

competition commission
south africa

ANNUAL REPORT 2019-20

competition regulation for a growing and inclusive economy





competition commission
south africa

Competition Commission of South Africa

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RP284/2020

ISBN: 978-0-621-48678-0

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LIST OF ABBREVIATIONS

AVE	Advertising Value Equivalent	HMI	Private Healthcare Market Inquiry
ACF	African Competition Forum	HR	Human resources
AG	Auditor General	IRC	Information Resource Centre
CD	Cartels Division	IT	Information Technology
CRESSE	The Competition and Regulation Summer School and Conference	ICN	International Competition Network
The Act	Competition Act No. 89 of 1998, as amended	LSD	Legal Services Division
Competition Bill	Competition Amendment Bill 2017	MCD	Market Conduct Division
CAC	Competition Appeal Court	M&A	Mergers and Acquisitions Division
Commission	Competition Commission of South Africa	NDP	National Development Plan
Tribunal	Competition Tribunal	NEDLAC	National Economic Development and Labour Council
Concourt	Constitutional Court of South Africa	NHI	National Health Insurance
CLP	Corporate Leniency Policy	OTC	Office of The Commissioner
CSD	Corporate Services Division	PFMA	Public Finance Management Act No. 1 Of 1999, as amended
Data Inquiry	Data Services Market Inquiry	PPTMI	Public Passenger Transport Market Inquiry
DAFF	Department of Agriculture Forestry and Fisheries	SME's	Small and Medium Sized Enterprises
DMR	Department of Mineral Resources	SARS	South African Revenue Service
DTIC	Department of Trade, Industry and Competition	SADC	Southern African Development Community
ERB	Economic Research Bureau	SCA	Supreme Court of Appeal
EDD	Economic Development Department	ToR's	Terms of Reference
EAP	Economically active population	EEA	The Employment Equity Act
GRMI	Grocery Retail Sector Market Inquiry		
GDP	Gross domestic product		

GLOSSARY OF TERMS

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

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

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

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

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

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

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

“Market Inquiry” refers to a formal inquiry in respect of the general state of competition, the levels of concentration in and structure of a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm.

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

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

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

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PART **A**

GENERAL OVERVIEW

1. **ABOUT** THE ANNUAL REPORT

This document constitutes the Annual Report of the Competition Commission of South Africa (Commission) for the 2019/20 financial year. It is premised on the Commission's strategic plan for 2015 - 2020.

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

This report is organised as follows:

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

2. THE **EXECUTIVE**



Tembinkosi Bonakele
Commissioner



Hardin Ratshisusu
Deputy Commissioner



Makgale Mohlala
Manager:
Cartels Division



Nompucuko Nontombana
Manager:
Market Conduct Division



Amos Moledi
Chief Financial Officer



Siyabulela Makunga
Head of Communications



Mduduzi Msibi
Company Secretary



Tamara Paremoer
Manager:
Mergers and
Acquisitions Division



Bukhosibakhe Majenge
Chief Legal Counsel and
Manager: Legal Services
Division



James Hodge
Chief Economist and
Manager: Economic
Research Bureau Division



Khanyisa Qobo
Manager:
Advocacy Division



Mpumi Nkabinde
Manager:
Human Capital Division



Mapato Ramokgopa
Manager: Commissioner's
Office



3. MINISTER'S FOREWORD



Ebrahim Patel
Minister of Trade, Industry and Competition

This Annual Report provides an account of the Competition Commission for the past financial year ending March 2020. In the last month of the financial year, the effects of the pandemic began to influence the work of agencies.

The last financial year started well: the sixth government administration took office following the national elections in May 2019, with a re-imagined industrial strategy for the country focused on localisation and a renewed promise, passion and urgency to address long standing socio-economic challenges.

The 2019 Presidential Investment Conference, held in November 2019 demonstrated sustained commitment and productive partnerships between the public and private sector in rebuilding the economy. Some R364 billion of further commitments were made (21% higher than at the inaugural Conference the previous year), with potential to create over 400 000 jobs over a five year period. This brings the total of investment commitments made at the two Conferences (2018 and 2019) to R664 billion, more than 50% of the five-year target set by the President in 2018.

The new **dtic** family accelerated the development and implementation of sector masterplans, completing these 'industry social pacts' in the automotive, poultry, sugar and clothing and textile sectors. These serve as a blueprint to harness energies amongst industry players for investment and increased output and jobs in sectors which together employ some 500 000 people. The Master Plans set out practical and reciprocal actions that each social partner at industry level would take to build more resilient businesses and industries. We are now working on sector masterplans in

the steel and furniture sectors, which we expect to complete in the coming year.

Significant progress was made with the finalisation of the modalities of the new African Continental Free Trade Area (AfCFTA), and with a trade agreement to address access to the United Kingdom in the event of a no-deal Brexit.

During the 2019/20 financial year, the Competition Commission maintained high levels of performance with several areas of success.

The Competition Amendment Act, 2018 was signed into law just prior to the start of the financial year, by President Cyril Ramaphosa in February 2019. The Amendment Act represents the most substantial amendment to competition law in the past 20 years and introduces significant changes to the current competition legislative framework. Importantly, these changes have a pointed focus on enabling participation by small and medium enterprises and historically disadvantaged individuals as a way to foster inclusive economic participation and to address market concentration. Implementation commenced during the financial year under review.

There has also been increased enforcement activity in merger control and restrictive practices. A total of 302 mergers were notified, with 82 large mergers, 217 intermediate and 3 small mergers. Many of the cases assessed in 2019/20 were in critical sectors, including manufacturing, property and wholesale trade.

Public interest conditions enhance the benefits of M&A activity for the economy. In the transaction where PepsiCo (via Simba) acquired Pioneer Foods, the Ministry intervened on public interest grounds. The intervention secured a commitment to a 13% ownership

stake by the 10 000 workers in the company; that the firm would make investments of R5,5 billion over five years; that 2 500 job opportunities be created and the firm commit a further R600 billion in a Development Fund for small-scale farmers and skills development. Similar transformative conditions were achieved in the Kwande Capital/Nampak merger which was approved subject to the parties undertaking public interest conditions to boost worker participation in equity and governance in the merged entity and to introduce the first black-owned glass manufacturer in South Africa. A total of 33 transactions were approved subject to conditions.

"The Amendment Act represents the most substantial amendment to competition law in the past 20 years and introduces significant changes to the current competition legislative framework."

To boost community digital access, the Competition Commission in 2017 at the Ministry request undertook a market inquiry into data prices, which released its final findings and recommendations in December 2019. The inquiry found that mobile data prices in South Africa were both high and structurally discriminated against low-income users. To remedy these, the Commission reached settlements with the major mobile network firms which resulted in prices of prepaid data bundles coming down, in some cases by more than 30%, resulting

in reported savings of more than R5 billion annually to customers. This will promote broad-based access to data by students, youth and communities and provide greater access to digital platforms. Two other critical market inquiries were completed in the period under review: the Private Health Market Inquiry and the Grocery Retail Market Inquiry, both of which made valuable findings and recommendations that will enable policy reform to promote access to affordable and quality healthcare, and enhance competition and entry of smaller players into the retail sector.

Competition law enforcement in the period ahead has to be done in more complex circumstances, induced by technology and greater global economic activity. Deeper levels of international cooperation by regulators are necessary. The Commission's engagements in

Africa are particularly important, to support regional integration through the African Continental Free Trade Agreement and the Commission contributed to the development of a continental Competition Policy Protocol, which is under development.

Covid-19 interrupted the rollout of the new industrial strategy. The economic environment brought on by Covid-19 has dented growth both locally and globally. The pandemic and its economic fallout have been described by leading economists as unprecedented in our generation. Across the world, countries are reporting or forecasting their lowest growth in at least a generation. China, for example, is experiencing its slowest annual growth since the death of Mao Zedong in 1976. In May this year, the Bank of England said the UK might experience its worst recession in 300 years and the US has recorded its highest level of unemployment since the Great Depression

For public entities, the pandemic principally impacted on their work beyond the financial year, placing pressure on delivery platforms and in a number of cases, on their finances.

Immediately after the declaration of the State of National Disaster in March 2020, I published - in consultation with the Competition Commission - block exemptions with several regulations to enable firms to cooperate lawfully and ensure that essential goods and services were available to respond to the pandemic. I also issued excessive price regulations, which provided a simple test for prosecution of price gouging practices in terms of the Competition Act and the Consumer Protection Act, and further regulations to enable the Competition Tribunal to hear these matters on an expedited basis.

The Commission developed a rapid response to Covid-19 through the regulatory interventions undertaken – with notable successes and significant lessons. These interventions helped to restrain firms from excessive pricing practices.

To repair the damage of Covid-19 and reconstruct the economy to create more jobs, bring more young people into entrepreneurship and

increase economic inclusion, we need to think boldly and implement smartly.

To address the immediate and urgent challenges of the economy, government and its social partners have agreed to an Economic Reconstruction and Recovery Plan. The Plan includes structural reforms and a commitment to greater levels of localisation and infrastructure investment. These measures will impact and shape the work of the dtic and its agencies.

Every agency of the dtic will be required to play its role in ensuring a steady recovery from the pandemic, and to continue execution of the re-imagined industrial strategy, outlined by President Ramaphosa at the start of this administration.

The economic challenges may result in greater levels of M&A where companies in distress are taken over by competitors or other investors; or exemption applications are prepared by industries to respond to the effects of the pandemic or deal with difficult trading conditions.

I wish to express my thanks to Commissioner Tembinkosi Bonakele who leads the Commission through challenging times, assisted by Deputy Commissioners Hardin Ratshisusu, Bukhosibakhe Majenge and James Hodge, as well as members of the Executive Committee who steered the ship during 2019/20, and the entire team of the Competition Commission who continue to deliver exceptionally.



Ebrahim Patel
Minister of Trade, Industry and Competition

4. THE COMMISSIONER'S OVERVIEW

I am pleased to present to you the 2019/20 Competition Commission Annual Report. This is our 21st edition, and like all 21-year-olds, the Commission has come of age.

It is entering its roaring twenties healthy, excited, energetic and eager to move with speed to change the world for the better with some realism, courtesy of the skirmishes and experimentation of our early years. Our performance for the reporting period fully exhibits this exciting moment in our evolution. However, no one could have guessed the events of the last month of the financial year. On 5 March 2020 patient zero tested positive for COVID – 19 in South Africa, having arrived in the country on 1 March. By 15 March a State of Disaster was declared and by 23 March the country was on national lockdown. The coronavirus spread was in full swing across the world. The pandemic has taken a toll on everyone, economically, physically, emotionally and otherwise. As we mark the end of the financial year with these dramatic events I wish to express our solidarity with all who were there – all of us and our loved ones who succumbed to the dreadful virus - those who have been infected or affected, the frontline workers, essential services workers, including Commission staff... I take this moment to salute you.

The pandemic decimated the economy and wreaked havoc on markets. Global supply chains were disrupted as many countries implemented lockdown measures, consumers stock-piled and the panic buying was threatening to plunge the country into a crisis of stock shortages and exploitative pricing. The competition and consumer protection authorities and government had to act swiftly to avert and mitigate the crisis. Various regulations were promulgated to ensure a swift investigations and prosecution of COVID – 19



Tembinkosi Bonakele
Commissioner

related cases as well as granting exemptions for some sectors that needed to coordinate their response to the pandemic. Our outreach program to retailers, pharmaceutical groups and other suppliers of essential products such as PPE, medicine and food, did much to prevent the problem from escalating into a crisis. Our early investigations and prosecutions sent out a strong message that I believe helped to deter price gouging. Much of the reporting on these cases will be done in the following reporting year, but I wish to express my gratitude to the staff and management of the Commission for their extraordinary efforts in undertaking this unprecedented work. The Competition Commission of South Africa has been widely acknowledged both locally and globally for this work and we owe all of this to staff who worked under very challenging times and who risked exposing themselves to a life threatening virus. I also wish to acknowledge the collaboration we undertook with the National Consumer Protection Commission during the investigation of the cases.

Our economy continues to be characterised by stagnant growth, persistent high levels of unemployment and increasing inequality – which is gendered and racialised. All these challenges are certainly amplified by the impact of COVID-19. It is therefore time for all of us to stand united, not only in fighting the pandemic but also in ensuring that the impact on the economy is minimised and that the economy recovers. This calls for a focused approach to our mandate, even as we reflect on our performance, to offer renewed ideas and appropriate solutions that would direct our country towards economic recovery, most importantly inclusive growth and transformation.

The past year (FY 2019/20) also marks the completion of the five year strategic cycle that we unveiled back in 2015. During these five years our overarching objective was to attain a growing and

inclusive economy, focusing on tangible economic outcomes. With this objective in mind, we took on a three-pronged approach. In the first place, we intensified our efforts to bring about a deconcentrated economy by focusing on abuse of dominance cases. Secondly, we prioritised investigations against cartel activity. Thirdly, we focused on advocacy to open-up specific markets with opportunities for SMMEs and HDI participation. Finally, in assessing mergers for their competition effects, we placed a special emphasis on concentrated industries. Our legislation is unique in that it has allowed us, during this period, to craft innovative settlements and remedies with market players which balance market efficiency with public interest objectives such as enabling participation by SMEs and HDIs and job preservation.

We have made a breakthrough in prosecuting abuse of dominance. The Competition Appeal Court found against Computicket, a subsidiary of Shoprite Holdings Ltd, for entering into exclusive agreements with inventory providers for the provision of outsourced ticket distribution services in the events and entertainment industry. This case has enhanced jurisprudence and investigative standards for

exclusionary abuse. A lot of effort also continues to be made to uncover and prosecute cartel activity in the economy, particularly in priority sectors. Our key highlight is the prosecution of collusion uncovered in the banking industry, involving 28 banks, for manipulating the USD/ZAR currency pair trading. The recent judgment by the Competition Appeal Court has paved the way for us to expedite the prosecution of this case given the profound effects it has had on our economy. There were two notable merger transactions during this period: Simba (Pty) Ltd (a subsidiary of PepsiCO) and Pioneer Food Group Limited and Kwande Capital / Nampak Glass. Both these transactions, enabled us to use the public interest provisions to impose a suite of conditions relating to

the development of local supply chains, emerging small / medium business, including a B-BBEE proposals that would create an employee share scheme.

We have also completed three of the five market inquiries in grocery retail, healthcare and mobile data. We initiated these inquiries with the aim of uncovering competition concerns in those markets and coming up with appropriate remedies and policy reforms to restore competition. I should highlight the ground-breaking settlements we have been able to conclude with Vodacom and MTN to implement reductions of data costs by up to 30%, provide lifeline data and zero rating of data for public interest organisations such as education and healthcare thus allowing for greater access to digital platforms like e-commerce.. Telkom and Cell-C also undertook to expand access to the internet by zero rating public education and offering other public benefits.

Another highlight from market inquiries has been the agreement concluded with major retailers (Shoprite Checkers and Pick n' Pay) to bring to an end the practise of long term exclusive leases by anchor tenants, which was found to limit competition and raise barriers to entry by SMMEs and HDIs into shopping malls for retail, including speciality retail such as butcheries.

We have provided responses and comments to eight key policies as part of our advocacy activities to ensure policies and laws are aligned with the Act. These included inputs into crucial laws and policies such as the National Health Insurance (NHI), ICASA's Sports Broadcasting regulations and Fisheries draft policies for the allocation and transfer of fishing rights. The advocacy into anti-competitive behaviour by various public and private schools for entering exclusive contracts with uniform suppliers also continues and we have seen greater levels of compliance amongst schools in line with these advocacy initiatives.

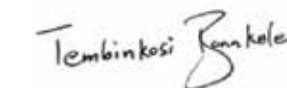
In February 2019 President Cyril Ramaphosa signed the Competition Amendment Bill into law which is major boost for the pursuit of a growing and inclusive economy, innovation and new investments. The aim of the amendments is to strengthen the Commission's ability to address the high levels of concentration in

the South African economy and accelerate its transformation into an inclusive economy. Several major changes were made to the Act. The amendments strengthened the Commission's power to conduct market inquiries and remedy market failures. The outcome of these inquiries are now binding and could even include divestiture..The amendments also enhanced the merger regime. When conducting merger assessment, the Commission now has to assess the full impact of public interest and promote collective forms of ownership. Finally, changes were made to provisions on abuse of dominance. In this regard provisions on excessive pricing and price discrimination have become clearer. Moreover as the Act now incorporates measures to curb the buyer power of large firms with a view to promoting participation of SMMEs and HDIs. We have in this regard begun the process of implementing these provisions, with the publication of the Price Discrimination and Buyer Power Guidelines, both of which are aimed at presenting an opportunity for SMEs or HDI firms to effectively participate in the economy without undue hindrances by dominant buyers.

As we entered the new year with the 'new normal', we were able to timeously invest in necessary systems to enable our teams to operate remotely and ensure business continuity remotely.

In conclusion, our achievements would not be possible without the contributions and support for our work. I wish to thank the entire management team and staff of the Commission for the prominence you continue to give to the institution through your hard work, professionalism, and excellence. I also wish to acknowledge the support extended by our colleagues from Department of Trade, Industry and Competition, Minister Patel, for his continuous support and leadership.

I hope that you find our annual report both interesting and insightful.



Tembinkosi Bonakele
Commissioner

“ In February 2019 President Cyril Ramaphosa signed the Competition Amendment Bill into law which is major boost for the pursuit of a growing and inclusive economy, innovation and new investments.”

5. ESTABLISHMENT AND MANDATE OF THE COMPETITION COMMISSION

5.1 ESTABLISHMENT OF THE COMPETITION AUTHORITIES

With the advent of democracy in 1994, the new South African government initiated a process of reviewing South Africa’s competition laws. The purpose of this process was to address the historical economic imbalances resulting from excessive economic concentration and ownership, collusive practices, and the abuse of economic power by firms in dominant positions. The 1994 White Paper on Reconstruction and Development¹ sought to establish a series of immediate measures to address the structural deficiencies in the South African economy. This included the development of a competition regime aimed at reforming markets with anti-competitive practices, and ensuring an inclusive and transformative economy.

Policy-makers recognised early on that competition policy would be one of several economic tools which would be used to achieve transformation. It was thus considered important that the new competition policy framework be flexible enough to accommodate other economic instruments of the state, even where there were perceived or inherent conflicts, including trade and industrial policy.²

From 1995 the DTI embarked on a consultative process to develop a new policy, which culminated in a National Economic Development and Labour Council (NEDLAC)³ agreement on the competition policy principles. The result of this process was the Competition Act no. 89, which was adopted in 1998 and became effective as of

1 September 1999 (hereafter “Competition Act” or “Act”). The Act established the Competition Commission, the Competition Tribunal and the Competition Appeal Court. The Competition Commission is an investigative and prosecutorial authority, the Tribunal is an adjudicative authority, and the Competition Appeal Court is an appeal body over competition matters.

5.2 OUR MANDATE

In terms of the Act, the Commission is empowered to investigate and prosecute restrictive horizontal and vertical practices; investigate and prosecute abuse of dominant positions; review exemption applications; review mergers and acquisitions applications; conduct market inquiries; develop and communicate advocacy positions on competition issues. Its mandate is to promote and maintain competition in South Africa in order to:

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

- promote a greater spread of ownership, specifically increasing the ownership stakes of historically disadvantaged persons.

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

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

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

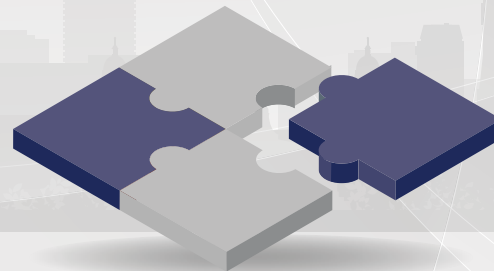
1 Notice 1954 Gazette 16085 of 23 November 1994
2 Guidelines for Competition Policy, 1997
3 NEDLAC comprises government, business and labour

6. OUR STRATEGIC OVERVIEW



VISION:

The Commission's "Vision 2030" aims to attain a growing and inclusive economy that serves all South Africans, which includes the eradication of poverty and unemployment – in line with the National Development Plan (NDP). This vision emphasises the transformative role played by the Commission in the economy.



MISSION:

In fulfilling its mandate, the Commission's mission is to undertake, "competition regulation for a growing and inclusive economy". This entails, amongst other things, balancing the efficiency objectives of the Competition Act with its public interest objectives.



STRATEGIC 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:

STRATEGIC GOAL 1:

EFFECTIVE COMPETITION ENFORCEMENT AND MERGER REGULATION

In pursuing this goal, the Commission effectively uses the instruments available to it in the Act. This includes the regulation of mergers and acquisitions, the investigation and prosecution of abuse of dominance and restrictive conduct, as well as the unmasking and dismantling of cartels. The primary tools utilised here are investigation, prosecution and remedies. Within the South African context, effective competition regulation also entails balancing market efficiencies with the public interest, leading directly into the Commission's overall objective to attain a growing yet inclusive economy.

The specific outcomes intended to lead to the achievement of this strategic goal are:

- Efficient and effective merger regulation;
- Competitive markets;
- Improved public interest outcomes in markets (relating to jobs, industrialisation, exports, development of Black-owned businesses and SMMEs);
- Increased competition compliance; and
- Improved understanding of market dynamics in priority sectors.

STRATEGIC GOAL 2:

STRATEGIC COLLABORATION AND ADVOCACY

The Commission develops strategic partnerships with complementary stakeholders, to attain inclusive growth. This goal entails promoting the Commission's work and activities to the public; conducting market inquiries; building strategic partnerships with government, business and labour; and promoting competitive markets. The primary tools used are market inquiries, advocacy programmes, and forging relationships with stakeholders. The outcomes pertaining to the achievement of this goal are:

- Improved co-ordination in the application of economic policy and competition policy;
- Increased importance of developmental perspectives in domestic and international competition law discourse;
- Improved compliance and awareness; and
- Improved understanding of market dynamics in priority sectors.

STRATEGIC GOAL 3:

A HIGH-PERFORMANCE AGENCY

The Commission successfully delivers on its objectives through a cohesive and well-structured organisation in which people, processes and systems perform optimally. In achieving this goal, the Commission maximises its human capital, resources, systems and processes to become an effective agency. It seeks to build and sustain a culture of caring and high performance. The Commission aims to become a knowledge-intensive organisation with strong, reliable and integrated information management systems, underpinned by the best in-range information technology (IT) platform. The outcomes pertaining to the achievement of this goal are:

- Improved organisational efficiency;
- Accountably managed resources; and
- Highly motivated and productive people.



VALUES:

The Commission's ongoing management of its operations is guided by a set of core values that define the organisational culture. These are:

C.O.M.P.E.T.E

COMMUNICATION

To effectively convey information and express thoughts and facts. This value demonstrates effective use of listening skills, and displays an openness to other people's ideas and thoughts.

OWNERSHIP

To commit one's self to the task at hand. The Commission encourages staff to accept responsibility for their own actions and decisions, and at all times to do their work in an ethical and cost-effective manner.

MAKING A DIFFERENCE

To consistently deliver the required business results, to set and achieve aggressive yet realistic goals, to consistently comply with quality, service and productivity standards, to meet deadlines, and to maintain a clear focus on the Commission's goals.

PROFESSIONALISM

To demonstrate a good work ethic. To show respect, display integrity and to have empathy with other stakeholders' needs.

EMPLOYEE WELFARE

For employees to achieve their full potential while maintaining a healthy work/life balance.

TEAMWORK

To work cooperatively and effectively with others in order to achieve common goals. The ability to participate in building a group identity characterised by pride, trust and commitment.

EFFICIENCY

To measure how well resources are utilised in pursuit of quality results.



PART **B**

ECONOMIC IMPACT

7. 2019/20 HIGHLIGHTS

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

7.1 DATA PRICES DROP BY MORE THAN 30%

From 20 April 2020 Vodacom customers experienced a dramatic drop of over 30% in monthly pre-paid data bundles across all channels. While the precise reduction differed for each channel, from April 20 consumers of Vodacom's popular 1GB monthly data bundle paid R99 for this bundle: a 34% drop from the R149 they paid before. Those buying even lower volumes of data – typically poorer customers – experienced even bigger price cuts.

This victory for consumers was the result of a settlement that Vodacom, one of South Africa's largest mobile networks, signed following the Commission's 2017 inquiry into high data prices.

7.2 SMALL RETAILERS GAIN ACCESS TO SHOPPING MALLS

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

7.3 PROMOTING ACCESS AND LOWER HEALTHCARE COSTS

The private healthcare market inquiry made several recommendations which are designed to promote systemic change to improve the context within which facilities, funders, and practitioners operate, and create a shift towards a pro-competitive environment. It was recommended that a healthcare regulatory authority be established to focus on healthcare facility planning (which includes licensing); economic value assessments; health services monitoring; and health services pricing.

It was also recommended that there be an introduction of a single, comprehensive, standardised base benefit option, which must be offered by all medical schemes to enable consumers to compare products and prices. Other recommendations aimed at reducing prices include competitive contracting and value-based contracts that are transparent and limited to 3 years.

7.4 PROMOTING COMPETITIVENESS IN THE STEEL INDUSTRY

Highveld was under business rescue, the approval of the AMSA/ Highveld transaction ensured the retention of Highveld's capacity to produce long steel products in the South African economy. At the time of the merger, Highveld did not produce any other products for its own account, since it did not have the necessary steel inputs required to produce any steel products. Highveld is currently the only producer of Heavy Steel Sections in South Africa. Highveld also has the capability to produce a small range of Light and Medium Steel Sections at its Heavy Sections Mill.

7.5 OVER R6 BILLION INVESTMENT TO DEVELOP SME'S

The merger between *Simba (Pty) Ltd and Pioneer Food Group Limited (Pepsi)* resulted in a large investment into the development of SMMEs and the economy of South Africa. In particular, the merging parties committed to investing a total of R6.5 billion in the maintenance and expansion of their South African operations over a period of five years and to establish a R600m development fund. The development fund will be used to facilitate the entry of farmers and SMMEs into their supply chain (R400m) and to develop and support South African research capacity by funding scholarships, learnerships and partnering with educational institutions and the Agricultural Research Council (R200m).

7.6 FIRST BLACK-OWNED FIRM IN GLASS MANUFACTURING:

The merger between *Kwande Capital (Pty) Ltd and the Glass Division of Nampak Products Limited* saw the entry of the first Black-owned

firm into the glass manufacturing industry in South Africa. The entry was facilitated by InBev, which will also provide technical support to Kwande to assist it in attaining high levels of operational efficiency.

7.7 PRECEDENT SETTING JUDGMENTS

A. CONSTITUTIONAL COURT CLARIFIES A LITIGANT'S RIGHT TO ACCESS THE COMMISSION'S DOCUMENTS

In *Standard Bank of South Africa Limited and Waco Africa (Pty) Limited*, the Constitutional Court distinguished between the litigant's right to a fair trial from the Constitutional right of access to information. The Constitutional Court clarified that once a person is involved in litigation, the rules of access to information for purposes of the trial are regulated by rules applicable in litigation rather than the general rights of access to the record of a public body. This judgment settled the law in as far as Rule 15 of the Commission Rules is concerned. Rule 15 of the Commission Rules is not available at all for any litigant that requires access to the Commission record of investigation.

B. TICKETING CASE PAVES THE WAY FOR BETTER COMPETITION

In January 2020 the Competition Appeal Court (CAC) found that Computicket had abused its dominance and prevented competitors in ticketing from expanding in the market. It did so by concluding exclusive agreements with event providers such as theatre owners, concert promoters and sports stadia (together called inventory providers) which had the effect of excluding rivals from the market. The CAC imposed a penalty of R20 million on Computicket and thus paved the way for greater competition amongst ticketing companies and ultimately more competitive prices for consumers.

The case confirmed the position on "exclusionary acts" and "anti-competitive effects" that the courts had previously established. The CAC confirmed that if conduct falls within the scope of one of the types of conduct contained in section 8(d) of the Competition Act, that is inducement, tying, predatory pricing and so forth, then the conduct is deemed to be exclusionary conduct. In the case of Computicket, the fact that its contracts were exclusive and thus prohibited inventory

providers from utilising the services of Computicket's competitors for the duration of the contracts, was enough to deem them exclusionary.

On anti-competitive effects the CAC confirmed that the Commission needed to prove either that the alleged conduct was actually harmful to consumer welfare or that the alleged conduct led to significant foreclosure of competition to the market. The foreclosure could be actual or likely. The CAC stated that foreclosure could be established by determining if Computicket's rivals had been rendered less effective as a result of Computicket's exclusive agreements with inventory providers.

Computicket had argued that rivals who had existed the market had done so because they were inefficient, not because of Computicket's exclusive contracts. However the CAC found that Computicket's contracts had indeed been exclusionary and anti-competitive thus upholding an earlier decision of the Competition Tribunal.

7.8 ADVOCACY IN THE AUTOMOTIVE INDUSTRY TO FACILITATE SME AND HDI PARTICIPATION

The Commission engaged the National Treasury's Chief Procurement Office in late 2018 to advocate for the alignment of Government's fleet tenders with the principles of the Automotive Aftermarkets Guideline's. The Commission provided input to the 'Special Conditions of Contract' for the RT46 and RT57 tenders so that the competition elements could be factored in. The Commission specifically assessed if these catered for the principles of allotment of work to small and medium enterprises (SMEs) and historically disadvantaged individuals (HDIs) and if the selection criteria to choose service providers was not exclusionary. Specifically, the Commission sought to ensure that conditions for the appointment of services providers included a preferential allocation for HDIs, multi-party awards, shorter contract periods, rotation of work amongst large entities and SMEs and general promotions of competition. During further engagements in November 2019 with Treasury it became clear that some changes had been introduced in these contracts to align with the Commission's recommendations. The Commission came to learn that in the finalisation of one of the

contracts (R57) this led to the appoint of over 40 service providers which included 12 new SMEs and HDI participants. The Commission continues to engage with Treasury regarding these contracts as the government remains one of the largest single customers of vehicles in the country. This would also have an effect on the aftermarket's segments including repair and maintenance; financing; and insurance.

7.9 PREVENTING CONSUMER EXPLOITATION AND SUPPORTING INDUSTRIES: THE COMMISSION'S ROLE IN RESPONSE TO COVID-19 DISASTER

Like all government institutions, the Commission also spent the large part of the end of the financial year responding to the Covid-19 national disaster and the subsequent lockdown. In response to a large number of Covid-19 related complaints received, the Commission had to establish a Covid-19 investigation team, to prioritise the investigations under the Competition Act and the Consumer Protection Regulations promulgated by the Minister of Trade and Industry on 19 March 2020. This included determining the appropriate tests for assessment of contraventions under the new regulations, developing suitable investigation guidelines and practice notes, and conducting research to monitor food price inflation of basic food commodities.

The Commission assisted the Department of Trade, Industry and Competition (DTIC) in the drafting of several Covid-19 Block Exemption Regulations for various industries, to enable industry players to work together to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster. The Regulations exempt categories of agreements or practices in the respective industries from the application of sections 4 and 5 of the Act, in response to the declaration of the Covid-19 pandemic as a national disaster. Covid-19 Block Exemption Regulations were issued for the healthcare sector, the banking sector, the retail property industry and the hotel industry. Below is a summary of block exemptions issued:

Table 1: Block Exemptions issued in response to the Covid-19 pandemic

Regulations	Summary
Covid-19 Block Exemption for the Healthcare Sector, 2020	<p>These Regulations exempt a category of agreements or practices in the healthcare sector from the application of sections 4 and 5 of the Competition Act in response to the COVID-19 pandemic. Market participants in the healthcare industry such as healthcare facilities and hospitals, medical specialists and suppliers, healthcare funders etc. are permitted to engage in concerted conduct and co-ordination, in response to the Covid-19 pandemic.</p> <p>These Regulations also permit the private sector to work with Government, in order to strengthen Government's health programs for fighting the Covid-19 pandemic.</p> <p>Category of agreements or practices exempted are in relation to hospitals and healthcare facilities, medical suppliers, medical specialists and radiologists, pathologists and laboratories, pharmacies, healthcare funders and cost reduction measures.</p>
Covid-19 Block Exemption for the Banking Sector, 2020	<p>These Regulations exempt a category of agreements or practices between Banks, Banking Association of South Africa and/or Payments Association of South Africa from the application of sections 4 and 5 of the Competition Act, in response to the declaration of the COVID-19 pandemic as a national disaster in terms of the Disaster Management Act, in order to:</p> <ol style="list-style-type: none">Promote concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster.Enable the banking sector to minimise the negative impact on the ability of customers, including both business and private individuals, to manage their finances during the national disaster, and be able to continue normal operations beyond the national disaster.Enable the banking sector to manage the banking infrastructure, including the payment infrastructure, ATMs and branches. <p>Category of agreements or practices exempted are in relation to the payment system and debtor and creditor management.</p>
Covid-19 Block Exemption for the Retail Property Industry, 2020	<p>These Regulations exempt a category of agreements or practices amongst the retail property landlords from the application of sections 4 and 5 of the Competition Act, in response to the declaration of the COVID-19 pandemic as a national disaster in terms of the Disaster Management Act, in order to:</p> <ol style="list-style-type: none">Promote concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the economic and social effects of the national disaster; andEnable the retail property sector to minimise the negative impact on the ability of retail tenants, especially small independent retailers, to manage their finances during the national disaster, and be able to continue normal operations beyond the national disaster. <p>Category of agreements or practices exempted are in relation to payment holidays and/or rental discounts for tenants, limitations on the eviction of tenants, and the suspension or adjustment to lease agreement clauses.</p>

Regulations	Summary
Covid-19 Block Exemption for the Hotel industry	<p>These Regulations exempt a category of agreements or practices in the hotel industry from the application of sections 4 and 5 of the Competition Act, in response to the declaration of the COVID-19 pandemic as a national disaster in terms of the Disaster Management Act, in order to:</p> <ol style="list-style-type: none">Promote concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster; andEnable the hotel industry to collectively engage with the Department of Health in respect of identifying and providing appropriate facilities for persons placed under quarantine, as determined by the Department of Health. <p>Category of agreements or practices exempted are in relation to the identification and provision of facilities and cost reduction measures.</p>

7.9 IMPLEMENTING THE AMENDMENTS TO THE COMPETITION ACT

The Competition Act was amended to, amongst other things, introduce provisions that clarify and improve the determination of prohibited practices relating to (1) restrictive horizontal and vertical practices, (2) abuse of dominance and price discrimination, (3) strengthening the penalty regime, (4) introducing greater flexibility in the granting of exemptions that promote transformation and growth, strengthening the role of market inquiries and merger processes in the promotion of competition and economic transformation – through addressing the structure and de-concentration of markets, (5) protecting and stimulating the growth of small and medium-sized businesses and firms owned and controlled by historically disadvantaged persons, while at the same time protecting and promoting employment and employment security. Most amendments to the Competition Act No. 89 of 1998 (as amended) came into operation on 12 July 2019.

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

DRAFT GUIDELINES FOR BUYER POWER AND PRICE DISCRIMINATION

Sections 8(4) and 9(1)(a)(ii) of the amendments were not operationalised, as both are new abuse of dominance provisions – which required regulations to be published by the Minister outlining the factors and benchmarks that should be considered in determining a contravention.

The amendments incorporate a buyer power provision under the abuse of dominance provisions of section 8, and a new price discrimination provision under section 9. Draft regulations in respect of these two provisions were gazetted by the Minister. These guidelines have been prepared in terms of section 79(1) of the Act, which allows the Commission to prepare guidelines to indicate its policy approach on any matter falling within its jurisdiction in terms of the Act.

These guidelines present the general principles that the Commission will follow in assessing whether alleged conduct contravenes section 8(4) of the Act. The guidelines seek to provide guidance by outlining how the Commission intends to interpret the new buyer power and price discrimination provisions, for enforcement purposes, and further how it will seek to screen and assess complaints laid in terms of the new provisions. The guidelines were published for public comments, and submissions were received and are being incorporated into the final version.

8. COMMISSION’S INTERVENTIONS IN PRIORITY SECTORS

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

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

Table 2: Commission’s enforcement work in priority sectors 2019/20

Priority sector	Parties to the investigation	Type of intervention
Food and agro-processing	Commission v South African Feedlot Association; Karan Beef (Pty) Ltd; Sparta Beef (Pty) Ltd; Chalmar Beef (Pty) Ltd; Beefmaster Kimberley; Morgan Beef (Pty) Ltd; Beefcor (Pty) Ltd; Fabvleis (Edms) Bpk t/a Midland Meat; Austin Evans Feedlot and 23 Others.	<p>After receiving information pointing to the existence of agreements between firms in the red meat market aiming to limit the prices of weaner calves while in turn raising the prices for carcass, the Commission initiated complaint against thirty-one (31) feedlots and the South African Feedlot Association (SAFA). The thirty-one feedlots include but are not limited to Karan Beef, Sparta Beef, Beefmaster, Chalmar Beef, Morgan Beef and Beefcor.</p> <p>The 31 feedlots are producers of red meat, and are all members of SAFA. To produce and supply red meat, feedlots purchase weaner calves from farmers through auctions, and bulk feed them for slaughter before being sold to wholesalers, butcheries, hoteliers, restaurants, and retail customers.</p> <p>The respondents are therefore competitors in the purchase of weaner calves, as well as in the production and supply of red meat. In its complaint, the Commission alleges that the respondents have entered into collusive agreements to fix the prices when purchasing the weaner calves at various auctions. In addition, the Commission alleged that the respondents have also fixed trading conditions by agreeing on the process to determine the breakeven prices when selling the carcass to wholesalers, hoteliers, restaurants, and retailers.</p>

Priority sector	Parties to the investigation	Type of intervention
Food and agro-processing		<p>The alleged conduct takes place through SAFA, which provides the platform to facilitate the conduct in that the feedlots submit their input costs data (including prices they paid for weaner calves) to SAFA so as to determine the average prices to be paid to the farmers for the weaner calves. They also submit information which is used to determine the breakeven price when selling the carcass. This results in wholesalers, restaurants, hoteliers, and retailers paying prices of red meat which are inflated by the alleged cartel. This usually has ripple effects on consumers of meat products, who are forced to pay higher prices for meat.</p> <p>This matter is currently under investigation.</p>
	Department of Agriculture, Forestry and Fisheries v Botha Roodt Market Agents (Pty) Ltd; Subtropico (Pty) Ltd; Interaction Market Services Holdings (Pty) Ltd t/a RSA Group Dapper Market Agents (Pty) Ltd; Dapper Market Agents (Pty) Ltd; Noordvaal Market Agents (Pty) Ltd; Marco Fresh Produce Market Agency (Pty) Ltd; Prinsloo & Venter Market Agents (Pty) Ltd; Fine Bros Market Agents (Pty) Ltd; and Delta Market Agents (Pty) Ltd.	<p>The Commission received a complaint from the Department of Agriculture, Forestry and Fisheries (DAFF) against nine [9] national fresh produce market agents; namely Botha Roodt Group, Subtropico, RSA Group, Dapper Market Agents, Noordvaal Market Agents, Marco Fresh Produce Market Agency and Prinsloo & Venter Market Agents, Delta Market Agents and Fine Bros Market Agents, for being involved in a cartel. In its complaint, the DAFF alleged that the national fresh produce agents are involved in:</p> <ul style="list-style-type: none">• undercutting the prices charged by small intermediaries in that they charge low prices in the early hours of the trading day, and then quickly increase their prices as soon as the smaller agents run out of stock.• agreeing on the timing of price increases, and selling certain volumes of fresh produce during late hours of trading with the intention to manipulate prices.• discriminating between buyers based on identity, pricing, and according to the quantities and grades of fresh produce they buy.• reserving high grade and quality fresh produce for sale to high volume buyers during late trading hours, leaving small scale buyers with low grade fresh produce during the early hours.• buying fresh produce from themselves (i.e. they purchase their own stock) at low prices and on credit, with the aim of selling the same produce at higher prices to other buyers.

Priority sector	Parties to the investigation	Type of intervention
<i>Food and agro-processing</i>		<p>Following the DAFF's complaint, the Commission raided the above national fresh produce agents and obtained further information of cartel conduct. Based on this information, the Commission initiated its own complaint. In its complaint, the Commission alleged that the national fresh produce market agents have fixed the commission rate at which they sell fruits and vegetables on behalf of farmers. In this regard, the Commission alleged that the national fresh produce agents charge farmers 5% to 6% commission for potatoes and onions, 7.5% for all fruits and vegetables with pallets, and up to a maximum of 9.5% for fruits and vegetables without pallets – for selling this fresh produce on their behalf.</p> <p>After investigating this conduct, the Commission referred the matter to the Tribunal, where the above fresh produce market agents are still facing prosecution.</p>
	The Grocery Retail Market Inquiry	The Grocery Retail Market Inquiry found that the formalised grocery retail market was concentrated, and that this was perpetuated through exclusive leases with shopping malls and superior rebates resulting from buyer power of the four large national chains. The Inquiry recommended that exclusive leases be phased out, with an immediate cessation in the enforcement of such leases as being against Small and Medium Enterprises (SMEs) and speciality stores nationally, as well as all grocery retailers. The Inquiry also recommended that no exclusivity be included in future leases or renews of existing leases. The Grocery Retail Market Inquiry further recommended that large suppliers sign up to a Code of Conduct which ensures that all rebates have an objective justification, and that they are available to all retailers, including smaller retailers and the buying groups that support them. These recommendations will facilitate SME participation in the market through access to shopping malls and competitive buying conditions.
	Research into the emerging farmers market	The Commission conducted research in the emerging farmers market to establish if there are any competition concerns. The Commission published a series of three working papers, which explored the barriers to entry and expansion for small and emerging farmers. The papers also made recommendations on how to address barriers related to funding, access to inputs and infrastructure, as well as access to markets.

Priority sector	Parties to the investigation	Type of intervention
Construction and infrastructure	Corobrik Pty (Ltd), Era Bricks (Pty) Ltd, Eston Bricks and Tile (Pty) Ltd, De Hoop Brickfields (Pty) Ltd, Clay Industry CC and Kopano Brickworks Ltd, Killarney Brickfields (Pty) Ltd and Bosun Structures and Precast (Pty) Ltd t/a Smartone KwaZulu.	<p>The Commission referred a complaint against Corobrik, Eston Bricks and Tile, De Hoop Brickfields, Clay Industry, Kopano Brickworks, Killarney Brickfields, and Bosun Structures and Precast t/a Smartone.</p> <p>These companies are brick and/or paving stone manufacturers, who have each concluded bilateral agreements with Corobrik in terms of which they produce bricks, but cannot supply to the market (they can supply to Corobrik only). They also agreed on the prices at which they will sell these bricks.</p> <p>These bilateral agreements fixed prices and divided markets, by allocating customers and specific type of products, in contravening section 4(1)(b)(i) & (ii) of the Act.</p> <p>This cartel has resulted in these firms not competing with Corobrik. This disadvantaged consumers, as they had limited choice of suppliers of bricks in the areas where these companies are operating.</p> <p>The matter is currently being prosecuted before Tribunal.</p>
Healthcare	Oliver Wright v Netcare Hospitals (Pty) Ltd t/a Netcare 911 and various Medical Aid Scheme.	<p>The Commission received complaints on behalf of the South African Private Ambulance & Emergency Services Association (SAPEESA) against Netcare 911 and various medical aid schemes such as Bankmed, Momentum, Polmed and Medshield.</p> <p>The complainant alleges that the medical aid schemes appointed Netcare 911 as their Designated Service Provider (DSP) for the provision of private ambulance and emergency services. As a DSP, Netcare 911 is responsible to manage the provision of ambulance services on behalf of the medical aid schemes. The appointment of Netcare 911 by these medical aid schemes as DSP presents competition problems, as Netcare also provides ambulance services. This appointment puts Netcare 911 in a position akin to that of being a referee and a player at the same time, in that it manages the appointment of third-party ambulances on behalf of medical aid schemes, whilst it also appoints its own ambulances. What compounds this problem is that all major medical aid schemes have appointed Netcare 911 as their respective DSP.</p>

Priority sector	Parties to the investigation	Type of intervention
Healthcare		<p>This has resulted in the bigger part of ambulance business coming in from medical aid being controlled by Netcare 911, to the exclusion of third-party ambulance operators, hence the compliant.</p> <p>The matter is under investigation. The Commission is engaging the medical aid schemes to resolve this matter.</p>
	The Private Health Market Inquiry	<p>The Commission completed the Private Healthcare Market Inquiry during the 2019/20 financial year. The Private Healthcare Market Inquiry identified features that alone or in combination, prevent, restrict or distort competition. The market is characterised by highly concentrated funders and facilities markets, disempowered and uninformed consumers, a general absence of value-based purchasing, practitioners who are subject to little regulation, and failures of accountability at many levels. A more competitive private healthcare market will translate into lower costs and prices, more value-for-money for consumers, and should promote innovation in the delivery and funding of healthcare</p>
Information and communication technology	USAASA (Lumko Mtinde) v Altech UEC (Pty) Ltd, Tellumat (Pty) Ltd, Vektronix (Pty) Ltd, QEC (Pty) Ltd, Worldtel Broadband (Pty) Ltd, Namec Skills Development Institute (Pty) Ltd, Namec Western Cape Holdings (Pty) Ltd, Equiton Investment Corporation (Pty) Ltd, African Digitech Solutions (Pty) Ltd, Siyeza Suppliers (Pty) Ltd and Lamec Trading (Pty) Ltd.	<p>The Commission received a complaint of collusive tendering in respect of the provision of the set-top boxes to the Department of Telecommunication and Postal Services (Universal Service and Access Agency of South Africa (USAASA) by suppliers of set-top boxes,,namely, Altech UEC, Tellumat, Vektronix, QEC and small manufacturers such as Worldtel, Equiton, Digitech, Siyeza, Namec Skills, Namec Western Cape and Lamec.</p> <p>The respondents manufacture and/or assemble and supply a wide range of electronic products such as LCD televisions, CCTV monitors, smart phones, antennas, and set-top boxes (decoders).</p> <p>The South African government started the process of migrating from analogue broadcasting to digital broadcasting, in terms of the broadcasting digital migration policy, as far back as 2008. USAASA is an agency of the Republic of South Africa, mandated to manage the roll out of antennas, set-top boxes (decoders) and satellite dishes for free to the approximately 5 million poor households throughout the country, in line with broadcasting digital migration policy. As part of the roll out, in November 2014, USAASA issued tenders for the appointment of service providers to supply digital terrestrial television (DTT) outdoor antennas, DTT set-top boxes (decoders) and direct-to- home (DTH) satellite set-top boxes. These set-top boxes and antennas are used to convert analogue to digital television signal.</p>

Priority sector	Parties to the investigation	Type of intervention
Information and communication technology		<p>The estimated value of the tender was R5 billion, and was part of government's inclusive approach to digital broadcasting migration as it was meant to subsidise poor households (by providing them with free decoders and antennas to ensure that these households continue to view their current analogue television sets with digital pictures).</p> <p>The respondents colluded when bidding for this tender and as a result, the government was not able to award this tender, thereby delaying the rolling out of the project.</p> <p>The matter is under investigation.</p>
	Commission v Publishers' Association of South Africa and others.	<p>The Commission initiated a cartel investigation into the Publishers' Association of South Africa (PASA) and ninety-one (91) of its members, who are publishers. These members include Abantwana Publishing (Pty) Ltd, African Directory Services (Pty) Ltd, AllCopy Publishers CC, Awareness Publishing SA (Pty) Ltd, Bargain Books CC, Berlut Books CC, Best Books CC, Black Letter Media (Pty) Ltd and Books 24/7 CC.</p> <p>These publishers are alleged to have engaged in price fixing and fixing of trading conditions in respect of the sale of TVET textbooks, schoolbooks, ABET workbooks, academic books, trade books and eBooks to retailers, government departments, universities and other educational institutions.</p> <p>They are also alleged to have fixed discounts provided to customers, fixing royalties to authors by publishers, as well as fixing commission to distributors of books and warehousing fees.</p> <p>This collusion has affected several sectors of the society, including government (which procures VET textbooks, schoolbooks and ABET workbooks for public schools and colleges).</p> <p>The matter is under investigation.</p>

Priority sector	Parties to the investigation	Type of intervention
Intermediate Industrial input products	Automotive components case	<p>This is an Automotive components case which consists of 62 Respondents that are involved in prohibited practices, implicating 119 automotive components.</p> <p>The allegations against the respondents is that they colluded on tenders to supply automotive components to Original Equipment Manufacturers such as BMW, Toyota and Ford.</p> <p>The matter is currently under investigation and some firms have already settled with the Commission.</p>
Banking and Financial Services	Commission v Bank of America Merrill Lynch International Limited; JP Morgan Chase and Co.; JP Morgan Chase Bank N.A; Australia and New Zealand Banking Group Limited; Macquarie Bank Limited; HSBC Bank USA and Credit Suisse Securities (USA) LLC and Others — (Forex)	<p>This is a cartel by twenty-three (23) foreign and local banks to manipulate the South African Rand (ZAR) and the United States of America Dollar (USD). The Commission referred the case against these banks to the Competition Tribunal for prosecution in February 2017.</p> <p>The complaint referral was against the following banks: Bank of America Merrill Lynch International Ltd; BNP Paribas; JP Morgan Chase and Co; JP Morgan Chase Bank N.A; Australia and New Zealand Banking Group Ltd; Standard New York Securities Inc.; Investec Ltd; Standard Bank of South Africa Ltd; Nomura International PLC; Standard Chartered Bank; Credit Suisse Group; Commerzbank AG; Macquaire Bank Ltd; HSBC Bank PLC; Citibank N.A; ABSA Bank Ltd; Barclays Capital Inc.; Barclays Bank PLC; HSBC USA, National Association; Merrill Lynch Pierce Fenner and Smith Inc.; Bank of America N.A.; Investec Bank Limited; and Credit Suisse Securities USA LLC.</p> <p>The foreign and the local banks decided to challenge the referral against them at the Tribunal, raising various issues. The main challenge by foreign banks was that the Commission and the Tribunal did not have jurisdiction to prosecute them. The local banks, on the other hand, raised the issue that the charges against them were not clear. All the banks requested the Tribunal to dismiss the Commission's case against them.</p>

Priority sector	Parties to the investigation	Type of intervention
Banking and Financial Services		<p>On 12 June 2019, the Tribunal issued a decision dismissing the challenges brought by various respondent banks, but also ruling that although the Commission could ask for a declaratory order of guilt against banks that have no presence in South Africa, it could not fine such banks. Some of the respondents, namely, Bank of America Merrill Lynch International Limited, JP Morgan Chase and Co., JP Morgan Chase Bank N.A , Australia and New Zealand Banking Group Limited, Macquarie Bank Limited, HSBC Bank USA, National Association Inc and Smith Inc and Credit Suisse Securities (USA) LLC filed appeals with the Competition Appeal Court (CAC) against the decision of the Tribunal.</p> <p>In addition to filing appeals, JP Morgan Chase and Co., JP Morgan Chase Bank N.A, Australia and New Zealand Banking Group Limited and Credit Suisse Securities (USA) LLC also filed review applications to review and set aside the Tribunal decision. The Commission then filed a cross appeal against certain aspects of the decision of the Tribunal, in particular, against an order that banks with no presence in South Africa cannot be fined.</p> <p>In February 2020, CAC delivered judgment on the appeals and reviews filed by the banks, as well as the cross appeal by the Commission. CAC dismissed the appeals and reviews lodged by the banks, and upheld the Commission's cross appeal. It held that the Commission must file a new complaint referral with the Tribunal, which will replace the previous referral. The CAC ordered the Commission that the new complaint referral should clearly indicate that the conduct of banks had direct and immediate effects on the South African economy.</p>
	Advocacy with SA Banks	<p>The Commission conducted advocacy with the banks, following the concerns found by the Commission on the relationship between the banks and conveyancers, as governed by the Service Level Agreements (SLAs). The Commission's efforts resulted in the banks (FNB, Standard Bank, Nedbank and Investec) committing to reform their conveyancing practices. The banks committed to limit or remove the exclusionary provisions from their SLAs. The banks have also committed to exempt members of the Black Conveyancing Association from their investment criteria, which will enable Black conveyancers to be on the panels of various banks.</p> <p>The Commission continues with its engagement with banks, to ensure that small conveyancers appointed into the conveyancing panels of these banks also get work allocation.</p>

Priority sector	Parties to the investigation	Type of intervention
Energy	SAPIA Exemption	The Commission has granted SAPIA a short term conditional exemption in relation to the cooperation agreements and/or practises between SAPIA and its members at various stages of the liquid fuel supply chain.
Transport	Public Passenger Transport Market Inquiry	The Commission is conducting a market inquiry in the land based public passenger transport sector to understand the general state of competition. The Commission initiated the Inquiry because it has reason to believe that there are features or a combination of features in the land based public passenger transport sector that may prevent, distort or restrict competition within the sector; and to achieve the purposes of the Act.
	Complaints against the Passenger Rail Agency of South Africa SOC Ltd (PRASA)	The Commission completed its investigation against PRASA for contraventions of sections 8(a), 8(b) and 8(c) of the Act. The Commission found that PRASA's denied its competitors access to an essential facility when it is economically feasible to do so, in contravention of section 8(b), alternatively 8(c) of the Act. The Commission also found that PRASA Cres has engaged in excessive pricing in contravention of section 8(a) of the Act. The Commission has referred this complaint to the Tribunal for prosecution.

Table 3: Noteworthy M&A cases in priority sectors

Priority sector	Parties to the investigation	Type of intervention
Food and agro-processing	ASF / Vuka	Merger prohibited due to the vertical foreclosure concerns in relation to transmission poles. Overall effect would likely have been higher prices of transmission poles to Eskom and other customers.
	Simba (Pty) Ltd / Pioneer Foods Limited	Public interest conditions to secure completion of a BEE Employee Share Ownership Scheme, employee board representation, a 5-year moratorium on merger related job losses, and R6.5 billion investment in local agricultural value chains and skills development
Construction and infrastructure	WBHO / Trencon	The transaction forms part of the alliances arising from the settlement agreement concluded between construction companies and the Government of the Republic of South Africa (as represented by the Ministers of Rural Development and Land Reform, Economic Development, Public Works and Transport) in October 2016 as a result of the Commission's investigation into cartel conduct in the construction industry. The terms of the settlement agreement included a requirement that construction companies either sell equity to HDPs or mentor and develop at least 3 firms owned and controlled by HDPs.

Priority sector	Parties to the investigation	Type of intervention
Information and communication technology	Vodacom / IoT.nxt	The transaction was approved with conditions. It raises potential foreclosure concerns regarding access to IoT solutions. Post-merger, customers of IoT.nxt would not be required to procure connectivity services from Vodacom. The conditions imposed ensure continued access by all customers of IoT.nxt such that there is no exclusive supply to Vodacom.
Intermediate Industrial input products	AMSA / Highveld	The transaction was approved unconditionally. Highveld was under business rescue, and both AMSA and Highveld produced long steel products that directly competed against each other. However, there was no structural change in any of the long steel markets impacted, since Highveld was only producing the long steel products on behalf of AMSA under a long-term agreement. The partnership with AMSA will allow for the production of mainline rail which will result in import replacement.
	Insimbi / Treppo	The transaction was approved without conditions. Ferrous and non-ferrous scrap products supplied to the mining and steel industries. The Commission found that although the post-merger market shares were high, the accretion in both the ferrous and non-ferrous markets is not significant, and there would be no significant change in market structure and the non-ferrous market as a result of the proposed transaction.
Banking and Financial Services	JSE Ltd / Link Market Services South Africa (Pty) Ltd	The Commission was concerned that through this transaction the JSE would further entrench its dominance in the exchange market, and acquire the ability to tie and bundle related services to the exclusion of other firms. As such, the Commission was of the view that the proposed merger would likely result in substantial prevention or lessening of competition, and prohibited the proposed merger.
Energy	Red Rocket Holding/ Building Energy South Africa (Pty) Ltd, Building Energy South Africa Holding (Pty) Ltd, and Zevoblox (Pty) Ltd	The transaction was approved without conditions. The activities of the parties in the transaction overlap with respect to the generation and provision of electricity and/or renewable energy. However, the Commission found that the merging parties are not direct competitors as they provide renewable energy generated from different technologies and also supply renewable energy to different customers.
Transport	Marinvest / Ignazio Messina	The Commission recommended that the merger be approved subject to behavioural conditions. The conditions required the parties to, amongst others, continue operating independently.

PART C

PERFORMANCE INFORMATION

9. PROGRAMS & FUNCTIONS

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

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

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

- Market Conduct Division (MCD): investigates abuse of dominance, vertical restrictive practices, assesses exemption applications and conducts market inquiries;
- Cartels Division (CD): investigates and prosecutes cartel conduct;
- Mergers and Acquisitions Division (M&A): analyses and evaluates applications for corporate consolidations;
- Legal Services Division (LSD): the program provides litigation services and legal expertise to the Commission, and advisory opinions to the public; and
- Economic Research Bureau (ERB): the division provides economic expertise to the organisation, and enhances the Commission's knowledge and understanding of market dynamics.
- Advocacy: the division conducts preliminary investigation of complaints received, provides policy responses to Government and other regulators, and advocates for voluntary compliance with the Act. The function is also responsible for managing the Commission's relations with international stakeholders, with the Strategic Planning function.

- The Corporate Services Division (CSD): the division provides corporate support services, including human resource management, registry, security and facilities management, as well as the management of Information Technology (IT).
- The Finance Division is tasked with the responsibility for finance management.
- Finally, the Office of the Commissioner (OTC) carries out communication and corporate governance.

Table 4 shows each of the Commission’s strategic goals, and the Commission’s division responsible for achieving them.

Table 4: Strategic goals, outcomes and responsible divisions

Strategic goal	Intended outcomes	Responsible divisions
Effective competition enforcement and merger regulation	<ul style="list-style-type: none">• Efficient and effective merger regulation• Competitive markets;• Improved public interest outcomes in markets;• Increased competition compliance; and• Improved understanding of market dynamics in priority sectors.	<ul style="list-style-type: none">• Advocacy Division• CD• ERB Division• MCD• LSD• M&A Division
Strategic collaboration and advocacy	<ul style="list-style-type: none">• Improved co-ordination in the application of economic policy and competition policy;• Increased importance of developmental perspectives in domestic and international competition law discourse; and• Improved compliance and awareness.	<ul style="list-style-type: none">• Office of the Commissioner• Advocacy Division
A high performance agency	<ul style="list-style-type: none">• Improved organisational efficiency;• Accountably managed resources; and• Highly motivated and productive people.	<ul style="list-style-type: none">• CSD• All other divisions

10. MARKET CONDUCT DIVISION

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

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

Abuse of a dominant position by a firm may include excessive pricing of goods or services, denying competitors access to an essential facility, price discrimination (unjustifiably charging customers different prices for the same goods or services) and other exclusionary acts (such as refusal to supply scarce goods to a competitor, inducing suppliers or customers not to deal with a competitor, charging prices that are below cost so as to exclude rivals, bundling goods or services, and buying up a scarce input required by a competitor).

The Act prohibits the abuse of a dominant position by firms in a market, but does not prohibit firms from holding a dominant position. Proving abuse of dominance requires extensive evidence and analysis. Firstly, it must be proven that the respondent is dominant

in a specific market. The Act uses both market share and market power to define dominance. Secondly, there must be evidence that the respondent is abusing their dominance. This evidence relates to substantial foreclosure or consumer welfare (harm).

Exemption applications are granted to firms that wish to engage in anti-competitive conduct, if the conduct and their motivation meet the requirements set out in the Act. The Market Conduct Division also conducts market inquiries, which are formal inquiries into the general state of competition in a market for goods or services, without necessarily referring to the conduct or activities of any particular firm.

10.1 SUMMARY OF PERFORMANCE VS TARGETS

The Market Conduct Division was responsible for four (4) performance targets in the 2019/20 financial year. Market Conduct Division met three (3) performance targets, the target that was not met related to completion of four (4) market inquiries. The Commission completed three (3) market inquiries including Data Market Inquiry, Grocery Market Inquiry and Healthcare Market Inquiry. The Commission could not finalise the Public Passenger Transport Market Inquiry – however, a draft report with preliminary findings and recommendations was published, and the inquiry was extended to allow for public consultation on preliminary findings and recommendations in the draft report.

10.2 PERFORMANCE HIGHLIGHTS

In this financial year the Market Conduct Division had sixty-three (63) complaints under investigation. Market conduct completed eight (8) investigations during the financial year: seven (7) complaints were

non-referred and one (1) complaint was referred to the Tribunal for prosecution.

Below, we discuss the matter that was referred to the Tribunal during the financial year:

a. Africa People Mover (Pty) Ltd and Others vs PRASA

Between 2017 and 2019, the Commission received several complaints against the Passenger Rail Agency of South Africa SOC Ltd (PRASA). The complaints were lodged by Africa People Mover (Pty) Ltd (APM), Moolla's Transport Services CC (Moolla's), Intercape Ferreira Mainliner Proprietary Limited (Intercape), Eagle Liner Proprietary Limited (Eagle Liner) and David Bus Services Proprietary Limited trading as Eldo Coaches. In the main, the complainants allege that PRASA is abusing its dominant position by restraining bus operators from accessing essential bus terminal facilities at Park Station, and by giving preference to its subsidiary, Autopax Passenger Services (SOC) Ltd (Autopax), in accessing these facilities.

PRASA is a state-owned firm responsible for, among other things, delivering commuter rail services in the Metropolitan areas of South Africa, and long-distance (inter-city) rail and bus services within, to and from the borders of the Republic of South Africa. PRASA is an agency of the Department of Transport. PRASA Cres is the property management division of PRASA, responsible for managing PRASA's property portfolio, which is made up of operational (stations, depots and office buildings) and non-operational (residential and land) properties.

The Commission investigated the complaints as potential contraventions of sections 8(a), 8(b) and 8(c) of the Act. The Commission identified the upstream market for the provision of an intermodal terminal facility, with specific reference to Park Station. The Commission concluded that Park Station, as an intermodal facility with features that include bus terminal facilities, constitutes a separate market and that PRASA, which manages and owns this facility, holds a monopoly position in the facility.

The Commission defined the downstream market as that of the provision of interprovincial bus services. For purposes of assessing the complaints, the Commission identified the most frequently used routes by long distance travellers. The routes identified are the routes that are generally considered as the most competitive routes by bus operators (including the complainants) and are attractive to new entrants. Over and above these routes, the Commission also included some of the routes that are considered as less competitive, which are commonly referred to as the Northern routes, and are Autopax's stronghold. The routes identified include the following:

- i. Pretoria/Johannesburg to Durban;
- ii. Pretoria/Johannesburg to Cape Town;
- iii. Pretoria/Johannesburg to Port Elizabeth;
- iv. Pretoria/Johannesburg to Mthatha;
- v. The Northern routes, which include:
 - Pretoria/Johannesburg to Polokwane; and
 - Pretoria/Johannesburg to Nelspruit.

The Commission found that PRASA's denied its competitors access to an essential facility when it is economically feasible to do so, in contravention of section 8(b), alternatively 8(c) of the Act. The Commission also found that PRASA Cres has engaged in excessive pricing in contravention of section 8(a) of the Act. The Commission has referred this complaint to the Tribunal for prosecution.

10.3 INITIATION OF COMPLAINTS

The Commission initiated two (2) complaints in the 2019/20 financial year. Below we discuss the initiations:

a. The Commissioner vs Adcock Ingram Critical Care Proprietary Limited

The Commissioner initiated a complaint against Adcock Ingram Critical Care Proprietary Limited (Adcock) and Baxter International Inc. (Baxter) for alleged excessive pricing in contravention of Section 8(1)(a) of the Act.

The complaint relates to the provision of a drug called Factor VII Inhibitor which is sold in South Africa by Adcock in terms of a long-term agreement concluded with Baxter. In terms of the agreement, Adcock has been granted permission to manufacture, distribute and/ or supply Factor VII Inhibitor in South Africa under its brand name Fieber.

Factor VIII Inhibitor is used in the treatment of, among others, haemophilia A and B. Haemophilia A and B are blood disorders in which blood cannot clot thereby resulting in patients bleeding for a long time after an injury. Factor VIII Inhibitor helps to control and/ or prevent bleeding episodes in patients with haemophilia A and B.

Information in the Commission's possession suggests that the prices charged for Factor VIII Inhibitor in South Africa by Adcock are excessive and could prevent patient access to this drug.

b. The Commissioner vs Discovery Ltd, Discovery Vitality, Discovery Life and Discovery Health

The Commissioner initiated a complaint against Discovery Ltd and three of its operating companies, namely Discovery Vitality, Discovery Life and Discovery Health ("the Respondents").

At the core of the complaint is a wellness and reward programme operated by the Respondents, called the Discovery Vitality Health programme (Vitality). This is a membership-based programme aimed at incentivising members to improve their health and overall quality of life by giving members access to a range of benefits. The Respondents have integrated the Vitality programme (or variations thereof) with its other product offerings across different sectors such as health insurance (medical aid scheme), long term insurance, short term insurance and banking.

In addition, the data capabilities of Vitality and the market characteristics of wellness programmes in general, makes it particularly susceptible to an incumbent's growing and persistent market power and potential abuses of such market power.

On 18 June 2019 the Respondents launched an application in the High Court of South Africa against the Liberty Group Ltd (Liberty), a competitor of Discovery Life in the long term insurance market. The Respondents sought to interdict Liberty from an alleged trademark infringement of the "Vitality" and "Discovery" trademarks. In court papers the Respondents sought to characterise the dispute as an intellectual property issue. Liberty, in its answer to the suit, makes a series of allegations against the Respondents, notably that they are attempting to "stifle legitimate competition" between Liberty and Discovery Life and that the Respondents seek to enforce an "exclusive right for the illegitimate purpose of removing a competitive threat to Discovery Life in the market-place". Whilst the Court has since dismissed the Respondent's application, the allegations raised





by Liberty during the course of these proceedings still raises potential competition concerns which require further scrutiny.

The concerns relate to an alleged abuse of dominance through the Vitality programme. For example, the Respondents are allegedly offering customers an upfront premium reduction and/or dynamic annual premium adjustments (increases/decreases) and/or cash back on premiums paid, all dependant on a customer’s Vitality status. This may amount to an inducement of customers not to deal with the Respondents’ competitors in the long-term insurance market. In particular, the leveraging of the Respondents’ dominance, through Vitality, to achieve this objective, may amount to a contravention of section 8(1)(d)(i), alternatively section 8(1)(c), of the Act.

This conduct may also impede and/or prevent other firms in the long term insurance market from entering into, participating in or expanding within the relevant market as such firms may either not have access to a similar wellness product to use as a risk proxy or are unable to achieve the same scale required as Vitality, given the Respondents’ alleged dominance.

The leveraging of the Respondents’ dominance through the tying of the Vitality programme to a long term insurance product (such as life insurance policy) in order to qualify for certain benefits (such as an upfront premium reduction and/or dynamic annual premium adjustments (increases/decreases) and/or cash back on premiums paid) may amount to an exclusionary act in contravention of section 8(1)(d)(iii), alternatively section 8(1)(c), of the Act.

In addition, the Respondents’ refusal to allow a competitor to use a consumer’s Vitality status as risk proxy, which classifies as “personal information”, may amount to a contravention of section 8(1)(c) of the Act, in that such conduct may exclude or impede the participation of competitors of the Respondents in the long term insurance market. This conduct may further limit consumer choice by obliging consumers, who seek to benefit from their Vitality status as a risk proxy, to purchase a life insurance policy from the Respondents only. This may impede and/or prevent other firms in the long term insurance market from entering.

10.4 EXEMPTIONS

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

Table 5: Exemption applications finalised in 2019/20

Applicant	Conduct sought to be exempted	Status of the application at year end
Air Mauritius Limited (AM) and South African Airways SOC Limited (“SAA”)	Joint venture agreement between AM and SAA. The agreement is expected to introduce synergies and improve efficiencies primarily through a code-share arrangement. The applicants seek to align their economic incentives by pooling the revenue and costs associated with their integrated routes. AM and SAA submit that the above conduct is necessary to attain the objectives stipulated under sections 10(3)(b)(i) and 10(3)(b)(ii) of the Act.	The Commission granted SAA and MA an unconditional exemption for a period of five (5) years, effective from 21 October 2019 to 30 October 2024.

11. CARTELS DIVISION

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

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

11.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Cartels Division was responsible for two (2) performance targets

in 2019/20 financial year; including one (1) target jointly shared with the Legal Services Division (LSD). The Cartels Division exceeded one (1) target and did not meet another target. The target that was not met related to ≥75% of cartel cases won at the Tribunal and the courts. The target was not met because the courts dismissed some of the Commission's matters, and furthermore the Commission could not file additional cartel cases with the Tribunal for adjudication due to Covid-19 disruptions in operations.

11.2 PERFORMANCE HIGHLIGHTS

During the 2019/20 financial year, the Commission received six (6) cartel complaints from third parties and initiated two (2) cartel investigations. A total of twenty-five (25) cartel investigations were completed during financial year 2019/20. Of these, nine (9) were referred to the Tribunal for prosecution, while fifteen (15) were non-referred. The Cartels Division received seven (7) CLP applications in 2019/20 financial year. The Cartels Division did not conduct any dawn raids in the 2019/20 financial year, due to limited financial resources.

Key cartel investigations are discussed below:

a. Competition Commission vs Standard Bank of South Africa Limited; and Competition Commission vs Waco Africa (Pty) Limited and Others

On 20 February 2020 the Constitutional Court handed down a judgment in three appeals which were heard together. The appeals were brought by the Competition Commission against decisions of the Competition Appeal Court (CAC) and the Competition Tribunal (Tribunal).

The two appeals involved Standard Bank of South Africa Limited (Standard Bank) and one appeal involved a group of seven companies including Waco Africa (Pty) Limited (Waco and Others).

The Constitutional court decided to consolidate the appeals against Standard Bank and Waco and Others, since they concerned the same question, namely, access to the Commission record of investigation in terms of Rule 15 of the Commission Rules.

On 15 February 2017 the Commission referred to the Tribunal 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 6 February 2018 the Commission also referred to the Tribunal 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 Commission opposed this application on the basis that Standard Bank is not entitled to the record at this stage of the proceedings. The Tribunal ruled in the Commission's favour. Standard Bank appealed this decision to the CAC. At the same time, Standard Bank lodged a review application at the CAC, against the Commission's decision to initiate and refer the case against it. As part of the review proceedings, Standard Bank sought access to the Commission's record of investigation.

On appeal, the CAC ruled in favour of Standard Bank, compelling the Commission to produce its record of investigation. On review

application, the CAC also ruled that, pending the review, the Commission should provide Standard Bank with its record of investigation. The Commission appealed both CAC decisions to the Constitutional Court.

In the Waco matter, the case involved collusive tendering and price fixing for the supply of scaffolding to Eskom, for the total amount of R4.5 billion. The Commission filed the case against WACO and other firms involved in February 2018. Instead of filing its answer, WACO, following the CAC decision on Standard Bank, also approached the Tribunal insisting that the Commission should produce the record of its investigation before it could answer. The Tribunal, following CAC precedent on Standard Bank, granted the order sought by Waco.



Table 6: Cartels case statistics

CARTEL CASES RECEIVED, INVESTIGATED AND FINALISED				
	2016/17	2017/18	2018/19	2019/20
COMPLETED INVESTIGATIONS	33	63	30	25
REFERRALS TO THE TRIBUNAL	27	52	18	9
CASES NON-REFERRED	6	11	12	15
CASES INITIATED BY THE COMMISSION	26	28	22	2
CASES RECEIVED FROM THIRD PARTIES	17	35	13	6
CASES TAKEN OVER FROM PREVIOUS YEAR	74	83	91	87

The Commission subsequently appealed the case directly to the Constitutional Court, and asked for it to be consolidated and heard together with the Standard Bank case.

The dispute between the Commission and Standard Bank as well as WACO was whether a litigant can use Rule 15 of the Commission Rules to access record of investigation in the same way members of the public do. The essence of the two cases were whether Standard Bank and WACO and others as respondents in litigation have the same rights of access to the information held by a public body such as the Commission, in the same manner that members of the public do, according to the Constitution. The Constitutional Court clarified that the rights of a litigant in the Tribunal proceedings to access the Commission's record of investigation are limited, in the same manner as litigants in the High Courts.

The Constitutional Court distinguished the litigant's rights to a fair trial from the Constitutional right of access to information. It asserted that once a person is involved in litigation, the rules of access to information for purposes of the trial are regulated by rules applicable in litigation, rather than by the general rights of access to the record of a public body.

The Constitutional Court upheld the Commission's appeal, and set aside the CAC order that compelled the Commission to hand over its record of investigation. The court decided that Standard Bank and WACO and Others cannot have access to the Commission record of investigation using Rule 15.

This judgment settled the law in as far as Rule 15 of the Commission Rules is concerned. Rule 15 of the Commission Rules is not available at all for any litigant that requires access to the Commission record of investigation. The judgment further unlocked several cases pending before the Tribunal, where respondents wanted access to the Commission record of investigation before filing their answer to the complaint referrals.

On appeal against the CAC review judgment, the Constitutional Court upheld the Commission's appeal and set aside the CAC judgment. The Constitutional Court found that the CAC erred in hearing the review application as a court of first instance, without first determining whether it has jurisdiction. The Constitutional Court remitted the matter back to the CAC to determine whether, as an

appeal court, it has jurisdiction to hear the review as a court of first instance.

b. *Bank of America Merrill Lynch International Ltd and Others vs the Competition Commission*

On 15 February 2017, the Commission referred a case to the Tribunal against eighteen banks, in which it was alleged that the banks' currency traders colluded in the foreign exchange market, in particular, by manipulating the USD/ZAR currency pair. The respondents filed various exceptions to the complaint referral. The referral was then subsequently supplemented and in the last supplementation, the Commission added five additional banks to the referral.

The respondent banks persisted with their challenge to the Commission's complaint referral, and filed exception to the referral. The respondents sought the dismissal of the referral against them, on the basis that the Commission and 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 Commission's complaint referral was vague and embarrassing.

In its reasons, the Tribunal found there to be three broad categories of respondent banks: banks that are based locally, foreign banks with an office in South Africa (local peregrini) and foreign banks without office in South Africa (pure peregrini).

On pure peregrini banks, the Tribunal held that it has the jurisdiction to adjudicate the case against these banks, but it does not have jurisdiction to impose administrative penalties against them. This decision meant that whilst the Commission can prosecute these banks for manipulating the USD/ZAR currency pairs in contravening section 4(1)(b) of the Act, the Tribunal will not fine them. On local peregrini banks, the Tribunal held that it has jurisdiction over these banks. No issue of jurisdiction was raised in relation to the local banks.

The Tribunal further held that the Commission should supplement its complaint referral and allege that the conduct of the respondent banks had an effect in South Africa, which met the internationally recognised threshold of being direct or immediate, and substantial – before the Tribunal could assert its jurisdiction in making any order.



Several banks appealed the Tribunal judgment, while others also filed review applications. The Commission cross-appealed.

The essence of the appeals and review applications was whether the Tribunal has jurisdiction to issue declaratory order over pure peregrini banks. These banks were of the view that the Tribunal erred in finding that, while it may not have jurisdiction over pure peregrini banks, it nevertheless can issue declaratory orders against them.

The Commission noted a cross-appeal against the following principal findings of the Tribunal: that the Tribunal had no personal jurisdiction over the pure peregrini banks; that to establish jurisdiction over a peregrinus the requirements of both personal jurisdiction and subject matter jurisdiction had to be met, and the provisions of section 3(1) of the Act could not be read to broaden the established approach to jurisdiction in competition matters.

The CAC dismissed the appeals and review applications and upheld the Commission's appeal. It held that the Commission and the Tribunal have jurisdiction to investigate and prosecute these cases. The CAC ruled that the Commission should file a new referral. It should allege among others, a single overall conspiracy, and that the impugned conduct had direct or immediate and substantial effects on the Republic.

This decision had also unlocked several cases pending before the Tribunal, where foreign firms contested that the Commission and the Tribunal do not have jurisdiction to prosecute them for contravening section 4(1)(b) of the Act.

c. *The Competition Commission vs Kap Diversified Industrial (Pty) Ltd and Sonae Arauco South Africa (Pty) Ltd*

On 09 March 2016, the Commission initiated a complaint in terms of section 49(B)(1) of the Act against KAP Diversified Industrial (Pty) Ltd, then known as PG Bison (Pty) Ltd (PG Bison) and Sonae (Pty) Ltd (Sonae) for price fixing in contravention of section 4(1)(b)(i) of the Act.

On 31 March 2016, the Commission raided the offices of the respondents and seized hard copy documents as well as electronic information.

The Commission’s investigation found that, from at least 2012 to 2016, the respondents colluded in that they agreed on percentage price increases for wood-based panel products. They further agreed on the timing to effect such price increases. This conduct amounted to price fixing which contravenes section 4(1)(b)(i) of the Act.

Accordingly, the Commission decided to refer the matter to the Tribunal for prosecution.

d. City of Cape Town Metropolitan Municipality vs Enviro Options (Pty) Ltd, Sakh’ikhaya Suppliers CC and African Sanitation Outsourcing (Pty) Ltd

On 28 July 2014, the Commission received a complaint from the City of Cape Town alleging that Enviro Options, Sakh’ikhaya and African Sanitation entered into collusive agreements in contravention of section 4(1)(i)(ii) and (iii) of the Act, in respect of tender number: 230S/2012/13, issued by City of Cape Town for servicing, maintenance and cleaning of dehydrated toilet units for single and communal use within informal settlements in the city for a period ending 30 June 2015.

The Commission investigated the matter and found that on or about January 2013, the respondents entered into three agreements pertaining to their bids in respect to the tender. Firstly, the Commission found that Enviro Options and Sakh’ikhaya agreed and/or engaged in a concerted practice to fix prices and tender collusively, in respect of the servicing, maintenance and cleaning dehydration toilets for communal use.

Secondly, it was found that African Sanitation and Sakh’ikhaya agreed and/or engaged in a concerted practice to fix prices and tender collusively in respect of the servicing, maintenance and cleaning of dehydration toilets for single use.

Lastly, the Commission found that African Sanitation and Enviro Options agreed and/or engaged in a concerted practice to divide markets by allocation of customers and tender collusively, in respect the servicing, maintenance and cleaning of dehydration toilets for single and communal use.

The Commission decided to refer to the matter to the Tribunal for prosecution.

12. MERGERS AND ACQUISITIONS DIVISION

The Mergers and Acquisitions (M&A) Division assesses mergers filed with the Commission, to determine whether the merger is likely to substantially prevent or lessen competition in a market, and whether the merger can or cannot be justified on public interest grounds. Mergers are classified as either small, intermediate or large, depending on the turnover or asset values of the merging firms. The Commission receives a filing fee for every intermediate or large merger filed.

According to the Act, it is not compulsory for small mergers to be notified, and no filing fee is prescribed. However, the Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds. In terms of the guidelines on small merger notifications, the Commission requires any party to a small merger to inform it of that merger if either party is under investigation by the Commission for a contravention of the Act, or if there is an ongoing investigation in the relevant market. The merger thresholds were last revised in October 2017 and are set out in the table below.

Table 7: Mergers and acquisitions thresholds applicable in the 2019/20 financial year

Threshold	Combined turnover or asset value	Target turnover or asset value	Size of the merger	Filing fee
Lower threshold	R 600 000 000	R 100 000 000	Intermediate	R 165 000
Higher threshold	R 6 600 000 000	R 190 000 000	Large	R 550 000

12.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The M&A Division was responsible for five (5) performance targets in 2019/20 financial year and met all the targets.

12.2 PERFORMANCE HIGHLIGHTS

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

Table 8: Time frames set for assessing mergers of varying complexities

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

Table 9: Average turn-around times in 2019/20 against service standards

Phase	Service standard	Total number of transactions (excluding withdrawn and no jurisdiction cases)	Average turnaround time
Phase 1	20 days	161 days	18 days
Phase 2	45 days	126 days	40 days
Phase 3 (small and intermediate)	60 days	17 days	57 days
Phase 3 (large)	120 days	14 days	113 days

Table 10: Mergers notified and reviewed over five years

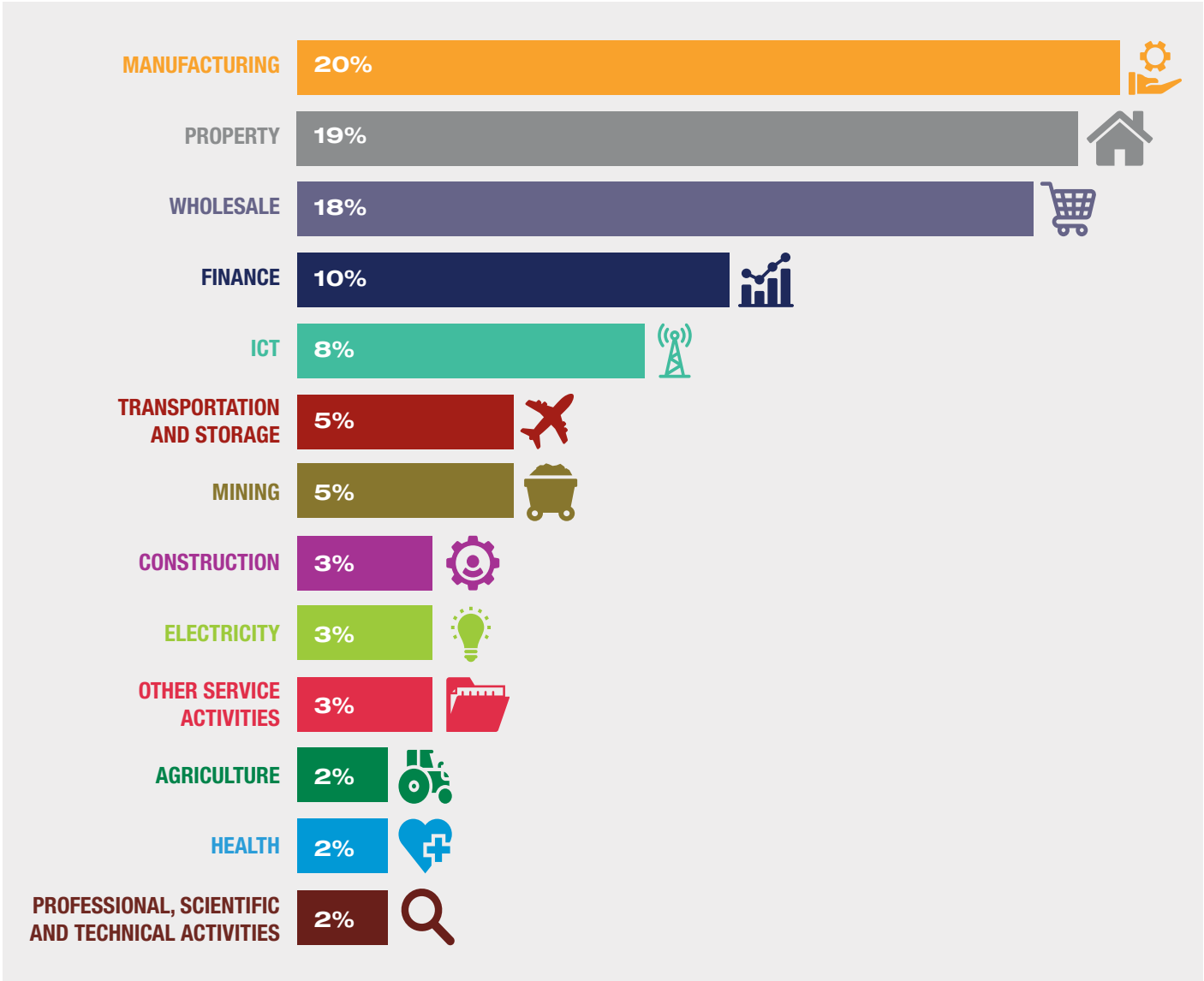
L: Large | I: Intermediate | S: Small

	2015/16			2016/17			2017/18			2018/19			2019/20		
	L	I	S	L	I	S	L	I	S	L	I	S	L	I	S
Notified	391			418			377			348			302		
	116	262	13	93	319	6	119	249	9	104	235	9	82	217	3
Finalised	413			385			388			336			318 ⁴		
	129	270	14	109	270	6	120	261	7	106	221	9	84	230	4
Approved without conditions	367			349			325			287			278		
	108	249	10	91	252	6	94	226	5	85	196	06	69	206	3
Approved with conditions	37			31			52			41			33		
	15	21	1	13	18	0	23	27	2	18	21	2	13	19	1
Prohibited	7			5			12			4			7		
	2	2	3	1	4	0	4	7	1	1	2	1	2	5	0
Withdrawn / No jurisdiction	5			3			9			2			3		
	4	1	0	1	2	0	4	5	0	1	1	0	1	2	0

4 Includes cases filed in the 2018/19 financial year but finalised in the 2019/20 financial years and excludes mergers that were abandoned/withdrawn.

Most of the cases assessed in 2019/20 were in the manufacturing sector (20%), property sector (19%), and Wholesale trade (18%). Figure 1 below depicts the sectors in which mergers took place in the 2019/20 financial year.

Figure 1: M & A 2019 sectoral analysis



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

a. Kwande Capital (Pty) Ltd and The Glass Division of Nampak Products Limited

On 14 February 2020, the Commission approved with conditions the proposed transaction in which Kwande Capital (Pty) Ltd, through Isanti Glass 1 (Pty) Ltd (Isanti), acquired the glass packaging business and plant of Nampak Glass, a division of Nampak Products Limited (Nampak Products).

Isanti is a special purpose vehicle (SPV) formed for the purpose of the proposed transaction. Isanti is controlled by Kwande. The remaining minority shareholding is held by SABSA Holdings (Pty) Ltd (SABSA) a subsidiary of Anheuser-Busch InBev SA/NV group (AB InBev). As part of the transaction AB InBev will provide technical support to Nampak Glass, to assist it to improve its operational efficiency.

Nampak Glass is a division of Nampak Products. Nampak Products is a wholly owned subsidiary of Nampak Limited. Nampak Limited is a public company incorporated in South Africa. The target business does not directly or indirectly control any firm.

The Commission found that there is no competitive overlap (horizontal overlap) between the activities of Isanti and Nampak Glass. However, due to SABSA's stake in Isanti, the proposed transaction results in a customer-supplier (vertical) overlap in relation to the (i) upstream market for the manufacture and supply of glass containers (upstream market) and (ii) the downstream market for the production and supply of alcoholic beverages, particularly beer and flavoured alcoholic beverages (FABs) (the downstream market).

The upstream market is highly concentrated, with only two players, namely Nampak Glass and Consol Glass (Pty) Ltd (Consol). Consol is a dominant firm in the upstream market, with a market share greater than 70% based on both output and sales value. Nampak Glass accounts for the rest.



The downstream market for the sale of clear beer is also highly concentrated, with AB InBev accounting for market shares upwards of 75% based on sales volumes and sales value. Heineken is the second largest player in this market. In the market for FABs, Distell has the highest market share and AB InBev is the second largest player.

Pre-merger, AB InBev procured a large proportion of its glass packaging requirements from Consol. Post-merger, AB InBev intends switching the bulk of its glass packaging input requirements from Consol to Nampak, essentially following a strategy of self-supply. The Commission concluded that this raises input foreclosure concerns for other downstream users of glass containers, as Nampak would no longer be able to supply third party users at pre-merger levels.

In addition to the foreclosure concerns mentioned above, the Commission was also concerned that the transaction may raise unilateral price effects. In this regard, the Commission notes that Nampak is an important rival to a dominant firm, and a valuable alternative supplier to third parties to ensure security of supply. Nampak also provided competitive prices to customers. If a large proportion of Nampak's output is provided to SABSA post-merger, third parties may lose these benefits. The Commission is also concerned that the proposed transaction may raise information exchange concerns, through AB InBev's involvement as technical partner in Nampak Glass post-merger.

The merging parties submitted that Nampak Glass is currently experiencing operational difficulties. The Commission assessed this and concluded that the continued operation of Nampak Glass as an effective competitor, absent the proposed transaction, is unlikely and that Nampak would benefit from technical efficiency improvements brought by AB InBev's involvement as a technical partner through the merger.

Regarding public interest considerations, the Commission found that the transaction is likely to introduce the first Black-owned glass manufacturer in South Africa. The merging parties have also committed to ensuring that there is no adverse effect on historically disadvantaged recycled glass collectors.

Whilst the merging parties dispute that the proposed transaction results in competition and public interest concerns, they nonetheless tendered remedies to address the concerns raised by the Commission and by third parties. These include remedies in relation to employment, effects on the glass recycling sector, supply to third party customers post-merger, investment in additional capacity, and proposals to limit anticompetitive information exchange. The Commission is of the view that these remedies may, on balance, address the concerns resulting from the proposed transaction.

With respect to third party supply, the merging parties commit to making a material proportion of their planned output available to third parties, on commercially reasonable terms, for 4 years. The merging parties have also committed to comply with the terms and conditions

of any pre-existing customer supply agreements that are in place at the time of the merger. The merging parties further commit to taking all steps within their auspices to add additional glass manufacturing capacity within the medium term. Further, in the event that there are production stoppages or shortages, Nampak Glass will ensure that output is allocated in a non-discriminatory manner. To safeguard against any potential sharing of competitively sensitive information, the merging parties will, amongst other safeguards, implement an information exchange policy.

Further, the merging parties are required not to retrench any employees as a result of the merger, and to ensure that they procure recycled glass for use in their operations in the ordinary course.

While the Commission is cognisant that post-merger, third party customers will be in a difficult position in relation to their ability to access capacity at the merged entity and at Consol, the Commission does, however, note that, pre-merger, customers were already operating in a market facing capacity constraints. The merger does not resolve the capacity constraints, but by maintaining Nampak's production capacity in the market, the merger ensures that the constraints are not worsened. The Commission thus notes that on the balance of probabilities, a conditional approval of this transaction presents better competitive outcomes for the market.

b. Simba (Pty) Ltd and Pioneer Food Group Limited

In February 2020, the Commission recommended that the Competition Tribunal (Tribunal) approves Simba (Pty) Ltd's (Simba) acquisition of Pioneer Food Group Limited (Pioneer Foods) subject to public interest conditions.

Simba, a subsidiary of PepsiCo Inc. (PepsiCo), proposed to acquire the entire issued share capital of Pioneer.

PepsiCo supplies packaged foods, snacks and beverages throughout various countries. PepsiCo's principal operating entity in South Africa is Simba. PepsiCo, through Simba, sells ready-to-eat products in South Africa under well-known brands which include, *inter alia*, Simba, Lays, Dorito's, NikNaks and Fritos. Simba's products include



peanuts and raisins, chips, ready-to-eat popcorn and pretzels. In addition, PepsiCo provides beverages in the form of carbonated soft drinks in South Africa, through a franchisee. The beverages brands provided by PepsiCo in South Africa include PepsiCo, 7Up, Mountain Dew and Miranda.

Pioneer Foods is a South African producer and distributor of a range of branded food and beverage products. Its popular food brands include Sasko, White Star, Weetbix, Safari and Wellingtons, while its beverage brands include Ceres, Liquifruit and Fruitree. In addition, Pioneer Foods supplies Lipton Iced Tea in South Africa, as an exclusive franchisee of the Pepsi Lipton International joint venture between PepsiCo and Unilever in South Africa.

The Commission found that the proposed transaction raises a horizontal overlap in relation to the manufacture and supply of savoury snacks and ready-to-drink non-alcoholic beverages (NABs). In the national market for the supply of savoury snacks, the Commission found that the transaction will result in minimal market share accretion and accordingly, was unlikely to significantly change the structure of the market. In the national market for the supply of NABs, the Commission found that the proposed transaction is unlikely to substantially lessen or prevent competition, considering the merged entities' relatively low market share.

The Commission also considered the impact of the proposed transaction on the narrower national market for the supply of peanuts, and found that the merged entity will have a moderately high market share, with accretion of over 10%. Despite this moderately high market share, the Commission found that there are at least 10 players who provide peanuts in the South African market, who hold in excess of 60% of the market.

The Commission further found that the proposed transaction results in vertical overlaps, but it is unlikely to result in any vertical foreclosure concerns post-merger, because the merged entity does not have the ability to foreclose any firm from any market in South Africa.

Taken as a whole, the Commission formed the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

In relation to public interest, the Commission noted that the merging parties had proactively engaged the Minister of Trade, Industry and Competition (the Minister) and presented a suite of public interest commitments to the Commission, relating to the development of local supply chains, emerging farmers and small/medium business. The Commission formed the view that these commitments will likely have a pro-public interest benefit.

In particular, the merging parties committed to investing a total of R6.5 billion in the maintenance and expansion of their South African operations, over a period of five years, and to establish a R 600m

development fund. The development fund will be used to facilitate the entry of farmers and SMMEs into their supply chain (R400m), and to develop and support South African research capacity by funding scholarships, learnerships and partnering with educational institutions and the Agricultural Research Council (R200m).

The Commission also considered the impact of the proposed transaction on employment and B-BBEE. The Commission found that the proposed transaction will not result in any retrenchments, and the merging parties have committed that the merger will create direct and indirect jobs. In addition, the merging parties committed to not retrenching any employees as a result of the merger, for a period of 5 years.

The Commission found that the public interest commitments proposed would result in an increase in Black and employee ownership/participation within Pioneer Foods. In this regard, the Commission found the B-BBEE proposal will create an employee share scheme that will result in employee participation of at least 12.9% shareholding in the merged entity. In addition, employees would be able to appoint at least one non-executive director to the board of Pioneer Foods, which was not the case pre-merger. As such, the Commission formed the view that the proposed transaction will promote Black ownership and Black participation within the merged entity, post-merger.

Given the lack of competition concerns and the positive public interest effects of the merger, the Commission recommended that the proposed transaction be approved, subject to the public interest conditions outlined above.

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

On 19 September 2018, the Commission received a notification of a large merger whereby MIH eCommerce Holdings (Pty) Ltd (MIH eCommerce) intends to subscribe for 60% of the issued share capital in WeBuyCars (Pty) Ltd (WeBuyCars).



MIH eCommerce seeks to acquire 60% of WeBuyCars. MIH eCommerce is an investment holding company with interests in OLX and the Naspers' subsidiary, Car Trader, which operates as AutoTrader. MIH eCommerce does not itself supply any products or services in South Africa.

The Commission's investigation found that the proposed merger is likely to result in the removal of a potential competitor, and other significant exclusionary effects on rivals of both WeBuyCars and online classifieds platforms, and accordingly recommended that the Tribunal prohibits the transaction.

The Commission concluded that the guaranteed car purchasing marketplace has arisen as a 'disruptive' business model that is able to address the difficulties experienced by the buyers and sellers of used cars. It entails marketing extensively to sellers of used vehicles, purchasing used vehicles from private individuals in a convenient manner, and offloading those vehicles, either wholesale to the used car dealers, or directly to end-consumers. The Commission assessed the merger in the market for guaranteed car purchasing model.

Although the Commission found that the proposed transaction does not present any horizontal overlap in South Africa, as the Naspers Group is not currently active in the buying and selling of cars, it found that there was an intention by Naspers Group to enter the market through another transaction. Specifically, the Commission found that the Naspers Group acquired a stake in Frontier Car Group Inc (FCG) and through this acquisition, the Naspers Group intended to enter the South African market for wholesale and online buying of cars from the public (using an instant cash model) and selling to dealers in direct competition with WeBuyCars.

Whilst FCG is currently not active in South Africa, it is apparent that the Naspers Group, through FCG, anticipated entering the South African market in competition with WeBuyCars. Therefore, the Commission believes that there is a potential overlap between the activities of the merging parties. The proposed merger will result in the removal of this potential competition in the niche segment of wholesale and online buying of used cars from the public, using an instant cash model, and the consequent selling to dealers and others. This is the market segment that is currently dominated by WeBuyCars.

Furthermore, the proposed merger will likely result in a substantial lessening of competition through exclusionary portfolio effects. The Commission found that there are numerous ways in which Naspers Group can harness the complementarities between WeBuyCars and AutoTrader and/or OLX, to the exclusion of both WeBuyCars' rivals and to the exclusion of other online platforms.

The merger raises vertical concerns, because the Naspers Group owns and operates online classified automotive advertising

platforms, e.g OLX and Auto Trader, and WeBuyCars utilises these platforms to either sell or purchase vehicles. The Commission is concerned that the proposed merger would result in the foreclosure of other traditional dealer rivals of WeBuyCars on the seller side. This is because AutoTrader is a significant platform on which many traditional dealers advertise their cars and, post-merger, AutoTrader has the ability and incentive to offer preferential treatment to WeBuyCars.

The Commission advanced two theories of harm, namely:

- i. The removal of a potential competitor in the guaranteed car purchasing marketing place in direct competition to WeBuyCars; and
- ii. The leveraging of the complementary businesses in MIH eCommerce and the Naspers group of companies, to entrench the existing dominance of WeBuyCars and raise barriers to entry for other players, whilst also providing some reciprocal benefits to those MIH eCommerce and Naspers' businesses too, which may entrench their own positions.

Following the hearing of evidence from factual witnesses and expert economists of both the Commission and the merging parties, as well as arguments, the Tribunal confirmed the Commission's recommendations and prohibited the proposed transaction involving MIH, trading as OLX, and WeBuyCars.

d. Arcelormittal South Africa (Pty) Ltd and the Manufacturing and the Production of Structural Steel and Rail Business of Highveld Structural Mill (Pty) Ltd - 2019Sep0040

On 24 January 2020, the Commission recommended an un-conditional approval of the acquisition by ArcelorMittal South Africa Ltd (AMSA) of the manufacturing and production of structural steel and rail business (Structural Mill Business) of Highveld Structural Mill (Pty) Ltd (Highveld).

AMSA is a producer of steel products. Of relevance to the proposed transaction is AMSA's production of long steel products. Long steel products can be broadly classified as Heavy Sections, Light and Medium Steel Sections, and Other Long Products. AMSA does

not produce Heavy Sections. It is only active in the production of Light and Medium Steel Sections and Other Long Products. The Commission found that AMSA produces a wide range of Light and Medium Steel Sections and Other Long Products.

Highveld is currently the only producer of Heavy Sections in South Africa. Highveld also has the capability to produce a small range of Light and Medium Steel Sections at its Heavy Sections Mill. Highveld entered into business rescue proceedings in 2015 and has not produced any products for its own account since. After entering into business rescue proceedings, Highveld has been producing Heavy Sections on behalf of AMSA, in exchange for a tolling fee. At the time of the merger, Highveld did not produce any other products for its own account, since it does not have the necessary steel inputs required to produce any steel products.

The Commission found that the merger does not alter the structure of the market, as it merely replaces one producer for another over the same productive capacity, as has been the case in the past 5 years. However, the Commission assessed the potential horizontal overlap in relation to the production of Light and Medium Steel Sections. The Commission found that, although Highveld has not produced any Light and Medium Steel Sections since entering into business rescue proceedings, there is a potential overlap between the merging parties, as Highveld has the production capability to produce these products.

The Commission first assessed the relevant counterfactuals to the proposed transaction, and found that the business rescue practitioners are in the process of winding down the Highveld business. As such, the Commission found that the continuation and conclusion of the wind-down plan of Highveld is the most relevant counterfactual. The competition assessment was conducted against this background.

With regards to unilateral effects, the Commission found that the merger is unlikely to change the current market dynamics in relation to the production and supply of Light and Medium Steel Sections. This is because Highveld is not currently active in this market, and therefore does not currently offer a competitive constraint to AMSA. It is also unlikely that Highveld will start production of these products

in the absence of the merger, given its inability to self-supply the necessary steel inputs. Further, the Commission also found that although imports of Light and Medium Steel Sections are on the decline, they are still sufficient and are likely to pose a competitive constraint to the merged entity post-merger. This was confirmed by customers of the merging parties.

The Commission also assessed whether the expansion of AMSA into the Heavy Sections market is likely to result in anticompetitive effects, through the bundling of Heavy Sections products (for which it will be the only producer in South Africa) with the Other Long Steel Products it currently produces and supplies in South Africa. The Commission considered the purchasing pattern of customers, and found that long steel products are produced with many different dimensions, as each product has a specific use, and customers purchase the product based on their specific requirements. As such, it is not possible to require a customer to purchase a bundle of products. In addition, it is unlikely that AMSA would bundle the products post-merger, as the products are specifically made per order based on the requirements of the customer. This was confirmed by customers. Further, customers also indicated that imports are a viable option and are likely to constrain the merged entity post-merger.

With regards to public interest considerations, the Commission found that the merger is unlikely to result in negative effects on employment. In fact, the proposed transaction will have a positive impact on employment, as all the current employees of Highveld will be retained by AMSA. The counterfactual to the current transaction is likely to result in job losses for the Highveld employees. The Commission also found that in the long term, the merger is likely to result in synergies between AMSA and Highveld, such that local production of main line rails may occur. This would be unlikely were the steel mills to continue operating separately. This product is currently being imported, as there are no local firms with the capability to produce main line rails in South Africa. Localisation of main line rails is likely to benefit the South African steel industry as well as consumers in general, as it will result in increased employment opportunities and reduced costs.

The Commission understand that the DTIC recently designated the rail-line steel, which requires the likes of Transnet and PRASA to develop domestic rail-line producing capacity, the designation will allow Highveld to be one of the early suppliers of domestically produced rail-lines. As such, the proposed transaction is likely to benefit the steel industry and beneficiation in South Africa that will result in significant import replacement.

For these reasons, the Commission recommended an unconditional approval to the Tribunal. The Tribunal approved the proposed transaction unconditionally on 12 February 2020.

e. Videx Wire Products Proprietary Limited/The Alrode

The Commission prohibited a proposed intermediate transaction whereby Videx Wire Products (Pty) Ltd (Videx) intended to acquire the Alrode business of Aveng Duraset (Alrode Business), a division of the Aveng Manufacturing division of Aveng Africa (Pty) Ltd (Aveng Africa).

The activities of the merging parties overlap, in relation to the supply of mining roof bolts and related strata support systems used in mines. From both a demand-side and supply-side substitution perspective, mining roof bolt products appear to be distinct sub-market offerings. As a result, the Commission assessed the competitive effects of the proposed transaction on the following markets: (i) Expansion shells/ mechanical roof bolts/ mechanical anchors/bail type expansion shells; (ii) Shepherd's crooks/grouting rods or bolts; (iii) Pigtail eyebolts/suspension bolts/rope eyebolts/flexible eyebolts; (v) Resin bolts/z-bars/v-bars and (vi) Bearing plates.

The Commission found that the merged entity are the largest players in various markets, with combined market shares generally above 50% and reaching 80% in some markets. The Commission was of the view that from a market share perspective, the merged entity can be considered dominant in the majority of the overlapping markets.

The Commission further assessed the closeness of competition between the merging parties in the supply of roof bolt products. The Commission found that the products of the merging parties are essentially commodities, and manufactured from the same raw steel

material. The functionality of the machinery owned by the merging parties is similar, with the exception that each company would have its own specific tooling and configurations. However, both companies are able to manufacture the overlapping roof bolt products in line with customers' requirements and specifications. The merging parties bid against each other in respect of the same tenders, and customers negotiate for pricing based on the competition that exists between Videx and the Alrode Business, as two of the main rivals in the market.

For the tender analysis, the Commission found that, predominantly, closed tenders are issued to pre-selected bidders (however, open tenders may occur depending on the customer's tender process). With the limited information available, the Commission conducted a participation analysis to assess the frequency with which the merging parties compete for the same tenders. From this, the Commission observed that the four larger players (Videx, Alrode Business, RSC Ekusasa Mining and Rocbolt Technologies) compete in all the tenders issued in respect of mining roof bolt products, with limited participation from other smaller players, as mining companies largely invite the more reputable players to compete in the closed tenders.

Taking all the above factors into account, the Commission found that Videx and the Alrode Business are close competitors, and that there will be loss of competitive rivalry as a direct result of the merger.

The Commission found that the barriers to enter the mining roof bolt market are high. There are stringent requirements, before one can meet the specifications of a mine and be approved as a supplier. New and small suppliers are typically not given opportunities to tender in most projects. This makes it difficult for new entrants to grow in the market. Customers have some degree of countervailing power as they have the ability to switch between suppliers, albeit mostly among the existing big 4 main suppliers, who will be reduced to 3, post-merger. The proposed merger will likely further reduce the existing countervailing power of customers, as it inhibits other rivals from bidding for the Alrode Duraset contracts should Alrode Duraset exit the market. More so, the industry dynamics will likely be significantly altered, to the detriment of customers' countervailing power, since Videx will now become significantly larger in this already concentrated market.

On this basis, the Commission was of the view that substantial unilateral effects are likely to arise as a result of the merger, as it results in the removal of competition and further weakening of the countervailing power of customers.

The Commission also considered coordination, since there has been history of collusion involving both merging parties in the markets impacted by the proposed merger. The Commission found that the merger will likely enhance coordination, since there will essentially be three main players remaining in the market, all of whom were involved and participated in the previous cartel. Although Videx will likely become much larger than RSC and Rocbolt, it is conceivable that allocating customers may still be beneficial to all if it maintains their market shares. More importantly, any countervailing power by the mining customers is unlikely to militate against such customer allocation conduct, as customers would be oblivious to the bid rigging conduct.

In all, the proposed merger results in a substantial lessening of competition in the markets for various mining roof products.

Public interest assessment

The merger brought about some benefits, in that it sought to save 100 jobs (out of a total of 275 employees). The Commission viewed the benefits on the 100 employees in the context of the significant competition harm arising from the merger.

The Commission took the view that the saving of 100 jobs alone does not outweigh the competition harm arising from the merger. This view prompted the Commission to explore whether Videx would be in a position to absorb all 275 Alrode Duraset employees, instead of only 100 employees, or alternatively proffer additional and significant benefits and commitments that could outweigh the competition harm arising from the merger. The merging parties indicated that they are unable to absorb all the employees of Alrode Duraset. Further, the acquiring firm declined to provide any other firm commitments that may alleviate the concerns arising from the proposed merger.

There were no viable remedies that were proffered by the merging parties, that can alleviate any of the competition concerns arising from the proposed merger. The Commission therefore prohibited the merger.

f. Africa Forestry Fund II Limited and Vuka Forestry Holdings (Pty) Ltd

The Commission has prohibited a proposed transaction whereby Africa Forestry Fund II Limited (AFF) intends to acquire Vuka Forestry Holdings (Pty) Ltd (Vuka Holdings) and Glen Village Trading Co (Pty) Ltd (Glen Village).

AFF forms part of entities including MTO Forestry (Pty) Ltd, Ramanas Farms (Pty) Ltd (Ramanas), Imvelo Forests (Pty) Ltd and Peak Timbers Limited, among others, collectively referred to as the ASF Group. The ASF Group is active in the plantation of hardwood trees, which they harvest and sell as transmission pole logs, building and fencing pole logs, mining timber logs, and pulp wood, among others. Vuka is a treated pole manufacturer operating from a facility in Comondale, Mpumalanga. Vuka primarily produces treated transmission poles (for use in electricity transmission and distribution) and treated building and fencing poles (for use in agricultural, conservation and building).

The ASF Group supplies transmission pole logs and building and fencing pole logs, which are used as inputs by downstream manufacturers of treated transmission poles and building and fencing poles, such as Vuka. Of relevance to the Commission's assessment are the activities of the merging parties which overlap in relation to the manufacture and supply of treated building and fencing poles.

The Commission found that the proposed transaction does not raise competition concerns in the market for the supply of treated building and fencing poles, as the parties' combined post-merger market shares remain relatively low. However, the proposed transaction raises several competition concerns from a vertical perspective, with respect to transmission pole logs. The Commission found that the merged entity has the ability to engage in input foreclosure strategies against rivals of Vuka in the downstream market for the manufacture

of treated transmission poles, as the ASF Group is the single largest producer of transmission pole logs available to independent downstream players in the relevant Limpopo, Mpumalanga and eSwatini areas.

Barriers to entry and expansion in the upstream market are high, given the applicable regulatory requirements such as applicable permits, limited land, the time it takes to grow the trees required to effectively constrain the incumbents, and capital requirements, among other factors. This means that entry and expansion in the upstream market is unlikely to take place in a timely and sufficient manner. Downstream competitors of Vuka are dependent (to varying degrees) on the ASF Group for the transmission pole logs supply required for their treatment operations, especially in the Mpumalanga and Limpopo areas.

In addition to having the ability to foreclose, the merged entity has incentives to embark on input foreclosure strategies, especially in respect of transmission pole logs.

The Commission thus found that there are substantial short-term and long-term anti-competitive effects that are likely to arise from the proposed transaction. When all the pertinent factors are considered, the proposed transaction is likely to substantially prevent and lessen competition in the downstream market for treated transmission poles in South Africa. In addition, the proposed transaction also results in a negative public interest outcome, specifically in relation to the likely negative impact the merger will have on the broader forestry industry in the Mpumalanga and Limpopo regions.

In light of the above competition and public interest concerns, the Commission invited the merging parties to submit possible remedies that can address the foreclosure and public interest concerns. However, in this instance, there were no workable remedies that were proffered by the merging parties, which can alleviate the concerns arising. The Commission therefore prohibited the proposed transaction.





data, information on corporate actions and business intelligence and statistics to anyone who is interested in such information, (ii) hiring out corporate event venues, and (iii) the provision of meeting management services in conjunction with The Meeting Specialist (Pty) Ltd (TMS).

LMS SA offers (i) transfer secretarial and registry services to issuers, (ii) custodial, settlement and nominee services to shareholders, (iii) analytics and other support services, as well as (iv) stakeholder engagements and communication. The transfer secretarial and registry services (TS services) include, registry maintenance, treasury services (calculating and distributing dividends), corporate actions, reporting and analytics, and meeting management services. LMS SA's custodial and settlement services are offered through its subsidiary LIS, an approved central securities depository participant (CSDP). LIS holds shares and funds in safe custody for its clients, settles all related transactions, and maintains clients' sub-registers in accordance with applicable legislative requirements.

The Commission found that the proposed transaction will lead to JSE being in a position to provide a range of products and services that none of the parties in the capital market will be able to mimic or reproduce. As a result of the proposed transaction, JSE will be able to offer transfer secretarial and registry services, CSDP services, and a range of other products and services in the markets. Some of these services/products are required to maintain a listing on the JSE. The JSE alludes to the fact that it wants to build a '1 stop shop' for its issuers.

As a result of this transaction, the JSE will be the only player able to provide end-to-end listing and associated services. The JSE's reputation, and its relationship with sponsors and issuers, is likely to encourage issuers to use the JSE's suite of services to the possible exclusion of competitors to LMS SA, such as Computershare and others.

It should be emphasised that none of the market participants in the entire capital market will have an array of the products and services that JSE together with Link will have as a result of this merger.

Given the above, the Commission concluded that it is likely that the JSE will have a portfolio of products and services that no other party will have in the market, post-merger. As such, it is likely that the JSE will tie and bundle different products and services across the capital market value chain to the detriment of competitors. As a result, the Commission prohibited the proposed merger.

12.3 PUBLIC INTEREST CONSIDERATIONS IN MERGERS 2019/20

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

Similarly, an anti-competitive merger can be approved if it is in the public interest to do so. As such, the public interest provisions in the Act have far-reaching implications. However, the concept is limited to the five public interest grounds set out in the Act, namely employment; impact on a particular sector or region; the ability of small businesses, or firms controlled by historically disadvantaged persons (HDPs) to become competitive; the ability of national industries to compete in international markets, and; the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.

The Commission has the authority to approve or prohibit a merger solely on the basis of its effect on public interest. This has only happened once since the Commission's inception, where a merger was approved on the basis of the significant public interest it generated. In general, where public interest concerns have been raised, the Commission and/or Tribunal have imposed conditions on the merger which aim to mitigate or eliminate the public interest concern, thus allowing the merger but minimising its negative effect on public interest.

During the financial year 2019/20, the Commission recommended and/or imposed conditions on thirty-three (33) merger cases, of which thirty (30) cases had public interest conditions. Most of these merger cases raised a combination of public interest issues including employment, impact on HDPs, maintenance of local production, SME development, and BEE ownership levels. The Commission's intervention in mergers resulted in a net saving of 45 027 jobs. The table below sets out mergers with public interest issues:

g. JSE Limited (JSE)/ Link Market Services South Africa (Pty) Ltd (LMS SA)

The Commission has prohibited the proposed merger whereby JSE intends to acquire LMS SA. JSE provides and maintains infrastructure for the listing and trading (buying and selling) of various securities, including shares (equities), bonds (Bond Exchange of South Africa) and derivatives (South African Futures Exchange), referred to as trading platforms. There are approximately 355 companies that are listed on the JSE. These listed companies are referred to as "issuers" since they issue shares/equity in return for capital. JSE also provides ancillary services which include (i) the provision of market

Table 11: Mergers approved with public interest conditions

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
2019Jan0002	Experian South Africa (Pty) Ltd	CSH Group (Pty) Ltd	Financial Services	<p>Public Interest: Employment The merging parties shall not retrench any of their employees as a result of the Merger for a period of 3 years.</p> <p>Public Interest: SMMEs Experian is required to provide Small Bureaus access to Historical Data and Technical Support for a period of 2 years, to help them become effective competitors.</p> <p>Public Interest: Investment Experian has committed to invest an additional R120 million in South Africa towards technological enhancements for its South African operations.</p>
2019Mar0039	The Industrial Development Corporation of South Africa SOC Limited	Celrose (Pty) Ltd	Manufacturing	<p>Public Interest: Employment Celrose shall not retrench any employees as a result of the merger for a period of 5 years.</p>
2019Mar0040	New HoldCo	Edgars Consolidated Stores Limited	Retail	<p>Public Interest: Employment Edcon Group will use its best endeavours to implement measures aimed at avoiding involuntary retrenchments, particularly amongst non-management related store staff, including offering employees of stores that are closed down, equivalent positions at alternate stores.</p> <p>Public Interest: Industrial sector Edcon commits to expanding its local procurement program and reducing the number of exports.</p> <p>Public Interest: BEE The Edcon Group will ensure that a replacement scheme is introduced to safeguard the rights and interests of the beneficiaries of the Edcon Staff Empowerment Trust.</p>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
2019Mar0055	Telefonaktiebolaget LM Ericsson	The antenna and fitter products business of Kathrein SE.	Telecommuni-cations	<p>Public Interest: SME and BEE Ericsson is required to continue sourcing products from a Black-owned third-party supplier by concluding a new supply agreement with the affected supplier.</p>
2019Apr0004	Glaxosmithkline Consumer Healthcare Holdings Limited	The Consumer Healthcare Business of Pfizer Inc.	Manufacturing	<p>Public Interest: Employment Restriction on the number of retrenchments as a result of the merger.</p>
2019Apr0006	Rappa Holdings Proprietary Limited	Rappa Management Proprietary Limited	Manufacturing	<p>Public Interest: Industrial sector or region Rappa Resources shall not refuse to supply Gold Doré Bars to a Local Refinery.</p>
2019Jan0014	Mondi plc	Mondi Limited	Manufacturing	<p>Public Interest: Employment The merging parties shall not retrench any MLTD employees as a result of the Merger for a period of 2 (two) years.</p> <p>Public Interest: Investment The Mondi group shall invest a total of R8 000 000 000.00 (eight billion Rand) in its South African operations over a period of 5 (five) years from the Implementation Date.</p> <p>Public Interest: BEE or SMMEs The Mondi Group shall invest a total of R150 000 000.00 (one hundred and fifty million Rand) over and above its current investment plans, within a period of 5 (five) years, towards programs aimed at developing and providing support to Small Businesses within the Mondi Group; programs aimed at developing communities, including where the Mondi Group conducts its business activities; and the Mondi Zimele Programme and any other similar initiative aimed at supporting and developing particularly small-scale businesses of historically disadvantaged persons/groups as part of an integrated supply chain, supported by local contractors and growers.</p>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
				Public Interest: Industrial Sector or region The Mondi Group will continue over the next 5 (five) years to work with South African universities, colleges and/or other educational or public bodies conducting scientific research to support research and development in forestry, paper, packaging and associated sectors, and to deploy funding to the aforementioned institutions.
2019Apr0030	Rhenus SE & Co. KG	World Net Logistics (Pty) Ltd	Logistics	Public Interest: Employment Moratorium on retrenchments for a period of 2 years.
2019Apr0025	Waco Africa Proprietary Limited	Doka South Africa Proprietary Limited	Construction	Public Interest: Employment Restriction on the number of merger specific retrenchments. Should the merged entity retrench employees as a result of the merger, it shall provide an upskilling fund for those employees.
2019May0001	Cheetah Crome South Africa Proprietary Limited	Dilokong Mine (Pty) Ltd	Mining	Public Interest: Employment Cheetah shall hire no fewer than 1600 employees according to the Employment Timeline Plan within a period of 10 years following Implementation Date. Public Interest: SMMEs For five (5) years from the Implementation Date, the Merged Entity shall continue to procure services from the SME Service Providers that DCM procured from before DCM was placed under business rescue. Such spend will, from the Implementation Date, constitute a minimum of 20% of Cheetah's local procurement, with the figure to increase to not less than 30% within 2 years of the Implementation Date. Public Interest: BEE Within 18 months from the Implementation Date, the Acquiring Firm shall ensure that the DCM employees hold 5% in DCM in line with the provisions of the Cheetah NUM Agreement.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
				Public Interest: Industrial sector or region The Acquiring Firm shall ensure that all chrome ore extracted at the DCM mine is subject to local beneficiation.
2019May0025	CompCare Wellness Medical Scheme	Selfmed Medical Scheme	Healthcare	Public Interest: Employment The Merging Parties shall re-employ the Affected Employees that were retrenched in contemplation of the merger.
2019Jun0019	Sunshine Luxembourg VII SARL	Nestle S.A Skin Health Business	Manufacturing	Public Interest: Employment Moratorium on retrenchments for a period of 2 years from the implementation date.
2019Jun0048	Natura Cosmetics S.A.	Avon Products Inc.	Wholesale	Public Interest: Employment The Merging Parties shall re-employ the Affected Employees that were retrenched in contemplation of the merger
2019Jul0047	CPG In Store (Pty) Ltd	The merchandising business of the consumer-packaged Goods Division of Imperial Logistics of South Africa Group (Pty) Ltd	Logistics	Public Interest: Employment The Acquiring Firm will ensure that the Merger will not give rise to more than 21 merger specific retrenchments. The Seller commits to allocating an amount of R2 million for purposes of establishing a fund to assist in the re-skilling of Affected Employees and/or to contribute to the future education needs of the children of the Affected Employees.
2019Aug0007	Bain Capital Investors LLC	The Company Comprising the Kantar Group	Advertising	Public Interest: Employment Moratorium on retrenchments for a period of 2 years.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
2019Mar0026	Boundary Terraces 042 Proprietary Limited	Bravo Group Limited	manufacturing	<p>Public Interest: Employment Save for the Affected Employees, the Merging Parties shall not retrench any other employees as a result of the Merger for a period of 3 (three) years from the Implementation Date.</p> <p>Rockwood shall set up a Development Fund to help to either reskill the Affected Employees or afford them an opportunity to start up small business ventures.</p>
2019Feb0041	Milco SA Proprietary Limited	Clover Industries Limited	Manufacturing	<p>Behavioural: Information Exchange Obligation on the merging parties to limit the flow of competitively sensitive information.</p> <p>Public Interest: Local Procurement The Merged Entity undertakes, for a period of 3 (three) years from the Implementation Date, to continue to procure its required volumes of bulk juice concentrate from local suppliers of bulk juice concentrate on substantially the same terms and conditions as are currently in place with Clover's local suppliers.</p> <p>Public Interest: Employment Merged Entity shall not retrench any employee in South Africa as a result of the Merger.</p> <p>The Merged Entity shall not retrench any employees as a result of the completion of Project Sencillo for a period of 2 (two) years from the Implementation Date. In the three-and-a-half-year period thereafter, the Merged Entity shall limit the net impact of the job losses as a result of the completion of Project Sencillo to 516 jobs.</p>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
2018Sep0049	The South African Breweries Propreitary Limited	The Licensed brands and related assets currently held by diageo South Africa Proprietary Limited	Manufacturing	<p>Behavioural: Information Exchange Obligation on SAB and Diageo to not exchange competitively sensitive information.</p> <p>Behavioural: Foreclosure SAB shall ensure that Outlets which are solely supplied by it with beverage coolers or refrigerators are free until 10 October 2021 to provide at least 10% (ten percent) of the capacity of one such beverage cooler or refrigerator in such Outlets to South African owned and produced Cider brands of competing third parties. This obligation shall include the Diageo Coolers.</p> <p>SAB shall ensure that Outlets which are solely supplied by it with beverage coolers or refrigerators (including the Diageo Coolers) are free for the Duration of the Licensing Agreements to provide at least 10% (ten percent) capacity of each such beverage cooler or refrigerator in such Outlets to Independent FAB Producers. The reservation of space in terms of this obligation is at the sole discretion of the Outlet owner or operator.</p> <p>Behavioural: Tying or bundling For the Duration of the Licensing Agreements, SAB shall not engage in tying, bundling and/or incentive strategies that would require or induce a customer to purchase any Licensed Brands on condition that the customer also purchase clear beer ABI Brands, or vice versa.</p> <p>Public Interest: Particular Industrial Sector or Region SAB shall commence local draught production of the Guinness Brands, if the feasibility threshold of 20,000 hectolitres per annum is reached within the first three years of the implementation of the Guinness Licensing Agreement.</p>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
2019Aug0004	Petre Dusk Proprietary Limited	Blue Bird Logistics Proprietary Limited	Petroleum	<p>Public Interest: SMME or BEE Petre Dusk is required to contribute an amount into an Educational Fund that will be used to provide further tertiary training to the BEE shareholder of the Blue Bird Logistics.</p> <p>In addition, Petre Dusk will contribute an amount into an Educational Fund that will benefit the children of its employees that earn below a certain threshold.</p>
2019Aug0062	AbbVie Inc	Allergan plc	Manufacturing	<p>Public Interest: Employment Restriction on the number of retrenchments for a period of 2 years from the implementation date.</p>
2019Sep0020	ChronMin (Pty) Ltd	Chroniment Chrome SA (Pty) Ltd	Mining	<p>Public Interest: Employment Restriction on the number of retrenchments for a period of 2 years from the implementation date.</p>
2019Oct0010	Elanco Animal Health (Pty) Ltd	Elanco Animal Health business, a division of Eli Lilly South Africa (Pty) Ltd	Manufacturing	<p>Public Interest: Employment Restriction on the number of retrenchments for a period of 2 years from the implementation date.</p>
2019Sep0042	Gardener Denver Holdings, Inc	Ingersoll-Rand U.S. HoldCo, Inc. (IR Industrials)	Wholesale	<p>Public Interest: Employment Moratorium on retrenchments for a period of 3 years from the implementation date.</p>
2019Aug0056	Bidvest Bank Limited	Eqstra Investment Holdings Proprietary Limited	Finance	<p>Public Interest: Employment Moratorium on retrenchments for a period of 2 years.</p>
2019Nov0017	Wipro Unza Holdings Ltd	Canway (Pty) Ltd	Manufacturing	<p>Public Interest: Employment Restriction on the number of retrenchments for a period of 2 years from the implementation date.</p> <p>Public Interest: industrial sector or region The merged entity is required to continue to procure packaging products, currently being manufactured locally for a period of 2 years from the implementation.</p>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
2020Jan0026	Up John Inc. (Newco)	Mylan N.V.	Manufacturing	<p>Public Interest: Employment Moratorium on retrenchments for a period of 3 years from the implementation date.</p>
2020Nov0024	Kwande Capital Proprietary Limited	The Glass Division of Nampak Products Limited	Manufacturing	<p>Public Interest: Employment Moratorium on retrenchments.</p> <p>Public Interest: Investment Subject to favourable Macro-Economic Factors, the Merged Firm undertakes that the operations and related facilities of Nampak Glass in South Africa shall be maintained and kept in place in line with the commitment and intention to sustain and grow the operations, so as to meet demand. Consistent with this commitment, the Merged Firm undertakes to incur all reasonable and necessary capital expenditure required to refurbish or replace the furnaces at the Nampak Glass operations after the Closing Date.</p> <p>The Merged Firm commits to construct and commission an additional Furnace within agreed timeframes to service committed demand from third-party customers.</p> <p>Behavioural: Information exchange The Merged Firm commits that suitable and appropriate information barriers will be put in place such that commercially sensitive or other confidential information pertaining to current and future third party customers of Nampak Glass is not unduly made available to AB InBev (a minority shareholder in the SPV that will acquire the Target Firm) in a fashion that may raise potential competition concerns.</p> <p>Behavioural: Supply The Merged Firm undertakes that a material portion of its output will be made available to Third-Party Customers, that is; customers other than ABInbev (with preference to firms that are owned or controlled by Historically Disadvantaged Persons and SMMEs).</p>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
2019Oct0016	Marinvest S.r.l	Ignazio Messina & C. S.p.A	Transportation and Storage	<p>Public Interest: Employment Moratorium on retrenchments at the target firm for a period of 3 years from the implementation date.</p> <p>Behavioural: Supply For a period of 3 years post-transaction the target firm will continue to use the services of their existing South African Small and Medium Sized Suppliers on the same terms and conditions that existed pre-transaction. In this context “existing” means having a valid agreement with IM or IM SA as at the date of approval by the Tribunal.</p> <p>Behavioural: Information Exchange/Ring-fencing The IM SA Business will be kept separate from the MSC South Africa Business, and no steps will be taken to integrate or otherwise align the activities or conduct of IM and MSC’s respective SA operations.</p>
2019Sep0013	Simba (Pty) Ltd	Pioneer Food Group Limited	Manufacturing	<p>Public Interest: Employment Moratorium on retrenchments for a period of 5 years from the implementation date. In addition, the merged entity will maintain the aggregate number of employees in South Africa as at the implementation date.</p> <p>Public Interest: B-BBEE The merged entity shall implement a B-BBEE transaction with an employee ownership scheme within 12 months of the implementation date.</p> <p>Public Interest: Industrial Sector or Region The Merged Firm shall remain incorporated in South Africa.</p> <p>The Merging Parties commit that the Merged Firm shall continue and expand the Pioneer Foods policy and practice of maximising local production.</p>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
				<p>Public Interest: SMMEs and HDIs The Merged Firm shall maintain all sale and distribution agreements with firms controlled by Historically Disadvantaged Persons and SMMEs for a period of 2 (two) years from the Closing Date, in line with ordinary business practices and on no less favourable terms and conditions as applicable on the Approval Date (provided that those agreements are on reasonable, commercially justifiable and non-discriminatory terms and conditions, particularly as regards appropriate quality standards, reasonably competitive commercial terms and cost).</p> <p>Public Interest: Investment Over a 5-year period post the Planning Phase, the Merged Firm shall make available an aggregate amount of R600 million as a development fund for investment in programmes in South Africa with respect to education, SMMEs, enterprise and agricultural development.</p> <p>In addition, PepsiCo shall invest approximately R6.5 billion to Pioneer Foods for productive capacity.</p>
2019Nov0041	Outotec Oyi	The minerals business of Metso Oyi	Manufacturing	<p>Public Interest: Employment Moratorium on retrenchments for the period between the Approval Date and the Implementation Date and thereafter, a period of 2 years post the Implementation Date.</p> <p>Public Interest: SMMEs / HDIs The Merging Parties will each continue the Learnerships and Bursaries programmes which are in place for HDI’s for the remainder of the 2020 calendar year, 2021 and 2022. These are meant to develop technical skills amongst HDIs to facilitate their ability to enter and participate within the Minerals Processing Value Chain.</p>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITIONS
2019Mar0008	WBHO Construction Proprietary Limited	Trencon Construction Proprietary Limited	Construction	<p>Behavioural – information exchange: WBHO to ensure that persons responsible for mentorship and development of emerging contractors are not the same persons appointed as trustees to represent WBHO's interests in the fund established in terms of the settlement agreement reached between construction companies and the Government of the Republic of South Africa. WBHO</p> <p>Obligation not to exchange competitively sensitive information and to appoint common directors.</p> <p>Allocation of work/projects WBHO shall ensure that it allocates work/projects to each emerging contractor in a fair and non-prejudicial manner.</p> <p>Development of a Competition Compliance Policy Each of the WBHO Alliance Members shall develop and implement a Competition compliance policy within 6 months of the approval date.</p>
2019Sep0002	ASK Chemicals GmbH	SI Group South Africa Proprietary Limited	Manufacturing	<p>Behavioural: Supply condition / Licensing The Merged Entity is required to conclude an amended licensing agreement with an existing third-party supplier which will endure for at least 1 year from the implementation date.</p>
2019Jul0052	Brookfield Asset Management Inc	Oaktree Capital Group,LLC	Open end investment funds	<p>Behavioural: Additional Acquisitions Should the Acquiring Firm acquire sole control over the target firm within 2 years from the implementation date, no new merger notification in terms of section 13A of the Act will be required. However, should the Acquiring Firm acquire sole control after the 2-year period, the Acquiring Firm will be required to file a new merger notification in terms of section 13A of the Act.</p>

13. LEGAL SERVICES DIVISION

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

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

13.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Legal Services Division had four (4) performance targets applicable for the 2019/20 financial year. Three (3) performance targets were met, and only one was not met. The one target that was not met related to a percentage of merger decisions upheld by the Tribunal and other courts – some of the Commission's recommendations in mergers were not upheld.

Table 12: Commission's litigation load at the end of 2019/20

Category	Number of cases
Number of cartel cases in litigation at the Tribunal and the courts	75
Number of abuse of dominance cases in litigation at the Tribunal and the courts	9
Number of minimum resale price maintenance cases in litigation at the Tribunal	2
Number of contested large mergers in the Tribunal	7
Number of reconsiderations ⁵ in litigation	7
Number of prior implementation cases in litigation	5
Number of appeals, review and variation application	13
Total cases	118

13.2 PERFORMANCE HIGHLIGHTS

a. *The Constitutional Court Decision on the Media 24 Predatory Pricing case*

On 3 July 2019 the Constitutional Court handed down its judgment in the application for leave to appeal against the judgment and order of the Competition Appeal Court (CAC). The CAC had overruled a decision of the Competition Tribunal (Tribunal) which had found Media24 (Pty) Ltd (Media24) guilty of predatory pricing.

⁵ A reconsideration application is an application brought by the merging parties to the Tribunal to reconsider a decision of the Commission, either prohibiting a small or intermediate merger, or approving such a merger with conditions



This case is about predatory pricing in the community newspaper market in the Goldfields region in the Free State. Media24 owned 2 community newspaper titles, namely Forum (a low-level community newspaper) and Vista (Media24's premium and more profitable paper). Berkina Twintig (Pty) Ltd (Berkina) owned Gold Net News.

The Commission alleged that, between 2004 and 2009, Media24 deliberately drove a competitor, Gold-Net News, out of the market for advertising in community newspapers. According to the Commission, Media24 did this by positioning a competing community newspaper, Forum, as a "fighting brand" against Gold-Net News, and running the brand at a loss until Gold-Net News eventually closed down in 2009. Having succeeded with this strategy, the Commission alleged, Media24 closed Goudveld Forum in January 2010. Media24 has denied the Commissions allegations. The complaint came after Berkina (trading as Gold-Net News) filed a case against Media24 with the Commission in 2009.

The Tribunal found Media24 guilty of predatory pricing in contravention of section 8(c) of the Act, based on evidence that Media24 charged prices for advertisements that were below its average total costs, together with evidence of Media 24's intention to perform a predatory act, and evidence of recoupment. The Tribunal concluded that Media24's conduct contributed to the exit of a competitor from the market, as alleged by the Commission.

On 15 March 2018, the CAC overturned the decision of the Tribunal and concluded that Media24 had not engaged in predatory pricing in contravention of sections 8(d)(iv) and 8(c) of the Act. The Commission appealed to the Constitutional Court against the decision of the CAC, and the matter was heard on 22 November 2018.

The Constitutional Court Decisions

Complex issues regarding law and economics were raised in the application for leave to appeal, including whether the Constitutional Court had jurisdiction in relation to Media24's pricing behaviour in the Welkom newspaper market.

The first judgment (Goliath AJ with Mogoeng CJ and Dlodlo AJ concurring and Mhlantla J concurring on the merits), held that the application raised both a constitutional issue within the Constitutional Court's jurisdiction, and an arguable point of law of general public importance that ought to be considered by the Constitutional Court.

On the merits, the Commission contended before the Constitutional Court that section 8(c) of the Act is a "catch-all" provision for exclusionary abuses and that the CAC adopted an unduly narrow interpretation of section 8(c) of the Act. The Commission argued that the approach adopted by the CAC is wholly inconsistent with the objectives and purposes of the Act, which seek to, *inter alia*, "achieve a more effective and efficient economy in South Africa" in order to reduce the historical "excessive concentrations of ownership and control within the national economy". The Commission submitted that the CAC's approach, if permitted to stand, will mean that the Commission's prosecutorial powers arising from investigations which concluded that abuses of dominance had occurred will be limited.

The first judgment found that the decision of the CAC limits the prosecutorial powers of the Commission, and wrongly disregards all evidence of a predatory firm's intention as being irrelevant. The first judgment also found that the Commission should be empowered to plead whatever cost benchmark best suits the facts of the case, including the average total cost standard, when there is sufficient additional evidence which illustrates predation. The first judgment would have upheld the appeal.

The second judgment (Cameron J, Froneman J and Khampepe J and Petse AJ concurring) found that it was not in the interest of justice for the Constitutional Court to engage in the enquiry regarding predatory pricing benchmarks. The second judgment would have dismissed the application for leave to appeal.

The third judgment (Theron J with Basson AJ concurring), found that although the matter did not raise a constitutional matter, it did raise an arguable point of law of general public importance that ought to be considered by the Constitutional Court. The third judgment agreed with the CAC regarding the approach to predatory pricing, on the basis that the "total cost plus intent" standard could not be

accommodated within section 8(c) of the Act. The third judgment would have dismissed the Commission's appeal. In a further judgment, Mhlantla J concurred with the first judgment on the merits, and with the third judgment on the issue of jurisdiction and leave to appeal.

The effect of the four judgments is that six members of the Constitutional Court held that the application raised an arguable point of law of general public importance within the Constitutional Court's jurisdiction, and granted leave to appeal against the judgment and order of the CAC. On the merits, six members did not uphold the appeal. The aforementioned means that there was a majority decision that the application raised an arguable point of law of general public importance within the Constitutional Court's jurisdiction, and that leave to appeal should be granted, and that the appeal must be dismissed with costs.

Given the peculiarity of having four judgments, and the fact that of the members who considered the merits of the matter, the majority would have upheld the appeal, it may well be that this case does not constitute the final word on whether the "total cost plus intent" standard could be accommodated within section 8(c) of the Act.

b. Sibanye/Lonmin vs Competition Commission

The Competition Appeal Court's (CAC) considered two applications, one by AMCU and another by Greater Lonmin Community (GLC) with respect to the Sibanye/Lonmin matter.

On 17 May 2019 the CAC dismissed the Association of Mineworkers and Construction Union's (AMCU) appeal against the Competition Tribunal's (Tribunal) decision, which approved the proposed large merger between Sibanye Gold limited t/a Sibanye Stillwater (Sibanye) and Lonmin PLC (Lonmin).

AMCU appealed the Tribunal's decision mainly on the ground that the Tribunal had failed to adequately assess the effect of the merger on employment. AMCU asked the CAC to prohibit the merger, or to impose more conditions, or change some of the conditions imposed by the Tribunal.

The CAC was divided on the complex questions raised by the application, issuing four judgments in the matter. The Commission was granted leave to appeal, but the Constitutional court upheld the decision of the CAC, which overturned the Tribunal's decision.

Brief Background

On 22 November 2018 the Constitutional Court heard the appeal brought by the Commission against an order of the Competition Appeal Court (CAC) which found that Media24 had not engaged in predatory pricing in contravention of section 8(d)(iv) and 8(c) of the Competition Act 89 of 1998, as amended (Competition Act).

The Tribunal ordered, amongst others, that all retrenchments at Lonmin would be prohibited for a period of six months from the implementation of the proposed transaction. The Tribunal's conditions also included conditions arising from an undertaking given by the merging parties to ensure that certain job saving measures were implemented. These additional conditions were dependent on the realisation of certain PGM price and mining cost levels. The conditions also included Sibanye's undertaking to honour Lonmin's Social Labour Plans (SLPs) obligations, post-merger. There was also a condition on the Agri-Industrial Development Program which was designed to promote the economic and social upliftment in the Rustenburg area which was most affected by the mining operations.

In its appeal, AMCU contended that all of the job losses were merger specific, and had to be considered when imposing conditions. It also argued that the conditions imposed by the Tribunal were vague, and that the six-month moratorium on retrenchments was inadequate. It also contested the condition on the Agri-Industrial Community Development Program. In addition, AMCU argued that the Tribunal had failed to properly consider the effects of the change of circumstances between the filing of the merger on 13 March 2018 and the general improvement of PGM prices, and positive market forecasts at the hearings on 12 November 2018.

In dismissing AMCU's appeal, the CAC looked at the potential jobs to be lost as a result of the merger (merger specific job losses), the rationality enquiry, the justification enquiry, AMCU's application to admit new evidence, and AMCU's criticism of the proposed Agri-Industrial program condition.

In rejecting AMCU's argument that all job losses were merger specific, the CAC found that some job losses had nothing to do with the merger. The CAC found that some job losses would have occurred if a counterfactual had been applied, in that Lonmin was required to make a decision with regard to its existing labour force, absent a merger with Sibanye. The CAC found that, outside of the merger specific figures suggested by Sibanye or proposed by the Commission, none of the other job losses could be said to be merger specific. Accordingly, AMCU's contention that all job losses were merger specific could not succeed.



With regards to GLC application, GLC applied to be admitted as an appellant, and for condonation for the late submission of their appeal. The CAC dismissed GLC's appeal on the basis that GLC was neither a party to the merger, nor a person to whom notice of the merger had to be given in terms of the Act. In addition, the CAC confirmed its decision in Distillers, where it found that the only persons who may appeal the Tribunal's decision in merger proceedings are the two categories of persons listed above, and not those who could merely appeal against or review a Tribunal's decision to the CAC.

The CAC also considered whether GLC had locus standi as a result of the CAC having jurisdiction over any constitutional matter arising

from the Competition Act. This was because of GLC's concern about the Social Labour Plans (SLPs) and whether the Tribunal's conditions complied with the Mineral Petroleum Resources Development Act (MPRDA). The CAC found that GLC's concern did not raise a constitutional issue as contemplated in the Act. The CAC therefore dismissed GLC's application.

c. *Uniplate (Pty) Ltd vs Competition Commission*

On 10 December 2019, the Competition Appeal Court (CAC) heard Uniplate Group (Pty) Ltd's (Uniplate) appeal against the Competition Tribunal's (Tribunal) finding that it contravened section 8(d)(i) of the Competition Act (Act).

The Tribunal found that the largest manufacturer and distributor of number plate blanks and embossing machines in South Africa, Uniplate, abused its dominance between 2010-2014, and ordered it to pay an administrative penalty of R16 192 315 (sixteen million one hundred and ninety-two thousand three hundred and fifteen rand).

The case arose from two complaints. The first complaint was lodged by NNPR, a competitor of Uniplate, in 2012, the second complaint was later lodged by JJ Plates, an embosser and customer of Uniplate. Following the receipt of these complaints, the Commission decided to consolidate these complaints under a common investigation, and a referral was filed with the Tribunal on 27 November 2015. The hearing commenced on 8 November 2017 and was heard over a period of 9 days.

Embossing machines and number plate blanks are used together, to produce the final number plate which is affixed to vehicles.

Uniplate had been using long term exclusive agreements to contractually oblige its customers, who do the actual embossing of number plates when purchasing a Uniplate embossing machine, to also purchase all of their number plate blanks and embossing materials from Uniplate. The exclusive supply agreements tied up customers for a period of 10 years, and prevented the customer from switching to alternative suppliers of number plate blanks.

These exclusive agreements limited the ability of Uniplate's rivals from accessing customers for number plate blanks in the market. Customers who were tied in these exclusive agreements by Uniplate were similarly unable to access competitor blanks, even when competitors' prices were lower.

The Tribunal found that Uniplate strictly enforced its exclusive supply agreements, and often threatened customers with litigation if they purchased or attempted to purchase their requirements from Uniplate's rivals. This discouraged entry and expansion of competitors in the blanks market, because the demand for blanks was tied up in contracts enduring for ten years or even longer, since some of the contracts contained automatic renewal clauses and had no termination clauses.

Uniplate denied that its exclusive supply agreements were anticompetitive. It argued that exclusivity was required in order to offer its embossing machines at a reduced price. It claimed that there were several efficiencies that arose from its exclusivity requirement. However, the Tribunal found that Uniplate was unable to substantiate its efficiency claims. The Tribunal concluded that Uniplate had contravened section 8(d)(i) of the Act by foreclosing the market and was liable for an administrative penalty. The Tribunal granted its decision on 27 June 2019.

Uniplate appealed this decision to the CAC, on various grounds, including alleged benefits to embossers as well as end customers. Uniplate also alleged that its competitor, NNPR, had grown during the complaint period – which thereby excluded the possibility of foreclosure.

The CAC upheld Uniplate's appeal and dismissed the Commission's complaint. In its reasons, the CAC reiterated the test that foreclosure may be actual or potential. The CAC, however, distinguished the type of foreclosure from the likelihood of these types of foreclosure occurring. This element of likelihood goes to sufficiency of proof for such foreclosure effects. Based on this test, the CAC found insufficient evidence to sustain the Tribunal's findings of foreclosure. The CAC held that there was insufficient evidence of actual foreclosure as Uniplate's main rival, NNPR, had grown during this

time and competed effectively. The CAC also could not conclude, on the available evidence, whether other smaller competitors had been foreclosed by Uniplate's exclusionary conduct.

The CAC also found insufficient evidence of potential foreclosure of possible entrants. The CAC held that absence of entry is insufficient to sustain potential foreclosure. The CAC held that there was insufficient evidence to show that certain potential entrants would have entered and added significant competition to the market after entry.

The Commission is not appealing the Court's decision to the Constitutional Court.

d. **Mediclinic Southern Africa and Matlosana Medical Health Services**

On 29 September 2016, the Commission received notice of a large merger in terms of which Mediclinic Southern Africa (Mediclinic) intends to acquire a majority share interest in Matlosana Medical Health Services (MMHS). Post-merger, Mediclinic will exercise sole control over MMHS in terms of section 12(2)(a) of the Act. Mediclinic, the primary acquiring firm, operates a private hospital group in South Africa which offers acute multi-disciplinary private hospital services. MMHS, the primary target firm, owns and manages two multi-disciplinary private hospitals, Wilmed Park Hospital and Sunningdale Hospital, both located in the North West province. Mediclinic Potchefstroom Hospital and the target MMHS hospitals are close, if not each other's closest, competitors (in particular, Wilmed Hospital) in the relevant market. The Commission recommended a prohibition of the proposed merger.

The Tribunal issued an order prohibiting the proposed merger on 29 January 2019, after having heard the matter. The merging parties appealed the Tribunal's decision and the appeal was heard on 14 and 15 October 2019, at the Competition Appeal Court in Cape Town. On 06 February 2020, the CAC issued an order approving the merger subject to conditions.

The CAC found that the Tribunal erred in holding that the relevant local market included both Klerksdorp and Potchefstroom. The Tribunal should have found that Klerksdorp and Potchefstroom are separate geographic markets. Because Potchefstroom and Klerksdorp do not fall in the same local market, the merger will not give rise to a significant lessening of competition.

The CAC held that the common cause fact that the tariffs at the target hospitals will immediately increase after the merger is not a consequence of an enhancement in Mediclinic's market power, and its marginal increase in the national market share will not give it greater pricing power.

The Court further found that the prohibition of the merger in the public interest was not justified, on the evidence. The Court accordingly approved the merger, subject to conditions which will endure for a period of five years. On 27 February 2020, the Commission filed an application for leave to appeal at the Constitutional Court, and is awaiting the outcome.

e. **Computicket (Pty) Ltd vs Competition Commission**

On 23 October 2019 the Competition Appeal Court (CAC) dismissed Computicket's appeal against the Competition Tribunal's (Tribunal) judgment of 21 January 2019. In dismissing the appeal, the CAC held that not only was the exclusionary act substantial in terms of foreclosing the market to rivals, but that there was also evidence pointing to actual harm to consumers, and there were no pro-competitive efficiencies that were established by Computicket. The Tribunal's decision accordingly stands.

The Tribunal found that Computicket contravened section 8(d)(i) of the Competition Act 89 of 1998, as amended (the Act) for the period mid 2005-2010. Computicket is to pay an administrative penalty of R20 000 000.

The Tribunal found that there is sufficient evidence to suggest that the exclusive agreements had resulted in anticompetitive effects. The Tribunal considered the strongest evidence to be that of foreclosure of the market to effective competition during the complaint period, evidence of supra competitive pricing effects, a decrease in supply by inventory providers, and a reluctance on the part of Computicket to innovate timeously. The cumulative effect of all these factors suggest that the Commission had established a case of anticompetitive effect on the balance of probabilities. The Commission argued that Computicket had an all-or-nothing policy with inventory providers, in terms of which inventory providers either had to use Computicket exclusively during the term of the contract, or not use Computicket at all. Exclusivity lasted for the most part for a period of 3 years, and applied to 99% of Computicket's contracts during the relevant period.

The onus to establish an efficiency defense is on Computicket, and the Tribunal concluded that it did not discharge this onus.



13.3 ADMINISTRATIVE PENALTIES AND SETTLEMENT AGREEMENTS

During this financial year the Commission finalised most of its cases referred to the tribunal through settlement agreements. The Commission settled twenty one (21) of the twenty two (22) complaints referred to the. The Commission levied a total of R70 782 000.

Table 13: Total administrative penalties levied over the last ten years

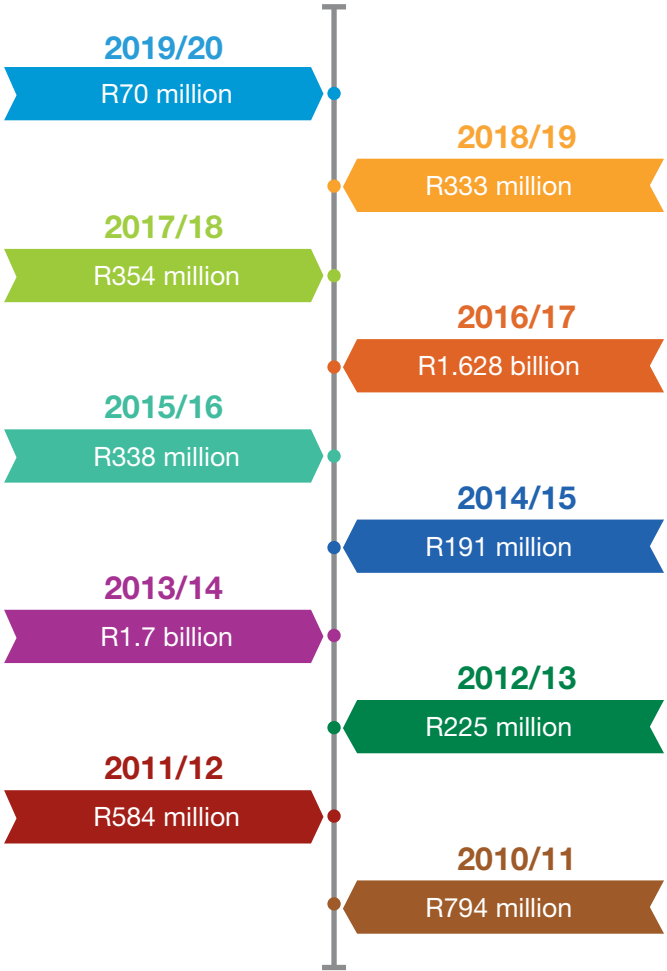


Table 14: Total administrative penalties levied in 2019/20

Complainant	Respondent	Penalty Imposed	Type of Order
Competition Commission	GVK Siyazama Building Contractors in respect of Cape Gate Mediclinic project	R 6 038 852.00	Settlement Agreement
	GVK Siyazama Building Contractors in respect of Tygervalley Shopping Mall project		
	GVK Siyazama Building Contractors in respect of Akila Trading project		
Competition Commission	Sonae Arauco South Africa (Pty) Ltd (Novoboard)	R 46 944 495.00	Settlement Agreement
Competition Commission	Vodacom (Pty) Ltd	R 0.00	Settlement Agreement
Competition Commission	Wesgrow Potatoes and HZPC Holland	R 0.00	Settlement Agreement
Competition Commission	Timrite (Pty) Ltd and Tufbag (Pty) Ltd	R 1 000 000.00	Settlement Agreement
Competition Commission	Stuart Graham Fabrics	R150 000.00	Settlement Agreement
Competition Commission	Senwes and Tradevantage	R 0	Settlement Agreement
Competition Commission	Lenmed Health (Pty) Ltd	R1 250 000.00	Settlement Agreement
Competition Commission	Kewberg Cables and Braids (Pty) Ltd	R 30 000.00	Settlement Agreement
Competition Commission	Saint-Gobain Construction Products SA (Pty) Ltd and D&D Roof Insulation	R1 670 379. 00	Settlement Agreement
Competition Commission	Wireforce Steelbar (Pty) Ltd	R 4 319 951.22	Settlement Agreement
Competition Commission	Power Construction Pty Ltd	R 3 069 887.43	Settlement Agreement
Competition Commission	Law Society of Northern Provinces	R 0.00	Settlement Agreement
Competition Commission	Hendok	R 5 001 364.34	Settlement Agreement
Competition Commission	Freefall Trading CC	R 10 724.00	Settlement Agreement
Competition Commission	Cables for Africa CC	R 10 078.50	Settlement Agreement
Competition Commission	Mail and Guardian Media	R 286 846.39	Settlement Agreement
Competition Commission	More Asphalt (Pty) Ltd	R 579 204.57	Settlement Agreement
Competition Commission	iFlight Technology Co Ltd	R 139 400,00	Settlement Agreement
Competition Commission	Uniplate (Pty) Ltd	R 0.00	Complaint referral
Competition Commission	Crown Relocations (Pty) Ltd	R 240 647.05	Settlement Agreement
Competition Commission	Greensweep Consortium (Pty) Ltd	R 40 300.59	Settlement Agreement
Total		R 70 782 130,09	

14. ECONOMIC RESEARCH BUREAU DIVISION

The Economic Research Bureau Division (ERB) is composed of economists, and provides internal leadership on the Commission's research and strategic approach to core economic issues in competition law and its enforcement. The ERB is also closely involved with the day-to-day work of case teams, providing economic guidance and methodological assistance in complex cases and competition policy issues. The ERB also provides economic expert testimony to the Tribunal on behalf of the Commission, on a case-by-case basis, and has led a number of the Commission's Market Inquiries.

14.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The ERB had two (2) performance targets for financial year 2019/20 and met one (1) target, conducting industry scoping studies in priority sector. The target that was not met is completion of impact assessment study, due to Covid-19 disruptions in the Commission's operations.

14.2 PERFORMANCE HIGHLIGHTS

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

- Review of the Commission's Priority Sectors
- Completion of Data Services Market Inquiry
- Completion of Grocery Retail Sector Market Inquiry
- Providing economic expert testimony
- Completing scoping study into pharmaceutical drugs
- Working Paper on CCSA/National Treasury Project on Measuring Participation
- CCSA/ACF/World Bank Institutional Benchmarking Project
- Mergers database compilation project between CCSA and World Bank

Below we discuss some of the ERB highlights from the 2019/20 financial year.

a. *Scoping study in pharmaceutical drugs*

This scoping study was part of the ongoing effort to identify potential excessive pricing for pharmaceutical drugs that treat highly prevalent diseases in South Africa. This followed continued widespread complaints received globally and locally by non-Government Organisations (NGOs) regarding the pricing dynamics and patent issues in the pharmaceutical sector for life saving drugs.

The study focussed narrowly on oncology products. The main recommendation from the study were that the Commission should prioritise investigating 4 active ingredients drugs (Rituximab, Bevacizumab, Everolimus, Erlotinib and Dasatinib). Further analysis emanating from steps of the triangulation methodology concluded that, from the four active ingredients assessed, two of these are recommended for further investigation. These drugs are (i) Cinacalcet; and (ii) Factor VIII Inhibitor.

In screening for any potential unreasonably priced drugs, a three-pronged approach (or triangulation methodology) was relied on.

- Step one involved assessing stakeholder information received, identifying potential drugs based on their experience – information on 93 drugs (as identified by stakeholders) was collated in total. These drugs were further shortlisted down to 22 drugs, which were subject to further screening. The shortlisting criteria relied on was based on omitting any drugs which were previously investigated by the Commission in prior scoping studies (these included drugs treating HIV/AIDS, hepatitis, diabetes and cancer).

- Step two involved conducting a comparative price analysis to further reduce the list to potential candidates for excessive pricing – the Commission found that there are 4 (of the 22) drugs in which South Africa's average prices rank above the median calculated for each drug. These drugs were further shortlisted.
- Step three involved an assessment of the competition dynamics pertaining to each drug, in order to further shortlist the list to those where the drug company may have market power domestically. For each of the 4 active ingredients shortlisted from the process described above, a variety of competition factors are considered, with the aim of further screening which lifesaving drugs should be scrutinised. The competition factors relied on included (i) a consideration of the extent to which

the drugs may also be under scrutiny by other competition authorities; (ii) if there is entry of generic manufacturers globally and/or domestically; (iii) the number of generic manufacturers as an indication of the level of price competition (if any); and (iv) an assessment of the duration of the patent regime in place.

Using this approach, the Commission found that from the four active ingredients assessed, two of these are recommended for further investigation. These drugs are (1) Cinacalcet; and (2) Factor VIII Inhibitor.

The scoping study also recommended that the Commission continuously monitor lifesaving drugs.

Table 15: Publications produced during 2019/20

Contributors	Title	Publication
Yongama Njisane & Sthabiso Mkwanazi	Remedies in practice outside the EU: The case of South Africa	Book chapter
James Hodge & Sthabiso Mkwanazi	Merger Conditions	Conference Paper
James Hodge & Thembaletu Buthelezi	Competition Policy in a Digital Economy – A Development Country Perspective	Conference Paper

15. MARKET INQUIRIES

The Commission is empowered to conduct market inquiries into the general state of competition in any industry. Market inquiries are different from investigations in that, while investigations target specified firms engaged in specified anti-competitive conduct, market inquiries look into any feature or combination of features in a market which may have the effect of distorting or restricting competition – without targeting any one firm. The Commission did not initiate any new market inquiries in the 2019/20 financial year.

15.1 THE PUBLIC PASSENGER TRANSPORT MARKET INQUIRY

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

- i. price setting mechanisms;
- ii. price regulation;
- iii. route allocation, licensing and entry regulations;
- iv. allocation of operational subsidies;
- v. transport planning; and
- vi. transformation in the land-based public passenger transport industry.

During the 2019/20 financial year the Commission completed the Data Services Market Inquiry; Private Healthcare Market Inquiry, and the Grocery Retail Sector Market Inquiry. The Commission is also working on finalising the Public Passenger Transport Market Inquiry. Below is a detailed discussion of each of the market inquiries:

The Commission issued provisional reports (main and e-hailing reports) with preliminary findings and recommendations for public comments. The provisional reports contained preliminary findings and recommendations, for further engagement with stakeholders. The Commission launched the provisional reports on 19 February 2020, and gave stakeholders until 31 March 2020 to provide comments.

The Commission plans to complete the PPTMI in the last quarter of the 2020/21 financial year.



15.2 DATA SERVICES MARKET INQUIRY

The Data Services Market Inquiry released its final findings and recommendations on 2 December 2019, thereby drawing the Inquiry to a formal closure. The Inquiry found that mobile data prices were both high and structurally anti-poor, insofar as smaller volume bundles were priced inexplicably higher on a per MB basis, compared to larger bundles. The Inquiry found that to overcome such discrimination, poorer consumers were driven to short validity bundles, which did not provide for continuous connectivity. The Inquiry recommended that the dominant providers, Vodacom and MTN, drop prices for monthly prepaid data by 30-50%, and remove discrimination on bundles of 500MB and lower. The Inquiry also recommended that dominant operators provide a daily free lifeline data allowance to each subscriber, and adopt a common approach to zero rating.

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

At the provisional report stage, the Inquiry already made specific findings on the importance of releasing high demand spectrum, but also doing so in a pro-competitive manner. The Inquiry has engaged with ICASA on the design of the spectrum licensing process, based on the policy directive released by the Department of Telecommunications and Postal Services.

The Inquiry also provided recommendations in respect of alternative data services infrastructure, namely fibre to the home (FTTH) and public WiFi. The Inquiry found Telkom Openserve pricing of the IP Connect product excessive, and recommended reductions in that price. However, the Inquiry determined that the main issues in developing alternative infrastructure were the high fixed cost, and variable demand in lower income areas. It therefore recommended there be investment incentives for infrastructure rollout. In a similar vein, the Inquiry recommended that government support free public WiFi in public spaces and government buildings, using public private partnerships to innovate around delivering on that mandate.

The Commission completed the Data Services Market Inquiry during the 2019/20 financial year, and immediately proceeded into the phase of implementing the recommendations of the inquiry. The focus of the Commission's work in the later stages of the financial year was the recommendations for immediate data pricing relief, both on mobile data prices and the pricing of Telkom Openserve's wholesale fixed line product.

The Commission successfully negotiated a far-reaching settlement with Vodacom, which was confirmed as a consent order by the Tribunal.

In terms of the agreement, Vodacom agreed to a range of issues on the following, among others:

a. Retail Pricing Reduction

Vodacom agreed to a multi-year substantial reduction of monthly data bundles across the board. Effective from 1 April 2020, prices of 30-day pre-paid bundles will drop by over 30% across all channels. For example, the key 1GB monthly data bundle will drop from R149 per 1GB to no more than R99 (including VAT). This represents a 34% price decrease. Customers that buy the lowest volumes of data, which are typically the poorest customers, would see the greatest benefit of these price decreases.

b. Lifeline Data and Zero Rating of Data

From 1 April 2020, Vodacom shall, except for the zero-rated Government websites, make available all of its current zero-rated services on one platform, with increased focus on consumers in poorer communities through "ConnectU". ConnectU will address seven key areas:

- i. Education – Vodacom shall expand their current zero rating offering to all public universities, Technical and Vocational Educational Training (TVET) colleges, as well as all public schools across the country.
- ii. Internet Search – Vodacom shall provide a full zero-rated Internet search function powered by Wikipedia, which will enable customers to search for any topic online.
- iii. Jobs – Vodacom shall allow customers to view and apply for job opportunities as advertised on seven zero-rated South African job portals.

- iv. Social and essential Internet access – Vodacom has undertaken to provide customers with free access to Facebook Flex. Consumers can also access local and international news headlines, trends, as well as weather services free of charge.
- v. Health and Wellness – Vodacom shall expand its health information portal to provide holistic health information across all life-stages in the third quarter of 2020.
- vi. Safety & Security – Vodacom shall assist with protecting families through measures to shield children from exposure to illegal and inappropriate adult content.
- vii. Pro-Poor Personalized Discounting and Free Communication – Vodacom shall extend current zero-rating to essential state and emergency specified sites. Citizens will be able to access emergency services, and allowed to access crucial government information and services.

Furthermore, Vodacom committed to be more transparent in its products/ service offering and prices. Vodacom shall improve customer awareness of the personalised price promotions, and guarantee that there will always be better value on the personalised price promotion platforms, when compared to headline offers. Vodacom shall enable prepaid customers to access detailed information such as (ability to see what data was used on) at no charge, provide prepaid itemised billing, display the Rand/MB for all data bundles offered (where possible), and create a landing page detailing all current promotional offers with identifiable calls to action for promotion.

MTN announced extensive commitments in similar areas, including significant decreases in data bundle pricing, and the expansion of zero-rated data and related services. The Commission expects to formalise these commitments in a consent agreement.

15.3 GROCERY RETAIL SECTOR MARKET INQUIRY

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

- the impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers;
- the impact of long-term exclusive leases on competition in the sector;
- the dynamics of competition between local and foreign-owned small and independent retailers;
- the impact of regulations, including municipal town planning and by-laws, on small and independent retailers;

- the impact of buyer groups on small and independent retailers; and
- the impact of certain identified value chains on the operations of small and independent retailers.

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

The Inquiry found that spaza shops faced a dual competitive threat from foreign shop owners and national retail chains. Their (spaza shops) ability to respond to these market changes is limited by regulatory barriers and business barriers, including lack of access to buyer groups and credit. The Inquiry recommended that government address regulatory barriers, including the proactive re-zoning of areas for business, the provision of infrastructure and security, and the adjustment of trading hours to suit the convenience role played by spaza shops in township communities. The GRMI also recommended a competitiveness fund to support businesses seeking to include spaza shops in buyer groups, develop township warehouse and distribution, and provide credit to individual stores.

15.4 PRIVATE HEALTHCARE MARKET INQUIRY

The Health Market Inquiry (HMI) was completed, and the final report published and officially handed over to the Minister of the DTIC at a stakeholder and media briefing held on 30 September 2019. The HMI identified features that, alone or in combination, prevent, restrict or distort competition. The market is characterised by highly concentrated funders and facilities markets, disempowered and uninformed consumers, a general absence of value-based purchasing, practitioners who are subject to little regulation, and failures of accountability at many levels.

A more competitive private healthcare market will translate into lower costs and prices, more value-for-money for consumers, and should promote innovation in the delivery and funding of healthcare. As the state becomes a purchaser of services, it will be able to enter a market where interventions like the establishment of a supply-side regulator, a standardised single obligatory benefit package, risk adjustment mechanism, and a system to increase transparency on health outcomes have already led to greater competition and efficiency.

It was indicated that competition in the healthcare sector should occur on price, cost and quality, not on risk avoidance. The risk adjustment mechanism is a regulatory component designed to eliminate fragmented risk pools but, more importantly, it is an essential market mechanism to ensure that purchasing in the market becomes more effective, by forcing funders to compete on value and, therefore, stimulate competition between and the efficiency of providers. The resultant competitive environment will benefit the National Health Insurance (NHI).

The HMI panel made several recommendations which are designed to promote systemic changes to improve the context within which facilities, funders, and practitioners operate, and create a shift towards a pro-competitive environment.

Amongst others, it was recommended that the Commission review their approach to creeping mergers, to address high levels of concentration through effective merger review, and that they provide guidance to practitioner associations about what constitutes pro-competitive conduct – and have suggested a method to evaluate the functioning of associations.

It was recommended that a healthcare regulatory authority, referred to here as the Supply Side Regulator for Healthcare (SSRH) be established, to focus on regulating the supply-side of the healthcare market. The role of the SSRH will include regulation of suppliers of healthcare services, which includes health facilities and practitioners. The SSRH will have four main functions: healthcare facility planning (which includes licensing); economic value assessments; health services monitoring; and health services pricing.

To increase comparability between schemes, and to increase competition in the funders market, it was recommended that there be an introduction of a single, comprehensive, standardised base benefit option, which must be offered by all schemes. It will enable consumers to compare products, reward those funders who are able to innovate to offer lower prices and/or higher quality, and, thereby, both discipline and reward the market.

There were also several other recommendations to promote competitive contracting, including possible practitioners' bilateral negotiations with funders, and value-based contracts that are transparent and limited to 3 years, before new contracts must be initiated.

16. THE ADVOCACY DIVISION

The Advocacy Division comprises five (5) functions, namely (1) stakeholder relations; (2) strategy; (3) policy; (4) international relations and (5) screening.

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

16.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Advocacy Division was responsible for four (4) performance targets in the 2019/20 financial year. Advocacy Division met one (1) performance target and exceeded three (3) targets.

16.2 PERFORMANCE HIGHLIGHTS

a. Screening

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

The Commission non-refers matters during the screening period if (i) the complaint does not raise competition concerns (ii) the allegation does not amount to a contravention of the Act and (iii) the parties resolve the complaint during the preliminary investigation phase. Where

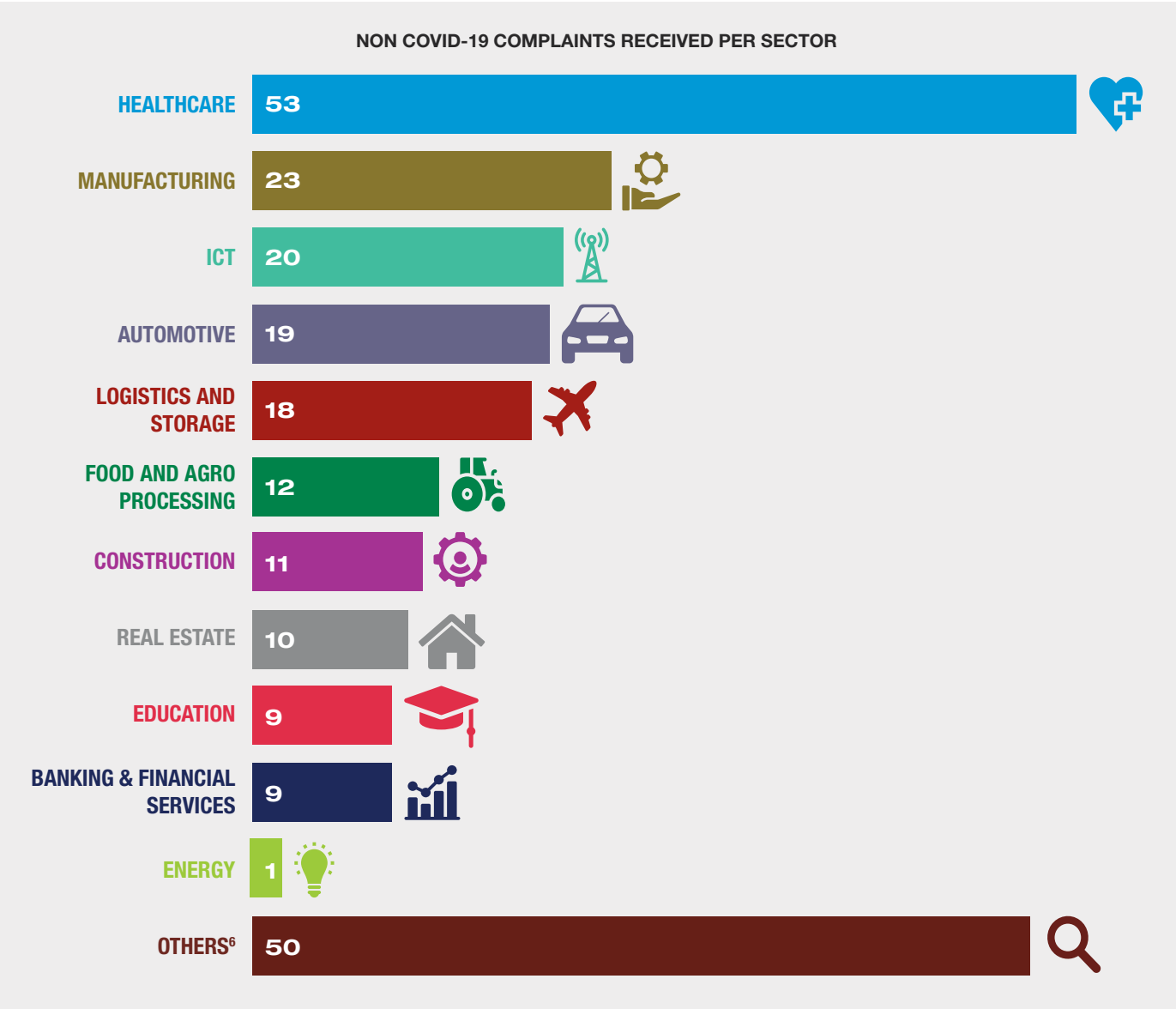
there are no competition concerns arising and complaints are non-referred, parties are advised of alternative routes to resolve the matters.

The Commission received a total of four hundred and thirty-six complaints from the public during the 2019/20 financial year, of which two hundred and thirty-five (235) were ordinary enforcement complaints, and two hundred and one (201) were related to essential products for the Covid-19 pandemic.

Table 16: 2019/20 Screening statistics

Complaints	Numbers
Total Covid-19 complaints received	201
Total non Covid-19 complaints received	235
Total complaints received	436

Figure 2: NON COVID-19 before complaints



6 Others include sectors such as mining, water supply and sewege, beauty, advertising.

The Commission non-refers several complaints at preliminary investigation (screening) stage, however, the Commission attempts to resolve the issues arising in some of the complaints. Below are some of the complaints resolved during 2019/20 financial year:

Table 17: Screening cases resolved in 2019/20

Complainant	Respondent	Penalty Imposed
Elizabeth Hlanganani Sathège trading as ‘Renalmed Services’ vs Mediclinic Tzaneen	Renalmed Services alleged that Mediclinic has rejected its application to provide acute renal dialysis at its facility in Tzaneen, Limpopo Province. Renalmed Services alleged that its application to have access privileges to the hospital was rejected due to an exclusive agreement that Mediclinic has concluded with certain in-house service providers.	The Commission engaged Mediclinic Tzaneen which then appointed Renalmed Service as a service provider at the hospital.
Island Supply Company vs Air Menzies International Ltd	Island Supply Company alleged that Air Menzies International Ltd refused to accept its cargo air freight bookings and compelled it to work through third-party freight forwarders, who in turn mark-up the freight rates by a minimum of 20% without any value add. According to Island Supply, the conduct of Air Menzies results in its prices becoming uncompetitive in the market.	The Commission engaged Air Menzies International Ltd, which agreed to reinstate its agreement with Island Supply Company.
Mr. Rishal Nulliah vs Terry Strachan of The Royal Agricultural Society.	Mr. Rishal Nulliah alleged that the Royal Agriculture Society has granted trade exclusivity to a company called Squirrels Bavarian Nuts to sell Pecan nuts at the Royal show, in contravention of section 8(c) of the Act.	The Commission engaged the Royal Agriculture Society on the issue. Following the engagements, the Royal Agriculture has terminated its exclusive agreement with Squirrel Nuts and has extended the invitation to other participants, including Mr. Rishal Nulliah’s company.

b. Policy responses

The Commission provides responses and comments to key policies as part of advocacy its activities, to ensure policies and laws are aligned with the Act. The Commission submitted eight (8) policy responses in the 2019/20 financial year. The table below provides the policies where the Commission submitted responses, and the purpose of the Commission’s submission:

Table 18: Policy responses in 2019/20

Relevant Policy	Purpose of intervention
ICASA’s draft Sport Broadcasting Services Amendment Regulations	The Commission’s submission sought to address potential competition issues identified in the amendments.
DAFF’s Draft General Policy on the Allocation of Commercial Fishing Right:2020 and the Draft Policy for the Transfer of Commercial Fishing Rights	The submission sought to address changes which might raise competition concerns, transform the fishing sector, and promote the entry of small and medium enterprises and historically disadvantaged individuals in the sector.
National Treasury’s Economic transformation, inclusive growth, and competitiveness: Towards an Economic Strategy for South Africa	The Commission also provides National Treasury with further information which could be considered on further iterations of the National Treasury’s strategy for the South African economy.
National Health Insurance (NHI) Bill	The Commission’s submission was primarily directed at contributing to the NHI Bill in so far as it affects the application of the Act, particularly focusing on the proposed exemption from the Act.
ICASA’s Information Memorandum (“IM”)	The Commission submitted views on the various obligations on spectrum licensees, and on how competing objectives should be treated or prioritised in the current market context.
ICASA’s Discussion Document on Mobile Broadband Services Market Inquiry	The Commission’s submission drew heavily on the Commission’s Data Services Market Inquiry

Below are the details of the submissions on ICASA’s Information Memorandum (IM), ICASA’s Discussion Document on Mobile Broadband Services Market Inquiry, and National Health Insurance (NHI) Bill.

i. ICASA’s Information Memorandum

On 31 January 2020 the Commission provided ICASA with a policy response on its Information Memorandum (IM) published on 1

November 2019. This followed the Minister of Communications’ “Policy On High Demand Spectrum And Policy Direction On The Licensing Of A Wireless Open Access Network” issued in the Government Gazette on 26 July 2019⁷ (the Policy Directive). As ICASA states, the IM is “... aimed at outlining the Authority’s intentions with regard to the licensing process for International Mobile Telecommunications (IMT) spectrum pursuant to consideration of the...”⁸ Policy Directive.

7 Government Gazette Notice No. 42597, 26 July 2019
8 ICASA IM, Government Gazette Notice No. 42820, para. 1

The Commission reviewed the IM and presented high level views on the design of the lots, the various obligations on spectrum licensees, and how competing objectives should be treated or prioritised in the current market context. The Commission expressed support for a greater degree of focus on affordability in the assignment of spectrum. The spectrum assignment process can contribute to affordability in three ways:

- Firstly, spectrum assignment can increase competition and therefore bring down prices. As noted in the Commission's DSMI report and ICASA's discussion document for its broadband market inquiry, not only are mobile markets not competitive, but spectrum assignments can have a significant impact on competition in mobile markets, and therefore on prices and affordability. The analysis of the Commission in the DSMI report showed that the primary driver of higher prices may not be a lack of spectrum but rather a lack of competition.
- Secondly, assigning spectrum also increases capacity, which drives lower prices. Greater amounts of spectrum allow operators to transmit higher volumes of data, often with limited changes in equipment. This increased capacity means that 'per unit' costs fall and thus firms are able to reduce prices while increasing volumes. Thus, assigning spectrum to players by itself contributes to lower prices and greater affordability. It also suggests that spectrum should be assigned to a number of firms to ensure that cost benefits are felt broadly across the market.
- Thirdly, assigning spectrum provides an opportunity to enforce pro-competitive and pro-poor obligations on licensees. Given the demand for spectrum, there is room to attach conditions and obligations to deal directly with prices for poorer consumers at least.

ii. *ICASA's Discussion Document on Mobile Broadband Services Market Inquiry*

On 27 February 2020, the Commission provided a policy submission to ICASA on the discussion document on its market inquiry into mobile broadband services⁹ (the discussion document) which was published on 29 November 2019. The Commission's submission drew heavily on the Commission's Data Services Market Inquiry (DSMI) report published on 2 December 2019.

The discussion document assessed four broad markets: spectrum, site access, roaming, and MVNO and APN services. Within each of these markets it – a) identifies and defines markets, b) determines the effectiveness of competition, c) identifies licensees with significant market power (SMP), and d) identifies suitable pro-competitive remedies, where competition is ineffective.

The Commission's submissions dealt with these four broad markets, focusing primarily on the recommendations reached in the discussion document, but also on aspects of the analysis, where pertinent. The Commission's overall view was that:

- Retail mobile data prices are too high, which is evident from international price comparisons as well as profitability analysis of the larger networks (compared to their operations in other regions), which is consistent with the international price benchmarking evidence. The discussion document also finds that prices are too high in the retail market, although the conclusions are not as strong as they ought to be.
- An assessment of profitability of operators, market structure and market dynamics, amongst other factors, shows there is clearly ineffective competition across wholesale and retail markets. Operators also hold SMP in these markets. The discussion document also identifies markets with ineffective competition, and operators with SMP, however there is additional evidence which shows that there are significant and substantial concerns with competition in mobile broadband.

- Given the state of the mobile data markets, and the record of market failure and persistent concentration in the wholesale and retail markets, as well as the persistence of first-mover advantages among other concerns, there is a need for strong and robust remedies. The Commission's view is that the remedies proposed in the discussion document are for the most part too weak, and unlikely to have the desired effect.
- The need for strong and robust remedies is further emphasised by impending roll-out of new technology (5G) which will require significant investment and resources, and may lead to the exclusion of smaller players, the entrenchment of dominance, and a perpetuation of uncompetitive market structures in future.

iii. *The National Health Insurance (NHI) Bill*

A policy response was sent to the Portfolio Committee on Health, in relation to the National Health Insurance (NHI) Bill. The NHI Bill is part of several legislative amendments aimed at implementing the objectives of the White Paper. It creates a single framework for public funding and public purchasing of health care services, medicines, health goods and health-related products. The NHI Bill establishes the National Health Insurance Fund (the Fund) that will be the single public purchaser and financier of health services in South Africa. It also introduces a mandatory pre-payment system for the purchase of health care services, medicines and health-related products by the Fund on behalf of users. The NHI Bill will apply to both public and private health establishments, and therefore aims to eliminate the disparities between access to healthcare services in the public and private sectors. As a result, the Fund will be the largest purchaser of health care services in South Africa. The Bill also sets out the purchaser-provider split that will occur under the NHI. Whereas previously the Department of Health both paid for public healthcare services and managed the provision of them, now it is the Fund that will purchase healthcare services, while the Department of Health will continue to be responsible for the development of public hospitals, clinics, other healthcare services and the training of healthcare professionals.

The Commission acknowledged and supported the overall objectives of the NHI Bill, of achieving a unified health care system for the country. It also acknowledged that healthcare markets may not be typical in that they (1) involve high stakes as they could determine whether someone lives or doesn't, their quality of life, but also make consumers price-insensitive, (2) have large implications for the productivity of the population (externalities) and so are of great importance to government, and (3) involve many other market failures such as information asymmetries, which tends to push up healthcare costs. A social healthcare insurance system attempts to address many of these issues.

The Commission's submission was primarily directed at contributing to the NHI Bill in so far as it affects the application of the Competition Act, based on the proposed exemption of the NHI. In section 3(5), which refers to the application of the NHI Act, it is stated that: "The Competition Act, 1998 (Act No. 89 of 1998), is not applicable to any transactions concluded in terms of this Act". This suggests that the exemption applies to both the Fund as well as other parties with which it will contract.

Section 58 of the Bill seeks to amend section 3 of the Competition Act as follows:

- a. By the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) a collective agreement, as defined in section 213 of the Labour Relation Act, 1995; [and]”; and
- b. (By the insertion in subsection (1) after paragraph (b) of the following paragraph:
“(bA) the operations of the National Health Insurance Fund established by section 9 of the National Health Insurance Act, 2019, as a single public purchaser and single payer of health care services;”.

It is not clear whether this provision suggests that only the Fund, which will be the single public purchaser and payer of health care services, will be exempt from the Act, or whether this will extend to additional parties, with respect to transactions with the Fund. The Bill contemplates that the “operations” of the Fund may be performed

9 ICASA “Discussion Document on the Market Inquiry into Mobile Broadband Services in South Africa”

by third parties, which would render the provisions of section 3 of the Act to be applicable to such third parties too.

The Commission’s submission cautioned against the proposed blanket exemption, as this could exempt anti-competitive conduct on behalf of those that contract with the Fund – which would undermine the Fund’s core purpose of contracting at the lowest cost. This in turn would undermine the goal of the NHI “to achieve sustainable and affordable universal access to quality health care services”. For instance, if so interpreted, the collusive conduct by or pricing abuses from dominant positions by market players in Fund negotiations would be exempt from scrutiny. Arguably, it could also extend to restricting merger control, insofar as the negative effect of consolidation felt through transactions with the Fund may not be considered.

Furthermore, even if narrowly construed, it would exempt activities of the Fund which result in uncompetitive outcomes and which should rightly not be exempt from competition law oversight. Given that the final design of the NHI has not been completed, it is premature to presume that all activities undertaken by the NHI Fund should be exempt. Any exemption should be based on a careful consideration of the potential consequences.

For these reasons the Commission was concerned that the proposed exemption provision in the NHI Bill may be inappropriate, and premature. Such a blanket exemption is also unnecessary to protect the specific activities of the NHI Fund that genuinely warrant exemption from the Act. Some of the activities may not constitute ‘economic activity’ or be conduct ‘designed for a socio-economic objective’, and which therefore is excluded on the basis of section 3 of the Act. For activities that warrant exemption, but which fall within the ambit of the Act, there is scope to make use of section 10 exemption processes, including block exemptions. This is a more measured approach which ensures that exemptions and their implications are carefully thought through prior to being granted, and removes the risks of large unintended consequences.

c. Workshops on Competition Policy

i. Seminar on Fourth Industrial Revolution

The Commission hosted stakeholders from the public and private sector in a seminar on Fourth Industrial Revolution (4IR) on 24 June 2019. The seminar was conducted by way of two panel discussions, which were preceded by a keynote address by the Commissioner.

Panellists included representatives from Microsoft SA, Rain, RecoMed, Bolt SA (formerly Taxify SA), the Technology Innovation Agency (TIA), the Independent Communications Authority of South Africa (ICASA), the Council for Scientific and Industrial Research (CSIR), the Centre for Competition Regulation and Economic Development (CCRED), the Tribunal and Falcon & Hume Inc (law firm).

The purpose of the seminar was to discuss what digital markets, digitisation and new technologies mean for the South African economy. Further, to understand how this affects the operation of both global firms as well as local start-ups, the potential benefits arising from 4IR, such as economic growth, as well as the issues that regulators such as the competition authorities are grappling with, in relation to the effects of 4IR on markets.

ii. Workshop on Private Healthcare Market Inquiry

The Commission hosted stakeholders from the public and private sector at a public workshop on 18 November 2019, at the DTI Campus. The workshop was also attended by relevant sector regulators, the legal fraternity, consumer and advocacy groups, as well as Commission employees.

The purpose of the workshop was to engage the general public and consumers on the Health Market Inquiry’s (HMI) final report and its impact on consumers and patients in the country, in the context of the developments in the sector, especially the NHI. The workshop was also intended to gain buy-in from stakeholders such as consumer groups, to collaborate with the Commission for future advocacy, and to leverage their messaging and information-sharing platforms.

The following focus areas were discussed at the workshop:

- a. HMI’s findings and recommendations in relation to:
 - Healthcare facilities, practitioners and funders
 - Healthcare funders;
 - Tariffs;
 - Supply-Side Regulator of Health; and
 - Outcomes Monitoring & Reporting Organisation.
- b. A response to questions regarding the NHI which include:
 - Whether the NHI can transform the healthcare system?
 - What is required for the NHI to be effective?
- c. The discussions from the plenary session ranged from the medical scheme’s requirements that are imposed by employers, to how the private sector can get involved in the implementation of the HMI recommendations.
- d. Advocacy in the Automotive Sector – Public Sector Procurement

The Commission initiated advocacy in the automotive industry to address anti-competitive concerns and promote greater participation by small and medium enterprises (SMEs) and historically disadvantaged individuals (HDIs). One of the interventions related to the procurement of government’s fleet management services (the supply delivery of motor vehicles; service, repair and maintenance; financing; and insurance). The Commission has been engaging with the National Treasury’s Chief Procurement Office since 2018 concerning five transversal contracts¹⁰, which span national and provincial government and public entities.

Numerous complaints received by the Commission pointed out that aspects of these contracts were being allocated in an exclusionary

manner to a few large entities to the exclusions of SMEs and HDIs. These arrangements would also persist for long periods.

The engagements with the Treasury addressed the conditions for the appointment of services providers included a preferential allocation for historically disadvantaged individuals (HDIs), multi-party awards, shorter contract periods, rotation of work amongst large entities and small and medium enterprises (SMEs) and general promotions of competition. The advocacy also sought to address barriers to entry and expansion of SMEs and HDIs in the sector. The Commission was concerned that barriers were created in the manner in which the tender specifications for potential bidders to provide the management services are set out and also in the way in which it allocated work.

The importance of the automotive sector and well as the role played by the government as one of the largest customers cannot be understated. The broader automotive industry’s contribution to gross domestic product (GDP) was 6.4% which comprised 4.0% for manufacturing and 2.4% for retail. The export of vehicles and automotive components reached a record amount of R201,7 billion, equating to 15.5% of South Africa’s total exports.¹¹

According to NAAMSA, fleet sales accounted for 2.9% (377 vehicles) of total sales of just under 13 000 vehicles in May 2020, reflecting the impact of the lockdown on car sales. In June 2020, fleet sales increased to 3.7% (1 179 vehicles) of total sales of 31 867 vehicles. By comparison, in September 2019 total sales were under 50 000 vehicles and fleet sales accounted for 3.1% (1550 vehicles) of the total. NAAMSA statistics show an increase in vehicle sales to the government from 2.2% (1014 vehicles) of total sales of 46 077 in August 2019 to 4.6% (1465 vehicles) of total sales of 31 867 vehicles in June 2020.¹² For the 2016/17 financial year, fleet management cost for South African provinces amounted to R2.8 billion. This was an increase of 5.6% from 2015/16 which was an increase of 6%

10 RT46, RT 57, RT58, RT62 and RT68
11 NAAMSA ‘Economic Impact of Covid-19 on the South African Automotive Sector’ https://www.naamsa.co.za/assets/downloads/Economic_Impact_Of_COVID19_on_theSA_Automotive_Sector.pdf
12 ‘Fleet Management in South Africa’ (July 2020) Who Owns Whom Report at page 5.

from 2014/15. Over the last two years, the total provincial fleet has approximated 39 500 vehicles. The majority of the fleet consists of sedans (16,885) and light delivery vehicles (12,807).

The Commission also noted that the Treasury’s procurement practices had to align with national industrial policy. Public procurement of designated products such as fleets of motor vehicles can provide increased local content and economic participation opportunities to domestic companies as suppliers of fleet management services.¹³ The Government’s procurement policy for its fleet of motor vehicles could thus have a significant impact on transforming the economy and creating jobs. Key to this success is achieving the correct balance between the transformation and the promotion of local industries in the automotive sector through procurement opportunities.

After it engaged with the Treasury, the Commission issued a formal policy response proposing changes to the procurement process to ensure that it was competitive. Using this the Treasury was able to make the necessary changes to their process, by making changes to the technical requirement of the tender and also agreeing on the principles such as the appointment of more service providers and especially SMEs and HDIs. For example, the Treasury subsequently issued a tender for the supply of motor vehicles and implemented the Commission’s recommendations. The tender was issued and awarded it to over forty (40) service providers which included twelve (12) new SMEs and HDI participants.

The Commission notes the entry of new entrants is likely to have positive results at that level of the value chain. This means that more participant would be able to participate in providing the government with these services. The Commission is especially optimistic that this means that more participants can participate down the rest of the value chain, for instance in the repair and services of these vehicles especially SMEs and HDIs. Because of the Commission’s recommendations, more of the work will be allocated to SMEs and HDI on a preferential basis.

The advocacy initiative demonstrates the importance of policy integration. The success of the initiative could not have been achieved without the proactive commitment of various departments of government, to align industrial policy and competition principles and develop a strategy for transformation in the procurement space. It has also provided a platform to build relationships with these departments for further advocacy in the future.

e. International Relations

The Commission mainly participated, attended and hosted events relating to engagements with other African countries under the African Competition Forum (ACF), Brazil, Russia, India, China and South Africa (BRICS), the Organisation for Economic Co-operation and Development (OECD) and International Competition Network (ICN), with a high rate of engagements and collaboration being in Africa and the ICN. The aim of these engagements is to influence international discourse in collaborative research and/or projects on competition policy, and draw learnings from other authorities. Below, we highlight significant developments in the Commission’s international relations during 2019/20 financial year:

Table 19: Engagements with international and foreign bodies in 2019/20 financial year

Competition body	Nature of engagement
ACF	Three (3) ACF Steering Committee meetings, one (1) ACF capacity building trainings and ACF conference took place during the period under review: <ol style="list-style-type: none">1. ACF Steering committee meeting which took place in Cartagena, Columbia on 16 May 20192. ACF Steering committee meeting took place in Geneva 10 July 2019.3. ACF Mergers workshop Capacity Training coordinated by the ACF Secretariat in Gambia 24 - 26 July 2019.4. ACF Steering committee meeting took place on the sidelines of OECD on 04 December 2019.
AfCFTA	Two AfCFTA meetings took place during the period under review: <ol style="list-style-type: none">1. AFCFTA workshop took place 28 August 2019 at Conference2. DTI and IDC hosted the AfCFTA training workshop in Sandton on 01 November 2019.
BRICS	The following BRICS engagements took place during 2019/20: <ol style="list-style-type: none">1. BRICS Economies Pharmaceutical dialogue with Global Pharmaceutical Players: Session “Big Pharma and BRICS countries: informative dialogue about fair and equal competition rules” in Moscow, Russia on 06 June 2019.2. Meeting of the BRICS Coordination Committee on Antimonopoly Policy in Moscow, Russia on 06 June 2019.3. Exchange of BRICS Automotive draft work plan with Competition Commission of India, on 26 June 2019.4. Submission of BRICS Automotive framework on 03 September 2019.5. Submission of BRICS Digital Markets report on 27 August to CADE.6. Submission of BRICS Digital Law questionnaire on 15 August 2019 to Professor Loannis.7. CCSA/FAS Bilateral meeting on the sidelines of Annual Conference -28 August 2019.8. Signing of the BRICS MOU extension joint consent in Paris, France on 05 December 2019.
UNCTAD	The following UNCTAD activities took place during 2019/20: <ol style="list-style-type: none">1. UNCTAD Expert presentation on the Guiding Policies and Procedures under Section F of the UN Set on Competition, during the ACF Steering Committee meeting on 04 December 2019 in Paris, France.2. UNCTAD Discussion Group on International Cooperation (IGE) leading the Health market Discussion on 10-12 July 2019.3. UNCTAD IGE on E – Commerce and the Digital Economy in Geneva on 01 – 05 April 2019.4. UNCTAD Discussion Group on International Cooperation in Geneva on 08 April 2019.

13 Designated products are products for which local production capacity exists and where government procurement of such products is mandated to be from local manufacturers.

Competition body	Nature of engagement
OECD	<p>The Commission had one (1) OECD Competition Committee meetings, and one (1) OECD government engagement and submitted papers:</p> <ol style="list-style-type: none"> 1. OECD Competition Committee meeting and WP2 & WP3 discussions in Paris, France on 03 – 07 June 2019. 2. OECD Competition Committee WP2 & WP3 and Global Forum written submissions submitted to CC meeting.
CCSA Staff exchange/ Benchmarking exercises/Courtesy visits	<p>The Commission had one (1) staff exchanges, one (1) benchmarking exercise and one (1) courtesy visit took place under period of review:</p> <ol style="list-style-type: none"> 1. Incoming visit by SAMR to the Commission in Pretoria, South Africa on 10 December 2019. 2. Namibia staff exchange, which took place from 22 November – 06 December 2019. 3. ACF/Worldbank institutional Benchmarking study took place 28 August 2019.
Other	<p>The Commission participated in four (4) other international activities during 2019/20:</p> <ol style="list-style-type: none"> 1. Coordination and planning of the eSwatini Law Society training which took place in eSwatini on 17 – 18 October 2019. 2. Participation in the Rabat International conference in Morocco on 13 – 14 November 2019. 3. BRICS Extension MOU 4. MOU with Zimbabwe on 30 August 2020

f. Stakeholder Engagements: Forums and Outreaches

Table 20: Broad Stakeholder engagement sessions

Stakeholders	Purpose of engagement
University of Fort Hare	An outreach to Honours and Masters students in the Law and Economics Faculties. The purpose of engagements was to appraise students of the opportunities available at the Commission, and broadly in the Competition law and economics fraternity.
University of Witwatersrand	An outreach to Honours and Masters students in the Law and Economics Faculties. The purpose of engagements was to appraise students of the opportunities available at the Commission, and broadly in the Competition law and economics fraternity.
Auditor General of South Africa (“AGSA”)	<p>The engagements related to the amendments of the Public Audit Act (PAA) that came into effect on 1 April 2019.</p> <p>The purpose of the workshop was to discuss how new amendments to the legislation would be implemented, and how these would affect the already existing relationship of the two institutions, going forward.</p>

Stakeholders	Purpose of engagement
Independent Regulatory Board for Auditors (IRBA)	The purpose of the engagement was to discuss the competition issues in the Auditing profession, as well as the ongoing initiatives that the IRBA is undertaking to address some of the competition and transformation concerns in the industry.
Mining Inputs Product Identification System Working Group of the Department of Trade and Industry (“Dti”)	<p>The working group is made up of members of industrial clusters Mining Equipment Manufacturers of South Africa, the South African Minerals Processing Equipment Cluster, and public–private partnership Mandela Mining Precinct, and has been tasked with adopting a system that will create a global catalogue of all components, products and services. The working group seeks to achieve the objectives of the Mining Charter III which was gazetted in September 2018, and which states that a minimum of 70% of total mining goods procurement spend must be on South African-manufactured goods.</p> <p>The multi-stakeholder working group consists of OEM’s who are competitors in the market for the manufacturing of mining inputs. The Commission’s participation was aimed at apprising the members of the working of the provisions of the Competition Act, in particular as it relates to information sharing between competitors.</p>
Federation of Governing Bodies of South African Schools (FEDSAS)	The Commission has been participating at the FEDSAS provincial conferences. In May and June, the Commission addressed members of school governing bodies at the North West Province conferences that took place in Rustenburg and Potchefstroom, as well as the Gauteng Province conference that took place in Centurion.
Youth Month Commemoration Event organised by the DTI	The Commission engaged with senior students of the Agricultural Economics Department of the University of Limpopo, on competition issues in the food and agro-processing sector and the interventions of the Commission in this sector.
Western Cape Enterprise and Supplier Development (ESD) Partnership	The workshop aimed to focus on the needs of corporate executives responsible for Enterprise and Supplier Development, buyers of Business Development Services, and officials managing entrepreneurship programmes, in order to assist them in making better data-based decisions, as well as provide insight into collaborative business from a Competition law perspective.
Gautrain Compliance Awareness Workshop	The Commission presented on the amendments of the Competition Act as well as on the findings of the Passenger Transport Market Inquiry.
Regulatory Roundtable Engagement of the Gauteng Department of Economic Development (GDED)	This was a roundtable engagement with various Regulatory Institutions which touched on a number of issues namely: how the regulatory framework can pose as a barrier of access to market; the ease of doing business for Township based SMMEs within the context of the current regulatory constraints, and what policy initiatives could help facilitate the acceleration of Township Economy Revitalisation.

Stakeholders	Purpose of engagement
National Agro-Processing Forum	This is a forum spear-headed and co-chaired by the DTIC and the Department of Agriculture, Land Reform and Rural Development. The Forum was informed by the Integrated Governmental Relations Framework, and has been established to coordinate, integrate and align policies, strategies, programmes, projects, activities and efforts meant to support and promote the development, growth and competitiveness of the agro-processing sector.
City of Cape Town	The Commission provided training to about 200 officials from Supply Chain Management, Internal Audit as well as other divisions within the municipality on collusive tendering, and how it can be detected through the various processes of the Municipality.
Department of Public Works	The engagements related to the implementation of Identification of Work (IDOWs) by the Council for the Built Environment (CBE) on behalf of its member councils.



17. OFFICE OF THE COMMISSIONER

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

17.1 COMMUNICATING THE WORK OF THE COMMISSION

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

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

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

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

During the period under review, the Commission issued 57 media statements. These solicited countless interviews, resulting in extensive media coverage. The coverage means a comparable commercial worth, called advertising value equivalent (AVE) amount of at least R602 750 079. This coverage comprises an AVE value of at least R138 724 434 for print media coverage; an AVE value of at least R 149 729 276 for broadcast coverage; and at least R 314 314 366 for online media coverage. This value is calculated by taking the inches, in the case of written word-based platforms, or seconds in the case of broadcast media, and multiplying these figures by the respective platform's advertising rates. The resulting number is the equivalent of what you would have paid if you placed an advertisement. This then becomes the equivalent value.

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

20 YEARS OF COMPETITION ENFORCEMENT IN SOUTH AFRICA



CELEBRATING 20 YEARS
OF REGULATING
FOR INCLUSIVE GROWTH



DATA SERVICES MARKET INQUIRY



HEALTH MARKET INQUIRY



PUBLIC PASSENGER TRANSPORT MARKET INQUIRY



THE GROCERY RETAIL MARKET INQUIRY



SCHOOL UNIFORM PRESS CONFERENCE



1ST INAUGURAL MOOT COURT



18. THE CORPORATE SERVICES DIVISION

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

18.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The CSD was responsible for two (2) performance targets in the 2019/20 financial year, and met all the targets.

18.2 PERFORMANCE HIGHLIGHTS

a. Supporting our human capital

The Commission is a fast-paced environment driven primarily by dynamic specialists in the areas of law and economics. The Human Capital (HC) function at the Commission provides strategic and administrative support to the organisation in general, and to line managers in the areas of talent management, talent acquisition, employee relations management, organisational development support, and human capital development. The Commission continues to benefit from the Business Partner model it adopted four years ago, when the HC function moved from administrative support to strategic management of talent, for the realisation of the High-Performance Agency goal.

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

- Improvements were made in talent acquisition processes and policies, to improve both the quality of talent sourced and the turnaround times for talent acquisition at the Commission;
- The institutionalisation of the employment equity committee, with particular focus on setting achievable employment equity targets;
- All Human Capital Management Policies were reviewed during the financial year, to ensure they are in line with best practices and are in line with the changes in legislation; and
- Limited implementation of some aspects of the new organisational structure whilst we await the approval of the structure by the Minister of Trade, Industry and Competition and the Minister of Finance.

b. Performance management

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

c. The Competition Cadets programme

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

d. Employment equity

The Commission has made a deliberate effort to comply with the Employment Equity Act (EEA) (No. 55 of 1998) as amended. In terms of the applicable provisions of the EEA, the Commission's 2019 employment equity report was submitted to the Department of Labour. Table 21 shows the equity breakdown for the past years, including the year under review. From a gender and national economically active population (EAP) perspective, the Commission is doing very well. The EAP includes people between the ages of 15 and 64 who are either employed or unemployed, and who are seeking employment.

In the 2019/20 financial year, the equity ratio for female and male representation is 59% and 41%, respectively. People with disabilities represented 2% of Commission staff, in line with the target set by the government. The Commission's 2019/20 race profile is as follows:

Table 21: Commission 2019/20 race profile

FEMALE (59%)

AFRICAN

50%

COLOURED

2.02%

INDIAN

4.04%

WHITE

3.03%

MALE (41%)

AFRICAN

35.8%

COLOURED

0.51%

INDIAN

1.01%

WHITE

3.54%



e. Staff turnover

As at end of the 2019/20 financial year, the Commission's staff complement stood at 209 employees.



The Commission's annual termination rate went slightly higher in the financial year, with a total number of 24 terminations. The main reasons cited for resignations were relocations and career change/development.

f. Employee retention

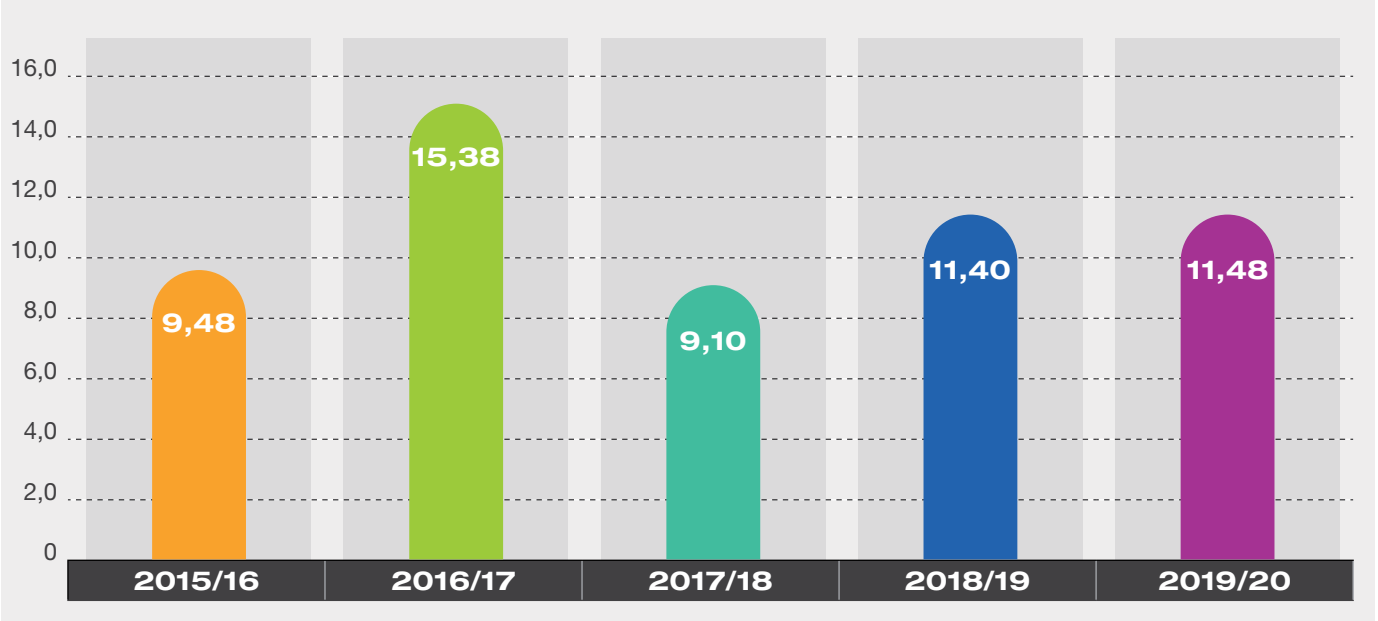
To ensure optimal employee retention the Commission has embarked on two initiatives: Employee Development and Performance Recognition & Incentivisation:

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

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

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

Figure 3: Percentage of staff turnover for the past 5 years



g. Employee relations

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

One employee was dismissed during the reporting period.

h. Learning and development

The Commission places great emphasis on developing its people. R 3 016 406 was spent on learning and development initiatives during the reporting period. The training budget includes local training, overseas training, conferences, and study loans, which amounts to R2 000 000 in the reporting period.

Through the learning academy, The Commission has moved towards

a Learning and Development Program that relies heavily on its internal expertise and information resources in the development and delivery of learning programs, whilst continuing to draw from best practices and innovation from outside the Commission. The Commission has invested a significant amount of effort in the development of learning content, and encouraging senior employees to participate in the development of other employees. Some of our senior employees have been involved in either providing content, or running training and development programs for international competition authorities. In line with its aspiration to support the development of its staff, the Commission supports its staff to not only do their jobs, but also to grow as individuals. In 2019/20 34, employees benefited from the R2 192 603,77 the Commission spent on bursaries and loans for staff.

i. Facilities management

The security and facilities section is responsible for ensuring the safety of Commission staff and visitors, assets of the Commission, and information of the Commission. The section oversees physical

security services, information resources and other services guided by the legislative framework, policies of the Commission, and its mandate to ensure a secure environment for the Commission.

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

j. Information and Communications Technology

The Information and Communication Technology (ICT) function is responsible for the provision of enabling technology to facilitate efficiencies in the work of the Commission, securing information resources, and ensuring continuity of the operations of the Commission. The Commission’s ICT network is partly hosted by the Department of Trade and Industry (DTI) as some operations of the Commission are located on the DTI campus.

Improvements in ICT governance and better focus in research for relevant solutions were a central focus, during this financial year. In the improved ICT governance area, the Commission has focused on updating and developing new ICT policies (including the Identity and Access Management Policy and the Disaster Recovery Policy), and improving terms of reference for the ICT Committee were also developed during the financial year.

The Commission has moved to deepen collaboration amongst teams, and acquired better storage capacity through the implementation of Office 365. The focus is now on better collaboration, to improve the effectiveness of the Commission and unlock the collective wisdom of our teams.

k. Records Management

The Commission’s Records Management function continued to provide an efficient service to external clients and internal clients; to support the core and support functions of the Commission. The focus area during the year under review was on the improvement of our policies to improve alignment and compliance with regulatory framework affecting information at the Commission’s disposal. The

Commission has put in place plans to improve the effectiveness and efficiency of this function in the next few years, through investment in capacity and improving the technology supporting this function.

l. Information Resources Centre (IRC)

The Commission derives its existence from the Competition Act, and conducts its work in line with the South African legal framework and international developments and jurisprudence, given the convergence of competition law worldwide. The IRC provides and maintains access to a rich set of databases (about 17 odd databases, which include international and local legal databases), various business and marketing resources that are well-used, and a well-maintained print collection (that includes a respectable and current book collection that has been augmented with 39 new titles during the year under review). The IRC issues resources to employees (with three hundred and forty-seven publications issued during the year) and provides support to employees conducting research (with about 324 requests for information finalised during the year under review). Employees were kept abreast of new information resources through bulletins (with more than nine (9) circulated during the financial year).

PERFORMANCE AGAINST TARGETS: 2019/20

Table 22: 2019/20 performance against targets set

PERFORMANCE MEASURE			ACCOUNTABLE PROGRAMME	ANNUAL TARGET 2019/20	ANNUAL RESULTS	REASON FOR VARIANCE
OUTPUT	KPI No.	KEY PERFORMANCE INDICATORS (KPI)				
a) Merger & acquisition decisions	1	Average turnaround time for Phase 1 merger investigations	M&A	≤ 20 days	18 days	Target met
	2	Average turnaround time for Phase 2 merger investigations	M&A	≤ 45 days	40 days	Target met
	3	Average turnaround time for Phase 3 intermediate and small merger investigations	M&A	≤ 60 days	57 days	Target met
	4	Average turnaround time for Phase 3 large merger investigations	M&A	≤ 120 days	111 days	Target met
b) Merger litigation	5	% of merger decisions upheld by Tribunal and/or courts	LSD	≥75%	100%	Target met
c) Compliance - monitoring for merger conditions	6	% of imposed merger remedies and conditions monitored	M&A	100%	100%	Target met
a) Cartel prosecutions	7	Number of cartel investigations completed	Cartels	10	25	Target Exceeded Settlements in the Automotive Components investigation resulted in finalization of more investigations.
	8	% of cartel cases won at the Tribunal and the courts.	LSD & Cartels	≥75%	62%	Target Not Met Target not met due to resource constraints. Inability to outsource litigation due to financial constraints resulted in resources for Investigations being moved to Litigation
a) Investigations of abuse of dominance and restrictive cases	9	% of abuse of dominance investigations completed within 24 months	Market Conduct	≥75%	98%	Target met
	10	Number of abuse of dominance conduct cases initiated in prioritised sectors	Market Conduct	2	2	Target met
b) Prosecution of abuse of dominance and restrictive cases	11	% of abuse of dominance cases won at the Tribunal and the courts	LSD	≥70%	63%	Target not met The CAC adopted a different approach from the Tribunal on abuse of dominance matters

PERFORMANCE MEASURE			ACCOUNTABLE PROGRAMME	ANNUAL TARGET 2019/20	ANNUAL RESULTS	REASON FOR VARIANCE
OUTPUT	KPI No.	KEY PERFORMANCE INDICATORS (KPI)				
c) Decisions on exemptions applications	12	% of exemption applications completed within 12 months	Market Conduct	≥75%	100%	Target met
a) External Guidelines on the application of the Act	13	Number of guidelines on the application of the Act issued to stakeholders	LSD	1	0	Target not met Guidelines on application of the Act could not be finalised due to Covid-19 disruption in operations
a) Industry scoping studies	14	Number of industry scoping studies conducted in prioritised sectors.	ERB	1	1	Target met
b) Market inquiries	15	Number of market inquiries initiated	Market Conduct	0	N/A	Target not applicable
	16	Number of market inquiries completed	Market Conduct	4	3	Target not met The Public Passenger Transport market inquiry was extended to allow for public consultation on preliminary findings and recommendations in the draft report
c) Impact assessments on Commission decisions or competition policy	17	Number of impact assessment studies completed	ERB	1	0	Target not met Draft Report was available, but the impact study could not be completed due to Covid-19 disruption in operations
a) Working partnerships with relevant economic stakeholders	18	Number of workshops or seminars on competition, trade/industrial policy and regulatory matters hosted	Advocacy	2	2	Target met
	19	Number of submissions or responses to policy or regulation	Advocacy	4	6	Target exceeded The Commission submitted more policy responses to regulations triggered by the outcomes of the data market inquiry and the national Treasury's economic strategy paper
b) Working relationship with Criminal Justice (CJ) system counterparts on anti-cartel activities	20	Number of training & capacity-building initiatives with criminal justice system counterparts hosted	LSD	1	0	Target not met The stakeholders were not available for training. The matter has been deferred

PERFORMANCE MEASURE			ACCOUNTABLE PROGRAMME	ANNUAL TARGET 2019/20	ANNUAL RESULTS	REASON FOR VARIANCE
OUTPUT	KPI No.	KEY PERFORMANCE INDICATORS (KPI)				
a) Collaboration with BRICS and African competition agencies	21	Number of collaborative research and/or other projects undertaken with African and BRICS partners of value to South Africa	Advocacy	4	6	Target exceeded The Commission had unexpected work relating to TFTA technical working group which led to the development of a Draft Competition Protocol. The Commission also signed an MOU with Zimbabwe Competition and Tariff Commission
b) Thought leadership on competition and development issues	22	Number of Commission-initiated media engagements	OTC	32	55	Target exceeded High media interest in the Commission's work, emanating from the completion of market inquiries
	23	Number of issues of the Commission's newsletter published	OTC	4	4	Target met
c) Domestic Outreach initiatives	24	Number of 20th Anniversary Commemoration activities	OTC	2	2	Target met
	25	Number of strategic activities undertaken in collaboration with universities	OTC	2	1	Target not met The moot court that was planned for 13 March 2020 with the University of Fort Hare was postponed due to student unrest on campus
	26	Number of Commission-initiated stakeholder training and education workshops or outreach programmes conducted	Advocacy	2	3	Target exceeded The Commission conducted two outreaches in the last quarter, one with the University of Fort Hare in East London Campus on 11 February 2020 and the other with University of Witwatersrand on 20 February 2020
a) Clean financial audit	27	A clean audit	Finance	Clean Audit	Clean Audit	Target met
a) Human Capital Management systems which align individual, divisional and organisational performance	28	Invest percentage of HR spend in learning and development (L&D)	CSD	Approved implementation report of 1% HR spend on L&D	1%	Target met
	29	% retention rate of staff complement	CSD	≥90%	97%	Target met

PART D

CORPORATE GOVERNANCE

19. CORPORATE **GOVERNANCE**

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

19.1 **DECISION-MAKING STRUCTURES**

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

a. Commission Meeting

The Commission Meeting is the highest decision-making structure in relation to case-related work of the Commission. The Commission meeting is chaired by the Commissioner, who is assisted by the Deputy Commissioners to carry out the functions of the Commission. The Commission Meeting ordinarily meets on a weekly basis with the Chief Legal Counsel, Chief Economist, and Divisional Managers responsible for dealing with the statutory, case-related work. During the reporting period, the Commissioners consisted of the Commissioner, Deputy Commissioner, and 2 acting Deputy Commissioners.

The Commission held twenty-nine (29) Commission Meetings during the period under review. The core functions of the Commission Meeting are to receive recommendations, and to make decisions on cases, as well as provide guidance and direction in the conduct of investigations.

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

b. The Executive Committee and Sub-Committees

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

The EXCO held twelve (12) meetings during the period under review. The key functions of the EXCO are to undertake strategic and business planning, monitor the implementation of strategic and business plans, and to mobilise and allocate financial and human resources. The EXCO also plays an oversight role over the management of human resources, information technology, security and facilities management, and risk management. It is responsible for approving policies relating to operations, and provides leadership and sets the tone for the overall operations of the Commission. The Company Secretary advises the EXCO on compliance with relevant legislation and regulations.

Performance against targets is discussed on a quarterly basis at the EXCO meetings, in order to monitor expenditure, activities and progress. The Commission submits quarterly reports to the DTIC, in terms of the PFMA. The EXCO has established six (6) committees to assist it in performing its oversight function, and to provide it with guidance on matters falling within the terms of reference of the respective committees. The six (6) committees are referred to below.

c. The Management Committee

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

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

d. Technology and Information (T&I) Committee

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

e. Finance Committee

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

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

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

The finance committee held two (2) meetings during the period under review.

f. Human Capital Committee

The Human Capital (HC) Committee comprises select EXCO members, and is tasked with oversight over the implementation of the HC strategy and ensuring that policies are developed, implemented and reviewed. The HC committee met five (5) times during the period under review.

g. Employment Equity Committee

The Employment Equity Committee comprises the Commission employees who represent all levels in the organisation, who are selected in line with the provisions of the Employment Equity Act. The Committee oversees the transformational agenda of the Commission. Its objectives are to do an analysis of the employee profile, play a consultative role in setting targets for transformation, and identify and resolve barriers to transformation. The Committee held two (2) meetings during the financial year.

h. Risk and Governance Committee

The Risk and Governance Committee comprises select EXCO members, and representatives from respective functions. It is tasked

with oversight over governance and risk management, and was chaired by the Chief Financial Officer. The Committee met four (4) times during the period under review.

19.2 OVERSIGHT COMMITTEES

a. Audit and Risk Committee

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

b. Remuneration Committee

This Committee consists of three (3) independent non-executive members. The Committee plays an oversight role, and makes recommendations to the Commissioner, in his capacity as Accounting Authority, on matters relating to remuneration of employees at all employee levels. The committee held a total of two (2) meetings during the period under review.

19.3 COMPLIANCE WITH LEGISLATION

a. Public Finance Management Act, 1999 and National Treasury Regulations

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

- quarterly reports on the Commission’s expenditure, budget variance, activities and performance against set targets;
- monthly expenditure reports;
- annual performance plan for the period 2019/2020; and
- annual report

b. Skills Development Act, 1998

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

c. Skills Development Levies Act, 1999

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

d. Employment Equity Act, 1998

The Commission submitted its employment equity report.

e. Unemployment Insurance Act, 2001

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

f. Occupational Health and Safety Act, 1993

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

g. Income Tax Act, 1962

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

h. Levies and taxes

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

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



PART E

ANNUAL FINANCIAL STATEMENTS

ACCOUNTING AUTHORITY RESPONSIBILITIES AND APPROVAL

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

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

The Annual Financial Statements are based upon appropriate accounting policies consistently applied and supported by

reasonable and prudent judgments and estimates.

The Commissioner acknowledges that he is ultimately responsible for the system of internal financial control established by the entity and place considerable importance on maintaining a strong control environment. To enable the Commissioner to meet these responsibilities, the Commissioner sets standards for internal control aimed at reducing the risk of error or deficit in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the Commission and all employees are required to maintain the highest ethical standards in ensuring the Commission's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the Commission is on identifying, assessing, managing and monitoring all known forms of risk across the Commission. While operating risk cannot be fully eliminated, the Commission endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The Commissioner is of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the Annual Financial Statements. However, any system of internal financial

control can provide only reasonable, and not absolute, assurance against material misstatement or deficit.

The Commissioner has reviewed the Commission's cash flow forecast for the year to March 31, 2021 and, in the light of this review and the current financial position, he is satisfied that the Commission has or has access to adequate resources to continue in operational existence for the foreseeable future.

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

The external auditors are responsible for independently reviewing and reporting on the Commission's Annual Financial Statements. The Annual Financial Statements will be examined by the Commission's external auditors and their report will presented thereafter.

The Annual Financial Statements set out on page 132, which have been prepared on the going concern basis, were approved by the Accounting Authority on September 30, 2020 and were signed on its behalf by:

Mr T. Bonakele
Commissioner

REPORT OF THE **AUDITOR GENERAL** TO PARLIAMENT ON THE COMPETITION COMMISSION

REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

Opinion

1. I have audited the financial statements of the Competition Commission set out on pages 134 to 171, which comprise the statement of financial position as at 31 March 2020, statement of financial performance, statement of changes in net assets, cash flow statement and the statement of comparison of budget information with actual information for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission as at 31 March 2020, and its financial performance and cash flows for the year then ended in accordance with Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA).

Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
4. I am independent of the public entity in accordance with sections 290 and 291 of the *Code of ethics for professional accountants* and parts 1 and 3 of the *International Code of Ethics for Professional Accountants (including International Independence Standards)* of the International Ethics Standards Board for Accountants (IESBA

codes) as well as the ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA codes.

5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Emphasis of matter

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

Irregular expenditure

7. As disclosed in note 27 to the financial statements, the public entity incurred irregular expenditure of R19 785 000 as it did not follow tender processes.

Responsibilities of accounting authority for the financial statements

8. The accounting authority is responsible for the preparation and fair presentation of the financial statements in accordance with Standards of GRAP and the requirements of the PFMA, and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
9. In preparing the financial statements, the accounting authority is responsible for assessing the public entity's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the public entity or to cease operations, or has no realistic alternative but to do so.

Auditor-general’s responsibilities for the audit of the financial statements

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

REPORT ON THE AUDIT OF THE ANNUAL PERFORMANCE REPORT

Introduction and scope

12. In accordance with the Public Audit Act of South Africa 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for the selected strategic goal presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.
13. My procedures address the usefulness and reliability of the reported performance information, which must be based on the approved performance planning documents of the public entity. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the public entity enabled service delivery. My procedures also do not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may

be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.

14. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected strategic goal presented in the annual performance report of the public entity for the year ended 31 March 2020:

Strategic goal	Pages in the annual performance report
Strategic goal 1 - Effective competition enforcement and merger regulation	19

15. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
16. I did not identify any material findings on the usefulness and reliability of the reported performance information for Strategic goal 1 – Effective competition enforcement and merger regulation.

Other matter

17. I draw attention to the matter below.

Achievement of planned targets

18. Refer to the annual performance report on pages 115 to 117 for information on the achievement of planned targets for the year and explanations provided for the underachievement of a number of targets.

REPORT ON THE AUDIT OF COMPLIANCE WITH LEGISLATION

Introduction and scope

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

OTHER INFORMATION

21. The accounting authority is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor’s report and the selected strategic goals presented in the annual performance report that has been specifically reported in this auditor’s report.
22. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
23. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected strategic goals presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
24. If based on the work I have performed, I conclude that there is a material misstatement in this other information, I am required to report that fact. I have nothing to report in this regard.

INTERNAL CONTROL DEFICIENCIES

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

OTHER REPORTS

26. I draw attention to the following engagement which had, or could have, an impact on the matters reported in the public entity’s financial statements, reported performance information, compliance with applicable legislation and other related matters. This report did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.
27. The Economic Development Department initiated a forensic investigation that would cover a period of three financial years, from the year ended 31 March 2016 to the year ended 31 March 2018. The aim of the investigation is to determine whether there was irregular expenditure incurred by the Commission, its causes and whether the Commission is implementing effective measures to address it. The investigation commenced during the financial year ended 31 March 2019 and as at date of this report, the investigation had not been finalised.

Pretoria
30 September 2020

AUDITOR-GENERAL'S RESPONSIBILITY FOR THE AUDIT

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

Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor's report, I also:
- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control
 - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the public entity's internal control
 - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority
 - conclude on the appropriateness of the accounting authority's use of the going concern basis of accounting in the preparation

of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the Competition Commission to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor's report. However, future events or conditions may cause a public entity to cease operating as a going concern

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

Communication with those charged with governance

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

The Audit and Risk Committee ("The Committee") is established as an independent statutory committee in terms of the PFMA. The committee functions within approved terms of reference, which are reviewed at least annually to ensure their continued relevance) and complies with relevant legislation, regulation and governance codes.

The Committee is pleased to present its report for the financial year ended March 31, 2020, in compliance with Treasury Regulations 3.1.9 and 27.1.7 issued in terms of Section 76 of the PFMA, 1999.

AUDIT AND RISK COMMITTEE MEMBERS AND ATTENDANCE

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

Name of member	Number of meetings attended	Number of meetings held
Mr. V Nondabula	4	4
Ms. M Ramataboe	4	4
Mr. S Gounden	4	4
Mr. N Mhlongo	4	4
Ms. R Kalidass	N/A	N/A

AUDIT AND RISK COMMITTEE RESPONSIBILITY

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

THE RESPONSIBILITIES OF THE COMMITTEE

The Committee assists the Commissioner as the Accounting Authority in discharging his oversight responsibility in terms of maintaining adequate and effective systems of internal control and risk management, as well as ensuring the integrity of financial reporting.

THE EFFECTIVENESS OF INTERNAL CONTROL

During the year under review the contract of the outsourced Internal auditors expired, and the Commission did not renew the contract timeously. As a result, the Internal Audit function was not in place for the entire year.

Based on the Internal Audit reports issued, general improvements were noted in the overall internal control environment of the Commission.

MANAGEMENT AND MONTHLY / QUARTERLY REPORTS

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

EVALUATION OF ANNUAL FINANCIAL STATEMENTS

The Committee has:

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

The Committee is pleased to report that there were no material findings in the Annual Financial Statements.

INTERNAL AUDIT FUNCTION

The Internal Audit function is responsible for reviewing and providing assurance on the adequacy and effectiveness of the internal control environment across all of the significant areas of the Commission and its operations.

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

The Committee reviews and approves the Internal Audit Plan annually. Internal audit’s activities are measured against the approved internal audit plan and the Head: Internal Audit tables progress reports in this regard to the Committee.

The outsourced Internal Audit service provider is responsible for the delivery of an annual audit opinion. The annual opinion concludes on the overall adequacy and effectiveness of the Commission’s governance, risk management and control. The system of internal control within the Commission and the control environment was reasonably effective as seen from the various reports issued by internal audit and the Auditor General of South Africa.

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

The contract of the outsourced Internal Audit service provider expired during the year, and the Commission was only able to finalise the new contract in time for the new financial year.

ENTERPRISE RISK ENTERPRISE RISK MANAGEMENT

The Committee is responsible for the oversight of the Department’s risk management activities.

A strategic and operational risk assessment for the year under review was conducted.

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

AUDITOR-GENERAL OF SOUTH AFRICA

The Committee, in consultation with the Accounting Officer, agreed to the terms of the Auditor General South Africa’s engagement letter, audit strategy and audit fees in respect of the 2019/2020 financial year.

The Committee also monitored the implementation of the action plans to address matters arising from the Management Report issued by the Auditor-General South Africa (AGSA) for the 2018/9 Financial Year.

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

The Committee has reviewed the AGSA’ s annual audit report and the management letter and concurs therewith.

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

Maemili Ramataboe

Chairperson of the Audit and Risk Committee
Competition Commission

STATEMENT OF FINANCIAL POSITION

AS AT MARCH 31, 2020

	Note(s)	2020 R'000	2019 Restated* R'000
ASSETS			
Current Assets			
Inventories	5	1,272	1,162
Receivables from exchange transactions	6	3,276	2,993
Cash and cash equivalents held on behalf of EDD	10	8,675	33,244
Cash and cash equivalents	7	39,643	5,069
		52,866	42,468
Non-Current Assets			
Property, plant and equipment	3	18,170	21,525
Intangible assets	4	1,401	1,266
		19,571	22,791
Total Assets		72,437	65,259
LIABILITIES			
Current Liabilities			
Finance lease obligation	8	-	861
Payables from exchange transactions	11	20,478	25,218
Provisions	9	15,059	14,651
Penalties payable to EDD	10	8,675	33,244
		44,212	73,974
Total Liabilities		44,212	73,974
Net Assets		28,225	(8,715)
Accumulated surplus/(deficit)		28,225	(8,715)

STATEMENT OF FINANCIAL PERFORMANCE

AS AT MARCH 31, 2020

	Note(s)	2020 R'000	2019 Restated* R'000
REVENUE			
REVENUE FROM EXCHANGE TRANSACTIONS			
Fees earned	13	65,476	70,672
Other income	14	427	832
Interest received	15	7,953	31,014
Total revenue from exchange transactions		73,856	102,518
REVENUE FROM NON-EXCHANGE TRANSACTIONS			
Government grants & subsidies	16	295,438	281,788
Total revenue		369,294	384,306
EXPENDITURE			
Employee related costs	17	(224,091)	(223,793)
Administrative expenses	18	(7,839)	(6,409)
Depreciation and amortisation		(4,969)	(4,853)
Finance costs	19	(293)	(323)
Lease rentals on operating lease	12	(27,595)	(21,704)
Loss on disposal of assets		(53)	(860)
Operating expenses	20	(67,544)	(102,932)
Total expenditure		(332,384)	(360,874)
Surplus for the year		36,910	23,432

STATEMENT OF CHANGES IN **NET ASSETS**

AS AT MARCH 31, 2020

	R'000	R'000
	Accumulated surplus/ (deficit)	Total net assets
Opening balance as previously reported	(34,725)	(34,734)
Correction of errors	1,773	1,773
Balance at April 1, 2018 as restated*	(32,961)	(32,961)
Changes in net assets		
Surplus for the year	23,432	23,432
Deficit for the year as previously stated	23,432	23,432
Opening balance as previously reported	(9,521)	(9,521)
Correction of errors	806	806
Balance at April 1, 2019 as restated*	(8,688)	(8,688)
Surplus for the year	36,913	36,913
Total changes	36,913	36,913
Balance at March 31, 2020	28,225	28,225

CASH FLOW STATEMENT

AS AT MARCH 31, 2020

	Note(s)	2020 R'000	2019 Restated* R'000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Rendering of services		65,476	70,672
Grants		295,438	281,788
Interest received		7,953	31,691
Other income		284	10,806
		369,151	394,957
Payments			
Employee costs		(224,091)	(226,092)
Suppliers		(105,560)	(162,903)
Finance costs		(293)	(323)
		(331,944)	(389,318)
Net cash flows from operating activities	21	397,207	5,639
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	3	(1,013)	(3,059)
Purchase of other intangible assets	4	(790)	-
Net cash flows from investing activities		(1,803)	(3,059)
CASH FLOWS FROM FINANCING ACTIVITIES			
Finance lease payments		(830)	(912)
Net increase in cash and cash equivalents		34,574	1,668
Cash and cash equivalents at the beginning of the year		5,069	3,401
Cash and cash equivalents at the end of the year	7	39,643	5,069

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

AS AT MARCH 31, 2020

	R'000	R'000	R'000	R'000	R'000	
	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
Statement of Financial Performance						
REVENUE						
Revenue from exchange transactions						
Fees earned	79,324	-	79,324	65,476	(13,848)	Note 29
Other income	-	-	-	427	427	
Interest received	2,000	-	2,000	7,953	5,953	Note 29
Total revenue from exchange transactions	81,324	-	81,324	73,856	(7,468)	
Revenue from non-exchange transactions						
Transfer revenue						
Government grants & subsidies	295,436	-	295,436	295,438	2	
Total revenue	376,760	-	376,760	369,294	(7,466)	
EXPENDITURE						
Employee related costs	(232,626)	-	(232,626)	(224,091)	8,535	Note 29
Administrative expenses	(13,207)	-	(13,207)	(7,839)	5,368	Note 29
Depreciation and amortisation	(4,980)	-	(4,980)	(4,969)	11	
Finance costs	-	-	-	(293)	(293)	
Lease rentals on operating lease	(27,818)	-	(27,818)	(27,595)	223	
Loss on disposal of assets	-	-	-	(53)	(53)	
Operating expenses	(98,129)	-	(98,129)	(67,544)	30,585	Note 29
Total expenditure	(376,760)	-	(376,760)	(332,384)	44,376	
Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement	-	-	-	36,910	36,910	

ACCOUNTING POLICIES

1. BASIS OF PREPARATION

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

These Annual Financial Statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention as the basis of measurement, unless specified otherwise. They are presented in South African Rand.

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

A summary of the significant accounting policies, which have been consistently applied in the preparation of these Annual Financial Statements, are disclosed below.

1.1 Going concern assumption

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

1.2 Materiality

Material omissions or misstatements of items are material if they could, individually or collectively, influence the decisions or assessments of users made on the basis of the financial statements.

Materiality depends on the nature or size of the omission or misstatement judged in the surrounding circumstances. The nature or size of the information item, or a combination of both, could be the determining factor.

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

1.3 Significant judgments and sources of estimation uncertainty

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

Trade receivables

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

Determination of impairment of non-financial assets

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

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

Impairment of non-cash generating assets

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

If there is any indication that an asset may be impaired, the recoverable service amount is estimated for the individual asset. If it is not possible to estimate the recoverable service amount of the individual asset, the recoverable service amount of the cash generating unit to which the asset belongs is determined.

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

If the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable service amount. That reduction is an impairment loss.

An impairment loss of assets carried at cost less any accumulated depreciation or amortisation is recognised immediately in surplus or deficit.

Management assesses at each reporting date whether there is any indication that an impairment loss recognised in prior periods for assets may no longer exist or may have decreased. If any such indication exists, the recoverable service amounts of those assets are estimated.

The increased carrying amount of an asset attributable to a reversal of an impairment loss does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset in prior periods.

A reversal of an impairment loss of assets carried at cost less accumulated depreciation or amortisation is recognised immediately in surplus or deficit.

Provisions

Provisions were raised and management determined an estimate based on the information available. Additional disclosure of these estimates of provisions are included in note 9 - Provisions.

Contingent liabilities

The Commission is involved in a number of legal case proceedings that form part of the nature of the operations of the entity. Due to inherent uncertainties precipitated by the nature of the cases, no accurate quantification of any cost, or timing of such cost, which may arise from any of the legal proceedings can be made.

Lease classification

Management uses judgment in assessing whether an arrangement is or contains a lease based on the substance of the arrangement

at the inception date of whether the fulfillment of the arrangement is dependent on the use of the specific asset or the arrangement conveys a right to use the asset. Management assess the following in each lease contract (using GRAP 13) to classify a lease as a finance lease or operating lease.

In order to make the determination as to whether a lease is a finance lease, the Commission considers several variables (non- exhaustive) and applies judgment to the assessment of whether any of the conditions noted hereunder using the guidance of GRAP 13. These include but are not limited to:

- Transfer ownership
- Remaining economic life of the asset
- The expected term of the lease
- Fair value of the underlying asset

Depreciation and amortisation

The Commission’s management determines the estimated useful lives and related depreciation charges for the Commission’s property, plant and equipment and intangible assets. This estimate is based on industry norm. Management will increase the depreciation charge where useful lives are less than previously estimated useful lives.

Trade receivables (impairment of financial assets)

The Commission assesses its trade receivables for impairment at the end of each reporting period. In determining whether loss should be recorded in profit and loss, the Commission makes judgments as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from financial asset.

Performance bonus

Performance bonus to employees and management is determined based on the performance of the Commission subject to availability of funds. This bonus is at management’s discretion and is decided annually. The bonus is based on performance and is evaluated using a rating method on an annual basis.

Impairment of cash generating assets

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

If there is any indication that an asset may be impaired, the recoverable amount is estimated for the individual asset. If it is not possible to estimate the recoverable amount of the individual asset, the recoverable amount of the cash-generating unit to which the asset belongs is determined.

The best evidence of fair value less cost to sell is the price in a binding agreement in an arms length transaction, adjusted for the incremental cost that would be directly attributable to the disposal of the asset.

The recoverable amount of an asset or a cash-generating unit is the higher of its fair value less costs to sell and its value in use.

If the recoverable amount of an asset is less that its carrying amount, the carrying amount of the asset is reduced to its recoverable amount. That reduction is an impairment loss.

An impairment loss of assets carried at cost less any accumulated depreciation or amortisation is recognised immediately in surplus or deficit.

1.4 Property, plant and equipment

Property, plant and equipment are tangible non-current assets that are held for use in the production or supply of goods or services, or for administrative purposes, and are expected to be used during more than one period.

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits or service potential associated with the item will flow to the Commission; and
- the cost of the item can be measured reliably

Property, plant and equipment is initially measured at cost.

The cost of an item of property, plant and equipment is the purchase price and other costs attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Trade discounts and rebates are deducted in arriving at the cost.

Where an asset is acquired through a non-exchange transaction, its cost is its fair value as at date of acquisition.

Where an item of property, plant and equipment is acquired in exchange for a non-monetary asset or monetary assets, or a combination of monetary and non-monetary assets, the asset acquired is initially measured at fair value (the cost). If the acquired item's fair value was not determinable, it's deemed cost is the carrying amount of the asset(s) given up.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses.

Property, plant and equipment are depreciated on the straight-line basis over their expected useful lives to their estimated residual value.

The useful lives of items of property, plant and equipment have been assessed as follows:

Item	Depreciation method	Average useful life
Furniture and fittings	Straight line	12 - 21 years
Motor vehicles	Straight line	5 - 8 years
Office equipment	Straight line	8 - 20 years
IT equipment	Straight line	
- Computer equipment		3 - 17 years
- Servers		5 - 9 years
- GPS		3 - 14 years
Leasehold Improvements	Straight line	3 years
Cellphone	Straight line	2 - 6 years
Leased assets	Straight line	Period of lease

The depreciable amount of an asset is allocated on a systematic basis over its useful life.

The Commission assesses at each reporting date whether there is any indication that the Commission expectations about the residual value and the useful life of an asset have changed since the preceding reporting date. If any such indication exists, the Commission revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

The depreciation charge for each period is recognised in surplus or deficit unless it is included in the carrying amount of another asset.

Items of property, plant and equipment are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is included in surplus or deficit when the item is derecognised. The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

The Commission separately discloses expenditure to repair and maintain property, plant and equipment in the notes to the financial statements (see note 3).

1.5 Intangible assets

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the Commission; and
- the cost or fair value of the asset can be measured reliably.

The Commission assesses the probability of expected future economic benefits or service potential using reasonable and supportable assumptions that represent management's best estimate of the set of economic conditions that will exist over the useful life of the asset.

Where an intangible asset is acquired through a non-exchange transaction, its initial cost at the date of acquisition is measured at its fair value as at that date.

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses.

Amortisation is provided to write down the intangible assets, on a straight-line basis, to their residual values as follows:

Item	Depreciation method	Useful life
Computer software	Straight line	3 - 21 years

Intangible assets are derecognised:

- on disposal; or
- when no future economic benefits or service potential are expected from its use or disposal.

The gain or loss arising from the derecognition of intangible assets is

included in surplus or deficit when the asset is derecognised (unless the Standard of GRAP on leases requires otherwise on a sale and leaseback).

1.6 Financial instruments

Initial recognition and measurement

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or a residual interest of another entity.

Financial instruments are recognised when the Commission becomes a party to the contractual provision of the instrument. These financial instruments are initially measured at fair value plus transaction costs, except for those financial instruments that are classified at fair value through profit or loss.

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation.

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates.

Derecognition is the removal of a previously recognised financial asset or financial liability from an Commission's Statement of Financial Position.

The effective interest method is a method of calculating the amortised cost of a financial asset or a financial liability (or group of financial assets or financial liabilities) and of allocating the interest income or interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the financial asset or financial liability. When calculating the effective interest rate, an Commission shall estimate cash flows considering all contractual terms of the financial instrument (for example,

prepayment, call and similar options) but shall not consider future credit losses. The calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest rate (see the Standard of GRAP on Revenue from Exchange Transactions), transaction costs, and all other premiums or discounts. There is a presumption that the cash flows and the expected life of a group of similar financial instruments can be estimated reliably. However, in those rare cases when it is not possible to reliably estimate the cash flows or the expected life of a financial instrument (or group of financial instruments), the Commission shall use contractual cash flows over the full contractual term of the financial instrument (or group of financial instruments).

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable willing parties in an arm's length transaction.

A financial asset is:

- cash;
- a residual interest of another entity; or
- a contractual right to:
 - » receive cash or another financial asset from another entity; or
 - » exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity.

A financial liability is any liability that is a contractual obligation to:

- deliver cash or another financial asset to another entity; or
- exchange financial assets or financial liabilities under conditions that are potentially unfavourable to the Commission.

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

Liquidity risk is the risk encountered by the Commission in the event of difficulty in meeting obligations associated with financial liabilities that are settled by delivering cash or another financial asset.

Loan commitment is a firm commitment to provide credit under pre-specified terms and conditions.

Loans payable are financial liabilities, other than short-term payables on normal credit terms.

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. Market risk comprises three types of risk: currency risk, interest rate risk and other price risk.

Other price risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices (other than those arising from interest rate risk or currency risk), whether those changes are caused by factors specific to the individual financial instrument or its issuer, or factors affecting all similar financial instruments traded in the market.

A financial asset is past due when a counterparty has failed to make a payment when contractually due.

A residual interest is any contract that manifests an interest in the assets of the Commission after deducting all of its liabilities. A residual interest includes contributions from owners, which may be shown as:

- equity instruments or similar forms of unitised capital;
- a formal designation of a transfer of resources (or a class of such transfers) by the parties to the transaction as forming part of the Commission's net assets, either before the contribution occurs or at the time of the contribution; or
- a formal agreement, in relation to the contribution, establishing or increasing an existing financial interest in the net assets of the Commission.

Transaction costs are incremental costs that are directly attributable to the acquisition, issue or disposal of a financial asset or financial liability. An incremental cost is one that would not have been incurred if the Commission had not acquired, issued or disposed of the financial instrument.

Subsequent measurement of financial assets and financial liabilities

The subsequent measurement of financial instruments is stated below:

The Commission classifies financial instruments, or their component parts, on initial recognition as a financial asset, a financial liability or an equity instrument in accordance with the substance of the contractual arrangement.

Receivables from exchange transactions

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

Cash and cash equivalents

Cash and cash equivalents comprise cash on hand, on deposit and other short-term readily realisable liquid instruments. Cash and cash equivalents that have been classified as loans and receivables are initially recognised at fair value and subsequently at amortised cost.

Payables from exchange transactions

Trade and other payables are classified as liabilities at amortised cost and are measured at amortised cost using the effective interest rate method.

Offsetting

Financial assets and financial liabilities are set-off against each other and the net amount presented in the Statement of Financial Position when the Commission has a legal right to set-off the amounts and intends to settle on a net basis to realise the asset and settle the liability simultaneously.

Impairment of financial assets

Financial assets are assessed for indicators of impairment at each end of the reporting period. The financial assets are impaired where there is objective evidence that, as a result of one or more events that have occurred after the initial recognition of the financial asset, the estimated future cash flows of the asset have been impacted. Impairment losses are recognised in profit or loss.

Where an impairment loss subsequently reverses, the carrying amount of the asset is increased to the revised estimate of its recoverable amount, but so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset in prior years. Reversal of impairment losses are recognised in profit or loss.

Derecognition

Financial assets are derecognised if the Commission's contractual rights to the cash flows from the financial assets expire or if the Commission transfers the financial assets to another party without retaining control, or transfers substantially all of the risks and rewards of the asset. Financial liabilities are derecognised if the Commission's obligations specified in the contract expire or are discharged or cancelled.

1.7 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

When a lease includes both land and buildings elements, the Commission assesses the classification of each element separately.

Finance leases - lessee

Finance leases are recognised as assets and liabilities in the Statement of Financial Position at amounts equal to the fair value

of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the Statement of Financial Position as a finance lease obligation.

The discount rate used in calculating the present value of the minimum lease payments is the interest rate implicit in the lease.

Minimum lease payments are apportioned between the finance charge and reduction of the outstanding liability. The finance charge is allocated to each period during the lease term so as to produce a constant periodic rate of on the remaining balance of the liability.

Any contingent rents are expensed in the period in which they are incurred.

Operating leases - Lessee

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability.

1.8 Inventories

Inventories are initially measured at cost except where inventories are acquired through a non-exchange transaction, then their costs are their fair value as at the date of acquisition.

Subsequently inventories are measured at the lower of cost and net realisable value.

Net realisable value is the estimated selling price in the ordinary course of operations less the estimated costs of completion and the estimated costs necessary to make the sale, exchange or distribution.

Current replacement cost is the cost the Commission incurs to acquire the asset on the reporting date.

The cost of inventories comprises of all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

The cost of inventories of items that are not ordinarily interchangeable and goods or services produced and segregated for specific projects is assigned using specific identification of the individual costs.

The cost of inventories is assigned using the first-in, first-out (FIFO) formula. The same cost formula is used for all inventories having a similar nature and use to the Commission.

1.9 Impairment of cash-generating assets

Cash-generating assets are assets used with the objective of generating a commercial return. Commercial return means that positive cash flows are expected to be significantly higher than the cost of the asset.

Impairment is a loss in the future economic benefits or service potential of an asset, over and above the systematic recognition of the loss of the asset's future economic benefits or service potential through depreciation (amortisation).

Carrying amount is the amount at which an asset is recognised in the Statement of Financial Position after deducting any accumulated depreciation and accumulated impairment losses thereon.

A cash-generating unit is the smallest identifiable group of assets used with the objective of generating a commercial return that generates cash inflows from continuing use that are largely independent of the cash inflows from other assets or groups of assets.

Costs of disposal are incremental costs directly attributable to the disposal of an asset, excluding finance costs and income tax expense.

Depreciation (Amortisation) is the systematic allocation of the depreciable amount of an asset over its useful life.

Fair value less costs to sell is the amount obtainable from the sale of an asset in an arm's length transaction between knowledgeable, willing parties, less the costs of disposal.

Recoverable amount of an asset or a cash-generating unit is the higher its fair value less costs to sell and its value in use.

Useful life is either:

- the period of time over which an asset is expected to be used by the Commission; or
- the number of production or similar units expected to be obtained from the asset by the Commission.

Judgments made by management in applying the criteria to designate assets as cash-generating assets or non-cash- generating assets, are as follows:

1.10 Employee benefits

Employee benefits are all forms of consideration given by an Commission in exchange for service rendered by employees. Termination benefits are employee benefits payable as a result of either:

- the Commission's decision to terminate an employee's employment before the normal retirement date; or
- an employee's decision to accept voluntary redundancy in exchange for those benefits.

Other long-term employee benefits are employee benefits (other than post-employment benefits and termination benefits) that are not due to be settled within twelve months after the end of the period in which the employees render the related service.

Short-term employee benefits

Short-term employee benefits are employee benefits (other than termination benefits) that are due to be settled within twelve months after the end of the period in which the employees render the related service.

Short-term employee benefits include items such as:

- wages, salaries and social security contributions;
- short-term compensated absences (such as paid annual leave and paid sick leave) where the compensation for the absences is due to be settled within twelve months after the end of the reporting period in which the employees render the related employee service;
- bonus, incentive and performance related payments payable within twelve months after the end of the reporting period in which the employees render the related service; and
- non-monetary benefits (for example, medical care, and free or subsidised goods or services such as housing, cars and cellphones) for current employees.

When an employee has rendered service to the entity during a reporting period, the entity recognises the undiscounted amount of short-term employee benefits expected to be paid in exchange for that service:

- as a liability (accrued expense), after deducting any amount already paid. If the amount already paid exceeds the undiscounted amount of the benefits, the Commission recognises that excess as an asset (prepaid expense) to the extent that the prepayment will lead to, for example, a reduction in future payments or a cash refund; and
- as an expense, unless another Standard requires or permits the inclusion of the benefits in the cost of an asset.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs. The Commission measures the expected cost of

accumulating compensated absences as the additional amount that the Commission expects to pay as a result of the unused entitlement that has accumulated at the reporting date.

The Commission recognises the expected cost of bonus, incentive and performance related payments when the Commission has a present legal or constructive obligation to make such payments as a result of past events and a reliable estimate of the obligation can be made. A present obligation exists when the Commission has no realistic alternative but to make the payments.

1.11 Provisions and contingencies

Provisions are recognised when:

- the Commission has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement is recognised when, and only when, it is virtually certain that reimbursement will be received if the Commission settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation.

Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense.

A provision is used only for expenditures for which the provision was originally recognised. Provisions are not recognised for future operating surplus.

If an entity has a contract that is onerous, the present obligation (net of recoveries) under the contract is recognised and measured as a provision.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note 31.

1.12 Commitments

Items are classified as commitments when the Commission has committed itself to future transactions that will normally result in the outflow of cash.

Disclosures are required in respect of unrecognised contractual commitments.

Commitments represent goods/services that have been ordered, but no delivery has taken place at the reporting date. These amounts are not recognised in the Statement of Financial Position as a liability or as expenditure in the Statement of Financial Performance as the Annual Financial Statement are prepared on an accrual basis of accounting, but are however disclosed in the Notes to the Annual Financial Statements.

1.13 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners.

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

An exchange transaction is the one in which the Commission receives filing fees from mergers, exemptions and advisory opinion cases

Measurement

Revenue is measured at the fair value of the consideration received or receivable, net of trade discounts and volume rebates.

1.14 Revenue from non-exchange transactions

Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, the Commission either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

Transfers are inflows of future economic benefits or service potential from non-exchange transactions, other than taxes.

Recognition

An inflow of resources from a non-exchange transaction recognised as an asset is recognised as revenue, except to the extent that a liability is also recognised in respect of the same inflow.

As the Commission satisfies a present obligation recognised as a liability in respect of an inflow of resources from a non- exchange transaction recognised as an asset, it reduces the carrying amount of the liability recognised and recognises an amount of revenue equal to that reduction.

Measurement

Revenue from a non-exchange transaction is measured at the amount of the increase in net assets recognised by the Commission.

When, as a result of a non-exchange transaction, the Commission recognises an asset, it also recognises revenue equivalent to the amount of the asset measured at its fair value as at the date of acquisition, unless it is also required to recognise a liability. Where a liability is required to be recognised it will be measured as the best estimate of the amount required to settle the obligation at the reporting date, and the amount of the increase in net assets, if any, recognised as revenue. When a liability is subsequently reduced, because the taxable event occurs or a condition is satisfied, the amount of the reduction in the liability is recognised as revenue.

1.15 Borrowing costs

Borrowing costs are interest and other expenses incurred by the Commission in connection with the borrowing of funds.

Borrowing costs are recognised as an expense in the period in which they are incurred.

1.16 Accounting by principals and agents Identification

Identification

An agent is an entity that has been directed by another entity (a principal), through a binding arrangement, to undertake transactions with third parties on behalf of the principal and for the benefit of the principal.

A principal is an entity that directs another entity (an agent), through a binding arrangement, to undertake transactions with third parties on its behalf and for its own benefit.

A principal-agent arrangement results from a binding arrangement in which one entity (an agent), undertakes transactions with third parties on behalf, and for the benefit of, another entity (the principal).

Identifying whether an entity is a principal or an agent

When the Commission is party to a principal-agent arrangement, it assesses whether it is the principal or the agent in accounting for revenue, expenses, assets and/or liabilities that result from transactions with third parties undertaken in terms of the arrangement.

The assessment of whether the Commission is a principal or an agent requires the Commission to assess whether the transactions it undertakes with third parties are for the benefit of another entity or for its own benefit.

Recognition

The DTI, as a principal, recognises revenue and expenses that arise from transactions with third parties in a principal-agent arrangement in accordance with the requirements of the relevant Standards of GRAP.

The Commission, as an agent, recognises only that portion of the revenue and expenses it receives or incurs in executing the transactions on behalf of the principal in accordance with the requirements of the relevant Standards of GRAP.

The Commission recognises assets and liabilities arising from principal-agent arrangements in accordance with the requirements of the relevant Standards of GRAP.

1.17 Comparative figures

Where necessary, comparative figures have been reclassified to conform to changes in presentation in the current year.

1.18 Fruitless and wasteful expenditure

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the Statement of Financial Performance

in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

1.19 Irregular expenditure

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including -

- a. this Act; or
- b. the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- c. any provincial legislation providing for procurement procedures in that provincial government.

National Treasury practice note no. 4 of 2008/2009 which was issued in terms of sections 76(1) to 76(4) of the PFMA requires the following (effective from 1 April 2008):

Irregular expenditure that was incurred and identified during the current financial and which was condoned before year end and/or before finalisation of the financial statements must also be recorded appropriately in the irregular expenditure register. In such an instance, no further action is also required with the exception of updating the note to the financial statements.

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end must be recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements.

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements must be updated with the amount condoned.

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority must be recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps must thereafter be taken to recover the amount from the person concerned. If recovery is not possible, the Commissioner may write off the amount as debt impairment and disclose such in the relevant note to the financial statements. The irregular expenditure register must also be updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto must remain against the relevant programme/ expenditure item, be disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

1.20 Budget information

The Commission is typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

General purpose financial reporting by the Commission shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

The approved budget is prepared on a accrual basis and presented by functional classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 4/1/2019 to 3/31/2020.

The Annual Financial Statements and the budget are on the same basis of accounting therefore a comparison with the budgeted amounts for the reporting period have been included in the Statement of Comparison of Budget and Actual Amounts.

The Statement of comparative and actual information has been included in the Annual Financial Statements as the recommended

disclosure when the Annual Financial Statements and the budget are on the same basis of accounting as determined by National Treasury.

1.21 Related parties

A related party is a person or an entity with the ability to control or jointly control the other party, or exercise significant influence over the other party, or vice versa, or an entity that is subject to common control, or joint control.

The Commission is exempt from disclosure requirements in relation to related party transactions if that transaction occurs within normal supplier and/or client/recipient relationships on terms and conditions no more or less favourable than those which it is reasonable to expect the Commission to have adopted if dealing with that individual entity or person in the same circumstances and terms and conditions are within the normal operating parameters established by that reporting entity's legal mandate.

Where the Commission is exempt from the disclosures in accordance with the above, the Commission discloses narrative information about the nature of the transactions and the related outstanding balances, to enable users of the Commission's financial statements to understand the effect of related party transactions on its Annual Financial Statements.

1.22 Events after reporting date

Events after reporting date are those events, both favourable and unfavourable, that occur between the reporting date and the date when the financial statements are authorised for issue. Two types of events can be identified:

- those that provide evidence of conditions that existed at the reporting date (adjusting events after the reporting date); and
- those that are indicative of conditions that arose after the reporting date (non-adjusting events after the reporting date).

The Commission will adjust the amount recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred.

The Commission will disclose the nature of the event and an estimate of its financial effect or a statement that such estimate cannot be made in respect of all material non-adjusting events, where non-disclosure could influence the economic decisions of users taken on the basis of the financial statements.

1.23 Penalties and Settlements

In terms of Section 59(1) of the Competition Act, the Competition Tribunal may impose an administrative penalty in terms of an order, which is collected by the Commission and in terms of Section 59(4) of the Competition Act must be paid over to the National Revenue Fund.

In terms of Section 49D of the Competition Act, the Commission and a respondent may agree on the terms of an appropriate order, which the Competition Tribunal may confirm as a consent order in terms of Section 58(1)(b). The consent order may contain a settlement amount which is collected by the Commission which in terms of Section 59(4) of the Competition Act must be paid over to the National Revenue Fund.

The accepted practice of the National Treasury is that no monies are paid directly to the National Revenue Fund but rather they are paid via a specific department to which the entity reports. In the case of the settlement amounts or administrative penalties, the Commission pays the monies to the Department of Trade, Industry and Competition who in turn must pay the monies over to the National Revenue Fund.

The consent orders and orders of the Tribunal may allow the respondents to pay the settlement amount or the administrative penalty over more than one financial year of the Commission. This situation therefore results in outstanding amount/s due to the National Revenue Fund which will be collected by the Commission.

In terms of Section 40(1) of the Competition Act, the settlement amounts and the administrative penalties are not listed as a source of finance for the Commission nor are the amounts of revenue defined in terms of GRAP 23. As such these amounts are not recognised in the Statement of Financial Performance. Furthermore, the outstanding amounts do not meet the liability definition in terms of GRAP 1 and are therefore not recognised in the Statement of Financial Position of the Commission.

Penalties levied and received

The Statement of Financial Position includes a financial asset and financial liability relating to penalties levied and received. The financial asset and financial liability will be same amount and are shown as “Cash and cash equivalents held on behalf of EDD” and “Penalties payable to EDD” respectively in the Statement of Financial Position.

For penalties levied but not yet received

Penalties levied but not yet received do not meet the requirements of a financial asset and a financial liability in terms of GRAP 104 and accordingly are not presented in the Statement of Financial Position.

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

AS AT MARCH 31, 2020

2. NEW STANDARDS AND INTERPRETATION

2.1 Standards and interpretations effective and adopted in the current year

In the current year, the Commission has adopted the following standards and interpretations that are effective for the current financial year and that are relevant to its operations:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
<ul style="list-style-type: none">GRAP 20: Related parties	April 1, 2019	The adoption of this does not have a material impact on the results of the Commission, but has resulted in more disclosure than would have previously been provided in the financial statements
<ul style="list-style-type: none">GRAP 109: Accounting by Principals and Agents	April 1, 2019	The adoption of this does not have a material impact on the results of the Commission, but has resulted in more disclosure than would have previously been provided in the financial statements
<ul style="list-style-type: none">IGRAP 19: Liabilities to Pay Levies	April 1, 2019	The impact of the is not material.

2.2 Standards and interpretations issued, but not yet effective

The Commission has not applied the following standards and interpretations, which have been published and are mandatory for the Commission's accounting periods beginning on or after April 1, 2020 or later periods:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
• GRAP 104 (amended): Financial Instruments	April 1, 2020	Unlikely there will be a material impact
• Guideline: Guideline on the Application of Materiality to Financial Statements	April 1, 2099	Unable to reliably estimate the impact
• GRAP 34: Separate Financial Statements	April 1, 2020	Unlikely there will be a material impact
• IGRAP 1 (revised): Applying the Probability Test on Initial Recognition of Revenue	April 1, 2020	Unlikely there will be a material impact
• Directive 7 (revised): The Application of Deemed Cost	April 1, 2020	Unlikely there will be a material impact

2.3 Standards and interpretations not yet effective or relevant

The following standards and interpretations have been published and are mandatory for the Commission's accounting periods beginning on or after April 1, 2020 or later periods but are not relevant to its operations:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
• GRAP 18 (as amended 2016): Segment Reporting	April 1, 2019	Unlikely there will be a material impact
• GRAP 32: Service Concession Arrangements: Grantor	April 1, 2019	Unlikely there will be a material impact
• GRAP 105: Transfers of functions between entities under common control	April 1, 2019	Unlikely there will be a material impact
• GRAP 106 (as amended 2016): Transfers of functions between entities not under common control	April 1, 2019	Unlikely there will be a material impact
• GRAP 107: Mergers	April 1, 2019	Unlikely there will be a material impact
• GRAP 108: Statutory Receivables	April 1, 2019	Unlikely there will be a material impact
• IGRAP 17: Service Concession Arrangements where a Grantor Controls a Significant Residual Interest in an Asset	April 1, 2019	

3. PROPERTY, PLANT AND EQUIPMENT

	2020			2019		
	Cost	Accumulated depreciation and accumulated impairment	Carrying value	Cost	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fittings	6,854	(3,106)	3,748	6,797	(2,690)	4,107
Motor vehicles	4,430	(1,756)	2,674	4,430	(1,332)	3,098
Office equipment	3,761	(1,702)	2,059	3,574	(1,344)	2,230
IT equipment	16,532	(7,283)	9,249	16,167	(5,563)	10,604
Leasehold improvements	2,228	(1,953)	275	1,973	(1,315)	658
Cellphones	87	(11)	76	12	(8)	4
Leased assets	3,110	(3,021)	89	3,110	(2,286)	824
Total	37,002	(18,832)	18,170	36,063	(14,538)	21,525

Reconciliation of property, plant and equipment - 2020

	Opening Balance	Additions	Disposals	Depreciation	Total
Furniture and fittings	4,107	57	-	(416)	3,748
Motor vehicles	3,098	-	-	(424)	2,674
Office equipment	2,230	187	-	(358)	2,059
IT equipment	10,604	439	(53)	(1,741)	9,249
Leasehold improvements	658	255	-	(638)	275
Cellphones	4	75	-	(3)	76
Leased assets	824	-	-	(735)	89
Total	21,525	1,013	(53)	(4,315)	18,170

				2020 R'000	2019 R'000
Reconciliation of property, plant and equipment - 2019					
	Opening Balance	Additions	Disposals	Depreciation	Total
Furniture and fittings	4,279	227	-	(399)	4,107
Motor vehicles	3,523	-	-	(425)	3,098
Office equipment	2,506	73	-	(349)	2,230
IT equipment	9,549	2,759	(203)	(1,501)	10,604
Leasehold improvements	1,315	-	-	(657)	658
Cellphones	14	-	(7)	(3)	4
Leased assets	1,770	-	-	(946)	824
Total	22,956	3,059	(210)	(4,280)	21,525

Pledged as security

None of the property, plant and equipment is pledged as security. There are no future contractual commitments for acquisition of property, plant and equipment.

Expenditure incurred to repair and maintain property, plant and equipment included in Statement of Financial Performance

Repairs and maintenance	456	364
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4. INTANGIBLE ASSETS

	2020			2019		
	Cost	Accumulated amortisation and accumulated impairment	Carrying value	Cost/Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer Software	3,593	(2,192)	1,401	2,803	(1,537)	1,266

Reconciliation of intangible assets - 2020

	Opening Balance	Additions	Amortisation	Total
Computer software	1,266	790	(655)	1,401

Reconciliation of intangible assets - 2019

	Opening Balance	Disposals	Amortisation	Total
Computer software	2,489	(650)	(573)	1,266

Pledged as security

None of the intangible assets were pledged as security for any obligation. There are no future contractual commitments for acquisition of intangible assets.

5. INVENTORIES

Consumable stores	1,272	1,162
Inventories recognised as an expense during the year	110	757

6. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Prepaid expenses	990	-
Sundry Debtors	2,286	2,993
Total	3,276	2,993

Sundry debtors is made up of the following.

Accrued interest	1,009	2,179
Deposits	668	668
Other	609	146
Total	2,286	2,993

The prior year amounts were erroneously disclosed as R2,973 and R3,017 and have been corrected to conform to changes in the current year presentation.

Trade and other receivables pledged as security

None of the trade and other receivables is pledged as as security.

7. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of:

Bank Balances	39,625	5,069
Cash on hand	18	-
Total	39,643	5,069

The bank accounts for the Commission are held with the banks approved by the National Treasury in line with Treasury Regulation 31.2.

	2020 R'000	2019 R'000
Credit quality of cash at bank and short term deposits, excluding cash on hand		

The credit quality of cash at bank and short term deposits, excluding cash on hand that are neither past due nor impaired can be assessed by reference to external credit ratings (if available) or historical information about counterparty default rates. None of the financial institutions with which bank balances are held defaulted in the prior periods and as a result a credit rating of high was ascribed by the financial institutions. The entity's maximum exposure to credit risk as a result of the bank balances held is limited to the carrying value of these balances as detailed above. All the bank balances are held with two banking institutions which reduces the related banking risk.

8. FINANCE LEASE OBLIGATION

Minimum lease payments due		
- within one year	-	916
	-	916
less: future finance charges	-	(55)
Present value of minimum lease payments	-	861
Present value of minimum lease payments due		
- within one year	-	861

The Commission is leasing equipment on a finance lease. The lease agreement does not impose any restrictions.

The average lease term was 3 years and the average effective borrowing rate was 14% (2019: 14%).The lease contract had expired in January 2020 and has been extended on month to month basis.

The Commission's obligations under finance leases are secured by the lessor's charge over the leased assets. Refer to note 3.

9. PROVISIONS

Reconciliation of provisions - 2020

	Opening Balance	Additions	Utilised during the year	Total
Leave provision	9,651	9,668	(9,260)	10,059
Performance bonus	5,000	4,211	(4,211)	5,000
Total	14,651	13,879	(13,471)	15,059

Reconciliation of provisions - 2019

	Opening Balance	Additions	Utilised during the year	Total
Leave provision	9,202	15,669	(15,220)	9,651
Performance bonus	13,328	5,000	(13,328)	5,000
Total	22,530	20,669	(28,548)	14,651

Leave provision

The Commission does not have an unconditional right to defer settlement of its leave liabilities and its policies stipulate that the leave is forfeited if not used within 6 months after the reporting date.

Performance bonus

Employees sign performance contracts as part of their conditions of service at the beginning of each financial year. Employees are assessed bi-annually. The amount is dependent on the outcome of individual performance evaluations and it is at the discretion of management, subject to the availability of funds.

10. PENALTIES PAYABLE TO EDD

Penalties received and penalties payable

The Commission collects the penalties imposed by the Tribunal on behalf of the DTIC in terms of section 49D of the Competition Act, therefore the Commission is the acting agent to the DTIC. This is the principal - agent arrangement and is accounted for in terms of GRAP 109: Accounting by Principals and Agents.

Opening balance	33,244	58,047
Penalties collected	185,056	881,179
Less: Amounts paid to the DTIC	(209,625)	(905,760)
Total	8,675	33,466

An amount of R185,056 million was collected in the current year and R209,625 million was paid over to the DTIC as at 31 March 2020. The balance of R8,675 (2019: R33,466 million) is still to be paid to the DTIC in the next financial year. The penalties payable are held in the Commission's bank account and are represented by Cash and Cash Equivalents held on behalf of DTIC disclosed under current assets on the Statement of Financial Position.

	2020 R'000	2019 R'000
Outstanding penalties amount at the beginning of the year	1,062,943	1,590,072
Add: Amounts of settlements and penalties levied by the Competition Tribunal	70,782	354,050
Less: Amounts collected by the Competition Commission	(185,056)	(881,179)
Total	948,669	1,062,943

Section 64(3) states that proceedings under subsection (2) may not be initiated more than three (3) years after the imposition of the administrative penalty. A total of R70,782 million (2019: R354,050 million) was levied by the Commission Tribunal in the current financial year.

The opening balance for the prior year has been restated by R4,628 million and the settlements and penalties levied also changed by R20,281 million due to interest levied that was not capitalised in the previous years.

The closing balance of R948,669 million as at 31 March 2020, included a total amount of R72,707 million of which fined entities are behind the agreed payment terms. This may result in a material loss to the National revenue Fund. Management has effected collection processes to recover the outstanding amounts in default. Some of the defaulters have requested a deferral payment arrangement due to financial challenges and those requests are being considered by Management.

The penalties collected by the Commission on behalf of the DTIC are disclosed in the Statement of Financial Position under current assets and liabilities as cash and cash equivalents held on behalf of DTIC and penalties payable to DTIC respectively. The Commission does not have additional resources held on behalf of the principal other than the disclosed.

11. PAYABLES FROM EXCHANGE TRANSACTIONS

Trade payables	14,914	23,019
Sundry payables	361	446
Accrued expenses	5,203	1,076
Operating lease payables	-	677
	20,478	25,218

The prior year comparatives have been restated as result of prior years adjustments identified as disclosed in note 29.

12. LEASE RENTALS ON OPERATING LEASE

Premises		
Contractual amounts	27,592	21,704
Equipment		
Contractual amounts	3	-
	27,595	21,704

13. FEE INCOME

Fees earned	65,476	70,672
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Fee income is made up of fees earned from mergers and acquisitions.

14. OTHER INCOME

Insurance recovered	115	16
Refunds, SETA grant and recoveries	256	788
Study bursaries recovered	56	28
	427	832

15. INTEREST RECEIVED

Interest received on short term deposits	7,953	31,014
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16. GOVERNMENT GRANTS AND SUBSIDIES

Operating grants		
Government grants and subsidies	295,438	281,788

The Commission receives an operational grant allocation from the DTIC in instalments of R73,859 million (2019: R70,447 million) per quarter.

17. EMPLOYEE RELATED COSTS

Basic	201,101	197,893
Performance bonus	4,211	5,238
Cellphone and data allowance	1,272	1,304
Clothing allowance	161	84
Danger allowance	58	66
Group life and pension administration	3,390	2,912
Medical aid	7,529	7,081
Recruitment fees	78	790
Other staff related costs	6,291	8,426
	224,091	223,794

2020	2019
R'000	R'000

Accounting Authority’s emoluments

Annual remuneration	2,172	1,815
Subsistence and cellphone allowance	110	151
Group life and pension administration	38	-
Other	562	-
	2,882	1,966

The prior year figures for payroll costs have been reclassified to conform to mapping changes effected to improve presentation.

Executive Committee’s emoluments

Annual remuneration	21,841	21,282
Cellphones and data allowances	139	129
Group life and pension administration	347	-
Performance bonus	-	2,706
Other	2,400	-
	24,727	24,117

The prior year figures for payroll costs have been reclassified to conform to mapping changes effected to improve presentation.

Other employees

Annual remuneration	175,282	183,402
Performance bonuses	4,211	12,685
Cellphone and data allowances	1,131	1,157
Group life and pension administration	3,091	2,650
Other	3,726	4,608
	187,441	204,502

The prior year figures for payroll costs have been reclassified to conform to mapping changes effected to improve presentation.

18. ADMINISTRATIVE EXPENSES

General and administrative expenses	6,108	5,213
Auditors remuneration - external audit fees	1,731	1,196
	7,839	6,409

2020	2019
R'000	R'000

19. FINANCE COSTS

Leased assets (Photocopiers)	293	323
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20. OPERATING EXPENSES

Audit and Risk and Remuneration committee fees	492	781
Advertising	419	46
Internal audit fees	342	962
Consulting and professional fees	13,524	21,763
Case related costs - Legal	30,044	52,434
Research and development costs	-	291
Security	3,272	4,336
Subscriptions and membership fees	1,630	1,158
Training	216	206
Travel and accommodation	3,525	6,196
Education and awareness	7,015	8,514
Maintenance, repairs and running costs	3,683	3,331
Publications	842	629
Meeting refreshments	539	621
Workshops	17	210
Other expenses	1,984	1,454
	67,544	102,932

The prior year comparative figures have been corrected and reclassified as a result of changes in the mapping of accounts between the administrative and operational expenses.

21. CASH GENERATED FROM OPERATIONS

Surplus	36,910	23,432
Adjustments for:		
Depreciation and amortisation	4,969	4,853
Loss on disposal of assets	53	860
Movements in provisions	408	(7,879)
Other non-cash items	-	(1)
Changes in working capital:		
Inventories	(110)	(757)
Receivables from exchange transactions	(283)	8,920
Payables from exchange transactions	(2,740)	(23,789)
	37,207	5,639

	2020 R'000	2019 R'000
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22. COMMITMENTS

Already contracted for but not provided for

Existing contracts - goods and services	4,134	15,400
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Not yet contracted for and authorised by Commission

Other goods and services	852	4,200
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TOTAL COMMITMENTS

Total commitments

Authorised capital expenditure	4,986	19,600
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This committed expenditure relates to multiple contracts entered into by the Commission and will be financed by available cash reserves.

OPERATING LEASES - AS LESSEE (EXPENSE)

Minimum lease payments due

- within one year	-	11,319
- later than five years	-	-
	-	36,019

Operating lease payments represent rentals payable by the Commission for leased office space. Leases are negotiated for an average term of three years and rentals are fixed for an average of three years. No contingent rent is payable.

23. RELATED PARTIES

Relationships

The Competition Tribunal	Public entity in the National sphere
The Department of Trade, Industry and Competition	Executive Authority
Public Investment Corporation	Public entity in National sphere
Members of key management	Members of the Executive Authority

RELATED PARTY BALANCES

Amounts included in trade receivables regarding related parties

The Department of Trade and Industry	-	933
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Amounts included in trade payables regarding related parties

The Competition Tribunal	(2,027)	(1,774)
The Department of Trade and Industry	(24)	-
Public Investment Corporation	(2,853)	(1,386)

RELATED PARTY TRANSACTIONS

The Department of Trade and Industry

Rental expense	11,330	10,300
Telephone and Internet costs	243	248

The Competition Tribunal

Filing fees	15,279	17,579
Facility Fee	886	912
Other admin related costs	236	104

Economic Development Department

Government grant received	295,438	281,788
Penalties collected on behalf of and transferred to related parties	185,057	980,107

Public Investment Corporation

Rental expense	16,939	11,269
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REMUNERATION OF EXECUTIVE MANAGEMENT

NAME:

Commisioner
Mr T Bonakele

Deputy Commissioner
Mr H Ratshisusu

Divisional Manager: Economic Research Bureau
Dr L Mncube (resigned 31 March 2019)

Divisional Manager: Market Conduct
Ms N Nontombana

Divisional Manager: Human Capital
Mr A Gwabeni

Chief Financial Officer
Mr M Kgauwe (resigned 14 March 2019)

Divisional Manager: Legal Services
Mr B Majenge

Divisional Manager: Cartels
Mr M Mohlala

Divisional Manager: Advocacy
Ms K Qobo

Divisional Manager: Mergers and Acquisition
Ms L Mabidikane (resigned 30 June 2019)

Company Secretary
Mr M Msibi

Divisional Manager: Economic Research Bureau
Mr J Hodge

Chief of Staff: Commissioner Office
Mr D Maimela (contract ended 30 June 2019)

Chief of Staff: Commissioner Office
Ms Z Mqolomba (appointed 01 July 2019)

Acting Chief Financial Officer
Mr A Moledi (from May to November 2019)

Chief Financial Officer
Mr A Moledi (appointed 01 December 2019)

Divisional Manager: Mergers and Acquisitions
Ms T Paramoer (appointed 01 November 2019)

Acting Divisional Manager: Office of the Commissioner
Ms M Ramokgopa (appointed 15 December 2019)

2020		
Basic salary	Other benefits received and subsistence allowance	Total
2,796	86	2,882
2,354	52	2,406
-	201	201
2,131	1	2,132
2,115	-	2,115
-	134	134
2,043	1	2,044
2,222	19	2,241
1,986	25	2,011
417	44	461
1,476	-	1,476
2,067	8	2,075
326	74	400
836	19	855
1,154	91	1,245
613	-	613
835	8	843
593	-	593
23,964	763	24,727

REMUNERATION OF EXECUTIVE MANAGEMENT

NAME:

Commisioner
Mr T Bonakele

Deputy Commissioner
Mr H Ratshisusu

Divisional Manager: Economic Research Bureau
Dr L Mncube

Divisional Manager: Market Conduct
Ms N Nontombana

Divisional Manager: Human Capital
Mr A Gwabeni

Chief Financial Officer

Divisional Manager: Legal Services
Mr B Majenge

Divisional Manager: Cartels
Mr M Mohlala

Divisional Manager: Advocacy
Ms K Qobo

Divisional Manager: Mergers and Acquisition
Ms L Mabidikane

Company Secretary
Mr M Msibi

Divisional Manager: Economic Research Bureau
Mr J Hodge (01 March 2019)

Acting Chief of Staff
Mr D Maimela

2019			
Basic salary	Bonuses and performance related payments	Other benefits received and subsistence allowance	Total
1,815	-	151	1,966
2,276	367	40	2,683
1,939	313	18	2,270
2,063	256	5	2,324
1,901	162	5	2,068
1,652	147	-	1,799
1,829	225	5	2,059
1,886	232	24	2,142
1,782	224	18	2,024
1,615	138	23	1,776
1,344	34	-	1,378
166	-	-	166
1,462	-	-	1,462
21,730	2,098	289	24,117

2020
R'000

2019
R'000

24. RISK MANAGEMENT

Financial risk management

The Commission has a policy and framework on risk management. The strategic risk register is reviewed annually by management. The entity’s activities expose it to interest, credit and liquidity risks.

Liquidity risk

The Commission’s risk to liquidity is a result of the funds available to cover future commitments. The Commission manages liquidity risk by monitoring forecasted cash flows and ensuring that the necessary funds available to meet any commitments which may arise. Cash which is not utilised is immediately invested in the Corporate for Public Deposits and call accounts.

The following table reflects the Commission’s exposure to liquidity risk from financial liabilities:

At March 31, 2020	Carrying Amount	Total cash flow	Contractual cash flow within one year	Contractual cash flow between two and five years
Payables from exchange transactions	20,478	20,478	20,478	-
At March 31, 2019	Carrying Amount	Total cash flow	Contractual cash flow within one year	Contractual cash flow between two and five years
Payables from exchange transactions	25,218	25,218	25,218	-
At March 31, 2020	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Cash and cash equivalents	39,643	-	-	-
Trade and other receivables	3,276	-	-	-
At March 31, 2019	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Cash and cash equivalents	5,069	-	-	-
Trade and other receivables	2,993	-	-	-

2020
R'000

2019
R'000

Credit risk

The Commission trades only with recognised, creditworthy third parties. In addition, receivable balances are monitored on an ongoing basis with the result that the Commission’s exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed. There is no significant concentration of credit risk within the Commission. With respect to credit risk arising from the other financial assets of the Commission, which comprise cash and cash equivalents, the Commission’s exposure to credit risk arises from default of the counterparty, with a maximum exposure equal to the carrying amount of these instruments. The Commission’s cash and cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is low. Trade and other receivables are not rated.

Financial assets exposed to credit risk at year end were as follows:

Financial instrument		
Cash and cash equivalents	39,643	5,069
Trade and other receivables	3,276	2,993

Market risk

Market risk is the risk that changes in the market prices, such as the interest rates which will affect the value of the financial assets of the Commission. The Commission is not exposed to market risk.

Interest rate risk

As the Commission has no significant interest-bearing assets, the Commission’s income and operating cash flows are substantially independent of changes in market interest rates.

The Commission is exposed to interest rate changes in respect of returns on its investments with financial institutions and interest payable on finance leases contracted with outside parties.

The Commission’s exposure to interest risk managed by investing, on a short term basis, in the current accounts and the Corporation for Public Deposits.

25. GOING CONCERN

We draw attention to the fact that at March 31, 2020, the Commission had an accumulated surplus of R 28,225 million and that the Commission’s total liabilities exceed its assets by R28,225 million.

The Annual Financial Statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets andsettlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

The ability of the Commission to continue as a going concern is dependent on a number of factors. The most significant of these is that the Commission is working together with the EDD and the National Treasury on a process to find a long-term sustainable funding model for the Commission.

Management have implemented stringent cost control measures in order to avoid overspending. In addition, the Commission has set aside funds from the current year budget to cover and make good of the prior year cash overspending and move from a deficit cash position. These allocated funds were not available for use in the 2019/20 financial year. There is however a material uncertainty on whether the Commission will be able to investigate and prosecute all cases that require its attention.

26. EVENTS AFTER THE REPORTING DATE

The Economic Development Department (EDD) which is the controlling department of the Commission merged with the Department of Trade and Industry (DTI) in April 2020 and the new department is the Department of Trade, Industry and Competition (DTIC).

The World Health Organisation (WHO) declared Covid-19 a pandemic on 11 March 2020. In response, the South African Government classified Covid-19 as a disaster and issued additional regulations and directions to curtail the disaster. All these events took place before the reporting date of 31 March 2020 and as discussed above. These events have no significant impact on amounts to be recognised and recorded in the Annual Financial Statements of the departments.

However, given the economic environment and the likelihood that further events may occur rapidly or unexpectedly, the Commission carefully evaluated information that became available after 31 March and before the date of authorisation of the Annual Financial Statements to identify any additional adjusting events or any non-adjusting events.

There are no amounts in the Annual Financial Statements to be adjusted to reflect events after the end of the reporting period that provide evidence of conditions that existed at the end of the reporting period.

2020
R’000

2019
R’000

27. FRUITLESS AND WASTEFUL EXPENDITURE

Opening balance as restated	23	23
Add: Expenditure identified - current	240	-
Closing balance	263	23

The opening balance of R23,000 relates to payment to a fraudulent bank account. The Commission was fraudulently requested to change the bank account details for one of the service providers. This fraud was identified before any additional payments were made. The fraud case has been reported to the South African Police Services. Controls have been put in place to ensure that such expenditure is avoided in the future.

The current year amount relates to multiple travel related incidents for R74,474 as well as SARS interest charged due to outstanding debts for R122,082 and traffic fines for R43,560.

28. IRREGULAR EXPENDITURE

Opening balance as previously reported	110,810	74,052
Add: Irregular Expenditure - current year	19,785	39,224
Opening balance as restated	130,595	113,276
Less: Amounts condoned	-	(2,466)
Closing balance	130,595	110,810

Irregular expenditure is made up of the following:

An amount of R71,586 million which relates to an expenditure incurred in contravention of the Supply Chain Management Regulations and overspending in the 2017/18 financial year. The Supply Chain Management contraventions relate to the appointment of professional services experts. This amount was previously disclosed as R126,124 million in the 2017/18 financial statements. Management has since reviewed this amount in consultation with the National Treasury. The irregular expenditure attributable to the overspending is R34,734 million.

An amount of R19,785 million (2019: R39,224 million) which mainly relates to an expenditure incurred in contravention of the Supply Chain Management Regulations in the 2019/20 financial year. The amount mainly relates to the appointment of professional services experts.

Incidents/cases identified in the current year include those listed below:

	Disciplinary steps taken/criminal proceedings		
Competitive bidding not invited	The Commission is in consultations with the National Treasury and the Auditor General in order to resolve the matters at hand.	19,785	39,224

	2020	2019
	R'000	R'000

29. BUDGET DIFFERENCES

Material differences between budget and actual amounts

27.1. Fee income

Fee income is below budgeted amount due to lower merger applications filed than anticipated.

27.2. Interest received - investment

Investment interest is higher than budgeted amount due to more funds in the bank.

27.3. Employee related costs

The variance is due to vacancies which were not filled during the year.

27.4. Administrative expenses

The variance is due to savings that management made to improve on the cash deficit position.

27.5. Operating expenses

The variance is due to savings management made to improve on the cash deficit position.

30. PRIOR PERIOD ERROR

STATEMENT OF FINANCIAL POSITION

Payables from exchange transactions

STATEMENT OF FINANCIAL PERFORMANCE

Expenditure

Operating expenses

	-	2,578
	-	(2,578)
	-	-

	2020	2019
	R'000	R'000

The Commission was served with a letter of demand regarding the outstanding debts relating to SDL, PAYE and UIF for the previous financial and or tax years 2002, 2007 to 2013 for an amount of R666 881 including interest and penalties.

The Commission further took an exercise to clean up the creditors age analysis and this resulted in the prior years adjustment of R1,472,911 decrease in the Payables from exchange transactions as a result of incorrect of supplier invoices and journals processed.

Also included in the balance is R1,773,000 that was adjusted in the Payables from exchange transactions and restated in the prior financial year.

31. CONTINGENT ASSETS AND LIABILITIES

Cases before the courts in which costs were awarded against the Commission.

Amount claimed	2,755	-
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There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded against the Commission. The estimated amount of legal costs incurred and claim amount is R2,755 million, however, for some of the cases the costs are unknown and were not yet confirmed at the reporting date.

Cases before the courts in which costs were awarded in favour of the Commission.

There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded in favour of the Commission. The legal costs incurred and claim amounts for these cases are unknown and were not yet confirmed at the reporting date.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. On the right side, there is a vertical margin line, creating a narrow right margin. The top right corner of the page features a decorative graphic element consisting of overlapping gray and blue shapes. The entire page is otherwise blank, with no text or other markings.





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RP284/2020

ISBN: 978-0-621-48678-0