



# **ANNUAL PERFORMANCE PLAN 2022/23**

**BASED ON STRATEGIC PLAN 2020 – 2025**

Resubmitted to the Department of Trade, Industry and Competition on 31 March 2022.

## MINISTER'S FOREWORD

The Annual Performance Plan (APP) identifies the outputs, output indicators and targets that an entity aims to achieve in the new financial year. The Executive Authority is responsible for providing direction on the development and implementation of policies and strategic priorities of entities in line with their respective mandates, and to ensure the APP is aligned to government's priorities.

The environment in which the APPs of the Department of Trade, Industry and Competition (the DTIC) and our entities have been formulated remains challenging, given the impact of the COVID-19 pandemic, the July 2021 unrest and more recently the Russia/Ukraine war. At the same time, determined efforts by the Administration has seen signs of economic recovery and greater investor confidence in economic prospects. In this light, Government's priority focus continues to be the recovery of growth, investment and employment, guided by the Economic Recovery and Reconstruction Plan adopted in 2020, and the tasks outlined by President Ramaphosa in the 2022 State of the Nation Address.

This APP is expected to take forward the strategic shift initiated in 2021/2022 toward strengthened implementation and impact of DTIC's work, through greater integration of efforts within the department and our entities, guided by shared, crosscutting outcomes and joint performance indicators. In this regard, the work of the DTIC and the entities will be evaluated in relation to three over-arching Outcomes (which incorporate the previous "Joint-KPIs") namely Industrialisation; Transformation; and Capable State (Implementation/ Effective Delivery). In this way these Outcomes more deliberately and directly inform respective outputs and KPIs of the department and entities.

In turn, the scope of the outputs collectively still encompass the identified DTIC's priorities, which include among others, the work of sector masterplans, initiatives to boost levels of investment and localisation in the economy, expanding trade within the continent, enabling better local economic development, supporting the growth of new industries (in the green economy and through beneficiation) and building a capable state, in particular addressing red tape as prioritised by the President in the 2022 State of the Nation Address.

Every entity in the DTIC has been requested to align their APPs to the three outputs, it being recognised that a particular entity's core business links more clearly and strongly to one or the other of the overarching Outcomes, than to others.

This APP represents the outcome of the work done by the Competition Commission. Following the tabling of the APP by the DTIC itself, each entity of the Department will be expected to consider such additional refinement and additions to be made and following completion of the review, such an addendum to this APP may be submitted in due course after the tabling.

This APP is therefore not about many new objectives but rather on a new way of implementation, with the focus on integration, to enhance the development impact of the work.

I accordingly table the APP for 2022/23 in accordance with the request by the Speaker.

I wish to thank the management for the work done and wish them well in executing the APP and aligning their work to government's overall programmes and priorities.

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

Ebrahim Patel

Minister of Trade, Industry and Competition

## ACCOUNTING OFFICER'S STATEMENT

The 2022/23 financial year marks the third year of the Commission's five-year strategy. The Commission developed its five-year strategy amid Covid19 pandemic. The pandemic has and will continue to have a significant effect on how the Commission carries out its mandate in the coming years: with the external economic environment severely altered, and continuously shifting, the next few years will be a testing ground on the strength of the institution.

The Commission continues to receive complaints related to price-gouging, as per the Consumer and Customer Protection and National Disaster Management Regulations and Directions, although far less compared to the numbers received during 2020/21 and 21/22 financial years. The Commission continues to prioritize Covid-19 investigations and prosecution by fast-tracking the investigations by completing all Covid-19 investigations within 12 months and winning 90% of Covid-19 cases in litigation. The Commission reached two major settlements agreements with private laboratories PathCare, Lancet and Ampath where the three private laboratories will reduce the price of the Covid-19 PCR test to R500 inclusive of VAT, and to immediately reduce the price of Covid-19 Rapid Antigen tests to no more than R150 inclusive of VAT. The undertakings are expected to make the Covid-19 PCR test to be more affordable to the general public.

The Commission achieved several victories in the courts during 2021/22: The Commission successfully litigated the Tourvest matter, where the Tribunal found Tourvest Holdings (Pty) Ltd and the Siyazisiza Trust guilty of collusive tendering or price fixing, in contravention of section 4(1)(b)(iii) of the Competition Act. The judgment also provides guidance on characterization, where the colluding parties contested their horizontal relationship.

The Commission also made major progress with Market Inquiries, the implementation of the Grocery Retail Market Inquiry recommendations resulted in a settlement agreement with Pick 'n Pay which will benefit independent grocery retailers and supermarkets owned and controlled by historically disadvantaged persons.

The Commission continues to lead research and conversations on competition matters. The Commission conducted a study in levels and trends of concentration and participation which seeks to deepen its understanding of the patterns of concentration and participation in the South African economy. The Commission also published several reports on essential food prices. The Commission issued several guidelines to the public to ensure compliance with the Competition Act. We issued draft guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030, for public comment. The purpose of the draft Guidelines is to provide guidance to the sugar industry on collaboration in the implementation of industry

commitments to increasing sourcing of local sugar as contemplated in the South African Sugarcane Value Chain Master Plan to 2030. We also issued draft guidelines on collaboration between competitors on localisation initiatives for public comment. The draft guidelines have been developed to guide the process by which such collaboration between competitors may occur and aim to provide guidance to industry and government as to how localisation initiatives may be appropriately identified and implemented, in a manner that does not raise competition concerns.

The increase in the Commission's budget allocation, of circa R300 million additionally over the MTEF, is thus very welcome. The budget increase came at a time when the amount and scope of work that the authority deals with has substantially increased over the years. These latest budgetary increases thus place the Commission in a strong position regarding its operations.

The amendments of various provisions of the Competition Act were promulgated between February and July 2019, which have enlarged the mandate of the Commission. Among others, the aim of the new provisions is to open the economy to small and medium enterprises and to Black South Africans. The amendments address two structural constraints to economic growth and inclusion: the high levels of concentration in markets and the skewed ownership profile of the economy towards a racial minority. This is a welcome mandate for the competition authorities, which has shaped our crafting of this strategy. Our consideration of public interest in merger, enforcement and advocacy work will be particularly pointed to advancing the participation of Women and Blacks in the economy.

2022/23 Annual Performance Plan (APP) identifies the outputs, output indicators and targets that the Commission aims to achieve in the new financial year. Our APP is guided by the DTIC's three Joint Key Performance Indicators (J-KPI) namely Industrialisation; Transformation; and Capable State (Implementation/ Effective Delivery).

A major focus of the Commission's activities has been working alongside all South Africans in the rebuilding of the economy. In general, the mandate of the Commission supports the objectives of greater levels of inclusive growth which the Recovery Plan seeks to achieve. A more competitive economy results in higher growth and job creation by enhancing the ability of domestic firms to replace imports and expand exports. It also provides consumers with lower prices and more product choice. The Competition Act seeks to ensure that such growth is more inclusive, addressing past exclusion through actively promoting transformation and small, medium and micro enterprises (SMMEs) participation as well as public interest objectives in its enforcement actions. The recent amendments to the Act strengthen the Commission's ability to address concentration and foster greater participation in the economy. The additional budget allocation enables us to undertake enforcement investigations, advocacy work and market inquiries- activities which were previously revised downwards.

In conclusion, it is indeed our commitment to ensure that our activities in the coming year yield positive outcomes for the economy of South Africa.

A handwritten signature in black ink, appearing to be 'T. Bonakele', with a stylized, cursive script.

Tembinkosi Bonakele  
Commissioner

## Official Sign-Off

It is hereby certified that this Annual Performance Plan:

- Was developed by the management of the Competition Commission under the guidance of Minister of the Department of Trade, Industry and Competition.
- Considers all the relevant policies, legislation and other mandates for which the Competition Commission is responsible.
- Accurately reflects the Programs, Key Performance Indicators and Targets which the Competition Commission will endeavour to achieve over the period 2022/23 financial year.

Signature: 

**Mr Amos Moledi, Chief Financial Officer**

**Date:** 31 MARCH 2022

Signature: 

**Mr Tembinkosi Bonakele, Commissioner**

**Date:** 31 MARCH 2022

Signature:

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

Date:

## **Abbreviations**

<b>Abbreviation</b>	<b>Full title</b>
<b>ACF</b>	<b>African Competition Forum</b>
<b>ACFTA</b>	<b>African Continental Free Trade Area</b>
<b>AMCU</b>	<b>Association of Mineworkers and Construction Union</b>
<b>BRICS</b>	<b>Brazil, Russia, India, China and South Africa</b>
<b>CAC</b>	<b>Competition Appeal Court</b>
<b>Commission</b>	<b>Competition Commission South Africa</b>
<b>CSD</b>	<b>Corporate Services Division</b>
<b>DAFF</b>	<b>Department of Agriculture, Forestry and Fisheries</b>
<b>DTIC</b>	<b>Department of Trade, Industry and Competition</b>
<b>EDD</b>	<b>Economic Development Department</b>
<b>EXCO</b>	<b>Executive Committee</b>
<b>FDI</b>	<b>Foreign Direct Investment</b>
<b>GDP</b>	<b>Gross Domestic Product</b>
<b>HMI</b>	<b>Health Market Inquiry</b>
<b>ICASA</b>	<b>Independent Communications Authority of South Africa</b>
<b>ICN</b>	<b>International Competition Network</b>
<b>IPAP</b>	<b>Industrial Policy Action Plan</b>
<b>ICT</b>	<b>Information and Communication Technology</b>
<b>KMS</b>	<b>Knowledge Management System</b>
<b>LSD</b>	<b>Legal Services Division</b>
<b>MANCOM</b>	<b>Management Committee (Divisional Managers, Principals, Heads of Department)</b>
<b>MCD</b>	<b>Market Conduct Division</b>
<b>MFSA</b>	<b>Mining Forum of South Africa</b>
<b>MOU</b>	<b>Memorandum of Understanding</b>
<b>MSA</b>	<b>Medical Schemes Act</b>
<b>MTBPS</b>	<b>Medium Term Budget Policy Statement</b>
<b>MTEF</b>	<b>Medium Term Expenditure Framework</b>
<b>M&amp;A</b>	<b>Mergers and Acquisitions</b>
<b>NDP</b>	<b>National Development Plan</b>
<b>NEDLAC</b>	<b>National Economic Development and Labour Council</b>
<b>NGP</b>	<b>New Growth Path</b>
<b>NHI</b>	<b>National Health Insurance</b>
<b>OECD</b>	<b>Organization for Economic Cooperation and Development</b>



<b>OIPMI</b>	<b>Online Intermediate Platforms Services Market Inquiry</b>
<b>OTC</b>	<b>Office of the Commissioner</b>
<b>SADC</b>	<b>Southern African Development Community</b>
<b>SMMEs</b>	<b>Small, Medium and Micro Enterprises</b>
<b>SOCs</b>	<b>State Owned Companies</b>
<b>Tribunal</b>	<b>Competition Tribunal South Africa</b>
<b>TFTA</b>	<b>Tripartite Free Trade Area</b>
<b>UASA</b>	<b>United Association of South Africa</b>
<b>WTO</b>	<b>World Trade Organisation</b>

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# INTRODUCTION

This document comprises the Competition Commission's 2021/22 Annual Performance Plan (APP), based on its five-year Strategic Plan (2020/21 – 2024/25). The Commission has undertaken a thorough planning process leading to consolidation of its three main goals with specific focus on the key mandate areas.

The 2021/22 Annual Performance Plan takes into account the authority's response to the Covid-19 pandemic and the phase of economic recovery South Africa must enter. The Commission's three Strategic Outcome-Oriented goals together with 12 Outcomes in its 2020-2025 Strategic Plan remain a relevant planning framework, upon which annual Key Performance Indicators and Targets have been developed.

## FIGURE 1: COMMISSION'S VISION, MISSION & GOALS

### Vision

#### • ***A Growing, Deconcentrated and Inclusive Economy***

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

### Mission

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

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

### Outcome-Oriented Goals

1. Enforcing and regulating towards economic growth and enhanced economic participation.
2. Advocating for improved compliance and pro-competitive public policy outcomes.
3. A people-centric, high- performance organization.

To achieve the above goals, the Commission will pursue the following outcomes:

- 1) Efficient and effective merger regulation & enforcement
- 2) Competitive, Contestable and Deconcentrated Markets
- 3) Improved public interest outcomes
- 4) Improved compliance & awareness
- 5) Existing competitive small and large businesses remain in the market
- 6) Improved understanding of market dynamics in priority sectors
- 7) Improved co-ordination on the application of economic policy and competition policy
- 8) Increased importance of developmental perspectives in domestic and international competition law discourse
- 9) Sound Corporate Governance
- 10) Secure, harmonious and conducive working environment
- 11) Highly motivated, engaged and productive workforce
- 12) Responsive corporate services systems to support workforce during Covid-19 pandemic.

In fulfilling its mandate and vision, the Commission has defined fifty-one (51) Performance Indicators which it seeks to achieve in the MTEF. This Annual Performance Plan for 2022/23 comprises three sections:

- a) **Part A:** Our Mandate – which deals with the mandate of the Commission as per the Competition Act and all other applicable legislation and policies.
- b) **Part B:** Situational Analysis- this section provides an analysis of developments in the external and internal operating environment, providing context to the conditions in which the strategy has been developed.
- c) **Part C:** MTEF Performance Plan - this section deals with the work program which the Commission has set for the next three years, along with the Budget and identified Risks.

## PART A: OUR MANDATE

### 1. Relevant Legislative and Policy Mandates

#### 1.1. The Competition Act

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

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

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

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

- Implement measures to increase market transparency;
- Implement measures to develop public awareness of the provisions of this Act.
- Investigate and evaluate alleged contraventions of Chapter 2;
- Grant or refuse applications for exemption in terms of Chapter 2;
- Authorize, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3;
- Negotiate and conclude consent orders in terms of section 63;

- Refer matters to the Competition Tribunal, and appear before the Tribunal, as required by this Act;
- Negotiate agreements with any regulatory authority to co-ordinate and harmonize the exercise of jurisdiction over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of this Act;
- Participate in the proceedings of any regulatory authority;
- Advise, and receive advice from, any regulatory authority;
- Over time, review legislation and public regulations, and report to the minister concerning any provision that permits uncompetitive behaviour; and
- Deal with any other matter referred to it by the Tribunal.

## **1.2. 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:

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

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

The new section 8(4) also includes a provision for the Minister to make regulations in respect of a) the sectors to which subsection (4) applies, b) the benchmarks for the application of subsection (4) to historically disadvantaged persons (HDPs) firms and c) the relevant factors and benchmarks for determining whether prices and trading conditions in those sectors are unfair. Regulations were

issued on 13 February 2020 (Govt. Gazette no. 43018) and these guidelines are consistent with the regulations.

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

### **1.3. Covid-19 competition regulations**

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

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

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

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

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

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



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

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

#### 1.4. Economic Reconstruction and Recovery Plan 2020

The Commission will support the Economic Reconstruction and Recovery Plan, 2020, and the three new joint indicators which are the implementation plans aligned to the NDP. The Commission's objectives are set out in the Competition Act. As an investigative body, the Commission can determine the outcomes of these objectives by aligning its investigations to meet the objectives of the NDP and the DTIC. Below are the DTIC three joint indicators how the Commission's general work aligns with each of the indicators:

**TABLE 1: DTIC JOINT INDICATORS & THE COMMISSION COTRIBUTING AREAS**

DTIC JOINT KPI	COMPETITION COMMISSION KPI
Joint Indicator 1: Industrialisation	<p>The Commission prioritization of sectors include sectors as per master plans, such as Agriculture, Food &amp; Agro-processing and Transport &amp; Automotive.</p> <p>Addressed by KPI 8, 9 to 11 (the Commission committed to investigate and successfully prosecute complaints related to Covid-19 products and services. The Commission is also committed to expedite Covid-19 Exemption applications.</p> <p>Addressed by KPI 15 (Exemption Applications (guided by objectives) – the Commission is committed to review exemptions for various objectives, including promotion of small businesses, economic stability of designated industries, maintenance, or promotion of exports).</p> <p>Addressed by KPI 34 36 and 39 (No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted.), hosting Annual Conferences, workshops/seminars, research projects and/or publications undertaken with African, BRICS and international partners.</p> <p>KPI 31 &amp; 32 – the Commission will conduct scoping studies and impact assessment studies in sectors that promote industrialization. The Commission will continue its work in the Automotive Aftermarket value chain. Following the</p>

	<p>Guideline that it published in July 2021, the Commission will embark on an impact assessment in the 2022/23 financial year. The purpose of the impact assessment will be to assess levels of compliance to the Guideline, whether any benefits are evident in the market and to understand the challenges that automotive stakeholders may have faced in its implementation.</p>
Joint Indicator 2: Transformation	<p>With respect to KPI 5 (% of imposed merger remedies and conditions monitored.), the Commission approves some mergers with conditions relating to public interest. The Commission monitors implementation of merger conditions to ensure compliance and achievement of the desired public interest outcomes. New KPI 6 (5% cases in which ESOP or BEE Deals are implemented to remedy merger-specific public interest concerns;</p> <p>The Commission's KPI 25 speaks to education, training and outreach initiatives conducted on the Competition Act. These initiatives will be targeted at women, youth and regulators.</p> <p>KPI 29 and 30 relate to initiation and completion of Market Inquiries, also KPI 30 is about scoping studies which the Commission intent to conduct in the year. Market Inquiries would identify structure of economy/market that is not desirable including identifying and addressing economic concentration and/or SME/HDI promotion/participation.</p> <p>With KPI 33 and 35, the Commission will complete advocacy cases in priority sectors and initiatives to promote entry &amp; participation of HDIs. In 2020, the Commission began a focused program to explore the barriers to entry and participation that business-women face. A series of initiatives, including workshops and an on-line survey, were conducted. The Commission will embark on a "stakeholder roadshow" during 2022/23 on its report on 'Gender &amp; Competition' and the implementation of its recommendations. The Commission will continue targeted outreach initiatives during the 2022/23 financial year, with the aim of educating Youth, Rural &amp; Peri-urban Consumers on their rights and responsibilities on competition matters. It is critical that the Commission understands the perspectives of these stakeholders to determine its role in unlocking barriers to economic growth.</p> <p>The Commission also has target (KPI 37) which speaks to commitment to input on policies and regulations to ensure alignment with the Competition Act, including public interest provisions.</p>

	<p>The Commission will initiate cases in priority sectors to ensure competitive and deconcentrated markets under KPI 12 (No. of abuse of dominance and restrictive cases initiated in prioritized sectors).</p>
Joint Indicator 3: Delivery/Capable State	<p><b>Goal 3 (A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION)</b></p> <p>The Commission continuously reviews its internal processes to ensure ongoing business process.</p> <p>The Commission is reviewing its organizational structure as per KPI 41 to ensure alignment of the strategy and resources in order to deliver on the set targets.</p> <p>The Commission also set target to retain a certain percentage of staff complement (KPI 46) to retain knowledge and expertise within the institution to ensure efficient and effective delivery of the Commission's goals.</p> <p>The Commission is also committed to building staff capacity by committing to spend 1% of its HR spend on learning and development (KPI 45) and ensuring that staff members are reached through the internal training efforts offered (KPI 49).</p> <p>Employee wellness and safety and compliance with occupational safety laws are key to the Commission hence a target on compliance (KPI 44).</p> <p>The Commission is also committed to continue compliance with governance laws, including obtaining a clean audit as per KPI 40.</p> <p>The Commission also set a new target to reviewing its merger and complaint filing forms (KPI 48) to ensure that its processes are efficient and effective, and not unreasonably burdensome to stakeholders.</p> <p>Our commitment to win cases at litigation Link KPI 17 – 24 (Cartel prosecutions, prosecution of abuse of dominance and restrictive practices, and merger litigation) demonstrate a capable state.</p> <p>The Commission set efficiency targets for completion of abuse of dominance, restrictive vertical practices and cartel investigations. Link KPI 14, 16, 17 and 18.</p> <p>The Commission set efficiency targets for completion of merger cases under KPI 1 – KPI 4.</p>

	<p>To ensure that the Commission has enabling tools of trade, we set a target to implement Phase 1 and initiate of phase 2 of integrated business system (KPI 42).</p> <p>The Commission will issue awareness publications including guidelines on the Competition Act, the Commission is also committed to issue advisory opinions within a specified period (KPI 25, 26, 27 and 28). The Commission will publish pamphlets on Buyer Power and Price Discrimination during the 2022/23 financial year. The aim is to present the new amendments to the public and small business stakeholders in a simplified manner. The Commission will continue targeted outreach initiatives during the 2022/23 financial year, with the aim of educating Youth, Rural &amp; Peri-urban Consumers on their rights and responsibilities on competition matters. It is critical that the Commission understands the perspectives of these stakeholders to determine its role in unlocking barriers to economic growth.</p> <p>New KPI 49 (Coordinated initiatives with a specific focus on transversal programmes, learning and development and employee wellness. And Creation of shared information and knowledge management platforms focusing on competition law and economics, transformation, and empowerment.)</p> <p>New KPI 50 (Report on collaboration with MOU partners, Gov and Sector Regulators). Section 21 (h) of the Competition Act provides that one of the functions of the Commission is to “negotiate agreement with any regulatory authority to co-ordinate and harmonise the exercise of jurisdiction over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of this Act”. The Commission has several Memoranda of Understanding which it has entered into with other regulators. Under these MoU, the areas of collaboration are operationalized through the formation of joint working groups, comprising relevant team members of both authorities which meet at agreed upon periods throughout the year. In the 2022/23 financial year, the Commission will focus on collaborative work the following regulators, among others National Energy Regulator of South Africa (NERSA), Health Professional Council of South Africa HPCSA and Council for Medical Schemes (CMS), South African Bureau of Standards, National Empowerment Fund, (NEF), Department of Women, Youth and Persons with Disabilities (DWYPD) and the DTIC.</p>
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	New KPI 51 (% of suppliers paid within 30 days) to ensure compliance with National Treasury regulations, and maintain efficient supply chain.
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## 2. UPDATE TO RELEVANT COURT RULINGS

The table below summarizes significant cases that have contributed to jurisprudence in the last five financial years.

**TABLE 2: KEY COURT RULINGS – 2014/15 -2021/22**

Item	Case	Contribution to Jurisprudence
Abuse of dominance		
1.	Competition Commission v Media 24	Average total cost (ATC) plus intention has no place in the scheme of section 8(c) of the Act.  Average Avoidable Cost (AAC) may be regarded as an appropriate cost benchmark for a predation case based on section 8(c) of the Act
2.	Competition Commission v Computicket	Likely foreclosure test, i.e. foreclosure may be actual or potential.
3.	Sasol v Competition Commission	The test for excessive pricing involves, firstly, establishing the actual price, secondly, determining the economic value of the product (made up of capital and operational costs), evaluating whether the relationship between the actual price and economic value is reasonable, and assessing consumer detriment.
4.	Uniplat v Competition Commission	The test of likely foreclosure also requires factual evidence of that likely foreclosure.
5.	Competition Commission v Dis-Chem	A pandemic may confer market power where there is no dominance in ordinary circumstances.
6.	Babelegi v Competition Commission	A pandemic may confer market power - “lucky monopolist theory”. CAC set aside Tribunal’s penalty by regarding Babelegi’s size, the very few masks sold at an excessive price, and the harm Babelegi had suffered as a result of its own excessive pricing conduct
7.	Competition Commission v Ampath, Lancet and Pathcare	Consent agreements in terms of which the 3 major pathology labs agreed to significantly reduce their prices for PCR and rapid antigen Covid-19 tests.

Cartel		
8.	Bank of America Merrill Lynch & Others v Competition Commission	South African competition authorities have jurisdiction to prosecute international cartels which have an effect within South Africa – qualified effects test (foreseeable, direct or immediate, and substantial effect in the Republic) and sufficient connecting factors to establish subject-matter jurisdiction and personal jurisdiction.
9.	Competition Commission v Primedia (Pty) Ltd & Avusa Limited	Element of Implementation required for collusive agreements entered into before the Competition Act came into force.
10.	Competition Commission v Omnico (Pty) Ltd & Coolheat Cycles Agencies	Passive participation in cartel conduct / publicly distancing oneself from conduct.
11.	Competition Commission v Standard Bank; Competition Commission v Waco Africa Pty Ltd & others	A ruling on jurisdiction must precede other orders, including an order to disclose a record of investigation in a review.
12.	CC v Pickfords Removals SA Pty Ltd	Section 67(1) is a procedural time bar, capable of condonation. Section 85(1)(c)(ii) includes the power of the Tribunal to condone non-compliance with section 67(1) on good cause shown.
13.	Competition Commission v Stuttafords Van Lines Gauteng Hub Pty Ltd and others	A “uniform approach” or uniform pricing among cartel members is required to establish consensus. The evidence must match the pleaded case in the referral and the Competition Tribunal cannot have regard to evidence outside of this.
14.		
Cartel – Initiation		
15.	Omnia Fertiliser Limited v Competition Commission	Restatement of Yara principles - valid referral of complaint on the basis of a tacit initiation.
16.	Power Construction	Validity of industry wide initiation. Re-affirm the principles in Woodlands that it is permissible to add a firm to an existing complaint, and Yara/Omnia principles that an initiation does not require any formality.
17.	Mondi Limited & Another v Competition Commission	Access to the record of the decision to initiate pending review.
18.	Competition Commission v Beefcor Pty Ltd and another	CT8 withdrawal of a complaint initiated in terms of s49B(1) brings proceedings to an end and that complaint referral cannot be reinstated.
Leniency		

19.	Blinkwater Mill (Pty) Ltd v Competition Commission	Confirmation of Commission's discretion in applying its Corporate Leniency Policy.
20.	Competition Commission v Allens Meshco	A marker and leniency applications are separate and distinct from one another.
<b>Single Economic Entity</b>		
21.	Delatoy Investment v Competition Commission	A "group of firms" may constitute a "firm".
22.	Shoprite Checkers and Computicket v Competition Commission	<p>The question whether the doctrine of a "single economic entity" applies to section 8 of the Act must be determined at trial stage not at exception stage.</p> <p>CAC set aside findings made by the Tribunal that the Commission could not prosecute both the parent company and its wholly owned subsidiary (i.e. a single economic entity) for abuse of dominance under section 8 of the Competition Act. Section 8 prohibits a dominant firm in the market from abusing its dominance by, among other things, engaging in conduct which has the effect of excluding its competitors from the market</p>
<b>Characterization</b>		
23.	Dawn Consolidated Holdings (Pty) Ltd and Others v Competition Commission	Development of the principle of characterization.
	Africa Pest Prevention CC v the Competition Commission	Characterization on the basis that an individual representing two different firms cannot collude with herself.
	Competition Commission v I & J	Characterization of restraints in a manufacturing agreement as vertical and not horizontal.
	Aranda Textile Mills v Competition Commission	Constitutional compliance requires a characterisation enquiry. The absence of a characterisation enquiry could produce a false positive. The conduct must be found to fall within the object of section 4(1)(a) or (b).
<b>Administrative Penalty/Settlement</b>		
24.	Competition Commission and ArcelorMittal South Africa Limited	Highest penalty imposed on a single firm in a settlement agreement.
25.	Competition Commission v Life Healthcare Group & Joint Medical Holdings Ltd	Highest penalty imposed for failure to notify and prior implementation of a merger.
26.	School Uniforms	The Commission entered into settlement agreements with major school groups which undertook to conduct their school uniform procurement processes in a fair and

		competitive manner.
27.	Competition Commission v Law Society of the Northern Provinces	Consent Agreement in terms of which the law society agreed to repeal its anti-competitive rules and guidelines.
28.	Data Markey Inquiry Consent Agreements	Consent Agreements in terms of which Vodacom and MTN agreed to reduce its retail data prices, zero-rating public sites, provide access to free basic data and enhance data pricing transparency to its customers.
29.	Competition Commission v Wesgrow Potatoes (Pty) Ltd and HZPC Holland B.V	Settlement Agreement provided a remedy in terms of which seed growers will be able to access the Mondial seed potato variety.
30.	Competition Commission v Foskor (Pty) Ltd	Tribunal confirmed that a consent agreement may be amended by the Commission and a respondent due to changed market circumstances. However, such an amendment requires confirmation by the Tribunal.
Merger Notification		
31.	Competition Commission v Hosken Consolidated Limited and Tsogo Sun Holdings Ltd	Once a firm has acquired control over another firm in any of the instances contemplated by section 12(2)(a) – (g), the crossing of a further “bright line” does not result in the acquisition of control it did not have before.
32.	SOS SABC & Multichoice v Competition Commission	Confirmation of Commission’s powers to investigate the notifiability of mergers.
33.	MIH eCommerce Holdings (Pty) Ltd & We Buy Cars (Pty) Ltd v Competition Commission	The theory of harm related to potential entry is an historic exercise, not a counterfactual of likely entry if the merger is prohibited.
Merger control – conditions		
34.	Joyson/Takata merger	Merger control cannot be used to preserve the Commission’s ability to enforce its cartel prosecutorial functions, in unique circumstances such as when the target firm is likely to exit the market absent the merger.
35.	Distell v Ab InBev	Approach to the interpretation of merger conditions – merger conditions must be interpreted consistently with the Tribunal’s reasons for its decision.
Mergers – Public interest		



36.	Sibanye / Lonmin merger	Assessment of merger specific retrenchments – confirmation of Momentum principles, in that a rational process has to be followed in order to determine the number of potential job losses.
37.	Burger King	The merger would have resulted in a dilution of BEE shareholding from ca.68% to 0% in Burger King SA. Merger conditions agreed after the Commission prohibited merger, signaling the importance of employment, investment and the greater spread of ownership when assessing public interest.
Mergers – Analysis		
38.	Imerys SA (Pty) Ltd and Andalusite Resources (Pty) Ltd v Competition Commission	If a merger raises a substantial prevention or lessening of competition, the choice whether to prohibit or approve the merger with conditions is an exercise of true discretion by the tribunal.
39.	MIH eCommerce Holdings (Pty) Ltd & We Buy Cars (Pty) Ltd v Competition Commission	The theory of harm related to potential entry is an historic exercise, not a counterfactual of likely entry if the merger is prohibited.
40.	Competition Commission v Mediclinic	Proper effect must be given to the purpose of the Competition Act and to Constitutional rights when assessing the substantial prevention or lessening of competition and public interest considerations. Appeal in Constitutional Court on the section 27 right to access to healthcare for uninsured patients and the interpretation of the Competition Act as required by the Constitution
Civil claims for loss or damage		
41.	Premier Foods (Pty) LTD v Norman Manoim NO, Competition Commission and Others	Victims of collusive conduct may obtain certificates to institute civil claims for loss or damage if relevant firm has been cited and there is an adverse finding against such firm.
Access to information		
42.	Group 5 v the Competition Commission	The term “any person” in Commission’s Rule 15 includes a litigant, and a litigant is entitled to access the Commission’s record, save for any documents that are restricted <sup>1</sup> .
43.	Competition Commission v	Commission Rule 15 which is a public access right does

<sup>1</sup> This has now changed, as Commission’s Rule 15 was amended on 25 January 2019.

	Standard Bank (ZACC)	not apply to requests for documents in Tribunal proceedings, as such requests must be dealt with using tribunal rules.
Tribunal Rules		
44.	Goodyear v the Competition Commission	The Tribunal's rules do not alter substantive law. They remain subordinate to the Act. Tribunal's rules do not have the legislative standing to negate an agreement reached between the Commission and the complainant to extend the period of investigation in terms of the Act.

## PART B: SITUATIONAL ANALYSIS

### 3. EXTERNAL ENVIRONMENTAL ANALYSIS

#### 3.1. Economic outlook

South Africa's economy had already started contracting in the last quarter of 2019, before the onset of the global Covid-19 health crisis ("the pandemic"). In 2019, the South African Economy found itself amidst the longest economic downturn on record, with a real GDP growth estimated at 0.3%.<sup>2</sup> In March 2020, there was an outbreak of the pandemic, which found a vulnerable South African economy. At the time the pandemic hit the South African shores, the country had experienced two consecutive quarters of recession.<sup>3</sup> Due to the dire state of the economy at the time, the pandemic deepened the economic crisis. Although the economy had taken a downturn, in December 2020, South Africa exited its longest recession in 28 years, even though it may not recapture pre-pandemic levels until 2025.<sup>4</sup>

Initially, between March and May 2020, global spikes in demand for hygiene and healthcare products, needed to contain and treat the virus, far outstripped supply, resulting in widespread shortages. This had brought into focus the inadequacy of healthcare systems in many countries (including South Africa), and particularly the ability to produce essential medical supplies domestically as supply from other countries turned inwards. Panic-buying and hoarding of dry foodstuffs, along with export restrictions on essential foodstuffs in some countries saw some initial food price inflation. This observed state in South Africa was worsened by the depreciation of the rand at the time.

These factors provided the economic conditions for widespread price gouging, which had been the immediate challenge for the Commission in response to the crisis. It has also required an urgent coordinated response on healthcare and debt management, necessitating numerous exemptions from the Competition Act to facilitate this. In response to the pandemic, the Department of Trade, Industry and Competition, with consultation with the Commission, granted block exemptions to various sectors which were; (i) Healthcare Sector, (ii) Banking Sector, (iii) Retail Property Sector, and the (iv) Hotel Sector. Effectively, these block exemptions allowed market players in these sectors to collaborate and coordinate their response to the crisis with the goal of mitigating the negative economic and social impact of the crisis. The Commission specifically sought to design the exemptions in a manner which

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<sup>2</sup> Economic Overview: Recent developments in the global and South African Economies. The Department of Research and Information, February 2020

<sup>3</sup> The South African Economic reconstruction and recovery plan, 2021

<sup>4</sup> "South Africa exits recession but faces long road to full recovery", see <https://www.aljazeera.com/economy/2020/12/8/bbsouth-africa-exits-recession-but-faces-long-road-to-full-recovery>. extracted on 14 January 2022

would permit required coordinated responses to the pandemic that was welfare enhancing but ensure that the exemption was not so wide ranging to permit collaborations that may extend beyond what is required to deal with the pandemic.

The impact of the pandemic was widespread, which saw an escalation in job losses, with the unemployment rate reaching a record high of 32.5% in the fourth quarter of 2020 and youth unemployment recorded at 63.2%.<sup>5</sup> Further, the impact saw the shutting down of businesses and having some citizens go without an income for extended periods, further extending inequality and poverty in the country.<sup>6</sup> The impact of the pandemic also led to low levels of capacity utilization in the various sectors of the South African economy. This trend is projected to continue, painting a dire picture for gross fixed capital formation. A significant reduction in the gross fixed capital formation variable is a troubling development; given that this variable is critical in sustaining and growing the productive base of the economy.

Although the impact the pandemic had on different sectors of the economy has varied considerably, albeit that going forward all sectors will likely suffer from reduced demand due to the local and global contraction. Many industries such as transport services, manufacturing, agriculture, and construction were already shrinking prior the pandemic. For instance, between quarter 4 of 2018 and quarter 4 of 2019, the construction sector experienced a negative growth of approximately 5%. Post-pandemic, the negative growth heightened where it was estimated at 19%. Same was seen with the transport sector which had a negative growth rate of 4% between quarter 4 of 2018 and quarter 4 of 2019. In the last quarter of 2020, the sector showed a negative growth of 12.5%, which more than tripled in a period of two years.<sup>7</sup>

Essential services such as healthcare, grocery retail and online access/services were more resilient in the early stages as they remained open and demand consistent. This included the upstream value chains in food & agro-processing, medical supplies and data infrastructure. Other sectors such as retail, non-essential manufacturing and mining have all suffered a liquidity shock from closure for a few months which will have pushed many into closure and have a lasting effect on others.

The pandemic had a global effect on the economy since it became a necessity to contain the spread of the virus within nations. The need led to widespread restrictions of the movement of people between nations and lockdowns of national economies. South Africa was no different, with a State of Disaster

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<sup>5</sup> Quarterly Labour force survey, 4<sup>th</sup> Quarter 2020. See [http://www.statssa.gov.za/?page\\_id=1854&PPN=P0211&SCH=72942](http://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=72942), extracted 14 January 2022

<sup>6</sup> The South African Economic reconstruction and recovery plan, 2021

<sup>7</sup> The Impact of Covid-19 on industries without smokestacks in South Africa. Zaakhir Asml and Christopher Rooney, dated July 2021

being declared on 15 March 2020, followed by ongoing several levels of lockdown which saw all but essential services cease operation. The result of the strict COVID-19 lockdown was observed by South Africa experiencing its largest recorded decline in economic output in the second quarter of 2020. Real GDP fell by 17.1% relative to the previous quarter with all major sectors declining (except for agriculture).

The economy, despite the disruptions brought forward by the pandemic, has seen consistent growth since the introduction of the pandemic, but not enough growth to return to the pre pandemic levels. In many countries, GDP growth was seen to recover more quickly, resurgent COVID-19 infections and additional lockdowns posed a serious risk to the economic outlook. It is expected for global monetary policy to continue supporting growth and liquidity. Real GDP in South Africa was 1,4% less in the second quarter of 2021 from the reading in the first quarter of 2020.<sup>8</sup> It is expected that South Africa will experience real economic growth of 1.8% at the end of the last quarter in 2022, with an expected growth of 1.6% in 2023.<sup>9</sup>

The growth in the GDP following disruptions is a clear indication of the potential of the South African economy to recover beyond the pre-pandemic state. To ensure sustainability, there is a need to support the economic recovery in the short run while undertaking reforms to increase potential long run growth. There are sectors that would need more support than others; given their weakened state which was further entrenched by the pandemic. Sectors such as the tourism sector, require that in the medium term, there should be initiatives that are steered into boosting the transport and tourism infrastructure investments which will also contribute to growth and job creation during the recovery.<sup>10</sup>

Globally, there are persistent economic risks associated with COVID-19 and rapid debt accumulation. The main risks to the economic outlook include the state's precarious fiscal position, a failure to implement structural reforms in key investment sectors (energy and infrastructure), weaker-than-expected growth as well as a continued surge in COVID-19 infections accompanied by further restrictions on economic activity. The pandemic follows a sharp deterioration in fiscal accounts over the past three years, with public debt increasing in the last decade, where in 2021, public debt was estimated to be 15% of GDP.<sup>11</sup> To foster stability, consolidation is vital. Failure to consolidate will result in debt levels exceeding 100% of the GDP, raising sustainability risks in a context of low growth and high government borrowing rates.<sup>12</sup> Ideally, the fiscal strategy has to run parallel, in the short-run, with the impact of the pandemic and, in the medium-term, implement a bold consolidation to restore debt in a sustainable path while sparing potential growth.

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<sup>8</sup> Economic Growth. Statistics SA, 2021

<sup>9</sup> Economic Outlook. National Treasury, 2021

<sup>10</sup> Economic survey. OECD, 2020

<sup>11</sup> Medium Term Budget Policy Statement, 2021

<sup>12</sup> Economic survey. OECD, 2020

Economic activity further experienced disruptions throughout 2021 as resurgent outbreaks rose, and a further disruption took place through looting across the country. Given the gradual roll out of vaccines, continued physical distancing measures are likely to continue to have a significant impact on economic recovery. Further, gaps in equitable access to effective vaccines globally are raising concerns that the continued spread of Covid-19 will further deepen global economic inequality with developing countries such as South Africa experiencing continued stagnation in their economic recovery. Rapid and effective vaccine rollout remains crucial for economic recovery and government prioritization of this is critical.<sup>13</sup>

Finally, some sectors are likely to be impacted for a much longer period due to the abrupt closures or curtailed operations and customers trying to limit their exposure to one another even after lockdown restrictions are lifted. These include air transport, tourism, restaurants and personal services. For instance, restaurants have seen reduced evening trade due to recurring curfews following the initial closures during hard lockdowns. The global and local recession also means that the impact will be felt on both inward and export focused sectors of the economy. In fact, travel and tourism is likely to feel the dual effect of reduced demand from local and global travelers.

The liquidity crisis created by hard lockdowns and emergence into a deep recession resulted in considerable business failure. The spillover effects were seen with SMMEs bearing the brunt of business failure given their lack of access to capital. In other instances, some large companies, such as Greyhound Lines, which were well-renowned in the Transport sector, collapsed due to being found in sectors particularly hard hit. Business rescue filings have increased across sectors with companies in the manufacturing, wholesale and retail, real estate, accommodation, food service activities and construction hardest hit. As a form mitigation, government reacted forcibly to the crisis by mobilizing R500 billion for reprioritization, tax relief and loan guarantees. All social grants were revised, and new schemes designed to provide support to workers including those in the informal sector.<sup>14</sup>

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

With businesses forced to shut down and many more filing for rescue, it is likely that it will result in increased concentration in the economy and distressed mergers aimed at consolidation. As of 2020, the number of mergers filed with the Commission were 233, with a reduction of over 30% in the number

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<sup>13</sup> Medium Term Budget Policy Statement, 2021

<sup>14</sup> Economic survey. OECD, 2020

of mergers filed in the previous year.<sup>15</sup> The economic hardship created by the crisis is also likely to result in an escalation in the abuse of market power, both by dominant buyers and sellers, as dominant firms look to use that market power to shift hardship from themselves to their trading partners or consumers. This became evident in the early stages of the crisis as larger food processing companies looked to impose unilateral price reductions on their suppliers, and retailers used the crisis as a weapon in negotiations to contain cost escalations. The threat is mostly to SMMEs and firms owned/controlled by historically disadvantaged persons which have less bargaining power and more tenuous relationships. A focus on abuse against these firms, especially around the new amendments is essential to contain an even greater failure rate of such firms and higher levels of concentration in the economy.

The threat of widespread business failure and the need to rebuild the economy is also likely to see a continued focus on sectoral recovery plans from government. This will result in an escalation in the requests for sector designations and exemptions to permit coordination which will require careful consideration as to whether coordination offers a better outcome than company failures, and how that can be contained without resulting in the emergence of cartel activity. In some sectors, such as airlines or steel, this may require competition authorities to become intimately involved in sectoral restructuring efforts beyond simply the granting of exemptions. The focus of such efforts will be around how to achieve a more competitive industry in the rebuilding process rather than simply facilitating consolidation.

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

The shift to online commerce and services was given a huge impetus by lockdown which is likely to continue given the desire by consumers to retain social distancing.<sup>16</sup> This step change in demand for online shopping provides an opportunity for new entry and greater competition, but also the threat that entrenchment strategies of leading online firms may tip the markets in their favour. This applies to both the infrastructure layer as well as the online eCommerce, platforms and service layer. Competition authorities will need to be far more proactive and rapid in their response to the online economy if they are to tip the balance in favour of greater competition and not less. This will require proactive enforcement on entrenchment strategies and removing entry barriers to new players. It will also require a broader engagement on other regulatory interventions such as data access that will complement

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<sup>15</sup> Analysis of the impact of Covid-19 on micro, small and medium-sized enterprises in SA. CCRED, dated May 2021

<sup>16</sup>

enforcement and shift the balance to greater competition. The Inquiry into the Data services and the recommendations set out became a strategic tool in supporting the shift online. The Commission initiated an Inquiry to improve mobile price competition and greater infrastructure alternatives to consumers over the medium to longer term. This initiative was well received with the impact resulting in the reductions in the cost of data of up to 43%<sup>17</sup>, making the use of internet and online platforms more affordable during and post the pandemic.

The response of different markets to the crisis also provided some indication of the health of different parts of the economy from a consumer access, participation, market resilience and competition perspective. For instance, the lack of domestic depth in medical supplies (incl. essential chemicals) has raised questions as to how these industries can be rebuilt. The lack of resilience of SMMEs and the risk of ‘too big to fail’ firms in multiple industries has similarly raised questions around the market structure we have inherited and the need to alter that. Similarly, the fragility of infrastructure and the inequity of services to lower income households have exposed failures in markets such as transport and online access. In addition, further questions regarding price transparency of pharmaceutical products and Covid-19 vaccines have been raised together with the role competition authorities may play to curb the potential for excessive pricing to occur.

Although government had further identified methods of intervention for purposes of recovery, such as, infrastructure investment, employment oriented strategic localization, reindustrialization and export promotion, energy security, tourism recovery and growth etc.<sup>18</sup>, there is still more ground works that needs to be done. The cracks within the economy exposed by the crisis provide a starting point for proactive efforts by the competition authorities to improve competition and participation through, for instance, market inquiries but also advocacy efforts to improve regulation and legislation. Another area to consider would be support for localisation against the background of disruptions in the international supply chains caused by the pandemic and the increased cost of imports. This should be a priority if the economy is to become more equitable and resilient to future crises.

### **3.2. Prioritising economic recovery**

The role of competition and the reduction in barriers to entry in promoting more inclusive growth is expressly recognized in the Economic Recovery and Reconstruction Plan (“recovery plan”) pronounced by the President in late 2020. Specifically, the recovery plan cites the importance of lowering entry barriers to make it easier for businesses to start, grow and compete as well as creating greater levels of economic inclusion through addressing high economic concentration. In addition, the recovery plan

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<sup>17</sup> DSMI non-confidential report, 2021

<sup>18</sup> The South African Economic reconstruction and recovery plan, 2021



identifies support for SMMEs, cooperatives and start-ups as a key enabler of the reform programme, with the objective of providing a supportive ecosystem to such firms.

Whilst the general work of the Commission directly delivers against the key structural reforms identified by the recovery plan, the Commission also engages in a process of prioritization for the five-year period as well as each year. This prioritization seeks to identify key themes for our enforcement activity over the medium term and the issues across specific sectors which are likely to have a high impact on low-income consumers, greater inclusion in the economy and broader government programmes. Following the amendments to the Competition Act, the general themes receiving priority are the reduction in concentration and the increase in participation by SMMEs and firms owned by historically disadvantaged persons, consistent with the Recovery plan's objective of structural reform and inclusive growth.

The Commission will continue to build on the responsive work it undertook in 2021/22 financial year. For the upcoming financial year, the Commission will similarly prioritize actions that will support the next phase of economic recovery. Such priorities are reflected in the budget allocation and APP targets set for the year. These include:

- fast track exemption processes where cooperation amongst firms is required to support localization and export promotion, small businesses, or firms controlled or owned by historically disadvantaged persons whilst providing sufficient safeguards against harmful collusive conduct;
- continued resource allocation to investigating price gouging and monitoring essential food prices as the country experiences subsequent waves of infections;
- a strong emphasis on implementing key amendments to the Competition Act which promote inclusion and the reduction in concentration levels. This includes the issuing of Guidelines setting out what conduct is seen to contravene the amended Competition Act to and ensuring compliance across the business community. It also includes prioritizing market conduct enforcement generally, and more specifically of the new provisions in the Competition Act;
- greater use of market inquiries to promote more competitive and inclusive markets in key sectors that may support economic recovery. The Commission has identified digital markets as one such sector along with essential food value chains. Inquiries will seek to unlock barriers to greater participation and the competitive expansion of these markets;
- general prioritization of digital markets and communications infrastructure as the pandemic accelerates the shift online where lower data costs and fair access to online trading

platforms is essential for South African businesses generally, and SMMEs and historically disadvantaged person-owned firms more specifically, to benefit from the fourth industrial revolution;

- focus on priority sectors, aligned with Re-imagined Industrial Policy and the recovery plan.

### **3.3. Impact of Covid-19 pandemic on merger activity**

The Covid-19 pandemic had a notable impact on the pace of merger activity in the 2020/21 financial year. The number of notifications declined significantly during the hard lockdown in 2020/21 but picked up as the economy gradually re-opened towards the latter part of the year. Merger activity continued to increase in the first half of 2021/22 financial year.

Over the past two years, the Commission also saw an increase in merger filings from firms in distress, most of whom cited strain from poor economic conditions and reduced consumer demand due to the pandemic. These firms often seek expedited assessment of transactions, which has placed increased pressure on the Commission's resources. These assessments are often complex, requiring a fine and nuanced balancing of the competition effects of the transaction and the possible public interest benefits such as saving jobs and retaining productive capacity in the economy.

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

Lastly, with respect to merger conditions monitoring, the Commission continues to see an increase conditions-related investigations, particularly on potential breaches of employment and supply commitments made conditional to the approval of mergers. The number of complaints about

employment losses continues to increase. With respect to employment conditions, the merits of each case will have to be considered carefully to assess whether the retrenchments have taken place for justifiable operational reasons and whether firms could have taken reasonable steps to avoid job losses, including taking advantage of the various support and relief mechanisms put in place by government.

### **Localisation**

The South African Economic Reconstruction and Recovery Plan identifies localization initiatives as one of the priority interventions for the revitalization and transformation of the South African economy. In the 2021/22 financial year, the Commission imposed localization conditions in three cases.

In the merger between Dischem Pharmacies Limited and Pure Pharmacy Holdings (Pty) Ltd, the parties agreed to increase procurement of products made in South Africa by a cumulative 50% over the next 5 years. This commitment will result in an increase in local procurement of approximately R322 million. In the matter between Air Liquide Large Industries South Africa (Pty) Ltd and the business of owning and operating 16 Air Separation Units of Sasol South Africa Ltd, the merging parties committed to investing R5 billion in reducing carbon emissions of the Air Separation Units by 30%. The parties to the merger also committed to introducing 900 MW of renewable energy into the target business. In achieving these objectives, the conditions require the merging parties to maximize procurement of services and input material from Small, Medium and Micro Enterprises ('SMMEs') and black-owned enterprises. Finally, in the transaction between NMI Durban South Motors (Pty) Ltd and Barloworld South Africa (Pty) Ltd, the merged entity agreed to maintain the supplier development fund successfully run by Barloworld prior to the merger. The programme focuses on ensuring that black-owned and women-owned small enterprises are afforded the maximum opportunity to participate in providing products and services to the Barloworld Motor Retail Business. The acquiring firm committed to contributing 2% of its profit after tax to this supplier development fund.

### **3.4. The Economic Policy Framework**

Although South Africa has, over the past decade, adopted a wide range of policy initiatives aimed at boosting economic growth and addressing the country's structural challenges, the country has seen very limited progress emanating from these initiatives and their implementation. This has partly been due to high levels of political uncertainty related to the so-called state capture phenomenon across various levels of government and State-Owned Companies (SOCs) as well as uncertainty about the country's economic policies including those related to mining and land.

Government has, since 2018 and under the leadership of President Cyril Ramaphosa, undertaken to address issues around state capture, to provide clarity around the country's economic policies and has accelerated its structural reform agenda in order to reverse the country's weak growth trajectory and to accelerate its long-term growth objectives in order to move the country towards its 2030 vision of eliminating poverty and reducing inequality.

In September 2018 President Cyril Ramaphosa announced an economic stimulus and recovery plan, which would result in reprioritized expenditure and new project level funding of around R50 billion.<sup>19</sup> The stimulus was aimed at igniting economic activity, restoring investor confidence, preventing further job losses, creating new jobs and addressing some urgent challenges affecting the conditions faced by vulnerable groups. Due to the pandemic, government had to introduce urgent interventions through a support package to help bring relief. In April 2020, government announced a R500 billion stimulus package, which is about 10% of GDP.<sup>20</sup> , As part of the employment stimulus for instance, R100 billion was earmarked for job creation and retention. Additionally, government set aside R50 billion in expanded social grants as well as distributing food parcels and vouchers, in order to provide support for the most vulnerable.<sup>21</sup>

The measures announced in the plan give priority to areas of economic activity that will have the greatest impact on youth, women and small businesses and that will speedily unlock the country's short and long-term growth prospects. The five broad areas set out by the plan are: 1) implementation of growth enhancing economic reforms; 2) reprioritization of public spending to support job creation; 3) the establishment of an Infrastructure Fund; 4) addressing urgent and pressing measures in education and health; and 5) investing in municipal infrastructure improvement.<sup>22</sup>

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

- The reduction of the cost of doing business, to boost exports and to make South African industry more competitive by reviewing various administered prices, starting with electricity, port and rail tariffs;

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<sup>19</sup> Economic stimulus and recovery plan. See <https://www.gov.za/speeches/president-cyril-ramaphosa-economic-stimulus-and-recovery-plan-21-sep-2018-0000>, extracted 14 January 2022

<sup>20</sup> Covid-19 stimulus package: South Africa. See <https://www.cnbcfrica.com/2020/covid-19-sa-announces-r500bn-stimulus-package-about-10-of-gdp/>, extracted 14 January 2022

<sup>21</sup> The South African Economic reconstruction and recovery plan, 2021

<sup>22</sup> <https://www.gov.za/speeches/president-cyril-ramaphosa-economic-stimulus-and-recovery-plan-21-sep-2018-0000>

- The expansion of procurement from small businesses and cooperatives, as well as using trade measures within WTO rules to protect poultry and other sensitive sectors and as well as a vigorous crackdown on illegal imports;
- The provision of a stimulus package to support black commercial farmers with the aim of increasing their entry into food value chains through access to infrastructure like abattoirs and feedlots; and
- The initiation of the process for the allocation of high demand radio spectrum to enable licensing and unlock significant value in the telecommunication sector, increase competition, promote investment, and reduce data costs which will provide relief for poor households. Progress has been made in this regard, with the July 2019 release of the policy directive for spectrum licensing<sup>23</sup> being followed by the release of the Information Memorandum by the Independent Communications Authority of South Africa (ICASA) during November 2019, providing an overview on the licensing process for the assignment of high demand spectrum.<sup>24</sup>

The interventions align with some of the objectives of the National Development Plan (NDP) over which the Commission can have an impact on, such as increasing trade and export opportunities; promoting competition in regulated markets and advancing sectors with high growth potential; as well as addressing issues related to abuse-of-dominance and restrictive business practices, amongst others.

In August 2019, the National Treasury released a discussion document concerning the country's economic reform agenda titled "Economic Transformation, Inclusive Growth, and Competitiveness: Towards an Economic Strategy for South Africa".<sup>25</sup> The paper identifies key growth reforms that can contribute towards economic transformation, inclusive growth, and competitiveness. These reforms, which align to the Commission's focus on competition, are organized around five broad themes, which are drawn from the priorities identified in the NDP, namely:

- modernising network industries such as transport, energy, water, and communication in order to promote competitiveness and inclusive growth;
- enhancing competition as a lever for inclusive growth and economic transformation by encouraging the growth of smaller firms, the entry of new firms, and growth in innovation and productivity. This requires reducing anti-competitive practices and barriers to entry in

<sup>23</sup> <https://www.gov.za/speeches/president-cyril-ramaphosa-economic-stimulus-and-recovery-plan-21-sep-2018-0000>

<sup>24</sup> ICASA. 2019. *ICASA is ready to engage stakeholders on the process leading up to the licensing of high demand spectrum*

<sup>25</sup> Economic Transformation, Inclusive Growth, and Competitiveness: Towards an Economic Strategy for South Africa. National Treasury, dated September 2019

order to facilitate the entry of Small, Medium and Micro Enterprises (SMMEs) and improve competition amongst incumbent firms;

- adopting deliberate policy measures and interventions that can bias economic growth towards employment-intensive sectors such as agriculture and services sectors such as construction, retail, and tourism;
- implementing focused and flexible industrial and trade policy to promote competitiveness and facilitate long-run growth; and
- growing exports and improving export competitiveness, which requires better integration into global and regional value chains.

Following the announcement of the government's national budget in February 2021, the Medium-Term Budget Policy Statement (MTBPS) was tabled in November 2021, detailing government's fiscal goals and projections for the economy, as well as setting out measures to boost the economy, narrow the fiscal deficit and raise the quality of spending, particularly on large infrastructure projects. The MTBPS covers a package of economic reforms largely focused around balancing the budget, promoting investment and economic growth, stabilizing SOC's and improving spending efficiency and reducing waste.

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

The MTBPS includes both short-term reforms, which do not require significant resources, and medium-term reforms. The short-term growth reforms include supporting tourism, diversifying power generation, expanding telecommunications services and reducing the cost of doing business in South Africa. Medium-term improvements are to be prioritized in transport, water, telecommunications, and industrial and trade policy. In terms of public-sector infrastructure projects, the projects will be financed through the Infrastructure Fund, using public-private partnerships and other funding arrangements to improve planning and speed up delivery.<sup>26</sup>

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<sup>26</sup> Medium Term Budget Policy Statement, 2021

Government exposure to SOCs is high and represents a significant risk to debt and sustainability, as well as public finances. Over the years, the poor performance of SOCs prevails due to mismanagement, corruption, overstaffing and an uncontrolled wage bill.<sup>27</sup> This uncertainty has greatly contributed to poor economic outcomes over the past few years, which has delayed the country from making significant progress towards attaining its long-term growth objectives as set out in the National Development Plan (NDP). To ensure recovery, government needs to establish an effective governance framework for SOCs that clearly sets company-specific goals in terms of profitability, capital structure and non-financial objectives.

The MTBPS acknowledges that several large SOCs are struggling due to governance failures, poor operational performance and unsustainable debt levels. While government is on board to assist these entities, as it has increased spending to meet its obligations for guaranteed debt, a program of reforms is being carried out to strengthen their governance and operations. In terms of managing the Eskom risk and ensuring a financially viable electricity utility, the MTBPS states that faster progress is required to effect separation of Eskom into three entities, while the reduction of Eskom's debt burden will only be considered once it cuts costs and starts unbundling. Government has made provisional support of R49 billion available in 2019/20, R56 billion in 2020/21 and R33 billion in 2021/22.

SOCs such as the South African Broadcasting Corporation (SABC), Denel and South African Express, have further added to spending pressure on government where these entities amounted to an expenditure of R10.8 billion in 2019. Other SOCs such as the South African Airways received R21 billion in support from government in 2020/21. The support grant included R10.3 billion for the settlement of government guaranteed debt, R7,8 billion for the implementation of the business rescue, R2,7 billion for SAA's subsidiaries, and R267 million for calls on guarantee obligations on which the airline had defaulted. As a form of relief, the Department of Public Enterprise has identified a strategic equity partner to buy part of SAA and aims to finalize the transaction in early 2022.<sup>28</sup> In the 2021 MTBPS, it is envisaged that going forward, no additional funding is provided for SOCs. These outcomes come as result of the devastation that follows the state capture inquiry, where four SOCs (Eskom, Transnet, Denel and SAA) were implicated in allegations of impropriety. The findings in the state capture report shows that SOCs are increasingly reliant on government support. To curb this, in the MTBPS report, government explained that exceptions of funding will be made where guarantees have been called by creditors and conditions have been met by the SOC in question.

The MTBPS outlines some funding shifts and measures to improve efficiency and reduce wasteful expenditure. In order to improve efforts to combat corruption and enhance revenue collection,

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<sup>27</sup> Economic survey. OECD, 2020

<sup>28</sup> Medium Term Budget Policy Statement, 2021

government will provide an additional R1.3 billion to the National Prosecuting Authority and an additional R1 billion to the South African Revenue Service for the period 2019/20 to 2022/23. Further reforms include the consolidation of overlapping agencies, the disposal of unused land and other assets, and the acceleration of the new Road Accident Benefit Scheme.

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

### **3.5. Global and regional competition policy developments**

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

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

The BRICS Competition Law and Policy Centre (BRICS Competition Centre) project was initiated and is coordinated by the Skolkovo – Higher School of Economics Institute for Law and Development, a Moscow-based international think tank. The aim of the BRICS Competition Centre is to provide the meeting point for BRICS competition law research, ensure the scientific support



the work of BRICS competition authorities and to promote a distinct BRICS competition law agenda for the global economy. The BRICS Competition Centre collaborates with a number of partner institutions worldwide and relies on a group of internationally known competition law and policy experts, public intellectuals, industry and technology leaders.

The work of the BRICS Competition Centre will allow to increase the interaction in the work of the competition authorities of the BRICS countries, thus enhancing their cooperation, and to bring together policy makers from all BRICS countries when deciding the agenda for future enforcement action. It will also aim to improve the qualified expertise in BRICS competition law systems on key issues of global economy, especially in the face of growing technological and information inequality.

### **The Tripartite Free Trade Area (TFTA)**

Three African regional economic communities (RECs) have taken a bold step towards advancing intra-Africa trade, consistent with the African Union's action plan for boosting such trade. The TFTA comprises of three regional economic blocks, Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC). South Africa signed the agreement in July 2017 after conclusion of the negotiations for the legal text in May 2017; ratification took place in October of the same year.

The TFTA agreement, bringing together twenty-six member and partner states of COMESA, EAC and SADC was signed by the third tripartite summit in the resort town of Sharm El Sheikh, Egypt. Five days after the TFTA signing, the African Union (AU) summit of heads of state and government launched negotiations for the Continental Free Trade Area (CFTA), subsequently renamed African Continental Free Trade Area, (AfCFTA).

TFTA, four technical meetings were held between July 2019 and April 2021 to develop the draft Protocol on Competition policy. Based on the frameworks and experience of the respective RECs as well as Member/Partner States interests, the parties agreed that the TFTA Protocol should be established as a nonbinding cooperation framework with no supranational authority to replace or intrude on the work of national competition authorities.

The objectives of the Protocol are to:

- (a) enhance the welfare of the people in the TFTA by: (i) protecting all market participants' freedom to compete fairly by prohibiting anti-competitive practices; (ii) protecting the opening of Member/Partner States' markets against the creation of barriers to interstate trade and economic transactions by market participants; Confidential (iii) protecting consumers in the TFTA against unfair trade practices; (iv) promoting economic integration and sustainable

development in the TFTA;

(b) enhance the competitiveness of TFTA undertakings in global markets by exposing them to competition within the TFTA; and

(c) bring the TFTA's competition and consumer protection policy and practice in line with international best practices. The Protocol provides for the ongoing development of procedures and criteria that could enhance cooperation amongst established competition authorities to address anti-competitive business practices in the TFTA region.

### **The African Continental Free Trade Area (AfCFTA)- Committee on Competition Policy**

The Committee on Competition Policy (CoCP) was convened virtually from 11-13 August, 2021 from , Ghana to consider the Terms of Reference of the Committee, develop a work schedule with regard to sequencing of negotiations, receive a preliminary presentation on Competition Policy Situational Analysis within the Africa and assess the required level of capacity building on Competition Policy within Africa. Due to the global travel restrictions attributed to Covid- 19, participating countries joined the meeting virtually.

The 2nd CoCP was convened virtually from Accra, Ghana from the 29 November – 2 December 2021 to consider and adopt the amended Terms of Reference, the report of the first capacity building workshop on Competition Policy, the revised Situational Analysis report, the draft work schedule and sequencing of the negotiations on Competition Policy and the capacity building work program.

All these activities will ultimately contribute to the development of an effective AfCFTA competition policy protocol to strengthen competition regulation in our continent to ensure a successful fight against anti-competitive practices that inhibit fair trade.

In the SADC region, there are now 11 functioning competition authorities out of 15 member states. Lesotho does not have competition regulation currently but has draft competition laws. Competition Regulatory Authority (CRA) in Mozambique became operational in January 2021, and the Democratic Republic of Congo in 2018. There is an increase in the enforcement of competition laws throughout the SADC region, accompanied by higher levels of cooperation and coordination between authorities. The Commission has signed MOUs (Memorandum of Understanding) with three of its fellow SADC authorities (Seychelles, Namibia and Mauritius) and an MOU with Eswatini.

The Commission signed a MOU on cooperation between SADC competition authorities in May 2016. SADC competition authorities meet at least once a year in the SADC Competition and Consumer Law and Policy Committee. The Committee's Working Groups on Mergers (led by Botswana),

Cartels (led by Zambia and South Africa) and Research (led by the African Competition Forum) have undertaken a program of work since its establishment in 2016 and continue to cooperate especially on cross-border cartel investigations. Detailed cooperation frameworks for merger review and cartel investigations were adopted in December 2016. Research undertaken by the Cartels Working Group shows the need for better harmonization of legislation relating to cartel investigations within SADC member states.

The Commission continues to engage with domestic and international stakeholders, including hosting conference, seminars, and educational workshops to promote competition compliance.

### **3.6. Digitization and implementation of the Competition Act**

Like all governments and authorities across the world, the Commission has been grappling with how to regulate competition in an increasingly digitised world. The dynamics of digital markets bring a threat of more complex potential anticompetitive conduct and outcomes, including:

- a) Merger control – challenges include possible under-enforcement, jurisdiction over international platforms, notification of mergers involving international platforms, notification of mergers involving international platforms without assets and turnover in South Africa and establishing appropriate theories of harm.
- b) Cartel Conduct - digital markets present new forms of collusion and new challenges for the Commission to detect and investigate co-ordinated conduct.
- c) Abuse of dominance and vertical restraints – increased dominance and unilateral conduct; the global reach of digital markets means that conduct found to be anticompetitive in one jurisdiction could be considered anticompetitive in other jurisdictions.

The Commission has thus published a strategy paper titled *Competition in Digital Economy* which outlines how it intends to apply competition law to achieve equitable outcomes in the digital economy in South Africa. Specifically, the Commission will focus its programs and resources to strengthen its regulation within this rapidly evolving landscape. Some of these interventions, including undertaking a market inquiry and strengthening cartel enforcement and merger investigations, are noted in the sections below pertaining to the internal environment.

## **4. INTERNAL ENVIRONMENTAL ANALYSIS**

An assessment of the key internal factors in the organizational environment which contribute to the Commission's performance is articulated below. The section outlines interventions aimed at

developing an enabling environment that effectively supports the performance of the Commission.

#### **4.1. Case pipeline management**

##### ***Complaints-Handling: Enforcement***

During 2020/21 financial year, the Commission's case management system was adapted to respond to the deluge of price-gouging complaints received (over 1500). The fast-track mechanisms which was established to enable the speedy conclusion of price-gouging complaints. Although there is a significant decline in price-gouging complaints, the fast-track mechanism for Covid-19 complaints remained in place in 2021/22 financial year, and will continue into 2022/23 particularly given the continuous waves of infection and potential contravention of the current regulations by retailers.

The volume of price gouging complaints eventually subsided significantly since September 2020 and instead the Commission began to receive a steady volume of complaints that were not related to price-gouging regulations. The Commission will continue to screen and investigate these matters expeditiously, as per its case pipeline process. The country is on the third wave of infections since the last quarter of 2021, however with less strict lockdown restrictions. The Commission is receiving far less volumes complaints (over 100) in comparison to the volumes received in the previous year. The nature of the pandemic thus requires a constant adjustment to case management.

Further to managing case load arising from complaints, the Commission intends to initiate multiple abuse of dominance investigations in the upcoming year, enabled by the recent amended provisions related to Buyer Power and Price Discrimination in the Competition Act.

The Commission initiated a market inquiry into online intermediation platforms services (OIPMI) in the last quarter of 2020/21 financial year. The OIPMI will focus on online intermediation service platform markets which intermediate transactions between business users and consumers (or so-called "B2C" platforms), including the generation of transactions leads (such as the case with online classifieds and travel aggregators). The Commission is planning to complete the OIPMI in the 2022/23 financial year.

##### ***Cartel Enforcement***

The Commission has been monitoring anti-competitive conduct in government procurement, particularly tracking any potential cartel activity.

As companies continue to work remotely due to the pandemic, the importance of updating cartel

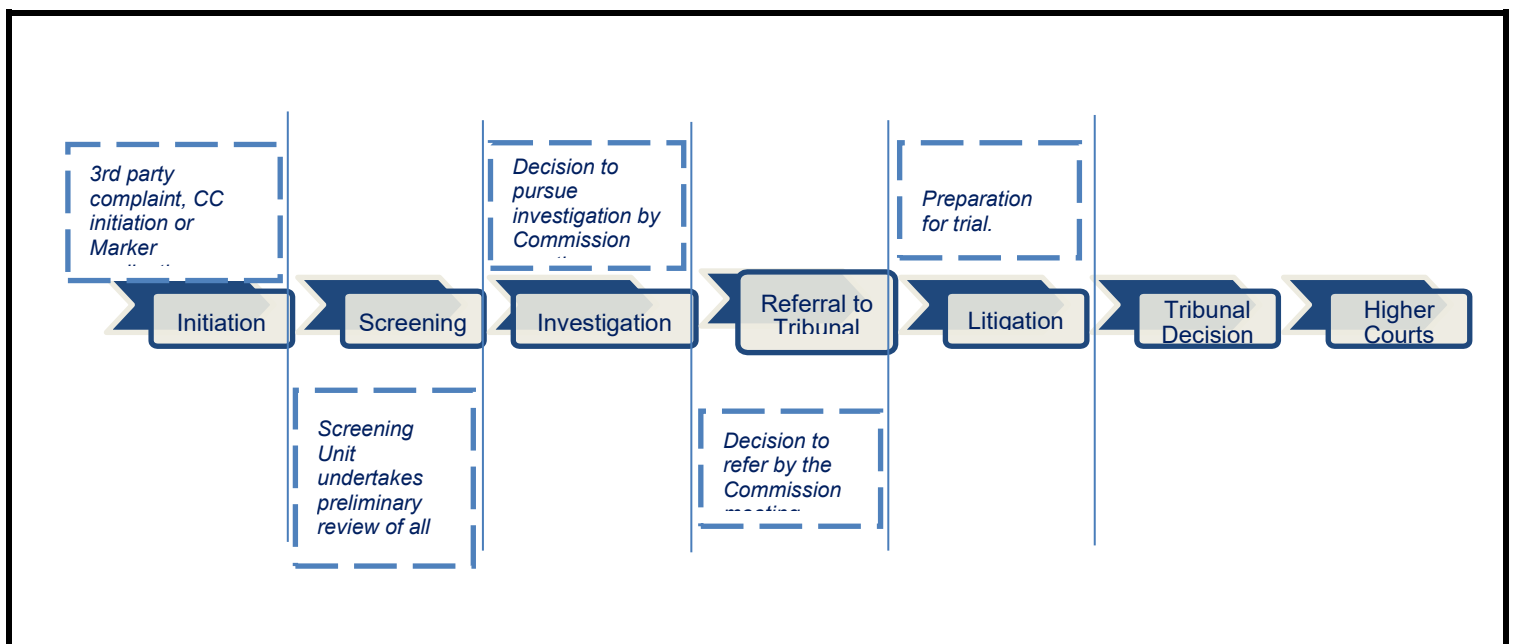
enforcement tools, from physical to virtual/ digital, has become urgent. Cartel detection in a digitized world requires an investment in appropriate and relevant detection tools and mechanisms. These include preparing appropriate spaces for conducting interrogations (interviews), establishing efficient systems for whistleblowing, building relevant ICT tools and developing internal capabilities for digital and forensic analysis. The additional budget allocation will enable the Commission to invest in such interventions, thus strengthening its cartel enforcement function.

### ***Litigation***

Various hearings were held at the Tribunal in 2021/22- all were held online. The Commission will continue to refer matters to the Tribunal expeditiously in the 2022/23 financial year.

However, one of the major challenge (and risk) arising is the postponement of trials by the Tribunal and the courts, due to the Covid-19 pandemic. The inability for courts to convene for physical trials, where witnesses and counsel must appear in person, has resulted in a major backlog. With the pandemic ongoing in 2021, this constraint remains a risk to the resolution of long-standing and important matters on the court's roll. It is unclear what the implications of the growing backlog will be on the resources of the Commission, the Tribunal, and the Competition Appeal Court (CAC) in the latter years of the MTEF, assuming the pandemic to then be over.

**FIGURE 2: CASE PIPELINE PROCESS- ENFORCEMENT**



## **4.2. Corporate Services**

The Commission's staff have largely been operating remotely since the declaration of the national disaster and lockdown. There has been in this regard, a serious impact on increased IT bandwidth requirements for remote connectivity to the network, communications systems, and human resource management to adjust to the new reality. There are inherent risks in managing investigations remotely, with the use of cellphones, laptops and documents in the personal spaces of employees. As such the Commission continuously adjust the operations of the Corporate Services Division to ensure swift responses to strengthen internal organizational policies, IT and Communication systems, to ensure that business continues remotely.

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

Some of these interventions undertaken since the start of lockdown have been scaled-up and/or repeated in the 2021/22 financial year, and will continue in the coming year, as the pandemic situation subsists. A significant portion of the corporate services (HR and IT) budget will thus be directed at ensuring the continued (largely virtual) operations of the organization.

The Commission also developed an enhanced Mental Health and Employee Welfare policy, to mitigate and manage the risks and psycho-social challenges arising due to the impact of Covid-19. In this regard, the mental well-being of staff will continue to be supported through relevant programs and activities which the Commission will undertake in 2022/23. The necessary employee training and reskilling in relation to the above is being undertaken, in an effort to balance the productivity needs of the organization, and the overall welfare and safety of the employees.

## **4.3. Information Communication Technology (ICT) Environment**

A comprehensive review of the Commission's ICT environment was completed in the 2016/17 financial year. The aim of the review was to make proposals for the modernization of the Commission's IT infrastructure and services to effectively enable the work of the organization. The review focused on assessing the adequacy and effectiveness of the current ICT, specifically the Infrastructure Architecture, the Platforms/Software Infrastructure and Internal Security. The review found that the Commission's ICT

environment consists of disparate systems that are not integrated; the core business system does not support the business vision and strategic objectives; does not support the people nor the process; the CSD is inadequately capacitated; and IT Governance needs to be improved. The implementation of a fully integrated, efficient and adequate ICT environment was recommended that:

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

The additional budget allocation of the MTEF will enable the Commission to implement the systems upgrade intended. Given the virtual operations of the organization, the implementation of an efficient ICT system is particularly urgent, to mitigate risks related to case and document management.

#### **4.4. Organizational Structure**

The Commission has developed a five-year Strategic Plan, effective 2020-21 to 2024-25. The Commission therefore needed to undertake a review of the organizational design to ensure alignment with the goals and objectives set out in the strategy.

The following considerations have been taken into account when reviewing the structure:

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

The review process entailed various engagement were scheduled with each divisional head, as well as

Deputy Commissioners and the Commissioner. The stakeholder engagement objectives were to collaboratively review the current Organisational Structure, identify current inefficiencies to be addressed in the desired Organisational Structure, collaboratively develop the fitting Organisational Structure and to ensure alignment with 5-year Strategic Plan and Competition Amendment Act.



## PART C: MTEF PERFORMANCE PLAN

### 5. FINANCE

Below are the Commission's budgetary estimates (MTEF) for the next three-year period of its Strategic Plan. These estimates are drawn from the intended work programs of the Commission for the period, as per the 2020-2025 Strategic Plan and Annual Performance Plan.

#### 5.1. Expenditure Analysis

The maintenance of the administrative activities of the Commission is human resource based. This is evident from the high financial requirements for human resources and administrative activities. The implementation of the Commission's policy on strategic priority sectors and prioritization will further require substantial input during this period. The following table summarizes the projected estimates by strategic objectives:

**TABLE 3: EXPENDITURE PER STRATEGIC OBJECTIVE**

EXPENDITURE PER STRATEGIC OBJECTIVE	2022/23 ANNUAL BUDGET	2023/24 ANNUAL BUDGET	2024/25 ANNUAL BUDGET
Goal 1: Enforcing and Regulating towards economic growth and enhanced economic participation	353,446,693	352,848,409	368,550,163
Goal 2: Advocating for improved compliance and pro-competitive public policy outcomes	22,758,745	23,771,509	24,829,341
Goal 3: A people-centric and high-performance organization	136,101,562	142,158,082	148,484,117
<b>TOTAL</b>	<b>512,307,000</b>	<b>518,778,000</b>	<b>541,863,621</b>

M&A, MCD, Cartels, LSD, ERB and Advocacy are the core programs directly involved with the implementation of the Competition Act. Nonetheless, support activities such as Administration spend more than 80% of their resources offering support to the core activities. The following table summarizes the projected expenditure per division. The financial resources have been allocated to ensure that the Commission focuses on the identified strategic areas. As customary, financial revisions are done during the financial year, and any adjustments are effected accordingly.

**TABLE 4: TOTAL EXPENDITURE PER MAIN ITEM**

TOTAL EXPENDITURE PER MAIN ITEM	2022/23 ANNUAL BUDGET	2023/24 ANNUAL BUDGET	2024/25 ANNUAL BUDGET
Human Resources	274,645,420	286,867,140	299,632,728

Premises & Equipment	21,508,374	22,465,497	23,465,212
Other Operational	6,728,543	7,027,963	7,340,707
Research & Information	3,078,207	3,215,187	3,358,263
IT and system Development	11,439,807	11,948,879	12,480,604
Educational Awareness	4,569,424	4,772,764	4,985,152
Case Related Costs	55,285,777	57,745,994	60,315,690
Capital Expenditure	7,896,669	8,248,071	8,615,110
Depreciation	7,815,828	8,163,633	8,526,914
Other Programme Costs	119,338,951	108,322,872	113,143,241
<b>TOTAL</b>	<b>512,307,000</b>	<b>518,778,000</b>	<b>541,863,621</b>

**TABLE 5: REVENUE**

REVENUE	2022/23 ANNUAL BUDGET	2023/24 ANNUAL BUDGET	2024/25 ANNUAL BUDGET
Mergers and Acquisitions	55,197,000	57,653,000	60,218,559
Government Grant	449,518,000	453,195,000	473,362,178
Interest Received	7,592,000	7,930,000	8,282,885
<b>TOTAL</b>	<b>512,307,000</b>	<b>518,778,000</b>	<b>541,863,621</b>

## Materiality Framework

Due to the nature of the business of the Commission (it is not a capital-intensive business) the best indicator regarding business activity is expenditure. There is lower risk on revenue as 80% of the revenue is made up of voted funds. For this reason, we have selected 0.50% of expenditure with regard to this framework. The implications, based on the estimated expenditure, are summarized as follows:

**TABLE 6: MATERIALITY**

MATERIALITY	%	2022/23	2023/24	2024/25
Expenditure		512,307,000	518,778,000	541,863,621
Materiality	0.50%	2,561,535	2,593,890	2,709,318

## 6. PRIORITY SECTORS

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

**TABLE 7: PRIORITY SECTORS**

Sector	Rationale	Sub-sectors
<b>1. Agriculture, Food &amp; Agro-processing</b>	The sector continues to be a priority due to its significance on the lives of South Africans, particularly the impact of high prices on the poor. The sector has huge potential for job creation and SME participation but is characterized by developing and legacy competition concerns. The Commission intends to address issues of access (entry) and participation in the value chain, with a focus on fresh produce markets, retail and processing levels. The issue of land (agriculture) and economic participation will also be a focus area. The Commission's work in this sector will be through enforcement and advocacy tools (including research and impact assessments) but considers the sector as suitable for market inquiries as well.	<ul style="list-style-type: none"> <li>• Meat (red meat, poultry, fish)</li> <li>• Fresh Produce (Fruits &amp; vegetables)</li> <li>• Dairy value chain</li> <li>• Breads and cereals</li> <li>• Basic food products and/or other "essential" foods</li> </ul>
<b>2. ICT &amp; Digital Markets</b>	Digital markets entail technology-driven businesses, including platform-based business models. These are typically multi-sided markets with high network effects and economies of scale of such size that it renders competition issues more complex. Digital markets are characterized by high rates of investment and innovation, which lead to rapid technological progress in the sector, and to increased disruptive innovation, in many other markets that adopt to technological changes. The increasing prominence of the digital economy requires competition authorities to devote more time in understanding the dynamics emerging, and to regulate in a manner that	<ul style="list-style-type: none"> <li>• ICT infrastructure</li> <li>• Data</li> <li>• Broadcasting</li> <li>• Platforms, Big Tech, FinTech &amp; E-commerce</li> <li>• Infant industries</li> </ul>

Sector	Rationale	Sub-sectors
	<p>strikes a balance between supporting the efficiencies and consumer benefits often arising whilst addressing anti-competitive outcomes such as concentration and abuse of dominance. The competition issues arising in digital markets intersect with other regulations (e.g. privacy laws, intellectual property, financial regulation, tax, labour etc.) and thus require a coordinated approach among regulators. The Commission will be contributing to the policy discourse in regulating these markets whilst also monitoring for anti-competitive conduct. A market inquiry may be an ideal tool to use to probe this sub-sector.</p> <p>South Africa's ICT market is highly concentrated, both at the wholesale and retail levels. The Commission has established that data (connectivity) prices are very high, particularly for mobile prepaid data. There is also lack of competition in subscription television broadcasting services, with one dominant player in the market. The market remains concentrated, even after issuing of various licenses by the sector regulator. As such, the Commission will continue its focus on the ICT sector.</p>	
<b>3. Energy</b>	<p>The South African energy sector is highly regulated and is currently the subject of policy reforms in most of its sub-sectors. The Commission will be monitoring the unbundling of Eskom and the effect of the restructuring on the market. Competition issues of focus will also include the ability of IPPs to access the grid and distribution channels, the relationships between Eskom, Independent Power Producers and municipalities. Further, pricing dynamics in the electricity market/value chain will be monitored.</p> <p>Other areas within the energy sector the Commission is prioritizing is Gas, including ensuring implementation of LPG market inquiry recommendations.</p>	<ul style="list-style-type: none"> <li>• Renewables/ IPPs</li> <li>• Electricity IPPs</li> <li>• Gas (LPG, Natural Gas)</li> </ul>
<b>4. Transport &amp; Automotive</b>	<p>A well-integrated and efficiently functioning transport system is key to enabling and unlocking economic growth, and an important mechanism in fighting poverty, given its financial significance on poor households. The South African transport system (roads, railway and ports)</p>	<ul style="list-style-type: none"> <li>• Automotive Aftermarkets: services &amp; repairs, short-term insurance</li> <li>• Automotive Components</li> </ul>

Sector	Rationale	Sub-sectors
	<p>is diverse and largely regulated by SOCs, national, provincial and local governments. The sector is characterized by inefficiencies due to apparent lack of coordination between different spheres of government. The recommendations arising from the market inquiry into Public Passenger Transport will be important in addressing some of the challenges in the transport network.</p> <p>Ongoing investigations into Ports and Rail will also continue, with the aim of addressing behavioural and legacy issues arising in these sub-sectors.</p> <p>The Commission will also continue its enforcement work in the automotive sector during the strategy period, with an emphasis on enforcement action in automotive aftermarkets. The work in automotive aftermarkets work is a result of more than a decade of complaints from the public regarding parts distribution, retail and service/repairs of vehicles. Component manufacturing will also remain a focus area.</p>	<ul style="list-style-type: none"> <li>• Ports &amp; Rail</li> <li>• Public Passenger Transport</li> </ul>
<b>5. Construction services, Property &amp; Infrastructure</b>	<p>In the recent past, the Commission undertook extensive work in the construction sector in relation to anti-competitive conduct that manifested prior to 2010 FIFA world cup construction projects. The Commission has succeeded in prosecuting firms for their anti-competitive conduct in this sector. The government also prioritized this sector and has successfully reached pro-transformation settlement agreements with various market participants. However, competition problems persist, with the Commission still receiving complaints relating to conduct in the various sub-sectors of construction services. The Commission also continues to investigate several bid-rigging complaints, and this continues to be a focus for advocacy and enforcement action.</p> <p>During this period, the Commission will also pay attention to Built Environment professionals: their role in construction projects and the role of the Councils with regards to promoting entry</p>	<ul style="list-style-type: none"> <li>• Construction services</li> <li>• Residential estates</li> <li>• Property finance</li> <li>• Built Environment Professionals</li> <li>• Bid-rigging</li> </ul>

Sector	Rationale	Sub-sectors
	<p>and participation.</p> <p>Another area of focus will be residential estates with regards to the rules and practices of role-players, which may have competition implications.</p>	
<b>6. Banking &amp; Financial Services</b>	<p>The banking and finance sector have the potential to contribute towards greater inclusion of historically marginalized groups – by extending access to banking and insurance services, by helping to promote and mobilize household savings, and by easing broader access to credit. The sector also has a crucial role as a provider of potentially dynamic intermediate services. The Commission will continue its enforcement focus in addressing contraventions of the Act which arise, including the banking cartel relating to foreign exchange market.</p> <p>The Commission will also follow policy reforms in the national payments system to identify competition issues which can be advocated for. Equally, reforms that are underway in the Audit Profession which have a competition element will be monitored.</p>	<ul style="list-style-type: none"> <li>• Banking</li> <li>• Property finance</li> <li>• Insurance</li> <li>• Audit Profession</li> </ul>
<b>7. Manufacturing</b>	<p>The manufacturing sector is important for the South African economy given its contribution towards the GDP and the number of employees that the sector absorbs. Manufacturing includes Intermediate Industrial Inputs (IIP) used to manufacture different outputs in various sectors. The Commission's study into concentrated markets revealed that the sector is highly concentrated. During this strategy period, greater focus would be in the value chains of various industries in the broader manufacturing sector, particularly where there is high concentration. A market inquiry may be an ideal tool to use to probe into these value chains.</p>	<ul style="list-style-type: none"> <li>• Chemicals, pesticides and agrochemicals</li> <li>• Forestry/paper/pulp/corrugated packaging</li> <li>• Steel/ fabricated metals</li> <li>• Plastic</li> </ul>
<b>8. Healthcare</b>	<p>The healthcare sector is undergoing major policy reforms with the proposal of a National Health Insurance. Commission will be advocating for the recommendations arising in the Market Inquiry on Private Healthcare, which are crucial to the achievement of an efficient universal healthcare system as proposed in the NHI. Equally, mergers in this sector, will be monitored to prevent further concentration, particularly in relation to facilities.</p>	<ul style="list-style-type: none"> <li>• Facilities</li> <li>• Pharmaceuticals, particularly drugs related to the treatment of Covid-19</li> <li>• Medical Equipment, particularly related to the treatment of Covid-19</li> </ul>

Sector	Rationale	Sub-sectors
	The investigation into various pharmaceutical drugs will continue in this period.	<ul style="list-style-type: none"> <li>• PPE and related products and services</li> <li>• Medical and hygiene supplies at retail level</li> </ul>

## **7. PERFORMANCE PROGRAMS**

The Commission undertakes its work through the following main programs or divisions:

### **7.1. Mergers & Acquisitions Division**

The Mergers & Acquisitions (M&A) division is tasked with ensuring that merger transactions do not lead to a substantial prevention or lessening of competition or to significant public interest concerns in terms of Chapter 3 of the Competition Act. The Commission has the authority to approve, conditionally approve, or prohibit intermediate mergers, while recommendations are made to the Tribunal in respect of large mergers. Small mergers may be notified to the Commission on a voluntary basis although the Commission may in certain circumstances require that the small merger be notified.

It is difficult to predict merger activity with certainty since merger activity is an outcome of market conditions and firm activity. The Commission has over the years set targets with regards to the key outputs of mergers approved, mergers approved with conditions and mergers prohibited against the total number of mergers notified based on observed trends. These assumptions have sometimes been incorrect, as they are largely outside of the control of the Commission. The Commission has thus developed performance indicators that are within its control, and thus has set merger targets in relation to turnaround times.

Merger regulation plays an important role in preventing anti-competitive structures in the economy. The Commission will continue to monitor the compliance of firms against merger remedies and conditions imposed, during this period. Compliance monitoring is an important step in ensuring that public interest and competition outcomes are realized in the economy. The M&A program also analyses mergers in priority sectors as an input into the enforcement work of the Commission. Further, with the support of Legal Services, the program also supports the Commission's litigation on mergers that are challenged at the Tribunal and the courts. The Commission will continue to meet service standards in assessing merger applications, with due considerations in assessing mergers involving distressed firms. The monitoring of conditions that have been previously imposed will also continue in the strategy cycle.

### **7.2. Cartels Division**

The Cartels Division focuses on investigating and prosecuting cartel activities in terms of section 4(1)(b) of the Competition Act. Cartel conduct includes price fixing, market allocation and collusive tendering or bid rigging.

In anticipation of higher prevalence of anti-competitive conduct due to the constrained economic environment, the Commission will continue its efforts on cartel detection. The Commission will complete



15 investigations in the 2022/23 financial year. This is in addition to Covid-19 investigations undertaken, both in relation to price gouging and Covid-19 public procurement.

Working with Market Conduct, the Cartels function will also work in the expedited analysis of exemption applications related to Covid-19, with a target of a 3-months turnaround.

Finally, the Cartels and Legal Services programs are responsible for prosecution activities in the Tribunal and the courts; a performance target of achieving a minimum 75% success rate has been set in this regard.

### **7.3. Market Conduct Division**

The Market Conduct Division (MCD) focuses on restrictive vertical practices and the abuse of dominant positions. Abuse of dominance includes excessive pricing, price discrimination, refusal to deal with competitors and predatory pricing. In addition, market inquiries are now located within the Market Conduct Division.

During 2022/23, the Market Conduct program will continue its focus on establishing a more proactive approach to investigating abuse of dominance cases in terms of section 8 and 9 of the Competition Act. The division will initiate and complete several of these in prioritized sectors. The conducting of market inquiries will be a strategic tool to enable the division to probe and gain insights into complex markets which have a high impact on the economy and consumers at large.

The Commission will continue to investigate and prosecute Covid-19 excessive pricing cases in the 2022/23 financial year. The program will also pay attention to the conduct of dominant firms and thus have set a target to initiate 5 abuse of dominance cases in the year, under the provisions in the amended Competition Act. Efficiency targets pertaining to the completion of cases have also been set, with the intention to complete 75% of investigations within 18 months.

### **7.4. Legal Services Division**

The Legal Services Division (LSD) is responsible for managing all the Commission's litigation before The Tribunal, CAC, High Court, Supreme Court of Appeal (SCA) and the Constitutional Court. The division represents the Commission in courts, in briefing attorneys and counsel, and directing and managing the Commission's strategy in respect of litigation. Legal support is also provided to analyzing merger applications. The division defends the Commission's recommendation of large mergers to the Tribunal and merger decisions which are appealed. The division is also responsible for negotiating and concluding settlement agreements, with the input of other divisions. The settlement process enables the Commission to conclude cases speedily and in the least costly manner.

In 2022/23, the Legal Services division will continue its focus on improving its level of success in the courts. Successful prosecution or settlement of cases is an important indicator of success for the Commission, and minimum targets have been set in this regard.

## **7.5. Economic Research Division**

The Economic Research Bureau (ERB) provides economics support for complex cases and policy issues. The division helps the Commission evaluate the economic impact of the Commission's actions by undertaking impact assessment studies. The key operational responsibilities of the division are to ensure economic research on sectors and policy issues identified by the Commission as priority areas; perform sound economic analysis for enforcement cases, merger cases and market inquiries.

The Commission will undertake one impact assessment study in the year, led by ERB. The Commission also wants to be a thought leader in competition matters hence the target to provide research and thought leadership insights. Importantly under the national disaster, ERB will continue to monitor prices of essential food. ERB will continue to support investigations with expert economic advice and testimonies.

## **7.6. Advocacy Division**

The Advocacy Division is responsible for undertaking preliminary investigations of complaints received from the public. The division also advances strategic cases, which could not be resolved through enforcement, but through advocacy initiatives. Another function of the Advocacy Division is policy analysis; that is to contribute to government policy and regulations to promote competitive outcome. The division also generates sector-based research on competition issues in order to analyze trends which will inform the Commission's approach.

One of the functions of the division is Stakeholder Relations, aimed at fostering collaborative relationships with the Commission's stakeholders. The Commission will continue to maintain relations with stakeholders during 2022/23 while focusing on key constituencies including Women and Black Business associations.

The Commission will continue its Advocacy work in prioritized sectors, with the intention to complete ongoing work in Automotive Aftermarkets, School Uniform procurement, Construction services and Emerging Farmers (agriculture). Education and outreach initiatives with consumers, big and small businesses will remain critical in the year, thus several activities are planned for the year.

Providing input into key legislation, regulations and policies will remain an important part of the Commission's work in the strategy period and targets have been set in this regard.

## **7.7. Corporate Services Division**

The Corporate Services Division (CSD) CSD comprises Human Capital, IT, Registry, the Resource Centre, and Security and Facilities.

The Human Capital department plays a critical role in ensuring that staff are motivated and committed to the Commission through its recruitment and selection processes, employee wellbeing, remuneration, learning and development, labour relations and strategic interventions. Performance targets have been set in relation to employee retention.

The IT department will be central in ensuring the efficient operation of the Commission during 2022/23, and supporting staff with appropriate tools of trade, as many continue to work remotely. The department will lead the implementation of an integrated business system, phased over 3 years- focused on knowledge management, case management and finance applications.

The Security and Facilities unit is responsible for ensuring a safe and secure environment for all the Commission staff and visitors. The unit oversees security enabling and guarding services, including access control, within the proper guidelines and procedural responsibilities that will ensure a secure physical environment. The department will continue to source appropriate office space that complies with occupational health and safety and to relocate staff during this period. The Information Resource Centre forms part of the Commission's knowledge management strategy, while Registry is responsible for document management.

## **7.8. Finance**

The Finance Division provides financial management, supply chain management and asset management support services. The key financial management services include budget development, implementation and monitoring, effective financial management, procurement, management of resources, financial reporting, and performance management.

Emphasis is placed on continuously improving the budgeting process in a manner that reflects to the strategic priorities of the Commission, cash flow management, timeous financial reporting and ensuring that policies and activities comply with regulatory frameworks and guidelines. Compliance with statutory and regulatory frameworks remains an important focus as well as improving the data analysis and reporting functions. In its continuous pursuit to maintain a clean audit, the Finance department has set a target for a clean audit for the entire strategic period.

## **7.9. Office of the Commissioner**

The primary role of the Office of the Commissioner (OTC) is oversight on the implementation of the Commission's strategic goals and objectives. In addition to crafting and setting the strategic direction of the Commission and providing necessary insight and guidance, the OTC will ensure that appropriate processes, procedures and structures are in place to enable all programs to achieve against its stated objectives. The primary mechanism to achieve this is the continued operation of the corporate governance program, which enables and supports sound corporate governance within the institution.

In addition to the above, the International Relations department is also located within the Office of the Commissioner. The Commission will continue with its participation in regional and international forums during 2022/23. The OTC also houses the Communications function, which has the aim of creating public awareness about the Commission's work and advocating and advancing competition.

**8. TABLE 8: MTEF OUTCOMES, OUTPUTS, PERFORMANCE INDICATORS & TARGETS**

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND ENHANCED ECONOMIC PARTICIPATION											
1. Efficient and effective merger regulation & enforcement	a) Mergers and Acquisitions decisions	M&A	1.	Average turnaround time for Phase 1 merger investigations.	17days	18 days	18 days	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days
		M&A	2.	Average turnaround time for Phase 2 merger investigations.	41 days	40 days	37 days	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days
		M&A	3.	Average turnaround time for Phase 3 intermediate and small merger investigations.	57 days	57 days	55 days	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days
		M&A	4.	Average turnaround time for 90% of Phase 3 large merger	119 days	111 days	93 days	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
				investigations.							
	b) Compliance monitoring for merger conditions	M&A	5.	% of imposed merger remedies and conditions monitored.	100%	100%	100%	100%	100%	100%	100%
	c) Merger regulation and conditions	M&A	6.	% cases in which ESOP or BEE Deals are implemented to remedy merger-specific public interest concerns.	N/A	N/A	N/A	N/A	5%	5%	5%
	d) Covid-19 investigations	Advocacy, Cartels & MCD	7.	% of Covid-19 investigations completed within 12 months.	N/A	N/A	1764	100%	100%	100%	100%
		LSD	8.	% of Covid-19 cases won at the Tribunal.	N/A	N/A	100%	≥90%	≥90%	≥90%	≥90%
		LSD	9.	% of Covid-19 cases won at the courts.	N/A	N/A	N/A	≥90%	≥90%	≥90%	≥90%
		MCD	10.	No. of abuse of dominance and restrictive cases initiated related to	N/A	N/A	N/A	10	0	0	0

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
				Covid-19.							
		MCD & Cartels	11.	% of Covid-19 exemption applications completed within 3 months.	N/A	N/A	N/A	100%	100%	100%	100%
		ERB	12.	Report on essential food products.	N/A	N/A	4	2	2	2	2
<b>2. Competitive, Contestable and Deconcentrated Markets</b>  <b>+ 3. Improved public interest outcomes</b>	a) Abuse of dominance and restrictive case investigations	MCD	13.	No. of abuse of dominance and restrictive cases initiated in prioritized sectors.	1	2	36	5	5	5	5
		MCD & Advocacy	14.	% of market conduct investigations completed within 18 months.	93%	98%	94%	≥75%	≥75%	≥75%	≥75%
	b) Exemption application decisions	MCD	15.	% of exemption applications completed within 12 months.	0%	98%	100%	100%	100%	100%	100%
	c) Cartel Investigations	Cartels	16.	No. of cartel investigations completed.	3	15	28	10	10	15	20

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
	d) Cartel prosecutions	Cartels & LSD	17.	% of cartel cases won at the Tribunal.	75%	62%	86%	≥75%	≥75%	≥80%	≥85%
		Cartels & LSD	18.	% of cartel cases won at the courts.	N/A	N/A	N/A	≥75%	≥75%	≥80%	≥85%
	e) Prosecution of Abuse of dominance and restrictive practices	LSD	19.	% of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation.	N/A	N/A	100%	≥70%	≥70%	≥70%	≥70%
		LSD	20.	% of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation.	N/A	N/A	N/A	≥70%	≥70%	≥70%	≥70%
	f) Merger litigation	LSD	21.	% of merger decisions upheld by the Tribunal.	67%	≥75%	100%	≥75%	≥75%	≥75%	≥75%



Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
			22.	% of merger decisions upheld by the courts.	N/A	N/A	N/A	≥75%	≥75%	≥75%	≥75%
	g) Interlocutory litigation	LSD & Cartels	23.	% of interlocutory decisions upheld by the Tribunal.	N/A	N/A	N/A	N/A	≥60%	≥65%	≥70%
			24.	% of interlocutory decisions upheld by the courts.	N/A	N/A	N/A	N/A	≥60%	≥65%	≥70%
STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES											
4. Improved compliance & awareness	a) Domestic outreach initiatives	Advocacy	25.	No. of education, training and outreach initiatives conducted on the Competition Act.	4	2	3	2	4	4	4
		Advocacy & OTC	26.	No. of awareness publications on the Competition Act.	N/A	N/A	4	6	4	4	4
	b) External Guidelines on	LSD & ERB	27.	No. of Guidelines on the application of the Act issued to	1	1	2	2	2	2	2

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
	the application of the Act			stakeholders.							
	c) Advisory Opinions	LSD	28.	% of advisory opinions issued within 60 days.	N/A	N/A	N/A	≥90%	≥90%	≥90%	≥90%
<b>5. Improved understanding of market dynamics in priority sectors</b>	a) Market inquiries	MCD	29.	No. of market inquiries initiated.	0	0	1	1	2	2	2
		MCD	30.	No. of market inquiries completed.	0	4	1	0	1	1	1
	b) Industry Scoping Studies	ERB	31.	No. of industry scoping studies conducted in prioritized sectors.	0	1	N/A	1	1	1	1
	c) Impact assessments on Commission decisions or competition policy	ERB	32.	No. of impact assessment studies completed.	1	1	1	1	1	1	1
	d) Advocacy in priority sectors	Advocacy	33.	No. of advocacy cases completed in priority sectors.	N/A	N/A	4	2	4	4	4

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
<b>6. Improved co-ordination on the application of economic and competition policy</b>	a) Strategic Partnerships with relevant stakeholders	Advocacy	34.	No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted.	4	2	4	2	2	2	2
		Advocacy	35.	No. of initiatives to promote entry & participation of HDIs.	N/A	N/A	N/A	1	2	2	2
		OTC & ERB	36.	No. of Annual Conferences hosted.	1	1	1	1	1	1	1
	Policy Responses	Advocacy	37.	No. of submissions or responses to policy or regulation.	4	4	11	4	4	4	4
	Research & Thought Leadership	ERB	38.	No. of research and thought leadership insights published.	N/A	N/A	3	4	4	4	4
<b>7. Increased importance of developmental</b>	a) Collaboration with regional and international partners	OTC	39.	No. of research projects and/or publications undertaken with African, BRICS and	4	4	N/A	8	8	8	8

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
perspectives in domestic and international competition law discourse				international partners.							
<b>STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION</b>											
<b>8. Sound Corporate Governance</b>	a) Audit Outcome	Finance	40.	Audit Opinion.	Unqualified Audit	Clean Audit	Clean Audit	Clean Audit	Clean Audit	Clean Audit	Clean Audit
	b) Organizational Structure Review	OTC, CSD & Finance	41.	Review of Organizational Structure.	Draft Organizational Structure	N/A	N/A	Report on Organization Structure	Implementation of Organizational Structure.	N/A	N/A
<b>9. Secure, harmonious, and conducive working environment</b>	a) Conducive Facilities & Efficient Security	CSD & Finance	42.	Implementation of Phase 1 and initiation of phase 2 of integrated business system.	N/A	N/A	N/A	Report on completed implementation.	Report on completed implementation.	Report on implementation of phase 1, and initiation of phase 2.	Report on completed implementation.

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
		CSD & Finance	43.	Relocate staff to appropriate office space.	N/A	N/A	N/A	Report on completed implementation.	Report on completed implementation.	N/A	N/A
		CSD	44.	Reports on implementation of the OHS compliance plan.	N/A	N/A	100%	4	4	4	4
<b>10.Highly engaged, motivated and productive workforce</b>	a) Talent Management	CSD & OTC	45.	% of HR spend in learning and development.	1.5%	1%	1%	1%	1%	1%	1%
		CSD	46.	% retention rate of staff complement.	≥98%	≥90%	98.5%	≥90%	≥90%	≥90%	≥90%
		OTC	47.	% of staff reached through training academy initiatives.	N/A	N/A	61%	≥60%	≥60%	≥65%	≥70%
<b>11. Business Process Improvement</b>	a. Review and redesign of business processes to improve efficiency and organisational agility	LSD	48.	Review the CC Forms for complaints/merger filing.	N/A	N/A	N/A	N/A	2	N/A	N/A
<b>12. Effective</b>		CSD	49.	Established	N/A	N/A	N/A	N/A	1	1	1

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2021/ 22	MTEF Period		
					2018/19	2019/20	2020/21		2022/23	2023/24	2024/25
collaboration with other state entities	a. Coordinated initiatives			initiative/workshop/seminar/online platform on transversal programmes, learning and development and employee wellness.							
	b) Partnerships with other Regulators and state entities.	Advocacy	50.	Report on collaboration with MOU partners, Gov and Sector Regulators.	N/A	N/A	N/A	N/A	2	2	2
	c) Efficient supply chain process.	Finance	51.	% of suppliers paid within 30 days.	N/A	N/A	N/A	N/A	80%	80%	80%

## 9. TABLE 9: ANNUAL INDICATORS AND QUARTERLY TARGETS - 2022/23

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
<b>STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND ENHANCED ECONOMIC PARTICIPATION</b>									
<b>1. Efficient and effective merger regulation &amp; enforcement</b>	a) Mergers and Acquisitions decisions	M&A	1.	Average turnaround time for Phase 1 merger investigations.	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days
		M&A	2.	Average turnaround time for Phase 2 merger investigations.	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days
		M&A	3.	Average turnaround time for Phase 3 intermediate and small merger investigations.	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days
		M&A	4.	Average turnaround time for 90% of Phase 3 large merger investigations.	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days
	b. Compliance monitoring for merger conditions	M&A	5.	% of imposed merger remedies and conditions monitored.	100%	100%	100%	100%	100%
	c. Merger regulation and conditions	M&A	6.	% cases in which ESOP or BEE Deals are implemented to remedy merger-specific public interest concerns.	5%	5%	5%	5%	5%

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	b) Covid-19 investigations	Advocacy, Cartels & MCD	7.	% of Covid-19 investigations completed within 12 months.	100%	100%	100%	100%	100%
		LSD	8.	% of Covid-19 cases won at the Tribunal.	≥90%	≥90%	≥90%	≥90%	≥90%
		LSD	9.	% of Covid-19 cases won at the courts.	≥90%	≥90%	≥90%	≥90%	≥90%
		MCD	10.	No. of abuse of dominance and restrictive cases initiated related to Covid-19.	N/A	N/A	N/A	N/A	N/A
		MCD & Cartels	11.	% of Covid-19 exemption applications completed within 3 months.	100%	100%	100%	100%	100%
		ERB	12.	Report on essential food products.	2	N/A	1	N/A	1
<b>2. Competitive, Contestable and Deconcentrated Markets</b> <b>+</b> <b>3. Improved public interest</b>	a) Investigation of Abuse of dominance and restrictive practices	Market Conduct	13.	No. of abuse of dominance and restrictive cases initiated in prioritized sectors.	5	N/A	2	2	1
		MCD & Advocacy	14.	% of market conduct investigations completed within 18 months.	≥75%	≥75%	≥75%	≥75%	≥75%



Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
outcomes	b) Exemption application decisions	MCD	15.	% of exemption applications completed within 12 months.	≥100%	≥100%	≥100%	≥100%	≥100%
	c) Cartel investigations	Cartels	16.	No. of cartel investigations completed.	10	3	3	2	2
	d) Cartel prosecutions	Cartels & LSD	17.	% of cartel cases won at the Tribunal.	≥75%	≥75%	≥75%	≥75%	≥75%
		Cartels & LSD	18.	% of cartel cases won at the courts.	≥75%	≥75%	≥75%	≥75%	≥75%
	e) Prosecution of Abuse of dominance and restrictive practices	LSD	19.	% of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation.	≥70%	≥70%	≥70%	≥70%	≥70%
		LSD	20.	% of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation.	≥70%	≥70%	≥70%	≥70%	≥70%
	f) Merger litigation	LSD	21.	% of merger decisions upheld by the Tribunal.	≥75%	≥75%	≥75%	≥75%	≥75%
		LSD	22.	% of merger decisions upheld by	≥75%	≥75%	≥75%	≥75%	≥75%

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
				the courts.					
	g) Interlocutory litigation	LSD & Cartels	23.	% of interlocutory decisions upheld by the Tribunal.	≥60%	≥60%	≥60%	≥60%	≥60%
			24.	% of interlocutory decisions upheld by the courts.	≥60%	≥60%	≥60%	≥60%	≥60%
STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES									
4. Improved compliance & awareness	a) Domestic outreach initiatives	Advocacy	25.	No. of education, training and outreach initiatives conducted on Competition Act.	4	1	1	1	1
		Advocacy & OTC	26.	Number of awareness publications on the Competition Act.	4	1	1	1	1
	b) External Guidelines on the application of the Act	LSD & ERB	27.	No. of Guidelines on the application of the Act issued to stakeholders.	2	N/A	1	N/A	1
	c) Advisory Opinions	LSD	28.	% of advisory opinions issued within 60 days.	≥90%	≥90%	≥90%	≥90%	≥90%
5. Improved understanding of market dynamics in priority sectors	a) Market inquiries	MCD	29.	No. of market inquiries initiated.	2	N/A	1	N/A	1
		MCD	30.	No. of market inquiries completed.	1	N/A	N/A	1	N/A

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	b) Industry Scoping Studies	ERB	31.	No. of industry scoping studies conducted in prioritized sectors.	1	N/A	N/A	1	N/A
	c) Impact assessments on Commission decisions or competition policy	ERB	32.	No. of impact assessment studies completed.	1	N/A	N/A	N/A	1
	d) Advocacy in priority sectors	Advocacy	33.	No. of advocacy cases completed in priority sectors.	4	1	1	1	1
<b>6. Improved co-ordination on the application of economic policy and competition policy</b>	a) Strategic Partnerships with relevant stakeholders	Advocacy	34.	No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted.	2	N/A	1	1	N/A
		Advocacy	35.	No. of initiatives to promote entry & participation of HDIs.	2	N/A	1	1	N/A
		OTC & ERB	36.	No. of Annual Conferences hosted.	1	N/A	N/A	1	N/A
	b) Policy Responses	Advocacy	37.	No. of submissions or responses to policy or regulation.	4	1	1	1	1
	c) Research & Thought Leadership	ERB	38.	No. of research and thought leadership insights published.	4	1	1	1	1

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
<b>7. Increased importance of developmental perspectives in domestic and international competition law discourse</b>	d) Collaboration with Regional & International partners	OTC	39.	No. of research projects and/or publications undertaken with African, BRICS and international partners.	8	3	2	2	1
<b>STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION</b>									
<b>8. Sound Corporate Governance</b>	a) Audit Outcome	Finance	40.	Audit Opinion.	Clean Audit	N/A	N/A	Clean Audit	N/A
<b>9. Secure, harmonious and conducive working environment</b>	a) Organizational Structure Review	OTC, CSD & Finance	41.	Review of Organisational Structure.	N/A	N/A	Report on implementation of Organisational Structure.	N/A	N/A
	b) Conducive Facilities & Efficient Security	CSD & Finance	42.	Implementation of Phase 1 and initiation of phase 2 of integrated business system.	Report on implementation	Report on implementation of phase 1	Initiation report of phase 2	Progress report on implementation	Report on implementation
		CSD & Finance	43.	Relocate staff to appropriate office space.	Report on completed implementation.	Report on the conclusion of the deed of	NA	Report on Initiation of relocation process	Relocation of staff

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
						sale documents		and report on office design	
		CSD	44.	Reports on implementation of the OHS compliance plan.	4	1	1	1	1
<b>10. Highly engaged, motivated and productive workforce</b>	a) Talent Management	CSD & OTC	45.	% of HR spend in learning and development.	1%	N/A	N/A	N/A	1%
		CSD	46.	% retention rate of staff complement.	≥90%	≥90%	≥90%	≥90%	≥90%
		OTC	47.	% of staff reached through training academy initiatives.	≥65%	N/A	N/A	N/A	≥65%
<b>11. Business Process Improvement</b>	Review and redesign of business processes to improve efficiency and organisational agility	LSD	48.	Review the CC Forms for complaints/merger filing.	2	N/A	1	N/A	1
<b>12. Effective collaboration with other state entities</b>	a. Coordinated initiatives	CSD	49.	Established initiative/workshop/seminar/online platform on transversal programmes, learning and development and employee wellness.	1	N/A	N/A	1	N/A
	b. Partnerships with other	Advocacy	50.	Report on collaboration with	2	N/A	1	N/A	1

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	Regulators and state entities.			MOU partners, Gov and Sector Regulators.					
	c. Efficient supply chain process.	Finance	51.	% of suppliers paid within 30 days.	80%	N/A	N/A	N/A	80%

## 10. TABLE 10: STRATEGIC RISKS

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

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



Risk	Risk Mitigation
8. Inadequate tools and resources for remote working	<ul style="list-style-type: none"> <li>• Purchase appropriate tools for all affected staff</li> <li>• Ensure secure and reliable connectivity for all affected staff</li> </ul>
9. Unavailability of critical staff to perform Commission functions or alternately staff burnout due to irregular working hours	<ul style="list-style-type: none"> <li>• Provide psychosocial support to all employees as they might be infected or affected by Covid19</li> <li>• Consider cross training and movement of staff across the Divisions to improve their depth of understanding of the Commission functions</li> <li>• Commission to advocate and create awareness on a structured mechanism of remote working</li> </ul>
10. Collapse of the Commission IT Systems due to large traffic volumes	<ul style="list-style-type: none"> <li>• Stabilisation of the Commission IT systems to cater for the remote working</li> <li>• Enforcement of the IT Capacity of the Commission to deal with any threats to its systems</li> </ul>
11. Inadequate revenue to support enforcement efforts across the range of priority sectors due to deep budget cuts and merger revenue reduction	<ul style="list-style-type: none"> <li>• Government review of funding model of the Commission</li> <li>• Review and potential revision of merger filing fees</li> <li>• Identification of operational savings and efficiencies</li> <li>• Prioritization around the use of external attorneys &amp; counsel</li> <li>• Continued promotion of organisational in-sourcing policy on economic and financial experts, litigation counsel</li> </ul>
12. Failure to prosecute due to inability of Tribunal to conduct trials (in-person) due to Covid-19 pandemic	<ul style="list-style-type: none"> <li>• Defer matters</li> </ul>

## 11. TABLE 11: TECHNICAL INDICATORS DESCRIPTIONS 2022/23

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
<b>STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND GREATER ECONOMIC PARTICIPATION</b>					
<b>1. Efficient and effective merger regulation &amp; enforcement</b>	a) Merger & acquisition decisions	1.	Average turnaround time for Phase 1 merger investigations.	<p>Definition:</p> <ul style="list-style-type: none"> <li>The Commission classifies merger notifications into 'phases', according to the complexity of the cases. Phase 1 investigations are non-complex. Phase 2 investigations require slightly more complex analysis and are unlikely to raise serious competition concerns. Phase 3 investigations require complex analysis, either because of the complex nature of the products and markets, the structure of the relevant markets or the public interest issues the transaction gives rise to.</li> <li>Indicators 1-3 refer to the amount of time the Commission takes to make a decision in a merger review process.</li> <li>Indicator 4 refers to the amount of time the Commission takes to make a decision in 90% of Phase 3 (L) merger cases.</li> <li>Indicator 3 includes both small and intermediate mergers.</li> <li>The Average Turnaround time for indicators 1- 3 is calculated by adding the time taken for decisions on all cases and dividing the total by the total number of cases decided.</li> </ul>	M&A
		2.	Average turnaround time for Phase 2 merger investigations.		M&A
		3.	Average turnaround time for Phase 3 intermediate merger investigations.		M&A
		4.	Average turnaround time for 90% of Phase 3 large merger investigations.		M&A

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>• To calculate the Average Turnaround time for indicator 4, Phase 3 (L) merger cases must be sorted by turnaround time, the top 10% of cases must be excluded and the Average calculated for the remaining 90% of cases.</li> <li>• The annual target is calculated as the average of all quarters.</li> <li>• The target is met if the outcome is less than or equal to the service standard.</li> </ul> <p>Purpose/Importance:</p> <ul style="list-style-type: none"> <li>• The indicator is a measure of process efficiency. Efficient merger review is important for service-delivery, particularly given the financial and economic implications of mergers.</li> </ul> <p>Collection of Data/Method of Calculation:</p> <ul style="list-style-type: none"> <li>• Turnaround times are determined by calculating the number of business days following the day of notification until the decision date. The average is calculated by the total number of days divided by the number of transactions.</li> <li>• The Mergers Division has a database of cases generated as and when filed with the Commission.</li> <li>• If a Notice of Incomplete merger filing (Form CC13(2)) is issued the turnaround times are calculated from the business day following the receipt of a Complete Filing.</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	b. Compliance monitoring for merger conditions	5.	% of imposed merger remedies and conditions monitored.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The Commission can approve mergers subject to certain conditions being met by the merging parties; or can impose remedies which the merging parties must fulfil. The indicator refers to the monitoring of the implementation of such conditions or remedies.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The effectiveness of merger remedies imposed is only evident in their application. Remedies are also legally binding to the parties. It is thus important that the Commission monitors the compliance of the parties thereto.</li> </ul> <p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>All cases approved with conditions or remedies are collected on a divisional database.</li> </ul> <p>Reports are received when due from the merging parties.</p>	M&A
	c. Merger regulation and conditions	6.	% cases in which ESOP or BEE Deals are implemented to remedy merger-specific public interest concerns.	<p><b>Definition:</b> A case raises merger-specific concern if the merger results in a dilution of employee and/or HDP ownership. The Commission will add the number of cases in which ESOP and BEE Deals are imposed and divide this by the number of cases that raise merger-specific concerns.</p> <p><b>Purpose/ Importance:</b> to record and report on changes in ownership structures resulting from merger transactions, specifically focused on ESOP and/or BEE.</p>	M&A

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<b>Collection of Data/Method of Calculation:</b> Add the number of cases in which ESOP and BEE Deals are imposed and divide this by the number of cases that raise merger-specific concerns. The percentage/result will show achievement of this target.	
	d. Covid-19 investigations	7.	% of Covid-19 investigations completed within 12 months.	<b>Definition:</b> <ul style="list-style-type: none"> <li>The target refers to Covid-19 (price gouging and public procurement) cases which the Commission has decided to refer to the Tribunal for prosecution, 2) cases which the Commission has decided to non-refer.</li> </ul> <b>Purpose/Importance:</b> <ul style="list-style-type: none"> <li>Completing the investigation of cases ensures that those parties whom the Commissions alleges to be engaged in Covid-19 related transgression can respond to the charges before the Tribunal, in fulfilment of the mandate of the competition Act.</li> </ul> <b>Collection of Data/Method of Calculation:</b> <ul style="list-style-type: none"> <li>The achievement of the target is evidenced by minutes of the CC meeting to refer cases to the Tribunal or non-refer cases.</li> </ul>	Advocacy, Cartels & MCD
	d. Covid-19 prosecutions	8.	% of Covid-19 cases won at the Tribunal.	<b>Definition:</b> <ul style="list-style-type: none"> <li>Winning means, the relief sought by the Commission is upheld partially or in full or variation thereof by the Tribunal or the courts.</li> <li>The percentage of Covid-19 cases, where a final decision of the</li> </ul>	LSD
		9.	% of Covid-19 cases won at the courts.		

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>Tribunal and or the Courts has been attained, which the Commission wins within the reporting period.</p> <ul style="list-style-type: none"> <li>• The target is not met if the Commission's case is dismissed by the Tribunal and/or higher court in its entirety.</li> <li>• Where the Commission case is partially upheld by the Tribunal or other courts this target is met.</li> <li>• This definition excludes cases which are under appeal or review at the courts at the time of reporting.</li> <li>• The indicator includes all Covid-19 cases completed through settlement agreements, pre and post referral.</li> <li>• The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>• It is the Commission's goal to successfully prosecute Covid-19 cases. Success at the Tribunal and Courts confirms the rigour applied by the Commission and the correctness of its decisions.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The indicator is determined from orders of the Tribunal and/or</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>the Courts where Covid-19 cases are under litigation.</p> <ul style="list-style-type: none"> <li>• Orders of the Tribunal/courts are accessible to the general public and the Commission keeps records thereof.</li> <li>• The annual result must denote <i>actual wins/losses</i> as at year- end for the FY, and not as a cumulative result of the quarterly performance.</li> <li>• The data is stored on a shared database on the KMS.</li> <li>• The data is captured on the divisional DCT, which indicates the date of the judgement and whether the judgement is in favour of not in favour of the Commission.</li> </ul>	
	e. Covid-19 investigations	10.	No. of abuse of dominance and restrictive cases initiated related to Covid-19.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>• The KPI refers to the number of Covid-19 investigations initiated, including, but not limited to price gouging complaints.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>• Abuse of dominance and restrictive vertical practices have a stifling effect on the economy, particularly in critical times like the national disaster. The Commission would like to be pro-active in identifying Covid-19 related cases for investigation and prosecution. The initiation of a case is the first step towards the prosecution of the conduct- a core business of the Commission.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p>	MCD

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>• The Commission initiates investigation on the basis of its own research and intelligence or on the basis of complaints or information received from members of the public.</li> <li>• The initiation of a case is evidenced minutes of the CC meeting's decision to initiate a complaint.</li> <li>• A list of initiated cases is kept in the Data Compilation Template (DCT) of the division.</li> </ul>	
	f.	11.	% of Covid-19 exemption applications completed within 3 months.	<p><b>Definition</b></p> <ul style="list-style-type: none"> <li>• An exemption application is 'completed' once the Commission meeting has taken a decision to grant or not to grant an exemption to the applicant/s. The Commission Meetings' decision is then published in the Government Gazette.</li> </ul> <p><b>Purpose/ Importance</b></p> <ul style="list-style-type: none"> <li>• The Competition Act provides for firms to apply to the Commission for exemption of compliance to the Act, under specific circumstances.</li> <li>• The Commission anticipate to receive Covid-19 exemption application mainly for the purposes of economic recovery. Granting exemptions arising from Covid-19 circumstances may facilitate recovery of several sectors in the economy and may facilitate/enable Covid industrial production. It is important that decisions on applications are taken timeously.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p>	MCD & Cartels



STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>The 3 months is calculated from the following day in which the application is received by the Commission's Registry department, to the date of the CC meeting decision.</li> <li>The achievement of the target is evidenced by minutes of the CC meeting, which indicate the CC's decision to either grant or refuse to grant an exemption.</li> <li>The Commission reports on the time it has taken to process exemption applications which it has taken a decision on.</li> <li>This number may differ from the pool of applications received in the quarter, some of which may not be decided upon at quarter-end.</li> </ul>	
	b)	12.	Report on essential food products.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>A report on essential food products is a report which comprises economic study/research on various food products during the pandemic.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission undertakes food price studies to assess markets for potential anti-competitive conduct including price gauging. This work assists the Commission in identifying Covid-19 cases to be initiated.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a report on essential food products noted/approved at the CC or Exco Meeting.</li> </ul>	ERB

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
<b>2. Competitive, Contestable and Deconcentrated Markets +</b> <b>3. Improved public interest outcomes</b>	a) Investigation of Abuse of dominance and restrictive practices	13.	No. of cases initiated in prioritized sectors.	<b>Definition:</b> <ul style="list-style-type: none"> <li>The KPI refers to the number of Market Conduct investigations initiated, which fall within the Commission's pre-determined priority sectors (see section on Prioritization within the APP).</li> </ul> <b>Purpose/Importance:</b> <ul style="list-style-type: none"> <li>Abuse of dominance and restrictive vertical practices have a stifling effect on the economy, particularly in critical sectors. The initiation of a case is the first step towards the prosecution of the conduct- a core business of the Commission.</li> </ul> <b>Collection of Data/ Method of Calculation:</b> <ul style="list-style-type: none"> <li>The Commission initiates investigation on the basis of its own research and intelligence or on the basis of complaints received from members of the public.</li> <li>The initiation of a case is evidenced minutes of the CC meeting's decision to initiate.</li> <li>A list of initiated cases is kept in the Data Compilation Template (DCT) of the division.</li> </ul>	MCD
		14.	% of market conduct investigations completed within 18 months.	<b>Definition:</b> <ul style="list-style-type: none"> <li>The 'completion' of a case refers to Commission's decision to refer the case to the Tribunal for prosecution or the decision to non-refer the case (i.e. not to pursue the case further).</li> <li>'Completed' cases include cases concluded at the 'screening' stage.</li> <li>Market conduct investigations include section 5, 8 and 9 cases, and</li> </ul>	MCD & Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>exclude cartel cases.</p> <ul style="list-style-type: none"> <li>• The indicator excludes cases that are placed on hold.</li> <li>• The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>• The Competition Act stipulates a time frame of 12 months within which the investigation of a complaint from members of the public must be finalised. However, it does not stipulate time limits within which to complete investigations initiated by the Commission. Due to the complex nature of investigations, certain matters may take longer than 12 months to finalise.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The target is calculated as follows: "Of the cases completed in the quarter/year, what percentage was completed within 18 months?"</li> <li>• The 18 months include the time taken by the screening unit to screen the case.</li> <li>• Minutes of the CC meeting will denote the decision for referral or non-referral of the investigations.</li> <li>• The baseline for the calculation of third-party complaints is the date following the actual date of receipt of the complaint by the Commission's Registry.</li> <li>• For Commission's own initiation, the baseline for calculation is the</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				completed and signed CC1 form.	
	b) Exemption application decisions	15.	% of exemption applications completed within 12 months.	<p><b>Definition</b></p> <ul style="list-style-type: none"> <li>An exemption application is 'completed' once the Commission Meeting has taken a decision to grant or not to grant an exemption to the applicant/s. The Commission Meeting's decision is then published in the Government Gazette.</li> <li>The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/ Importance</b></p> <ul style="list-style-type: none"> <li>The Competition Act provides for firms to apply to the Commission for exemption of compliance to the Act, under specific circumstances.</li> <li>The granting of exemptions can facilitate promotion of small businesses, economic stability of designated industries, maintenance, or promotion of exports).</li> <li>It is important that decisions on applications are taken judiciously.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The 12 months is calculated from day following the date in which the application is received by the Commission's Registry department, to the date of the CC meeting decision.</li> <li>The achievement of the target is evidenced by minutes of the CC meeting, which indicate the CC's decision to either grant or refuse to grant an exemption.</li> </ul>	MCD

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>The Commission reports on the time it has taken to process exemption applications which it has taken a decision on.</li> <li>This number may differ from the pool of applications received in the quarter, some of which may not be decided upon at quarter-end.</li> </ul>	
	c) Cartel Investigations	16.	No. of cartel investigations completed.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The target refers to cartel 1) cases which the Commission has decided to refer to the Tribunal for prosecution, 2) cases which the Commission has decided to non-refer.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>Completing the investigation of cases ensures that those parties whom the Commissions alleges to be engaged in cartel activities can respond to the charges before the Tribunal, in fulfilment of the mandate of the competition Act.</li> </ul> <p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the target is evidenced by minutes of the CC meeting to refer or non-refer cartel cases to the Tribunal.</li> </ul>	Cartels
	d) Cartel Prosecutions	17.	% of cartel cases won at the Tribunal.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Winning means, the relief sought by the Commission is upheld partially or in full or variation thereof by the Tribunal or the courts.</li> <li>The percentage of cartel cases, where a final decision of the Tribunal and or the courts has been attained, which the Commission wins within the reporting period.</li> <li>The target is not met if the Commission's case is dismissed by the</li> </ul>	LSD & Cartels
		18.	% of cartel cases won at the courts.		

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>Tribunal or the courts in its entirety.</p> <ul style="list-style-type: none"> <li>Where the Commission case is partially upheld by the Tribunal or other courts this target is met.</li> <li>This definition excludes cases which are under appeal or review at the courts at the time of reporting.</li> <li>The indicator includes cartel cases completed through settlement agreements, pre and post referral.</li> <li>The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>It is the Commission's goal to successfully prosecute cartelists. Success at the Tribunal and courts confirms the rigour applied by the Commission and the correctness of its decisions.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The indicator is determined from orders of the Tribunal and/or the Courts where cartel cases are under litigation.</li> <li>Orders of the Tribunal/courts are accessible to the general public and the Commission keeps records thereof.</li> <li>Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage.</li> <li>The annual result must denote <i>actual wins/losses</i> as at year- end for the FY, and not as a cumulative result of the quarterly performance.</li> <li>The data is captured on the divisional DCT, which indicates the</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>date of the judgement and whether the judgement is in favour of not in favour of the Commission.</p> <ul style="list-style-type: none"> <li>Orders/ decisions of the Tribunal and/or the courts are accessible to the general public and the Commission keeps records thereof.</li> </ul>	
	e) Prosecution of Abuse of dominance, restrictive practices and exemption applications	19.	% of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Winning means, the relief sought by the Commission is upheld partially or in full or variation thereof by the Tribunal or the courts.</li> <li>The percentage of cases, where a final decision of the Tribunal and or the courts has been attained, which the Commission wins within the financial year.</li> <li>This definition excludes cases which are under appeal or review at the time of reporting, i.e. a Tribunal or other court decisions in favour or against the Commission cannot be counted if it is under appeal or review at the time or reporting).</li> <li>Where the Commission case is partially upheld by the Tribunal or other courts this target is met.</li> <li>The indicator includes enforcement cases (excluding cartels and market inquiries) completed through settlement agreements, both pre- and post- referral.</li> <li>The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>It is the Commission's goal to successfully prosecute contraveners</li> </ul>	LSD
		20.	% of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation.		

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>and to ensure that market conduct remedies and exemption decisions are upheld by the Tribunal and the courts. Success at the courts confirms the rigour applied by the Commission and the correctness of its decisions.</p> <p><b>Collection of Data: Method of Calculation</b></p> <ul style="list-style-type: none"> <li>The indicator is determined from the number of final Tribunal or court orders issued (excluding cases under appeal or review at the time of reporting) where enforcement cases were under litigation.</li> <li>Orders of the Tribunal/courts are accessible to the general public and the Commission keeps records thereof.</li> <li>Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage.</li> <li>The annual result must denote actual wins/losses as at year- end for the FY, and not as a cumulative result of the quarterly performance.</li> <li>The data is captured on the divisional DCT, which indicates the date of the judgement and whether the judgement is in favour of not in favour of the Commission.</li> <li>Orders/ decisions of the Tribunal and/or the Courts are accessible to the public and the Commission keeps records thereof.</li> </ul>	
	f) Merger Litigation	21.	% of merger decisions upheld by Tribunal.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The percentage of the Commission's decisions on contested Large Mergers, reconsideration applications, prior implementation cases and merger reviews which are upheld at the Tribunal and at the courts.</li> </ul>	LSD
		22.	% of merger decisions upheld by the courts.		



STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>This definition excludes cases which are under appeal or review in the courts at the end of the reporting period. i.e. a Tribunal or CAC decision in favour or against the Commission cannot be counted if it is under appeal or review at the time of reporting.</li> <li>This definition includes cases where the Commission recommendation/decision is subsequently amended through (a) negotiations between the Commission and parties and ultimately approved by the Tribunal, and (b) amended through a decision by the Tribunal or the courts.</li> <li>The indicator includes cases completed through settlement agreements, pre and post referral.</li> <li>Where the Commission case is partially upheld by the Tribunal or other courts this target is met.</li> <li>The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>The rationality of Commission's decisions is best tested by the Tribunal and the Courts. Decisions upheld by the Tribunal and the Courts confirm the rigour applied by the Commission and the correctness of its decisions.</li> </ul> <p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the indicator is evidenced by the decision of the Tribunal and/or the courts which pertain to mergers taken within the reporting period.</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage.</li> <li>The annual result must denote actual wins/losses as at year- end for the FY, and not as a cumulative result of the quarterly performance.</li> <li>Orders/ decisions of the Tribunal and/or the Courts are accessible to the public and the Commission keeps records thereof.</li> </ul>	
	g) Interlocutory litigation	23.	% of interlocutory decisions upheld by the Tribunal.	<b>Definition:</b> <ul style="list-style-type: none"> <li>The percentage of the Commission's decisions on interlocutory applications upheld at the Tribunal and at the courts.</li> <li>This definition is limited to interlocutory applications that may have a strategic impact on a case such as exception applications, jurisdictional challenges, dismissal applications, and reviews excludes process applications/considerations such as discovery, extensions,</li> <li>Excludes cases which are under appeal or review in the courts at the end of the reporting period. i.e. a Tribunal or CAC decision in favour or against the Commission cannot be counted if it is under appeal or review at the time of reporting.</li> <li>This definition includes cases where the Commission recommendation/decision is subsequently amended through (a) negotiations between the Commission and parties and ultimately</li> </ul>	LSD
		24.	% of interlocutory decisions upheld by the courts.		

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>approved by the Tribunal, and (b) amended through a decision by the Tribunal or the courts.</p> <ul style="list-style-type: none"> <li>• Matters completed through settlement agreements are also included.</li> <li>• Where the Commission case is partially upheld by the Tribunal or other courts this target is met.</li> <li>• The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>• The rationality of Commission's decisions is best tested by the Tribunal and the courts. Decisions upheld by the Tribunal and the courts confirm the rigour applied by the Commission and the correctness of its decisions.</li> </ul> <p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The achievement of the indicator is evidenced by the decision of the Tribunal and/or the courts which pertain to interlocutory applications taken within the reporting period.</li> <li>• Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage.</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>The annual result must denote actual wins/losses as at year- end for the FY, and not as a cumulative result of the quarterly performance.</li> </ul> <p>Orders/ decisions of the Tribunal and/or the courts are accessible to the public and the Commission keeps records thereof.</p>	
<b>STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES</b>					
<b>4. Improved compliance &amp; awareness</b>	a) Domestic outreach initiatives	25.	No. of education, training and outreach initiatives conducted on Competition Act.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Stakeholders refers to government officials, trade unions/ federations, organizations representing business and consumers and the general public.</li> <li>Education, training and Outreach programs refers to educations initiatives which aim to improve stakeholder understanding of the Competition Act, and therefore promoting compliance.</li> <li>Workshops or outreach programs conducted refer to those initiated by the Commission.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>Stakeholder education and awareness on competition law and policy is an advocacy mandate of the Commission. Stakeholders are taught about how to effectively participate in the Commission's processes.</li> <li>The Commission engages in outreach programmes as part of reaching members of the public and publicizing its work and to</li> </ul>	Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>promote compliance.</p> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a post- event report noted at the CC or EXCO Meeting.</li> </ul>	
		26.	Number of awareness publications on the Competition Act.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Publications refers to training material including pamphlets, presentations, newsletters, booklets, reports etc. which are used in the process of improving stakeholders' understanding of the Competition Act.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>Stakeholder education and training on competition law and policy is an advocacy mandate of the Commission. Stakeholders are taught about how to effectively participate in the Commission's processes.</li> <li>The Commission engages in education and training and publications as part of reaching members of the public and publicizing its work and to promote compliance.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a Commission Meeting approved publication being uploaded on the Commission's website of distributed to the public.</li> </ul>	Advocacy & OTC
	b) External Guidelines	27.	No. of Guidelines on the application of the Act issued to	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Guidelines are detailed explanatory directives on the Commission's</li> </ul>	LSD & ERB

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	on the application of the Act		stakeholders.	<p>policy approach to any aspect of the Competition Act.</p> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>As the custodian of the Competition Act, the Commission issues Guidelines to stakeholders to guide them on the application of the Act in particular circumstances.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The attainment of the target is denoted by approval of the Guidelines at the Commission Meeting or EXCO.</li> <li>Details of timelines will be on divisional DCT.</li> </ul>	
	c) Training	28.	% of advisory opinions issued within 60 days.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Non-binding advisory opinion is a written guidance issued by the Commission.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The purpose of the advisory Opinion is to assist the requestor to comply with the provisions of the Competition Act.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The number of advisory opinions issued by the Commission in the relevant reporting period within the service standard.</li> <li>The turnaround time for issuing the advisory opinion will only begin to run from the date that all the relevant information required by the Commission has been submitted.</li> <li>If all the relevant information required by the Commission has not</li> </ul>	LSD

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>been submitted, the turnaround time will not commence.</p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by an advisory opinion noted at the CC or EXCO Meeting.</li> </ul>	
5. Improved understanding of market dynamics in priority sectors.	a) Market Inquiries	29.	No. of Market Inquiries initiated.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Market Inquiries are a general inquiry into the state of competition in a market, which the Commission undertakes under provisions in the Act. The initiation of a Market Inquiry refers to the publication of final Terms of Reference in the Government Gazette.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>A Market Inquiry allows the Commission to undertake an in- depth probe of a market in order to understand competition dynamics, without initiating an investigation into particular conduct.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the indicator is determined by the decision of the Commission Meeting to initiate the Market Inquiry.</li> </ul>	MCD
		30.	No. of Market Inquiries completed.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The ‘completion’ of a Market Inquiry refers to the submission of a Final Report on the inquiry to the Commission Meeting.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Final Report of a Market Inquiry can have actionable recommendations, which have an impact on the public, on Government or on the market.</li> </ul>	MCD

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<b>Collection of Data/ Method of Calculation:</b> <ul style="list-style-type: none"> <li>The achievement of the indicator is denoted by the approval of the final market inquiry report approved by the CC or EXCO meeting.</li> </ul>	
	b) Industry scoping studies	31.	No. of industry scoping studies conducted in prioritized sectors.	<b>Definition:</b> <ul style="list-style-type: none"> <li>A scoping study is a report which comprises an economic study of a market or industry, largely to identify potential competition issues which the Commission can further probe.</li> </ul> <b>Purpose/ Importance:</b> <ul style="list-style-type: none"> <li>The Commission undertakes scoping studies to assess markets for potential anti-competitive conduct. This work assists the Commission in identifying not only cases to be initiated but also informs potential market inquiries to be initiated.</li> </ul> <b>Collection of Data/ Method of Calculation:</b> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a scoping study report noted at the CC or EXCO Meeting.</li> </ul>	ERB
	c) Impact assessments on Commission decisions or competition	32.	No. of impact assessment studies completed.	<b>Definition:</b> <ul style="list-style-type: none"> <li>'Impact Assessment Studies are economic studies which have been undertaken by the Commission to measure the impact of its work on markets or regulation. 'Completed' refers to impact assessment studies which have served at the CC meeting.</li> </ul> <b>Purpose/ Importance:</b>	ERB



STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	policy.			<ul style="list-style-type: none"> <li>The Commission seeks to qualitatively and quantitatively measure the impact of its decisions in particular sectors on consumers and the economy, to ensure its effectiveness.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the indicator is denoted by an impact assessment report which has been approved/ noted at the CC or EXCO meeting.</li> </ul>	
	d) Advocacy in priority sectors	33.	No. of advocacy cases completed in priority sectors.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI refers to the number of advocacy case undertaken which fall within the Commission's pre-determined priority sectors.</li> <li>Advocacy cases refers to those cases or projects initiated by the Commission or resulting from a complaint in which the competition or regulatory issue is to be addressed through non-enforcement, but through advocacy processes.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>Anti-competitive conduct has a stifling effect on the economy, particularly in critical sectors. The completion of an advocacy case seeks to address competition concerns even where the Commission does not seek the prosecution of the conduct.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The completion of an advocacy case is evidenced by minutes of a Commission Meeting decisions to conclude advocacy work on the case.</li> </ul>	Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>The case is regarded as completed if a phase/part of it is concluded, even if new work is still to be done on the same broader case.</li> <li>A list of completed advocacy cases is kept in the Data Compilation Template (DCT) of the division.</li> </ul>	
6. Improved co-ordination on the application of economic policy and competition policy.	a) Strategic Partnerships with relevant stakeholders.	34.	No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Workshops or seminars which have been hosted by the Commission within the themes competition, trade, industrial policy and/or regulatory matters.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission will partner with other economic role-players on competition, trade and industrial policy matters. This work will result in the sharing of ideas, alignment of priority sectors, alignment of policy actions, understanding of each other's priorities, amongst others.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a post-workshop/seminar memorandum noted at the CC meeting.</li> <li>The workshop/ seminar must have transpired within the reporting period, even if it is noted by the CC meeting in a subsequent reporting period.</li> </ul>	Advocacy
		35.	No. of initiatives to promote entry & participation of HDIs.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI relates to the Commission's initiated outreach activities/projects with HDIs, including business owned by women,</li> </ul>	Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>youth and people with living disabilities. These includes undertaking collaborative research projects, workshops and seminars with Women and other HDIs associations/groups.</p> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The decision on which HDIs the Commission partners with at a point in time will be in the Commission meeting minutes.</li> <li>• The achievement of the target is evidenced by minutes of the CC meeting, noting a report which reflects joint activities undertaken with HDIs.</li> <li>• The initiative with HDIs must have transpired within the reporting period, even if it is noted by the CC meeting in a subsequent reporting period.</li> </ul>	
		36.	No. of Annual Conferences hosted.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>• The Annual Competition Conference is an event/ meeting of local and international stakeholders, where stakeholders share their research and experiences on common subjects.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The achievement of this indicator is evidenced by a post-Conference memorandum noted at the CC meeting.</li> <li>• The workshop/ seminar must have transpired within the reporting period, even if it is noted by the CC meeting in a subsequent reporting period.</li> </ul>	OTC & ERB

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	b) Policy Responses	37.	No. of submissions or responses to policy or regulation.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI relates to written input which reflects the views of the Commission on a particular policy or regulatory matter.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission undertakes competition assessment of policy and regulation, according to s.21 of the Competition Act. In addition to informing the Minister of anti-competitive legislation, the Commission submits written responses to the relevant policymakers.</li> <li>Responding to policy or regulatory matters can lead to the promotion of competition which is a core mandate of the Commission.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by an approval of a written submissions or policy responses by the CC meeting, within the reporting period.</li> </ul>	Advocacy
	c) Research & Thought Leadership	38.	No. of research and thought leadership insights published.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Research and thought leadership insights are economic studies undertaken by the Commission on current and emerging issues related to competition policy (incl. the state and role of competition) and competition law enforcement (incl. toolkits and techniques).</li> <li>'Published' refers to research and thought leadership studies</li> </ul>	ERB

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>which have been published by the Commission (including platforms such as Commission books and working papers published on the Commission's website), published by an international organization or university, published by leading industry online publications (CLI, GCR, CPI), conference papers, book chapters and academic journal articles.</p> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission undertakes research into competition policy and law enforcement issues in order to develop a deeper, evidence-based understanding of current / emerging debates in these fields in order to develop informed positions on these issues.</li> <li>The Commission also aspires to take a thought leadership role in shaping some of the debates in these fields, both locally and internationally. This includes bringing a development perspective to the competition policy field.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the indicator is the publishing of the research or thought leadership insight as defined within the reporting period.</li> </ul>	
<b>7.Increased importance of developmental perspectives in domestic</b>	a) Collaboration with regional and international	39.	No. of collaborative research and/or other projects undertaken with African, BRICS and international partners.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The indicator refers to the Commission undertaking collaborative research projects or other forms of collaboration with African, BRICS and international partners.</li> <li>Research and "Projects refers to joint research on competition</li> </ul>	OTC

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
and international competition law discourse.	partners.			<p>issues; capacity building workshops; joint publication of papers, newsletters; participation in surveys and questionnaires; signing of MOUs; management of working groups and case information exchange; participation in and coordination of conferences, engagements and forums.</p> <ul style="list-style-type: none"> <li>African partners pertain to bilateral partnerships and multilateral/regional bodies such as the African Competition Forum, COMESA and AfCFTA.</li> <li>'BRICS' partners pertain to the BRICS member states.</li> <li>International partners pertain organizations such as OECD, UNCTAD, ICN,</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>Through practical collaboration with its African, BRICS and international counterparts, cooperation is deepened, and advances made in increasing developmental perspectives in domestic and international competition law discourse.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by reports or memos of Commission's collaborative work noted at CC meeting.</li> </ul>	
<b>STRATEGIC GOAL 3: A PEOPLE-CENTRIC HIGH-PERFORMANCE ORGANIZATION</b>					
8.Sound Corporate Governance	a) Audit Outcome	40.	Audit opinion.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The target refers to audit outcomes where all areas are unqualified, with no material reportable matters.</li> </ul>	Finance

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission seeks to achieve a clean audit in the financial year, as a demonstration of effective resource management.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is denoted by a clean audit opinion from the Auditor General Report regarding the financial period under review.</li> <li>The target is measured annually.</li> </ul>	
9. Secure, harmonious and conducive working environment	b) Organizational Structure Review	41.	Review of Organisational Structure.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI entails reviewing the current structure and functions of the Commission and developing/designing a revised structure in line with the current mandate of the institution.</li> <li>On completion of the review of the structure, the Commission must implement the structure in different phases.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is denoted by Report on implementation of Organisational Structure noted/approved at the Commission Meeting or Exco.</li> </ul>	Advocacy, CSD & Finance
	c) Conducive Facilities & Efficient	42.	Implementation of Phase 1 and initiation of phase 2 of integrated business system.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI entails the procurements of the integrated business system,</li> </ul>	CSD & Finance

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	Security			<p>to provide solution for the Commission's IT, Finance and HR. The initiation of phase 2 will focus on case management and information and knowledge management resources and tools.</p> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is denoted by a Go-live Report confirming migration to live phase 1 system noted at EXCO. Signed off report on the initiation of phase 2 by EXCO.</li> <li></li> </ul>	
		43.	Relocate staff to appropriate Commission office space.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Appropriate office space means office building and infrastructure that complies with Occupational Health and Safety (OHS) laws.</li> <li>Target is met when a report denoting that the Commission's employees have been moved to an appropriate office building which complies with the OHS laws has been approved at EXCO.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>To ensure that the Commission staff is working in an appropriate working environment.</li> </ul> <p><b>Collection of Data/ Method of Calculation</b></p> <p>Target is met when:</p> <ul style="list-style-type: none"> <li>A report denoting that the Commission's employees have been moved to an appropriate office building which complies with the OHS</li> </ul>	CSD & Finance



STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>laws has been approved at EXCO.</p> <ul style="list-style-type: none"> <li>We conclude acquisition of our own office building.</li> <li>Title Deed on the new office building acquired.</li> </ul>	
		44.	Reports on implementation of the OHS compliance plan.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Anticipation, recognition, evaluation and control of hazards arising in the Commission offices that could impair the health and wellbeing of our employees and visitors. The Commission has an annual OHS compliance plan which denotes quarterly compliance plan (internal &amp; legislated).</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The purpose of the indicator is to ensure that the Commission offices comply with the occupational health and safety laws.</li> </ul> <p><b>Collection of Data/ Method of Calculation</b></p> <ul style="list-style-type: none"> <li>The indicator will be reported to EXCO on a quarterly basis and the cumulative total will be reported at the end of the financial year.</li> <li>A quarterly report is issues to report on progress against legislation and/or the OHS Compliance Plan.</li> <li>Achievement of this target is denoted by the report on instances of compliance with the OHS Act and the internal OHS compliance plan for the Commission/EXCO.</li> </ul>	CSD
10. Highly engaged,	a) Talent manageme	45.	% of HR spend on Learning and Development.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The Commission aims to spend overall 1% of its salaries costs on</li> </ul>	CSD &OTC

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
motivated and productive workforce	nt			<p>learning and development initiatives per annum.</p> <p><b>The purpose:</b></p> <ul style="list-style-type: none"> <li>The purpose of the indicator is to ensure that the Commission supports the development of its employees and is able to build an internal talent pipeline.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The indicator will be reported to EXCO on a quarterly basis and the cumulative total will be reported at the end of the financial year. The reason for not setting a quarterly target is because learning and development is cyclical.</li> </ul>	
		46.	% retention rate of staff complement.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The Commission is instituting programs to maintain high staff-retention levels.</li> <li>The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission seeks to ensure sustainable delivery and impact by retaining its employees.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The baseline from which this indicator is measured is the Total Staff Complement at the beginning of the Quarter. The indicator <i>excludes</i></li> </ul>	CSD

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>graduate trainees.</p> <ul style="list-style-type: none"> <li>The indicator will be reported to EXCO on a quarterly basis and the cumulative total will be reported at the end of the financial year.</li> </ul> <p><b>Quarterly performance</b> is measured as follows: Baseline (i.e. staff complement as beginning of Quarter) <i>minus</i> number of staff who have left in the Quarter <i>divided by</i> Baseline <i>multiply by</i> 100.</p> <p><b>Annual performance</b> is measured as the average of the four quarters (i.e. (Q1+Q2+Q3+Q4) / 400 x 100.</p>	
		47.	% of staff reached through training academy initiatives.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI measures the percentage of staff, out of the total staff complement, that trained through the academy over the year.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>The purpose of the indicator is to ensure that the Commission supports the development of its employees and is able to build internal talent.</li> </ul> <p><b>Method of Calculation</b></p> <ul style="list-style-type: none"> <li>The indicator is calculated as a total number of employees who have attended training offered through the Commission's Academy. No double counting of repeat attendees.</li> <li>The achievement of the target is measured as follows: total staff</li> </ul>	OTC

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>trained / total staff complement as at end of Q4 x 100.</p> <p><b>Collection of Data/Evidence</b></p> <ul style="list-style-type: none"> <li>• The achievement of the target is denoted by a final report at EXCO in Q4 reporting on training attendance over the year, in relation to the target set.</li> <li>• Evidence includes attendance registers signed by each employee who attended the training or electronic evidence of attendance in case of virtual training.</li> </ul>	
<b>Business Process Improvement</b>	Review and redesign of business processes to improve turnaround times and organisational agility	48.	Review the CC Forms for complaints/merger filing.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>• The Commission receives complaints and mergers through CC Forms which require the parties to submit specific information.</li> <li>• Reviewing the complaint and merger filing forms entail a detailed review of each requirement on the form and where applicable recommend the changes.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>• A review of the filing forms is required to ensure a more efficient and practical process filing process.</li> </ul> <p><b>Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• A report on review of the relevant CC Forms detailing the process and areas reviewed, and recommendations.</li> </ul>	LSD

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<b>Collection of Data/Evidence.</b> <ul style="list-style-type: none"> <li>• Report submitted and approved/noted by EXCO of the CC meeting.</li> </ul>	
<b>Effective collaboration with other state entities</b>	Coordinated initiatives	49.	Established initiative/workshop/seminar/online platform on transversal programmes, learning and development and employee wellness.	<b>Definition:</b> <ul style="list-style-type: none"> <li>• Pursuing joint programmes on learning and development to capacitate, build skills and opportunities for staff and targeted groups.</li> <li>• Identify and implement joint initiatives on employee wellness. A number of empowerment programmes focusing on youth, women and people with disabilities.</li> <li>• Establish a common platform to share information and knowledge on various topics covering competition law and economics, economic empowerment, and transformation.</li> </ul> <b>Collection of Data/Method of Calculation</b> <ul style="list-style-type: none"> <li>• The achievement of this indicator is denoted by an establishment of a committee constituting of various members in the DTIC and its entities. This enables collaborative efforts of the transformation agenda through coordinated talent development programmes for targeted groups.</li> <li>• The achievement of this indicator is denoted by the creation of a joint online platform/seminar/workshop and/or link to share information and knowledge on competition law, economics and economic transformation and empowerment.</li> </ul>	CSD
	Partnerships	50.	Report on collaboration with MOU	<b>Definition:</b>	Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	with other Regulators and state entities.		partners, Government and Sector Regulators	<ul style="list-style-type: none"> <li>The indicator refers to the Commission reporting on various work done in collaboration with several MOU partners, government and sector regulators. This include new collaborative work and developments/progress on work historically done.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>The Commission has concluded several MOUs with sector regulators and government departments/entities. The Commission also contribute greatly in policy developments through advocacy initiatives. The purpose of this indicator is to report on progress and benefits/challenges on collaborative work.</li> </ul> <p><b>Method of Calculation &amp; Collection of Data/Evidence</b></p> <ul style="list-style-type: none"> <li>The indicator will be reported to EXCO on a quarterly basis.</li> <li>Achievement of this target is denoted by the report submitted to the Commission/EXCO.</li> </ul>	
	<b>Efficient supply chain process.</b>	51.	% of suppliers paid within 30 days.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI includes payment of suppliers of the Competition Commission, as guided by National Treasury.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>The purpose of the indicator is to ensure an efficient supply chain services which does not disadvantage the service providers, most importantly the SMEs and HDIs.</li> </ul>	Finance

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p><b>Method of Calculation &amp; Collection of Data/Evidence</b></p> <ul style="list-style-type: none"> <li>• The indicator will be calculated as a percentage of payments paid to service providers.</li> <li>• Of the payments made in the quarter/year, what percentage was paid within 30 days?”.</li> <li>• The turnaround time only start when all the relevant information required by the Commission has been submitted.</li> <li>• Achievement of this target is denoted by the report (Finance Report) submitted to the Commission/EXCO.</li> </ul>	