

# ANNUAL REPORT

2023/24



*competition* **commission**  
south africa



*a growing, deconcentrated and inclusive economy*



The Competition Commission declares zero tolerance for fraud and corruption and intends serving the South African people by remaining true to its mission

**Pledge of the Accounting Authority and EXCO:**

Internally and externally, the Accounting Authority and Management vow to combat fraud and corruption as part of their duties of ensuring and maintaining effective Risk Management.

Use the National Anti-Corruption Hotline 0800 701 701 to report any suspicious fraudulent and corrupt activities.



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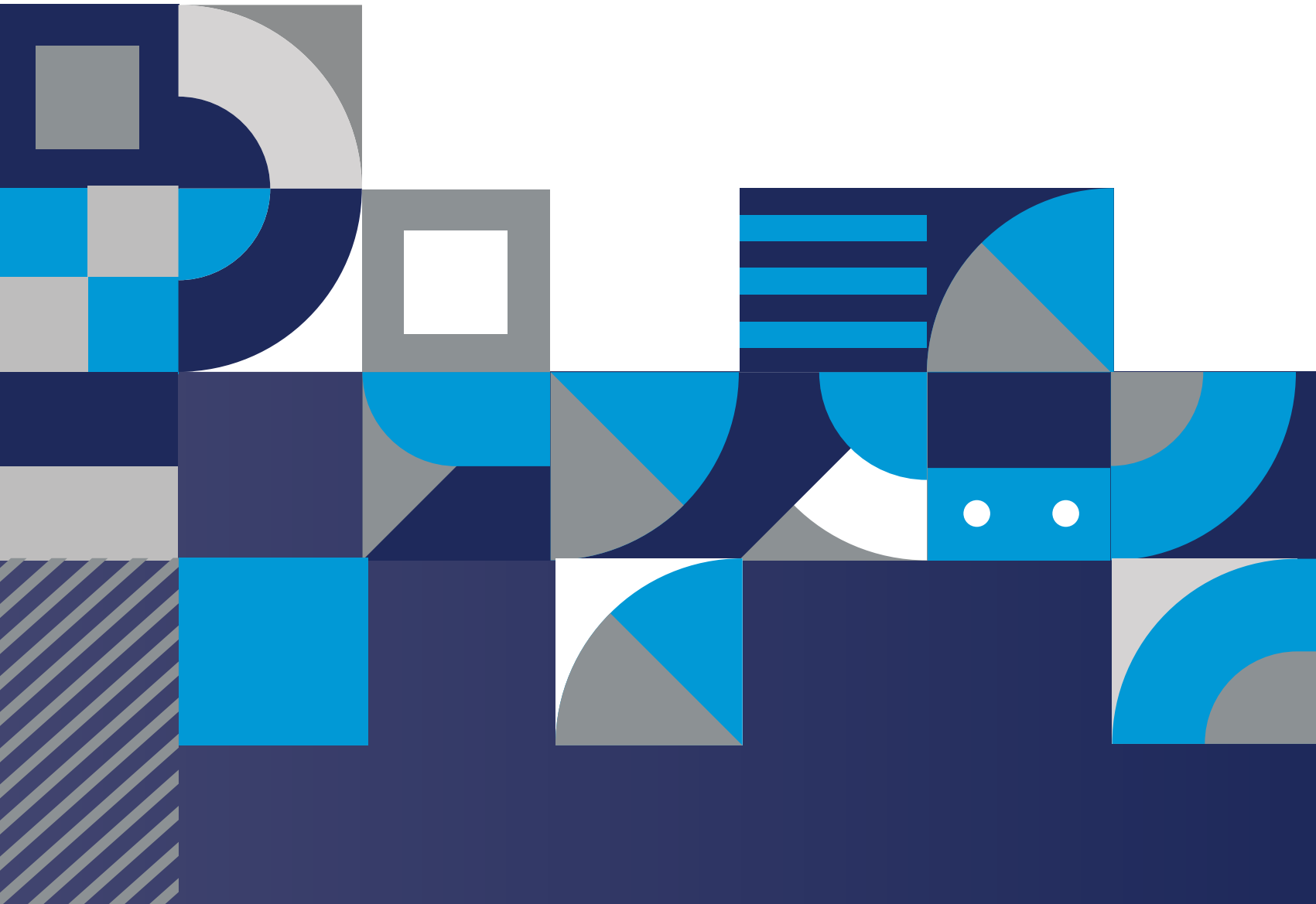
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# PART A

## GENERAL OVERVIEW





## PUBLIC ENTITY'S GENERAL INFORMATION

### REGISTERED NAME

Competition Commission of South Africa

### PHYSICAL ADDRESS

The dtic campus,  
Block C, Mulayo,  
77 Meintjies Street,  
Sunnyside,  
Pretoria, 0002

### TELEPHONE NUMBER/S

+27 12 394 3200

### WHATSAPP / SMS LINE

+27 (0) 84 743 0000

### EMAIL ADDRESS

ccsa@compcom.co.za

### WEBSITE ADDRESS

www.compcom.co.za

### EXTERNAL AUDITORS

The Auditor-General of South Africa

### BANKERS

ABSA Business Bank  
South African Reserve Bank

### COMPANY SECRETARY

Mr Mduduzi Msibi

## LIST OF ABBREVIATIONS/ ACRONYMS

<b>ACF</b>	African Competition Forum	<b>IRC</b>	Information Resource Centre
<b>AFS</b>	Annual Financial Statements	<b>ISPs</b>	Internet Service Providers
<b>AGSA</b>	Auditor General of South Africa	<b>LSD</b>	Legal Services Division
<b>AVE</b>	Advertising Value Equivalent	<b>M&amp;A</b>	Mergers and Acquisitions Division
<b>BBBEE</b>	Broad Based Black Economic Empowerment	<b>MCD</b>	Market Conduct Division
<b>CAC</b>	Competition Appeal Court	<b>NDP</b>	National Development Plan
<b>CD</b>	Cartels Division	<b>NEDLAC</b>	National Economic Development and Labour Council
<b>CFO</b>	Chief Financial Officer	<b>OTC</b>	Office of The Commissioner
<b>CLP</b>	Corporate Leniency Policy	<b>PFMA</b>	Public Finance Management Act No. 1 of 1999, as amended
<b>Competition Bill</b>	Competition Amendment Bill 2017	<b>SADC</b>	Southern African Development Community
<b>ConCourt</b>	Constitutional Court of South Africa	<b>SARS</b>	South African Revenue Service
<b>CRESSE</b>	Competition and Regulation Summer School and Conference	<b>SCA</b>	Supreme Court of Appeal
<b>CSD</b>	Corporate Services Division	<b>SCM</b>	Supply Chain Management
<b>DAFF</b>	Department of Agriculture, Forestry and Fisheries	<b>SMEs</b>	Small and Medium Sized Enterprises
<b>Data Inquiry</b>	Data Services Market Inquiry DSMI	<b>The Commission</b>	Competition Commission of South Africa
<b>DMRE</b>	Department of Mineral Resources & Energy	<b>The Competition Act</b>	Competition Act No. 89 of 1998, as amended
<b>EAP</b>	Economically Active Population	<b>The dtic</b>	Department of Trade, Industry and Competition
<b>EEA</b>	The Employment Equity Act	<b>The Tribunal</b>	Competition Tribunal
<b>ERB</b>	Economic Research Bureau	<b>ToRs</b>	Terms of Reference
<b>HDPs</b>	Historically Disadvantaged Persons	<b>TR</b>	Treasury Regulations
<b>HR</b>	Human Resources		
<b>ICN</b>	International Competition Network		
<b>ICT</b>	Information and Communication Technology		





## GLOSSARY OF TERMS

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

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

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

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

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

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

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

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

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

**“Public interest”** refers to the consideration of factors set out in section 12A of the Competition Act, in the evaluation of mergers and acquisitions applications.

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



**Mr Parks Tau, MP**

Minister of Trade, Industry, and Competition

**A**s the Minister of Trade, Industry, and Competition, I am pleased to present the Annual Report of the Commission for the 2023/24 financial year. This year has been marked by significant strides and challenges as we continue to champion industrialisation for export-led and faster growth of the economy. Competition and consumer protection in South Africa's dynamic economic landscape are critical in the achievement of the priorities of the 7th Administration in general and the priorities defined by **the dtic**.

The Commission has demonstrated unwavering commitment to its mandate, playing a crucial role in promoting a competitive economy that benefits all South Africans. The 2023/24 financial year has seen the Commission engage in rigorous enforcement activities, advocacy initiatives, and impactful research to address anti-competitive practices and enhance market transparency.

One of the notable achievements of this period is the completion of the Online Intermediation Platforms Market Inquiry (OIPMI), which is a first on many fronts, including that it is the first such inquiry undertaken by a developing African country. The OIPMI set out to assess whether features in business to consumer (B2C) online platform markets adversely affected competition between platforms and between businesses using these platforms, including by Small and Medium Enterprises (SMEs) and HDPs in terms of section 43B(1)(a) of the Competition Act.

The B2C platforms include eCommerce, online travel agencies, food delivery, app stores, and property/automotive classifieds, along with the role of Google Search in shaping B2C platform competition. These platforms were selected as they affect a wide range of business activities throughout the country's economy. The remedial actions should provide the following benefits to platforms, businesses, and consumers: greater visibility and opportunity for smaller South African platforms; enable more intense platform competition; level the playing field for small businesses selling through these platforms; and provide a more inclusive digital economy.

This Annual Report highlights the contribution of the Commission in fulfilling its core mandate whilst aligning and collaborating with the dtic's 18 entities towards the realisation of the priorities of the 6h Administration including:

- Increased industrialisation
- Strengthened economic transformation
- Building a capable state

By concentrating on these central outcomes, the dtic group—which includes regulators, financiers, and technical institutions—maximises its positive impact for the people of South Africa.

The Commission continued to enhance its core mandate while aligning its efforts with the dtic group's common set of outcomes, including the 45 central outcomes. These outcomes were designed to measure performance based on tangible impacts, such as the number of jobs supported, investment unlocked, and the output generated by the work of public entities. The Commission's resilience and adaptability in the face of economic and regulatory challenges are noteworthy. Despite the complexities of the global economic environment, the Commission has remained steadfast in its vision to promote a growing, deconcentrated and inclusive economy.

I extend my gratitude to the Commissioner, Doris Tshepe, assisted by Deputy Commissioners Hardin Ratshisusu, Bukhosibakhe Majenge and James Hodge, members of the Executive Committee who steered the ship during the 2023/24 financial year, as well as the entire team of the Commission who continue to deliver exceptional results, often in difficult circumstances.



**Mr Parks Tau, MP**  
Minister of Trade, Industry and Competition





**Doris Tshepe**  
Commissioner

The Commission presents this Annual Report to South Africans on the progress it has made in the implementation of the Competition Act as we continue to work towards more competitive, transformed, and inclusive markets that are open to participation by all South Africans.

During the financial year under review, the Commission has continued to focus on markets that affect low-income consumers, including in the areas of food prices, healthcare, and energy supply.

In relation to food prices, we launched the Fresh Produce Market Inquiry to understand, amongst others, the challenges that small and black fresh produce farmers face. These problems related to how and where such farmers sell their produce, whether they are charged higher prices when buying inputs such as fertiliser, seed and chemicals (called price discrimination), whether they are forced to sell their produce at unreasonable prices because of powerful buyers (called buyer power) and issues related to how they farm, such as access to water and finance. Fresh produce value chains have significant potential to allow more emerging farmers and existing (small and black) farmers to expand their operations, particularly into formal sectors such as selling to grocery supermarkets.

The Commission has also continued to monitor essential food prices to gain insight into the drivers of high and rising food inflation. Our research found that gross margins at the retail level have remained relatively stable over the past four years; indicating that South African retailers have neither absorbed nor overcompensated for the rising costs of sales. We have also conducted more comprehensive reviews of the beef and canned pilchards value chains given the prominence of these proteins in the consumption baskets of low-income South

Africans. In the beef value chain, we have seen signs of increasing concentration and vertical integration throughout the chain which may affect the entry and participation by smaller competitors. With respect to canned pilchards, we found that while the price of canned pilchards has increased, producers have absorbed some of the cost increases which is likely to have benefitted cash-strapped consumers. The Commission will continue to monitor essential food prices.

In healthcare, the Commission sustained its focus on the exploitative and exclusionary impact patent evergreening has on the affordability of pharmaceutical drugs. This practice raises prices to the state and to ordinary South Africans. It also limits potential competition from generic manufacturers, which could drive prices down significantly. One such case is the investigation we initiated against Johnson & Johnson for excessive pricing and exclusionary conduct in relation to Bedaquiline (trading as Sirturo®), a drug used to treat tuberculosis, a disease afflicting millions of South Africans. The case has since been resolved with Johnson & Johnson agreeing not to enforce its patent for Sirturo®, thus opening the market for the entry of generic manufacturers. Importantly, the commitment relates not only to South Africa but also to 133 other low- and middle-income countries, expanding the benefit to millions of patients across the global south. Closer to home, the agreement has also resulted in significant savings to the fiscus, with Johnson & Johnson agreeing to reduce the Bedaquiline price it charged the state by approximately 40%. This case builds on the Commission's previous work on excessive pricing and exclusionary conduct in relation to cancer and HIV/Aids drugs.

In terms of energy supply, the Commission referred two complaints against Sasol for the excessive pricing of piped gas to the Competition Tribunal (Tribunal). The Commission found that Sasol Gas extracted markups of up to 72% on piped gas in certain instances, and that the practice endured for decades. Piped gas is an essential input for many industrial users, raising a concern about the potentially chilling effect of these pricing practices on manufacturing activity.

The Commission is also intensifying its focus on the competition dynamics in new or green energy markets, having conducted studies on the uptake of solar photovoltaic energy by industrial and domestic users, as well as conducting research on barriers to entry and transformation in renewable energy generation markets. These research projects form an important basis for the Commission to advocate for effective competition in new markets that are pivotal to the sustainable growth of the South African economy.

In addition to the focus on low-income consumers, the Commission remains determined to strengthen its investigative core with a focus on litigation strategy in cartels and the implementation of the amendments in market conduct. This is already bearing fruit, as the Commission referred a price discrimination complaint to the Tribunal in December 2023, the first of its kind since the amendments of this section of the Competition Act in 2019. The enforcement of price discrimination underscores our commitment to addressing abusive conduct that excludes small firms and firms owned or controlled by black South Africans from participating equitably in the economy.

Cartel conduct remains a focal point. Developments in cartel jurisprudence have required internal reflection on litigation strategy and case selection. The Commission is investing in positioning the institution for the successful prosecution of cartel conduct by identifying digital tools to aid detection and investigation, improving case selection, and prioritising training on litigation strategy, including seeking advice from international experts.

Over the past few years, competition regulators have had to come to grips with effective regulation in new and rapidly changing digital markets to ensure that these markets develop in a manner that is inclusive and competitive. In this regard, the Commission initiated a market inquiry into online intermediation platforms (OIPMI) in 2021 and published its final findings and recommendations in July 2023. The OIPMI achieved notable gains, especially for homegrown small and black-owned businesses by, amongst others, advocating for greater visibility for smaller South African platforms to acquire customers through Google Search.

This provides a level playing field for small businesses selling through platforms to access fairer pricing and opportunities for gaining visibility and customer acquisition relative to large national businesses. Further gains include providing a more inclusive digital economy through support for participation by black-owned South African businesses, and enabling more intense competition between platforms, including through the removal of wide and narrow price parity provisions. In securing many of these gains, the Commission is at the forefront of promoting digital competition globally.

One of the significant achievements in the international arena is the adoption of the African Continental Free Trade Area (AfCFTA) Protocol on Competition Policy. This protocol was adopted by the African Union Assembly during its 36th Ordinary Session, held from 18 to 19 February 2023. The Commission's Deputy Commissioner chaired the committee responsible for the AfCFTA Protocol on Competition Policy. The Commission continues to support and actively participate in the relevant programmes of the AfCFTA.

During the financial year under review, the Commission has achieved 93% of its targets in the Annual Performance Plan (APP).

Operationally, the Commission is placing renewed focus on impactful case selection and improving efficiency in case administration and investigations as well as ensuring the highest standards of integrity and accountability in the use of the financial resources entrusted to the Commission. This is exemplified in the achievement of the Commission's fifth successive clean audit.

The Commission has finalised the implementation of its revised Enterprise Resource Planning (ERP) tools, concentrating on improved management of its finances and human capital. This is expected to improve oversight of these areas and achieve greater efficiencies.

This financial year marks the penultimate year of our 2020-2025 strategy cycle as the Commission, marking a moment of renewed reflection on the progress we have made in the realisation of our vision, mission and strategic goals over the strategy cycle. We present this Annual Report at a time when the Commission is celebrating 25 years of competition regulation in South Africa, contributing to improved competition regulation on the African continent and influencing competition regulation across the world. However, while this Annual Report highlights our progress and achievements, we also acknowledge that we are at an inflection point. South Africans are facing significant headwinds and economic growth is far below the targets we set ourselves to address persistent unemployment, poverty and inequality. More must be done to improve the competitiveness, inclusivity, efficiency and structural transformation of our economy.

The Commission remains steadfast in its vision of contributing to a growing, deconcentrated and inclusive economy and will continue to focus its resources on markets and cases that have the greatest impact on the cost of living of South Africans and the re-industrialisation of the economy.

In conclusion, I am thankful to the Minister of the Department of Trade, Industry and Competition (the dtic), Mr. Parks Tau, the Ministry of the dtic and the dtic colleagues, for their continued support and for consistently holding us to a high standard in our work. I would also like to extend my thanks to all our stakeholders, including trade unions, businesses, and non-governmental organisations. Lastly, I am grateful to the Commission's Deputy Commissioners, the Executive Committee, and employees of the Commission for their dedication and commitment to the work of the Commission.



**Doris Tshepe**

Accounting Authority

The Competition Commission of South Africa





# 06

## STATEMENT OF RESPONSIBILITY AND CONFIRMATION OF ACCURACY FOR THE ANNUAL REPORT

### **To the best of my knowledge and belief, I confirm the following:**

All information and amounts disclosed in the annual report are consistent with the annual financial statements audited by The Auditor General of South Africa. The annual report is complete, accurate and free of any omissions. The annual report has been prepared in accordance with the guidelines on the annual report issued by National Treasury. The Annual Financial Statements (Part F) have been prepared in accordance with the Standards of Generally Recognised Accounting.

Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board, standards applicable to the public entity. The Accounting Authority is responsible for the preparation of the Annual Financial Statements and for the judgments made in this information. The Accounting

Authority is responsible for establishing and implementing a system of internal controls as designed to provide reasonable assurance to the integrity and reliability of the performance information, the human resources information and the annual financial statements. The external auditors are engaged to express an independent opinion on the annual financial statements. In our opinion, the annual report fairly reflects the operations, the performance information, the human resources information and the financial affairs of the public entity for the financial year ended 31 March 2024.

Yours faithfully



**Doris Tshepo**  
Accounting Authority  
The Competition Commission of South Africa



# 07

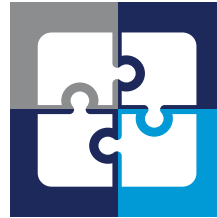
## STRATEGIC OVERVIEW



### VISION

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

Our vision is for the realisation of a growing and inclusive economy. The South African economy faces several challenges such as high food and energy inflation, slow economic growth, high unemployment, and electricity supply constraints. In the face of these challenges, strong competition law enforcement remains important and must pivot to give priority to the immediate economic challenges while laying the foundation for a more competitive economy. The Commission will continue to regulate in the interest of contestable markets to ensure that there is healthy competition between firms, that new businesses can emerge, existing businesses can expand, concentration levels in markets are lowered and all citizens are able to participate meaningfully 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, industrialisation and export promotion whilst expanding opportunities for SMMEs and the participation of blacks, youth, and women in the economy.



### VALUES

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

# VALUES OF THE COMMISSION



## COMMUNICATION

The ability to effectively convey information and express thoughts and facts. Demonstrates effective use of listening skills and displays openness to other people's ideas and thoughts.



## PROFESSIONALISM

An ability to demonstrate good work ethic, respect, integrity, and empathy.



## OWNERSHIP

The ability to commit self to task(s) at hand, accept responsibility for own actions, decisions and demonstrate commitment to accomplish work in an ethical and cost-effective manner.



## EMPLOYEE WELFARE

The ability of employees to achieve full potential whilst maintaining a healthy work-life balance.



## MAKING A DIFFERENCE

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



## TEAMWORK

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



## EFFICIENCY

The ability to measure how well resources are utilised (i.e. means and manner) in pursuit of quality results.



## OUR OUTCOME-ORIENTED GOALS

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

### GOAL 1:

#### **Enforcing and regulating towards economic growth and enhanced economic participation**

- In this goal, the Commission effectively uses the instruments of merger regulation, market inquiries and enforcement to address market concentration and achieve positive public interest outcomes.
- Further, the goal also applies to the investigation and prosecution of instances of abuse-of-dominance and restrictive conduct, and the unmasking and dismantling of cartels, with the creative use of remedies to promote market entry and participation.

### GOAL 2:

#### **Advocating for improved compliance and pro-competitive public policy outcomes**

- Under goal two, the Commission promotes compliance to the Competition Act through education and awareness initiatives with its key stakeholders: the public, big and small business, labour, government and consumers.
- Co-ordination with government and other regulators is crucial in promoting the development of pro-competitive public policy outcomes, particularly through the policy-making process.
- In this goal, the Commission also seeks to be a thought-leader on competition and economic issues, both domestically and internationally. This includes contributing to the national economic discourse and policymaking.

### GOAL 3:

#### **A People-Centric, High-Performance Organisation**

- In this goal, the Commission successfully delivers on its objectives through a cohesive, well-structured organisation in which staff, processes and systems perform optimally.
- The Commission provides Human Capital, Information Communication Technology, Facilities and Security solutions that enable the optimal performance of employees, supporting their well-being and performance.



## OUTCOMES

In line with strategic outcome-oriented goals, the Commission has developed a set of key outcomes which it seeks to realise. “Outcomes” in this context refers to a change in our target stakeholders’ status, behaviour, attitudes, commitment, or practices, attributed to the Commission achieving its strategic goals. Outcomes for the 2020-2025 strategic period are captured in the table below.

### STRATEGIC GOAL 1:

#### Enforcing and regulating towards economic growth and enhanced economic participation

- Efficient and effective merger regulation and enforcement;
- Competitive, contestable and deconcentrated markets;
- Improved public interest outcomes;
- Improved compliance and awareness;
- Existing competitive small and large businesses remain in the market.

### STRATEGIC GOAL 2:

#### Advocating for improved compliance and pro-competitive public policy outcomes

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

### STRATEGIC GOAL 3:

#### A people-centric, high-performance organisation

- Sound corporate governance;
- Secure, harmonious, and conducive working environment;
- Responsive corporate services systems to support workforce;
- Highly motivated, engaged and productive workforce.



## LEGISLATIVE AND OTHER MANDATES

### ESTABLISHMENT AND MANDATE OF THE COMPETITION COMMISSION

#### A) ESTABLISHMENT OF THE COMPETITION AUTHORITIES

The Commission was established with the objective of fostering fair competition, preventing anti-competitive practices, and ensuring consumer protection within the country's economic landscape. Empowered by the Competition Act, this regulatory authority is tasked with promoting a level playing field for businesses, encouraging innovation, and safeguarding consumer interests. Through its vigilant enforcement of competition laws and collaborative engagement with various stakeholders, the Commission aims to create a robust and equitable economy that benefits all South Africans.

Policymakers recognised early on that competition policy would be one of several economic tools which would be used to achieve transformation. It was thus considered important that the new competition policy framework be flexible enough to accommodate other economic instruments of the state such as trade and industrial policy.

From 1995, **the dtic** embarked on a consultative process to develop a new policy, which culminated in a National Economic Development and Labour Council (NEDLAC) agreement on competition policy principles. The result of this process was the Competition Act, which was adopted in 1998 and became effective as of 1 September 1999 (hereafter "Competition Act").

The Competition Act established the Commission, the Competition Tribunal ("Tribunal"), and the Competition Appeal Court (the "CAC"). The Commission is an investigative and prosecutorial authority, the Tribunal is an adjudicative authority, and the CAC is an appeal body over competition matters.

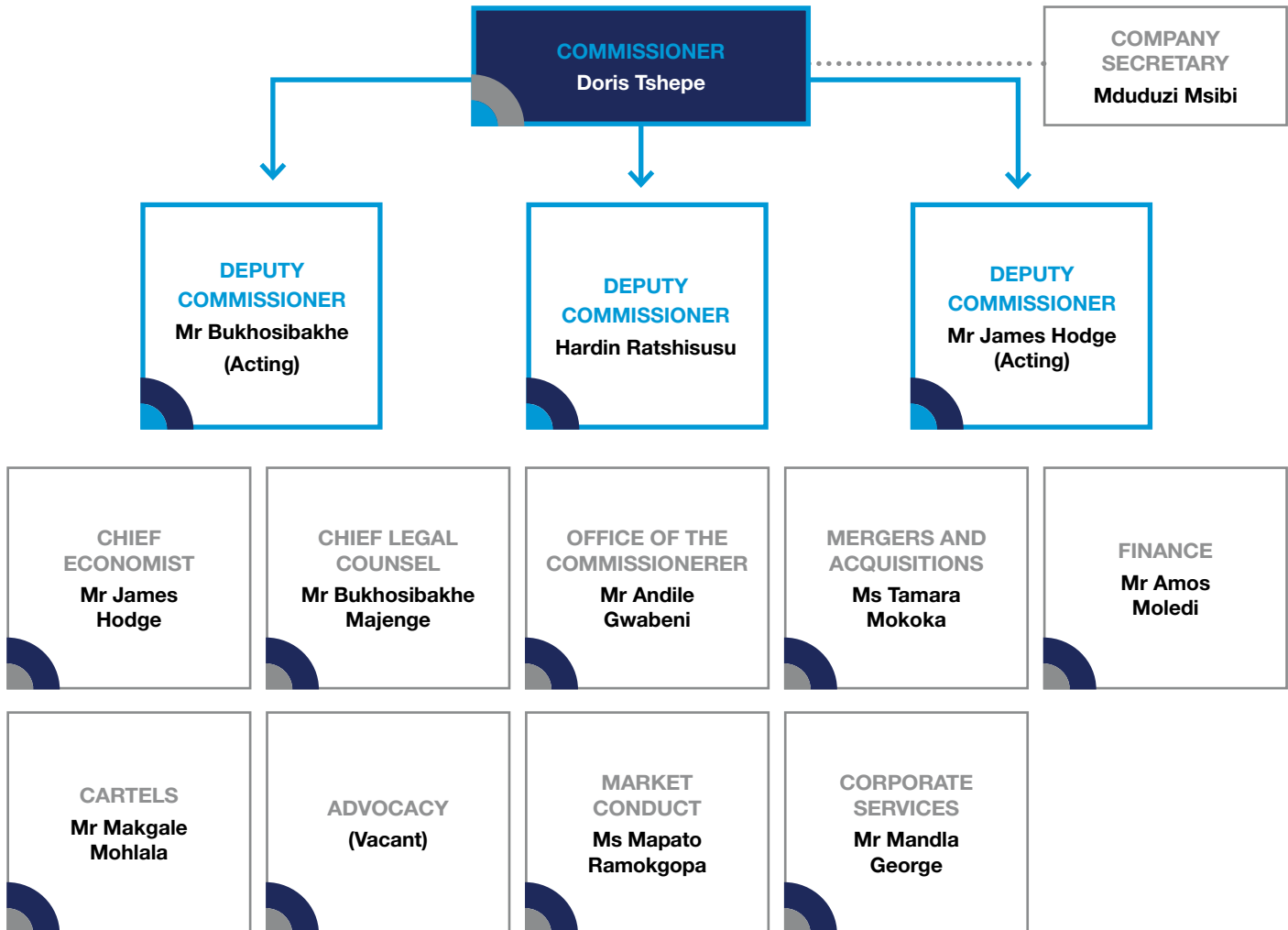
#### B) LEGISLATIVE MANDATE

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

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

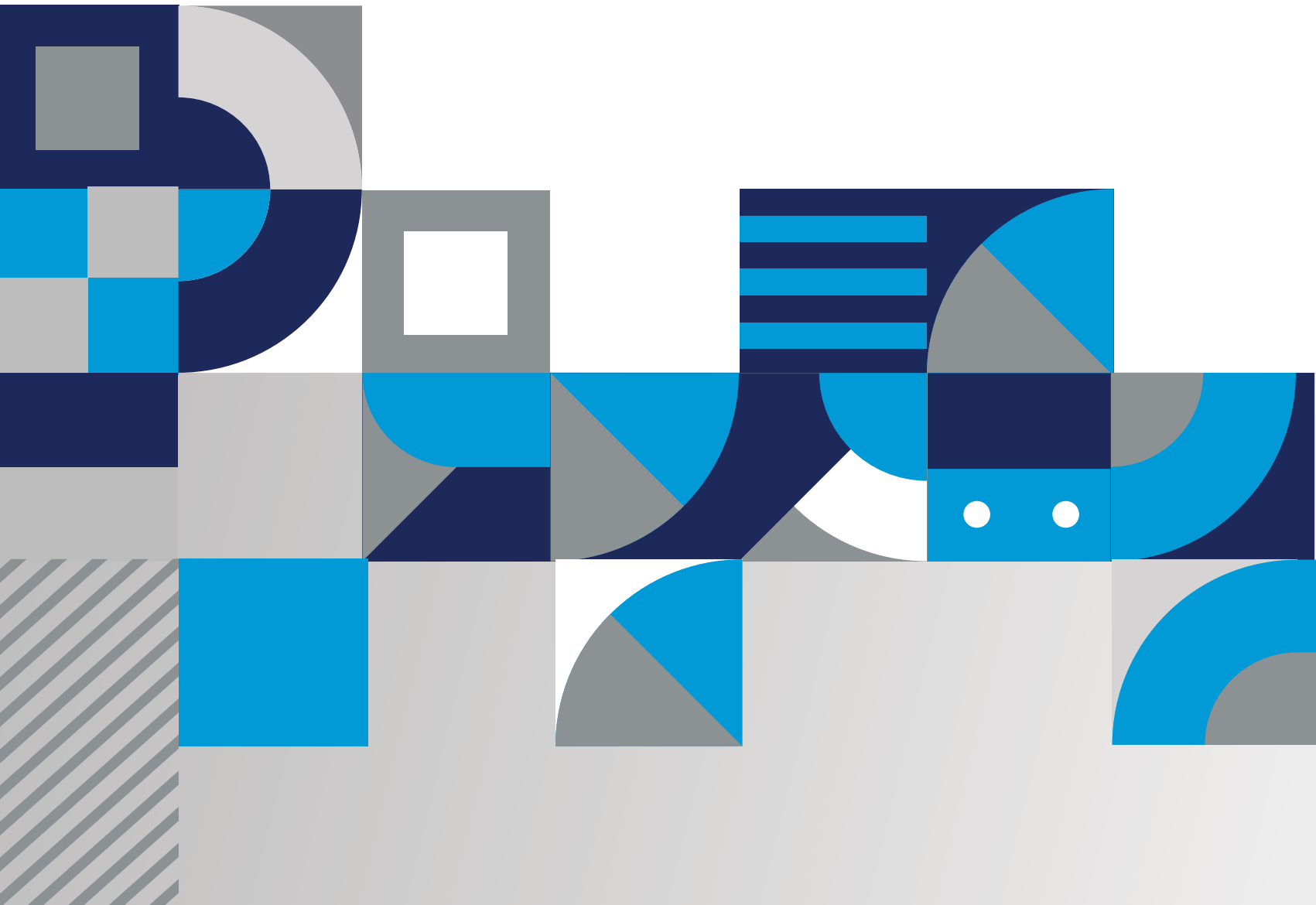
In addition, the Commission promotes voluntary compliance with the Competition Act by providing education and advice on the application of the Competition Act. The Commission can negotiate and conclude agreements with any regulatory authority, coordinate and harmonise the exercise of jurisdiction over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





# PART B

## ECONOMIC IMPACT





# OVERVIEW OF THE COMMISSION'S INTERVENTIONS IN CURRENT PRIORITY SECTORS

**The Commission continues to direct its enforcement efforts towards de-concentration, transformation and economic growth by focusing on:**

- Addressing competition issues affecting hard-pressed and low-income consumers,
- Exclusion of SMEs and HDPs from participating fully in the economy,
- Removal of barriers to entry and growth.

**The Commission's response includes:**

- Promotion of entry and participation by SMEs and/or firms owned or controlled by HDPs through effective merger control, advocacy and enforcement,
- Supporting economic growth and pro-competitive cooperation through the effective use of exemptions.

## 11.1 PROMOTING COMPETITION

### 11.1.1 MARKET INQUIRIES

A market inquiry refers to a formal inquiry in respect of the general state of competition, the levels of concentration in, and structure of a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm. Market inquiries are different from investigations in that, while investigations target specific firms engaged in specified anti-competitive conduct, market inquiries investigate any feature or combination of features in a market which may have the effect of impeding, distorting or restricting competition. Market inquiries are thus an important tool in understanding how competition currently

works in a market and how competition can be promoted in the interest of more competitive and inclusive markets.

#### (A) MARKET INQUIRIES INITIATED

During the 2023/24 financial year, the Commission initiated two market inquiries in terms of section 43B(1)(a) of the Competition Act. The market inquiries are outlined below.

##### (i) Steel Market Inquiry

The draft Terms of Reference (ToRs) for the Steel Market Inquiry were published on 7 April 2023 and the Commission received considered feedback from stakeholders about the scope of the Inquiry. Further engagements on the scope of the Inquiry, especially around the possible inclusion of scrap metal, are taking place.

##### (ii) Poultry Market Inquiry

Chicken meat and eggs are a key source of protein for the majority of South Africans, particularly low-income households. Understanding the structure and competitiveness of the poultry sector is thus critical to understanding outcomes in this sector which affect the pockets and wellbeing of all South Africans. The market inquiry into the poultry sector will allow the Commission to examine levels of concentration, vertical integration, and barriers to entry within the industry. The poultry market inquiry can complement other industry-wide initiatives to improve the competitiveness of the industry to the benefit of consumers and smaller market participants. The Commission gazetted the draft ToRs for the poultry market inquiry on 6 February 2024 and invited

members of the public and interested stakeholders to make written submissions on the proposed ToRs.

### **(iii) Polymers Market Inquiry**

Polymers are an essential input in the production of plastic products, such as, packaging, plastic containers and bottles, polyvinyl chloride (PVC) pipes, etc. Plastic products are used widely throughout the economy, including in core sectors such as the packaging industry, building and construction, as well as the electronic and automotive sectors.

A significant number of companies that produce plastic products are SMEs. The inquiry will allow the Commission to understand whether there are features of the polymers market that may negatively impact competition and limit participation and growth of firms in this sector.

In addition, the inquiry will complement other initiatives in the polymers industry that are aimed at improving the growth and competitiveness of the industry for the benefit of participants and end consumers. The ToRs for the Polymers Inquiry were published in March 2024.

## **(B) MARKET INQUIRIES UNDERWAY**

There are currently three ongoing market inquiries at the Commission.

### **(i) Fresh Produce Market Inquiry**

In March 2023, the Commission launched the Fresh Produce Market Inquiry (FPMI). The main objective of the Inquiry is to identify features, or combination of features, that inhibit or distort competition and participation in the fresh produce value chain. Where there are competition and/ or public interest issues, the FPMI aims to provide recommendations to foster competition and ensure equitable and meaningful participation in the value chain for the benefit of all stakeholders as well as consumers in the



economy. In this sense, the Inquiry is considering aspects of both consumer welfare and public interest.

The FPMI embarked on a series of workshops with small and emerging farmers in Limpopo (in September 2023 in the Vhembe district and the Mopani/Tzaneen district), the Eastern Cape (in September 2023 in the Keiskammahoek region), KwaZulu-Natal (in September 2023 in the Tugela region) and the Western Cape (in October 2023 in the Vredendal-Clanwilliam region). These workshops provided a platform for the FPMI team to engage small and emerging fresh produce farmers on their experiences and challenges in relation to market access, discrimination in the

procurement of inputs (price discrimination), unfair treatment in the sale of their produce (buyer power), access to finance and access to water. Following the workshops, the FPMI team conducted public hearings in October 2023.

## **(ii) Media and Digital Platforms Market Inquiry (MDPMI)**

The Inquiry was initiated to examine the distribution of media content on search and social media digital platforms, artificial intelligence (AI) chatbots and assisted search, and the advertising technology (AdTech) markets that connect advertisers and news publishers' websites. The purpose is to determine if there are any market features that may be adversely affecting competition or undermining the purposes of the Competition Act, and to comprehensively remedy those features. The MDPMI was launched on 17 October 2023 and has already gathered extensive information from a wide range of industry stakeholders; from submissions made to the Statement of Issues, Further Statement of Issues, and Requests for Information.

## **(C) MARKET INQUIRIES COMPLETED**

The Commission is also undertaking the implementation of completed market inquiries. The market inquiries are briefly outlined below:

### **(i) Market Inquiry into Online Intermediation Platforms**

The Online Intermediation Platforms Market Inquiry (OIPMI) was completed on 31 July 2023. Given the different commitment periods for each of the leading platforms that are complying with remedial action, it is estimated that the total savings of ZAR1.16 billion to business users in South Africa. These savings are largely emerging from Ad Credits, Training & Skill Development Fund, Black Founders Fund, HDP benefits, removal of parity clauses, discounts & promotions, remedies that deal with self-preferencing, local filters, units and listing/branding discounts.

- On the main, the remedial actions are expected to provide the benefits to all the stakeholders in the ecosystem including

platforms, businesses listing on the platforms and consumers, including:

- Greater visibility and opportunity for smaller South African platforms to acquire customers through Google Search, enabling growth and greater platform competition with larger, sometimes global, rivals;
- Enabling more intense platform competition in each of these categories, which in turn will offer businesses that list on the platforms and consumers more choice and innovation. This should result in lower prices for the businesses listing on the platforms, and for consumers too where they currently pay for the service;
- Providing a level playing field for small businesses selling



- through these platforms, including fairer pricing and opportunities for gaining visibility and customer acquisition relative to the large national businesses they compete with;
- Providing a more inclusive digital economy through overcoming impediments for participation and fair competition by black-owned South African businesses on online platforms and funding opportunities for black entrepreneurs.

Overall, there has been substantial compliance with the first set of remedial actions. There have been few instances of non-compliance and in such instances the relevant parties have sought indulgence from the Commission, requesting specifically to be given more time to comply due to delays caused by unforeseen circumstances. It is important to note that some of the platforms, over and above implementing remedial actions that have been triggered, have also implemented some of the remedial actions that are not yet triggered. Most of the restaurant chains have not submitted compliance reports, thus are likely to not be complying with the relevant remedial actions. Measures are being taken to enforce compliance with remedial actions, including sending formal letters to these parties requiring them to file compliance reports.

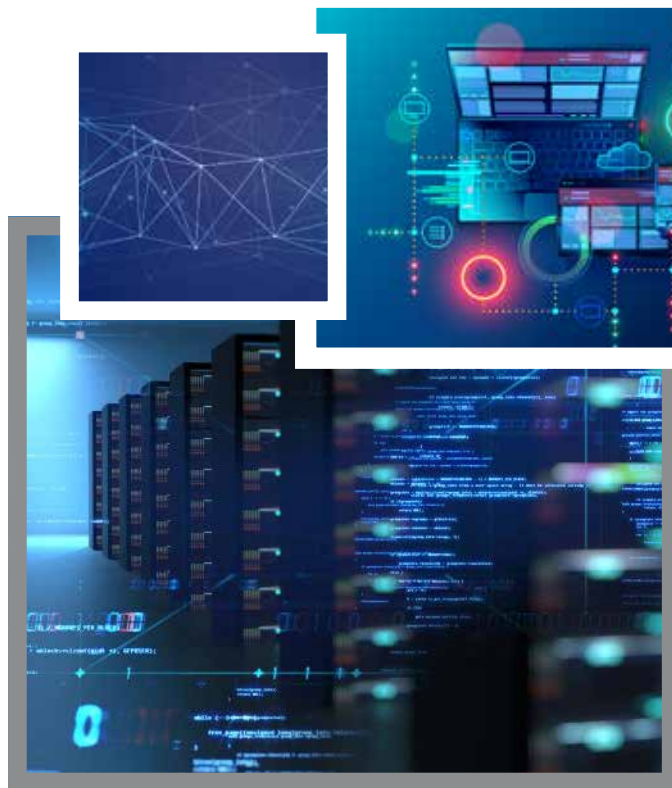
At least eight platforms have started implementing remedial actions and four platforms (i.e. Booking.com, Apple, Private Property and Uber Eats) and one restaurant chain (i.e. Famous Brands) have lodged appeals and/ or review applications. Of the four platforms, Uber Eats has opted to implement the remedial actions that it does not contest, while the other three platforms have opted to appeal all the findings and remedial actions. In order to manage litigation and foster compliance with remedial actions, the Commission has initiated settlement negotiations with all the parties that have lodged appeals/reviews. These negotiations, led by the Commission's Legal Services Division, promise to yield positive results and may assist to avoid litigation.

## (ii) Data Services Market Inquiry

In the second quarter of the 2023/2024 financial year, the Commission published an updated report detailing the progress

in implementing the recommendations from the Data Services Market Inquiry (DSMI). The DSMI, concluded in December 2019, identified that mobile data prices in South Africa were excessively high and disadvantaged the poor. It made three broad sets of recommendations to improve data affordability and foster competition in the market.

The first set proposed steps to be taken by operators to immediately relieve consumers from high data prices and the accelerated release of high demand spectrum and were achieved between 2020 and 2022. The second and third sets of recommendations were to be implemented in phase two of the implementation program, within six to 18 months of the release of





the DSMI. These included a package of legislative and wholesale regulatory changes required to address long-term competition issues and were recommendations that needed to be implemented by the Department of Communication and Digital Technologies (DCDT) and the Independent Communications Authority of South Africa (ICASA).

The Electronic Communication Amendment Bill was approved by Cabinet in 2023 and addresses the DSMI recommendations regarding legislative challenges and alternative infrastructure development. The Bill was gazetted for comment on 23 June 2023.

The DSMI recommendations have for the most part been implemented (short-term measures) or are in progress to be achieved in the near future (intermediate measures). Market developments have made the recommendation to provide incentives for fibre to the home (“FTTH”) potentially redundant.

The market has developed such that FTTH rollout in high-income areas have become saturated, resulting in FTTH providers turning their attention to lower income areas and experimenting with different models to deliver cost-effective data access. This suggests that there may not necessarily be a strong need for specific government incentives to FTTH providers to promote infrastructure investment in all low-income areas.

This is an impressive achievement given that the DSMI could only make recommendations rather than impose binding action. The one area that likely remains for implementation is free Wi-Fi in public spaces, commuter points and government buildings, or the development of lower cost private Wi-Fi networks in these areas. This is because whilst FTTH may provide off-load at home, it is important to extend off-load opportunities outside of the home in strategic areas of high density.

### **(iii) Public Passenger Transport Market Inquiry**

In 2017, the Commission initiated a market inquiry into the land-based public passenger transport sector. The Commission’s



final report outlined recommendations related to the provision of subsidies for public transport, public transport integration, and proposals to harmonise interventions for public transport operating conditions in rural areas, among other issues. The report included an Implementation Plan for the inquiry recommendations and the key stakeholders responsible for implementing them.

During the year under review, the Commission received updates from the Gautrain Management Agency, Gauteng Transport Authority, Gauteng Provincial Government, National Treasury (NT) and several updates from the Department of Transport (DoT) on the implementation of the recommendations.

The following recommendations have been completed: 1. Establishment of dedicated transport authorities, 2. Creation of capacity at local government level to ensure prioritisation of transport planning, 3. Review of the Bus Rapid Transport (BRT) Model, and 4. Compliance with the Division of Revenue Act (DORA) which stipulates that municipalities should demonstrate sufficient capacity to implement Integrated Rapid Public Transport Networks (IRPTNs) before funding is transferred. The requirement to comply with the DORA before transferring funds to the cities for IRPTNs, is now contained in the Public Transport Network Grant Framework, which outlines a review of the public transport strategy to ensure that municipalities develop fiscally sustainable IRPTN systems.

Some of the recommendations have not been fully implemented but are in progress, including the recommendation for DoT to develop a Devolution Strategy to guide the devolution of public transport functions to lower levels of government. In this regard, Cabinet approved a White Paper on the National Rail Policy in May 2022, which supports a devolution strategy. The policy proposes that rail commuter services will be devolved to the local government level in the Western Cape, Eastern Cape and KwaZulu-Natal. In Gauteng, it will be devolved to a Transport Authority. DOT submitted the Devolution Strategy which will be implemented by the end of 2024 as a National Rail Bill and a National Rail Master Plan is being developed for this purpose.

### **11.1.2 KEY CASES PROMOTING ENTRY AND TRANSFORMATION**

#### **A. THE COMMISSION VS ST. GOBAIN CONSTRUCTION PRODUCTS SA (PTY) LTD ("SAINT-GOBAIN")**

The Commission referred a complaint on prohibited price discrimination by Saint-Gobain to the Tribunal. It is alleged that Saint-Gobain contravened section 9(1)(b)(ii) of the Competition Act, by engaging in price discrimination against PE African Brick Centre, an SME hardware store in Gqeberha, Eastern Cape. The Commission found that Saint-Gobain was selling a plaster product called Crestestone to a small customer at prices approximately 20%-25% higher than those of the complainant's larger

competitors, such as Builder's Warehouse and Amalgamated Dry Wall & Ceiling, thus impeding the ability of the small complainant to compete effectively against larger competitors.

The Commission seeks a finding that Saint-Gobain's conduct of price discrimination contravenes the Competition Act, and that the company is liable for the payment of an administrative penalty equal to 10% of its annual turnover in South Africa.

This is the first complaint referred by the Commission to the Tribunal for prosecution under the new price discrimination provisions of the Competition Act. These provisions aim to protect SMEs and companies owned by HDPs against price discrimination by dominant suppliers.

### **11.1.3 KEY CASES: FIGHTING CARTELS AND REDUCING PRICE**

#### **A. THE COMMISSION VS BANK OF AMERICA MERRILL LYNCH INTERNATIONAL AND OTHERS**

In its landmark case against 28 banks accused of manipulating the USD/ZAR currency pair, the Commission reached a settlement agreement with one of the respondents, UK-based multinational bank Standard Chartered Bank ("SCB"). As part of the settlement, SCB agreed to pay an administrative penalty of R42 715 880.

SCB participated in the manipulation of USD/ZAR currency pair by fixing bids; offers; bid-offer spreads; the spot exchange rate; and the exchange rate. Further, SCB participated in dividing markets by allocating customers where one trader withholds or pulls his/her existing bid or offer from the market to allow the other trader to execute and complete his/her trade.

This settlement ends an eight-year-long litigation between the Commission and SCB over the currency manipulation allegations. Citibank N.A already settled the same conduct with the Commission in 2017.

The settlement came at a time when the remainder of the respondent banks were appearing before the Competition Appeal Court.

## **B. THE COMMISSION VS LASER GROUP COMPANIES: STUTTAFORDS VAN LINES (PTY) LTD, PICKFORDS REMOVALS SA (PTY) LTD AND AGS FRASER INTERNATIONAL (PTY) LTD**

On 03 November 2010, the Commission initiated investigations against eight furniture removal companies, namely, J.H Retief Transport CC (“J.H Retief”), Cape Express Removals (Pty) Ltd, Patrick Removals (Pty) Ltd, Stuttaford Van Lines (Pty) Ltd, Pro-Pack Removals CC, Sifikile Transport CC (“Sifikile”), De Wet Furniture Removals t/a Viking Furniture and Gloway Transport CC for their alleged involvement in cover pricing/quoting, dividing markets, and tendering collusively in the market for the provision of furniture removal services.



In 2015, the Commission referred the complaint against the Respondents for cover pricing/quoting, dividing markets and tendering collusively to the Tribunal for prosecution. However, before the conclusion of the prosecution, Stuttafords, Pickfords and AGS agreed to settle the matter with the Commission.

In terms of the settlement agreement, the furniture removal firms also agreed to pay a cumulative administrative penalty of R40 000 000,000 (forty million rand), jointly and severally, in full and final settlement of all matters before the Tribunal. As part of the settlement, the Commission agreed to the withdrawal of charges against AGS. The furniture removal firms also agreed to refrain from engaging in conduct which contravenes section 4(1)(b) of the Competition Act; and to continue to implement and monitor their existing competition law compliance programmes as part of their corporate governance policies, which are designed to ensure that their employees, management, directors, and agents do not engage in future contraventions of the Competition Act.

The finalisation of this settlement ended one of the long-running prosecutions in the furniture removal industry. The impact of this settlement, confirmed by the Tribunal in March 2024, is that consumers of furniture removal services, including government departments, will now and going forward receive competitive rates for removal of their furniture, which are not subjected to collusion. For government departments and other state entities, this means significant savings for the public purse.

### **11.1.4 ADDRESSING EXPLOITATION AND EXCLUSION: KEY ABUSE OF DOMINANCE INVESTIGATIONS**

#### **A. SIBANYE STILLWATER LIMITED AND DRD GOLD LIMITED VS SASOL SOUTH AFRICA LIMITED**

On 09 December 2022, the Commission received a joint complaint from Sibanye Stillwater Limited and DRD Gold Limited (Complainants), against Sasol South Africa Limited (“Sasol”), and its division, the Base Chemicals Unit, which produces and supplies liquid sodium cyanide in South Africa. Liquid sodium

cyanide is used for gold extraction by the Complainants and other gold mining firms in South Africa.

The Complainants allege that Sasol's Base Chemicals Unit, the only supplier of liquid sodium cyanide in South Africa, substantially increased the prices for sodium cyanide by at least 47% from around August/September 2021. The Complainants alleged that as a result of the increase, Sasol's prices for sodium cyanide were excessive.

The Commission investigated the matter under section (8)(1)(a) of the Competition Act. The relevant market was defined as the market for the mining and supply of liquid sodium cyanide in South Africa. Sasol is a monopoly in this market; hence it is dominant. The assessment revealed that Sasol's prices for sodium cyanide were approximately 34% above what it previously charged. In addition, the price-cost assessment revealed that Sasol's prices were higher than economic costs by 27%. The Commission concluded that Sasol's prices and mark-ups were unreasonable, hence excessive. These prices have the effect of reducing profitability of gold mining firms and also making it difficult for such firms to compete globally.

As a result, the Commission referred the matter against Sasol to the Tribunal for adjudication on 3 October 2023, for a potential contravention of section 8(1)(a) of the Competition Act.

#### **B. THE COMMISSION VS PAILPAC (PTY) LTD ("PAILPAC II") AND THE COMMISSION VS PAILPAC (PTY) LTD; KANSAL PLASCON (PTY) LTD; AKZONOBEL SOUTH AFRICA (PTY) LTD T/A DULUX; AND PROMINENT PAINTS (PTY) LTD ("PAILPAC I")**

In May 2022, the Commissioner initiated two cases against plastic packaging manufacturer, Pailpac. The assessment revealed that Pailpac concluded exclusive (or near exclusive) supply agreements with its largest customers, as well as engaged in targeted below-cost pricing to select smaller customers who did not conclude exclusive agreements with Pailpac. The combined effect in this regard meant that more than 50% of the downstream market was non-contestable

and "tied-up" exclusively with Pailpac over the period 2018-2022. The potential pro-competitive claims by Pailpac did not meet the legal standards of (i) investment specificity, (ii) contractability; and (iii) means to prevent free riding by competitors and, as such, could not be regarded as legitimately generating efficiencies.

As a result, there was a prima facie case that Pailpac had contravened section 8(1)(d)(i) of the Competition Act and/or section 8(1)(c). Therefore, the Commission took the decision to refer the matters against Pailpac to the Tribunal for further adjudication.

#### **C. INITIATION OF AN INVESTIGATION AGAINST NCP CHLORCHEM (PTY) LTD**

The Commission initiated a case against NCP Chlorchem ("NCP") in November 2023. NCP is a manufacturer of chlor-alkali chemicals, specifically, caustic soda lye, hydrochloric acid and sodium hypochlorite. These chemicals are used in various industries, including water treatment. The Commission understands that in some instances NCP makes use of distributors, such as, CIM Chemical (Pty) Ltd ("CIM") to supply its customers.

Information available to the Commission shows that for the past four years or so, NCP significantly reduced the volumes of chlor-alkali chemicals supplied in South Africa. The information further shows that NCP has been giving preferential treatment and supplying more volumes of chlor-alkali chemicals to some customers, such as, CIM, while volumes supplied to other customers were significantly reduced. This conduct may contravene sections 8(1)(c) and 8(1)(d)(ii) of the Competition Act.

The information in the Commission's possession further shows that CIM does not only receive higher volumes of chlor-alkali chemicals from NCP, but it also receives these chemicals at prices that are lower when compared to other customers of chlor-alkali chemicals. This conduct may contravene section 9(1) of the Competition Act.



### 11.1.5 DEVELOPMENTS IN CARTEL LITIGATION: KEY CASES

#### A. THE COMMISSION VS COROBRIK (PTY) LTD/ BOSUN STRUCTURES AND PRECAST (PTY) LTD T/A SMARTSTONE KWAZULU NATAL

On 28 February 2018, the Commissioner initiated a complaint against Bosun for allegedly agreeing to divide markets by allocating customers in contravention of section 4(1)(b)(ii) of the Competition Act. On 16 September 2019, the Commission referred the complaint to the Tribunal in terms of section 50 of the Competition Act.



Between November 2021 and February 2022, Bosun discovered and produced documents in respect of this complaint referral. During the discovery process, the Commission found that Bosun and Corobrik may also be involved in price fixing. On 25 February 2022, the Commission filed a witness statement alleging price fixing in contravention of section 4(1)(b)(i) of the Competition Act. Smartstone objected to the introduction of the new allegations and brought an application to strike out the price fixing allegations.

On 2 August 2023, the Tribunal heard an application by the Commission for leave to amend the complaint referral to include price fixing allegations. Smartstone opposed this application. After hearing the parties, the Tribunal granted the application to amend the complaint referral.

#### B. THE COMMISSION VS TAKATA SOUTH AFRICA (PTY) LTD

On 2 June 2022, the Tribunal heard an exemption application brought by Takata South Africa (Pty) Ltd ("Takata SA") against a supplementary affidavit to the 21 complaint referrals filed by the Commission at the Tribunal on 13 March 2018. The exemption raised by Takata SA was based on the fact that it was not sufficiently linked to the conduct that was conducted by Takata Corporation and as such could not be held liable for such conduct. In this regard, Takata SA persisted with its exemption against the supplementary affidavit as it claims that it does not disclose a cause of action against Takata SA, and that it is vague and embarrassing.

The Tribunal made the following assessment in relation to the exemption application. The Tribunal provided that whether or not an agreement took place is a matter of evidence to be presented and not a matter to be decided on the exemption stage. The Tribunal made reference to Rule 15(2) which states that there is no requirement imposed on the Commission to lay bare all its evidence on which it seeks to rely upon.

The Tribunal stated that the Commission makes it clear that Takata SA was the instrument through which the prohibited conduct took place in South Africa. It further states that its case is one where

Takata SA acted in the fulfilment of the design and overall strategy of Takata Corporation. The Tribunal went further to state that a referral is at pleading stage followed by pre-trial steps such as discovery, witness statements and evidence and concluded that this was a concise pleading of the Commission's case.

Furthermore, the Tribunal stated that the Commission has provided sufficient evidence particularity in that it provided the tender, the Occupant Safety Systems (OSS) part in question and the vehicle platform in each of the 21 referrals. In the Tribunal's view, the Commission had met the requirements of Tribunal Rule 15(2) with its pleadings. Therefore, Takata SA was able to discern what case it was required to respond to and, in particular, what conduct it was alleged to have committed that constituted a contravention of section 4(1)(b) of the Competition Act. As a result, Takata's exception application was dismissed.

### 11.1.5 WORK IN DIGITAL MARKETS

#### A. THE COMMISSION VS MICROSOFT CORPORATION AND MICROSOFT SA

This is an initiation against Microsoft Corporation and its subsidiary, Microsoft SA. The allegations are that Microsoft has implemented several measures which restrict its legacy IT customers to only migrate to Azure, its cloud computing services. Such measures discourage Microsoft's legacy IT customers from migrating to cloud computing services offered by Azure's competitors. In this regard, it is alleged that Microsoft is exploiting its dominant position in the legacy IT market to unfairly benefit itself (Azure) in the cloud computing market. Such restriction has a serious impact, especially on South African enterprise consumers as they seek to migrate from server-based to cloud-based computing.

The above conduct is achieved in a number of ways. For example, Microsoft restricts its customers' ability to deploy existing Microsoft software licenses (e.g. Windows Server) on competitors' cloud infrastructure. Microsoft also refuses to provide customers with product features and functionalities, like the latest security



patches and new releases for must-have non-cloud products like Windows Server and Windows 7 if these products are not exclusively run on Microsoft's cloud infrastructure.

Microsoft allegedly ties and bundles some of its unrelated non-cloud-based products and services to nascent cloud products. As an example, Microsoft's Microsoft 365 which includes must-have non-cloud products, such as Microsoft Word and Teams, often include distinct cloud-related products, such as, Azure Active Directory and OneDrive. In addition to the above, Microsoft sells licenses for Windows Server and SQL Server to third-party cloud service providers through SPLA at excessive prices. Microsoft's alleged conduct as explained above may amount to excessive

pricing, inducement and/or exclusionary conduct and / or tying/ bundling. The conduct will be investigated under sections 8(1)(a), 8(1)(c), 8(1)(d)(i), and 8(1)(d)(iii) of the Competition Act.

## **B. COMPETITION REGULATION FOR DIGITAL MARKETS: THE SOUTH AFRICAN EXPERIENCE**

The study examines the recent experiences of South Africa's competition authorities in engaging with competition matters in the country's digital markets. Specifically, the authors examine engagements with three regulatory elements: (1) mergers, examined through the MIH and WeBuyCars and Google and Fitbit cases; (2) abuse of dominance, examined through the GovChat vs Facebook case; and (3) cartel conduct, examined through the Commission vs Bank of America Merrill Lynch International Limited & Others case. In reviewing the decisions made in these cases, the authors highlight regulatory considerations that are coming to the fore in response to competition matters in digital markets.

### **11.1.6 MERGER REGULATION**

#### **Significant mergers finalised by the Commission in 2023/24**

##### **A. VODACOM (PTY) LTD AND BUSINESS VENTURE INVESTMENTS NO 2213 (PTY) LTD**

The Commission recommended that the proposed large merger whereby Vodacom (Pty) Ltd ("Vodacom"), intended to acquire control in Business Venture Investments no 2213 Pty Ltd ("Newco"/ "Maziv") be prohibited. The Commission was of the view that the transaction was likely to substantially prevent or lessen competition in several markets and that the conditions offered did not fully address the resultant harm to competition. Further, the public interest commitments provided by the merger parties did not outweigh the competition concerns.

The proposed transaction raised several vertical and horizontal competition concerns. The Commission found that from a horizontal perspective, 5G Fixed Wireless Access (FWA) and fibre compete in the same relevant market and that consumers stand to

benefit from increasing competitive rivalry between FWA and fibre. The proposed merger would result in the loss of direct competition between Vodacom and Maziv in the areas where both Vodacom and Maziv have deployed fibre.

The Commission's investigations showed that fibre players tend to reduce prices in areas where more than one fibre network provider has deployed fibre. This price competition would have been lost with the merger. Importantly, the proposed merger was also likely to result in the prevention or lessening of future competition in relation to fibre and 5G FWA. Both Maziv and Vodacom have significant pre-merger plans to expand coverage, particularly in underserved low-income areas. These expansion plans would bring benefits of price competition and consumer choice to underserved or unserved consumers.

In addition, the evidence shows that fibre exerts a constraint on the extent to which mobile operators can set prices for mobile data more generally. The merger would reduce this constraint.

From a vertical perspective, the Commission's investigation identified several concerns about incentives for self-preferencing and foreclosure of competitors post-merger. One concern arises from the fact that mobile network operators (MNOs) rely on Maziv, and DFA specifically, to a varying but significant degree for fibre backhaul and metropolitan connectivity services to provide mobile retail services. The merger creates the ability and (increased) incentive to partially foreclose or otherwise disadvantage rival MNOs. Similarly, providers of lit FTTB services rely on the merger parties, and particularly DFA, to a significant but varying degree for dark fibre. The merger amplifies the merged entity's incentive to preference their own retail businesses over those of competitors.

Importantly, there are no significant benefits arising from the proposed merger that are not already independently planned prior to the merger or not already in place. Moreover, the supposed benefits of Maziv's open access regime have not been universally confirmed by the investigation; instead, evidence and allegations of self-preferencing behaviour and discriminatory pricing have arisen.

Although the merging parties have also proposed open-access remedies that seek to address the competition concerns arising, the Commission found that the remedies are complex, incapable of being effectively monitored and did not address the full extent of the competition concerns likely to arise from the proposed transaction. The Commission recommended that the Tribunal prohibits the merger.

#### **B. AFRIMAT LTD AND LAFARGE SOUTH AFRICA HOLDINGS (PTY) LTD**

The Commission recommended that the Tribunal approve the proposed transaction whereby Afrimat Ltd (Afrimat) intended to acquire Lafarge South Africa Holdings (Pty) Ltd (Lafarge), with conditions.

Of relevance to this merger assessment are Afrimat's construction and building materials activities, namely, general aggregates and ready-mix concrete.

General aggregates are produced from hornfels rock quarries in various industry standard sizes/diameters. They are an input for various construction activities such as foundations, roads, railways, and buildings. General aggregates are also one of the inputs required to produce ready-mix concrete. Ready-mix concrete is made by mixing proportions of cement, general aggregates, and other inputs such as fly ash. Ready-mix is used for, amongst others, building and/or construction.

The Commission found that the merger is likely to result in a substantial lessening and prevention of competition in the supply of general aggregates in various regions of South Africa. Similarly, the Commission found that the merger will likely result in a substantial lessening and prevention of competition in the supply of ready-mix concrete. To restore the lost competition and in order to ensure that the merger is justifiable on public interest grounds, the Commission recommended that the Tribunal approve the merger subject to the merging parties divesting of various general aggregates quarries and ready-mix concrete plants across South Africa. The merging parties agreed to these recommendations.

To address public interest concerns, the Commission recommended that the merger be approved subject to a moratorium on merger-related retrenchments and other measures to protect employment.

#### **C. VITOL EMERALD BIDCO (PTY) LTD AND ENGEN LTD CC**

On 27 October 2023, the Commission recommended that a proposed large merger between Vitol Emerald Bidco Proprietary Limited ("Vitol") and Engen Limited ("Engen") be approved subject to conditions. The merger triggered interventions by several parties that sought recognition by the Tribunal to be granted intervenor status when the merger is heard. The background on the referral for the proposed merger is set out below.

On 7 March 2023, the Commission received a notice of a large merger in terms of which Vitol intended to acquire 74% of Engen. As part of the proposed transaction, Engen would also repurchase the 26% shareholding held by Phembani Group Proprietary Limited ("Phembani") in Engen. This would result in Vitol holding 100% in Engen. Therefore, as a result of the proposed transaction, Vitol would have sole control over Engen and its subsidiaries. Phembani was to subsequently use a portion of the proceeds in the sale of its 26% shareholding in Vitol to purchase shares in the holding company of Vitol.

Vitol Group is a large independent energy marketing and trading company. It supplies and distributes crude oil, petroleum products and natural gas globally. The Engen group is an African-based energy group focused on the supply, distribution and marketing of petroleum products including, amongst others, petrol, diesel, lubricants, and chemicals.

During the merger investigation, the Commission considered, amongst other assessment criteria, whether, post-merger, the merged entity would have the ability and incentive to foreclose competitors of Vitol Group, in particular, Sasol Limited ("Sasol") and Astron Energy (Pty) Ltd ("Astron Energy"), access to a significant customer (Engen) and whether such a foreclosure strategy would have significant effects on Sasol and Astron

Energy, the two remaining local refiners of petroleum products. The Commission received concerns from Sasol and Astron Energy who indicated that, post-merger, Engen (a significant customer) might import all its fuel requirements via Vitol and cease purchasing from local refineries. This would affect the viability of local refineries and continued local production of refined petroleum products.

The Commission took a decision to recommend the Tribunal approve the merger subject to several conditions, one of which being that Engen will continue to procure refined petroleum product from local refineries for a maximum period of 15 years. This remedy addresses the customer foreclosure concern and the adverse effect the merger would likely have on the local production of refined petroleum products.

As indicated, several parties sought recognition from the Tribunal as intervenors when the matter was before the Tribunal for hearing. The intervening parties that were permitted to join the hearing were Astron Energy (Pty) Ltd (Astron), Sasol, NUMSA, **the dtic** and CEPPWAWU.

The Tribunal heard the matter on 10 and 11 March 2024. The Tribunal reserved its decision pending the Commission, merging parties, Sasol and Astron reaching consensus on the proposed refined products procurement conditions by Engen from local refineries.

#### **D. SASOL SOUTH AFRICA LIMITED AND DRASLOVKA HOLDINGS A.S VS THE COMPETITION COMMISSION AND OTHERS CT**

In November 2021, the Commission prohibited the proposed acquisition of the sodium cyanide business of the target business Sasol South Africa ("Sasol") by acquiring business Draslovka Holdings ("Draslovka"). Draslovka is a global company located in the Czech Republic with its subsidiary SA OpCo based in South Africa. The acquisition constituted an intermediate merger.

During its investigation, the Commission received concerns from **the dtic** and several Sasol customers about likely post-merger price increases.

Specifically, concerns were raised that post-merger, Draslovka might charge import parity prices for locally produced liquid sodium cyanide (NaCN), the procurement of which is a significant portion of the local gold mining customers' input costs, and would significantly and negatively impact the latter's long-term profitability.

The Commission therefore concluded that post-merger price increases would not only be a direct result of the proposed





transaction but would also result in negative public interest effects because of the substantial negative impact price increases would have on the local gold mining sector.

By reason of the Commission's prohibition, on 10 December 2021 Sasol and Draslovka filed a consideration application to approve the merger.

Subsequently, Sasol's customers, namely Sibanye, Harmony Gold Mining ("Harmony") and Pan African Resources ("PAR") were granted leave to intervene in the merger proceedings before the Tribunal.

In opposition to the application before the Tribunal, the Commission and Sibanye advanced that the merger would bring about a permanent structural change in the market and result in the vertical disintegration of Sasol's sodium cyanide business. The matter was heard by the Tribunal in April, May and July 2023 at which proceedings Harmony and PAR accepted term sheets proposed by Draslovka and withdrew their opposition to the merger. Harmony and PAR were called by the Tribunal to testify and explain their change in stance.

The Commission and Sibanye presented factual and expert evidence in opposition to that led by Sasol and Draslovka and closing argument was presented in July 2023.

During September 2023, the parties, including the intervening parties, engaged with each other on the conditions tendered by Draslovka post-hearing to determine whether mutually acceptable conditions could be identified. Those engagements were not successful.

On 11 October 2023, the Tribunal prohibited the merger. The merging parties expressed an intention to appeal the Tribunal's ruling and requested the Tribunal's reasons. On 1 February 2024, the Tribunal issued its reasons for prohibiting the merger, but neither Sasol nor Draslovka noted an appeal. The Commission therefore considers this matter finalised.

### 11.1.7 RECONSIDERATIONS IN THE TRIBUNAL

#### A. AKZO NOBEL N.V. AND KANSAI PLASCON AFRICA LTD AND THE COMMISSION

On 21 November 2023, the Tribunal granted an order prohibiting the merger between Akzo Nobel N.V.(AkzoNobel) and Kansai Plascon Africa Ltd (KPAL). This order was granted following an application by the merging parties for the reconsideration of the proposed merger transaction after the Commission's decision to prohibit the transaction. The background of the application for merger consideration is set out below.

On 8 August 2022, the Commission received a notice of an intermediate merger in terms of which AkzoNobel intended to



acquire (i) KPAL, and (ii) Kansai Plascon East Africa (Pty) Ltd (KPEA). On completion of the proposed transaction, AkzoNobel would have sole control over the target firms. The acquiring group manufactures decorative and industrial coatings under the more commonly known brand “Dulux”, whilst the target firms also manufacture decorative coatings and industrial coatings under the commonly known brand “Plascon”.

During the merger investigation, the Commission found that Plascon and Dulux are the biggest manufacturers of decorative paint and are each other’s closest and most effective competitors. The Commission further found that Plascon and Dulux hold the following estimated market shares in the premium tier segment of the decorative coatings market: Plascon’s market share is approximately 40% to 50% by value and by volume and Dulux’s market share is approximately 30% to 45% by value and by volume. The merging parties’ combined post-merger market share would have been approximately 70% to 90% based on value and approximately 75% to 95% based on volume at the premium level. It found that the merging parties would have a very high market share in this market and the proposed merger would create a dominant manufacturer and supplier of premium decorative coatings.

The Commission took a decision to prohibit the merger on the basis that the transaction would result in the elimination of close competition between the merging parties and the removal of an effective competitor in the market. Consequently, the merger would have provided the merged entity with the incentive to raise prices post-merger, and the majority of the remaining competitors do not possess the same brand equity as the merging parties so as to replace the competition that would be lost should the merger proceed. Subsequently, the merging parties approached the Tribunal to reconsider the Commission’s decision to prohibit the transaction.

The Tribunal dismissed the application for consideration and affirmed the decision of the Commission prohibiting the merger.

## 11.2 INITIATIVES TARGETING COMPETITION CONCERNS AFFECTING LOWER INCOME CONSUMERS

### 11.2.1 FOOD

#### A. ESSENTIAL FOOD PRICE MONITORING REPORTS (“EFPM REPORTS”)

The Commission has been monitoring the price of essential foods since the on-set of the COVID-19 pandemic in March 2020. The Commission therefore continues to monitor essential food prices and prices throughout the value chain to see whether consumers are being harmed by the state of competition throughout food value chains.

Food prices are often fast to rise in response to higher input costs and slow to fall when those costs subside. This is known as the rocket-and-feather effect. There are several explanations for this phenomenon which includes adjustment costs and lumpy contracts in food markets. However, the one that is more salient for competition regulators is that it serves as an indicator that competition may not be functioning optimally throughout food value chains.

The essential food price monitoring (EFPM) reports published in FY 2023/24 found that while commodities prices eased, consumers did not immediately feel the benefit of lower input costs. This is the case in all the value chains that we track as well as beef, covered in the deep dive of the September 2023 edition. Unfortunately, this has coincided with severe loadshedding that has invariably played a role in slowing the pace of downward price transmission. However, the financial results of food companies show a mixed picture on the costs of loadshedding, which calls for a measure of caution when explaining its role in food prices as the management of loadshedding and the costs thereof likely differ across firms. Even with the additional effect of loadshedding, the rocket and feather effect has been longstanding feature of food value chains domestically which indicates that these value chains at the producer and retail level are not as competitive as they



could be. The quarter 2 EFPM report also found that compared to Canada, Ireland and the United Kingdom (which are countries are competition authorities had carried out similar work) margins in the South African retail sector were higher.

The quarter 4 edition of the EFPM report shows indications that spread across food value chains are beginning to settle following periods of intense volatility covered in previous editions of this report. This has happened despite on-going loadshedding, the deteriorating rail and port situation, and sporadic disturbances in global shipping markets following conflict in Red Sea. It also highlighted instances such as in sunflower oil where drastic producer price cuts have followed a period of wider farm-to-

producer spreads, which indicates that producers have become better at transmitting lower production costs to price. In the egg value chain, it is encouraging that retailers, on average, absorbed some of the pricing pressure from the producer level. Alongside efforts to ration egg purchases, this has insulated consumers from the effects of the avian flu outbreak.

Nonetheless, food inflation continues to be higher than headline inflation. While lower food inflation may be a positive sign food prices are still rising at a rate which is a threat to food security. Within this context, consumer decisions to swop items in their basket for other foods, such as chicken for canned pilchards, are likely to continue and remain an important feature of grocery shopping in the coming months. While the price of canned pilchards has increased, our analysis shows that canned pilchard producers have absorbed some of the cost increases that they have experienced. This is likely to have benefitted consumers as they increase their consumption of pilchards over other protein sources.

The report further finds that:

- There was surge in producer price of eggs following the bird flu outbreak. However, prices did not increase to the same extent at the retail level. This indicates some absorption of the part of retailers which may have assisted consumers and protected them from the full effects of the outbreak.
- Sunflower oil prices continue to fall. However, there was a widening in margin at the producer level which was closed by a steep decline in November. This has yet to translate into retail prices. Bread prices and spreads remain stable and have not changed significantly from longer-term trends. We further find that in line with previous EFPM, the price of IQF chicken at the retail level appears to be constrained by imports resulting in a lower spread between retail and producer price.
- At the producer level, maize meal spreads have been wider than usual, which is a cause for concern that may indicate on-going cost pressures or the use of market power. The slow transmission of lower white prices to maize meal producer prices is an example of the feather effect. Spreads have also started to widen at the retail level, which is a likely



consequence of elevated producer prices. We compared maize meal spreads and trends with Kenya, Nigeria, and Ghana and observe similar rocket-and-feather dynamics in these markets too.

- South African fish supply for pilchards is depressed which has meant increased reliance on imports while canned pilchards have become more popular. However, producers have access to various sources of supply and combine fish from local waters with imports to manage costs and prices. We find that this dynamic may have smoothed producer prices at a time when the international fish supply and prices have been volatile.
- We further see that large canned pilchard producers have absorbed some cost pressures, which is reflected in earning higher revenues while profitability is lower. At the retail level, there has also been a shrinking of spreads, this indicates that all market actors are sharing rising costs rather simply transmitting them to consumers.

Overall, the report finds that the volatility previously seen in spreads for essential foods has been moderating and that there are fewer upward price swings. This indicates changing behaviour among market actors.

## 11.2.2 ENERGY

### A. THE COMMISSION VS SASOL GAS (PTY) LTD

In July 2023, the Commission referred two complaints to the Tribunal for the adjudication of excessive pricing complaints as it relates to natural piped gas for a contravention of section 8(1) (a) of the Competition Act. The Commission found that Sasol Gas (Pty) Ltd (“Sasol Gas”) extracted mark-ups of up to 72% in certain instances. The excessive pricing has been ongoing for almost a decade.

The Commission relied on publicly available information to assess the prices charged by Sasol Gas to the complainants against the costs of supplying natural piped gas. This information consists of

the gas landing cost information that Sasol Gas provides to the United States Securities and Exchange Commission each financial year and information recorded by the South African Revenue Service (SARS) in its Trade Statistics Data, reflecting the value and volume of natural gas imports from Mozambique.

Considering the landed cost of the gas molecule and the trading cost, the Commission found the average mark-ups per gigajoule by Sasol Gas to the three complainants were, on a conservative basis, as follows:

- a. IGUA-SA members were charged an excessive mark-up of 55%, over nine years from 2014 to 2022;
- b. Egoli was charged an excessive mark-up of 72%, over nine years from 2014 to 2022; and
- c. Spring Lights Gas was charged an excessive mark-up of 59%, over five years from 2018 to 2022.

The Commission also found that Sasol Gas’ excessive pricing to gas traders and industrial customers ultimately affected the pricing to the end consumers, as gas traders and industrial customers generally pass these costs to consumers.

Sasol Gas did not provide the Commission with the relevant information it had requested during the investigation. Instead, Sasol Gas elected to file a review application in the CAC challenging the Commission’s jurisdiction to investigate the three complaints. However, the Competition Act only affords the Commission a period of one year to investigate a complaint lodged by a member of the public unless extended by the complainant. In this case, the one-year period has already lapsed and one of the complainants has indicated that it is not amenable to granting any further extension pending Sasol Gas’ jurisdictional challenge in the CAC. Under these circumstances, and in the public interest, the Commission had a duty to refer the complaint to the Tribunal for prosecution before it lapses. The CAC has since dismissed Sasol Gas’ review application. Sasol Gas has elected to appeal the CAC decision in the Constitutional Court.

### 11.2.3 HEALTHCARE

#### A. JOHNSON & JOHNSON (PTY) LTD AND JANSSEN PHARMACEUTICA (PTY) LTD

On 12 September 2023, the Commission, in terms of section 49B (1) of the Competition Act, initiated a complaint against Johnson & Johnson (Pty) Ltd and its subsidiary company Janssen Pharmaceutica (Pty) Ltd.

The initiation is based on information in the Commission's possession that gives rise to a reasonable suspicion that the two companies have and continue to engage in exclusionary practices and excessive pricing in the provision of Bedaquiline (trading as Sirturo®) which is a drug used in the treatment of tuberculosis (TB). This conduct may be in possible contravention of sections 8(1) (a) and (c) of the Competition Act.

The information in the Commission's possession indicates that the companies were granted a patent for Bedaquiline in South Africa which expired in July 2023. However, they filed a secondary patent with the Companies and Intellectual Property Commission - which in effect prolongs the lifespan of the Bedaquiline patent to 2027. This is despite the same patent application being denied and/or opposed in other jurisdictions. The Commission will investigate whether the secondary patent constitutes patent evergreening and/or is being used by the two companies to exclude generic entry and maintain their market power in South Africa, a conduct that could be in contravention of section 8(1)(c) of the Competition Act.

Furthermore, the Commission will investigate whether the patents granted to Johnson & Johnson (Pty) Ltd and Janssen Pharmaceutica (Pty) Ltd enabled them to charge excessive prices in the South African market.

#### B. LIFE HEALTHCARE GROUP PROPRIETARY LIMITED AND THE DIALYSIS SERVICES BUSINESS OF FRESENIUS MEDICAL CAR SOUTH AFRICA PROPRIETARY LIMITED

The proposed merger between Life Healthcare Group Proprietary Ltd (Life) and the dialysis services business (Target Business) of Fresenius Medical Car South Africa Proprietary Limited (Fresenius) affected the market for the provision of dialysis services across South Africa.

Dialysis services are required to treat kidney failure, a chronic disease. Life provides its dialysis services from its hospitals using third party providers whilst Fresenius provides its services from standalone centres not located in a hospital. Therefore, the



Commission assessed whether the combination of Life and the Target Business' dialysis services would have a negative impact on competition and on the cost of dialysis services, particularly for patients without medical aid.

The Commission found that the merger could result in the prices of dialysis services increasing after the merger since Life's prices were typically higher than those charged by the Target Business. To address this concern, the Commission recommended that the Tribunal approves the merger subject to a commitment that for each type of dialysis service, the lowest tariff charged by either Life and Fresenius, would apply for at least five years post-merger.

The Commission also assessed whether the merger would result in Life replacing the independent third-party dialysis service providers within its hospital network with Fresenius. The Commission found that this was likely and would result in less competition. To address this concern, the Commission recommended that the Tribunal approves the merger subject to a condition that independent dialysis providers will continue to have access to Life's hospital network for five years post-merger. Further, Life committed that specialist doctors operating from Life's hospitals would not be forced to refer patients needing dialysis services to Fresenius.

This merger is significant in affirming that access to affordable healthcare is a constitutional imperative, as previously confirmed by the Constitutional Court in the Mediclinic Merger.

The Commission and the merging parties agreed to public interest conditions relating to employment, capital expenditure to expand dialysis services and expanding treatment to public sector patients.

## 11.3 PARTICIPATION OF SMES AND HDPS IN THE ECONOMY

### 11.3.1 BUYER POWER

#### A. UBER B.V. & UBER SOUTH AFRICA TECHNOLOGY (PTY) LTD ("UBER")

This is an initiation of a complaint against Uber for conduct that potentially contravenes sections 8(4)(a)(i) and (ii) of the Competition Act, which states that it is prohibited for a dominant firm in a sector designated by the Minister in terms of section 8(4)(d) of the Competition Act to require from or impose on a supplier that is a small and medium business or a firm controlled or owned by



HDPs, unfair prices; or any other trading conditions.

Information in the Commission's possession indicates that Uber unilaterally controls the total amount charged to riders for a trip; and the total amount payable to drivers for rendering e-hailing services through Uber's online platform. Accordingly, the net payment made to drivers by Uber for services rendered (i.e. its suppliers) is unilaterally determined by Uber and there is a reasonable suspicion that these prices imposed by Uber on drivers may be unfair.

For example, Uber has, over time, unilaterally increased the "Service/Commission Fee" charged to drivers when providing e-hailing services through the Uber App. Information in the Commission's possession indicates that such increases in the "Service/Commission Fee" have resulted in the net payments to drivers being significantly reduced, which contributes to drivers not being able to cover their operational costs. Such conduct may be in contravention of section 8(4)(a)(i) of the Competition Act.

Furthermore, the Commission is in possession of information that gives rise to a reasonable suspicion that the conditions imposed by Uber on drivers (through its Service Level Agreement) may be unfair as it unreasonably transfers risks and costs onto drivers, and are one sided, onerous and not proportionate to the objective of the Services Agreement potentially in contravention of section 8(4)(a)(ii) of the Competition Act.

### 11.3.2 PRICE DISCRIMINATION

#### A. THE COMMISSION VS BRADY SA

In September 2023, the Commission initiated a complaint against Brady South Africa ("Brady SA") in terms of section 49B (1) of the Competition Act. The initiation enables the Commission to focus on prioritisation of the implementation of the new amendments of the Competition Act. In this regard, the Commission also initiated a case of price discrimination against SMEs or firms controlled or owned by HDPs which impede their effective participation in the market.

Brady SA is a subsidiary of the multinational company, Brady Group. The Brady Group manufactures and supplies a wide range of products and services, including speciality products, technical equipment, and services for purposes of identification which are used in various industries. The relevant products in relation to the initiated complaint are optic fibre labelling consumables (vinyl labels and laminate carriers) used in fibre cable installation.

Brady SA directly sells vinyl labels and laminate carriers used in fibre cable installation to affiliated distributors in the Western Cape. In addition to the affiliated distributors, the Commission is in possession of information that Brady SA also supplies the vinyl labels and laminate carriers to non-affiliated distributors, some of which include SMEs controlled or owned by HDPs. The non-affiliated distributors compete against Brady SA's affiliated distributors in the market for re-sale or supply of the vinyl labels and laminate carriers. The Commission is in possession of information that suggests that Brady SA provides favourable discounts to its affiliated distributors compared to non-affiliated distributors. The Commission is assessing this as a likely contravention of section 9(1)(a)(ii) and alternatively section 8(c) of the Competition Act.

In addition, the information in the Commission's possession of information that suggests that Brady SA initially refused to directly supply some of the non-affiliated distributors and instructed them to purchase from its affiliated distributors. The Commission

is assessing this as a likely contravention of section 9(1)(A) and alternatively section 8(c) of the Competition Act. The investigation of the complaint is in the early stage as the complaint was initiated in September 2023.

### 11.3.3 WOMEN PARTICIPATION (HDPS)

#### A. BARRIERS TO ENTRY FACING WOMEN IN BUSINESS IN SOUTH AFRICA

In June 2023, the Commission completed its research study on barriers to entry and participation facing women entrepreneurs in South Africa. The research paper titled “Promoting Effective Entry



and Participation of Women Entrepreneurs in the South African Economy” forms part of the Commission’s broader Women in Business project - an initiative that seeks to promote the entry and meaningful participation of women (as historically disadvantaged individuals) in the South African economy through the Competition Act.

The paper encompassed several initiatives, including a series of workshops with stakeholders and a survey that was rolled out nationally to women entrepreneurs. The findings of the study show that women entrepreneurs face significant barriers including: (i) access to business knowledge, education and training programmes; (ii) access to finance for new business start-up or expansion; (iii) access to (profitable) markets; (iv) compliance requirements, bureaucracy and administration; and (v) access to women networks or support structures. All of these affect the ability of women entrepreneurs to enter high income generating markets and to effectively participate in those markets.

The findings of the study and further engagements with stakeholder show that there is a need for co-ordinated and concerted efforts to be made by government and non-government stakeholders to enhance an effective implementation of the existing frameworks and initiatives aimed at empowering women entrepreneurs. Further, both government and non-government stakeholders should collaborate more on initiatives that are intentional and well targeted in ensuring that all women entrepreneurs in South Africa are afforded equal opportunities to succeed in their entrepreneurial ventures. The Commission in its study has identified some of the pro-competitive principles that can be adopted by government and non-government stakeholders to promote the effective entry and participation of women entrepreneurs in the broader South African economy.

### 11.3.4 YOUTH PARTICIPATION

In the last few years, the Commission has undertaken a number of initiatives aimed at addressing the barriers to entry, participation, and sustainability affecting youth in business. These barriers included, amongst others: (i) limited access to information (ii)

lack of awareness about funding options specifically targeted at youth-owned businesses; and (iii) the lack of access to resources. In the year under review, the Commission hosted its second Youth in Business Exhibition. The purpose of the exhibition was to create a platform for Government Entities to engage with young entrepreneurs and to raise awareness on some of the issues affecting the successful entry and participation of SMEs. In 2023, Government Entities such as the South African Revenue Service (SARS); the Small Enterprise Finance Agency (SEFA), the South African Bureau of Standards (SABS); the Companies and Intellectual Property Commission (CIPC); the Department of Trade Industry and Competition (**the dtic**) and the Gauteng Economic Propeller (GEP) engaged SMEs on some of the initiatives that each entity has developed to support SMEs with special focus on youth-owned businesses.

The exhibition also provided young entrepreneurs with the opportunity to showcase their products and services and sought to inspire entrepreneurship among the youth by exposing attendees to how other young entrepreneurs are working to address the socio-economic challenges faced by many South Africans, such as unemployment among the youth, food security and poverty.

An informal approach was adopted to conduct the exhibition. The program was delivered by young analysts from the Commission. Commissioner Doris Tshepe opened the program and interacted with the exhibitors. The exhibitors were given opportunities to speak about their respective agencies and answered questions from participants. The start-up companies were also given opportunities to talk about their journeys and offerings.

The following government entities participated in the exhibition: SARS; SEFA, SABS; CIPC; **the dtic** and the GEP. The South African Youth Chamber of Commerce (SAYCC) also participated at the exhibition under the youth entrepreneurship associations category. Each entity was given an opportunity to speak about their offerings. In addition, each entity was available to address general enquiries from members of the public throughout the day.

The Commission also invited nine (9) young entrepreneurs to showcase their businesses and product offerings to the participants throughout the event. The young entrepreneurs are active in the food processing sector. Some provided services, while others manufacture skin care products, candles, and clothing. The youth exhibitors on the day included: Dipalesa Biotech; SA Moqhaka Foods; Tshewu White Clothing; Myoli Group; 86 Public; Vernacular Lounge; Thathu Restaurant; Tshepiso-Entle Selfcare and Seen Pha. The entrepreneurs were also provided a platform to talk about their journey into entrepreneurship to both inspire and advise other young people in attendance.

### 11.3.5 SELECTED CASE STUDIES

#### A. UNILEVER R400M SETTLEMENT: A CATALYST FOR COMPETITION, TRANSFORMATION, AND INCLUSIVE GROWTH

In a landmark resolution sanctioned by the Tribunal, Unilever South Africa (Pty) Ltd (“Unilever”) reached a groundbreaking settlement worth R400 million with the Commission, resolving accusations of market division. This significant agreement underscores the dynamic evolution of settlement solutions within the framework of the Competition Act, notably under section 4(1)(b), which does not expressly outline such remedies.

As part of the settlement agreement, Unilever agreed to pay an administrative penalty of R16 million as prescribed by the Act, and in line with the Commissions’ deterrent and punitive mandate against cartels prescribed by section 59(1)(a). More importantly, the settlement agreement contained public interest remedies including the establishment of an Enterprise and Supplier Development Fund (“ESD Fund”) which would be maintained for a period of three years, to the value of R40 million. The ESD Fund is aimed at empowerment, through providing interest free business loans to qualifying black-owned entities (including black-owned start-ups that need funding) in the manufacturing, logistics and wholesale industries in South Africa that meet Unilever’s credit and selection criteria.





This is consistent with the broad contextual interpretation of both the Act and the Amendment provisions which highlight public interest and the role of the Commission in addressing economic exclusion, inequality, and disempowerment entrenched in the South African economy. The latter approach is also in line with emerging constitutional jurisprudence regarding the interpretation of the Competition Act.

The enduring economic exclusion and inequalities in key market segments are mostly structural and systemic and have in most cases resulted in barriers to entry for new competitors. The Competition Act assigns the Commission a pivotal developmental role within the South African economy, among others, to actively promote transformation, market entry and access, and ensuring fair access to resources and opportunities for all market participants with a particular focus on black-owned firms, SMMEs and firms owned by HDPs. This settlement agreement is a prime example of how settlement remedies in cartel cases are innovatively evolving and contextually responsive to operationalise and blend both competition and public interest-related issues to deter and penalise anti-competitive behaviour, promote market efficiency as well as promote inclusive economic development and transformation.

Unilever also agreed to increase the aggregate annual value of its local procurement of products and services from entities operating in South Africa by a minimum of R340 million for four years with the aim of bolstering inclusive market participation. Additionally, Unilever agreed to donate hygiene, disinfectants, and oral care products to the value of R3 million to no fewer than 16 780 public primary schools across all nine provinces of South Africa over a period of five years. This settlement highlights the Commission's endeavours to embrace innovative remedies that align with public interest, socio-economic welfare, promoting transformation through participation of historically disadvantaged firms, opening the markets to new competitors, and fostering inclusive economic growth.



## 11.4 PUBLIC PROCUREMENT

### 11.4.1 PRICE GOUGING

#### A. COMMISSION VS RED ROSES AFRICA (PTY) LTD

Red Roses Africa (Pty) Ltd (“Red Roses”), previously registered as Mainstreet 669 (Pty) Ltd, is accused of price gouging conduct at the onset of the COVID-19 pandemic, at the expense of the South African Police Service (SAPS) and the public purse.

On 17 May 2023, the Commission referred this third COVID-19-related public procurement case to the Tribunal for prosecution. This followed the conclusion of the Commission’s investigation of complaints lodged by the SAPS for its procurement of Personal Protective Equipment (PPE) during the national state of disaster. The Commission’s investigations determined that Red Roses’ price was excessive and exploitative and directed at taking advantage of the SAPS as a consumer, at a time when PPE, and particularly hand sanitiser, were in high demand, in response to the international health crisis experienced.

In March 2020, Tshwane-based Red Roses responded to the SAPS request for quotes for the supply of bulk hand sanitiser in 25-litre containers. Hand sanitisers were required by the SAPS to combat the spread of the COVID-19 pandemic. Red Roses was subsequently appointed and supplied the SAPS with 90 000 25-litre containers of hand sanitisers at a price of R4 700 per 25-litre container. Red Roses’ price did not correspond to the increase in the cost of providing the hand sanitiser. The SAPS was under pressure to acquire PPE for its employees as quickly as possible, given the central role it played in the control of the pandemic. At that time, no single supplier had the capacity to satisfy its requirements for hand sanitiser. The SAPS was forced to procure from suppliers who responded to the invitation to submit quotes, regardless of the price. Some firms were aware of this pressure and exploited the situation to their own benefit by charging the SAPS exorbitant prices for the PPE supplied.

Red Roses sold the hand sanitiser at a gross markup of 236% and a margin of 70%. Since gross margins of 15% are customary or competitive, Red Roses’ margins were clearly unreasonable. The Commission found that Red Roses charged excessive prices and contravened section 8(1)(a) of the Competition Act, read with Regulation 4 of the Consumer Protection Regulations and National Disaster Management Regulations and Directions in Government Notice No. 350 of Government Gazette no. 43116 (Consumer Protection Regulations). This conduct is particularly egregious when one considers its social consequences.

The ACCAC in *Tsutsumani Business Enterprises CC v Tribunal and Others* (205/CAC/Jul22) [2023] ZACAC 6; [2023] 3 CPLR 34 (CAC) (13 October 2023) – the first COVID-19-related public procurement



case referred by the Commission - confirmed that excessive pricing in public procurement can constitute price gouging. Red Roses supplied more units of hand sanitiser and at a price higher than the respondent supplied in the Commission's successful second public procurement prosecution in the Commission vs Bluecollar Occupational Health (Pty) Ltd (First) and Another (COVCR114Sep20) [2023] ZACT 2 (3 April 2023).

Despite this, Red Roses denies liability. On 14 June 2023, Red Roses filed an application to suspend the prosecution of the complaint referral pending the outcome of its review application in the High Court (Gauteng Division, Pretoria), in which it seeks the review of the Commission's decision to investigate and refer the complaint. Currently, neither the application to suspend before the Tribunal, nor the review application in the High Court have been finally determined. The Commission is, however, confident that there is no merit in these applications and that, when the Tribunal considers the referral, Red Roses will be held liable for its contravention of the Competition Act.

#### 11.4.2 EXCESSIVE PRICING: CASE STUDY

##### A. TSUTSUMANI BUSINESS ENTERPRISES VS COMMISSION

This is the first excessive pricing case prosecuted by the Commission and determined by the Tribunal in the context of a public procurement process during the pandemic.

The matter emanates from a complaint lodged with the Commission by the SAPS on 05 May 2020 relating to price-gouging in the supply of face masks required by the SAPS during the period of the hard lockdown. In essence, the impugned conduct was the charging of excessively high prices, to the detriment of the SAPS, as its customers.

On 28 April 2022 the Tribunal found that Tsutsumani Business Enterprises (Tsutsumani) had supplied face masks to the South African Police Service (SAPS) at excessive prices and in contravention of section 8(1)(a) of the Competition Act, read with Regulation 4 of the Consumer Protection Regulations.

The Tribunal found that during the hard lockdown, SAPS was in desperate need of face masks for its 197 000 members who were in the frontlines of efforts aimed at containing the escalation of the pandemic and as a result, SAPS required nine million masks per month to protect its members from contracting the coronavirus. At the time, there was an unprecedented surge in the demand for surgical face masks and SAPS had to secure supply of face masks on an emergency basis. The exploitative conduct of the respondent, in pricing at excessive levels was determined to not only be highly detrimental to the SAPS, who required the critical protective masks, but was detrimental to the whole country as the masks were to be used to curb the spread of the COVID 19 disease.

The Tribunal found that Tsutsumani charged the SAPS an excessive price of R32.50 (inclusive of VAT) per mask. In its papers before the Tribunal, the Commission alleged that Tsutsumani procured the masks from its suppliers at an average cost of R17.35 per mask. This means that Tsutsumani earned a total of 87% mark-up and 46% gross margin per mask. The Commission estimated that the excessive profits earned by Tsutsumani amounted to R5,3 million rand.

Tsutsumani was given an administrative penalty in the amount of R3 441 689.10 (three million four hundred and forty-one thousand six hundred and eighty-nine rand and ten cents), being the maximum permissible amount (10% of turnover). This is indicative of the seriousness of the exploitative behaviour.

Tsutsumani brought a review application against the Tribunal's order. On 13 October 2023, the CAC dismissed Tsutsumani's review. The CAC held that Tsutsumani's review grounds has "non-existent" prospects of success. The result is that the Tribunal decision was upheld.

The Tsutsumani decision serves as a critical reminder to firms of the serious consequences of such exploitative, excessive pricing conduct, and serves as a deterrent for future similar conduct. It is during such unprecedented times, occasioned by a health pandemic, when consumers are most vulnerable, and choices are

limited that timely and impactful intervention is paramount. Without the Commission's intervention, consumers would most likely have been worse off. It was important for the competition authorities to make a swift pronouncement against excessive pricing and price gouging to alert and deter firms from engaging in such conduct and to minimise any opportunist business practices. The prosecution serves as a signal to the market to deter repeat conduct, and to protect consumers against such harmful practices.

The full decisions can be found below:

- Decision of the Competition Appeal Court: <https://www.saflii.org/za/cases/ZACAC/2023/6.html>
- Decision of the Competition Tribunal: <https://www.comptrib.co.za/case-detail/19320>

## 11.5 THOUGHT LEADERSHIP

### 11.5.1 STAKEHOLDER RELATIONS

The Commission's Advocacy function coordinates stakeholder relations programs where the Commission collaborates with stakeholders in the public and private sector to achieve the objectives of the Act and to promote voluntary compliance with the Competition Act. The Advocacy function is a proactive, responsive and collaborative function that facilitates the achievement of the outcomes of the Act and strategic priorities of the Commission. During the year under review, the Commission has collaborated with a number of stakeholders with some of the highlights to our work with stakeholders discussed below.

#### A. SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION (SACAP)

The Commission and SACAP have been working together to resolve various complaints filed against the Homeowner Associations and Body Corporates of various residential estates. In May 2023, the Joint Working Group of SACAP and the Commission convened for their quarterly meeting wherein the existing cases were discussed. In August 2023, SACAP published

Guidelines of Professional Fees in line with section 34 (2) of the Architectural Profession Act which states that "the Council must annually, after consultation with the Voluntary Associations, determine guideline professional fees and publish those fees in the Gazette". The Commission is currently reviewing the Guidelines to ensure that the Guidelines do not result in unintended harm in the market to the detriment of competition in the market.

## B. NATIONAL CONSUMER COMMISSION

In August 2023, the Commission engaged with representatives of the National Consumer Commission ("NCC") regarding a survey to be issued by the Commission. The Commission intends to issue an online survey to assess the state of competition and the use of three renewable energy products: solar panels, inverters, and storage batteries by consumers. The target audience for the survey are consumers, consisting of households and businesses that use solar panels, inverters and storage batteries to generate and store electricity. The survey aims to enhance an understanding of the usage, willingness to pay, supply and demand of the renewable energy products by residential households and businesses, and will inform the Commission's ongoing work in the energy sector. Under the aegis of a Memorandum of Understanding (MoU) between the Commission and the NCC, the Commission requested the support of the NCC with the survey questions to include the consumer protection issues raised in complaints received, including lack of transparency on pricing of renewable energy products, poor quality of installations, and voiding of warranties when consumers seek product repairs from independent non-approved repairers.

### 11.5.2 INTERNATIONAL RELATIONS

#### A. THOUGHT LEADERSHIP: INTERNATIONAL RELATIONS

The Commission has a strong international relations function that focuses on the management of strategic bilateral and multilateral relations to influence the global competition discourse and advance South Africa's developmental agenda. Collaborative research is one of the key pillars of the international relations

program of the Commission to advance thought leadership in competition policy and law, with a number of projects currently being pursued through multilateral forums like the African Competition Forum (ACF) and the International Competition Network (ICN).

The Commission participates in a number of forums to enrich the evolution of competition policy and law as an effective contributor, collaborator and in participating in leadership structures of various bodies. During the year under review, the Commission participated in various regional and international engagements including in the African continent by participating in the African Competition Forum (“ACF”), African Continental Free Trade Area (“AfCFTA”), Southern African Developing Countries (“SADC”) and the Common Market for Eastern and Southern Africa (“COMESA”).

Internationally, the Commission participated and contributed to engagements in International Competition Network (“ICN”), Organisation for Economic Cooperation and Development (“OECD”), United Nations Conference on Trade and Development (“UNCTAD”), and Brazil, Russia, India, China, and South Africa (“BRICS”) engagements during the financial year. The Commission is looking forward to hosting the Biennial Competition Law Conference of BRICS countries in 2025 in South Africa.

In the period under review, the Commission would like to highlight its high level engagements and collaborative activities hosted across the continent, specifically its contribution to the AfCFTA Competition Protocol and the ICN. The Commission has benefitted immensely from learning from other authorities and regions in the continent and the world in these engagements.

Below, we highlight significant developments in the Commission’s international relations during the 2023/24 financial year:

## **B. REGIONAL ENGAGEMENTS:**

The Commission has contributed to the smooth transition of the leadership of the ACF as it passed the leadership baton of the ACF to Mauritius and continues to play its part on the activities of

the ACF as a member of the steering committee. The Commission is honoured to have been tasked with playing a central role in the drafting of the AfCFTA Protocol on Competition Policy. The Protocol was adopted by the African Union Assembly during its 36th Ordinary Session held from 18 to 19 February 2023. The Commission continues to support and participate in the relevant programs of the AfCFTA.

The Commission chaired the Southern African Developing Countries (SADC) Cartels Working Group; with notable accomplishment of this group being completion of the project on ‘Compilation of challenges encountered in cartel enforcement’ within the SADC region. This project is expected to contribute to the improvement of enforcement on Cartels in the SADC by competition authorities.

The Commission also participated in collaborative work by SADC to contribute to the shaping of regulations governing the Competition Protocol. The event saw participation from key stakeholders, including **the dtic**, AfCFTA Secretariat, SADC Secretariat, COMESA, German Development Cooperation, and representatives from various countries such as Mozambique, Zimbabwe, Namibia, Angola, Malawi, Botswana, Tanzania, Seychelles, Mauritius, Eswatini, Lesotho, and Zambia.

## **C. INTERNATIONAL ENGAGEMENTS:**

The Commission actively participated in numerous global engagements with various international competition authorities. These engagements encompassed events under the ICN, OECD, UNCTAD, BRICS, and several other significant forums. Commissioner, Ms Doris Tshepe, was elected as the Chairperson of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy. The Commission contributed to UNCTAD’s background documentation on competition law enforcement issues with some of our contribution adding value in international discussion in the areas related to monopolies.

The Commission contributed to OECD Competition meetings, providing written submissions on topics such as ‘Consumer

welfare’ and ‘Algorithmic Competition’. The Commission also contributed to debates in G7 Competition Authorities, with written submission in the ‘Compendium of approaches to improving competition in digital markets’ where the Commission drew from insights from its work on fair competition in the digital economy.

The Commission is collaborating with other partners on competition issues in agriculture and food markets, working with stakeholders such as the Federal Trade Commission (FTC), Prof Simon Roberts, Prof Eleanor Fox, and Prof Mor Bakhoun. This work has drawn significant support from other Competition Authorities in the developed and the developing world.

Commission officials attended several events internationally hosted by key partners, and these hosts include among others: BRICS Round table hosted by FAS of Russia on “Activities of Antimonopoly Authorities in Socially Significant Food Markets in Morden Conditions which took place in April 2023; the Abuse in Digital Markets hosted by the International Competition Network (ICN) in Norway; Capacity Building Workshop on Market Definition and Economic Analysis of Mergers hosted by the Competition Council in Morocco; the OECD Competition Committee in France where the Commission made submissions on Algorithmic Competition and Consumer Welfare as well as a case study on Market Sharing from Manipulation of Algorithm by firms selling Covid PPEs.

The Commission continues to improve its bilateral relations with other competition authorities in the world leveraging on various Memorandums of Understanding (MOUs) to improve its work on merger control, enforcement on and advocacy work. The Commission has also participated in various capacity building interventions with some of our partners, including exchange programs and secondment of experts.

During the period under review, the Commission has contributed to shaping competition policy discussions both regionally and internationally, with a strong developmental perspective at its core. These achievements highlight the organisation’s commitment to fostering fair and competitive markets for the benefit of consumers, businesses, and economies worldwide.

### 11.5.3 COMMUNICATING THE WORK OF THE COMMISSION

The Competition Act enjoins the Commission to create awareness and educate the public about the objectives and the provisions of the Act. The communication function of the Commission plays a critical role in communicating the activities and programs of the Commission for improved understanding of it’s the Commission’s work and to improve its relationships, foster greater support and manage its reputation.

During the year under review, the Commission has continued to position itself as a trusted and effective regulator for fair competition in the South African economy whilst also advancing transformation focusing on Small and Medium Enterprises and firms owned by Historically Disadvantaged Persons. The Commission has also focused on the welfare of consumers, more especially in relation to food prices and costs of pharmaceutical products.

The Commission has used its communication function to facilitate meaningful engagement with stakeholders, such as industry players, trade associations, advocacy groups, and academia. These interactions are facilitated through events that are organised by the Commission or events where the Commission participates. The Commission has also used its platforms including the website (resources, publications, reports, updates and sharing of news, guidelines, case studies, and educational materials with stakeholders’), social media platforms (such as X, LinkedIn, Instagram and Facebook) to disseminate real-time updates, announcements, events, and relevant content), media relations management (through press releases, media briefings, and interviews are essential for communicating key decisions, enforcement actions, investigations, and policy developments to the press and the public.

During this financial year, the Commission produced five editions of Competition News, Competition News is a quarterly publication of the Commission aimed primarily at external stakeholders particularly competition law practitioners, economists, the international competition community, academics, students,

policymakers, the media and the public. The following editions Edition 81 focused on the establishment of the agreement on establishing the African Continental Free Trade Area (AfCFTA), the release of the terms of reference of the Media and Digital Platforms Market Inquiry, the Guidelines on the Exchange of Competitively Sensitive Information, among others; Edition 82 focused on extensive public awareness around the release of the final report of the Online Intermediation Platforms Market Inquiry, agreement between the Spar Group and the Commission relating to the Grocery Retail Market Inquiry, the consent agreement with Unilever, the report on the Evolution of the South African Private Primary Healthcare Market, among other areas of public education; A Special Edition on the 17th Annual Competition Law, Economics, & Policy Conference which was aimed at communicating and amplifying the content and activities of the event as mentioned below.

In pursuance of its mandate, the Commission hosted, co-hosted, and attended an array of events in the country and beyond with stakeholders aimed at solidifying relations, public education, influencing the evolution of competition policy and learning from other entities and authorities, among many other objectives. The Commission has communicated its participation and hosting of various events including events like the 17th Annual Conference through its various platforms. The Commission and the Tribunal's 17th Annual Conference on Competition Law, Economics, and Policy held on 28 – 29 September 2023 is worth highlighting as discussed below.

The conference explored different themes based on current policy, legislative, and strategic issues, drawing from research and strategic insights from the Commission and Tribunal. This conference served as a vital platform for shaping and influencing the intellectual discourse on competition regulation and economic policy, engaging with a diverse range of local and international stakeholders.

The conference centred around the theme: "Towards Competitive Markets, Transformation, and Deconcentration," chosen to reflect the significant amendments made to the Competition Act in 2019.

This theme raised a fundamental question: How can competition law enforcement extend beyond traditional market efficiencies and consumer welfare to embrace the socio-economic objectives outlined in the 2019 amendments and broader industrial policy? Throughout the conference, this theme pervaded all panel discussions, serving as the fulcrum for conversations and debates. This focus was prominently featured in various aspects of the conference, including:

- The first plenary session, which underscored the desired long-term outcomes of the African Continental Free Trade Area (AfCFTA) and the recently approved competition protocol.
- The second plenary session's emphasis on addressing the challenges faced by the poor, such as the escalating costs of food, and delving into the root causes of inflation in the food and agro-processing sectors.
- Plenary 3 highlighted a non-traditional approach to merger assessments, signalling a departure from the conventional reliance on competitive rivalry as the primary factor in determining the outcomes of mergers and acquisitions.
- The Advocacy team's focus on promoting women in business was a notable highlight towards the end of day one of the Conference.
- Plenary 6 introduced alternative legal standards that are more aligned with the unique objectives sought by the South African competition regime for its economy.

Overall, the Commission and the Tribunal hosted a successful conference that enabled stakeholders to effectively engage on topical issues to enrich competition policy and law in South Africa.

The Commission views media as an important partner to disseminate information to a wide range of external stakeholders, including the public, policymakers, and industry experts. Through a series of media engagements such as media launches, media roundtables, interviews, and media statements, the Commission has been able to establish relationships with community media, refresh partnerships with national media houses, and strengthen its consistent flow of timely information to journalists to aid in

the accurate reporting of the Commission and its work towards fostering an inclusive and growing economy.

In the 2023/24 financial year, the Commission received extensive media coverage across print, broadcast, and the fast-growing online media. The Commission issued a total of 48 media statements (excluding its weekly mergers and acquisitions/complaints statement), engaged in over 200 media interviews, liaised directly with journalists to answer queries, all with the goal of positioning the Commission as a leading voice in the country's socio-economic affairs. The number of mentions of the Commission increased by 26% from the previous financial year, with the Commission mentioned 5 088 times in the media.

The media coverage also translates into quantifiable commercial worth or advertising value equivalent (AVE). AVE is calculated by taking the centimetres, in the case of word-based platforms, or seconds in the case of broadcast media and multiplying these figures by the respective platform's advertising rates. The resulting number is the equivalent of what you would have paid if you placed an advertisement. In total, the Commission's coverage for the financial year was R491 913 494.

The Commission's continued work with the media ensures accurate and important information about our work is conveyed to external stakeholders effectively; that the Commission remains transparent, accountable, and open to engaging with the media and aids in positioning the Commission favourably in the public eye.

Below is a breakdown of the quarterly AVEs.

Table 3: Quarterly advertising value equivalency (AVE):

Coverage	Q1	Q2	Q3	Q4
Print	R33 574 803	R39 903 966	R35 373 241	R28 630 697
Broadcasting	R17 077 218	R28 605 581	R40 132 469	R33 381 460
Online	R87 679 016	R118 141	R45 208 503	R54 236 587
Total	R138 331 037	R116 597 905	R120 714 215	R116 270 337

In addition to media relations, the Commission has participated in career and youth exhibitions, university lectures and presentations, government fora, organised internal staff events; with all these extensively covered in our social media platforms including the website. These public awareness and educational efforts not only improved stakeholder relations but empowered various stakeholders with knowledge, boosted compliance attempts, and assisted in the reduction of litigation and associated costs.

11.5.4 OUR WORK ON HEALTH

1. WORKING PAPER – STRATEGIC PATENTING AND ITS IMPACT ON COMPETITION: EVIDENCE FROM THE SOUTH AFRICAN PHARMACEUTICAL SECTOR

The research paper considered the trends in patent applications for pharmaceutical drugs used to treat Diabetes, TB and HIV. These are three chronic diseases with high prevalence and often



result in death in South Africa. The first part of the research considered the market structure landscape in terms of patent filings by assessing active and expired patents on molecules that treat the three diseases as part of this research. This was to provide an overview of patent filing activity by pharmaceutical manufacturers. The second part of the research examined whether there exists any form of strategic patent behaviour at molecule level that may potentially have implications on competition.

Having broadly analysed the trends and behaviour in patent applications, the implications of this research are two-fold.

1. From a policy perspective, the implementation of the TRIPS flexibilities would enable the implementation of a more substantive and rigorous patent system. Under the current South African patent system, the novelty or inventive merit of the invention is not substantively examined. The system fundamentally misses out on protecting patents for a set period only after the examination of the patentability of the invention. Our view is consistent with the views of several industry advocacy groups[1]. To this end, the government (**the dtic**[2]) is currently in the process of amending the Patents Act of 1978 to introduce substantive search and examination procedures to foster greater innovation.
2. From a competition law and enforcement standpoint, the research has shown that the conduct by pharmaceutical firms in terms of patent filings may potentially raise competition concerns. Therefore, competition law and enforcement have a role to play in addressing competition issues arising from strategic patenting conduct by pharmaceutical firms. Specifically, potential abuse of market power can be addressed by the Competition Act, through enforcement interventions against exploitative and exclusionary conduct by firms. This has been recently done by the Commission in the case of Johnson and Johnson (Bedaquiline).

#### 11.5.5 HIGHLIGHTS OF OUR WORK ON EDUCATION AND AWARENESS:

##### A. THE CASE STUDY OF GUIDELINES ON THE FILING OF MERGER NOTIFICATIONS FOR HOSTILE TRANSACTIONS UNDER THE COMPETITION ACT

On 20 March 2024, the Commission published final Guidelines on the filing of merger notifications for hostile transactions (“Guidelines”) after a period of public comment. The Guidelines provide clarity on how the Commission will approach a request for a separate merger filing while ensuring a fair process is followed without resulting in undue delay of the commencement of the merger investigation. This is done by canvassing the question of when the Commission is likely to view a proposed merger as sufficiently mature to warrant notification by way of a separate merger notice; the factors that the Commission is likely to take into account when considering whether it is just and reasonable to allow a separate merger notification; and the timelines applicable to separate merger notifications. Therefore, the Guidelines provide clarity on when separate merger notifications may be allowed for hostile transactions under the Competition Act, with a focus on transparency and assisting potential merger parties in making informed decisions.

##### B. APPROPRIATE LEGAL STANDARDS IN COMPETITION LAW: A SOUTH AFRICAN PERSPECTIVE

The adoption of legal and liability standards of more mature jurisdictions has not necessarily served competition enforcement or the development agenda well in developing countries. As the case of South Africa shows, a full rule of reason analysis in abuse of dominance cases not only unduly raises the evidentiary burden but is complicated further by developing country factors such as asymmetric litigation resources and jurisdictional disputes. South Africa recently amended its Competition Act to include a presumptive based standard for certain dominant firm conduct, alongside a lower liability standard where the complainants involve small and historically disadvantaged businesses. The amendments also granted decision-making powers in market inquiries with a

lower liability threshold of demonstrating an ‘adverse effect on competition’ (AEC). This has resulted in more rapid and effective enforcement without necessarily compromising on the accuracy of legal decisions. The Constitutional Court (ConCourt) has given impetus to these changes by softening the presumptive requirements where a human right is invoked or where conduct perpetuates exclusion from the economy. These changes promise to drive a more competitive and inclusive economy. The experience provides an interesting natural experiment that can offer insights for the current debate on appropriate legal standards for both developing countries and digital markets.

### **Updated Guidelines for Competition in the South African Automotive Industry for public consultation**

In December 2020, the Commission published the final Guidelines for Competition in the South African Automotive Aftermarket Industry (Guidelines). The Guidelines were published in terms of section 79(1) of the Competition Act, which allows the Commission to indicate its approach on any matter falling within its jurisdiction in terms of the Competition Act, by publishing Guidelines. The Guidelines became effective on 01 July 2021. Since the effective date, the Commission has monitored and evaluated the implementation of the Guidelines by the industry.

In the year under review the Commission identified provisions in the Guidelines that require amendment based on submissions received during its engagements with industry associations, individual stakeholders and complaints received and investigated. The proposed amendments include the substitution of “Commercially Sensitive Information” with “Competitively Sensitive Information” to align the definition with the Commission’s Guidelines on the Exchange of Competitively Sensitive Information. The Commission also proposes a definition of “Intermediary” and provisions to allow intermediaries’ access to OEM-technical information on behalf of a group of Independent Service Providers (ISPs), and therefore limit the burden (financial and administrative) faced by ISPs to individually access the technical information from OEMs. The Commission intends to expand the definition of “Spare Parts” to include accessories and to provide a non-exhaustive

list of accessories. The amendments propose inclusions to acknowledge the considerations of OEMs and Insurers, including low volume and insufficient work that might affect their ability to onboard Motor-Body Repairers and allow for a consideration of various factors when on-boarding MBRs on a case-by-case basis. The amendments also aim to clarify that the provisions for the unbundled sale of motor vehicles with value added products applies to new, demo and/or second-hand vehicles at the point of sale.

The Commission intends to publish the proposed amendments for public comment in the 2024/2025 financial year. Following this process, the Commission will publish final amended Guidelines.

### **11.5.6 POLICY INTERVENTIONS AND CONTRIBUTIONS**

The Commission through its advocacy division provides policy responses and comments to Government and other regulators to ensure policies and laws are aligned with the Competition Act (influencing a pro-competitive outcome and that government does not create barriers in its legislatures. Below are summaries of the 6 policy responses and comments provided in the financial year under review.

#### **A. THE DRAFT SOUTH AFRICAN SMMEs AND CO-OPERATIVES FUNDING POLICY FOR SOUTH AFRICA**

The Commission submitted a policy response on the Draft South African SMMEs and Co- Operatives Funding Policy (“Policy” hereafter) for South Africa to the Department of Small Business Development (“DSBD”).

The purpose of the Policy is to prescribe a process for providing a holistic, coordinated, and pragmatic framework for strengthening the provision of development finance towards small medium and micro enterprises (“SMMEs”) and Co-operatives. The Commission supported the Policy and decided to participate in the process of developing the policy because there is a need for a unifying developmental mandate that can leverage off existing government funding and programmes and incorporate them into one national developmental funding framework. The Commission focused its

submission and contribution on key policy proposals identified including (i) improved co-ordination for access to finance by SMMEs and Co-operatives, (ii) easing small business cash flow through timely payments, (iii) establishing a database of small businesses, (iv) promoting business development support (v) affordable and appropriate insurance for SMMEs and Co-Operatives, and (vi) creating an accessible funding environment for targeted groups (youth, women, persons with disabilities). The Commission identified a few important considerations for the Policy:

- a. The Commission outlined its previous research and interventions that have uncovered access to finance as a barrier to entry for SMMEs. The Commission published a Report in November 2021 entitled 'Measuring Concentration and Participation in the South African Economy: Levels and Trends.' The Commission found that there is a need for a more coordinated and systematic approach to policy development across all spheres of government. The policy should seek to promote competition and de-concentration of the economy and broader effective participation.
- b. The Commission indicated the Buyer Power Enforcement Guidelines that were issued in terms of the Competition Act. The Guidelines outline a list of unfair trading conditions, which include payment terms that are longer than 30 days from the delivery date. The Commission therefore considers late payment as an unfair trading condition as it could result in cash flow problems for SMMEs.
- c. The use of consistently available datasets of SMMEs can provide the basis for potential targets for funding to be set and tracked in respect of de-concentrating parts of the economy and increasing participation. The Commission recommended that DSBD actively oversees and monitors who has access to the database to avoid the exchange of competitively sensitive information among competitors. DSBD and other key stakeholders may be guided on the sharing of information that is permissible and not permissible contained in the 'Guidelines on the Exchange of Competitively Sensitive Information between Competitors under the Competition Act issued by the Commission.
- d. Collaboration with private stakeholders may result in successful patent funding initiatives, such as supplier development programmes which need to be strengthened and formalised.
- e. Insurance plays a pivotal role in some industries such as the agricultural and automotive industries and lack of insurance could result in the inability of SMMEs to secure finance and contracts. The Commission therefore supported the proposed initiatives by DSBD to understand the insurance demand of SMMEs and to ensure the availability of insurance products to meet their needs.
- f. Easing lending terms and offering products to suit the needs of women entrepreneurs by financial institutions can support them in the economy.

## B. THE GAS AMENDMENT BILL

The Commission submitted a policy response on the draft Gas Amendment Bill (the Bill) issued by the Department of Mineral Resources and Energy (DMRE).

The purpose of the Bill is to provide for new developments in the gas industry and regulate recent technologies in the gas facilities. 'Gas', for the purposes of the Bill, means all hydrogen gases including natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquified natural gas, compressed natural gas, re-gasified liquefied natural gas, and any low-carbon and renewable gases. The rationale of the Bill is also to facilitate the development of integrated energy projects, including gas-to-power projects, strengthen the role of the National Energy Regulator of South Africa (NERSA) in the regulation of maximum gas prices and distribution tariffs (the monetary charge for providing gas services to customers) and the issuing of licenses for the construction or conversion of a gas facility, operation of a facility and trading in gas. The Bill also provides for third party access to uncommitted capacity in gas facilities where appropriate, which is intended to constrain the monopoly power of exclusive distribution rights holders.

The Commission was of the view that the Bill may have a significant impact on its jurisdiction to investigate pricing in the gas industry. The Commission focused its submission on key provisions identified, including (i) the objectives of the Bill insofar as it overlaps with the Commission's jurisdiction to regulate conduct including excessive pricing and price discrimination; (ii) the regulatory framework for concurrent jurisdiction, how it works, and its benefits; and (iii) the relevant provisions establishing NERSA's jurisdiction.

The Commission identified a few salient considerations for the Bill:

- a. The Bill, in its current form, may cause confusion about which authority has jurisdiction to deal with pricing and other forms of conduct in the gas industry. The Bill may cause an impasse on the jurisdiction of the Commission to investigate excessive pricing, price discrimination and other prohibited conduct in the gas industry.
- b. The Commission exercises primary authority to detect and investigate alleged prohibited practices within any industry or sector and to review mergers within any industry or sector. This is supported in case precedent which highlights the purpose and benefits for a system of concurrent jurisdiction.
- c. The investigation of excessive pricing conduct by dominant firms falls within the mandate of the Commission.
- d. Although the Commission and NERSA signed a Memorandum of Understanding (MoU) which outlines areas of mutual interest and overlapping mandates in the investigation of complaints such as excessive pricing, the MoU will not solve an impasse or conflict between the jurisdiction given to NERSA by the Bill to regulate excessive pricing, and the jurisdiction of the Commission to investigate excessive pricing contraventions of the Competition Act in the case of dominant firms.
- e. The Commission understands that the Bill allows gas traders (such as Sasol Gas) to charge customers discriminatory prices based on the quantities of gas they purchase. However, price discrimination is specifically regulated by the Commission in terms of section 9 of the Competition Act. It aims to prevent anti-competitive conduct which includes price discrimination, if such discrimination is likely to impede the effective

participation of small and medium enterprises (SMEs) or firms controlled or owned by historically disadvantaged persons (HDPs). The Commission recommended that the Bill should be explicit that the jurisdiction of the Commission to investigate price discrimination is retained and not changed by the Bill.

- f. The Commission recommended that license terms should be kept at a maximum of 5 to 10 years. In a market where piped gas is a scarce limited resource and firms are limited to the number of possible pipelines they can operate and construct, having an incumbent firm with an agreement in place running for 25 years can dissuade a potential entrant from applying for a license.

### **C. THE DRAFT SOUTH AFRICAN RENEWABLE ENERGY MASTERPLAN**

The Commission submitted a policy response on the Draft South African Renewable Energy Masterplan issued by the Department of Mineral Resources and Energy.

The Masterplan identifies four key interventions:

1. Supporting the local demand for renewable energy and storage by unlocking market demand.
2. Driving industrial development by building renewable energy and storage value chains, through localisation drives in both the public and private sector markets, supported by trade and industrial policy.
3. Fostering inclusive development of renewable energy and battery storage, by driving the transformation of the industry, supporting the development of emerging suppliers, and contributing to a just energy transition.
4. Building local capabilities in terms of skills and technological innovation, to enable the rollout of renewable energy and storage technologies and associated industrial development.

The Commission supported the objectives of the Masterplan and also made a submission. It focused its submission on a few important considerations:

- a. The Masterplan seeks to promote industrial development through localisation initiatives. It proposes to establish a set of local content targets and criteria for future public and private procurement programmes, with the aim of achieving a certain percentage for local content by 2030. In 2020, the Commission published ‘Guidelines on collaboration between competitors on localisation initiatives.’ The Guidelines outline the manner in which localisation initiatives may be appropriately identified and implemented by industry players and Government, that do not raise competition concerns under section 4(1) of the Competition Act. The DMRE was advised that only aggregated information necessary for purposes of the localisation initiative, on the percentage and volumes of industry data, may be shared and discussed among competitors. The Guidelines have therefore been developed to guide the process by which such collaboration between competitors may occur in a manner that does not raise competition concerns.
- b. The Masterplan promotes the Renewable Energy Independent Power Procurement Programme (REIPPP) as an enabler of industrial and inclusive development. The Commission supported the objectives to roll-out renewable energy and storage technologies to achieve increased competition, inclusivity of Broad-Based Black Economic Empowerment (B-BBEE) suppliers and job creation.
- c. The Commission noted that South African firms are faced with barriers which hinder their ability to meaningfully participate in the renewable energy sector. The Commission considered data on South Africa’s largest wind farms in the REIPPP which shows that only 6 local players have been awarded contracts, in comparison to twelve (12) international players. In instances where local firms are able (through establishing partnerships with international players) to participate in REIPPP tenders, they are still in a disadvantaged position, since access to significant finance is required.

#### **D. DRAFT DIRECTIVE IN RESPECT OF ISSUING OF ELECTRONIC FUNDS TRANSFER CREDIT PAYMENT INSTRUCTIONS ON BEHALF OF THE PAYER IN THE NATIONAL PAYMENT SYSTEM**

The Commission submitted a policy response on the draft Directive issued by the South African Reserve Bank (SARB). The draft Directive is part of the SARB’s policy interventions to address the risks that can arise from screen scraping within the National Payment System (NPS). It introduces a registration system managed by the SARB for financial service providers to conduct screen scraping. The Commission decided to provide comments to aid the use of screen scraping as a tool used by financial technology companies (Fintechs) and ensure their participation in the sector is protected.

Screen scraping involves a Fintech developing an app to get direct access to a consumer’s online banking profile and subsequently taking over the Internet banking session and automating a payment on behalf of the consumer. For screen scraping to work, a customer should share his/her online banking credentials with the fintech firms practicing screen scraping. There have been increasing concerns regarding screen scraping and its impact on the safety and integrity of the NPS, consumer data protection, and cybersecurity risks it may pose to customers (such as loss of data and money).

The Commission provided its submission in support of the draft Directive, and also identified a few important considerations for the promotion of competition, and non-discrimination in the registration of persons using screen scraping and other tools in the NPS.

- a. The Commission proposed a clarification on the scope of the Directive to other competing tools of screen scraping to remove any ambiguity.
- b. The definition of screen scraping should include ‘with the payer’s informed consent.’
- c. The grounds for an exemption should be inserted in the Directive to aid transparency on the exemption process and

- the equal treatment of providers to whom the Directive applies.
- d. Applicants should be provided with reasons for rejection of their applications to enable them to make improvements and re-apply.
  - e. Consumers need to know about the tools before they decide whether to use it. The key consumer awareness measures include (a) consumers' control over the data, (b) whether they will be protected from any losses if something were to go wrong with the transaction, (b) ability to revoke consent, and (c) where they can report data breaches.
  - f. The Directive specifies compliance with robust encryption standards and data security standards, but does not indicate the relevant standards. The Commission recommended that the SARB considers developing these standards in the form of a "Conduct Standards" document, in collaboration with the Information Regulator, Fintechs and other relevant stakeholders.

## **E. INTEGRATED RENEWABLE ENERGY AND RESOURCE EFFICIENCY REGULATIONS**

The Commission submitted a policy response on the Integrated Renewable Energy and Resource Efficiency Regulations issued by the Department of Public Works and Infrastructure on 17 January 2024. The Regulations establish a Public Procurement Programme to regulate the participation of Provincial and National spheres of Government (Users) in achieving energy and water efficiency, and waste management in government buildings. The objectives of the procurement include:

- (i) supporting efficient budget utilisation, socio-economic development, security of energy and water supply
- (ii) transitioning to low carbon emissions in the use of Utilities; and
- (iii) achieving cost savings to Users.

The Commission provided its submission in support of the Regulations, but more specifically on the implementation of procurement processes enabling green, sustainable and competitive initiatives through public procurement. Sustainable

products and services are increasingly becoming a parameter of competition. The Commission identified some considerations for promoting competition principles in the implementation of the procurement framework:

- a. Public procurement contracting models/frameworks should ensure an allocation of work to multiple service providers, especially when procurement is across National and Provincial Governments. This can be achieved using strategic enablers for competition including open framework agreements where multiple providers are invited to bid, allowing bids on certain lots within the contract, rather than bids on the whole contract only, and limiting the contract period to five years or less to allow for a rotation of awards among service providers.
- b. Tender criteria in public procurement can also be sustainability-oriented and promote the adoption of green technologies. In May 2023, the Minister of Trade, Industry and Competition published Energy Users and Energy Suppliers Block Exemptions in terms of the Competition Act, with sustainability objectives. The Block Exemptions allow energy suppliers to undertake joint investment in shared energy infrastructure, undertake joint financing and risk-sharing in energy projects. In addition, they allow for joint procurement of backup or alternative energy by energy users, and to share backup and energy generation capacity.
- c. The Commission supported the promotion and inclusivity of small and medium enterprises and historically disadvantaged persons and proposed the integration of Social, Environmental and Governance priorities within the preferential procurement framework.

## **F. INTERGOVERNMENTAL FINTECH WORKING GROUP FINTECH DATA PORTAL**

The Commission submitted a policy response on the Intergovernmental Fintech Working Group (IFWG) Fintech Data Portal at the invitation of the Financial Sector Conduct Authority (FSCA) and IFWG. The portal is a database to showcase Fintechs with a list of their activities or areas of business in South Africa. Banks and larger Insurers are therefore not included in the

portal. It was indicated to the Commission that the portal is not a mandatory registration or licensing requirement to operate or become active in South Africa.

The portal requires Fintechs to voluntarily enter certain information, including their trading name, registered name and number, location of headquarters, jurisdiction where services are offered, description of activities and relevant contact details. The portal also includes a “Find a Fintech” search tool.

The Commission supported the initiative insofar as it provides a record of the Fintechs active in South Africa. It also supported the management of the portal by an independent Regulator, such as the FSCA, which may aid education and awareness, and facilitate consumer choice in the use of Fintechs active in South Africa. The Commission submitted that the portal should not be used as a conduit for firms to coordinate their conduct in a manner that would facilitate collusive behaviour and/or sharing of competitively sensitive information amongst the Fintechs. Thus, the Commission’s comments served to support the implementation of the portal, but also highlight the need to prevent collusive information exchange through the portal.

### 11.5.7 RESEARCH PAPERS

The Commission conducts research and provides leadership on core economic issues in competition law and its enforcement. Below we discuss some of the key research output from the 2023/24 financial year.

#### A. INSIGHTS INTO THE EVOLUTION OF THE SOUTH AFRICAN PRIVATE PRIMARY HEALTHCARE MARKET

The introduction of NHI will result in government purchasing PHC services from both the public and private sector. In this regard, PHC providers are positioning themselves to be key providers to the NHI by expanding their clinic services to various geographic areas. However, until the NHI is implemented, there is a significant percentage of the population that is formally employed but do not have medical aid coverage. It is estimated five to eight million

South African residents in formal employment do not have medical aid coverage. These market dynamics have resulted in significant developments in the PHC market, with the PHC providers investing considerably to expand their current business activities as well as investing in new PHC product markets.

Both Clicks and Dischem have been embarking on an extensive expansion over the years acquiring independent pharmacies, which has allowed them to expand both their retail pharmacies and clinics. The independent pharmacies also have clinics located in their stores and recently the independent group clinics have entered the market. To further expand their geographic reach, some of the corporate and independent clinics also offer telemedicine services that allow consumers access to GPs at much lower rates and electronic scripting directly into dispensaries. The digital platform offers an integrated PHC service to consumers that spans both dispensary and clinic. This may be a strategy for the retail pharmacies to strengthen their position in the dispensary market as it is convenient for patients visiting the clinic to purchase their medicines from the dispensary.

Another recent development in the PHC market is the PHC insurance offered by Clicks and Dischem. PHC insurance is an attractive product to the uninsured population as it provides PHC services at a much lower cost than medical aid coverage. There are several players offering PHC insurance but Clicks and Dischem are the only players that are active in both the retail pharmacy and clinic market. Both Clicks and Dischem’s focus has evolved from only retail pharmacies to a far broader offering including wholesale and distribution, clinics, telemedicine and PHC insurance providing an integrated PHC model in South Africa.

#### B. MARKET STUDY REPORT ON GRAINS AND OILSEEDS VALUE CHAINS

The Commission has identified grains and oilseeds value chains as one of the markets to conduct a market study in the 2023/2024 financial year. Over the years, producers, consumers and food industry groups have been concerned about the rapidly increasing food prices. More recently, the Commission also noted concerns



about high food prices in South Africa in its food price monitoring initiative.

As a key role player and regulator, the Commission's mandate is to contribute solutions to South Africa's economic challenges including the issue of increasing food prices through effective competition enforcement and merger regulation. In this regard, food and agro-processing sector of which the grains and oilseeds value chains fall, was specifically identified as a priority sector for the Commission given its influence on key staple zero-rated products namely bread, flour, maize meal and cooking oil. The study found that the competition issues identified in the processing level include the rocket and feather effect, vertical integration and concentration. It has also found evidence of abuse of dominance and cartel conduct. The evidence of rocket and feather effects indicates that there are features adversely impacting on competition.

The study also identified competition concerns are in relation to the rocket and feather effect and market concentration in the retail level of the value chain. However, this market has been the subject of the Grocery Retail Market Inquiry which did identify exclusive leases as harming competition in retail markets. Changes to the structure will likely take time but at this stage it is not apparent that other enforcement is needed other than to keep the retailers honest in the interim through transparency on pricing in the EFPM reports and to avoid making concentration worse through merger control.

### **C. ENFORCEMENT RESEARCH ON THE PIPED GAS MARKET SEGMENTS IN SOUTH AFRICA**

A research study into the piped gas market was conducted to identify anti-competitive conduct. This enforcement research refrains from providing specific recommendations and defers the decision of whether to adopt an initiation or enforcement approach resolution of the identified anti-competitive concerns to the discretion of the Commission.

The primary objective of this enforcement research study was to identify mainly competition and/or public interest issues that may be present in the market segments of the piped gas supply chain. After analysing the available information, the research findings can be summarized as follows, with respect to each level of the piped gas supply chain:

*Upstream* – based on this research, there is no indication of competition or public interest concerns at this particular level of the piped gas supply chain.

*Midstream* – at this level of the piped gas supply chain, it is anticipated that competition issues may only arise within the distribution segment, which currently lacks regulation. Specifically, the distribution segment may demonstrate instances of excessive pricing and exclusionary behaviour.

*Downstream* – in the trading segment, there is an ongoing investigation against Sasol Gas for alleged excessive pricing conduct. Additionally, concerns of a legal nature have been identified in the market segment for the trading of piped gas. Specifically, a misalignment has been observed between the Gas Act and the amended Competition Act in terms of regulating price discrimination. On the other hand, in the reticulation segment, Egoli Gas, the sole active firm in this market segment, has exhibited excessive and discriminative pricing conduct.

### **Scoping Study into the Poultry Industry Value Chain**

The South African poultry industry is dominated by a few vertically integrated companies, creating entry and expansion barriers. In broiler and egg production, a handful of producers control the majority of supply, while contract growers operate as extensions of the vertical integration model. The Commission has previously found concentration throughout the market chain for chicken meat and eggs starting from genetic material to marketing and distribution.

- Genetic material is globally concentrated with 2 companies, Aviagen and Cobb-Vantress, supplying 90% of the world's

broiler genetics. Lohmann and Hy-line are the predominant egg laying breeds in South Africa. Genetic material is imported by companies with exclusive distribution rights. These companies are also vertically integrated players with operations throughout the value chain and supply themselves as well as independent players.

- Feed is a crucial input and determinant of profitability in the poultry sector. This too is a concentrated activity with 75% of feed production being produced by three vertically integrated companies – Meadow Feed, Epol, and Afgri.
- In egg supply, the largest three companies supply 51% of the market. In the broiler market, RCL and Astral have enjoyed market shares of 35% including imports and 50% excluding imports.

Not only is the poultry value chain concentrated at every level, but vertical integration means that it is typically the same large companies that dominate at each level. Access to the breeding stock enables those companies to dominate the process of developing day-old chicks and the use of those chicks in broiler or egg production. The companies have made use of contracted parties to increase capacity but still retain control of inputs and markets. Contract growing is a globally used method to rear chickens in the poultry industry. However, in South Africa, contract growers do not appear to be able to operate independently and challenge the entrenched players. The structure of the poultry industry has not changed materially in recent years, despite the governments' industrial policy interventions and active trade policies. As such, concentration levels remain high, raising the risk of anti-competitive conduct and imbalanced relationships that impede participation by emerging producers. The poultry industry exhibits several features that may impede, restrict or distort competition.

- Structure: There are high-levels of concentration throughout the value chain which exist alongside vertical integration. The largest producers of broilers and eggs have a presence from essential inputs through to retail brands sold through retailers. These integrated firms sell inputs to their internal operations and contract growers as well as to independent and emerging

farmers and producers in the value chain, creating a reliance on a larger competitor by emerging players.

- Outcomes: The concentration levels and vertical integration in poultry production have limited the scope for new players to enter the market and compete with established producers. Consequently, transformation in the poultry industry remains slow. Contract growers, while an important part of the value chain, remain highly dependent on the integrated producers for inputs such as feed and day-old chicks. This dependence also deprives them of an independent route to market through retail or the fast-food industry. Furthermore, South Africa's inability to compete with imports may be driven by low levels of domestic competition, among other factors.
- Conduct: Contract growing has been coming under more scrutiny by regulators and policymakers in other jurisdictions, where there are concerns about the power imbalances that manifest themselves through information asymmetry and tournament systems in contracts. The current market structure may serve as a barrier to accessing retail and/or end-user customers for emerging producers as large producers have established commercial relationships that an emerging player would be unlikely to replicate.

Lastly, contract relationships at the breeding stock and hatchery levels of the value chain are generally likely to create dependency as the contractors will be similarly reliant on the large integrated firms for both inputs and for market access. This situation is likely to result in an imbalance of power in their design and execution, placing the contracted producers in adverse market circumstances.

### 11.5.8 CASE STUDY

#### A. SURVEY ON THE IMPACT OF THE GUIDELINES FOR COMPETITION IN THE SOUTH AFRICAN AUTOMOTIVE INDUSTRY

The Commission administered a survey to evaluate overall industry compliance with the Guidelines. The survey was an advocacy approach initiated by the Commission. The Survey was therefore administered on a voluntary and anonymous basis to encourage

stakeholder participation. The survey sought to determine the following:

- a) The extent to which ISPs have serviced, maintained and repaired in-warranty motor vehicles and the compliance by ISPs to disclose liability risks to consumers.
- b) The measures implemented by OEMs to appoint motor-body repairers, particularly HDIs to their panels and a fair system for the allocation of work to repairers.
- c) The measures implemented by insurance companies to appoint repairers, particularly HDIs to their panels and to implement a fair allocation of work to repairers.
- d) The measures implemented by OEMs to reduce barriers to establish dealerships and in the appointment of Approved Dealers.
- e) The measures that OEMs have adopted to introduce the use of non-original spare parts for in-warranty motor vehicles.
- f) The measures implemented by OEMs to unbundle the sale of motor vehicles with service plans, maintenance plans and value-added products.
- g) The measures implemented by OEMs to ensure access to technical information and OEM-Training for ISPs.

The survey generated 212 responses, with most respondents consisting of 175 Independent Service providers. The remaining responses consisted of 17 Dealers, 12 Insurers and 8 OEMs. The survey results revealed a high level of awareness in the industry of the Guidelines. In particular, 83% of participants indicated that they were aware of the Guidelines. This level of awareness can be attributed to the stakeholder consultations and awareness conducted by the Commission prior to and after issuing the Guidelines.

The survey also revealed that ISPs remain concerned about the non-compliance of OEMs with regards to access to technical information. This includes accessing unequivocal motor vehicle identification; vehicle service books or its electronic equivalent including data stored electronically or in a cloud; technical manuals; component and diagnosis information; diagnostic trouble codes; software calibration identification number applicable

to a motor vehicle type; information provided concerning, and delivered by means of, proprietary tools and equipment; data record information and two-directional monitoring and test data; and operational software, and security-critical information. In particular, the survey revealed that approximately 72% of ISPs indicated that work done on vehicles that are in-warranty was less than 30% of their revenue, which could be attributed to a lack of access to technical information on in-warranty vehicles. These results substantiate the issues raised in complaints received and investigated by the Competition relating to the lack of access to technical information by ISPs, resulting in the inability of ISPs to repair in-warranty vehicles.

Many ISPs reported receiving approval status by both OEMs and Insurers and the majority did not wait prolonged periods to receive work after being onboarded. In particular, 50% of OEMs indicated that they had accredited 1 to 10 ISPs, whilst 75% of insurers indicated that they had appointed over 20 ISPs since the effective date of the Guidelines. Furthermore, it was revealed that more than 50% of these ISPs are firms owned by HDIs. The Commission also recently received information from 10 insurers which substantiates the increased appointment of ISPs by the insurance industry since the effective date of the Guidelines. The information revealed that a total of 348 ISPs were approved by the insurers collectively. The survey also revealed that most ISPs have accessed Original Spare Parts from either OEMs or Approved Dealers and training when requested.

## **B. ADVOCACY STUDIES EVALUATING THE COMMISSION'S INTERVENTIONS IN PRIORITY SECTORS**

The Commission has released a paper assessing the impact of its interventions in school uniform procurement from 2020 to 2023. The primary objective was to evaluate the effectiveness of these interventions and their outcomes. The paper focused on changes implemented by schools in response to the Commission's actions, particularly examining whether small and medium-sized enterprises (SMEs) and Historically Disadvantaged Persons (HDPs) have gained better access to the school uniform market. The Commission contacted the various schools that signed the settlement agreements to evaluate compliance and changes

implemented for the procurement of school uniform at their respective schools. Schools such as St Andrews have introduced procedural changes in the procurement of their school uniform. For instance, it introduced a uniform committee which consists of the executive head, school heads, heads of sport, and uniform staff. The purpose of the uniform committee is to streamline branded sports items and to reduce unique uniform items. St Andrews submitted that through this structure, it has managed to remove some unique items from its school uniform for the different learning levels. Further, St Andrews has adopted a uniform procurement policy as part of the school's policies. The purpose of the uniform procurement policy is to open the school uniform tender process for a period of five (5) years. During the tender process, it requests quotes from both existing suppliers as well as new suppliers, and the evaluation, selection and the approval of a viable supplier is done through the Uniform Committee Meeting.

Curro schools confirmed that it no longer applies a blanket approach whereby a supplier is appointed based on a historical relationship with the supplier and subscribes to continuous renewal of contracts and there is no automatic renewal of a supplier's agreement at the expiry of the duration of the existing supplier's agreement. Curro has adopted an independent tender process, whereby all interested potential suppliers are afforded the opportunity to submit a bid to be appointed as a supplier of school uniforms to Curro schools.

The paper highlights the Commission's success in encouraging schools to sign undertakings, committing to implement measures that promote competition in the procurement of school uniform and ensure reasonable and affordable prices for parents, as outlined in the National Guidelines on School Uniform and in the joint circular issued by the Commission and the Department of Basic Education. The Undertakings were signed by schools from various provinces and include Robin Hills Primary School, Tshepo Yarona Secondary, Jabulani Technical High, Winnie Mandela Primary School and Flora Park Comprehensive Primary. These undertakings include adopting a competitive bidding process for supplier selection, appointing multiple suppliers, minimising exclusive agreements and limiting contract duration to

shorter periods. Additionally, schools pledged to maintain price affordability by offering a balanced mix of generic and unique/school branded uniform items that can be easily purchased from various retailers.

In addition, the paper provides a comprehensive analysis of the Commission's survey results. The results from the survey indicate that a majority of schools are well-informed about the joint circular and guidelines. However, several challenges impede schools from fully complying with them such as the voluntary nature of the guidelines, inadequate knowledge, lack of participation from relevant stakeholders and a shortage of personnel to assist with implementation. The paper showcases success stories from SMEs that have entered into agreements with schools for the procurement of school uniforms. These success stories demonstrate the positive impact of the Commission's interventions to promote competition and inclusivity in the school uniform industry. Overall, the paper concludes that the Commission's interventions have resulted in improved competition, reduced prices, and greater choice for parents in school uniform procurement. These efforts have aimed to align practices with the DBE circular and promote fairness, affordability, and transparency in the procurement process.

### C. AGRICULTURE DEVELOPMENT FUNDS IMPACT STUDY

One of the ways in which the Commission deals with the concentration of markets is through the control of mergers and acquisitions. The Commission is required to assess all mergers that meet the required threshold before they are implemented. When mergers are being evaluated, the Commission investigates, amongst other things, the effects of the merger on the competitiveness of SMEs and HDPs and can also insist on remedies to proposed mergers. These include the creation of Development Funds for increased enterprise development and market competitiveness of SMEs and firms owned by HDPs in the markets impacted by the merger. Development Funds are also created as part of the merger conditions to respond to the potential loss of employment and sales by local suppliers because of the potential displacement from import competition.

The Commission conducted a study on the impact of Development Funds created in the Agricultural sector by the Commission between 2015 and 2020. Four Development Funds were assessed, and these were established in the following mergers, namely: Mondi's Zimele Development Fund, AB-InBev

Development Fund, Pepsico's Kgodiso Development Fund and Coca-Cola's Mintirho Development Fund. The study found that these funds have disbursed a total of R1.3 billion to 1009 beneficiaries. 7 797 jobs were created by beneficiaries. Support was given to 331 SMEs and 210 young people.

**Table 4: Summary of performance outcomes from the four Funds**

Item	AB- InBev Fund	Mondi Fund	Pepsico Fund	Coca Cola Fund	Total
Disbursed amounts as of 2023	R621 million	R176 million	R114 million	R343.2 million	R1.3 billion

*Source: Merger monitoring reports submitted to the Commission and interviews with beneficiaries*

As reflected in the table above, R621 million of the AB-InBev and SAB Miller Fund has been distributed to beneficiaries as at the end of 2023. Since the launch of the Coca-Cola Beverages South Africa's (CCBSA) Mintirho Development Fund in 2018, R343.2 million was disbursed to beneficiaries. As at the end of 2023, Mondi reported to the Commission that it invested R176 million, which exceeds the target of R150 million that was set as part of the merger condition. As at the end of 2023, the Kgodiso Development Fund has disbursed R114 million to beneficiaries.

During November 2023 to December 2023, the Commission conducted site visits to the farms and agricultural establishments of some of the beneficiaries in the Eastern Cape, Mpumalanga, Gauteng, and KwaZulu-Natal to aid its study on the financial and non-financial support they received through the Funds.






The study found that the Development Funds had a positive effect on employment. Most beneficiaries attributed their employment increases to the intervention by the funds. The study found that the participating farmers increased employment levels by 629 jobs, which is attributed to interventions by the development funds.

The Agriculture Development Funds considered in the study have improved the supply capacity of farmers. Some Funds focused on supporting farmers in rural areas. Economic indicators, such as revenue, employment, output, and productivity have been positively affected by the funds.

## 11.6 ORGANISATIONAL EFFECTIVENESS AND EFFICIENCY

### 11.6.1 THE HUMAN CAPITAL PROFILE OF THE COMMISSION

The profile of the staff of the Commission can be illustrated as follows:

 NUMBER OF STAFF	225	The Commission has a young, vibrant and passionate staff complement of 255 employees.
 GENDER PROFILE OF STAFF	<b>OVERALL PROFILE:</b> MALE = 43%   FEMALE 57% <b>MIDDLE MANAGEMENT:</b> MALE = 50%   FEMALE 50% <b>SENIOR MANAGEMENT:</b> MALE = 60%   FEMALE 40% <b>TOP MANAGEMENT:</b> MALE = 50%   FEMALE 50%	The majority of the Commission's employees are women even though the representation of women is disproportionate at senior levels.
 SKILLS PROFILE	<b>LAWYERS = 77</b> <b>ECONOMISTS = 62</b> <b>OTHER SKILLS = 86</b>	Whilst most employees of the Commission are lawyers and economists, the Commission is investing in other skills to support its core work considering the evolving environment within which it operates.
 VACANCY RATE	13%	The current vacancy is at 13% even though positions get filled more efficiently than before; this is as a result of most positions being filled with internal candidates.
 RETENTION RATE	96.9%	The Employee Value Proposition of the Commission delivered through its Talent Management Framework continues to deliver high retention rates in a very challenging market.





### 11.6.2 CADET PROGRAMME: TRAINING THE NEXT GENERATION OF LEADERS

The Commission is steadfast in its commitment to nurturing talent and fostering inclusivity within the field of Competition Law and Economics. Central to this endeavour is its Cadet Training Programme, a biennial initiative designed to provide practical training and experience to graduates while contributing to the economic landscape of South Africa.

The 24-month programme offers a structured pathway for inexperienced graduates to immerse themselves in the intricacies of Competition Law and Economics. Through rotations across divisions and guidance from mentors and technical coaches, cadets engage in real-life developments, building a robust portfolio of skills and expertise. The Commission recognises the strategic significance of this programme in replenishing its talent pool with practitioners possessing applied experience. To ensure a diverse intake, efforts were made to reach tertiary institutions across the country, including those in marginalised areas often overlooked in talent attraction initiatives.

In 2023, the Commission embarked on an extensive search for top-ranking graduates, conducting outreach activities and advertising the programme on various platforms. The



overwhelming response necessitated a rigorous selection process, culminating in the identification of the top 50 candidates.

Acknowledging the diverse backgrounds of applicants, the Commission structured a comprehensive bootcamp to equip shortlisted participants with essential skills beyond the immediate scope of employment at the Commission. Modules addressing generational wars in the workplace, self-awareness, career planning, finance, critical thinking, problem-solving and collaboration were meticulously crafted to bridge the gap between academia and the professional world of work.

Following the bootcamp, interviewing panels convened to assess candidates' suitability for different functional streams within the Commission. Despite the challenge of selecting from a highly qualified pool, the Commission successfully onboarded 17 graduates for the 2024 intake, with a significant proportion hailing from regions beyond the Gauteng province. The impact of the bootcamp extends beyond the Commission, as evidenced by feedback from unsuccessful candidates who expressed empowerment and refinement in their skills. This underscores the broader contribution of such initiatives to the enhancement of South Africa's youth talent market.

As the Commission continues its quest for top talent, the Cadet Training Programme remains a beacon of opportunity, embodying the organisation's commitment to excellence, diversity, and socioeconomic empowerment. Through strategic outreach, comprehensive training, and inclusive recruitment practices, the Commission is poised to shape the future of Competition Law and Economics in South Africa, one cadet at a time.

### 11.6.3. INFORMATION AND COMMUNICATIONS TECHNOLOGY

In 2023/24 financial year, the Commission's strategic work on ICT focused on the implementation of the new Enterprise Resource Planning (ERP) solution, Development of the a new ICT Strategy to respond to current challenges and in preparation for the new Strategy Cycle of the Commission, Enhancing Cybersecurity, Upgrading Infrastructure, and Improving Technology tools of employees.

One of the major milestones was the successful launch of the new ERP system using Sage X3 technology. This initiative aligns with the Commission's ICT strategy, which emphasises cloud-first solutions. Beyond the technical aspects, the Commission ensured a smooth transition for the employees by implementing a thorough training program and effective change management strategies. This new ERP system streamlines our business processes and enhances data management across the Commission.

Before the ERP system went live, project implementors provided employees with foundational knowledge through pre-launch training. Training programs were specifically tailored to different user roles and responsibilities within the ERP system, ensuring that each user received the most relevant instruction. Additionally, the technical team established ongoing support resources, including user guides, online tutorials, and readily available support personnel to address any questions or challenges that may arise.

Throughout the entire ERP implementation process, employees were kept well-informed through various communication channels

such as screen savers, emails, email signatures, and staff meetings. This transparent approach addressed concerns and highlighted the benefits of the new system. Staff feedback was actively sought during the training and implementation phases, fostering a sense of ownership and increasing user buy-in. The Commission also committed to recognising and celebrating the successful adoption of the new ERP system. The new cloud-based ERP system offers a comprehensive suite of integrated modules, including streamlined financial management processes in accounting and improved inventory control, procurement, and logistics in the supply chain, making it more responsive and cost-effective.

#### (i) Approved ICT Strategy

A comprehensive ICT strategy was developed and approved, outlining the Commission's goals and roadmap for supporting future technology needs. The ICT strategy was developed focusing on four main themes:

- Business Partner Centric: Aligning ICT initiatives with partner needs and objectives.
- Resilient to the Core: Building a robust ICT infrastructure that withstands challenges.
- Digital by Design: Embedding digital thinking into every aspect of the Commission's operations.
- Secure by Design: Prioritising security in all ICT endeavours.

#### (ii) Enhanced Cybersecurity:

The institution implemented proactive cyber defence technologies, significantly strengthening our security posture. This resulted in successfully preventing all attempted cyber-attacks during the year, safeguarding data integrity and our reputation.

#### (iii) Infrastructure Modernisation:

Redundant tools of trade were replaced with the latest laptops, enhancing staff productivity and efficiency. Additionally, an infrastructure upgrade was completed to ensure a robust and reliable technological foundation. Overall, the following

interventions during the 2023/24 financial year sought to position the Commission for continued success by:

- Improving operational efficiency with the new ERP system.
- Providing a clear roadmap for future technology investments with the approved ICT strategy.
- Enhancing data security and mitigating cyber threats.
- Empowering staff with modern tools and a reliable infrastructure.

#### **(iv) Reduced IT Costs:**

Cloud-based solutions eliminate the need for significant upfront hardware and software investments, as well as ongoing maintenance expenses. These interventions are also likely to contribute to improved Security as Cloud providers offer robust security measures to safeguard data, ensuring its protection and integrity. This investment has also contributed to Real-Time Data and Insights as Cloud-based systems provide real-time access to data, enabling better decision-making based on up-to-date information.

#### **(v) Implementation of the ERP System**

The implementation of a cloud-based ERP system represents a significant step forward in the Commission's technological advancements. This project not only improves core business processes but also demonstrates our commitment to aligning with the Commission's ICT strategy. We are confident that this new system will continue to deliver significant benefits for the Commission well into the future.

### **11.6.4. EMPLOYEE DEVELOPMENT AND WELLNESS**

#### **(i) Learning and development**

The Commission places great importance on developing its personnel. R3 936 436,63 was spent on learning and development initiatives during the reporting period. The training budget includes local training, overseas training, conferences, and study loans. Through the learning academy, the Commission has moved towards a Learning and Development Program that relies heavily on its internal expertise and information resources in the development and delivery of learning programs, whilst continuing to draw from best practices and innovation from outside the Commission. The Commission has invested a significant amount of effort in the development of learning content and encouraging senior employees to participate in the development of other employees. Some of our senior employees have been involved in either providing content or running training and development programs for international competition authorities. In line with its aspiration to support the holistic development of its staff, the Commission supports staff to not only do their jobs, but also to grow as individuals.

#### **(ii) Outcomes and impact of learning and development initiatives:**

The Commission considers it important to develop local content because it recognises that the South African economy faces unique economic constraints; namely high levels of poverty, inequality and unemployment. These constraints require an approach to competition law enforcement that may not apply equally in other jurisdictions. Therefore, the learning and development function is crucial to developing local knowledge and approaches to competition law enforcement so as to enable case outcomes and remedies that are relevant to South Africa's developmental context.



# PART C

## PERFORMANCE INFORMATION



# 11

## AUDITOR'S REPORT: PREDETERMINED OBJECTIVES

The AGSA currently performs the necessary audit procedures on the performance information to provide reasonable assurance in the form of an audit conclusion. The audit conclusion on the performance against predetermined objectives is included in the report to management, with material findings being reported under the Predetermined Objectives heading in the Report on other legal and regulatory requirements section of the auditor's report.

Refer to pages 130-135 of the Auditors Report, published as Part H: Financial Information.

# 12

## OVERVIEW OF PERFORMANCE

### 13.1 SERVICE DELIVERY ENVIRONMENT (STRATEGIC OPERATIONS, THE LINK)

The Commission achieved an overall performance of 93% against its 2023/24 annual performance plan targets. This success is attributed to the Commission implementing the amendments of the Competition Act as well as its core activities which include:

- Cartel Enforcement
- Tackling Abuse of Dominance in Markets
- Merger Regulation
- Market Inquiries
- Advocacy Efforts

These efforts aim to address anti-competitive market structures and generate a positive impact on society and the economy, contributing to a growing, deconcentrated, and inclusive economy.

### 13.2 KEY POLICY DEVELOPMENTS AND LEGISLATIVE CHANGES

The public entity should describe any major changes to relevant policies or legislation that may have affected its operations during the period. If there have been no changes this should be stated.



## 14.1 PROGRAMS AND FUNCTIONS

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

The regulation of mergers and acquisitions entails the assessment of corporate consolidations, to determine their likely impact on competition and the public interest. The Commission's enforcement function can be defined as the investigation of vertical restrictive practices, horizontal restrictive practices – including cartels – and the investigation of abuse of dominance by firms.

A market inquiry refers to a formal inquiry in respect of the general state of competition, the levels of concentration in and structure of a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm. Finally, Advocacy refers to the Commission's authority to promote voluntary compliance with the Competition Act.

The divisions responsible for executing the Commission's work during the reporting period included:

1. Mergers and Acquisitions Division (M&A): analyses and evaluates applications for corporate consolidations.
2. Market Conduct Division (MCD): investigates abuse of dominance, vertical restrictive practices, assesses exemption applications and conducts market inquiries.
3. Cartels Division (CD): investigates and prosecutes cartel conduct.
4. Advocacy: conducts preliminary investigations of complaints

received; provides policy responses to government and other regulators; and advocates for voluntary compliance with the Competition Act.

5. Legal Services Division (LSD): provides litigation services and legal expertise to the Commission and advisory opinions to the public.
6. Economic Research Bureau (ERB): provides economic expertise to the organisation and enhances the Commission's knowledge and understanding of market dynamics.
7. Corporate Services Division (CSD): provides corporate support services, including human resource management, registry, security and facilities management, as well as the management of Information Technology (IT).
8. Finance Division: responsible for finance management.
9. Office of the Commissioner (OTC) carries out the strategic planning, communication and corporate governance functions. The division is also responsible for managing the Commission's relations with international stakeholders.

## 1. MERGER REGULATION

Mergers are classified as either small, intermediate, or large, depending on the turnover or asset value of the merging firms. It is not compulsory for small mergers to be notified, and no filing fee is prescribed. However, the Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds.

According to the Competition Act, it is not compulsory for small mergers to be notified, and no filing fee is prescribed. However,

the Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds.

The merger thresholds were last revised in October 2017 and are set out in the table below. The Commission receives a filing fee for every intermediate and large merger filed.

**Table 5: Mergers and acquisitions thresholds applicable in the 2023/24 financial year**

Threshold	Combined turnover or asset value	Target turnover or asset value	Size of the merger	Filing fee
Lower threshold	R 600 000 000	R 100 000 000	Intermediate	R 165,000.00
Higher threshold	R 6 600 000 000	R 190 000 000	Large	R 550,000.00

For operational efficiency, the Commission classifies mergers as either phase 1 (non-complex), phase 2 (complex) or phase 3 (very complex) mergers, depending on the complexity of the competition or public interest issues raised.

The Commission has published service standards for the time periods it takes to complete a merger investigation. These service standards are necessary as the Competition Act has set out

timeframes for merger investigations, regardless of their level of complexity. Therefore, the service standards assist in managing internal deadlines and stakeholders' expectations when notifying mergers of varying complexity. The table below gives a complete picture of the timeframes set out in the Commission's service standards, and the maximum allowable timeframes set for merger assessments in the Competition Act. Table below sets out the Commission's performance against these service standards.

**Table 6: Time frames set for assessing mergers of varying complexity**

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

The Commission met all its turnaround time targets in the 2023/24 financial year. Phase 1 (non-complex) cases should be completed within 20 days and the Commission achieved an average

turnaround time of 12 days. Phase 2 (complex) cases have a turnaround time target of 45 days and the Commission completed 208 Phase 2 cases with an average turnaround time of 41 days.

Phase 3 (highly complex) intermediate and small mergers have a turnaround time target of 60 while the target for the completion of 90% of Phase 3 large mergers is 120 days. The Commission met

both of these targets, completing 34 Phase 3 intermediate and small mergers in an average of 56 days and completing 90% of Phase 3 large mergers in an average of 99 days.

**Table 7: Average turn-around times in 2023/24 against service standards**

Phase	Service standard	Total number of transactions (excluding withdrawn and no jurisdiction cases)	Average turnaround time
Phase 1	20	4	12
Phase 2	45	208	41
Phase 3 (small and intermediate)	60	34	56
90% of Phase 3 large merger investigations.	120	17	99

### **Trends in notification and approval over the past five years**

**Table 8: Mergers notified and reviewed over five years**

	2019/20	2020/21	2021/22	2022/23	2023/24
Notified	302	242	295	273	268
Large	82	72	89	105	85
Intermediate	217	161	197	165	175
Small	3	9	9	6	8
Finalised	318	225	297	258	266
Large	84	67	92	94	89
Intermediate	230	150	200	154	170
Small	4	8	5	10	4
Approved without conditions	278	189	216	189	136
Large	69	50	60	62	49
Intermediate	206	132	152	122	81
Small	3	7	4	5	6
Approved with conditions	33	34	74	68	126
Large	13	16	30	32	38
Intermediate	19	17	44	31	87

	2019/20	2020/21	2021/22	2022/23	2023/24
Small	1	1	0	5	1
Prohibited	7	2	5	1	1
Large	2	1	2	0	1
Intermediate	5	1	3	1	0
Small	0	0	0	0	0
Withdrawn / No jurisdiction	3	2	2	6	3
Large	1	0	0	2	1
Intermediate	2	1	1	4	2
Small	0	1	1	0	0

Table above sets out the trends in mergers notified and finalised over the five years from 2019/20 to 2023/24. The Commission saw a slight decline of 2% in the number of mergers notified in 2023/24 compared to the previous year continuing the downward trend in merger notifications compared to the pre-Covid period.

The Commission has also seen a marked increase in conditional approvals in the 2023/24 financial year. In 2022/23, conditions were imposed in approximately 26% of cases finalised. This increased to approximately 47% of cases in 2023/24. The increase in conditional approvals coincides with greater focus on the implementation of the amendments to the public interest provisions from the 2020/21 financial year.

#### **The impact of public interest conditions imposed in mergers in 2023/24**

During the financial year 2023/24, the Commission recommended and/or imposed conditions in one hundred twenty-six (126) merger cases.

#### **Employment conditions imposed in mergers**

The Commission's interventions in mergers resulted in a net saving of 4 902 jobs in the 2023/24 financial year. The table does not depict the full extent of the impact of merger control on employment as it does not include the impact of moratoria on retrenchments imposed as conditions to mergers but only focuses on the quantitative aspects of the employment conditions imposed.

**Table 9: Impact of Merger on Jobs**

Month	Jobs lost	Jobs saved	Intended job creation	No. of cases	Net effect
April	33	821	155	4	943
May	0	500	20	2	520
June	0	0	0	0	0
July	0	78	0	1	78
August	0	0	369	2	369
September	0	0	300	2	300
October	0	0	255	2	255
November	0	0	26	2	26
December	0	1103	0	3	1103
January	10	0	500	4	490
February	0	0	23	6	23
March	0	735	60	2	795
<b>Total</b>	<b>43</b>	<b>3 237</b>	<b>1 708</b>	<b>30</b>	<b>4 902</b>

## 2. COMPETITION INVESTIGATIONS

The Commission's enforcement functions can be defined as the investigation of vertical restrictive practices, horizontal restrictive practices – including cartels – and the investigation of abuse of dominance by firms. The investigative work of the Commission comes from two main sources - complaints and exemption applications filed by the public and investigations and market inquiries proactively initiated by the Commission.

### Investigation process within the Commission

#### Screening cases

The Commission undertakes preliminary investigations on all complaints received to assess whether they fall within the provisions of the Competition Act. Based on these preliminary investigations, the Commission decides on whether to investigate

the complaints further or opt not to investigate further (non-referral).

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

The Commission received a total of three hundred and nineteen (319) complaints from the public during the 2023/24 financial year; all complaints received were ordinary enforcement complaints. The Commission completed preliminary investigations (screening) of three hundred and twenty-three (323) complaints, of which two hundred and fifty (250) were non-referred, eleven (11) were withdrawn, and the remaining cases recommended for further investigation. The tables below provide a summary of screening statistics:

**Table 10: screening statistics for FY 2023/24**

Screening Activity	Q1	Q2	Q3	Q4	Total
Total complaints received	70	74	82	93	319
Total Complaints received	70	74	82	93	319
Total complaints finalised	82	69	84	88	323
Complaints withdrawn	2	3	1	5	11
Complaints referred to the Competition Tribunal	0	0	0	0	0
Active cases	109	102	98	111	111
Complaints non-referred	71	57	57	65	250

The Commission non-refers several complaints at preliminary investigation (screening) stage, however, the Commission attempts

to resolve the issues arising in some of the complaints. Below are some of the complaints resolved during the 2023/24 financial year:

**Table 11: Screening cases resolved in 2023/24**

Parties to the investigation	Complaint	Type of intervention
Kate Elliot v Nissan Milnerton	The Complainant alleged that the Respondent has failed to comply with section 11.6.1.4 of the Guidelines for Competition in the South African Automotive Aftermarket. The Complainant also alleges that the Respondent continues to sell the service plan as a bundled product together with the purchase price of new motor vehicles.	The Commission engaged with Nissan SA, which undertook to change its policy to unbundle the service plan from the sale of the new vehicles.
Anonymous v Subaru SA	The Complainant alleged that Subaru Centurion provided a quotation for car parts without parts numbers. The Complainant also stated that when he requested Subaru Centurion to provide information on part numbers, it indicated that it is not allowed by Subaru South Africa to provide quotations to customers with such information.	Following our engagement, Subaru South Africa issued out directives to all sales personnel within its dealer network to update their system to display part numbers on every quotation issued out to customers.
Harold Mogajana v Mapalagadi Primary School	The Complainant alleged that the school refused to allow him to supply the school with uniform.	Following our engagement, the school has appointed the Complainant to supply their school uniform.



Parties to the investigation	Complaint	Type of intervention
Anna-Rita van der Westhuizen of Nantekara African Foods (Pty) Ltd v Marili Viljoen of Fieldfresh Veg	The Complainant alleged that Fieldfresh Veg has terminated its supply agreement with immediate effect after she had a fall-out with some of its employees.	Following our engagement, Fieldfresh Veg agreed to reinstate the supply agreement and to supply the Complainant with their product requirements.
Kate Elliot v William Simpson Cars /or Peugeot	The Complainant alleged that Peugeot SA sell the service plan as a bundled product included in the purchase of a new motor vehicle and do not provide consumers with a choice to purchase the motor vehicle separate from the service plan.	The Commission engaged with Peugeot SA, which undertook to change its policy to unbundle the service plan from the sale of new vehicles.
Thabo Kenneth Molamu obo Mputsu Investment Holdings (Pty) Ltd v G4 Roads & Civils (Pty) Ltd	<p>The Complainant was appointed by G4 Roads as a subcontractor. The Complainant alleged that G4 Roads started imposing its affiliates and instructed that he should hire plant machinery from these firms to ensure that it was able to provide efficient plant-hire machineries as required in terms of the subcontract. The Complainant alleged that the rates charged by G4 Roads' affiliates were very high, which made it difficult to operate profitably.</p> <p>The Commission engaged with G4 Roads, which agreed to write off the debt that the Complainant owed.</p>	The Complainant requested that G4 Roads write-off the debt that he owed at the time.

### Restrictive Horizontal practices - cartel cases

Cartel conduct comprises price fixing, market allocation and collusive tendering, all of which are prohibited by section 4(1)(b) of the Competition Act.

During the 2023/24 financial year, the Commission received nineteen (19) cartel complaints from third parties and initiated four (4) cartel investigations. A total of thirty-three (33) cartel investigations were completed during financial year 2023/24. Of these, six (6) were referred to the Tribunal for prosecution, while twenty-seven (27) were non-referred.

**Table 12: Cartels case load**

Cases	Q1	Q2	Q3	Q4
Number of cartel cases under investigation	73	72	69	71
Number of cartel cases under investigation carried from previous quarter	68	68	61	62
Number of cartel cases in litigation	79	79	74	78
Number of cartel cases from third parties	5	4	7	3
Number of cartel cases initiated	0	1	1	2
Number of cartel cases completed	5	9	6	13
Number of cartel cases referred to the Tribunal	0	0	1	5 (settlements)
Number of cartel cases non-referred	5	9	5	8
Number of cartel withdrawals	0	2	1	0

### Corporate Leniency Applications

Corporate Leniency Applications are undertaken in terms of the Commission's Corporate Leniency Policy (CLP). The CLP is a policy in which the Commission grants immunity from prosecution to a cartel member who is first to disclose or confess to their participation in a cartel. The evaluation of leniency applications is only done at the end of the investigation of each case. The Commission received five (5) CLP applications and rejected one (1) CLP application in 2023/24 financial year. The Commission did not conduct any dawn raids in the 2023/24 financial year.

**Table 13: Applications for leniency**

Corporate leniency applications	Q1	Q2	Q3	Q4
CLP applications carried over from the previous quarter	23	25	26	27
CLP applications received during the quarter	2	1	1	1
CLP applications granted	0	0	0	0
CLP applications rejected	0	0	0	1
CLP applications abandoned	0	0	0	0

### Restrictive vertical practices and abuse cases

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

Abuse of a dominant position by a firm may include excessive pricing of goods or services, denying competitors access to an essential facility, price discrimination (unjustifiably charging customers different prices for the same goods or services) and other exclusionary acts (such as refusal to supply scarce goods to a competitor, inducing suppliers or customers not to deal with a competitor, charging prices that are below cost so as to exclude rivals, bundling goods or services, and buying up a scarce input required by a competitor). The Competition Act prohibits the abuse of a dominant position by firms in a market but does not prohibit firms from holding a dominant position. Proving abuse of dominance requires extensive evidence and analysis. Firstly,

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

In the financial year 2023/24, the Commission had one hundred and eighty-three (183) complaints under investigation. Forty-one (41) cases were completed during the financial year, thirty-three (33) complaints were non-referred, and eight (08) complaints were referred to the Tribunal for prosecution.

**Table 14: Enforcement case load**

Cases	Q1	Q2	Q3	Q4	Annual
Number of cases under investigation	61	36	42	44	183
Number of cases under investigation carried from previous quarter	54	29	35	39	157
Number of cases from third parties	41	28	30	30	129
Number of cases initiated	1	8	1	2	12
Number of cases completed	29	5	4	3	41
Number of cases non-referred	24	5	1	3	33

### Exemptions

Exemption applications are granted to firms that wish to engage in anti-competitive conduct, if the conduct and their motivation meet the requirements set out in the Competition Act.

During the financial year, the Commission did not finalise any exemption applications. The Commission received two (2) new exemption applications in the financial year. One of the exemptions was a block exemption. On 15 February 2024, the Commission received a block exemption notification and request for confirmation in terms of the Energy Users Block Exemption Regulations, 2023 (the Regulations) from the South African energy users (the Energy Users). The Regulations permit the Minister of

Trade, Industry and Competition (the Minister) to exempt certain types of agreements or practices by Energy Users from the application of sections 4(1)(a), 4(1)(b)(i), 4(1)(b)(ii) and 5(1) of the Competition Act in response to the electricity supply constraint. In terms of these regulations, the Commission is only required to provide clarification on whether any proposed agreements or practices fall within the scope of the Regulations upon receipt of a request for confirmation from Energy Users. Accordingly, unlike the exemptions that fall within section 10 of the Competition Act, the power to grant exemptions that fall within the scope of the Regulations lies solely with the Minister and not the Commission. These exemption applications are still under investigation.

### 3. LITIGATION

The Commission's litigation is undertaken by the Legal Services division (LSD) as well as the Cartels division. The Commission has observed that the cases are becoming more complex with respondents contesting Tribunal judgments and the application of the Competition Act in various proceedings. The Commission is contending with a high volume of cases in litigation. The table below shows that a total of hundred and twenty-nine (129) cases were in litigation at the end of Q4.

**Table 15: Litigation case load 2023/2024**

Cases	Q1	Q2	Q3	Q4
Number of cartel cases in litigation at the Tribunal and the courts	85	85	80	85
Number of abuses of dominance cases in litigation at the Tribunal and the courts	6	7	8	8
Number of minimum resale price maintenance cases in litigation at the Tribunal	1	1	4	2
Number of contested large mergers in the Tribunal	1	4	2	3
Number of merger reconsiderations in litigation	5	5	11	0
Number of prior implementation cases in litigation	3	4	3	3
Number of appeals, reviews, and variation applications	23	24	24	28
<b>TOTAL CASES</b>	<b>123</b>	<b>130</b>	<b>132</b>	<b>129</b>

Penalties are imposed by the Tribunal after it has heard a case to its conclusion and made a finding. Should the respondent/s be found guilty, the Tribunal has the option to impose a financial penalty. The Tribunal imposed no penalties in the quarter under review.

**Table 16: Penalties levied by the Tribunal 2023/24**

No	Decision Date	Case Name	Section Transgressed	Penalty levied
1	3/4/2023	The Commission vs Bluecollar Occ & Altico	8(1)(a)	R3 550 000,00
2	2023-06-23	The Commission and Cape Gate (Pty) Ltd	4(1)(b)(i)(ii)	R1 375 344,32
3	23/5/2023	The Commission and Pacific Solar Technologies	4(i)(b)(iii)	R200 000,00
4	24/7/2023	The Commission vs Cromico & Maziya General Services CC	4(i)(b)(iii) (i)	R100 000,00
5	04/08/2023	The Commission vs Enviro Options Pty Ltd		R745 000,00
6	24/7/2023	The Commission vs Medmart & Baby Bug		R75 000,00
7	15/9/2023	The Commission vs Siyavuma Sports (Pty) Ltd		R90 000,00
8	3/10/2023	Unilever and Sime Darby Hudson Knight (Pty) Ltd ("Sime Darby")		R16 000 000,00
9	6/10/2023	Pienaar Brothers		R3 000 000,00
10	16/10/2023	The Commission and The Golfers Club	4(1)(b)(i)	R -
11	22/11/2023	Allen Mescho Group		R5 000 000,00
12	19/12/2024	The Commission and Spar Group		R -
13	13/2/2024	The Commission and Primedia Outdoor		R 2 717 950,00
14	13/2/2024	The Commission and Leo Constantin Pistorius and Five Others HWC		R 661 151,21
15	13/2/2024	The Commission and Leo Constantin Pistorius and Five Others HWC		R275 000,00
16	18/3/2024	Stuttaford Van Lines /Fracer		R40 000 000,00
17	18/3/2024	Standard Chatters		R42 715 880,00
18	15/3/2024	Tokai Rika company		R 1 312 878,25
Total levied @ 31 March 2024				R117 818 203,78

#### 4. STRATEGIC COLLABORATION AND ADVOCACY

The strategic collaboration and advocacy function within the Commission encompasses a variety of activities aimed at raising awareness about competition law, enhancing the profile of the Commission, and encouraging compliance among stakeholders in both the private and public sectors, domestically and internationally. Key activities include:

- hosting stakeholder engagement sessions such as workshops, seminars, forums, training sessions, exhibitions, and conferences on competition and related topics;
- compiling journals and other publications;
- influencing policy and regulation; contributing a development perspective to the global competition narrative; and
- managing internal and external communications.





### 15.1. OUTCOMES, OUTPUTS, OUTPUT INDICATORS, TARGETS AND ACTUAL ACHIEVEMENTS

#### STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND ENHANCED ECONOMIC PARTICIPATION

**Mergers and Acquisitions (M&A)** The Commission achieved its targets in the Mergers and Acquisitions programme by effectively regulating merger activities to foster economic growth and participation. Significant achievements include:

- **Phase 1 merger investigations:** Completed with an average turnaround time of 12 days against a target of 20 days.
- **Phase 2 merger investigations:** Completed in 41 days, well within the 45-day target.
- **Phase 3 intermediate and small merger investigations:** Completed in 56 days, ahead of the 60-day target.
- **Phase 3 large merger investigations:** Achieved a 99-day average turnaround time, significantly below the 120-day target.
- **Compliance monitoring reports:** Met the target by completing four compliance reports, ensuring adherence to imposed competition and public interest conditions.

These achievements have contributed to efficient and fair market regulation, enhancing competitive practices and supporting economic growth.

In its quest towards Competitive, Contestable and Deconcentrated Markets and Improved public interest outcomes, the Commission met and exceeded several targets.

- **Abuse of dominance and restrictive vertical cases:** Initiated 12 cases, surpassing the target of 5, driven by increased market information.
- **Market conduct investigations:** Completed 96.44% within the 18-month target, meeting the set  $\geq 85\%$  target.
- **Market inquiries:** Initiated and completed 2 inquiries, meeting the set targets.
- **Cartel investigations:** Completed 28 investigations, exceeding the target of 16, expedited by the absence of trials.

These efforts have reinforced competitive market structures and deterred anti-competitive behaviours, aligning with broader economic participation goals.

#### STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES

Advocacy and Outreach programme surpassed its targets, enhancing compliance and public awareness:

- **Education, training, and outreach initiatives:** Conducted 19 activities, exceeding the target of 14 due to increased stakeholder requests.
- **Guidelines on the Competition Act:** Issued 4 guidelines, surpassing the target of 3.

These initiatives aim to increase stakeholder understanding and compliance with the Competition Act, contributing to a more informed and competitive economic environment.

Table 17: Performance against targets: 2023/24

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
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.	≤ 20 days	12 days	Target met.
		M&A	2	Average turnaround time for Phase 2 merger investigations.	≤ 45 days	41 days	Target met.
		M&A	3	Average turnaround time for Phase 3 intermediate and small merger investigations.	≤ 60 days	56 days	Target met.
		M&A	4	Average turnaround time for 90% of Phase 3 large merger investigations.	≤ 120 days	99 days	Target met.
	b) Compliance monitoring for merger conditions	M&A	5	No. of compliance monitoring reports on competition and public interest conditions imposed by the Commission.	4	4	Target met.
2. Competitive, Contestable and Deconcentrated Markets  + 3. Improved public interest outcome	a) Investigation of Abuse of dominance and restrictive practices	MCD	6	No. of abuse of dominance and restrictive vertical cases initiated in prioritized sectors and/or in line with amendments of the Competition Act.	5	12	Target exceeded. The Commission received more information that led to initiation from the market.
		MCD	7	% of Energy Sector related investigations completed within 6 months.	100%	N/A	Target not applicable. Target was not triggered
		MCD	8	% of Energy Sector related investigations completed within 6 months.	100%	N/A	Target not applicable. Target was not triggered
		MCD & Advocacy	9	% of market conduct investigations completed within 18 months.	≥85%	96.44%	Target met.
	b) Exemption application decisions	MCD	10	% of exemption applications completed within 12 months.	100%	N/A	Target not applicable. Target not triggered.
	c) Market Inquiries	MCD	11	No. of market inquiries initiated.	2	2	Target met.
		MCD	12	No. of market inquiries completed.	1	1	Target met.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
2. Com- petitive, Contest- able and Decon- centrated Markets  +  3. Improved public interest outcome	d) Advocacy work of the imple- mentation on market inquiries recommendations.	OTC, ERB, Advocacy & MCD	13	No. of monitoring reports on implementation of Market Inquiry Recommendations.	2	2	Target met.
	e) Cartel investigations	Cartels	14	No. of cartel investigations completed.	16	28	Target exceeded. The Commission expedited completion of cartel investigations, as there were no trials.
	f) Cartel prosecutions	Cartels & LSD	15	% of cartel cases won at the Tribunal.	≥80%	91.8%	Target met.
		Cartels & LSD	16	% of cartel cases won at the courts.	≥80%	0%	Target not met. CC v I&J and Karan Beef- Lost
	g) Prosecution of Abuse of domi- nance and restric- tive practices	LSD	17	% of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices, and exemption litigation.	≥75% <sup>1</sup>	100%	Target met.
		LSD	18	% of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation.	≥75%	100%	Target met.
	h) Merger litigation	LSD	19	% of merger decisions upheld by the Tribunal.	≥80%	100%	Target met.
		LSD	20	% of merger decisions upheld by the courts.	≥80%	N/A	Target not applicable. No decision granted in the quarter under review
	i) Interlocutory litigation	LSD & Cartels	21	% of interlocutory decisions upheld by the Tribunal.	≥65%	100%	Target met.
		LSD & Cartels	22	% of interlocutory decisions upheld by the courts.	≥65%	50%	Target not met. The Competition Appeals Court dismissed the Tribunal's decision which was in favour of the Commission.

1 Annual target was erroneously recorded as ≥70%.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES							
4. Improved compliance & awareness	a) Domestic outreach initiatives	Advocacy & OTC	23	No. of education, training, and outreach and awareness activities initiatives conducted on Competition Act.	14	19	Target exceeded. The Commission received a higher number of requests for training from its stakeholders than the number of training initiatives originally planned.
	b) External Guidelines on the application of the Competition Act	LSD, M&A & ERB	24	No. of Guidelines on the application of the Competition Act issued to stakeholders.	3	4	Target exceeded.
	c) Advisory Opinions	LSD	25	% of advisory opinions issued within 60 days.	≥90%	N/A	Target not applicable. The Commission is awaiting Minister to publish guidelines.
5. Improved understanding of market dynamics in priority sectors	a) Industry Scoping Studies	ERB	26	No. of industry scoping studies conducted in prioritized sectors.	2	2	Target met.
	b) Impact assessments on Commission decisions or competition policy	ERB	27	No. of impact assessment studies completed.	1	1	Target met.
	c) Enforcement research on priority industrial sectors and support infrastructure.	ERB	28	No. of research reports on enforcement research on priority industrial sectors and support infrastructure.	2	2	Target met.
	d) Advocacy in priority sectors	Advocacy	29	No. of advocacy cases completed in priority sectors.	4	4	Target met.
		Advocacy	30	No. of advocacy studies evaluating the Commission's interventions in priority sectors.	2	2	Target met.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
6. Improved co-ordination on the application of economic policy and competition policy	a) Strategic Partnerships with relevant stakeholders	Advocacy	31	No. of initiatives to promote entry & participation of HDIs.	2	2	Target met.
	b) Policy responses	Advocacy	32	No. of submissions or responses to policy or regulation.	4	6	Target exceeded. Request from more stakeholders to provide comments on policies or regulations.
	c) Partnerships with government, labour, business and sector regulators regarding the objectives of the Competition Act.	Advocacy	33	No. of reports on collaboration projects with stakeholders on objectives of the Competition Act.	2	2	Target met.
7. Increased importance of developmental perspectives in domestic and international competition law discourse	a) Research & Thought Leadership	ERB	34	No. of research and thought leadership insights published.	4	4	Target met.
		ERB	35	Reports on essential food products.	2	2	Target met.
	b) Collaboration with Regional & International partners	OTC & ERB	36	No. of research on collaborative research on cross-country competition issues in regional and continental industrial value chains.	4	4	Target met.
	c) Strengthened strategic bilateral and multilateral relations focused on influencing with a developmental perspective.	OTC	37	No. of projects/contributions on regional cooperation, bilateral and multilateral relations management focused on influencing with a developmental perspective.	4	4	Target met.
STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANISATION							
8. Sound Corporate Governance	a) Audit Outcome	Finance & OTC	38	Audit Opinion.	Clean Audit	Clean Audit	Target met.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
9. Secure, harmonious and conducive working environment	a) Conducive Facilities & Efficient Security	CSD	39	Reports on implementation of the OHS compliance plan.	4	4	Target met.
10. Highly engaged, motivated and productive workforce	a) Talent management	CSD & OTC	40	% of HR spend in learning and development.	1%	1%	Target met.
		CSD	41	% retention rate of staff complement.	≥90%	98%	Target met.
		OTC	42	% of staff reached through training academy initiatives.	≥65%	70%	Target met.
11. Business Process Improvement	a) Review and redesign of business processes to improve efficiency and organizational agility	LSD	43	No. of reviews of the Commission's complaints and merger processes.	2	2	Target met.
	b) Efficient supply chain process.	Finance	44	% of suppliers paid within 30 days.	100%	77.68%	Target not met. An ineffective system of managing the payment of invoices and poor monitoring.
12. Effective collaboration with other state entities	a. Efficient Human Resources and Finance Systems.	CSD & Finance	45	% Progress on the implementation of the HR and Finance systems.	Completed HR and Finance Systems.	Completed HR and Finance Systems.	Target met.
	b. Partnerships with other Regulators and state entities	Advocacy	46	Report on collaboration with MOU partners, Gov and Sector Regulators.	2	2	Target met.



## 15.2 LINKING PERFORMANCE WITH BUDGETS

In assessing the achievement of the outputs in comparison to the planned targets, the public entity must consider the linkages and the relation to the resources available to the public entity, in particular the financial resources. Therefore, the following financial information should be presented. The financial information must agree to the information in the annual financial statements.

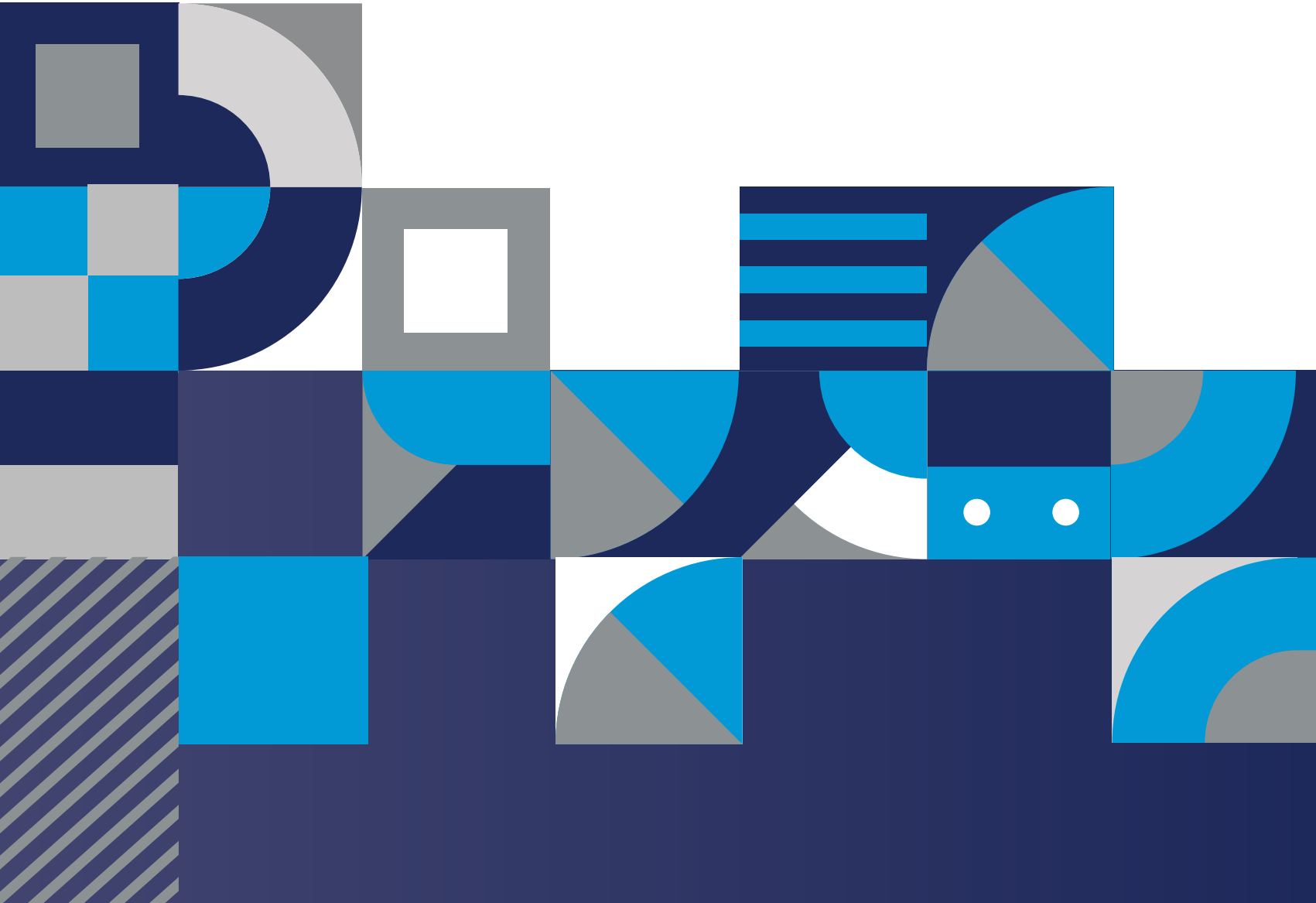
	2023/2024			2022/2023		
Programme/activity/objective	Budget	Actual Expenditure	(Over)/Under Expenditure	Budget	Actual Expenditure	(Over)/Under Expenditure
	R'000	R'000	R'000	R'000	R'000	R'000
Human resources	320 744	314 735	6 009	318 820	301 121	17 699
Premises and equipment	23 680	15 167	8 513	20 525	17 714	2 811
Other operational	17 433	15 457	1 976	13 726	10 940	2 787
Research and information	6 299	3 304	2 995	2 982	1 579	1 403
IT and system development	5 120	11 796	(6 676)	7 780	5 533	2 247
Educational awareness	16 037	14 996	1 041	14 375	13 216	1 159
Case related costs	93 199	91 305	1 894	109 593	84 862	24 731
Capital expenditure	14 700	1 437	13 263	22 000	8 036	13 964
Depreciation	7 000	4 448	2 552	5 529	5 060	469
Other program costs	40 941	21 189	19 752	13 591	11 704	1 887
<b>Total</b>	<b>545 153</b>	<b>493 834</b>	<b>51 319</b>	<b>528 921</b>	<b>459 765</b>	<b>69 156</b>

	2023/2024			2022/2023		
Sources of revenue	Estimate	Actual Amount Collected	(Over)/Under Collection	Estimate	Actual Amount Collected	(Over)/Under Collection
	R'000	R'000	R'000	R'000	R'000	R'000
Mergers and acquisitions	71 027	59 808	5 300	71 810	65 345	6 465
Government grant	453 195	407 875	45 320	449 518	449 518	-
Interest received	7 930	44 437	(36 507)	7 592	25 184	(17 592)
<b>Total</b>	<b>532 152</b>	<b>512 120</b>	<b>20 032</b>	<b>528 920</b>	<b>540 047</b>	<b>(11 127)</b>

The under-collection of mergers and acquisitions filing fees is attributed to fewer merger filings during the year than anticipated. This decrease in activity resulted in lower revenue from these fees. The Commission was initially allocated a grant of R453,195,000 for the 2023/24 financial year. However, this amount was subsequently reduced by 10%, bringing the total allocation to R407,875,000. The reduction of R45,320,000 was returned to **the dtic** in November 2023. The interest income exceeded the budgeted amount primarily due to the higher-than-expected balances in the bank accounts. This surplus of funds led to an increase in interest earnings.

# PART D

## GOVERNANCE



# 16 | INTRODUCTION

Corporate governance embodies processes and systems by which public entities are directed, controlled and held to account. In addition to legislative requirements based on a public entity's enabling legislation, and the Companies Act, corporate governance with regard to public entities is applied through the precepts of the Public Finance Management Act (PFMA) and run in tandem with the principles contained in the King's Report on Corporate Governance.

Parliament, the Executive and the Accounting Authority of the public entity are responsible for corporate governance.

## 17.1 DECISION-MAKING STRUCTURES

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

### A) COMMISSION MEETING

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

with the statutory, case-related work. During the reporting period, the Commissioners consisted of the Commissioner, Deputy Commissioner, and 2 acting Deputy Commissioners. The Commission held forty-nine (49) Commission Meetings during the period under review. The Commission Meeting's core functions are to receive recommendations, make decisions on cases, and provide guidance and direction in the conduct of investigations. The Commissioners receive updates on important cases, adopt policies and procedures regarding the conduct of cases, and receive reports and give direction on advocacy and communication relating to the work of the Commission, as prescribed by the Competition Act.

### B) THE EXECUTIVE COMMITTEE AND SUB-COMMITTEES

The Commission's executive committee (EXCO) is chaired by the Commissioner, and comprises the Deputy Commissioners and Divisional Managers, including the Chief Financial Officer. The EXCO advises the Commissioners in decision-making on the administrative and operational aspects of their functions. The EXCO held ten (10) meetings during the period under review. The key functions of the EXCO are to undertake strategic and business planning, monitor the implementation of strategic and business plans, and to mobilize and allocate financial and human resources. The EXCO also plays an oversight role over the management of human resources, information technology, security and facilities management, and risk management. It is responsible for approving policies relating to operations, providing leadership and setting the tone for the Commission's overall operations. The company secretary advises the EXCO on compliance with relevant legislation and regulations. Performance against targets is discussed on a quarterly basis at EXCO meetings, to monitor

expenditure, activities and progress. The Commission submits quarterly reports to **the dtic** in terms of the PFMA. EXCO has established five committees to assist it in performing its oversight function, and to provide it with guidance on matters falling within the terms of reference of the respective committees. The five committees are referred to below.

### C) THE MANAGEMENT COMMITTEE

EXCO is assisted by the Management Committee which meets a minimum of two times a financial year. The Management Committee comprises all management of the Commission, including members of EXCO and a layer of management below EXCO, which is representative of all functions, including Heads of Departments. The Management Committee convened four (4) meetings during the financial year. The role of the Management Committee is to review and recommend the annual performance plan of the Commission, to approve business plans for respective functions, and to review organisational and functional performance. It provides strategic and operational oversight over investigations – to assess progress, review investigative strategies, and complement existing functional and inter-divisional structures.

### D) TECHNOLOGY AND INFORMATION (T&I) COMMITTEE

The T&I Committee is comprised of select EXCO members who are tasked with overseeing the delivery of strategic IT projects that support the business. It is also responsible for developing and reviewing IT policies and ensuring that these are effectively implemented. The Committee held three (3) meetings during the financial year.

### E) FINANCE COMMITTEE

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

- recommending the annual organisational budget to EXCO for adoption;

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

The Finance Committee held one (1) meeting during the period under review.

### F) HUMAN CAPITAL COMMITTEE

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

### G) EMPLOYMENT EQUITY COMMITTEE

The Employment Equity Committee comprises of Commission employees who represent all levels in the organisation, who are selected in line with the provisions of the Employment Equity Act. The Committee oversees the transformational agenda of the Commission. Its objectives are to do an analysis of the employee profile, play a consultative role in setting targets for transformation, and identify and resolve barriers to transformation. The Committee held six (6) meetings during the financial year.

### H) RISK AND GOVERNANCE COMMITTEE

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

tasked with oversight over governance and risk management. The Committee met two (2) times during the period under review.

## 17.2 OVERSIGHT COMMITTEES

### A) AUDIT AND RISK COMMITTEE

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

### B) REMUNERATION COMMITTEE

This Committee consists of 3 independent non-executive members. The Committee plays an advisory role, and makes recommendations to the Commissioner, in her capacity as Accounting Authority, on matters relating to remuneration of employees at all employee levels. The committee held six (6) meetings during the period under review.

## 17.3 COMPLIANCE WITH LEGISLATION

### A) PUBLIC FINANCE MANAGEMENT ACT, 1999 AND NATIONAL TREASURY REGULATIONS

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

- quarterly reports on the Commission's expenditure, budget variance, activities and performance against set targets;
- monthly expenditure reports;
- annual performance plan for the period 2022/2023; and
- annual report.

### B) SKILLS DEVELOPMENT ACT, 1998

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

### C) SKILLS DEVELOPMENT LEVIES ACT, 1999

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

### D) EMPLOYMENT EQUITY ACT, 1998

The Commission submitted its employment equity report for the period under review.

### E) UNEMPLOYMENT INSURANCE ACT, 2001

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

### F) OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

During the financial year under review, the Commission took all reasonable precautions to ensure a safe working environment and conducted its business with due regard for environmental issues. The Commission has prioritised the Occupational Health and Safety compliance by ensuring that resources are made available to achieve set priorities. In support of the Commission's OHS policy statement of providing a safe and healthy environment for all employees, contractors and visitors; ongoing reporting on matters related to Occupational Health and Safety is done on a quarterly basis. Compliance to OHS and its regulations is facilitated and monitored by the OHS Committee, as stipulated by the Occupational Health and Safety Act 85 of 1993.

The focus for the next financial year will be on creating more awareness by embedding a safety culture throughout the organisation whilst enhancing the knowledge of the OHS committee to meet the changing work dynamics as per current

operational needs. Striving towards a safe, healthy, and thriving Commission workforce, supported by evidence-based programs, policies and professionals that respond to the challenges of new technologies, changing workforce dynamics and employment conditions of an evolving economy.

#### G) INCOME TAX ACT, 1962

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

#### H) LEVIES AND TAXES

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

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





In accordance with the Public Sector Risk Management Framework and best/leading practices, the Commission has developed the Risk Management Framework, Policy, and Implementation Plan, which is reviewed annually to keep abreast with any developments in the dynamic environment in which it operates. These documents provide guidance and promote a proactive approach to risk management, emphasizing the importance of early identification and continuous monitoring of risks. This process ensures compliance with section 51(1)(a)(i) of the PFMA, which requires the Accounting Authorities to ensure that their Institutions have and maintain effective, efficient, and transparent systems of risk management.

Regular (annual) risk assessments are conducted and are an essential part of the Commission's risk management implementation plan. These assessments are crucial for evaluating the effectiveness of existing risk management measures and for identifying new and emerging risks. A risk register is a crucial tool that the Commission uses to ensure the effective identification, assessment, and mitigation of risks within a particular period. It facilitates ongoing tracking and monitoring of risks, allowing for regular updates on the status and progress of risk mitigation efforts. It also enables analysis of risk trends over time, helping to identify patterns and emerging issues.

The Commissioner, as the Accounting Authority, has established and appointed the Risk and Governance Committee that reports to the Executive Committee on the overall system of risk management, especially the mitigation of unacceptable levels of risk.

- Whether the Audit Committee advises the public entity on risk management and independently monitors the effectiveness of the system of risk management.

The Audit and Risk Committee provides oversight and guidance on financial reporting, internal controls, risk management, and compliance with regulatory requirements. This Committee assures that the Commission's operations are conducted with integrity, transparency, and accountability.

- Whether the public entity sees progress in the management of risks, whether this has transmitted into improvements in the entity's performance, and if not, what it plans on doing to address this problem.

The Commission has made significant strides in enhancing its risk management environment.

Key areas of progress include:

**1. Risk Identification and Assessment:**

- Comprehensive Risk Register: Subsequent to assessments, detailed risk register made available as a tool that systematically monitors the mitigation of risks over time. The register also records all emerging risks identified Regular Risk Assessments: Conducting regular risk assessments assists in addressing emerging risks promptly.

**2. Internal Controls:**

- Strengthened Controls: Improvement and implementation of robust internal control measures are evaluated for their effectiveness to mitigate identified risks.

Internal Audits: Regular internal audits are conducted to test and validate the effectiveness of these controls.

### 3. Risk Mitigation and Action Plans:

- Action Plans: specific action plans are developed on the risk registers to address identified risks with more emphasis to high-priority risks.

### 4. Training and Awareness:

- Employee Training: The Commission is a corporate member of the Institute of Risk Management South Africa (IRMSA) as and when training programmes are made available, employees are encouraged to attend these to increase awareness and understanding of risk management.
- Cultural Shift: The Commission conducts regular awareness campaigns to promote a risk-aware culture across the divisions.



## COMPLIANCE WITH LAWS AND REGULATIONS

The Commission has implemented a comprehensive approach to ensure compliance with all relevant and applicable regulations.

Key actions taken include:

### 1. Establishment of Compliance Policies and Procedures

- Comprehensive Compliance Framework: Development and implementation of a robust compliance framework that outlines the policies and procedures necessary to meet regulatory requirements.
- Documented Procedures: Clear documentation of compliance procedures to provide guidance to employees and ensure consistent application.

### 2. Regulatory Universe

- Regulatory Universe is a tool that the Commission uses for regular and continuous monitoring of regulatory changes and updates to ensure it remains compliant with the latest legal requirements.

### 3. Dedicated Compliance Function

- Compliance Office: Establishment of a dedicated compliance office responsible for overseeing regulatory compliance activities.

### 4. Training and Awareness Programs

- Employee Training: Regular training sessions for employees on relevant regulations, compliance policies, and ethical standards to ensure they understand their responsibilities.
- Awareness Campaigns: Internal campaigns to raise awareness about the importance of compliance and to promote a culture of integrity.

# 19

## FRAUD AND CORRUPTION

The Commission has developed a comprehensive fraud prevention policy and plan aimed at detecting, preventing, and mitigating fraud risks within the organisation. Comprehensive training programs and awareness campaigns have been rolled out to all employees, with periodic refresher courses to maintain awareness.

The Commission subscribes to and promotes the National Anti-Corruption Hotline 0800 701 701 as a mechanism put in place to report and make confidential disclosure about suspected fraud and corruption.

Confidential reporting channel National Anti-Corruption Hotline 0800 701 701 is fully operational, and employees are encouraged to use this channel to report suspicious activities. The Commission adopts a zero-tolerance approach to Fraud and Corruption. As such, once a case is reported, multiple investigations are conducted based on detected anomalies, then clear protocols for responding to fraud are refined, ensuring quick and effective action.

# 20

## MINIMISING CONFLICT OF INTEREST

The Commission takes seriously its responsibility to manage conflicts of interests. All Commission employees, from senior management to those at junior levels, are required to declare their financial interests on annual basis and to update these as necessary during the financial year. This includes declaration of gifts that employees receive in the context of the work they do for the Commission, with clear processes for approvals that are required to receive the gifts. As a public entity the Commission ensures effective management of Supply Chain Management ("SCM") to ensure appropriate management of its resources. SCM performs its duties according to the applicable legislation and regulations and requires all those involved in the SCM processes to declare their conflict of interests, including employees who work in SCM unit and those who sit in bid committees. As a regulator, the Commission requires its employees to declare conflicts of interests in relation to the investigations they are involved in and requires those who are conflicted not to be part of investigation teams and to not participate in discussions of any matters in which they have conflicts of interest in meetings of governance structures in which they are members or invitees. The Commission continues to review its management of conflicts of interests to improve its approaches in this aspect of governance.



## CODE OF CONDUCT

The Commission has developed a comprehensive Code of Conduct policy. This policy outlines the expected conduct/behaviour of all Commission employees. The policy has assisted greatly in identifying conduct that is unbecoming and that which is acceptable.



## HEALTH SAFETY AND ENVIRONMENTAL ISSUES

Since the establishment of the Occupational Health and Safety (OHS) Committee, most compliance issues related to health, safety and environmental were attended to and are being monitored on a regular basis. The major issues we had in the past were non-compliance with the Occupational Health and Safety Act and this has since been addressed by training and appointment of the OHS Committee and quarterly reporting at EXCO and EXCO sub-committees.

As public servants, we are not only committed to drive inclusive economic growth in the country but also determined to give back to the Tshwane community we are part of. That is why we joined the rest of the world in celebrating the legacy of Nelson Mandela and his commitment to change the world for the better. Ahead of Mandela Day last year, we established CompCom Cares, an internal initiative

that seeks to raise support for non-profit organisations that will have a positive impact on the community, individuals, and the environment. To commemorate Mandela Day, the Commission's CompCom Cares champions joined hands with the New Beginningz Orphanage in Laudium which has become a safe haven for abandoned babies and children as well as children from child-headed homes. At

New Beginningz, the next generation is given an opportunity to grow and access education, medical care, food, clean water, and warm clothes. The New Beginningz team indicated a list of essential items they needed, and our CompCom Cares champions immediately sprang into action. The team identified a need for pre-loved and new baby clothes, toys, and essential baby care items such as carriers and toiletries like wet wipes, nappies, lotions, and shampoos. Our compassionate staff eagerly donated a treasure trove of toys and baby clothes including lunchboxes, soaps, and educational books as well as study desks and colouring pencils, but most importantly, donate their time at New Beginningz supporting its dedicated staff in caring for the children under its care. Through our time, donations, care, and love we were able to support children in need.

Madiba's legacy is a constant reminder for us to live by the ideals of giving, humanity, patriotism and nation-building. Throughout the years, our Mandela Month volunteer and support actions have embodied this legacy, and we look forward to continuing in the new financial year.



Photo caption: CompCom Cares members who volunteered at New Beginningz on 21 August 2023: Elizabeth Hlatshwayo, Melissa Naidoo, Busisiwe Masina, and Lydia Molefe. Photo credit: Susanna Smith

## B-BBEE COMPLIANCE PERFORMANCE INFORMATION

Public entities are required to contribute and play their role in implementing BBBEE and the imperatives of section 9(2) of the Constitution. The Commission commenced with the BBBEE verification process on 5 December 2023 and AMAX Verifications (Pty) Ltd was appointed to execute the BBBEE verification audit process. The BBBEE verification process was expected to yield BBBEE Status for the Commission for financial years 2022/2023.

The process sought to audit and measure the following elements as per the BBBEE Codes and applicable BBBEE Act:

- Management control - number of directors and managers for each category, race classification, gender, age, location, disability indication, and value thereof.
- Skills development - number of black persons trained per race classification, gender, age, location, disability indication, and value thereof;
- Enterprise and supplier development - number of all black owned EMEs/QSEs enterprise and supplier development entities assisted and value thereof.
- Socio-economic development - number of black participants, race classification, gender, geographical location and value thereof.

The verification process for 2022/2023 Financial year was concluded on 27 March 2024, the outcome of the verification process for the Commission was non-compliant, which reflects level 0%.

**AMAX BEE VERIFICATIONS**  
Broad-Based Black Economic Empowerment  
Verification Certificate  
COMPETITION COMMISSION SOUTH AFRICA

Certificate Number: B/B-BBEE/2023/00105/0526

Applicant's Name: N/A  
VAT Number: N/A  
Place of Birth: N/A

Verifier: 1.1 The Standard B-BBEE  
Verifier's Name: N/A  
Verifier's Address: N/A  
Verifier's Contact: N/A

Year: 2022/2023  
Date of Verification: 27 March 2024  
Date of Issuance: 27 March 2024

**B-BBEE Level: NON-COMPLIANT**

B-BBEE Performance Rating: Level 0%  
Black Ownership: 0.00%  
Black Women Ownership: 0.00%  
W.E.S. Initiative Applicable: No  
Financial Year Audited: 2022/2023

Category	Score	Weighting	Score
Management Control	0	10%	0.00
Skills Development	0	10%	0.00
Enterprise and Supplier Development	0	40%	0.00
Socio-economic Development	0	40%	0.00
<b>Overall Score</b>	<b>0</b>		<b>0.00</b>

Category	Score	Weighting	Score
Black Ownership	0	10%	0.00
Black Women Ownership	0	10%	0.00
W.E.S. Initiative	0	10%	0.00
Enterprise and Supplier Development	0	40%	0.00
Socio-economic Development	0	40%	0.00
<b>Overall Score</b>	<b>0</b>		<b>0.00</b>

The verifier and client have agreed on the scope of the verification and the information provided by the client. The verifier is not responsible for the accuracy of the information provided by the client. The verifier is not responsible for the accuracy of the information provided by the client. The verifier is not responsible for the accuracy of the information provided by the client.

Signature of Verifier: N/A  
Signature of Client: N/A

Verifier's Name: N/A  
Verifier's Address: N/A  
Verifier's Contact: N/A

Client's Name: N/A  
Client's Address: N/A  
Client's Contact: N/A

Sanas  
100% Compliance  
Since 2010

The BBBEE compliance is mandatory annually, as prescribed in section 13G of the BBBEE Act. The Commission reported to BBBEE Commission for compliance reporting on 12 April 2024, which included the submission of BBBEE Form 1, of the confirmation of receipt was on the 23 April 2024.

The BBBEE Commission provided feedback by encouraging the Commission to align our verification processes to the end of our financial year as guided by the practise guide 01 Of 2023 on understanding a Broad-Based Black Economic Empowerment Verification for organs of state and public entities.

The mitigation strategy going forward for the Commission is (1) to develop and incorporate BBBEE strategy in the Organisational Operational Plan for the purpose of implementing and monitoring progress and (2) to attend value added training provided by BBBEE Commission.

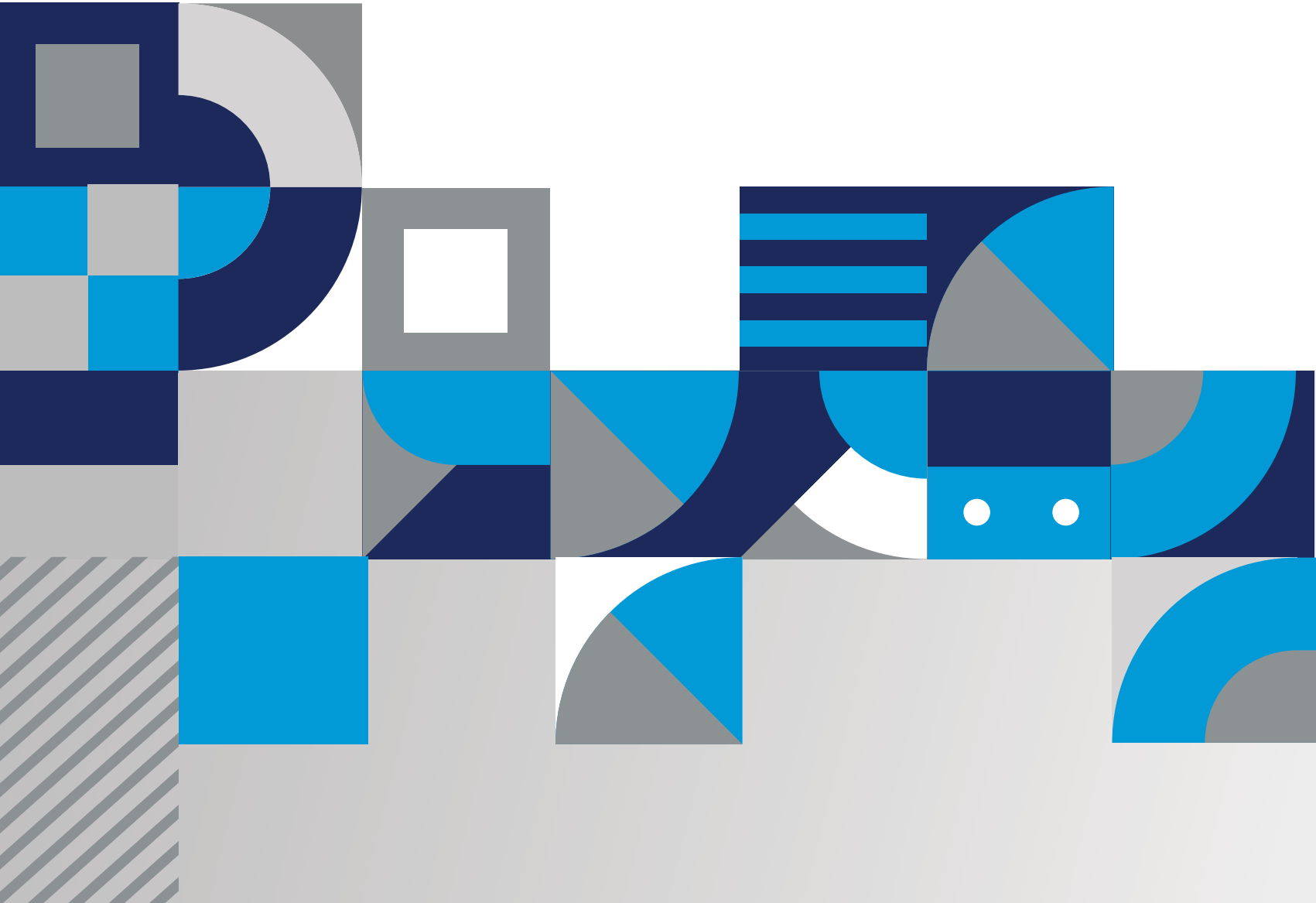
The Commission takes pride in achieving 94% BBBEE spend, as it continues to contract suppliers that are 100% BBBEE owned, Women owned with the majority being suppliers that have annual turnover that is less than R10 million or with a turnover that is between R10 and R50 million.





# PART E

## HUMAN RESOURCE MANAGEMENT



The effective talent management of our employees plays a critical role in the success of the Commission. As we reflect on financial year, it is evident that Human Capital has been an integral part of efforts to improving employee wellness, retention, building a diverse, inclusive and productive workplace, and implementing new policies and procedures that are meant to create a conducive climate for healthy employer-employee relations. Whilst the year presented many challenges, we have made great strides to make continuous improvements to the services offered to the Commission and have maintained our commitment to our values and strive to provide high quality services to all our employees. We are consistently reviewing our processes to ensure that they future fit the organisation and empowering for the new world of work.

In this financial year we closed off year 2 of the Human Capital strategy which is articulated in five pillars:

- Pillar 1: Investment in employee development
- Pillar 2: Driving Human Capital Excellence and innovation
- Pillar 3: Enhancing the employee experience
- Pillar 4: Deploying recruitment and retention strategies
- Pillar 5: Creating a healthy work environment that is diverse and inclusive

The strategic objectives of these pillars drive the people management agenda that enables a well-resourced, highly skilled workforce that is able to deliver on the Commission's mandate.

The Commission started off the financial year with a vacancy rate of 18.85% and significant strides were made which led to closing out the financial year with a ratio of 13.5%.

At end of quarter 4, the Commission filled a total of 37 replacement vacancies ensuing an 86% implementation on recruitment target:

- 9 Vacancies in Q1 2023/2024
- 19 Vacancies Q2 2023/2024
- 2 Vacancies in Q3 2023/2024
- 7 Vacancies in Q4 2023/2024

Successful implementation of our first Graduate bootcamp. 17 graduates onboarded. There is continued reformation of the Cadet Program and implementation of 2024 Cadet Intake.

There has been a consistent and growing investment in Learning and Development towards building a high-performance culture in the organisation, through investment in Learning and Development, the outcomes of the programmes have enabled efficient and effective performance across the level of the Commission, and this could be seen through the number of cases the Commission was able to win and conclude favourably. The financial year showcased the Commission's commitment to nurturing its human capital through a well-structured bursary programme. The alignment of actual spend with the budgeted figures underscores a high level of fiscal management and a keen understanding of the organisation's learning needs. Nevertheless, the occurrence of unrealised planned bursaries, accounting for a sizable portion of the budget, reveals that there is room for improvement in the prediction and utilisation of educational funds.

The approval of the Commission's talent management framework that provides the Commission with a structured approach in developing its talent to meet both organisational and individual

needs and further retaining such talent for it to see and contribute to the growth path of the Commission. This was an important highlight in giving effect to the people management strategy the Commission seeks to achieve.

The approval of the Human Capital Development Strategy was also a significant highlight for the period under review. The overall strategic focus is the investment to improve the skills level of our workforce and maximize the benefits of excellent performance for the individual staff members and the Commission.

### **Challenges faced by the public entity**

The moratorium on all recruitment processes due to budgetary constraints contributed to reported levels of burnout due to workload. In addition the moratorium caused a backlog on recruitment processes overall.

In addition to the 10% budget cut affected the Human resources budget as significant planned employee engagement initiatives had to be deferred.

The delays in the finalisation of the consultation process on the organisational structure. This has placed a lot of constraints on Divisions who had to also use their limited resources for other areas of responsibility of the Commission like the Market Enquiries the Commission had to undertake.

## HUMAN RESOURCES

Human Capital management is an integral component in the execution of the mandate of the Commission and its performance against targets. During the financial year under review, the Commission focused on effective management of its staff complement, investment in human capital development, effective management of employee relations and the wellness of staff. Below is a summary of the key areas of progress:

### **(A) STAFF COMPLEMENT**

The staff complement average for the 2023/24 financial year was 228 employees, compared to 230 at end of 2022/2023. This is a -0,87% decrease from the previous year. The staff retention rate remained high at 98,24% in the 2023/24 financial year, compared to 97,83% in 2022/2023.

Figure 1: 2023/23 Staff Complement

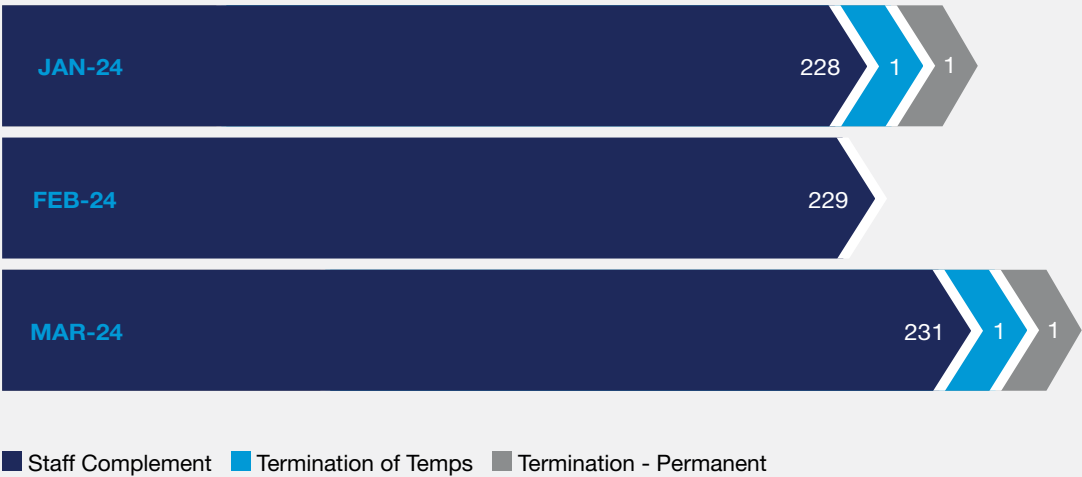
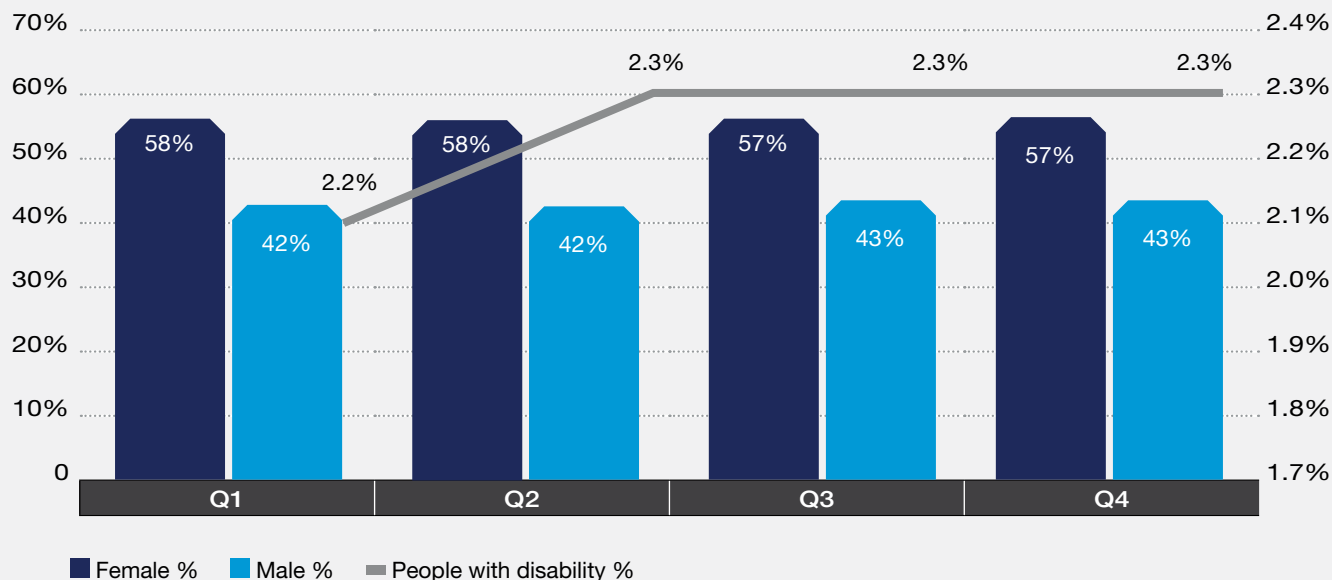


Table 18: Staff Profile and Equity Ratio

Quarters	Female %	Male %	People with disability %
Q1	58%	42%	2,2%
Q2	58%	42%	2,3%
Q3	57%	43%	2,3%
Q4	57%	43%	2,3%

Figure 2: 2023/24 Staff Profile



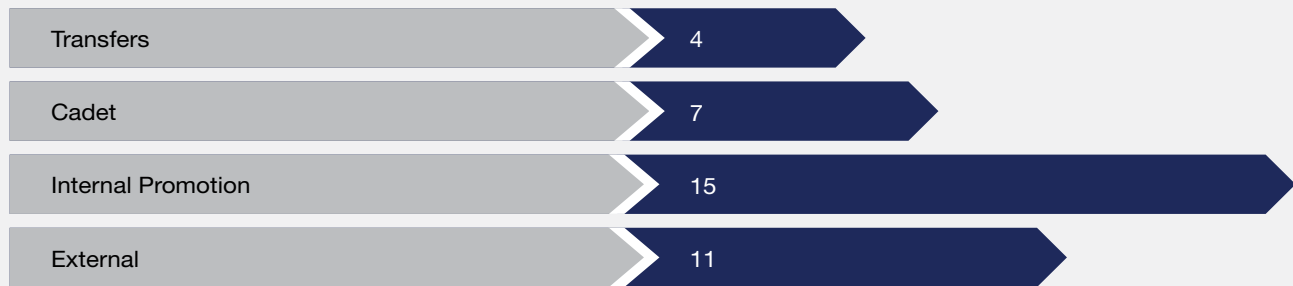
## (B) RECRUITMENT AND VACANCY MANAGEMENT

At the beginning of the 2023/2024 financial year, the Commission had 26 vacant positions. The Commission started off the financial year with a vacancy rate of 18.85% and closed off the financial year with a rate of 13.5%. At end of Q4, the Commission filled a total of 37 replacement vacancies, achieving 86% implementation on the recruitment plan. The Commission has filled most of its positions with internal candidates, this has been a reason for small

reduction in vacancy rate despite an 86% success rate on the recruitment as illustrated below.

The Commission has also implemented the LinkedIn Recruiter Tool, which will enhance our recruitment efforts, enhance our ability to connect with top-tier talent, and ultimately fortifying our position as an Employer of Choice.

**Figure 3: Candidate Source**



### (C) INVESTMENT IN HUMAN CAPITAL DEVELOPMENT

The Commission continues to invest in the development of its employees in a targeted way. In the quarter under review, the Commission finalised the Economist Development Programme, Legal Development Programme, Investigator Development and the Management Development program. These programs are at the heart of ensuring a more effective and efficient Competition regulation program for the Commission.

The Commission had further invested in post graduate studies within the domains of law, economics, and leadership development and targeted “On Demand” training courses.

### (D) EMPLOYEE RELATIONS

As at the end of March 2023, the following progress has been made on ER matters:

**Table 19: Employee Relations matters**

Matter	Stage	Progress
CCMA Referral	One matter now pending at the CCMA.	In Progress
Internal Disciplinary Inquiry	NA	NA
Collective Bargaining	The Commission has received Salary Demands from NEHAWU and negotiations have not commenced.	Pending
Matters Referred to Labour Court	There is only one matter pending at Labour court and one matter at Labour Appeal Court is awaiting judgement.	Pending



# HUMAN RESOURCE OVERSIGHT STATISTICS

## 30.1 PERSONNEL RELATED EXPENDITURE

### PERSONNEL COST BY PROGRAMME/ ACTIVITY/ OBJECTIVE

Programme/ activity/objective	Total Expenditure for the entity (R'000)	Personnel Expenditure (R'000)	Personnel exp. as a % of total exp. (R'000)	No. of employees	Average personnel cost per employee (R'000)
M&A, MC, C & MI	180 389	117 617	24%	92	1
ERB, A and LS	119 457	80 768	16%	63	1
OC, SC and Finance	195 425	116 743	24%	101	1

### PERSONNEL COST BY SALARY BAND

Level	Personnel Expenditure (R'000)	% of personnel exp. to total personnel cost (R'000)	No. of employees	Average personnel cost per employee (R'000)
Top Management	451 280,72	2%	2	225 640,36
Senior Management	1 994 530,43	8%	10	199 453,04
Professional qualified	11 152 161,40	46%	83	134 363,39
Skilled	7 830 912,06	33%	92	85 118,61
Semi-skilled	2 218 514,96	9%	39	56 885,00
Unskilled	45 216,08	0%	2	22 608,04
Cadets	382 383,72	2%	17	22 493,16



## PERFORMANCE REWARDS

Level	Performance rewards	Personnel Expenditure (R'000)	% of personnel exp. to total personnel cost (R'000)
Top Management	271	5 771	5%
Senior Management	1 856	26 047	7%
Professional qualified	10 655	153 562	7%
Skilled	5 818	95 294	6%
Semi-skilled	1 668	29 815	6%
Unskilled	53	673	8%
<b>TOTAL</b>	<b>20 321</b>	<b>311 163</b>	<b>7%</b>

## TRAINING COSTS

Programme/activity/objective	Personnel Expenditure (R'000)	Training Expenditure (R'000)	Training Expenditure as a % of Personnel Cost	No. of employees trained	Avg training cost per employee R'000
Bursaries	314,735	3,606	1.14%	42	R86
Trainings	314,735	1,271	0.40%	66	R19
<b>Total L&amp;D Spend</b>		<b>R4 876</b>	<b>1.54%</b>	<b>108</b>	<b>R36,493</b>

## EMPLOYMENT AND VACANCIES

Programme/activity/objective	2023/2024 No. of Employees	2023/2024 Approved Posts	2023/2024 No. of Employees	2023/2024 Vacancies	% of vacancies
Top Management (Grade 2 – 3)	2	2	2	0	0%
Senior Management (Grade 4)	10	12	10	2	20%
Professional qualified (Grade 5 – 6)	76	95	76	19	26,3 %
Skilled (Grade 7 – 9)	95	111	95	20	21%

At end of Q4 2023/24, the Commission filled a total of 37 out of the 43 replacement vacancies ensuing an 86 % implementation on the recruitment target for the financial year 23/24. Time-to-fill metric refers to the time it takes an organisation to fill a vacancy. Extended time-to-fill metrics are affected by a variety of factors, such as a tight labour and/or skill market particularly at the more senior management levels, inefficiencies in processes as well

as lengthy interview, selection and decision-making in the hiring process. Our 2022/2023 time-to-fill stat averaged 246 total days to hire. At the end of 2023/2024, our time-to-fill stat sits at an average of 155 total days to hire, ensuing a 36,9% decrease in our time to fill metric. The 36,9% decrease reflects improving efficiencies in our processes and continues to be a focus area in our recruitment and retention efforts.

## EMPLOYMENT CHANGES

Provide information on changes in employment over the financial year. Turnover rates provide an indication of trends in employment profile of the public entity.

Salary Band	Employment at beginning of period	Appointments	Terminations	Employment at end of the period
Top Management	2	0	0	2
Senior Management	11	0	1	10
Professional qualified	85	2	4	83
Skilled	87	15	10	92
Semi-skilled	40	0	1	39
Unskilled	3	0	1	2
Total	228	17	17	228

## REASONS FOR STAFF LEAVING

Salary Band	Employment at beginning of period	Appointments	Terminations	Employment at end of the period
Death	0	0%	0	2
Resignation	14	6,11%	1	10
Dismissal	1	0,44%	4	83
Retirement	2	0,87%	1	10
Ill health	0	0%	10	92
Expiry of contract	0	0,44%	1	39
Other	0	0%	1	2
Total	17	7,42%	17	228

Employees often seek growth and advancement opportunities during their careers. However, the Commission has equally been able to retain a significant staff complement due to development opportunities provided.. As such the Commission has invested significantly in developmental training programmes for economists and lawyers, continuous mentorship, challenging assignments and additional responsibilities. The Commission has further provided considerable support for formal education.

#### LABOUR RELATIONS: MISCONDUCT AND DISCIPLINARY ACTION

Nature of disciplinary Action	Number
Verbal Warning	0%
Written Warning	1
Final Written warning	0%
Dismissal	0%

#### EQUITY TARGET AND EMPLOYMENT EQUITY STATUS

Levels	MALE							
	African		Coloured		Indian		White	
	Current	Target	Current	Target	Current	Target	Current	Target
Top Management	50,00%	43,60%	0%	5,00%	0%	1,70%	0%	4,80%
Senior Management	50,00%	43,60%	0%	5,00%	0%	1,70%	0%	4,80%
Professional qualified	40,58%	43,60%	1,45%	5,00%	2,90%	1,70%	5,80%	4,80%
Skilled	34,41%	43,60%	0%	5,00%	1,08%	1,70%	3,23%	4,80%
Semi-skilled	30,00%	43,60%	0%	5,00%	0%	1,70%	2,50%	4,80%
Unskilled	0%	43,60%	0%	5,00%	0%	1,70%	0%	4,80%

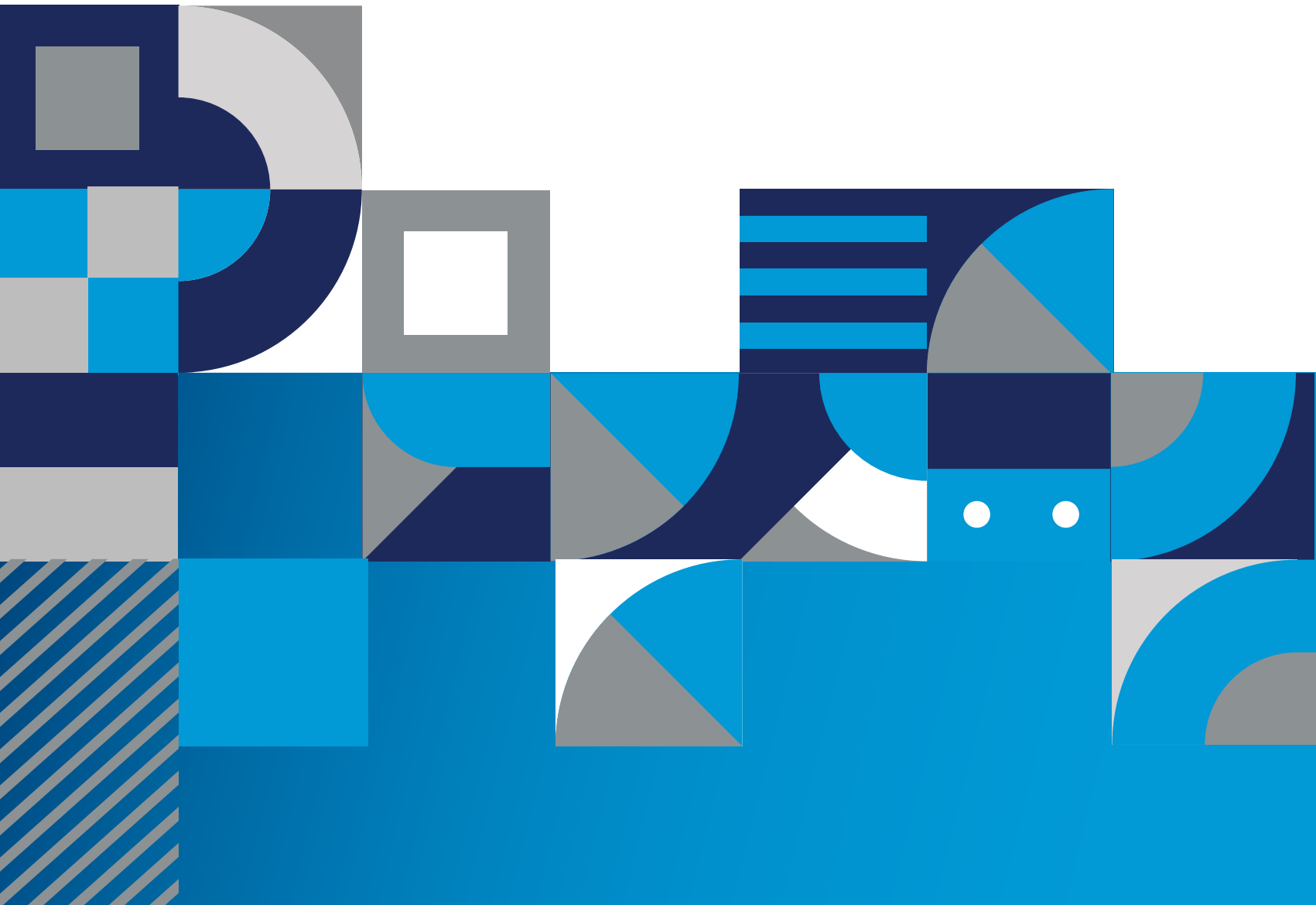
Levels	FEMALE							
	African		Coloured		Indian		White	
	Current	Target	Current	Target	Current	Target	Current	Target
Top Management	50,00%	35,90%	0%	4,10%	0%	0,90%	0%	3,90%
Senior Management	20,00%	35,90%	19,00%	4,10%	0%	0,90%	0%	3,90%
Professional qualified	40,58%	35,90%	1,45%	4,10%	4,35%	0,90%	2,90%	3,90%
Skilled	52,69%	35,90%	2,15%	4,10%	4,30%	0,90%	2,15%	3,90%
Semi-skilled	60,00%	35,90%	5,00%	4,10%	2,50%	0,90%	0%	3,90%
Unskilled	100%	35,90%	0%	4,10%	0%	0,90%	0%	3,90%

Levels	DISABLED STAFF			
	Male		Female	
	Current	Target	Current	Target
Top Management	0	0	0	0
Senior Management	0	0	0	0
Professional qualified	0	0	2	0
Skilled	1	0	0	0
Semi-skilled	0	0	2	0
Unskilled	0	0	0	0



# PART F

## PFMA COMPLIANCE REPORT



# IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE AND MATERIAL LOSSES

## 31.1 IRREGULAR EXPENDITURE

### A) RECONCILIATION OF IRREGULAR EXPENDITURE

Description	2023/2024 R'000	2022/2023 R'000
Opening balance	1,038	499
Adjustment to opening balance		
Opening balance as restated		
Add: Irregular expenditure confirmed	773	540
Less: Irregular expenditure condoned		
Less: Irregular expenditure not condoned and removed	498	
Less: Irregular expenditure recoverable <sup>2</sup>		
Less: Irregular expenditure not recoverable and written off		
Closing balance	1,313	1,038

The irregular expenditure for the current year pertains to three incidents of non-compliance with the Supply Chain Management (SCM) bid process. In two of these incidents, no bid process was followed for the services paid, and in the third incident, no approval was granted for the extension of services.

### Reconciling notes to the annual financial statements disclosure

Description	2023/2024 R'000	2022/2023 R'000
Irregular expenditure that was under assessment		
Irregular expenditure that relates to the prior year and identified in the current year		
Irregular expenditure for the current year	773	540
<b>Total</b>	<b>773</b>	<b>540</b>

<sup>2</sup> Transfer to receivables



## B) DETAILS OF IRREGULAR EXPENDITURE (UNDER ASSESSMENT, DETERMINATION, AND INVESTIGATION)

Description <sup>3</sup>	2023/2024 R'000	2022/2023 R'000
Irregular expenditure under assessment	773	540
Irregular expenditure under determination		
Irregular expenditure under investigation		
<b>Total</b>	<b>773</b>	<b>540</b>

## C) DETAILS OF CURRENT AND PREVIOUS YEAR IRREGULAR EXPENDITURE NOT CONDONED

Description	2023/2024 R'000	2022/2023 R'000
Irregular expenditure not condoned and removed	498	
<b>Total</b>	<b>498</b>	

The irregular expenditure removed in the current year was incurred in 2021/2022 due to a bid awarded to a service provider who submitted an invalid BBBEE certificate. The necessary steps, in line with National Treasury Instruction Note 4 of 2022/23, were implemented, and consequence management was applied. However, the National Treasury did not condone the irregular expenditure due to insufficient proof of implemented internal controls to prevent similar future transgressions. These controls have since been implemented and confirmed to be effective.

## 31.2 FRUITLESS AND WASTEFUL EXPENDITURE

Description	2023/2024 R'000	2022/2023 R'000
Opening balance	246	246
Adjustment to opening balance		
Opening balance as restated		
Add: Fruitless and wasteful expenditure confirmed		
Less: Fruitless and wasteful expenditure condoned		
Less: Fruitless and wasteful expenditure not condoned and removed		
Less: Fruitless and wasteful expenditure recoverable <sup>4</sup>		
Less: Fruitless and wasteful expenditure not recoverable and written off		
<b>Closing balance</b>	<b>246</b>	<b>246</b>

<sup>3</sup> Group similar items

<sup>4</sup> Transfer to receivables

#### D) DETAILS OF FRUITLESS AND WASTEFUL EXPENDITURE (UNDER ASSESSMENT, DETERMINATION, AND INVESTIGATION)

Description <sup>5</sup>	2023/2024 R'000	2022/2023 R'000
Irregular expenditure under assessment		
Irregular expenditure under determination		
Irregular expenditure under investigation	246	
<b>Total</b>	<b>246</b>	

5 Group similar items

## 32.1 PROCUREMENT BY OTHER MEANS

Supply Chain Management (SCM) is responsible for effective and efficient Demand, Acquisition, Disposal, Logistics, Risk, Contract Management and Compliance Management aligned to the Supply Chain Management Regulatory Framework as prescribed by National Treasury. SCM ensures processes that are fair, transparent, equitable, cost-effective and competitive. During the 2022/23 financial year, the Commission's SCM process achieved the delivery of effective and efficient procurement processes, good governance, compliance reporting and monitoring of Fruitless, Wasteful, and Irregular Expenditure. The Commission achieved finalisation of strategic acquisitions against an approved procurement plan in compliance with effective collaborative compliance processes such as bid specification, bid evaluation and bid adjudication committees. The table below reflects the Reporting of Procurement by Other Means, Variations and Expansions of Contracts as required in National Treasury Instruction Note 3 of 2021/2022 sections 4.7 and 5.5.

Table 20: Reporting of Procurement by Other Means, Variations and Expansions of Contracts

REPORTING OF PROCUREMENT BY OTHER MEANS, VARIATIONS AND EXPANSIONS OF CONTRACTS								
No	Project Description	Name of Supplier	Contract Number	Reason for the procurement by other means	Value of contract	Award Date	Contract start date	Contract expiry
QUARTER 4								
1	54 Dedicated Parking Bays for 36 Months	Karabo Parking Management	PO42/238	Sole Source - Inadequate parking space for the CCSA staff	R344 885,00	08-Sep-23	01-Jun-23	30-May-26
2	Procurement of LinkedIn Recruiter Licence, LinkedIn Job slots and LinkedIn Talent Insights tool	Ayanda Mbanga Communications (Pty) Ltd	PO42/239	Sole Source - LinkedIn advertisement fields	R608 380,36	08-Sep-23	01-Oct-23	30-Sep-24

#### REPORTING OF PROCUREMENT BY OTHER MEANS, VARIATIONS AND EXPANSIONS OF CONTRACTS

No	Project Description	Name of Supplier	Contract Number	Reason for the procurement by other means	Value of contract	Award Date	Contract start date	Contract expiry
QUARTER 4								
3	Acquisition of Additional Office Space at <b>the dtic</b> Campus, Block G for a Period of 3 years	Delta Property Fund Limited	PO41/990	Limited Bidding - Single Source-Acquisition of Additional Office Space at <b>the dtic</b> Campus	R34 536 225,15	31-Aug-23	01-Nov-23	31-Oct-26
4	Annual Licence Renewal	Sage Pastel	PO42/486	Sole source-annual licence renewal	R61 884,00	31-Jan-24	01-Feb-24	31-Dec-24
5	Procurement of Web Traffic Estimator services (annual subscription)	Similarweb	PO42/481	Sole source-Similarweb is the sole supplier for web traffif estimator services	R1 329 543,71	30-Jan-24	01-Feb-24	31-Dec-24
6	Annual CaseWare Licence Renewal	Adapt IT	PO42/627	Sole source-annual licence renewal	R118 415,74	19-Mar-24	19-Mar-24	31-Mar-25
7	Procurement of LinkedIn Recruiter Licence, LinkedIn Job slots and LinkedIn Talent Insights tool	Ayanda Mbanga Communications (Pty) Ltd	PO42/720	Sole Source - LinkedIn advertisement fields	R1 309 761.47	28-Mar-24	01-Oct-24	30-Sep-26

#### REPORTING OF EXPANSIONS AND VARIATIONS OF CONTRACTS

No	Project Description	Name of Supplier	Contract Number	Reason for the procurement by other means	Value of contract	Award Date	Contract start date	Contract expiry
QUARTER 4								
1	Provision for Physical Security Services	SBL Undertaking (Pty) Ltd	PO42/420	To allow the security tender to be finalized	R700 000.00	29-Mar-24	01-Apr-24	30-Apr-24

## 32.2 CONTRACT VARIATIONS AND EXPANSIONS

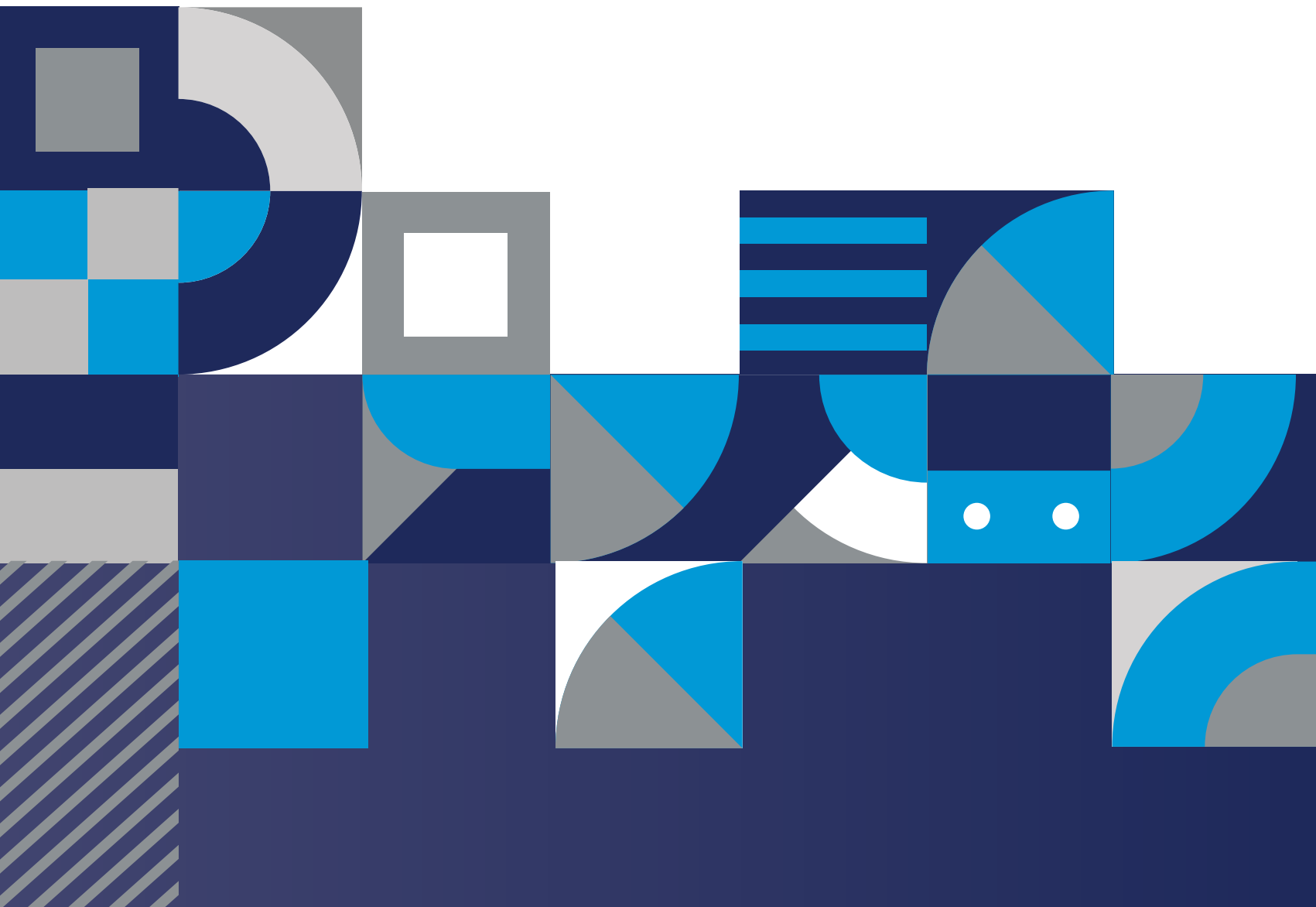
Table 21: Reporting of expansions and variations of contracts

Project description	Name of supplier	Contract modification type (Expansion or Variation)	Contract number	Original contract value	Value of previous contract expansion/s or variation/s (if applicable)	Value of current contract expansion or variation	Award date	Contract start date	Contract end date
Provision for Physical Security Services	SBL Undertaking (Pty) Ltd	To allow the security tender to be finalised	PO42/420	R700 000	N/A		29 March 2024	1 April 2024	30 April 2024
<b>Total</b>				<b>R700 000</b>	<b>0</b>	<b>0</b>			



# PART G

FINANCIAL  
INFORMATION





# GENERAL INFORMATION

<b>Country of incorporation and domicile</b>	South Africa
<b>Nature of business and principal activities</b>	The Competition Commission is a statutory body constituted in terms of the Competition Act, No 89 of 1998 by the Government of South Africa 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.
<b>Executive Committee</b>	Ms. D. Tshepe - Commissioner Mr. W. Gumbie (Acting DM from 07 November 2023) Mr. H. Ratshisusu Mr. A. Gwabeni Ms. T. Mokoka Ms. M. Ramokgopa Mr. J. Hodge Ms. K. Qobo (resigned 13 November 2023) Mr. M. Mohlala Mr. M. George Mr. A. Moledi Mr. B. Majenge Mr. M. Msibi
<b>Registered office</b>	Competition Commission of South Africa the dtic Campus, Block C Mulayo, 77 Meintjies Street, Sunnyside Pretoria, 0002
<b>Economic entity</b>	The Competition Commission is a competition authority of South Africa and the Minister of the Department of Trade, Industry and Competition ( <b>the dtic</b> ) is the Executive Authority.
<b>Bankers</b>	ABSA Business Bank South African Reserve Bank
<b>Auditor</b>	The Auditor General of South Africa

# ACCOUNTING AUTHORITY'S RESPONSIBILITIES AND APPROVAL

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

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

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

The Commissioner acknowledges that she is ultimately responsible for the system of internal financial control established by the Commission and place considerable importance on maintaining a strong control environment. To enable the Commission to meet these responsibilities, the Commissioner

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

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

The Commissioner has reviewed the Commission's cash flow forecast for the year to March 31, 2025 and, in the light of this review and the current financial position, she is satisfied that the Commission has access to adequate resources to continue in operational existence for the foreseeable future.

The Commission is largely dependent on the fiscus or government for continued funding of operations. The annual financial

statements are prepared on the basis that the Commission is a going concern and that the Commission has neither the intention nor the need to liquidate or curtail materially the scale of its activities.

Although the Commissioner is primarily responsible for the financial affairs of the Commission, she is supported by the Commission's executive committee as well as the audit and risk committee.

The external auditors are responsible for independently reviewing and reporting on the Commission's annual financial statements. The annual financial statements will be examined by the Auditor General of South Africa (AGSA) as the Commission's external auditors and their report is presented in the annual report.

The annual financial statements set out on page 137 to 177, which have been prepared on the going concern basis, were approved by the Accounting Authority on 31 July 2024 and were signed on its behalf by:

A handwritten signature in black ink, appearing to read 'Doris Tshepe', is written over a faint, stylized graphic element.

**Ms Doris Tshepe**  
Commissioner

# REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE COMPETITION COMMISSION OF SOUTH AFRICA

## REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

### Opinion

1. I have audited the financial statements of the Competition Commission of South Africa set out on pages 139 to 179, which comprise the statement of financial position as at 31 March 2024, statement of financial performance, statement of changes in net assets, cash flow statement and statement of comparison of budget and actual amounts for the year then ended, as well as notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission of South Africa as at 31 March 2024 and its financial performance and cash flows for the year then ended in accordance with the Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act 1 of 1999 (PFMA).

### Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the responsibilities of the auditor-general for the audit of the financial statements section of my report.
4. I am independent of the in accordance with the International Ethics Standards Board for Accountants' *International code of ethics for professional accountants (including International Independence Standards)* (IESBA code) as well as other ethical requirements that are relevant to my audit in South

Africa. I have fulfilled my other ethical responsibilities in accordance With these requirements and the IESBA code.

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

### Responsibilities of accounting authority for the financial statements

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

### Responsibilities of the auditor-general for the audit of the financial statements

8. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error; and to issue an auditor's report that includes my opinion.

Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

9. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report. This description, which is located at page 134, forms part of our auditor's report.

## REPORT ON THE AUDIT OF THE ANNUAL PERFORMANCE REPORT

10. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I must audit and report on the usefulness and reliability of the reported performance against predetermined objectives for selected strategic goal presented in the annual performance report. The accounting authority is responsible for the preparation of the annual performance report.
11. I selected the following material performance indicators related to Enforcing and regulating towards economic growth and enhanced economic participation presented in the annual performance report for the year ended 31 March 2024. I selected those indicators that measure the public entity's performance on its primary mandated functions and that are of significant national, community or public interest.
  - Average turnaround time for Phase 1 merger investigations.
  - Average turnaround time for Phase 2 merger investigations.
  - Average turnaround time for Phase 3 intermediate and small merger investigations.
  - Average turnaround time for 90% of Phase 3 large merger investigations.
  - No. of compliance monitoring reports on competition and public interest conditions imposed by the Commission

- No. of abuse of dominance and restrictive vertical cases initiated in prioritized sectors and/or in line with amendments of the Competition Act.
- % of Energy Sector related Investigations completed within 6 months.
- % of Energy Sector related exemption applications completed within 6 months
- % of market conduct investigations completed within 18 months
- % of exemption applications completed within 12 months
- No. of market inquiries initiated
- No. of market inquiries completed
- No. of monitoring reports on implementation of Market Inquiry Recommendations
- No. of cartel investigations completed
- % of cartel cases won at the Tribunal
- % of cartel cases won at the courts
- % of market conduct cases won at the Tribunal in relation to abuse of dominance, Restrictive practices, and exemption litigation
- % of market conduct cases won at the courts in relation to abuse of dominance, Restrictive practices and exemption litigation
- % of merger decisions upheld by the Tribunal
- % of merger decisions upheld by the courts
- % of interlocutory decisions upheld by the Tribunal
- % of interlocutory decisions upheld by the courts

12. I evaluated the reported performance information for the selected strategic goal against the criteria developed from the performance management and reporting framework, as defined in the general notice. When an annual performance report is prepared using these criteria, it provides useful and reliable information and insights to users on the public entity's planning and delivery on its mandate and objectives.
13. I performed procedures to test whether:
  - the indicators used for planning and reporting on performance can be linked directly to the public entity's mandate and the achievement of its planned objectives

- all the indicators relevant for measuring the public entity's performance against its primary mandated and prioritised functions and planned objectives are included
- the indicators are well defined and verifiable to ensure that they are easy to understand and apply consistently and that I can confirm the methods and processes to be used for measuring achievements
- the targets can be linked directly to the achievement of the indicators and are specific, time bound and measurable to ensure that it is easy to understand what should be delivered and by when, the required level of performance as well as how performance will be evaluated
- the indicators and targets reported on in the annual performance report are the same as what was committed to in the approved initial or revised planning documents
- the reported performance information presented in the annual performance report in the prescribed manner and is comparable and understandable
- there is adequate supporting evidence for the achievements reported and for the reasons provided for any over- or underachievement of targets.

14. I performed the procedures to report material findings only; and not to express an assurance opinion or conclusion.

15. I did not identify any material findings on the reported performance information for the selected indicators.

#### Other matter

16. I draw attention to the matters below.

#### Achievement of planned targets

17. The annual performance report includes information on reported achievements against planned targets and provides explanations for over- or under achievements. This information should be considered in the context of the material findings on the reported performance information.

18. The table that follows provides information on the achievement of planned targets and lists the key service delivery indicators that were not achieved as reported in the annual performance report. The reasons for any underachievement of targets are included in the annual performance report on pages 85 to 89.

#### Enforcing and regulating towards economic growth and enhanced economic participation

Targets achieved: 91% Budget spent: 74%		
Key service delivery indicator not achieved	Planned target	Reported achievement
% of Cartel cases won at the Courts	≥80%	0%
% of interlocutory decisions upheld by the Courts	≥65%	0%

#### REPORT ON COMPLIANCE WITH LEGISLATION

19. In accordance with the PAA and the general notice issued in terms thereof, I must audit and report on compliance with applicable legislation relating to financial matters, financial management and other related matters. The accounting authority is responsible for the public entity's compliance with legislation.

20. I performed procedures to test compliance with selected requirements in key legislation in accordance with the findings engagement methodology of the Auditor-General of South Africa (AGSA). This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.

21. Through an established AGSA process, I selected requirements in key legislation for compliance testing that are relevant to the financial and performance management of the public entity, clear to allow consistent measurement

and evaluation, while also sufficiently detailed and readily available to report in an understandable manner. The selected legislative requirements are included in the annexure to this auditor's report.

22. I did not identify any material non-compliance with the selected legislative requirements

## OTHER INFORMATION IN THE ANNUAL REPORT

23. The accounting authority is responsible for the other information included in the annual report. The other information referred to does not include the financial statements, the auditor's report and those selected strategic goal presented in the annual performance report that have been specifically reported on in this auditor's report
24. My opinion on the financial statements, the report on the audit of the annual performance report and the report on compliance with legislation, do not cover the other information included in the annual report and I do not express an audit opinion or any form of assurance conclusion on it.
25. My responsibility is to read this other information and, in doing so, consider whether it is materially inconsistent with the financial statements and the selected strategic goal presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
26. The other information I obtained prior to the date of this auditor's report is the information on irregular and fruitless and wasteful expenditure, and the general information (including a report of the accounting officer), governance information (including the audit committee report in terms of treasury regulations) and human resource management information are expected to be made available to us after August 2024.

27. If, based on the work I have performed on the other information that I obtained prior to the date of this auditor's report, I conclude that there is a material misstatement of this other information, I am required to report that fact. I have nothing to report in this regard.

28. When I do receive and read the general information (including a report of the accounting officer), governance information (including the audit committee in terms of treasury regulations) and human resource management information, if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

## INTERNAL CONTROL DEFICIENCIES

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

*Abdulla General*

Pretoria  
19 September 2024





# ANNEXURE TO THE AUDITOR'S REPORT

The annexure includes the following:

- the auditor-general's responsibility for the audit
- the selected legislative requirements for compliance testing.

## AUDITOR-GENERAL'S RESPONSIBILITY FOR THE AUDIT

### Professional judgement and professional scepticism

As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements and the procedures performed on reported performance information for selected programmes and on the 's compliance with selected requirements in key legislation.

### Financial statements

In addition to my responsibility for the audit of the financial statements as described in this auditor's report, I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the 's internal control
- evaluate the appropriateness of accounting policies used

and the reasonableness of accounting estimates and related disclosures made

- conclude on the appropriateness of the use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the public entity to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor's report. However, future events or conditions may cause a to cease operating as a going concern
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair that achieves fair presentation.

### Communication with those charged with governance

I communicate with the accounting authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

I also provide the accounting authority with a statement that I have complied with relevant ethical requirements regarding independence and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and, where applicable, actions taken to eliminate threats or safeguards applied.

## COMPLIANCE WITH LEGISLATION - SELECTED LEGISLATIVE REQUIREMENTS

The selected legislative requirements are as follows:

Legislation	Sections or regulations
Public Finance Management Act 1 of 1999 (PFMA)	Sections 51(1)(a)(iv); 51(1)(b)(ii); 51(1)(e)(iii); 53(4); 54(2)(c); 54(2)(d); 55(1)(a); 55(1)(b); 55(1)(c)(i); 56(1); 57(b); 66(3)(c)
Treasury Regulation, 2005	Regulation 8.2.1; 8.2.2; 16A3.1; 16A3.2; 16A3.2(a); 16A6.1; 16A6.2(a) & (b); 16A6.2(e); 16A6.3(a); 16A3.3(a)(i); 16A6.3(b); 16A6.3(c); 16A6.3(d); 16A6.3(e); 16A6.4; 16A6.5; 16A6.6; 16A7.1; 16A7.3; 16A7.6; 16A7.7; 16A8.2(1); 16A8.2(2); 16A8.3; 16A8.3(d); 16A8.4; 16A9.1; 16A9; 16A9.1(b)(ii); 16A9.1(c); 16A9.1(d); 16A9.1(e); 16A9.1(f); 16A9.2; 16A9.2(a)(ii); 16A9.2(a)(iii); 30.1.1; 30.1.3(a); 30.1.3(b); 30.1.3(d); 30.2.1; 31.1.2(c); 31.2.1; 31.3.3; 33.1.1; 33.1.3
Prevention and Combating of Corrupt Activities Act No.12 of 2004 (PRECCA)	Section 34(1)
Construction Industry Development Board Act No.38 of 2000 (CIDB)	Section 18(1)
Construction Industry Development Board Regulations, 2004	Regulations 17; 25(7A)
Preferential Procurement Policy Framework Act 5 of 2005 (PPPFA)	Sections 1; 2.1(a); 2.1(f)
Preferential Procurement Regulations 2017 (PPR)	Regulations 4.1; 4.2; 5.1; 5.3; 5.6; 5.7; 6.8; 7.8; 8.2; 8.5; 9.1; 9.2; 10.1; 10.2; 11.1
Preferential Procurement Regulations (PPR) 2022	Regulations 4.4; 5.4
National Treasury SCM Instruction No. 03 2021/22	Paragraphs 4.1; 4.2(b); 4.4; 7.2
National Treasury SCM Instruction No. 4A of 2016/17	Paragraph 6
National Treasury SCM Instruction No. 2 of 2021/22	Paragraphs 3.2.1; 3.2.4; 3.3.1
Practice Note 5 of 2009/10	Paragraph 3.3
Second amendment of National Treasury Instruction 05 of 2020/21	Paragraph 1
Erratum National Treasury Instruction 5 of 2020/21	Paragraph 2
National Treasury Instruction No.1 of 202/21	Paragraph 4.1
National Treasury Instruction No.5 of 2020/21	Paragraphs 4.8; 4.9

# AUDIT AND RISK COMMITTEE REPORT

The Audit and Risk Committee is pleased to present its report for the financial year ended March 31, 2024, in compliance with Treasury Regulations 3.1.9 and 27.1.7 issued in terms of the PFMA, 1999, and King IV Code of good governance.

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

## AUDIT AND RISK COMMITTEE MEMBERS AND ATTENDANCE

During the year under review, the Committee consisted of seven (7) independent Non-Executive Members appointed by the Commissioner. The term of appointment of two (2) of the three (3) members who constituted the Committee at the beginning of the financial year, came to an end during the financial year, with the remaining one (1) of the three members being re-appointed for another term.

Three (3) new members were appointed during the financial year, with the Committee being constituted of a total of four (4) members at the end of the period under review. The Committee attended five (5) meetings, which were also attended by the Auditor General South Africa (AGSA) together with its Outsourced firm, FinFive Incorporated; Outsourced Internal Auditors; and members of Executive Management led by the Commissioner. The three (3) members appointed later during the period under review

did not attend any meeting as no meeting was held between 1 and 31 March 2024. The Committee membership was constituted as follows:

Name of member	Number of meetings held	Number of meetings attended
Ms R Kalidass (term expired on 23 November 2023 and she was re-appointed for another term) - Chairperson	5	5
Ms. M Ramataboe (term expired on 23 November 2023)	5	5
Mr. N Mhlongo (term expired on 23 November 2023)	5	5
Dr. T Sethibe (appointed on 1 March 2024)	5	0
Ms. Y Pamla (appointed on 1 March 2024)	5	0
Rev. N Madyibi (appointed on 1 March 2024)	5	0

## AUDIT AND RISK COMMITTEE RESPONSIBILITY

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

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

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

In the current reporting period, the committee's work included amongst others, reviewing the financial planning process, quarterly and in-year financial reporting from management, the audit process and related audit findings, risk management including business continuity. This included recommending appropriate accounting policies for the Commission; reviewing any significant assumptions and judgments made by management; reviewing annual and quarterly financial reports prior to approval by the Commissioner and reviewing filings of quarterly reports to the relevant authorities; reviewing internal audit reports and tracking all audit findings; approving audit fees as well as reviewing internal audit and external audit mandates for independence, objectivity, and effectiveness.

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

## **THE EFFECTIVENESS OF INTERNAL CONTROL**

During the year under review the internal control environment of the Commission continued to improve increasing the probability of achievement of strategic objectives. The outsourced Internal Audit function conducted audit reviews in line with approved Internal Audit Plan, and audit findings from previous years were resolved.

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

There was irregular expenditure in year under review, some of which is under investigation. The Commission did not apply for or receive any condonation.

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

The committee can confirm that quarterly reports were submitted to the DTIC and that it was satisfied with the content and quality of monthly and quarterly reports during the year under review as required by the PFMA.

## **EVALUATION OF ANNUAL FINANCIAL STATEMENTS**

The Committee has:

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

The Committee is pleased to report that there were no material findings in the Annual Financial Statements and the Committee concurs fully with the AGSA report and the clean audit opinion of the Auditor General South Africa on the Annual Financial Statements. The Committee further recognizes the importance

of maintaining the clean audit, and the responsibility required of management to be consistent in the next period.

## INTERNAL AUDIT FUNCTION

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

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

The outsourced Internal Audit service provider is responsible for the delivery of an Annual Audit Plan. The annual Audit Plan for the current reporting period was executed satisfactorily, and covered the following: Information technology review; Risk management review; Case pipeline; Performance Information review for Q1; Performance Information review for Q2; Performance Information review for Q3 and Q4; 2023/24 AFS review; Probity review-office accommodation; Knowledge management; Financial control review; Supply chain management; Information Technology-Phase 1 Transitional Plan; Business continuity review; and Review of 2024/24 APP.

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

## ENTERPRISE RISK MANAGEMENT (ERM)

The Committee is responsible for the oversight of the Commission's risk management systems and activities. In the current reporting period, the Committee reviewed the ERM policies and strategy. Business Continuity reports were submitted.

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

## AUDITOR-GENERAL OF SOUTH AFRICA

The Committee, in consultation with the management, agreed to the terms of the Auditor General South Africa's engagement letter, audit strategy and audit fees in respect of the 2023/2024 financial year. The Auditor General South Africa completed the audit on 17 September 2024, beyond the statutory timeframes.

The Committee also monitored the implementation of the action plans to address matters arising from the Management Report issued by the Auditor-General South Africa (AGSA) for the 2022/2023 Financial Year.

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

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

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



**Miss Rachel Kalidass**

Chairperson of the Audit and Risk Committee  
Competition Commission

# STATEMENT OF FINANCIAL POSITION

AS AT MARCH 31, 2024

	Note(s)	2024 R'000	2023 Restated* R'000
<b>ASSETS</b>			
<b>Current Assets</b>			
Inventories	5	495	1,070
Receivables from exchange transactions	6	4,647	3,158
Cash and cash equivalents held on behalf of the dtic	10	16,031	11,977
Cash and cash equivalents	7	217,764	264,125
		<b>238,937</b>	<b>280,330</b>
<b>Non-Current Assets</b>			
Property, plant and equipment	3	16,316	17,048
Intangible assets	4	2,090	3,261
		<b>18,406</b>	<b>20,309</b>
<b>Total Assets</b>		<b>257,343</b>	<b>300,639</b>
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Finance lease obligation	9	-	179
Payables from exchange transactions	11	45,565	34,136
Provisions	8	39,465	40,681
Penalties payable to the dtic	10	16,031	11,977
		<b>101,061</b>	<b>86,973</b>
<b>Total Liabilities</b>		<b>101,061</b>	<b>86,973</b>
<b>Net Assets</b>		<b>156,282</b>	<b>213,666</b>
Accumulated surplus		156,282	213,666
<b>Total Net Assets</b>		<b>156,282</b>	<b>213,666</b>

# STATEMENT OF FINANCIAL PERFORMANCE

AS AT MARCH 31, 2024

	Note(s)	2024 R'000	2023 Restated* R'000
<b>REVENUE</b>			
<b>Revenue from exchange transactions</b>			
Fees earned	13	59,808	65,345
Other income	14	1,165	1,653
Interest received	15	44,437	25,184
<b>Total revenue from exchange transactions</b>		<b>105,410</b>	<b>92,182</b>
<b>Revenue from non-exchange transactions</b>			
<b>Transfer revenue</b>			
Government grants & subsidies	16	407,875	449,518
<b>Total revenue</b>		<b>513,285</b>	<b>541,700</b>
<b>EXPENDITURE</b>			
Employee related costs	17	(314,735)	(301,121)
Administrative expenses	18	(4,945)	(4,188)
Depreciation and amortisation	3 & 4	(4,448)	(5,314)
Finance costs	19	(3)	(100)
Lease rentals on operating lease	12	(11,966)	(13,751)
Loss on disposal of assets		(102)	(3,897)
Inventories losses/write-downs	5	(439)	-
Operating expenses	20	(157,196)	(131,394)
<b>Total expenditure</b>		<b>(493,834)</b>	<b>(459,765)</b>
<b>Surplus for the year</b>		<b>19,451</b>	<b>81,935</b>



# STATEMENT OF CHANGES IN NET ASSETS

AS AT MARCH 31, 2024

	Accumulated surplus R'000	Total net assets R'000
<b>Restated balance at 01 April 2022</b>	<b>221,771</b>	<b>221,771</b>
Surplus for the year	81,935	81,935
Transfer of surplus reserves to National Treasury	(89,982)	(89,982)
Correction of errors 27	(58)	(58)
<b>Balance at 01 April 2023</b>	<b>213,666</b>	<b>213,666</b>
Surplus for the year	19,451	19,451
Transfer of surplus reserves to National Treasury - note 30	(76,834)	(76,834)
Total changes	(57,383)	(57,383)
<b>Balance at March 31, 2024</b>	<b>156,283</b>	<b>156,283</b>

# CASH FLOW STATEMENT

AS AT MARCH 31, 2024

	Note(s)	2024 R'000	2023 Restated* R'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Receipts</b>			
Sale of goods and services		59,808	65,345
Grants		407,875	449,518
Interest income		44,134	25,460
Other income		1,544	1,557
		513,361	541,880
<b>Payments</b>			
Employee costs		(317,464)	(303,656)
Suppliers		(162,597)	(146,215)
Finance costs		(3)	(100)
		(480,064)	(449,971)
<b>Net cash flows from operating activities</b>	21	<b>33,297</b>	<b>91,909</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Purchase of property, plant and equipment	3	(2,645)	(6,717)
Proceeds from sale of property, plant and equipment	3	-	1,012
Purchase of other intangible assets	4	-	(2,948)
<b>Net cash flows from investing activities</b>		<b>(2,645)</b>	<b>(8,653)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Finance lease payments		(179)	(993)
Transfer of surplus reserves to National Treasury		(76,834)	(89,982)
<b>Net cash flows from financing activities</b>		<b>(77,013)</b>	<b>(90,975)</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b>(46,361)</b>	<b>(7,719)</b>
Cash and cash equivalents at the beginning of the year		264,125	271,844
<b>Cash and cash equivalents at the end of the year</b>	7	<b>217,764</b>	<b>264,125</b>

# STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS AS AT MARCH 31, 2024

## Budget on Accrual Basis

### Statement of Financial Performance

#### REVENUE

##### Revenue from exchange transactions

	Approved budget	Adjust- ments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
	R'000	R'000	R'000	R'000	R'000	R'000
Fees earned	71,027	-	71,027	59,808	(11,219)	Note 29
Other income	-	-	-	1,165	1,165	
Interest received	7,930	-	7,930	44,437	36,507	Note 29
<b>Total revenue from exchange transactions</b>	<b>78,957</b>	<b>-</b>	<b>78,957</b>	<b>105,410</b>	<b>26,453</b>	

##### Revenue from non-exchange transactions

##### Transfer revenue

Government grants & subsidies	453,195	(45,320)	407,875	407,875	-	
<b>Total revenue</b>	<b>532,152</b>	<b>(45,320)</b>	<b>486,832</b>	<b>513,285</b>	<b>26,453</b>	

#### EXPENDITURE

Employee related costs	(320,394)	(350)	(320,744)	(314,735)	6,009	
Administrative expenses	(25,108)	-	(25,108)	(4,945)	20,163	Note 29
Depreciation and amortisation	(7,000)	-	(7,000)	(4,448)	2,552	Note 29
Finance costs	-	-	-	(3)	(3)	
Lease rentals on operating lease	(18,392)	-	(18,392)	(11,966)	6,426	
Operating expenses	(161,258)	(12,650)	(173,908)	(157,196)	16,712	Note 29
<b>Total expenditure</b>	<b>(532,152)</b>	<b>(13,000)</b>	<b>(545,152)</b>	<b>(493,293)</b>	<b>51,859</b>	
<b>Operating surplus</b>		<b>(58,320)</b>	<b>(58,320)</b>	<b>19,992</b>	<b>78,312</b>	
Loss on disposal of assets	-	-	-	(102)	(102)	
Inventories losses/write-downs	-	-	-	(439)	(439)	
	-	-	-	(541)	(541)	
<b>Surplus before taxation</b>	<b>-</b>	<b>(58,320)</b>	<b>(58,320)</b>	<b>19,451</b>	<b>77,771</b>	
<b>Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement</b>	<b>-</b>	<b>(58,320)</b>	<b>(58,320)</b>	<b>19,451</b>	<b>77,771</b>	

# ACCOUNTING POLICIES

## 1. BASIS OF PREPARATION

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

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention as the basis of measurement, unless specified otherwise.

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

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

### 1.1 Presentation currency

These annual financial statements are presented in South African Rand, which is the functional currency of the Commission. All figures presented are rounded off to the nearest thousand.

### 1.2 Going concern assumption

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

### 1.3 Materiality

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

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

### 1.4 Significant judgments and sources of estimation uncertainty

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

### Determination of impairment of non-financial assets

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

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

### Impairment of non-cash generating assets

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

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

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

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

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

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

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

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

### Provisions

Provisions were raised and management determined an estimate based on the information available. Additional disclosure of these estimates of provisions are included in note 8 - Provisions.

### Contingent liabilities

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

## Lease classification

Management uses judgment in assessing whether an arrangement is or contains a lease based on the substance of the arrangement at inception date of whether the fulfillment of the arrangement is dependent on the use of the specific asset or the arrangement conveys a right to use the asset. Management assesses the conditions listed below in each lease contract (using GRAP 13) to classify a lease as a finance or operating lease.

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

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

The Commission did not establish any lease agreements during the current financial year.

## Useful lives of tangible and intangible assets

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

## Performance bonus

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

## Trade receivables (impairment of financial assets)

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

## Impairment of cash generating assets

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

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

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

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

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

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

## 1.5 Property, plant and equipment

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

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

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

Property, plant and equipment is initially measured at cost.

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

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

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

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

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

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

Item	Depreciation method	Average useful life
Furniture and fittings	Straight line	12 - 25 years
Motor vehicles	Straight line	5 - 15 years
Office equipment	Straight line	8 - 20 years
IT equipment	Straight line	
- Computer equipment		3 - 21 years
- Servers		5 - 9 years
- GPS		3 - 14 years
Leasehold Improvements	Straight line	3 years
Cellphone	Straight line	2 - 6 years
Leased assets	Straight line	Period of lease

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

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

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

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

The gain or loss arising from the derecognition of an item of property, plant and equipment is included in surplus or deficit

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

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

## 1.6 Intangible assets

An intangible asset is recognised when:

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

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

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

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

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

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

Intangible assets are derecognised:

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

The gain or loss arising from the derecognition of intangible assets is included in surplus or deficit when the asset is derecognised (unless the Standard of GRAP on leases requires otherwise on a sale and leaseback).

## 1.7 Financial instruments

### Initial recognition and measurement

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

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

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

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

Derecognition is the removal of a previously recognised financial asset or financial liability from an entity's statement of financial position.

The effective interest method is a method of calculating the amortised cost of a financial asset or a financial liability (or group of financial assets or financial liabilities) and of allocating the interest income or interest expense over the relevant period. The



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

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

A financial asset is:

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

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

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

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

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

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

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

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

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

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

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

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

- a formal agreement, in relation to the contribution, establishing or increasing an existing financial interest in the net assets of the Commission.

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

### **Subsequent measurement of financial assets and financial liabilities**

The subsequent measurement of financial instruments is stated below:

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

### **Receivables from exchange transactions**

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

### **Cash and cash equivalents**

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

### **Payables from exchange transactions**

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

### **Offsetting**

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

### **Impairment of financial assets**

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

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

### **Derecognition**

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

## Classification

The Commission has the following types of financial assets (classes and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Cash and cash equivalents	Financial asset measured at fair value
Sundry receivables	Financial asset measured at fair value

The Commission has the following types of financial liabilities (classes and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Payables from exchange transactions	Financial liability measured at fair value

## 1.8 Leases

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

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

### Finance leases - lessee

Finance leases are recognised as assets and liabilities in the statement of financial position at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the statement of financial position as a finance lease obligation.

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

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

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

### Operating leases - Lessee

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

## 1.9 Inventories

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

Inventories are measured at the lower of cost and current replacement cost where they are held for;

- distribution at no charge or for a nominal charge; or
- consumption in the production process of goods to be distributed at no charge or for a nominal charge.

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

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

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

## 1.10 Employee benefits

### Identification

Employee benefits are all forms of consideration given by the Commission in exchange for service rendered by employees or for the termination of employment.

Post-employment benefits are employee benefits (other than termination benefits and short-term employee benefits) that are payable after the completion of employment.

Other long-term employee benefits are all employee benefits other than short-term employee benefits, post-employment benefits and termination benefits.

Termination benefits are employee benefits payable as a result of either:

- a Commission's decision to terminate an employee's employment before the normal retirement date; or
- an employee's decision to accept an offer of benefits in exchange for the termination of employment.

### Short-term employee benefits

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

Short-term employee benefits include items such as:

- wages, salaries and social security contributions;
- short-term compensated absences (such as paid annual leave and paid sick leave) where the compensation for the absences is due to be settled within twelve months after the end of the reporting period in which the employees render the related employee service;
- bonus, incentive and performance related payments payable within twelve months after the end of the reporting period in which the employees render the related service; and

- non-monetary benefits (for example, medical care, and free or subsidised goods or services such as housing, cars and cellphones) for current employees.

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

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

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs. The Commission measures the expected cost of accumulating compensated absences as the additional amount that the entity expects to pay as a result of the unused entitlement that has accumulated at the reporting date.

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

## 1.11 Provisions and contingencies

Provisions are recognised when:

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

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

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

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

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

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

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

A provision is used only for expenditures for which the provision was originally recognised.

Provisions are not recognised for future operating surplus.

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

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note 30.

## 1.12 Commitments

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

Disclosures are required in respect of unrecognised contractual commitments.

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

Commitments for which disclosure is necessary to achieve a fair presentation should be disclosed in a note to the financial statements, if both the following criteria are met:

- Contracts should be non-cancellable or only cancellable at significant cost (for example, contracts for computer or building maintenance services); and
- Contracts should relate to something other than the routine, steady, state business of the entity – therefore salary commitments relating to employment contracts or social security benefit commitments are excluded.

## 1.13 Revenue from exchange transactions

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

An exchange transaction is one in which the Commission receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

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

### Measurement

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

The amount of revenue arising on a transaction which is statutory (non-contractual) in nature is usually measured by reference to the relevant legislation, regulation or similar means. The fee structure, tariffs or calculation basis specified in legislation, regulation or similar means is used to determine the amount of revenue that should be recognised. This amount represents the fair value, on initial measurement, of the consideration received or receivable for revenue that arises from a statutory (non- contractual) arrangement (see the accounting policy on Statutory Receivables).

#### 1.14 Revenue from non-exchange transactions

Revenue comprises gross inflows of economic benefits or service potential received and receivable by the Commission, which represents an increase in net assets, other than increases relating to contributions from owners.

Fines are economic benefits or service potential received or receivable by entities, as determined by a court or other law enforcement body, as a consequence of the breach of laws or regulations.

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

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

### Recognition

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

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

### Measurement

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

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

Receivables that arise from statutory (non-contractual) arrangements are initially measured in accordance with this accounting policy, as well as the accounting policy on Statutory Receivables. The entity applies the accounting policy on Statutory Receivables for the subsequent measurement, derecognition, presentation and disclosure of statutory receivables.

Interest is recognised using the effective interest rate method for financial instruments, and using the nominal interest rate method for statutory receivables. Interest levied on transactions arising from exchange or non-exchange transactions is classified based on the nature of the underlying transaction.

### 1.15 Investment income

Investment income is recognised on a time-proportion basis using the effective interest method.

### 1.16 Accounting by principals and agents

#### Identification

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

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

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

The Commission collects penalties imposed by the Competition Tribunal under the Competition Act and remits them to the National Revenue Fund through the Department of Trade, Industry and Competition (DTIC). Therefore, the Commission acts as an agent in this process and **the dtic** is the principal.

#### Identifying whether an entity is a principal or an agent

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

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

#### Binding arrangement

The entity assesses whether it is an agent or a principal by assessing the rights and obligations of the various parties established in the binding arrangement.

Where the terms of a binding arrangement are modified, the parties to the arrangement re-assess whether they act as a principal or an agent.

#### Assessing which entity benefits from the transactions with third parties

When the entity in a principal-agent arrangement concludes that it undertakes transactions with third parties for the benefit of another entity, then it is the agent. If the entity concludes that it is not the agent, then it is the principal in the transactions.

The entity is an agent when, in relation to transactions with third parties, all three of the following criteria are present:

- It does not have the power to determine the significant terms and conditions of the transaction.
- It does not have the ability to use all, or substantially all, of the resources that result from the transaction for its own benefit.
- It is not exposed to variability in the results of the transaction.

Where the entity has been granted specific powers in terms of legislation to direct the terms and conditions of particular transactions, it is not required to consider the criteria of whether it does not have the power to determine the significant terms and conditions of the transaction, to conclude that it is an agent. The entity applies judgement in determining whether such powers exist and whether they are relevant in assessing whether the entity is an agent.

#### Recognition

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

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

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

### **1.17 Comparative figures**

Where necessary, comparative figures have been reclassified to conform to changes in presentation in the current year. Refer to note 27.

### **1.18 Fruitless and wasteful expenditure**

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

Fruitless and wasteful expenditure is accounted for in line with all relating requirements, including, but not limited to, ruling Legislation, Regulations, Frameworks, Circulars, Instruction Notes, Practice Notes, Guidelines etc (as applicable).

Fruitless and wasteful expenditure when incurred and confirmed is recorded in the annual financial statements disclosure. This relates to fruitless and wasteful expenditure incurred in the current financial year, with a one previous financial year comparative analysis.

Fruitless and wasteful expenditure for previous financial year (comparative amounts) must be recognised in the period in which they occurred as follows:

- a. fruitless and wasteful expenditure incurred and confirmed in the previous financial year;
- b. fruitless and wasteful expenditure that was under assessment in the previous financial year and confirmed in the current financial year; and

- c. fruitless and wasteful expenditure that was not discovered in the previous financial year and identified and confirmed in the current financial year.

Additional information relating to fruitless and wasteful expenditure under assessment, determination, investigations, narratives and a process of dealing with the concerned fruitless and wasteful expenditure must be recorded in the annual report of the Commission.

Fruitless and wasteful expenditure must be recorded in the notes to the financial statements when confirmed after its assessment. The amount recorded is equal to the value of fruitless and wasteful expenditure incurred and confirmed in that current financial year unless it is impractical to determine, in which case reasons must be provided in the annual report.

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

### **1.19 Irregular expenditure**

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including -

- a. this Act; or
- b. the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Competition Act; or
- c. any provincial legislation providing for procurement procedures in that provincial government.

Irregular expenditure is accounted for in line with all relating requirements, including, but not limited to, ruling Legislation, Regulations, Frameworks, Circulars, Instruction Notes, Practice Notes, Guidelines etc (as applicable).



For determining whether irregular expenditure occurred, the following must be present:

- a. expenditure incurred in contravention of, or not in accordance with legislation; and
- b. expenditure must have been recognised in the statement of financial performance or liability recognised in the statement of financial position (where expenditure is not reflected in the statement of financial performance) in a case of institutions that are required to comply with Standards of Generally Recognised Accounting Practice (GRAP). The earlier of an invoice or payment will trigger irregular expenditure for these transactions.

Irregular expenditure when incurred and confirmed is recorded in the annual financial statements disclosure. This relates to irregular expenditure incurred in the current financial year, with a one financial year comparative analysis.

Irregular expenditure for the previous financial year (comparative amounts) must be recognised in the period in which they occurred as follows:

- a. irregular expenditure incurred and confirmed in the previous financial year;
- b. irregular expenditure that was under assessment in the previous financial year and confirmed in the current financial year; and
- c. irregular expenditure that was not discovered in the previous financial year and identified and confirmed in the current financial year.
- d. irregular expenditure payments relating to multi-year contracts that was not condoned or removed.

Additional information relating to irregular expenditure under assessment, determination, investigation, narratives, and the process of dealing with the irregular expenditure must be recorded in the annual report of the Commission.

Irregular expenditure is recorded in the notes to the financial statements when confirmed after its assessment. The amount recorded is equal to the value of irregular expenditure incurred and

confirmed in that current financial year unless it is impractical to determine, in which case reasons must be provided in the annual report.

## **1.20 Budget information**

The Commission is typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

General purpose financial reporting by Commission shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

The approved budget is prepared on an accrual basis and presented by functional classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 4/1/2023 to 3/31/2024.

The annual financial statements and the budget are on the same basis of accounting therefore a comparison with the budgeted amounts for the reporting period has been included in the Statement of comparison of budget and actual amounts.

The Statement of comparative and actual information has been included in the annual financial statements as the recommended disclosure when the annual financial statements and the budget are on the same basis of accounting as determined by National Treasury.

Comparative information is not required.

## **1.21 Related parties**

A related party is a person or an entity with the ability to control or jointly control the other party, or exercise significant influence over the other party, or vice versa, or an entity that is subject to common control, or joint control.

Related party transaction is a transfer of resources, services or obligations between the reporting entity and a related party, regardless of whether a price is charged.

Management are those persons responsible for planning, directing and controlling the Competition Activities of the Commission, including those charged with the governance of the Commission in accordance with legislation, in instances where they are required to perform such functions.

Close members of the family of a person are those family members who may be expected to influence, or be influenced by that person in their dealings with the Commission.

The Commission is exempt from disclosure requirements in relation to related party transactions if that transaction occurs within normal supplier and/or client/recipient relationships on terms and conditions no more or less favourable than those which it is reasonable to expect the Commission to have adopted if dealing with that individual entity or person in the same circumstances and terms and conditions are within the normal operating parameters established by that reporting entity's legal mandate.

Where the Commission is exempt from the disclosures in accordance with the above, the Commission discloses narrative information about the nature of the transactions and the related outstanding balances, to enable users of the entity's financial statements to understand the effect of related party transactions on its annual financial statements.

## 1.22 Events after reporting date

Events after reporting date are those events, both favourable and unfavourable, that occur between the reporting date and the date when the financial statements are authorised for issue. Two types of events can be identified:

- those that provide evidence of conditions that existed at the reporting date (adjusting events after the reporting date); and

- those that are indicative of conditions that arose after the reporting date (non-adjusting events after the reporting date).

The Commission will adjust the amount recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred.

The Commission will disclose the nature of the event and an estimate of its financial effect or a statement that such estimate cannot be made in respect of all material non-adjusting events, where non-disclosure could influence the economic decisions of users taken on the basis of the financial statements.

## 1.23 Penalties and Settlements

In terms of section 59(1) of the Competition Act, the Competition Tribunal may impose an administrative penalty in terms of an order, which is collected by the Commission and in terms of section 59(4) of the Competition Act must be paid over to the National Revenue Fund.

In terms of section 49D of the Competition Act, the Commission and a respondent may agree on the terms of an appropriate order, which the Competition Tribunal may confirm as a consent order in terms of section 58(1)(b). The consent order may contain a settlement amount which is collected by the Commission which in terms of section 59(4) of the Competition Act must be paid over to the National Revenue Fund.

The accepted practice of the National Treasury is that no monies are paid directly to the National Revenue Fund but rather they are paid via a specific department to which the entity reports. In the case of the settlement amounts or administrative penalties, the Commission pays the monies to **the dtic** who in turn must pay the monies over to the National Revenue Fund.

The consent orders and orders of the Tribunal may allow the respondents to pay the settlement amount or the administrative penalty over more than one financial year of the Commission. The situation therefore results in outstanding amount/s due

to the National Revenue Fund which will be collected by the Commission.

In terms of section 40(1) of the Competition Act, the settlement amounts and the administrative penalties are not listed as a source of finance for the Commission nor are the amounts of revenue defined in terms of GRAP 23. As such these amounts are not recognised in the statement of financial performance. Furthermore, the outstanding amounts do not meet the liability definition in terms of GRAP 1 and are therefore not recognised in the statement of financial position of the Commission.

#### **Penalties levied and received**

The statement of financial position includes a financial asset and a financial liability relating to penalties levied and received. The financial asset and financial liability will be same amount and are shown as “Cash and cash equivalents held on behalf of **the dtic**” and “Penalties payable to **the dtic**” respectively in the statement of financial position.

#### **For penalties levied but not yet received**

Penalties levied but not yet received do not meet the requirements of a financial asset and a financial liability in terms of GRAP 104 and accordingly are not presented in the statement of financial position.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

AS AT MARCH 31, 2024

## 2. NEW STANDARDS AND INTERPRETATION

### 2.1 Standards and interpretations issued, but not yet effective

The Commission has not applied the following standards and interpretations, which have been published and are mandatory for the Commission's accounting periods beginning on or after April 1, 2024 or later periods. The standards that are not relevant to the Commission's operations are not included in the list below:

Standard or pronouncement	Effective date:	Expected impact:
<ul style="list-style-type: none"><li>GRAP 1 (amendments related to going concern)</li></ul>	Not yet determined by the Minister of Finance.	The Commission is yet to review and assess the impact if any
<ul style="list-style-type: none"><li>IGRAP 22 (Foreign Currency Transactions and Advanced Consideration)</li></ul>	01 April 2025	Likely to impact the Commission
<ul style="list-style-type: none"><li>Improvements to Standards of GRAP (2023)</li></ul>	Not yet determined by the Minister of Finance.	Likely to impact the Commission
<ul style="list-style-type: none"><li>Guideline The application of materiality to financial statements</li></ul>	The guideline is not authoritative, but entities are encouraged to consider it when preparing financial statements.	Likely to impact the Commission

### 3. PROPERTY, PLANT AND EQUIPMENT

	2024			2023		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fittings	5,808	(3,271)	2,537	5,808	(2,901)	2,907
Motor vehicles	2,224	(893)	1,331	2,065	(767)	1,298
Office equipment	4,655	(2,672)	1,983	4,032	(2,194)	1,838
Computer equipment	18,232	(7,941)	10,291	16,499	(5,905)	10,594
Leasehold improvements	34	(18)	16	34	(7)	27
Cellphones	237	(85)	152	237	(46)	191
Leased assets	2,239	(2,233)	6	3,334	(3,141)	193
<b>Total</b>	<b>33,429</b>	<b>(17,113)</b>	<b>16,316</b>	<b>32,009</b>	<b>(14,961)</b>	<b>17,048</b>

#### Reconciliation of property, plant and equipment - 2024

	Opening Balance	Additions	Disposals	Depreciation	Total
Furniture and fittings	2,907	-	-	(370)	2,537
Motor vehicles	1,298	159	-	(126)	1,331
Office equipment	1,838	623	-	(478)	1,983
Computer equipment	10,594	1,863	(101)	(2,065)	10,291
Leasehold improvements	27	-	-	(11)	16
Cellphones	191	-	-	(39)	152
Leased assets	193	-	-	(187)	6
<b>Total</b>	<b>17,048</b>	<b>2,645</b>	<b>(101)</b>	<b>(3,276)</b>	<b>16,316</b>

#### Reconciliation of property, plant and equipment - 2023

	Opening Balance	Additions	Disposals	Depreciation	Total
Furniture and fittings	2,938	551	(204)	(378)	2,907
Motor vehicles	1,874	773	(1,165)	(184)	1,298
Office equipment	1,793	748	(221)	(482)	1,838
Computer equipment	11,960	4,426	(3,270)	(2,522)	10,594
Leasehold improvements	-	34	-	(7)	27
Cellphones	87	185	(50)	(31)	191
Leased assets	1,292	-	-	(1,099)	193
<b>Total</b>	<b>19,944</b>	<b>6,717</b>	<b>(4,910)</b>	<b>(4,703)</b>	<b>17,048</b>

2024	2023
R'000	R'000

#### Pledged as security

None of the property, plant and equipment is pledged as security. There are no future contractual commitments for acquisition of property, plant and equipment.

None of the property, plant and equipment was sold, the assets were scrapped as disposal method during the financial year.

#### Expenditure incurred to repair and maintain property, plant and equipment included in Statement of Financial Performance

Repairs and maintenance	461	351
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#### 4. INTANGIBLE ASSETS

	2024			2023		
	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer Software	6,131	(4,041)	2,090	6,131	(2,870)	3,261

#### Reconciliation of intangible assets - 2024

	Opening Balance	Amortisation	Total
Computer software	3,261	(1,171)	2,090

#### Reconciliation of intangible assets - 2023

	Opening Balance	Additions	Amortisation	Total
Computer software	925	2,948	(612)	3,261

#### Pledged as security

None of the intangible assets are pledged as security. There are no future contractual commitments for acquisition of intangible assets.

	2024 R'000	2023 R'000
<b>5. INVENTORIES</b>		
Consumable stores	495	1,070
Inventories recognised as an expense during the year	589	31

## 6. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Prepaid expenses	3,252	1,151
Sundry debtors	1,395	2,007
	<b>4,647</b>	<b>3,158</b>

**Sundry debtors is made up of the following.**

Accrued interest	1,005	703
Deposits	-	535
Other	390	769
	<b>1,395</b>	<b>2,007</b>
<b>Total receivables from exchange transactions</b>	<b>4,647</b>	<b>3,158</b>

None of the trade and other receivables is pledged as security.

## 7. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of:

Cash on hand	217,747	264,125
Other cash and cash equivalents	17	-
	<b>217,764</b>	<b>264,152</b>

### Credit quality of cash at bank and short term deposits, excluding cash on hand

The credit quality of cash at bank and short term deposits, excluding cash on hand that are neither past due nor impaired can be assessed by reference to external credit ratings (if available) or historical information about counterparty default rates: None of the financial institutions with which bank balances are held defaulted in the prior periods and as a result a credit rating of high was ascribed by the financial institutions. The entity's maximum exposure to credit risk as a result of the bank balances held is limited to the carrying value of these balances as detailed above. All the bank balances are held with two banking institution which reduces the related banking risk.

## 8. PROVISIONS

### Reconciliation of provisions - 2024

	Opening Balance	Additions	Utilised during the year	Total
Legal proceedings	-	1,513	-	1,513
Leave provision	14,081	3,139	(1,268)	15,952
Performance bonus	26,600	15,722	(20,322)	22,000
<b>Total</b>	<b>40,681</b>	<b>20,374</b>	<b>(21,590)</b>	<b>39,465</b>

#### Legal proceedings provisions

The balance pertains to 2 issues:

A potential claim related to costs for reinstating the premises after vacating them. This claim is in dispute, as the Commission confirmed that the premises were reinstated and handed over to the landlord shortly after vacating them.

The taxed bill of costs, which was concluded immediately after the year-end.

#### Leave provision

The Commission does not have an unconditional right to defer settlement of its leave liabilities. The policy stipulates that the leave is forfeited if not used within 6 months after the reporting date, however leave is paid out when the employee is terminated.

#### Performance bonus

Employees sign performance contracts as part of their conditions of service at the beginning of each financial year. Employees are assessed bi-annually. The amount is dependent on the outcome of the individual performance evaluations and it is at the discretion of management, subject to the availability of funds.

The Institutional Moderation Committee (IMC) will look at overall performance at institutional level and ensure there is alignment between rating of performance of the institution in the APP and Non-APP Targets and the rating of the average individual scores for the institution, where there is a difference between the two scores, the IMC should resolve this.



2024	2023
R'000	R'000

The Committee will ensure that:

- The evaluation process is holistic in its consideration of all APP and Non-APP targets;
- There is an alignment of overall Commission performance with divisional performance;
- Performance is evaluated in a consistent way across all divisions;
- The integrity of the system is protected.

The Committee will communicate its decisions to Employees via Divisional Managers. The Committee will hear appeals from employees on recommendations of the Divisional Moderation Committees. The Committee must review reports of DMCs and agree on employees at the Commission that are considered Best performers, employees that are considered Middle Performers and employees that are considered Worst Performers.

## 9. FINANCE LEASE OBLIGATION

### Minimum lease payments due

- within one year

-	179
-	179
-	(3)
-	<b>176</b>

less: future finance charges

### Present value of minimum lease payments

It is Commission's policy to lease certain equipment under finance leases.

The average lease term was for three (3) years and the average effective borrowing rate used was (2023: 13%). The lease contract ended at 31 May 2023.

## 10. PENALTIES PAYABLE TO DTIC

	2024 R'000	2023 R'000
Opening balance	11,977	10,296
Penalties collected	177,711	148,371
Less: Amounts paid to <b>the dtic</b>	(173,524)	(146,690)
Less: Refunds	(133)	-
<b>Total</b>	<b>16,031</b>	<b>11,977</b>

An amount of R177.711 million was collected in the current financial year and R173.524 million was paid over to **the dtic** as at 31 March 2024. The balance of R16.031 million (2023: R11.977 million) is still to be paid over to **the dtic** in the next financial year. The penalties payable are held in the Commission's bank account and are represented by cash and cash equivalents held on behalf of **the dtic** disclosed under current assets on the statement of financial position.

Outstanding penalties amount at the beginning of the year	743,116	846,980
Add: Amounts of settlements and penalties levied by the Competition Tribunal	117,818	40,441
Less: Amounts collected by the Competition Commission	(177,712)	(148,371)
(Less)/Add: Adjustments and interest levied	(3,811)	4,066
	<b>679,411</b>	<b>743,116</b>

Section 64(3) of the Competition Act states that proceedings under subsection (2) may not be initiated more than three (3) years after the imposition of the administrative penalty. A total of R117.818 million (2023: R40.441 million) was levied by the Competition Tribunal in the current financial year.

Adjustments and interest levied balance for R3.811 million relates to interest accrued and paid on penalties as well unidentified receipts in prior years confirmed in the current year.

The closing balance of R679.411 million as at 31 March 2024, included a total amount of R632.673 million of which fined entities are behind the agreed payment terms. This may result in a material loss to the National Revenue Fund. Management has effected collection processes to recover the outstanding amounts in default. Some of the defaulters have requested a deferral payment arrangement due to financial challenges and those requests are being considered by Management.

The penalties collected by the Commission on behalf of **the dtic** are disclosed in the statement of financial position under current assets and liabilities as cash and cash equivalents held on behalf of **the dtic** and penalties payable to **the dtic** respectively. The Commission does not have additional resources held on behalf of the principal other than the disclosed.

	2024 R'000	2023 R'000
<b>11. PAYABLES FROM EXCHANGE TRANSACTIONS</b>		
Trade payables	30,773	19,590
Sundry payables	497	549
Accrued expenses	14,295	13,997
	<b>45,565</b>	<b>34,136</b>

## 12. LEASE RENTALS ON OPERATING LEASE

### Premises

Contractual amounts	11,966	13,751
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## 13. FEES EARNED

Fees earned	59,808	65,345
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## 14. OTHER INCOME

Insurance recovered	145	75
Refunds, SETA grant and recoveries	1,020	1,525
Other income	-	53
	<b>1,165</b>	<b>1,653</b>

## 15. INTEREST RECEIVED

Interest received on short term deposits	44,437	25,184
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## 16. GOVERNMENT GRANTS & SUBSIDIES

### Operating grants

Government grants and subsidies	407,875	449,518
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The Commission receives an operational grant allocation from **the dtic** in instalments or as once off amount of the total allocation. The current year grant was received all at once in May 2023.

## 17. EMPLOYEE RELATED COSTS

	2024 R'000	2023 R'000
Basic	261,660	245,076
Bonus	15,722	22,794
Medical aid - company contributions	11,527	9,974
Group life and pension administration	4,965	4,583
Cell phone and data allowance	6,947	7,145
Other staff related costs	13,914	11,549
	<b>314,735</b>	<b>301,121</b>

### Remuneration of the Accounting Authority

Basic	2,178	3,522
Medical aid	286	283
Group life and pension administration	49	72
Cell phone and data allowance	36	91
Other staff related costs	112	272
	<b>2,661</b>	<b>4,240</b>

### Remuneration of executive committee

Basic	23,408	22,281
Medical aid	1,022	856
Performance Bonuses	2,244	2,771
Group life and pension administration	444	421
Cell phone and data allowance	491	507
Other staff related costs	1,167	179
	<b>28,776</b>	<b>27,015</b>

	2024 R'000	2023 R'000
<b>Remuneration of other employees</b>		
Basic	235,594	219,627
Medical aid	10,219	8,836
Performance Bonuses	18,078	20,023
Group life and pension administration	4,472	4,090
Cell phone and data allowance	6,420	7,320
Other staff related costs	12,659	9,466
	<b>287,442</b>	<b>269,362</b>

## 18. ADMINISTRATIVE EXPENDITURE

General and administrative expenses	2,929	2,286
Auditors remuneration - external audit fees	2,016	1,902
	<b>4,945</b>	<b>4,188</b>

## 19. FINANCE COSTS

Leased assets (Photocopiers)	3	100
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	2024 R'000	2023 R'000
<b>20. OPERATING EXPENSES</b>		
Audit and risk and remuneration committee fees	651	380
Advertising	973	426
Internal audit fees	1,023	690
Consulting and professional fees	21,158	16,183
Case related costs - legal fees	87,680	80,847
Research and development costs	581	180
Security	1,438	1,191
Software expenses	5,012	3,627
Subscriptions and membership fees	2,213	1,222
Training	394	1,347
Travel and accommodation	9,516	6,263
Education and awareness	11,727	8,338
Maintenance, repairs and running costs	8,425	4,513
Publications	1,527	2,523
Meeting refreshments	1,735	555
Workshops	2,252	2,429
Other expenses	891	680
	<b>157,196</b>	<b>131,394</b>

## 21. CASH GENERATED FROM OPERATIONS

Surplus	19,451	81,935
<b>Adjustments for:</b>		
Depreciation and amortisation	4,448	5,314
Loss on disposal of assets	102	2,760
Movements in provisions	(1,216)	2,535
Inventory losses or write-downs	(439)	-
Other non-cash items - finance lease	436	993
<b>Changes in working capital:</b>		
Inventories	575	(31)
Receivables from exchange transactions	(1,489)	1,217
Payables from exchange transactions	11,429	(2,814)
	<b>33,297</b>	<b>91,909</b>

The prior year figures for the cash flow statement have been reclassified to conform to mapping changes effected in the current financial year.

## 22. COMMITMENTS

### AUTHORISED OPERATIONAL EXPENDITURE APPROVED AND CONTRACTED FOR

#### Approved and contracted for

• Existing contracts - goods and services	26,925	8,453
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#### Approved and not yet contracted for

• Purchase orders - goods and services	85,748	34,033
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#### TOTAL OPERATIONAL COMMITMENTS

Approved and contracted for	26,925	8,453
Approved and not yet contracted for	85,748	34,033
<b>Total commitments</b>	<b>112,673</b>	<b>42,486</b>

This committed expenditure relates to multiple service contracts entered into by the Commission and will be financed by the available cash reserves.

### OPERATING LEASES - AS LESSEE (EXPENSE)

#### Minimum lease payments due

- within one year	21,797	10,559
- in second to fifth year inclusive	47,413	-
	<b>69,210</b>	<b>10,559</b>

Operating lease payments represent rentals payable by the Commission for its office space. Leases are negotiated for an average term of three (3) years and rentals are fixed for an average of three years. No contingent rent is payable.

The lease for the rental of Block C ended on 21 March 2024 and has been extended for a period of 36 months ending 21 March 2027.

The Commission has entered into a new operating lease for the rental of additional office space in Block G at **the dtic** campus. The period of the lease is three (3) year commencing at 01 April 2024 ending 31 March 2027 with annual escalation of 7% on basic rental and parking.

2024	2023
R'000	R'000

## 23. RELATED PARTIES

### Relationships

The Department of Trade, Industry and Competition	Executive authority
The Competition Tribunal	Public entity in the national sphere
Public Investment Corporation	Public entity in the national sphere
Safety and Security Sector Education and Training Authority (SASSETA)	Public entity in the national sphere
Members of key management	Members of the executive committee

### RELATED PARTY BALANCES

#### Amounts included in trade receivable (trade payable) regarding related parties

The Competition Tribunal	(1,360)	(2,354)
The Department of Trade, Industry and Competition	(890)	(2,526)
Public Investment Corporation	(872)	535
The Department of Trade, Industry and Competition - Penalties	(16,031)	(11,977)

### RELATED PARTY TRANSACTIONS

#### The Department of Trade, Industry and Competition

Rental expense	10,559	15,080
Telephone and internet costs	38	76
Government grant received	407,875	449,518
Penalties collected on behalf of and transferred to related parties	173,524	146,690

#### The Competition Tribunal

Filing fees	15,461	18,472
Facility Fee	728	728
Other	9	-

#### Safety and Security Sector Education and Training Authority

Mandatory grant	529	434
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#### Transactions with companies related to EXCO members

D Tshepe Incorporated	-	602
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The services were rendered by D. Tshepe Incorporated before the Commissioner (Ms D Tshepe) joined the Commission.



## REMUNERATION OF EXECUTIVE MANAGEMENT

NAME:

**Commissioner**

Ms D Tshepe

**Deputy Commissioner**

Mr H Ratshisusu

**Company Secretary:**

Mr M Msibi

**Divisional Manager: Office of the Commissioner**

Mr A Gwabeni

**Divisional Manager: Mergers and Acquisition**

Ms T Mokoka\*

**Divisional Manager: Market Conduct**

Ms M Ramokgopa

**Divisional Manager: Economic Research Bureau**

Mr J Hodge

**Divisional Manager: Advocacy**

Ms K Qobo (resigned 13 November 2023)

**Divisional Manager: Cartels**

Mr M Mohlala

**Divisional Manager: Corporate Service Division**

Mr M George

**Chief Finance Officer**

Mr A Moledi

**Divisional Manager: Legal Services**

Mr B Majenge

**Acting Divisional Manager: Mergers and Acquisitions**

Mr W Gumbie\*\*

2024			
Basic salary	Bonuses and performance related payments	Other benefits received	Total
2,549	-	112	2,661
2,733	271	106	3,110
1,780	117	19	1,916
2,461	238	26	2,725
2,149	213	36	2,398
2,167	143	32	2,342
2,630	238	34	2,902
1,696	238	20	1,954
2,470	245	34	2,749
2,406	159	25	2,590
2,140	141	22	2,303
2,630	240	28	2,898
103	-	-	103
<b>27,914</b>	<b>2,243</b>	<b>494</b>	<b>30,651</b>

\* Surname changed, previously Paremoer.

\*\* Appointed to act effective 07 November 2023.

## REMUNERATION OF EXECUTIVE MANAGEMENT

NAME:

**Commisioner**

Ms D Tshepe (appointed 01 September 2022)

**Commissioner**

Mr T Bonakele (term ended 31 August 2022)

**Deputy Commissioner**

Mr H Ratshisusu\*

**Divisional Manager: Office of the Commissioner**

Mr A Gwabeni

**Company Secretary**

Mr M Msibi

**Divisional Manager: Mergers and Acquisitions**

Ms T Mokoka

**Divisional Manager: Market Conduct**

Ms M Ramokgopa

**Divisional Manager: Economic Research Bureau**

Mr J Hodge

**Divisional Manager: Advocacy**

Ms K Qobo

**Divisional Manager: Cartels**

Mr M Mohlala

**Divisional Manager: Corporate Service Division**

Mr M George

**Chief Financial Officer**

Mr A Moledi

**Divisional Manager: Legal Services**

Mr B Majenge

	2023			Total
	Basic salary	Bonuses and performance related payments	Other benefits received	
Ms D Tshepe (appointed 01 September 2022)	1,517	-	18	1,535
Mr T Bonakele (term ended 31 August 2022)	2,451	-	253	2,704
Mr H Ratshisusu*	2,589	707	101	3,397
Mr A Gwabeni	2,259	161	-	2,420
Mr M Msibi	1,669	136	-	1,805
Ms T Mokoka	2,033	246	-	2,279
Ms M Ramokgopa	2,049	166	-	2,215
Mr J Hodge	2,275	276	24	2,575
Ms K Qobo	2,271	246	2	2,519
Mr M Mohlala	2,336	189	17	2,542
Mr M George	2,273	123	-	2,396
Mr A Moledi	2,024	245	20	2,289
Mr B Majenge	2,284	278	14	2,576
	<b>28,030</b>	<b>2,773</b>	<b>449</b>	<b>31,252</b>

## 24. RISK MANAGEMENT

### Liquidity risk

The Commission's risk to liquidity is a result of the funds available to cover future commitments. The Commission manages liquidity risk by monitoring forecasted cashflows and ensuring that the necessary funds are available to meet any commitments which may arise. Cash which is not utilised is immediately invested in the Corporate for Public Deposits and call accounts.

#### At March 31, 2024

	Carrying amount	Total cash flow	Contractual cash flow within one year	Contractual cash flow between two and five years
Payables from exchange transactions	45,565	45,565	45,565	-

#### At March 31, 2023

	Carrying amount	Total cash flow	Contractual cash flow within one year	Contractual cash flow between two and five years
Payables from exchange transactions	34,136	34,136	34,136	-

#### At March 31, 2024

	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Cash and cash equivalents	217,764	-	-	-
Receivables from exchange transactions	1,395	-	-	-

#### At March 31, 2023

	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Cash and cash equivalents	264,125	-	-	-
Receivables from exchange transactions	2,007	-	-	-

## Credit risk

The Commission trades only with recognised, creditworthy third parties. In addition, receivable balances are monitored on an ongoing basis with the result that the Commission's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed. There is no significant concentration of credit risk within the Commission. With respect to credit risk arising from the other financial assets of the Commission, which comprise cash and cash equivalents, the Commission's exposure to credit risk arises from default of the counterparty, with a maximum exposure equal to the carrying amount of these instruments. The Commission's cash and cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is low. Trade and other receivables are not rated.

Financial assets exposed to credit risk at year end were as follows:

### Financial instrument

Cash and cash equivalents	217,764	264,125
Receivables from exchange transactions	1,395	2,007

## Market risk

Market risk is the risk that changes in the market prices, such as the interest rates which will affect the value of the financial assets of the Commission. The Commission is not exposed to market risk.

## Interest rate risk

As the Commission has no significant interest-bearing assets, the Commission's income and operating cash flows are substantially independent of changes in market interest rates.

The Commission is exposed to interest rate changes in respect of returns on its investments with financial institutions and interest payable on finance leases contracted with outside parties

The Commission's exposure to interest risk managed by investing, on a short term basis, in the current accounts and the Corporation for Public Deposits.

## 25. GOING CONCERN

We draw attention to the fact that at March 31, 2024, the Commission had an accumulated surplus of R 156,283 and that the Commission's total assets exceed its liabilities by R 156,282.

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis

presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

The ability of the Commission to continue as a going concern is dependent on a number of factors. The most significant of these is that **the dtic** continue to provide funding for the ongoing operations for the Commission.

## 26. EVENTS AFTER THE REPORTING DATE

No events identified to be reported.

## 27. PRIOR-YEAR ADJUSTMENTS

Presented below are those items contained in the statement of financial position and cash flow statement that have been affected by prior-year adjustments:

### Statement of financial position

#### 2022

	Correction of error	Restated
Payables from exchange transactions	(30)	(30)
Receivables from exchange transactions	(28)	(28)
Net assets	58	58
	-	-

### Cash flow statement

#### 2023

	As previously reported	Re-classification	Restated
<b>Cash flow from operating activities</b>			
Sale of goods and services	66,330	(985)	65,345
Interest income	25,184	276	25,460
Other income	1,653	(96)	1,557
Employee costs	(272,429)	(31,227)	(303,656)
Suppliers	(178,247)	32,032	(146,215)

	2024 R'000	2023 R'000
<b>28. IRREGULAR EXPENDITURE AND FRUITLESS AND WASTEFUL EXPENDITURE</b>		
Irregular expenditure	773	540

## 29. BUDGET DIFFERENCES

### Fee income

The variance is mainly due to actual merger fees collected being less than anticipated as well as withdrawal of filing fees by certain companies.

### Interest received

This is mainly due to interest received on excess funds invested on short-terms investments yielding better returns.

### Administrative expenses

Actual spending is below budget mainly due to projects and services related to the additional office space by the Commission that were budgeted for the year. The anticipated expenditure could only materialize following the finalisation and signing of the lease contract, resulting in a delay in spending as initially projected.

### Depreciation

The variance in depreciation is mainly due to delays in securing the additional office space for the Commission, whereby the planned asset additions to house the building could not materialise.

### Lease rentals on operating lease

Actual spending is below budget mainly due to delays in securing the additional office space.

### Operating expenses

Actual spending on operational expenses is mainly attributable to lower than anticipated spending on research projects as well as the postponement of consultant costs associated with the planned additional office space and underspending on market inquiry related costs

### 30. CONTINGENT ASSETS AND LIABILITIES

#### Cases before the courts in which costs were awarded against the Commission.

Claim amount	16,252	521
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There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded against the Commission. The estimated amount of possible cost awards and/or claims of the pending cases is R16.252 million, however for some of cases the costs are unknown and were not yet confirmed at the reporting date.

#### Cases before the courts in which costs were awarded in favour of the Commission.

Claim amount	-	700
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There are pending cases before the courts emanating from ongoing investigations by the Commission. Based on the assessment of these cases, there is no likelihood of costs to be awarded in favour of the Commission.

#### Surplus funds

In terms of section 53 (3) of the PFMA, public entities listed in Schedule 3A and 3C to the PFMA may not retain cash surpluses that were realized in the previous financial year without obtaining the prior written approval of National Treasury. National Treasury issued Instruction No.12 of 2020/2021 to repeal the National Treasury Instruction No.6 of 2017/2018 on the retention of cash surpluses. This new Treasury Instruction takes effect from the date of signature for surpluses realized in the 2019/2020 financial year and for all surpluses realised thereafter. According to this Treasury Instruction the surplus is based on cash and cash equivalents plus receivables less current liabilities at the end of the financial year. The Commission is expecting to retain the 203/2024 financial year's surplus in it's entirety.

During the year the Commission submitted the request for retention of surplus funds as determined in terms of the Instruction note mentioned above for the 2022/2023 financial year and received approval by the National Treasury for an amount of R115.453 million.

In terms of paragraph 6.1(a) of the National Treasury Instruction 12 of 2020/21, the Commission had to surrender R76.834 million to the National Revenue Fund through the Department of Trade, Industry and Competition.

## NOTES

[illegible]



## NOTES

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## COMPETITION COMMISSION OF SOUTH AFRICA

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