



competitiontribunal  
SOUTH AFRICA

# INTEGRATED ANNUAL REPORT 2021/22

*Adjudicating for competitive  
and inclusive markets*





## VISION

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



## MISSION

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



## VALUES

In pursuing its legislated mandate, the Tribunal strives to deliver:

- fairness, objectivity and independence;
- timeous decisions of a high calibre;
- effective communication of our work with the public; and
- courteous, efficient, informed interaction with our stakeholders.



## CONSTITUTIONAL MANDATE

The mandate of the Tribunal is contained in section 34 of The Constitution of the Republic of South Africa, 1996, which states:

*“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”*



## LEGISLATIVE MANDATE

The Tribunal derives its legislative mandate from section 2 of the Competition Act of 1998 (Act 89 of 1998) (the Act or the Competition Act) and its purpose is to promote and maintain competition in the Republic in order to:



**(a)** promote the efficiency, adaptability and development of the economy;



**(b)** provide consumers with competitive prices and product choices;



**(c)** promote employment and advance the social and economic welfare of all South Africans;



**(d)** expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;



**(e)** ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;



**(f)** promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons; and



**(g)** detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, that tends to impede, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic.

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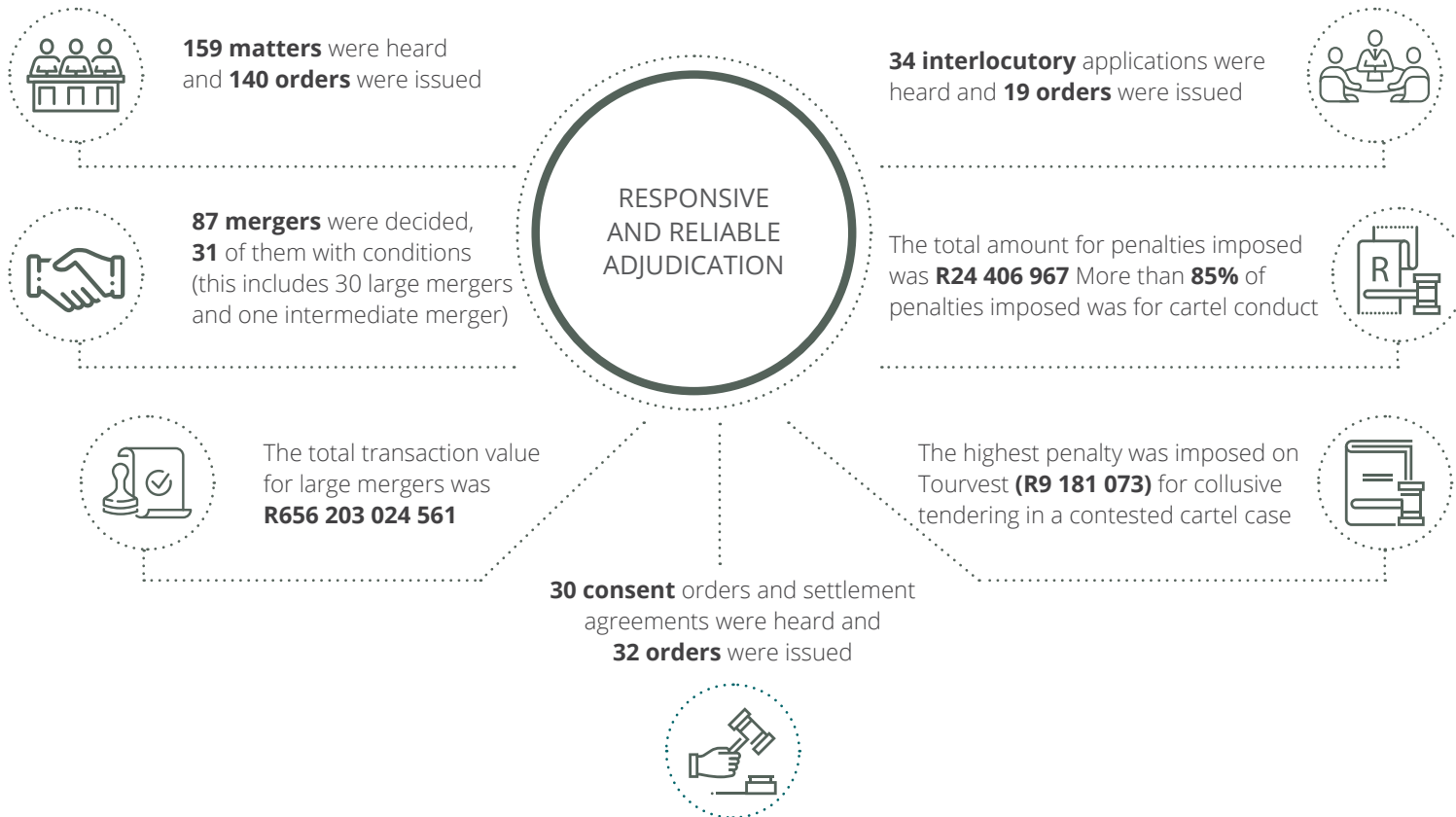
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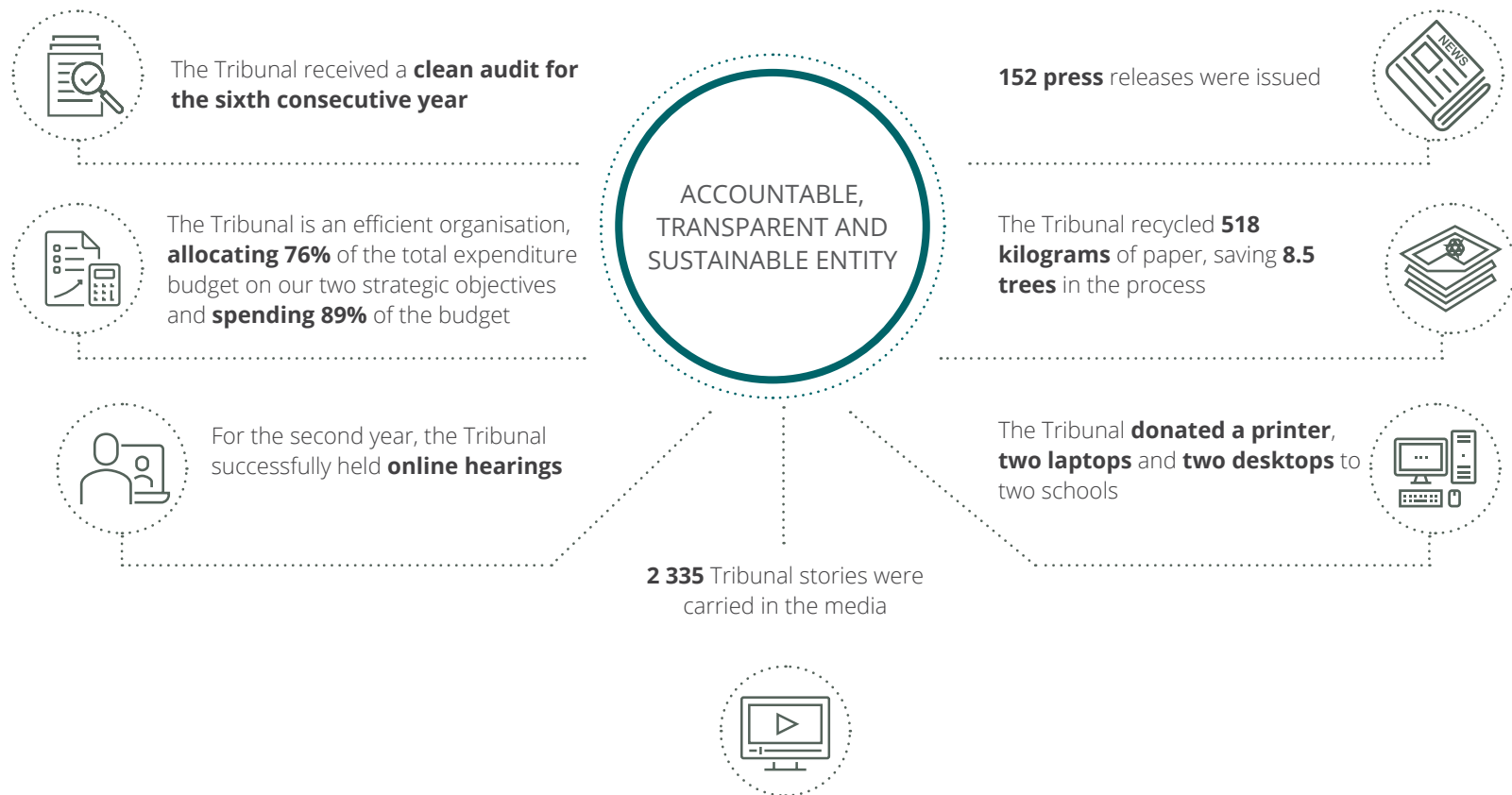
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# HIGHLIGHTS FOR 2021/2022









## STRATEGIC OUTCOMES

### RESPONSIVE AND RELIABLE ADJUDICATION

During the period under review, the Tribunal heard a total of 159 matters and issued a total of 140 orders, of which 87 were for mergers. 56 of the mergers were approved without conditions. 31 were approved with conditions, of which 20 included public interest conditions.

In addition, we issued one order in one contested cartel case which was heard by the Tribunal in the previous reporting period.

The Tribunal heard six complaint referrals from the Commission. One was settled and the remaining five were not yet concluded at the end of the reporting period.

The Tribunal also heard 30 consent orders and settlement agreements and issued 32 orders (two of these orders were from the previous reporting period). 20 of these were collusion or cartel related, 10 related to abuse of dominance (8 were specifically COVID-19 excessive pricing cases) and two were for failure to notify a merger. We also heard 34 interlocutory applications and issued 19 orders in this regard. These are procedural applications that delay the hearing of the cases on the merits relating to, for example, postponement or extension applications, applications for the discovery of documents and access to confidential information as well as proceedings relating to jurisdictional points. We also heard two interim relief matters and issued one order.

Interim relief is a procedure to temporarily protect and maintain competition while the Commission is investigating and is decided on the basis of evidence before the Tribunal without the benefit of a full investigation and oral evidence. A full investigation may or may not confirm evidence of harm.

### ACCOUNTABLE, TRANSPARENT AND SUSTAINABLE ENTITY

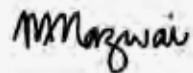
The Tribunal strives to be an accountable, transparent and sustainable entity while conducting its operations and delivering on its core mandate of adjudication. While we are ultimately accountable to Parliament, our second strategic goal requires us to have effective oversight structures in place to ensure effective operations, financial management and reporting.

We maintain a strong culture of open communication of the outcomes of our work and recognise the importance of sharing information with our key stakeholders, especially the public. During the reporting period, a total of 152 media releases were issued. In addition, a total of 2 335 news stories on Tribunal decisions and activities were carried in the media. Our value proposition is reflected in our strong track record of clean audits over numerous years. We also focus on developing and building sustainable human capacity while taking into account the wellness of staff.

The Tribunal is an efficient organisation, having allocated 76% of the total expenditure budget on our two strategic objectives and having spent 89% of the budget. The remaining 24% of the budget was allocated to administration. We are pleased to report that we stayed within budget during the reporting period. Through prudent financial management and revenue from higher than expected filing fees, the Tribunal incurred a surplus of R8.88 million. These surpluses assist to offset the variability of filing fees. We had received approval from National Treasury and the Department of Trade, Industry and Competition (“**the dtic**”) to retain an accumulated surplus of R7.61 million over the 2021/2022 financial year. These funds have been allocated to prioritised projects. At the end of the financial year, on 31 March 2021, the Tribunal incurred an accumulated cash surplus of R17.06 million which we will seek approval to retain for 2022/2023 from National Treasury.

## STATEMENT OF RESPONSIBILITY

The Chairperson and the Chief Operating Officer (COO) acknowledge their responsibility in terms of ensuring the integrity of this Integrated Annual Report. In their opinion this report addresses all the issues that are material to the Tribunal's ability to create value and presents the integrated performance of the Tribunal fairly. This report was approved by the Chairperson on 31 August 2022.



**Mondo Mazwai**  
Chairperson



**Oliver Josie**  
Chief Operating Officer



## BOUNDARY AND SCOPE

This 2021/2022 Integrated Annual Report covers the Tribunal's performance for the year ending 31 March 2022. It provides information on our two strategic goals which are: responsive and reliable adjudication; and being an accountable, transparent and sustainable entity.

We report on the extent to which we achieved our planned objectives for the year. Where we did not meet certain targets in full, we address the reasons and corrective action implemented. We also provide an overview of our governance structures and present details on how we adhere to effective corporate governance.

We use infographics for easier understanding of our work and performance. We also explain how we used our financial resources during the reporting period.

Since 2020, the COVID-19 pandemic has had a significant impact on the South African economy. On the merger front, we prioritised cases that had an impact on and advanced public interest objectives including employee share ownership, a greater spread of ownership, shareholding by B-BBEE firms or individuals, access to markets, and capital investment.

Furthermore, we report on the Tribunal's decisions that impacted employment; local or regional industries; small and medium businesses or firms controlled or owned by historically disadvantaged persons, in order to create competitive and inclusive markets for all participants in the South African economy.



PART 1  
AT A GLANCE



# MINISTER'S FOREWORD



**Ebrahim Patel**  
Minister: Trade, Industry  
and Competition

*Government's priority focus continues to be the recovery of growth, infrastructure investments, greater levels of localisation, investment and employment, guided by the Economic Recovery and Reconstruction Plan, and the tasks outlined by the President in the 2022 State of the Nation Address.*

It is my pleasure to table the Competition Tribunal's Integrated Annual Report for the 2021/22 financial year. The report sets out the work of the Tribunal during a challenging year for the economy and society.

Government's priority focus continues to be the recovery of growth, infrastructure investments, greater levels of localisation, investment and employment, guided by the Economic Recovery and Reconstruction Plan, and the tasks outlined by the President in the 2022 State of the Nation Address.

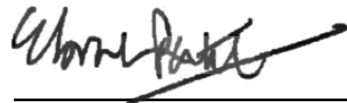
The Tribunal key focus is to ensure that markets remain competitive and that market structures which impede participation and economic development are remedied; and to ensure that the public interest is protected during merger applications.

In the period under review, the Tribunal heard and decided numerous large mergers and approved some subject to conditions. The conditions imposed by the Tribunal played a significant role in promoting public interest objectives. These include, among others, the establishment of employee share ownership programmes (ESOPs), financial commitments towards enterprise and supplier development, capital expenditure commitments, greater participation of historically disadvantaged persons (HDPs) and employees and the acquisition of shareholding by B-BBEE shareholders. In addition, conditions imposed by the Tribunal also related to employment security and increases in expenditure towards skills development and socio-economic development.

In the new financial year, the work of **the dtic** and its entities will be evaluated in relation to three over-arching Outcomes namely:

- industrialisation;
- transformation; and
- building state capability.

I wish to thank the Tribunal's Chairperson, Ms Mondo Mazwai, for her work and significant contribution towards the evolution of South Africa's competition jurisprudence, Mr Enver Daniels who served as Deputy Chairperson for part of the reporting period; the eminent panel of Tribunal members and the staff of the institution.

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

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**Ebrahim Patel**

Minister of Trade, Industry and Competition

# CHAIRPERSON'S REPORT



**Mondo Mazwai**  
Chairperson

*This snapshot of case adjudication illustrates the diverse nature of our work, and the increasing demand for our services. It is ever more important to build the capacity of the competition authorities to tackle the challenges that lie ahead in rebuilding the economy.*

Shaped by the COVID-19 pandemic and the associated disruption to so many aspects of our economy, society and lives, the 2021/22 financial year was a busy year for the Competition Tribunal which saw an increase in the Tribunal's case load following a slight recovery in the economy. I expect this trend to continue.

The COVID-19 pandemic in 2020 found South African competition law and policy at an inflection point where the Competition Act had been amended in 2019. The amendments were aimed at addressing the high concentration levels that continue to plague the economy, 20 years after the Competition Act was in force. The amendments have, *inter alia*, strengthened the merger, abuse of dominance and market inquiry provisions in order to reduce barriers to entry in markets, to increase ownership and participation, particularly by SMMEs and HDIs in the economy. In essence the amendments seek to foster fair, competitive and inclusive markets.

Protecting and maintaining competition in the public interest is just as important in exceptional times as in normal times. Against this backdrop, we continued to build on the innovations of the past year of working remotely and holding hearings online. The staff returned to the office on a hybrid working model (office and remote working) in compliance with applicable COVID-19 restrictions and protocols.

While the COVID-19 pandemic slowed down the traction that the amendments sought to achieve, the decisions of the Tribunal contributed to sustaining public trust and confidence in markets, by protecting consumers from unjustifiable high prices. We heard and decided eight consent orders and settlement agreements relating to COVID-19 excessive pricing allegations. For example, when Lancet Laboratories, PathCare and Ampath were individually accused of excessively pricing COVID-19 PCR tests, we ordered them to reduce the price of COVID-19 PCR tests to no more than R500 (VAT incl.) for a period of two years. Again when Lancet Laboratories, PathCare and Ampath were individually accused of excessively pricing rapid antigen tests, we ordered them to reduce the price of COVID-19 rapid antigen tests to no more than R150 (VAT incl.) for a two-year period.

Our achievements are a testament to our staff who support the reliable and responsive adjudication pillar – our core function - through their work on our people policies, facilities management, our agile information technology systems and thus ensuring the achievement of the second pillar of our function as a transparent, accountable and sustainable Tribunal. Over the twelve months, 159 cases were heard at the Tribunal. These comprised: 87 merger cases, 6 complaints from the Commission, 30 consent orders/settlement

agreements, 2 interim relief applications and 34 procedural matters. Nearly all these cases were significant in terms of their scope and complexity. Compared to the previous financial year, the distribution of cases shows an increase in the number of large merger cases as the economy recovered slightly. I highlight a few cases which serve to illustrate the impact and diversity of the Tribunal's work.

On enabling inclusive participation through merger control, when ECP Africa Fund sought to acquire Burger King (South Africa) & Grand Foods Meat Plant, the Tribunal conditionally approved the merger after considering the submissions of the merger parties, the Commission, **the dtic** and trade union, SACTWU. As a package, the conditions address several public interest issues to remedy the pre-merger dilution of black ownership in Burger King (South Africa) from a shareholding of over 60% to 0%. The conditions included the following over a five-year period: (1) expansion commitments; (2) commitments relating to South African suppliers; (3) commitments relating to an employee share ownership program ("ESOP"); and (4) a commitment to divest the meat plant that supplies Burger King South Africa.

When DP World Logistics, ultimately owned by the Dubai government, sought to acquire Imperial Logistics Limited, we approved the merger subject to public interest conditions to address, among others, a potential decrease in the spread of ownership and to maintain the levels of the target group's planned investment in South Africa. The conditions included the following: (1) the establishment of an ESOP; (2) enterprise and supplier development commitments; and (3) capital expenditure commitments.

In the context of prohibited practices, we granted interim relief to Wilec against Allbro. Wilec sought interim relief against Allbro to prevent Allbro from engaging in anti-competitive conduct in the market for the provision of transformer bushings, on the basis that Allbro was inducing customers not to deal with Wilec through a strategy of vexatious intellectual property litigation and threats to customers. Allbro was, for a long time, the only supplier of transformer bushings in South Africa. It is a private South African company that has been operational for over 40 years. Wilec is a private, 100% black-owned firm established in 2018, when a B-BBEE entity, Makarenge Electrical Industries, purchased the transformer bushings business from Actom, a long-established transformer manufacturer that would, through its "Wilec" division, self-supply transformer bushings and sell them to Eskom. Eskom buys about 80% of all transformers sold in South Africa. We found that there was a *prima facie* case to grant interim relief because Wilec had demonstrated that Allbro's conduct had anti-competitive effects that were not justified by any pro-competitive or efficiency gains.

On the cartel front, we found Tourvest and Siyazisiza Trust guilty of collusive tendering in relation to an Airports Company South Africa (ACSA) tender for arts, crafts and curio retail leasing opportunities at OR Tambo International Airport in Johannesburg. Tourvest conducts

business in the tourism industry. Among others, it operates arts, crafts and curio retail stores and branded homeware stores in the international departures terminal section of OR Tambo. Siyazisiza Trust is a broad-based craft enterprise development agency which works with multiple rural crafters who are women, mostly from rural areas, skilled in a particular craft or art. We ordered Tourvest to pay an administrative fine. Using our discretion, we decided not to impose any administrative penalty on Siyazisiza Trust given its size and purpose, the fact that it did not benefit from the conduct, as well as its role in the conduct.

Even in this snapshot, the breadth, depth and impact of our work is evident. However, it remains an ongoing challenge to meet the enormous and growing demand on our services. Often, cases are extremely urgent, raising issues of fundamental importance not only to the firms concerned but to workers, consumers and the wider economy and require the rapid mobilisation of resources to deal with them. Increasing the Tribunal's resources both in funding and human capital is necessary.

As we look ahead, I expect the demand for our services to continue increasing in line with the recovery in the economy from the pandemic and finalisation of the Commission's market inquiries. We have begun a process to review and reassess our activities and we will require an increase in our resources to deliver on our core action to adjudicate for fair, competitive and inclusive markets. Even with our challenges, the impact of the work we do and commitment of our staff keeps us striving to do better for the South African public.

In this financial year, the five-year term of Mr Enver Daniels, the Deputy Chairperson ended. Professor Halton Cheadle's five-year term also ended in this financial year. I would like to thank both Enver and Halton for their contribution to the important work of adjudicating for competitive and inclusive markets. I should like to welcome the appointment of acting part-time members Professor Liberty Mncube and Ms Sha'ista Goga who joined the Tribunal in January 2022 and immediately hit the ground running. Of course, none of this would be possible without the staff who are the engine of the organisation and whose contribution is appreciated.

Our annual report provides an overall view of all the areas of our work and I hope you will enjoy reading it.

  
**Mondo Mazwai**  
Chairperson  
31 August 2022



# CHIEF OPERATING OFFICER'S REPORT



**Oliver Josie**  
Chief Operating Officer

*This is the result of the hard work of all staff in the Tribunal and I thank, in particular, my colleagues in the OPCOM team for managing their divisions effectively and for pursuing their annual targets. I must also convey my thanks to the Chairperson, the Tribunal's Management (MANCOM) for their support at times and the guidance from the Audit & Risk Committees and **the dtic** during the year.*

The 2021/2022 financial year represents my first full year as the Tribunal's Chief Operating Officer. My previous role of Non-Executive Member of the Tribunal's Audit and Risk Committees, for almost four years, stood me in good stead to initiate improvements to risk management, the control environment and the policy framework.

The 2021/2022 report represents the Tribunal's ninth Integrated Annual Report. Supported by a dedicated and committed Operations Committee (OPCOM) team, we were able to integrate the triple context of governance (financial, social and environmental) into our operations while achieving our stated objectives and delivering on our mandate.

This report provides a detailed analysis of the Tribunal's work during the 2021/2022 period. We also provide a forward-looking focus, particularly with regard to our core objective which is responsive and reliable adjudication. We have combined both narratives and infographics in an innovative way to provide an easy-to-read Integrated Annual Report. The basic structure of the report has remained consistent over a number of years as it provides a logical and holistic picture for the reader.

2021/2022 has been a challenging year as the country was still dealing with the COVID-19 pandemic as well as the July 2021 unrest. In Part 1 of this report the Minister of Trade, Industry and Competition (the Minister) and the Tribunal Chairperson highlight the efforts undertaken to promote economic recovery as well as the need for public entities to contribute towards inclusive growth. In Part 2, we provide the reader with an explanation of who the Tribunal is, what our role is and insights into the officials and members of the Tribunal.

Part 3 is, in essence, a detailed description of the Tribunal's operational environment. We highlight the strategic objectives set out by the Tribunal over the five-year planning period and cascade these down into annual priorities. Each strategic objective is addressed in detail and we provide an overview of achievements against predetermined targets i.e. whether we met, exceeded or partially met our respective targets. We also provide explanations for both under- and over-performance and where there has been underperformance, corrective action is addressed.

Our first strategic objective is responsive and reliable adjudication. We highlight statistics related to the type and number of matters heard as well as matters where orders and reasons were issued. We also provide a detailed narrative on particularly interesting cases considered by the Tribunal and any remedies or penalties imposed. Our second strategic objective is being a transparent, accountable and sustainable entity. This objective is also discussed in detail in Part 3. We provide information on our communication and information sharing function as well as our relationship with stakeholders, who they are and how and what we communicate. Much of our stakeholder communication relates to Tribunal decisions and the reasons for these decisions. In addition, we provide substantial detail on media coverage of the Tribunal's decisions.

In Part 4 we address compliance, ethical behaviour and fraud and risk management. We provide answers to various questions, that is, who are we accountable to, how do we govern ourselves internally, what governance structures are in place, what is their role in ensuring accountability and transparency, and how effectively is risk and fraud prevention managed in the Tribunal?

Detailed financial analysis is provided in Part 5. We address revenue and financial resource management and explain how our budget is funded. Comparing spend against budget gives an indication as to whether we have managed our financial resources effectively. We are also able to provide an overview of spend by objective and provide a detailed analysis of the cost of the adjudicative process.

In Part 6 we present the audited Annual Financial Statements, prepared in compliance with Generally Recognised Accounting Practice standards. This section concludes with a detailed performance matrix submitted to our line department and the National Treasury. It is pleasing to note that the Tribunal has once again achieved a clean audit. As the audit performed by the Auditor-General, South Africa (Auditor-General) relates to financial and non-financial operations, it reflects both governance in financial and performance reporting.

This is the result of the hard work of all staff in the Tribunal and I thank, in particular, my colleagues in the OPCOM team for managing their divisions effectively and for pursuing their annual targets. I must also convey my thanks to the Chairperson, the Tribunal's Management Committee (MANCOM) for their support at times and the guidance from the Audit & Risk Committees and **the dtic** during the year. We hope the reader is able to gain valuable insights and benefit from this Integrated Annual Report.



**Oliver Josie**

Chief Operating Officer

31 August 2022



PART 2  
WHO WE ARE

## OUR ROLE

The Tribunal is an independent and impartial administrative body with jurisdiction throughout South Africa. We are required to perform our functions without fear, favour or prejudice, subject only to the Constitution, the law, and our legislated mandate derived from the Act.

Our core business and therefore our strategic focus is the adjudication of mergers and prohibited practice cases brought before us either by the Commission or directly by third parties, or in some circumstances by the courts.

At the heart of our work is adjudicating for competitive and inclusive markets, which advances both competition and public interest objectives in the Act. This includes equitable, diverse and inclusive participation in markets that ultimately offer lower prices, greater product choices for customers and consumers and fair access to markets for all South Africans.

We do this by interpreting the law in a clear, consistent and predictable way that balances the interest of various stakeholders so as to encourage investment by business while enabling small businesses and historically disadvantaged individuals to participate in the economy.

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

- authorise a merger, with or without conditions, or prohibit a merger;
- adjudicate in relation to any conduct prohibited in terms of the Act by determining whether a prohibited conduct has occurred and, if so, impose a remedy;
- hear appeals from, or review any decision of, the Competition Commission that may in terms of the Act be referred to it; and
- grant an order for costs.

The Tribunal's decisions have the same legal weight as the judgements of the High Court and may be taken on appeal to the Competition Appeal Court (CAC) and ultimately to the Constitutional Court.

We are enjoined to retain our independence and impartiality in the exercise of our powers and in carrying out our duties. The Tribunal members are supported both logistically and operationally in their work by full-time employees who are referred to as the Secretariat.

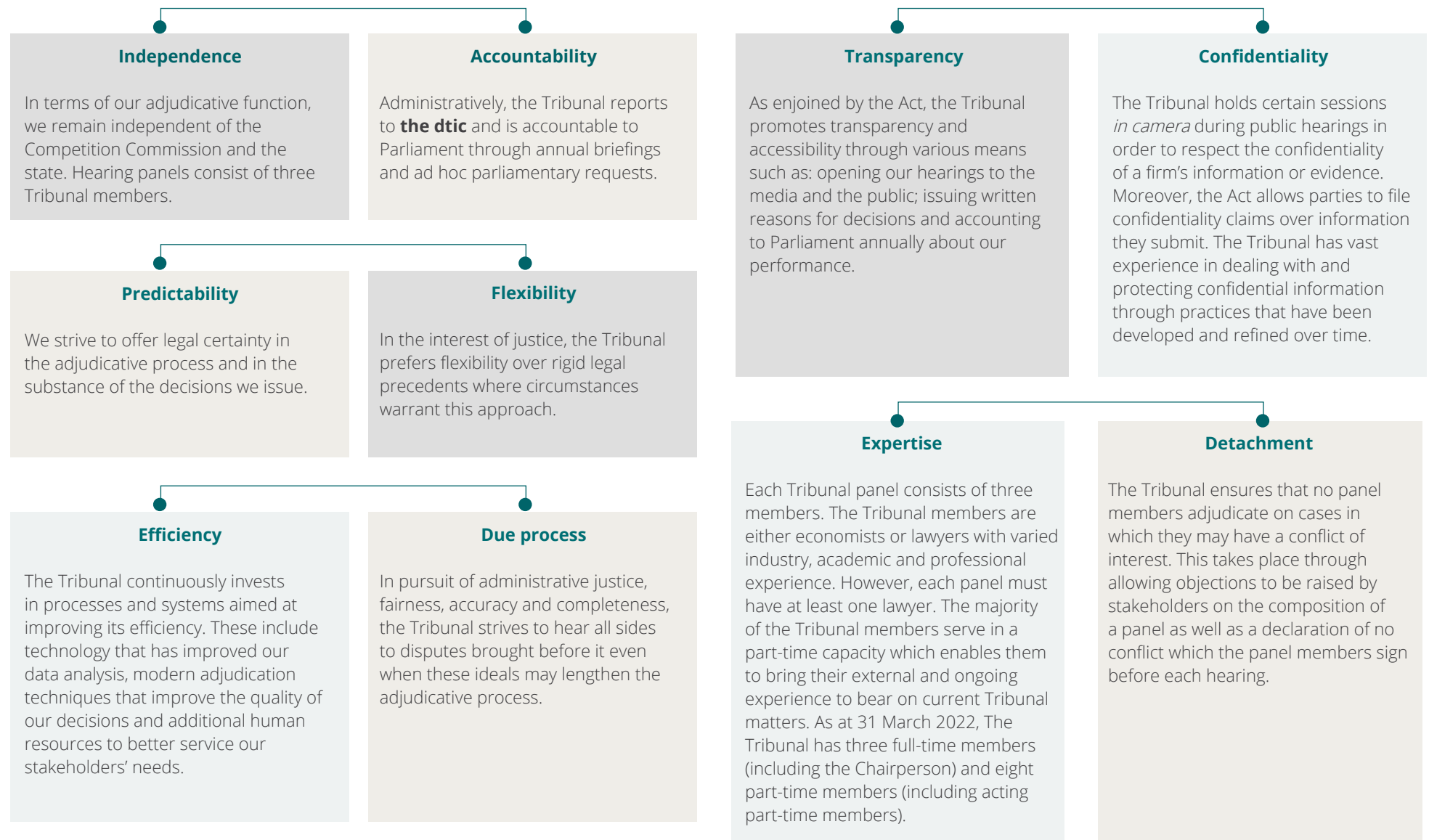
While the adjudicative process remains the main strategic focus, we have also placed emphasis on other key areas of administration namely: governance, risk and compliance; capacity building; and effective financial management.

In addition, we strive to be an accessible institution and to ensure that the public remains informed about the Act and the Tribunal's functions, decisions and activities. All upcoming hearings and Tribunal decisions are communicated through media releases and alerts and all Tribunal decisions can be accessed by the general public on the Tribunal's website.



## APPLYING AND ADDING VALUE

In executing its mandate and role, the Tribunal must perform a balancing act between seemingly contrasting values as depicted below:



The Tribunal regulates for competitive and inclusive markets through the following:



- **Protecting and promoting the public interest** – the competition authorities are obliged to consider public interest grounds in merger analysis in terms of its effect on: Small, Medium and Micro Enterprises (SMMs), also referred to as small business or firms controlled or owned by historically disadvantaged persons (HDPs) to become competitive; worker participation in firms; employment; and the ability of national industries to compete internationally.



- **Levelling the playing field** – the Tribunal facilitates expansion and new entry by ensuring that markets remain open for business and that consumer welfare is protected.



- **Creating judicial certainty** – the Tribunal adjudicates on mergers and matters where there are disputes or contraventions, creating clarity for firms and encouraging investment both locally and internationally through legislative fairness and consistency. This creates a well-regulated regime, (which includes appeal processes) and guides companies on how to interpret jurisprudence as it refers to competition law.



- **Reparation** – with regard to some prohibited practices where the conduct is considered to have a serious impact on competition (including on customers, consumers and competitors) the Tribunal may approve remedies requiring firms to contribute to a development fund, for example, over and above the penalty imposed.



- **Innovation** – the Tribunal is mindful of the importance of innovation. One of the considerations when reviewing a merger is whether it is likely to inhibit or encourage innovation. In hearing a prohibited practice complaint, the Tribunal will consider, among other things, whether the practice discourages innovation.





## TRIBUNAL IN OPERATION

As at 31 March 2022, the Tribunal comprises three full-time members and 8 part-time members (including three acting members). Full-time and part-time members (5) are appointed by the President of the Republic of South Africa, on the recommendation of the Minister. Acting part-time members (3) are appointed by the Minister in terms of section 26 of the Act.

These members hear cases, rule on them and issue written reasons. For most matters, a quorum for hearings requires three members. Each panel must comprise at least one lawyer.

Full-time and part-time members serve five-year terms and can be re-appointed. The Chairperson can serve a maximum of two five-year terms.

Given the legal and economic considerations required in competition law, it is essential that Tribunal members have the requisite skills. In addition, in terms of the Act, Tribunal members must be South African citizens and must represent a cross section of our population. The current pool of members comprises five lawyers and six economists.

## Full Time members

The current full-time members are Ms Mondo Mazwai (Chairperson); Ms Yasmin Carrim; and Mr Andreas Wessels.



**Ms Mondo Mazwai**  
Chairperson

Appointed  
01 January 2013

Number of years at  
the Tribunal: 9



**Mr Enver Daniels**  
Deputy Chairperson

Appointed  
01 January 2017

Number of years at  
the Tribunal: 5

\*Five-year term ended 31 December 2021.



**Ms Yasmin Carrim**  
Full-time member

Appointed  
01 August 2004

Number of years at  
the Tribunal: 17



**Mr Andreas Wessels**  
Full-time member

Appointed  
01 August 2009

Number of years at  
the Tribunal: 12

Part Time members



**Ms Andiswa Ndoni**

Part-time member

Appointed  
01 August 2009

Number of years at  
the Tribunal: 12



**Prof Imraan Valodia**

Part-time member

Appointed  
01 January 2013

Number of years at  
the Tribunal: 9



**Mr Anton Roskam**

Part-time member

Appointed  
01 January 2013

Number of years at  
the Tribunal: 9



**Prof Fiona Tregenna**

Part-time member

Appointed  
01 August 2014

Number of years at  
the Tribunal: 8



**Prof Halton Cheadle**

Part-time member

Appointed  
01 January 2017

Number of years at  
the Tribunal: 5



**Dr Thando Vilakazi**

Part-time member

Appointed  
1 August 2019

Number of years at  
the Tribunal: 2

\*Term ended 31 December 2021



**Prof Liberty Mncube**

Acting part-time member

Appointed  
1 January 2022

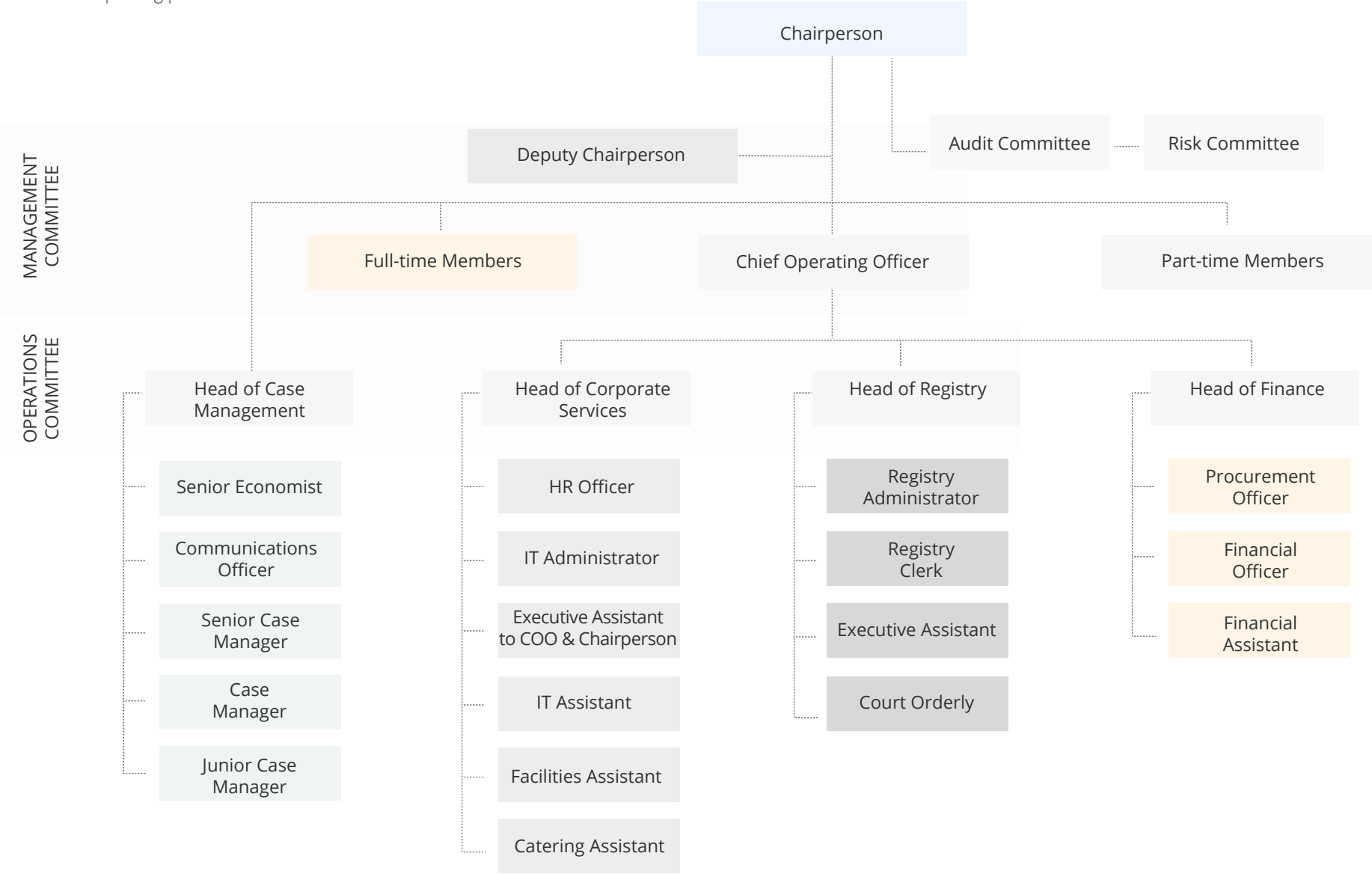


**Ms Sha'ista Goga**

Acting part-time member

Appointed  
1 January 2022

Tribunal members are supported both logistically and operationally in their work by full-time employees who are referred to as the Secretariat. The Secretariat differs in function from the members as they do not decide cases. The Secretariat is headed by the COO and comprises four divisions, namely: Case Management; Finance; Registry; and Corporate Services. The Divisional Heads and the COO constitute the OPCOM which assists the Chairperson in her role as the Accounting Authority. The OPCOM has oversight responsibilities for all operational functions and is required to ensure good governance. The Audit Committee and Risk Committee assist the Chairperson in her oversight role. The Tribunal's structure for the reporting period is illustrated below:





## OUR PEOPLE - AS AT 31 MARCH 2022



**OLIVER JOSIE**  
Chief Operating Officer



**JABULANI NGOBENI**  
Head of Case Management



**TEBOGO MPUTLE**  
Head of Registry



**DEVrani MOONSAMY**  
Head of Finance



**BELLAH KEKANA**  
Human Resources Officer



**LUFUNO RAMARU**  
Executive Assistant: COO



**NONKULULEKO MPEPUKE**  
Executive Assistant: Core



**PATRICIA FROUDE**  
Procurement Officer



**COLIN VENTER**  
IT Administrator



**RENDANI NESWISWI**  
IT Assistant



**THEMBA CHAUKE**  
Registry Clerk



**SIBONGILE MOSHOESHOE**  
Registry Administrator



**DAVID TEFU**  
Court Orderly



**CYRIEL MPAKETSANE**  
Registry Assistant



**SABINAH MMOYANE**  
Facilities and Support  
Services Assistant



**ONGWEZWA DLULANE**  
Financial Assistant



**MAGGIE MKHONTO**  
Catering Assistant



**MPUMELELO TSHABALALA**  
Senior Case Manager



**KAMEEL PANCHAM**  
Senior Case Manager



**JULIANA MUNYEMBATE**  
Junior Case Manager



**CAMILLA MATHONSI**  
Junior Case Manager



**LEILA RAFFEE**  
Long term Intern



**SINETHEMBA MBEKI**  
Long term Intern



**GILLIAN DE GOUVEIA**  
Communications Officer







## SETTING STRATEGIC GOALS AND OBJECTIVES

The Tribunal's core mandate is to adjudicate for competitive outcomes in the marketplace, equitable participation in markets and to promote an inclusive economy. In line with this mandate, the Tribunal has two strategic goals: responsive and reliable adjudication; and being an accountable, transparent and sustainable entity.

Each strategic goal includes objectives which have KPIs and targets allocated to it. Our performance is measured against these targets which are reviewed annually and, where relevant, adjustments are made. The Tribunal's budget is allocated according to the two strategic goals. This is reflected in Diagram 1.

While targets are generally set numerically and in percentage terms, the Tribunal's KPIs are mainly dependent upon demands for our services driven by merger applications and adjudication of prohibited practices brought before the Tribunal. For some KPIs or set targets, achievement is sometimes outside of the Tribunal's control. This may also be the result of a number of case specific factors, *inter alia*, the complexity of the matter, delays or postponements requested by the parties as well as the prioritising of certain matters based on relative urgency or importance.

In this section, we provide details of our performance against the 34 targets set for the period under review. 14 targets relate to responsive and reliable adjudication and 20 relate to being an accountable, transparent and sustainable entity.

### PRIORITIES FOR THE YEAR

The Tribunal's five-year strategic plan is cascaded into a yearly Annual Performance Plan (APP) that sets out the Tribunal's immediate targets for the upcoming financial year. The budget is allocated according to each of the two strategic goals. On a regular basis we are able to report expenditure against each goal and determine the direct cost of our operations and core function, that is, adjudication. The two strategic goals reflect our priorities year-on-year.

Our adjudication goal requires us to set matters down for hearings and issue orders and reasons within statutory timelines. In the period under review 14 of the 34 KPIs and targets were aligned to this goal. We discuss the targets in detail further in this section of the report.

In pursuit of this core mandate, and as part of greater efforts to rebuild the economy following the COVID-19 pandemic's impact on businesses and livelihoods, the Tribunal has been ever vigilant to ensure that the economy does not revert to increased concentration that the Act and the amendments seek to further address. The amendments have strengthened us in several ways to deal with, among others, certain public interest objectives including: the promotion of worker ownership through the establishment of ESOPs; enhanced participation in markets of HDPs and workers; transfers of shareholding to B-BEEE shareholder/s; and prohibiting dominant firms from charging excessive prices for specified goods and services necessary to stop the spread of COVID-19. More detail on how the Tribunal has implemented and progressed these objectives is contained in Part 3 of this report.

We allocated 76% of our total expenditure budget towards our two strategic goals. We provide a detailed narrative of performance against the 34 targets set for the period under review in the section that follows. A detailed performance matrix is attached to this Integrated Annual Report as Appendix A.

Overall, from our total of 34 targets we met and exceeded 24, six were not met and four could not be measured as there were no reasons issued for prohibited practice (classified as simple and very complex) and interim relief cases; and there was no target set for the year for Electronic Records Management.

Diagram 1: Strategic focus areas and performance this financial year

Strategic orientated outcome goal	Goal statement	Approved budget	Budget spent	Number of indicators	Number achieved or exceeded	Number not achieved	Number that could not be measured
Responsive and Reliable Adjudication	To ensure effective and efficient adjudication on matters brought before the Tribunal	26 627 524	22 241 500	14	9	2	3
Accountable, transparent and sustainable entity	To ensure effective leadership, transparency and accountability in the Tribunal through capacity building, effective reporting, policy management and financial compliance	12 359 969	12 280 978	20	15	4	1
Other expenses		11 662 507	10 746 255	-	-	-	-
<b>TOTAL</b>		<b>50 650 000</b>	<b>45 268 733</b>	<b>34</b>	<b>24</b>	<b>6</b>	<b>4</b>

Diagram 2: Changes in targets made for 2021/2022 APP

Target	2020/2021 target	2021/2022 target	2020/2021 Actual
% of large mergers to be set down for the beginning of a hearing or a pre-hearing, within 10 business days of filing of the merger referral	75%	80%	97%
% of large merger reasons issued to parties within 20 business days of the date the order was issued on	65%	70%	72%
% of orders for intermediate and small merger reconsideration issued to parties within 10 business days of last hearing date.	80%	70%	100%
% of reasons for intermediate and small merger reconsiderations issued to parties within 20 business days of the order being issued.	65%	50%	No reasons issued
Reasons for prohibited practice cases classified as simple are issued to parties within 100 business days of the last hearing date.	80%	75%	No reasons issued
Reasons for prohibited practice cases classified as complex are issued to parties within 125 business days of the last hearing date.	80%	65%	0%
Reasons for prohibited practice cases classified as very complex are issued to parties within 150 business days of the last hearing date.	80%	65%	67%
% orders for consent orders and settlement agreements issued to parties within 10 business days of last hearing date	80%	75%	92%

## LOOKING FORWARD

The National Development Plan (NDP) 2030 was adopted by government in 2012. It sets out the long-term vision for the country and provides a broad strategic framework to guide government actions required to transform the economy and society. It allows for the co-ordination and alignment of priorities across spheres of government. The Tribunal's legislative mandate is aligned to the NDP, and it emphasises, among others:

- Growing the productive base of the economy;
- Promoting employment;
- Developing SMMEs, including township and rural enterprises;
- Localisation;
- Promoting export competition;
- Interventions against excessive pricing; and
- Intervention in key growth markets including Infrastructure, Agro-processing, Health, Transport, Energy, Food, Tourism and the Digital and Green economies.

The Competition Amendment Act came into effect in July 2019 to address competition concerns relating to market concentration, spread of ownership, barriers to entry and broader participation of South Africans in the economy. The Tribunal has leveraged these additional powers to maximise the outcomes of its work.

The performance progress with regard to **the dtic's** seven joint indicators aligned with the NDP, has been reported quarterly to **the dtic** in the 2021/2022 financial year. In the coming financial year 2022/2023, **the dtic** has regrouped the seven joint indicators into three over-arching joint/integrated outputs that address **the dtic** portfolio contribution to outcomes such as inclusive growth, job creation, combating poverty and dealing with inequality, as follows:

1. Industrialisation - opportunities to grow the domestic market through localisation, sector partnerships (Masterplans), green economy initiatives, investment expansion/promotion, African and global exports;
2. Transformation - opportunities to promote BEE, worker empowerment, addressing economic concentration and SME promotion; and
3. Delivery/Capable State - initiatives to build entity staff and governance capacity and quick response, participate in the shared services of **the dtic** and undertake internal business processes improvements.

For the institution to deliver on its mandate, there needs to be growth. It will require capacity to be bolstered on both the adjudicative and governance side. The resourcing has not kept up with the demands for our services and the complexity of matters considered.

We have aligned our two strategic outcomes to the three over-arching joint/integrated outputs. In deciding mergers, the Tribunal must also assess whether a merger can be justified on substantial public interest grounds. We focus on addressing the following objectives set out in the Act:

- A particular industrial sector or region;
- Employment;
- The ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the market;
- The ability of national industries to compete in international markets; and
- The promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.

We anticipate increased consolidation in the economy as firms' sustainability is put under pressure against the backdrop of COVID-19, resulting in businesses opting to merge which will enhance the dominance of the merging firm. The Tribunal must be more vigilant in this time of recovery to ensure that the economy does not revert to its anti-competitive past.

## MEASURING THE ADJUDICATIVE PROCESS

We measure our adjudicative process to assess our ability to meet objectives, to analyse the effectiveness and efficiency of our processes and to ensure compliance with the reporting requirements expected of public entities. We do this through a customised electronic case management system (CMS). This system stores large amounts of data and enables us to extract detailed reports and statistics. We are thus able to measure our efficiency and performance and compare numbers across different periods. Matters heard and decided, as well as the number of reasons issued over the past two financial years are illustrated below.

Diagram 3: Matters heard and decided over two years

Year	2020/21	2021/22	2020/21	2021/22	2020/21	2021/22
Case Type	Number heard		Orders issued		Reasons issued	
Large Mergers	66	86	66	86	72	84
Small/Intermediate Mergers	2	1	2	1	0	2
Complaints from the Commission	4	6	7	1	7	1
Consent Orders/ Settlement Agreements	63	30	64	32	0	0
Complaints from Complainant/High Court	0	0	0	0	0	0
Interim Relief	1	2	1	1	2	0
Interlocutory/Procedural Matters	16	34	20	19	8	7
<b>Totals</b>	<b>152</b>	<b>159</b>	<b>160</b>	<b>140</b>	<b>89</b>	<b>94</b>

\* Not all procedural / interlocutory matters require reasons to be issued.

The graph below illustrates the merger clearance period over the current and prior financial years. There is a slight increase in the time it took to clear mergers in the current year with 62.79% (54 out of 86) of large merger decisions being cleared in less than 60 days compared to 75.76% (50 out of 66) in the prior year. This is due, *inter alia*, to the increase in volumes. From the 60 days, the Commission has 40 days to file the merger with the Tribunal. The Tribunal has no control over the Commission's 40 day period.

Diagram 4: Merger clearance period over two-years

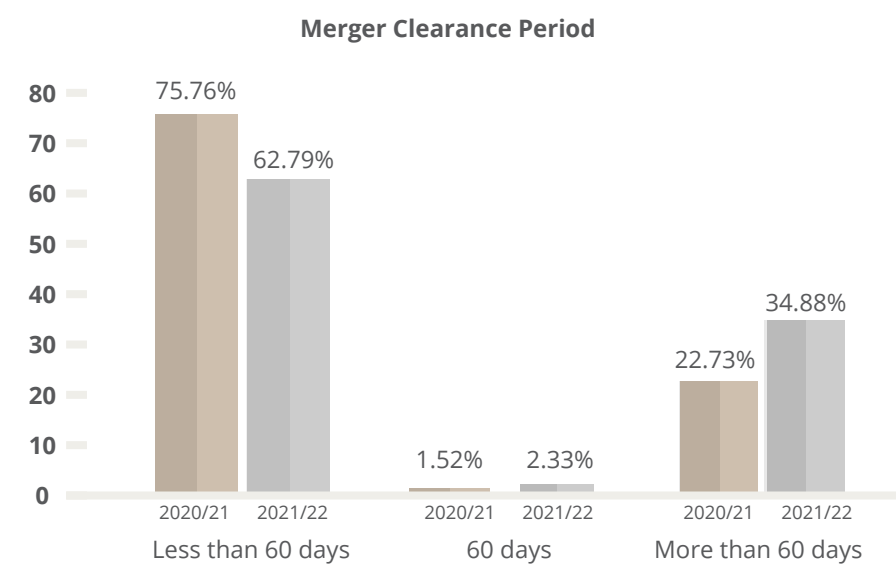


Diagram 5 reflects the Tribunal's 20 days merger clearance period from the date of set down to the date the merger was decided i.e. when a merger clearance certificate was issued.

Diagram 5: 20 days merger clearance period over two years

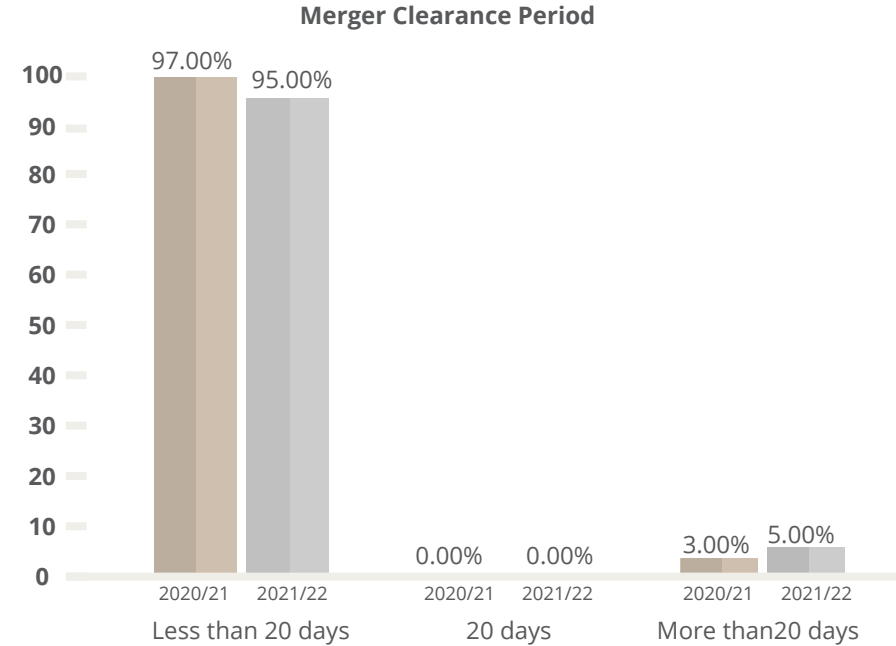


Diagram 6: 20 days merger clearance period 2021/2022

Period	No. of large mergers decided	Average merger clearance period (days)	Median (days)
2021/2022	86	10.13	9

Delays may result from internal processes or requests by the Commission to grant extension applications. During the reporting period, there were no delays occasioned as a result of the Tribunal's internal processes.

The Tribunal was able to issue 100% of orders within the required timeframe and 92% of mergers were set down within the required 10 business days.

## MERGERS – AN OVERVIEW

The Competition Amendment Act came into effect in 2019 to address competition concerns relating to a greater spread of ownership, broader participation of South Africans in the economy, market concentration and barriers to entry. The Tribunal has leveraged these additional powers to maximise the outcomes of its work. As mentioned earlier in this report, we approved a total of 87 mergers during the reporting period. Of these, 31 were approved with conditions (this included 30 large mergers and one intermediate merger). The conditionally approved mergers that we highlight later in this section speak to the increased focus on public interest conditions in merger cases.

We consider three main types of merger transactions, of which horizontal mergers are the most common type, namely:

- Horizontal mergers – a merger between firms that are competitors in a market, selling the same kind of product or service;
- Vertical mergers – a merger between firms in the same industry but at different levels of the supply chain; and
- Conglomerate mergers – a merger between firms that operate in different unrelated product or services markets without a vertical relationship.

In the period under review, horizontal mergers remained the largest proportion of decided mergers. However, the proportion of horizontal mergers decreased by 10.52%, from 57.58% in the previous year, to 47.06%. In contrast, vertical mergers as a proportion of decided mergers increased by 12.76%, from 6.06% to 18.82%, while mergers with both horizontal and vertical elements increased by just over 11%. Conglomerate mergers decreased by 13.5%, from 28.79% in the previous year to 15.29%.

Diagram 7: Types of large mergers decided by the Tribunal

	2020/21	%	2021/22	%
Horizontal	38	57.58%	41	47.06%
Vertical	4	6.06%	16	18.82%
Both horizontal and vertical	5	7.58%	16	18.82%
Conglomerate	19	28.79%	13	15.29%
Total	66	100.00%	86	100%

A transaction requires mandatory notification if it constitutes a merger as defined, has an effect within South Africa and meets the asset and turnover thresholds established in terms of the Act. There are three categories of mergers, namely small, intermediate and large mergers. Only intermediate and large mergers require mandatory notification. The Tribunal has jurisdiction to approve, conditionally approve or prohibit large mergers. Small and intermediate mergers are decided by the Commission. However, prohibitions by the Commission or conditional approvals can be brought to the Tribunal for reconsideration by the merging parties.

Diagram 8 provides a comparative overview of the value of large merger transactions decided by the Tribunal over the last two financial years.

Diagram 8: Value of large merger transactions decided by the Tribunal

	2020/21	2021/22
Total combined turnover	R10 175 713 799 301	R3 801 515 988 803
Minimum combined turnover	R46 000 000	R330 535 754
Maximum combined turnover	R6 233 804 841 300	R799 000 000 000
Average combined turnover	R156 549 443 066	R44 723 717 515
Number of mergers decided	66	86
Total transaction value	R426 587 190 971	R656 203 024 561

Most mergers do not significantly harm competition and may be pro-competitive as they benefit consumers by lowering cost or increasing innovation. This is evidenced by our figures that show 56 mergers (64%) were approved without conditions during the reporting period. In addition, 31 mergers (36%) were conditionally approved. However, in some situations, mergers can substantially prevent or lessen competition by enhancing the merged entity's market power by negatively impacting public interest considerations such as employment or by negatively affecting small businesses or participation by historically disadvantaged persons.

Diagram 9: Comparative figures for all mergers decided over two years

	2020/2021	%	2021/2022	%
Approved	49	72%	56	64%
Approved subject to conditions	19	28%	31*	36%
Prohibited	0	0%	0	0%
Total	68	100%	87	100%

*\*This figure includes 30 large mergers and one intermediate merger*

## ADJUDICATING MERGERS

The 2019 Competition Amendment Act expands existing public interest grounds and introduces new public interest grounds which obliges the Tribunal to consider the effect that the merger has on “the promotion of a greater spread of ownership, in particular to increase the levels of ownership of historically disadvantaged persons and workers in firms in the market”. The term “historically disadvantaged person” is defined in the Act as a category of individuals who were disadvantaged by unfair discrimination on the basis of race before the South African Constitution came into effect (or an association or juristic person majority-owned and/or controlled by such persons) (HDPs).

The Tribunal is obliged to consider the ability of small and medium-sized businesses and firms owned or controlled by HDPs to “effectively enter into, participate in or expand within the market”. These amendments recognise that the economy must be open to greater ownership by a greater number of South Africans. This will lead to the promotion of competition and economic transformation through addressing the structural constraints in markets. During the reporting period, the Tribunal played a role in promoting participation by workers, SMMEs and HDPs, through the conditions it imposed.

As context, before deciding these mergers, the Tribunal held public hearings or where the hearings were in chambers, sent information requests or requested clarification from the Commission and merging parties on the various public interest issues arising out of these mergers. In addition, the Tribunal engaged with **the dtic** in circumstances where it made submissions to the Commission during the investigations of the various mergers. These inquiries were used by the Tribunal to enhance the proposed merger conditions, to ensure legal certainty, consistency and transparency.

While structural constraints (which require industrial policy co-ordination and intervention) remain, public interest considerations have enabled the realisation of double dividends i.e. the promotion of both competition and economic transformation. The following are a few examples of how public interest considerations were advanced through mergers adjudicated by the Tribunal during the reporting period:

## EMPLOYEE SHARE OWNERSHIP PROGRAMMES (ESOPS)

ECP Africa Fund IV LLC & ECP Africa Fund IV A LLC And Burger King (South Africa) RF (Pty) Ltd & Grand Foods Meat Plant (Pty) Ltd

In what was possibly the most notable and most publicised merger during the reporting period, the Tribunal conditionally approved the transaction in which ECP Africa Fund acquired Burger King SA and Grand Foods, both owned by Grand Parade Investments. The intermediate merger was initially prohibited by the Commission on public interest grounds that the shareholding of HDPs in Burger King would decrease from more than 68% to 0% as a result of the merger.

Following the prohibition, the merging parties entered into discussions with the Commission and **the dtic** to remedy the concerns. They then approached the Tribunal for a reconsideration of the Commission’s decision and proposed a revised set of merger conditions that reflected a joint position between the parties and **the dtic**. The conditions addressed both public interest and structural concerns. The public interest conditions related to an ESOP and commitments relating to investment and local procurement. The structural conditions related to the acquiring group divesting from the meat plant owned by Grand Foods.

At an online hearing, the Tribunal sought to clarify issues relating to the mechanism of the ESOP, including funding plans for the shares and the criteria for qualifying beneficiaries. The Tribunal also probed the parties on the mechanics of ensuring effective monitoring of the investment commitments, employment levels, demographics and payroll. The Tribunal considered submissions from the merging parties, the Commission, **the dtic** and SACTWU, a union representing workers at Grand Foods which is the meat plant that primarily supplies Burger King SA with burger patties. The Tribunal approved the transaction subject to a package of enhanced conditions which involved, among others, the ESOP that would provide an effective 5% share interest to workers in Burger King SA. In addition to the meat plant divestiture, other conditions included:



Expansion commitments involving:

- An investment of no less than R500 million in capital expenditure;
- Increasing the number of Burger King outlets in South Africa from 90 to at least 150; and
- Employing no less than 1250 HDPs as permanent employees in Burger King SA (in addition to current permanent employees) and increasing the value of the payroll as well as employee benefits (in respect of the 1250 employees) by an amount of no less than R120 million within five years.

As part of commitments relating to South African suppliers, the merged entity would improve compliance with the Enterprise Supplier Development element of the merger parties' B-BBEE scorecard.

#### DP World Logistics FZE and Imperial Logistics Limited

The Tribunal conditionally approved the merger wherein DP World, ultimately owned by the Dubai government, intended to acquire the South African firm, Imperial Logistics. Following the implementation of the merger, DP World would solely control Imperial.

We approved the merger subject to public interest conditions to address, among others, a potential decrease in the spread of ownership and to maintain the levels of the target group's planned investment in South Africa.

The conditions included the establishment of an ESOP through which employees in South Africa would have an effective 5% interest in Imperial Logistics South Africa Group (Pty) Ltd (ILSA), a subsidiary of Imperial. Imperial would also increase its enterprise and supplier development expenditure in South Africa, its spend on corporate social responsibility initiatives and training and development of black persons and procurement from black persons. Imperial also committed to incur capital expenditure of no less than R2.1 billion in South Africa over four years, ending 30 June 2025.

In assessing the proposed merger, the Tribunal considered submissions by the merging parties, the Commission and **the dtic**. The Tribunal considered public interest concerns arising from the merger and the remedies proposed relating to a greater spread of ownership by workers and historically disadvantaged persons. The Tribunal also sought clarification and enhancements on certain aspects of the proposed conditions before approving the transaction.

Among others, Imperial employees would not be required to pay to participate in the ESOP; the ESOP shareholding would not substitute the existing HDP shareholding in ILSA; before establishing the ESOP, the merged entity would provide the Commission with the principles it proposed to apply in the ESOP, consult with the Commission on these and not implement the ESOP before obtaining the Commission's written approval.

#### Net1 Applied Technologies South Africa (Pty) Ltd And Ovobix RF (Pty) Ltd and Luxanio 227 (Pty) Ltd

In South Africa, Net1SA is active in the provision of low-cost financial services to underserved consumers and payment processing. Ovobix and Luxanio are investment holding companies.

This merger was initially found not to promote a greater spread of ownership by HDPs and workers in firms in the market as it would result in a dilution of B-BBEE shareholding by 1.62%. To address this concern, a set of conditions involving the establishment of an ESOP were proposed by the Commission and agreed to by the merging parties.

The Tribunal sought clarity and further details from the parties regarding certain aspects of the tendered conditions relating to the ESOP, including issues such as the level of shareholding allocation in Net1 Inc. to the ESOP, costs, if any, for the employees/beneficiaries regarding the ESOP, the funding arrangement, the criteria to be applied for qualification as beneficiary and any exclusions that may apply, benefits that the beneficiaries will be entitled to, representation of employees and consultation processes.

The merging parties subsequently enhanced the tendered ESOP-related conditions in certain respects. These amended ESOP-related conditions were acceptable to the Tribunal after motivation by the merging parties and the Commission.

The Tribunal subsequently approved the merger subject to the set of conditions including a provision that Net1 Inc. establish an ESOP for the benefit of workers of the merged entity to receive shareholding in Net1 Inc equal in value to at least 3% of the issued shares in Net1 Inc as at the implementation date of the merger, in accordance with certain ESOP design principles. The merging parties also committed to supplier and enterprise development initiatives and socio-economic development investments.

## B-BBEE OWNERSHIP

### Atlantica Sustainable Infrastructure plc And the employees of Abengoa South Africa (Pty) Ltd and the assets of Kaxu CSP O&M Company (Pty) Ltd

The Tribunal conditionally approved the merger in terms of which Atlantica acquired (i) the employees of Abengoa South Africa and (ii) the assets of Kaxu O&M. Post-merger, the shareholders of Atlantica South Africa Operations would be: (i) Atlantica South Africa (not owned or controlled by HDPs); and (ii) Yet-to-be established B-BBEE partners (which is intended to hold 8% of the shares in Atlantica South Africa Operations).

To give effect to this, the Tribunal approved the merger subject to, among others, the following ownership-related conditions:

- Atlantica South Africa Operations must implement a B-BBEE ownership transaction within a certain time frame. It must ensure that a minimum of 8% of its issued share capital is held by black persons who are also employees of Atlantica South Africa Operations; and
- Atlantica South Africa Operations shall design appropriate transaction/s to give effect to the above, it being agreed that the B-BBEE ownership transaction shall include at least an employee participation element.

The design and implementation of the B-BBEE ownership transaction would be at the cost of Atlantica South Africa Operations. This would include the issue of the requisite shares to the persons or entity which Atlantica South Africa Operations selects in order to comply with the conditions.

The primary acquiring firm, Atlantica South Africa Operations, is an indirect subsidiary of Atlantica, which is incorporated in the United Kingdom. Atlantica conducts activities in South Africa through Kaxu Solar One. Through this subsidiary, it has a 100 MW solar parabolic facility in Pofadder, in the Northern Cape (the Kaxu Facility).

Kaxu Solar One has an agreement with Kaxu O&M whereby Kaxu O&M provides operations and maintenance services to the Kaxu Facility. Kaxu O&M does not have any employees and has an agreement with Abengoa SA to provide the labour for its services.

### Air Products South Africa (Pty) Ltd And Weldamax (Pty) Ltd

The Tribunal approved this merger with conditions relating to the establishment of a fund to enable small businesses and HDPs to enter into, participate in and expand within the market, as well as increasing the HDP or B-BBEE ownership interest in the merged entity.

The merging parties and the Commission had agreed on certain public interest conditions, namely, that the merged entity would reasonably endeavour to increase the effective HDP shareholding in Weldamax to at least 25% within two years as well as invest a specific amount of money in an enterprise development fund.

During the hearing of the matter, the Tribunal tested the proposed conditions with the parties and sought clarification on the conditions. Firstly, the Tribunal tested the effectiveness of the initial proposed remedy and incentives to comply by the parties. Secondly, the Tribunal sought to understand the basis and appropriateness of appointing a trustee and its mandate in the context of the proposed 25% HDP or B-BBEE shareholding. And lastly, the Tribunal sought clarity on the basis for the rollout period for the investment.

Following the merger parties' responses, the Tribunal subsequently approved the proposed transaction with conditions relating to the establishment of a fund to enable small businesses and HDPs to enter into, participate in and expand within the market, as well as increasing the HDP or B-BBEE ownership interest in the merged entity.

Air Products primarily manufactures, supplies, and distributes industrial and speciality gases used by customers across various industries in South Africa. Air Products also supplies ancillary speciality gas regulating, controlling, and handling equipment. Weldamax distributes a range of manual metal Arc welding, stick manual Arc welding and other welding equipment, consumables and accessories.

### Sun Valley Estate (Pty) Ltd And Ascendis Vet (Pty) Ltd, Ascendis Animal Health (Pty) Ltd, Kyron Laboratories (Pty) Ltd, Kyron Prescriptions (Pty) Ltd

The Tribunal conditionally approved this merger subject to a Transformation Initiative condition. Regarding the impact that the merger will have on the spread of ownership, the acquiring group committed to enter into a B-BBEE transaction with a B-BBEE investment partner post-merger. The B-BBEE transaction would result in the investment partner having a specified percentage of (indirect) shareholding in Sun Valley and the target firms would be black-owned, as to a specified minimum percentage. The acquiring group was also required to provide the Commission with specific details, in writing, of the Transformation Initiative before implementation. In addition, it would not be implemented without the Commission's written approval. The acquiring group is an agriculture and food group which focuses on agricultural inputs and services, fresh fruit, food processing and health foods. The target firms comprise the constituent businesses that form part of Ascendis' Animal Health division. Their activities include development, importation, manufacturing, warehousing, distribution and marketing of medication across the production (cattle, pigs, sheep, etc.) and companion (cats, dogs, horses, etc.) animal health markets.

## GREATER SPREAD OF OWNERSHIP

### TLG Midco (Pty) Ltd And The Logistic Group (Pty) Ltd

The Tribunal approved this transaction subject to conditions relating to the implementation of an empowerment transaction that involved increasing the levels of ownership by HDPs. The HDP transaction involved the acquiring group's commitment to transfer a shareholding of no less than 25% in TLG Acquisition Holdings to one or more HDPs.

The merging parties wished to implement a new black economic empowerment structure at the TLG shareholder level, by procuring a black economic empowerment partner as an indirect shareholder of TLG, holding no less than an effective 25% equity interest in TLG. The Tribunal found that the HDP transaction, as provided for in the imposed conditions, had a positive impact on the public interest as it increased the post-merger levels of ownership by HDPs.

The TLG Group operates strategic logistical and terminal assets in Southern Africa including port and rail terminal services, warehousing facilities, stevedoring (loading or offloading cargo to or from a ship) facilities and digital transport technology services.

### Air Liquide Large Industries South Africa (Pty) Ltd and the Business of Owning and Operating 16 Air Separation Units of Sasol South Africa Ltd

Subject to a range of public interest conditions, the Tribunal approved the acquisition of 16 Air Separation Units (ASUs) owned and operated by Sasol South Africa Ltd (Sasol) by Air Liquide Large Industries South Africa (Pty) Ltd (ALLISA). The conditions related to B-BBEE, employment, availability of spare liquid oxygen for the healthcare sector, preferential procurement and supplier development, among others.

In terms of the conditions, the merging parties committed to enter into a transaction that would promote a greater spread of ownership by introducing B-BBEE shareholding into ALLISA. They also committed to procuring from SMMEs and black-owned businesses when upgrading the ASUs. Further, when procuring renewable energy, the merging parties committed to localisation and transformation i.e. procuring technical services and input material from SMMEs and black-owned enterprises where reasonable and practically and technically feasible.

In addition, there would be no merger-related retrenchments for a two-year period. In addition, ALLISA would spend approximately R20 million to train and upskill employees transferred from Sasol. The merging parties also committed to making available spare liquid oxygen produced by the ASUs to customers in the healthcare sector.

The conditions also catered for the establishment of a supplier development fund of approximately R100 million aimed at supporting and developing opportunities for SMMEs and firms owned and controlled by previously disadvantaged persons in ALLISA's value chain. They also committed an additional amount of approximately R100 million to localisation initiatives to drive industrialisation. Lastly, the merging parties committed to substantially reduce carbon emissions associated with the ASUs.

### Sinosteel Group Corporation Ltd And Deen Holdings Corporation Ltd

This merger was approved by the Tribunal with conditions relating to the promotion of a greater spread of ownership as well as employment. Neither of the merging parties had B-BBEE shareholding or an employee share ownership programme pre-merger. Addressing how the proposed transaction would promote a greater spread of ownership, the merging parties submitted that Samancor had applied for a mining right. If the application to the Department of Mineral Resources and Energy (DMRE) was successful, the DMRE would require Samancor to increase its existing levels of ownership by HDPs in respect of the Mineral Right Holding Entity (MRHE). As a condition to the approval of the proposed transaction, Samancor would allocate a specified shareholding in the MRHE to an ESOP; a further specified shareholding in the MRHE to the relevant community; and allocate a further minimum specified shareholding in the MRHE to an HDP shareholder/s. This condition would only be effected if Samancor was successful in its DMRE mining right application.

On employment, the merging parties submitted that the merger would not lead to any retrenchments. They disclosed historic and contemplated retrenchments at Samancor which they claimed were based on operational requirements. The retrenchments were found not to be merger related. However, considering South Africa's current economic climate and unemployment rate, the merging parties agreed to a two-year moratorium on merger-specific retrenchments and a two-year "vacancies clause" which would give preference to the retrenched employees when vacancies arise. Following further submissions by trade unions and the merging parties, the Tribunal was satisfied that a revised condition addressed any merger-specific employment concerns. The Tribunal concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market and that the conditions it imposed would have a positive effect on the public interest.

## EMPLOYMENT

### DSV South Africa (Pty) Ltd And Globeflight Worldwide Express SA (Pty) Ltd

The Tribunal approved this merger involving firms in the courier services market, subject to a range of employment-related conditions. The merging parties initially intended to retrench 522 employees. In reaching its decision, the Tribunal considered submissions and a set of proposed conditions. The Tribunal also considered submissions by **the dtic**. In utilising its inquisitorial powers, the Tribunal probed both the Commission and merging parties on the effect of the merger on employment, the greater spread of ownership and the views of third parties. Having considered the submissions as a whole, the Tribunal imposed conditions reducing the number of retrenchments from 522 employees to 205, saving 317 jobs.

The conditions included no retrenchments of any semi-skilled employees for three years, a limit on the number of retrenchments of skilled employees to no more than 140 and a limit on the number of retrenchments of professionally qualified employees to no more than 59. In addition, DSV would maintain a database of all retrenched employees who could be informed of any vacancies in the DSV Business for three years after the merger. Retrenched employees meeting employment criteria would be given preference in the appointment process. Furthermore, in circumstances where a particular employee did not possess the requisite skills or experience for redeployment, DSV would consider whether, to the extent feasible, such an employee would be able to fulfil the role following training, mentoring or other re-skilling initiatives. The conditions also required DSV to establish a Fund to re-skill or re-train eligible skilled employees who had been retrenched, in accordance with specified principles and conditions including R15 000 for training for each eligible employee. If an eligible employee did not opt for training or reskilling, they could request that the Fund be used by a nominated close family member.

### Premier FMCG (Pty) Ltd And Lodestone Brands (Pty) Ltd

The Tribunal approved, with employment-related conditions, the merger whereby Premier FMCG would acquire the sugar-based confectionery business conducted through "Mister Sweet" as a going concern from Lodestone Brands. On public interest grounds, **the dtic** raised concerns over anticipated merger-related retrenchments. Following engagements with **the dtic**, the merging parties agreed to conditions where a moratorium was placed on 19 non-executive positions initially earmarked for retrenchment for a period of 24 months after the merger implementation date – effectively reducing the number of anticipated retrenchments.

In terms of the conditions imposed by the Tribunal, the total number of potential retrenchments was limited to six (6) employees. The Tribunal approved the merger subject to the condition, among others, that should vacancies become available due to resignation or natural attrition during the 24-month moratorium period, Premier would endeavour to fill the vacancies from the 19 non-executive employees who would otherwise be retrenched after the 24-month moratorium.

### DSV Panalpina A/S And Global Integrated Logistics Business of Agility Public Warehousing Company K.S.C.P

The Tribunal approved this international merger on the condition that the merged entity would not retrench any employees in South Africa as a result of the merger, for a two-year period following the merger implementation date. The Tribunal concluded that the transaction, which was also notified in other jurisdictions, was unlikely to substantially prevent or lessen competition in any relevant market in South Africa. Further, in light of the moratorium on retrenchments, the transaction was unlikely to have a negative impact on the public interest.

DSV A/S is a public company listed on the Nasdaq Copenhagen Stock Exchange. It is a global, light-asset based international freight-forwarding and logistics company that provides land, air and sea freight forwarding-services, as well as logistics solutions. GIL is controlled by Agility, a public company listed on the Boursa Kuwait and the Dubai Stock Exchange. GIL is a global freight-forwarder and provider of contract logistics. It offers ocean, air and road freight, warehousing and distribution, and integrated supply chain services in more than 100 countries.

### Sandvik Aktiebolag Plc And DSI Underground Holdings S.A.R.L (DSI-U)

In another international merger, the Tribunal imposed employment-related conditions to protect local jobs. The Tribunal concluded that the transaction was unlikely to substantially prevent or lessen competition in any relevant market in South Africa. However, the following employment-related conditions were imposed: (i) The merging parties could not retrench any employees in South Africa as a result of the merger, for a period of two years after the merger had been implemented; and (ii) Should the need to retrench employees arise after the moratorium period, the merging parties would, for a further period of 24 months, give preference to any affected employees in relation to any available vacancies.

Sandvik, a global engineering group, is a publicly listed Swedish company that controls several firms in South Africa. In South Africa, it is predominantly active in providing mining and rock solutions as well as manufacturing and machining solutions. DSI, a mining and tunnelling products provider, is a company incorporated in Luxembourg. In South Africa, DSI, through its subsidiaries, manufactures and supplies specialised ground control products to the South African underground mining and geotechnical industries.

## DEVELOPMENT AND INVESTMENT

### Dis-Chem Pharmacies Ltd (Dis-Chem) And Pure Pharmacy Holdings (PPH) (Pty) Ltd

The Tribunal approved this merger subject to a package of competition and public interest-related conditions. Among the concerns that the conditions sought to remedy was that the transaction could notably alter the structure of the national pharmaceutical retail market which has seen a growth in corporate-owned pharmacies and a decline in independently owned pharmacies over the past five years. The competition-related conditions addressed the potential foreclosure of Dis-Chem competitors from accessing the Healthforce Video Telemedicine Platform, owned by PPH, as well as a concern of creeping mergers.

The public-interest related conditions included, among others, a commitment by Dis-Chem to use reasonable endeavours to procure locally made products from its current and new SMME and HDP suppliers on reasonable commercial terms, provided that such products meet the requisite industry norms and standards and comply with any regulatory requirements imposed on the specific products by law. The conditions also required that Dis-Chem develops its South African supplier base and promotes local manufacturing. In addition, Dis-Chem would ensure that it increased its procurement spend on South African HDP controlled businesses to a specified percentage over a cumulative period of five years. Dis-Chem also committed to providing up to 150 learnership opportunities to qualifying pharmacists' assistants and two bursaries for every new store opened by the merged entity. Lastly, Dis-Chem would also provide internship opportunities to graduating pharmacists and full-time employment as fully qualified pharmacists' post-community service.

### NMI Durban South Motors (Pty) Ltd And The Barloworld Motor Retail Business

The Tribunal approved the acquisition of control by NMI over the Barloworld Motor Retail Business as conducted by Barloworld South Africa (Pty) Ltd (Barloworld SA) and other members of the Barloworld Group in respect of the motor retail sector (the target firm), subject to the following public interest conditions, among others:

- Barloworld SA and NMI shall ensure that the merged entity continues to participate in the Barloworld Supplier Development Programme for a period of two years following the implementation date of the proposed transaction;
- during the abovementioned period, the merged entity shall develop its own Supplier Development Programme which will replace the target firm's participation in Barloworld's Supplier Development Programme; and
- in furtherance of above condition, the merged entity shall contribute a minimum of a certain percentage of its profit after taxation to the Supplier Development Programme, subject to certain criteria.

NMI's principal business consists of the retailing of new and used motor vehicles as well as vehicle servicing and the provision of parts. The activities of the Barloworld Motor Retail Business include trading in new and used motor vehicles, after-sales services, finance and insurance products, customer services and other ancillary services. The conditions sought to address concerns relating to the effect that the proposed transaction may have on the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive.

### ETG Chem FZE LLC and Cure-Chem SA

This merger did not raise any significant employment concerns or any concerns in relation to the industrial sector. However, to remedy concerns raised in regard to HDP ownership, the conditions imposed on this merger by the Tribunal involved the acquiring group increasing its expenditure towards the following existing public interest initiatives:

- Enterprise development i.e. assisting HDPs to establish, expand or improve their business;
- Skills development i.e. providing bursaries to HDPs for tuition at local universities and learnerships at Sector Education and Training Authority (SETA) accredited institutions;
- Supplier development i.e. procuring from and providing technical support to existing HDP suppliers; and
- Socio-economic development i.e. recruiting, placing and training previously unemployed youth on a production technology learnership programme, leading to a National Qualifications Framework (NQF) qualification.

The acquiring group is active in the markets for the supply of agricultural products and commodity trading as well as the market for the manufacturing and distribution of granular fertilizer and liquid fertilizer in South Africa. It also blends various inputs to manufacture liquid and granular fertilizer. Cure-Chem is an importer and distributor of raw chemicals that are supplied as inputs for the manufacture of detergents and paint.

## OTHER NOTABLE MERGERS

### DH Brothers Industries (Pty) Ltd And Seaboard Corporation And RussellStone Protein (Pty) Ltd

The Commission recommended to the Tribunal that this transaction be prohibited. It was of the view that the merger would likely result in a substantial lessening of competition through the creation of a structural link between competitors – Willowton and Seaboard – likely leading to coordinated effects that would have a negative impact on the South African soybean meal market. The Commission and merging parties could not agree on merger conditions.

The Tribunal heard submissions from the Commission and the merging parties, as well as factual and expert witness evidence, in relation to the proposed merger. At the end of the hearing, the Tribunal invited the merging parties to submit their proposed remedies. Following the Tribunal's request for comments on the proposed conditions, the Commission made submissions indicating its discontent with the proposed conditions. After consideration of the submissions by the merging parties and the Commission, the Tribunal decided on a set of conditions which, in its view, were adequate to address the competition concerns in the identified market and approved the transaction conditionally.

The conditions stipulated that, among others, the merging parties must adhere to confidentiality obligations that seek to prevent the sharing or exchange of sales information and competitively sensitive information between the competing businesses. Willowton and Seaboard were obliged to keep the business sites of their respective competing businesses and that of RSP separate and all persons involved in the sales and operational activities of the competing businesses would not be allowed access to RSP's information technology systems. In addition, the merging parties had to commit to competition law compliance through developing and implementing a competition law compliance programme. All sales, marketing, management and executive employees, as well as Directors of the respective merging parties would also undergo competition law training.

### Altron TMT SA Group (Pty) Ltd And Law Trusted Third Party Services (Pty) Ltd

Following an online hearing during which submissions were made by the merging parties and the Commission, the Tribunal imposed conditions on this merger which sought to remedy concerns regarding: (i) LawTrust's monopoly in respect of Advanced Electronic Signature certificates and required the merging parties to supply these to all South African entities downstream, including rivals, on fair and reasonable terms; (ii) the pricing of Advanced Electronic Signature certificates post-merger and required, among others, that the increase in pricing be limited to a yearly price increase linked to the consumer price index; and (iii) the potential sharing of competitively sensitive information including provisions to prevent the sharing of such information as well as to prevent cross-directorships.

The Altron Group invests in telecommunications, multi-media and information technology. The acquiring group's information technology security services were of relevance to this transaction. LawTrust is a specialist cyber security solutions provider whose main streams of business are: (i) Public Key Infrastructure, a WebTrust certified Trust Centre in South Africa from which it issues various types of digital certificates; (ii) digital signature solutions, in terms of which LawTrust issues Advanced Electronic Signatures, LawTrust is currently the only accredited provider of Advanced Electronic Signature certificates and Advanced Electronic Signatures; and (iii) biometrics software, in terms of which it develops a matching platform to support the onboarding and ID Proofing of customers for digital signature accounts.

## NOTABLE PROCEDURAL MATTERS

PepsiCo Inc; Simba (Pty) Ltd; Pioneer Food Group (Pty) Ltd And Competition Commission; Minister Of Trade, Industry And Competition; Food And Allied Workers Union



The Tribunal extended the compliance period for the implementation of a B-BBEE ESOP, imposed as a condition in the March 2020 merger whereby PepsiCo indirectly acquired Pioneer Food Group through Simba, twice. The merger, one of PepsiCo's largest acquisitions outside the United States, was approved by the Tribunal subject to several public interest conditions. The merger was the first major transaction in which the promotion of a greater spread of ownership in firms, in particular, by workers and historically disadvantaged persons, was a central issue in assessing the transaction under the Competition Amendment Act.

Both extension applications, brought by the merged firm, related to the implementation of a B-BBEE ownership plan. The B-BBEE condition involves employees in the company being issued with shares in PepsiCo worth R1,6 billion. This condition had to be implemented within 12 months from the transaction closing date, which was 22 March 2021. In March 2021, the merged firm submitted that delays in implementing this condition were caused by, among others, complex legal, foreign exchange control, B-BBEE compliance, corporate governance, tax, and industrial relations aspects, including COVID-19 and the resulting lockdown. The Tribunal extended the 12 month compliance period to 18 months i.e., it granted a six month extension. In addition to employees being issued with shares worth R1.6 billion, the merged firm undertook to provide an additional amount of R55 million as compensation for any potential economic prejudice to workers during the six month extension period.

In the second extension application, the merged firm submitted that formal compliance with the B-BBEE condition had been the subject of further delay, for reasons outside of its control i.e. administrative delays involving the Master's Office and the South African Reserve Bank. After considering submissions from the merging parties, the Commission, the trade union representing employees of the merged entity, the Food and Allied Workers Union, and **the dtic**, the Tribunal extended the compliance period by a further two months.

## FAILURE TO NOTIFY A MERGER

During the reporting period, the Tribunal heard four matters involving failure to notify a merger prior to implementation. These matters were discovered through other merger filings. The respective firms involved in these matters were:

- ETG Agro Products (Pty) Ltd and Rand Agri (Pty) Ltd;
- Overlooked Colliery Alpha (Pty) Ltd and Sudor Coal (Pty) Ltd;
- Kagiso Media Investments (Pty) Ltd and Mediamark (Pty) Ltd; and
- Shashe Trading (Pty) Ltd and Devenco 44 (Pty) Ltd.

The Tribunal imposed fines in all of these matters. The highest administrative penalty was paid by Mediamark and totalled R1 699 500.

## PROHIBITED CONDUCT MATTERS BEFORE THE TRIBUNAL

### Abuse of dominance

While no contested abuse of dominance cases were heard in the reporting period, we heard 10 consent orders related to abuse of dominance. Eight related to COVID-19 excessive pricing allegations. This was a significant decrease compared to 40 such cases in the prior financial year, which may indicate increased levels of compliance and awareness following precedent set by the Tribunal on excessive pricing and may also be due to the reduced impact of COVID-19 and measures to contain the pandemic. The eight COVID-19 related consent agreements involved donations totalling R256 454.04. Diagram 13 on page 46 indicates that in both the current and prior financial year, the vast majority of penalties imposed by the Tribunal were for cartel conduct.

Diagram 10 sets out the relevant cases in addition to two other abuse of dominance consent orders.

Diagram 10: Abuse of dominance consent orders

	Parties to the agreement	Sections of the Act	Conduct	Penalty	Donations/other
1	CC and Mine Africa Safety Solutions (Pty) Ltd	8(1)(a)	Excessive pricing of online supply of FFP1 and FFP2 face masks	0	Mine Africa Safety Solutions to immediately and for the duration of the state of national disaster reduce its gross profit margin on face masks to an agreed maximum percentage. Donate essential goods of R116 672.02 to Empilweni Community Project in Tembisa and contribute R116 672.02 to the Solidarity Fund
2	CC and Fruit Stop CC	8(1)(a)	Excessive pricing of raw ginger in the Wonderboom area	0	Fruit Stop to make donation of essential goods (fruit, vegetables and groceries) to the value of R23 110.00 to a community based organisation
3	The Competition Commission and Lancet Laboratories	8(1)(a)	Excessive pricing for COVID-19 PCR tests	0	Reduce the price of COVID-19 PCR tests to no more than R500 (VAT incl.) for a period of two years from the date of confirmation of the consent agreement as an order by the Tribunal
4	The Competition Commission and Ampath	8(1)(a)	Excessive pricing for COVID-19 PCR tests	0	Reduce the price of COVID-19 PCR tests to no more than R500 (VAT incl.) for a period of two years from the date of confirmation of the consent agreement as an order by the Tribunal
5	The Competition Commission and PathCare	8(1)(a)	Excessive pricing for COVID-19 PCR tests	0	Reduce the price of COVID-19 PCR tests to a price no more than R500 (VAT incl.) for a period of two years from the date of confirmation of the consent agreement as an order by the Tribunal
6	The Competition Commission v Lancet Laboratories	8(1)(a)	Excessive pricing of rapid antigen tests	0	Reduce the price of COVID-19 rapid antigen tests to no more than R150 (VAT incl.) for a two-year period from the date of confirmation of the consent agreement as an order by the Tribunal
7	The Competition Commission and PathCare	8(1)(a)	Excessive pricing of rapid antigen tests	0	Reduce the price of COVID-19 rapid antigen tests to no more than R150 (VAT incl.) for a two-year period from the date of confirmation of the consent agreement as an order by the Tribunal
8	The Competition Commission v Ampath	8(1)(a)	Excessive pricing of rapid antigen tests	0	Reduce the price for COVID-19 rapid antigen tests to a maximum of R150 (VAT incl.) for a two-year period from the date of confirmation of the consent agreement as an order by the Tribunal
9	Competition Commission and Pick n Pay Retailers (Pty) Ltd	8(1)(c)	Exclusivity provisions contained in lease agreements with shopping centres	0	Supermarkets privately owned and controlled by HDPs can immediately access letting space in all shopping centres where a Pick n Pay store has exclusivity provisions in its lease agreement
10	Competition Commission and McCullagh and Bothwell	5(1), 8(a) and/or 8(c)	Long term exclusive supply agreements of school uniforms and excessive pricing of school uniforms	0	No longer enter into exclusive supply agreements with schools and school groups and change existing supply agreements

Diagram 11: Other consent orders/settlement agreements

	Parties to the agreement	Sections of the Act	Conduct	Penalty
1	Competition Commission and Shashe Trading (Pty) Ltd and Devenco 44 (Pty) Ltd	13A(3)	Failure to notify a merger in the retail market for general household merchandise	R350 000.00
2	Competition Commission and Premier FMCG (Pty) Ltd	4(1)(b)(i)	Price fixing in the wheat and maize milling industry	0
3	Competition Commission and Kagiso Media Investments (Pty) Ltd	13A(3)	Failure to notify a merger in the retail market for general household merchandise	R1 699 500.00
4	Competition Commission and Media Credit Coordinators NPC	4(1)(b)(i)	Price fixing and fixing of trading conditions in the advertising industry	0
5	Competition Commission and M Meyer Surgical Sales CC t/a Intermed	4(1)(b)(iii)	Collusive tendering related to the supply of diagnostic sets to hospitals and health institutions for the Western Cape Provincial Health Department	R50 000.00
6	Competition Commission and Jasco Security and Fire Solutions (Pty) Ltd	4(1)(b)(ii)	Market allocation related to the provision of inspection and installation services of automatic sprinkler systems	R300 000.00
7	Competition Commission and ZTE Corporation South Africa (Pty) Ltd	4(1) (b) (ii)	Market division in the market for the supply of telecommunications equipment and networks	R5 000 000.00
8	Competition Commission and PNM Shorthauliers (Pty) Ltd	4(1) (b) (iii)	Collusive tendering in relation to a tender of transportation of timber saw logs in the Komatiland Forest	R80 000.00
9	Competition Commission and BMS Medical CC	4(1) (b) (iii)	Collusive tendering in relation to a tender for the supply of diagnostic sets	R20 000.00
10	Competition Commission and Maziya General Services CC	4(1) (b) (iii)	Collusive tendering in relation to a tender appointment of labour contractors for installation, maintenance of medium and low voltage infrastructure including public lighting and major capex projects	R300 000.00
11	Competition Commission and Relativ Media	4(1) (b) (i)	Price fixing of digital advertising rates on digital screens to customers	R24 145.68
12	Competition Commission and Tractor Outdoor	4(1) (b) (i)	Price fixing of digital advertising rates on digital screens to customers	R38 585.10
13	Competition Commission and Insight Outdoor	4(1) (b) (i)	Price fixing of digital advertising rates on digital screens to customers	R65 017.62
14	Competition Commission and Afriworld	4(1)(b)(iii)	Cover pricing: furniture removal	R188 936.00

	Parties to the agreement	Sections of the Act	Conduct	Penalty
15	Competition Commission and SAAB Grintek Defence	4(1)(b)(iii)	Collusive tendering in relation to a South African Air Force tender	R2 000 000.00
16	Competition Commission and K.F Computers	4(1)(b)(iii)	Collusive tendering in relation to a tender for the provision of network maintenance and support services for the South African Air Force's ground command and control systems and current intelligence system	R32 135.00
17	Competition Commission and Denso Corporation	4(1)(b)(i), (ii) and (iii)	Price fixing, dividing markets and collusive tendering in respect of supplying parts for five different Nissan and Toyota vehicles	R447 258.00
18	Competition Commission and Aludar Holdings (Pty) Ltd	4(1)(b) (iii)	Collusive tendering in relation to a National Treasury tender for the supply, delivery and off-loading of animal feed to the State	R30 000.00
19	Competition Commission and Ikemele Egg Production CC	4(1)(b) (iii)	Collusive tendering in relation to a National Treasury tender for the supply, delivery and off-loading of animal feed to the State	R50 000.00
20	Competition Commission and Monnye and Khomo Construction CC	4(1) (b) (iii)	Collusive tendering in relation to a Gauteng Provincial Treasury tender for the supply and delivery of groceries and toiletries to Gauteng Provincial Government institutions and the State Information Technology Agency (SITA)	R71 225.00
21	Competition Commission and Mokgatshelwa Projects and Trading CC	4(1)(b) (iii)	Collusive tendering in relation to a Gauteng Provincial Treasury tender for the supply and delivery of groceries and toiletries to Gauteng Provincial Government institutions and the State Information Technology Agency (SITA)	R499 669.00
22	Competition Commission and Robert Bosch GMBH and Bosch Electrical Drives	4(1)(b)(i),(ii) and (iii)	Fixing prices that they would quote to original equipment manufacturers (OEMs), dividing markets and/or tendering collusively in respect of Requests for Quotations (RFQs) in the market for the manufacture and supply of automotive components to OEMs outside of South Africa	R2 401 923.00

## CARTEL CONDUCT

Section 4 of the Act regulates restrictive horizontal practices among competitors, also known as cartel conduct. Cartels can operate in any industry, locally, regionally, nationally or internationally. Cartels harm other businesses and consumers by artificially raising prices and reducing output and choice. Cartel conduct is considered to be the most egregious and harmful to competition and consumers alike and must be treated with the appropriate attention and sanction by competition agencies. During the reporting period, the Tribunal issued one order in one contested cartel matter which had been heard in the previous reporting period:

### Competition Commission v Tourvest Holdings (Pty) Ltd And Siyazisiza Trust

The Tribunal found Tourvest and the Siyazisiza Trust (Trust) guilty of collusive tendering in relation to an Airports Company South Africa (ACSA) tender for arts, crafts and curio retail leasing opportunities at OR Tambo International Airport in Johannesburg (OR Tambo). The Commission investigated and referred a complaint of collusive tendering to the Tribunal. After hearing evidence, the Tribunal concluded that Tourvest and the Trust contravened section 4(1)(b)(iii) of the Act. The Tribunal ordered Tourvest to pay an administrative penalty of R9 181 073. The Tribunal used its discretion to not impose any administrative penalty on the Trust.

Tourvest conducts business in the tourism industry. Among others, it operates arts, crafts and curio retail stores in the international departures terminal section of OR Tambo. The Trust is a broad-based craft enterprise development agency which works with rural crafters, women mostly from rural areas skilled in a particular craft or art. It sells their products and is financed through donor funding and revenue derived from craft sales.

In February 2013, ACSA published a request for bids for a tender in relation to arts, crafts and curio retail leasing opportunities at OR Tambo. The tender, which was to be for a period of five years, was divided into three i.e. Shop DF02 (Opportunity 1), DF Shop 20 (Opportunity 2) and Shops IPR 04, DFE 04, BS 02 (Opportunity 3). The conduct of Tourvest and the Trust related to their bids for Opportunity 3.

Tourvest assisted the Trust to prepare its bid and they concluded a Memorandum of Understanding (MOU) in this regard. During the bid evaluations, ACSA noticed similarities in Tourvest and the Trust's bids. For example, the bids included the same projections in pricing, suggesting possible collusive conduct between the two.

## ADMINISTRATIVE PENALTIES

Diagram 12 includes all fines imposed by the Tribunal during the reporting period. The highest percentage of penalties (42.40%) in terms of value was imposed on firms in the wholesale and retail trade sector. This sector also yielded the highest percentage in the previous reporting period.

Diagram 12: Fines issued per sector over two years

	Sector	2020/21	%	2021/22	%
1	Manufacturing	R14 062 895	27.43%	R1 000 000	4.09%
2	Wholesale and retail trade	R33 612 294	65.58%	R10 348 331	42.40%
3	Construction	R0	0%	R0	0%
4	Human health and social work activities	R0	0%	R0	0%
5	Professional scientific and technical activities	R0	0%	R0	0%
6	Transportation and storage	R76 003	0.15%	R268 936	1.10%
7	Administrative and support service activities	R250 305	0.49%	R0	0%
8	Financial and insurance activities	R742 500	1.45%	R0	0%
9	Information and communication	R2 512 500	4.90%	R8 731 635	35.78%
10	Accommodation and food services	R0	0%	R570 894	2.34%
11	Agriculture, forestry, and fishing	R0	0%	R80 000	0.33%
12	Other service activities	R0	0%	R2 829 671	11.59%
13	Mining and quarrying	R0	0%	R577 500	2.37%
	<b>TOTAL</b>	<b>R51 256 497</b>	<b>100%</b>	<b>R24 406 967</b>	<b>100%</b>

In both the current and the prior financial year, the vast majority of the penalties imposed by the Tribunal were imposed for cartel conduct, as illustrated below.

Diagram 13: Penalties imposed per section of the Act over two years

	Sections of the Act	2020/21			2021/22		
		Number of cases	Amount	%	Number of cases	Amount	%
1	Restrictive horizontal practices sections 4(1)(b)(i), (ii) and (iii)	18	R40 784 469	79.57%	21	R20 779 967	85.14%
2	Abuse of dominance sections 8(1)(a), 8(c), 8(d)(i), 8(d)(iii); 5(i)	10	R9 729 528	18.98%	10	R0	0%
3	Failure to notify section 13A(3)	1	R742 500	1.45%	4	R3 627 000	14.86%
	<b>TOTAL</b>	<b>29</b>	<b>R51 256 497</b>	<b>100%</b>	<b>35</b>	<b>R24 406 967</b>	<b>100%</b>



INTERIM RELIEF

Interim relief is a procedure to temporarily protect and maintain competition while the Commission is investigating and is decided on the basis of evidence before the Tribunal without the benefit of a full investigation and oral evidence. A full investigation may or may not confirm evidence of harm. We heard two interim relief applications and issued one order during the reporting period:

Makareng Electrical Industries (Pty) Ltd t/a Wilec And Allbro (Pty) Ltd And the Competition Commission

We granted interim relief to a black-owned firm, Makareng Electrical Industries (Pty) Ltd t/a Wilec. Wilec sought interim relief against Allbro (Pty) Ltd (Allbro) to prevent Allbro from engaging in anti-competitive conduct in the market for the provision of transformer bushings, on the basis that Allbro was inducing customers not to deal with Wilec through a strategy of vexatious intellectual property litigation and threats to customers. Transformer bushings transmit electrical power into or out of a transformer and are a crucial component in the manufacture of transformers. Eskom buys about 80% of all transformers sold in South Africa.

Wilec sought an order preventing Allbro from abusing its dominance by inducing customers to not deal with Wilec’s customers, alternatively, preventing Allbro from engaging in an exclusionary act, pending the determination of its complaint to the Commission or for six months from the date of the Tribunal order, whichever occurs first. We found that there was a *prima facie* case to grant interim relief while the complaint against Allbro was being investigated by the Commission.

We concluded that Wilec *prima facie* established that Allbro’s conduct was sufficient to induce one of only two customers of transformer bushings, Actom, to not deal with both Ukusa and Wilec, in contravention of section 8(1)(d)(i) of the Act, alternatively that Allbro’s conduct constituted an exclusionary act under section 8(1)(c) of the Act. The Tribunal found that Wilec established a *prima facie* case of substantial foreclosure. On consumer harm, the Tribunal found that there was *prima facie* evidence that with competition offered by Wilec, prices would be lower (and indeed were lower as Wilec alleged). However, a conclusive determination of consumer harm can only be made after a full investigation. The Tribunal also concluded that Wilec had *prima facie* demonstrated that Allbro’s conduct had anti-competitive effects that were not justified by technological, efficiency or pro-competitive gains.

In terms of our order, Allbro was prohibited from (1) threatening Wilec’s actual and potential transformer bushings customers that by dealing with Wilec they are engaging in unlawful conduct; and (2) engaging in any conduct that directly or indirectly undermines Wilec’s relationships with Wilec’s actual and potential transformer bushings customers. Allbro noted appeal at the CAC against the order.

Both Wilec and Allbro are in the market for the supply of transformer bushings and are two of only three competitors in this market. Allbro was, for a long time, the only supplier of transformer bushings in South Africa. It is a private South African company that has been operational for over 40 years.

Wilec is a private, 100% black-owned firm established in 2018, when a B-BBEE entity, Makareng Electrical Industries (Pty) Ltd (MEI), purchased the transformer bushings business from Actom (Pty) Ltd, a long-established transformer manufacturer that would, through its “Wilec” division, self-supply transformer bushings.

HOW DID WE PERFORM AGAINST OUR PREDETERMINED ADJUDICATION OBJECTIVES?

We have identified 14 targets that are related to responsive and reliable adjudication in our APP. The APP sets out the Tribunal’s intentions, in a particular financial year, to give effect to and implement its strategic plan. As indicated earlier, the strategic plan sets out the Tribunal’s strategic outcome goals and priorities for a five-year period within the scope of resources (financial and other) and as approved by the Minister.

We review targets annually and, where necessary, revise them based on a three-year baseline average. They are set to ensure that the Tribunal adjudicates matters brought before it and issues decisions (orders) within time frames that are either stipulated in the Act or determined internally.

In the period under review we achieved/exceeded nine targets, two were not met and three could not be measured.

No. of indicators	No. achieved/ exceeded	No. substantially but not fully achieved	No. that could not be measured
14	9	2	3

## To what degree did we not comply and why?

- The target set for issuing reasons for small and intermediate merger considerations within 20 business days was set at 50%. Target was not met for the year. The delay was caused by a lack of resources;
- Internally we classify prohibited practices as “simple”, “complex” or “very complex matters” based on the complexity of the matter or other technical factors that need to be considered. 75% of the simple matters are required to be issued within 100 business days and 65% of both the complex and very complex matters are required to be issued within 125 and 150 business days respectively. Reasons were issued in one matter classified as complex and were delayed. The delay was caused by a lack of resources.

## Communication Targets

During the reporting period, a total of 152 media releases were issued. These comprised media releases on specific matters as well as hearing alerts and merger alerts. Among others, media releases were issued in relation to 86 large mergers, one intermediate merger, 32 consent/settlement agreements and one prohibited practice matter decided by the Tribunal.

There are two targets in the Tribunal's APP relating to the issuing of media releases. The first relates to final merger decisions and the second to final decisions in prohibited practice cases:

- 90% of the media releases issued for final merger decisions are communicated within three business days of the order date; and
- 90% of media releases issued for final prohibited practice decisions are communicated within three business days of the order date.

However, when confidentiality claims are still to be settled with parties at the time that an order is issued, media releases are not issued within three business days.

For the first target, relating to final merger decisions, 66 of 86 media releases for large mergers were issued within three business days of the order date. 20 were issued outside of three business days once confidentiality claims had been finalised. The target was therefore partially met, that is, 77% of the media releases were issued within three business days.

One media release was issued for one prohibited practice decision during the reporting period. The media release was issued after three working days once confidentiality claims had been finalised. Therefore, the second target was partially met.

As from the latter part of the second quarter, “Merger Alerts” were implemented in order to immediately communicate merger decisions to the market, the media and the public while confidentiality claims are being finalised with the relevant parties.

While we deal with communication targets here, further information on the Tribunal's communication activities is dealt with later in this section.

## Tribunal Handbook of Case Law

The target relating to the annual publication of the Tribunal Handbook of case law was met through the publication of the updated handbook on the Tribunal's website.

Covering various topics ranging from substantive merger control issues and procedural matters, to cases dealing with prohibited conduct and remedies, the handbook captures the Tribunal's unique institutional approach to cases and serves as a guide to our stakeholders.

Among others, the new topics include: cases dealing with COVID-19 related complaints decided by the Tribunal; the question of the Tribunal's jurisdiction over foreign entities; the powers of the Tribunal to vary consent orders; the exercise of the Tribunal's inquisitorial powers; access to confidential information; the approach of the Tribunal to the question of indivisible transactions; and expanded public interest grounds in mergers introduced by the 2019 amendments to the Act.

## BEING ACCOUNTABLE, TRANSPARENT AND SUSTAINABLE

The Tribunal's second strategic goal requires us to have effective oversight structures in place to ensure efficient operations, financial and risk management and reporting. As a public entity, in terms of the Public Finance Management Act (PFMA), we have a responsibility to exercise transparency and accountability in our operations and reporting.

In this section we address compliance, governance, audit, risk and ethics. There is also a focus on developing and building sustainable capacity and the prudent use of resources. This strategic goal is aligned to the King Code IV on corporate governance, hence a focus on the Tribunal's activities in the triple context (financial, social and environmental). Our resources, capacity and internal business processes are accordingly aligned to promote good governance in operations.

We continue to adopt an integrated and more holistic approach to our reporting, hence the annual production of our Integrated Annual Report. We strive to produce a report that is simple, relevant, and useful to our key stakeholders, while providing both financial and non-financial information. We have taken into account and reported on both achievements and under achievements, thus enhancing transparency and accountability while addressing areas of improvement.

### DID WE ACHIEVE OUR OBJECTIVES OF ACCOUNTABILITY, TRANSPARENCY AND SUSTAINABILITY?

In our APP, 20 of our 34 targets relate to the above-mentioned strategic goal. Of the total of 20 targets, five relate to effective business processes (integrated knowledge management and effective records management); five relate to effective financial management; seven relate to capacity development, retention and training; and three relate to effective communication and information sharing. The four targets that were not met relate to delays in press releases pending finalisation of confidentiality claims by parties and higher than expected vacancy and turnover rates.

No of indicators	No. achieved/ exceeded	No. substantially but not fully achieved	No. that could not be measured
20	15	4	1

We provide a detailed account of governance in the Tribunal in Part 4. How we managed our Human Resources is discussed at length in Part 5. The Tribunal's finances are unpacked in detail in Part 5 and Part 6.

### B-BBEE SPEND

We are mandated, in terms of the B-BBEE Act, to report on our B-BBEE compliance. We do this through a system that allows us to collect data on suppliers we procure from and determine our spend in terms of B-BBEE level and enterprise size. In this way, we can measure our contribution towards the national agenda of redressing historical imbalances and to advance small businesses. This is in line with our legislative mandate to ensure that SMMEs have an equitable opportunity to participate in the economy and to promote a greater spread of ownership. Our spend by B-BBEE for the year under review is reported below:

Diagram 14: Tribunal spend by B-BBEE

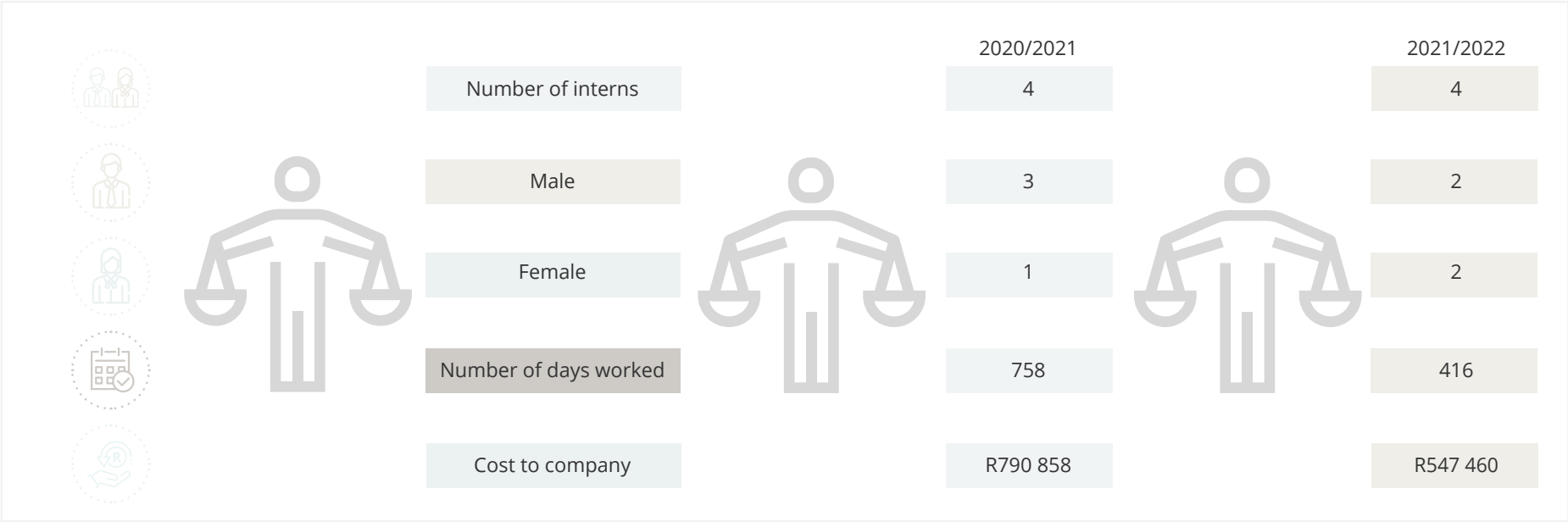
Level	2020/21		2021/22	
	Spend	%	Spend	%
Government entities	R6 220 943	47%	R6 844 842	54%
Level 1	R1 532 761	12%	R2 698 230	22%
Level 2	R1 642 865	13%	R942 204	7%
Level 3	R250 678	2%	R90 462	1%
Level 4	R2 147 813	16%	R1 426 665	11%
Level 5	R83 893	1%	R474	0%
Level 6	R0	0%	R0	0%
Level 7	R0	0%	R0	0%
Level 8	R1 625	0%	R8 304	0%
Not defined	R1 232 204	9%	R642 903	5%
Total	R13 112 782	100%	R12 654 084	100%

## INTERNSHIPS

The Tribunal's internship programme was launched over a decade ago and has been maintained throughout the COVID-19 pandemic and resulting lockdowns. We understand the importance of helping to equip South Africa's youth for the workplace while also providing an opportunity for further skills training and on-the-job mentoring. Presenting such opportunities is particularly important given South Africa's unemployment rate and, in particular, youth unemployment. Our internships integrate theory with practical experience and assist in developing the talent pool within competition law enforcement and competition economics.

During the reporting period, four university students were employed as long-term interns in the Case Management Division. Long-term interns are appointed for a calendar year and are involved in all aspects of cases while they work with more experienced case managers and Tribunal members. During the reporting period, one of the long-term case managers was promoted to the position of Junior Case Manager, effective from 1 October 2021.

Diagram 15: Internship statistics





*I had an amazing experience while interning at the Tribunal. The opportunity presented me with multiple opportunities for growth, both at a professional and personal level. I have gained extensive knowledge from the Tribunal members as well as other case managers with whom I work closely. After my internship, I was given an opportunity to join the organisation on a permanent basis. As a result, I have been given more responsibility and am now exposed to more complex and interesting cases. I look forward the personal development that will accompany my role as a case manager at the Tribunal.*

**Camilla Mathonsi**



*Working as an intern at the Tribunal has been an incredible experience so far. One cannot underestimate the value of such an opportunity. While it has opened my eyes to the practical aspects of competition law, the experience validates my knowledge as a student of the subject, currently pursuing an LLM in Competition Regulation. In addition, the warm welcome and devotion of the Tribunal employees never ceases to astonish me.*

**Sinethemba Mbeki**



*The Tribunal has given me insight into various aspects of competition law and allows for continuous learning and guidance from the Tribunal members and a dynamic team. In particular, I have enjoyed observing diverse views and discerning thought processes leading to critical engagement, as well as seeing how theories learnt in school play out in practice.*



**Leila Raffee**



RECYCLING INITIATIVES





As Tribunal employees moved towards hybrid working during the reporting period, as opposed to exclusively working from home during the COVID-19 pandemic, more paper was used and recycled compared to the previous financial year. However, for health and safety reasons and in the context of the COVID-19 pandemic, we suspended the recycling of other materials such as plastic, Tetra Pak, glass and tin. There was also an increase in the amount of recycled computer equipment due to the equipment reaching the end of its useful life during the reporting period. Some of it was still usable and, as part of our corporate social responsibility, we were able to donate one printer, two laptops and two desktops to two schools.

Diagram 16: Tribunal recycling figures measured in kilograms

	2020/2021	2021/2022	KG Difference
 Paper (KG)	280	518	238
 Computer Equipment (KG)	0	28.3	28.3



We determined the equivalent of what we saved through recycling 518 kg of paper during the reporting period. We did this through the use of *Inch Calculator*, an online resource for calculations in, among others, maths and science education.

Diagram17: What we saved through recycling paper

Paper recycled for 2021/2022 (518 KG)			
 Trees		8.5 trees	
 Energy		2050Kwh	
 Oil		0.85	barrel
 Water		13 248.94	litres

The table below shows an increase in the amount of paper printed in 2021/2022 compared to the previous financial year. This is due to staff moving towards hybrid working during the reporting period, as opposed to exclusively working from home:

Diagram 18: Tribunal paper printing figures

	Multifunction copiers	2020/2021	2021/2022
 Nashua copier one		365 033	415 945
 Toshiba copier		115 486	74 730
	Total copies made	480 519	490 675

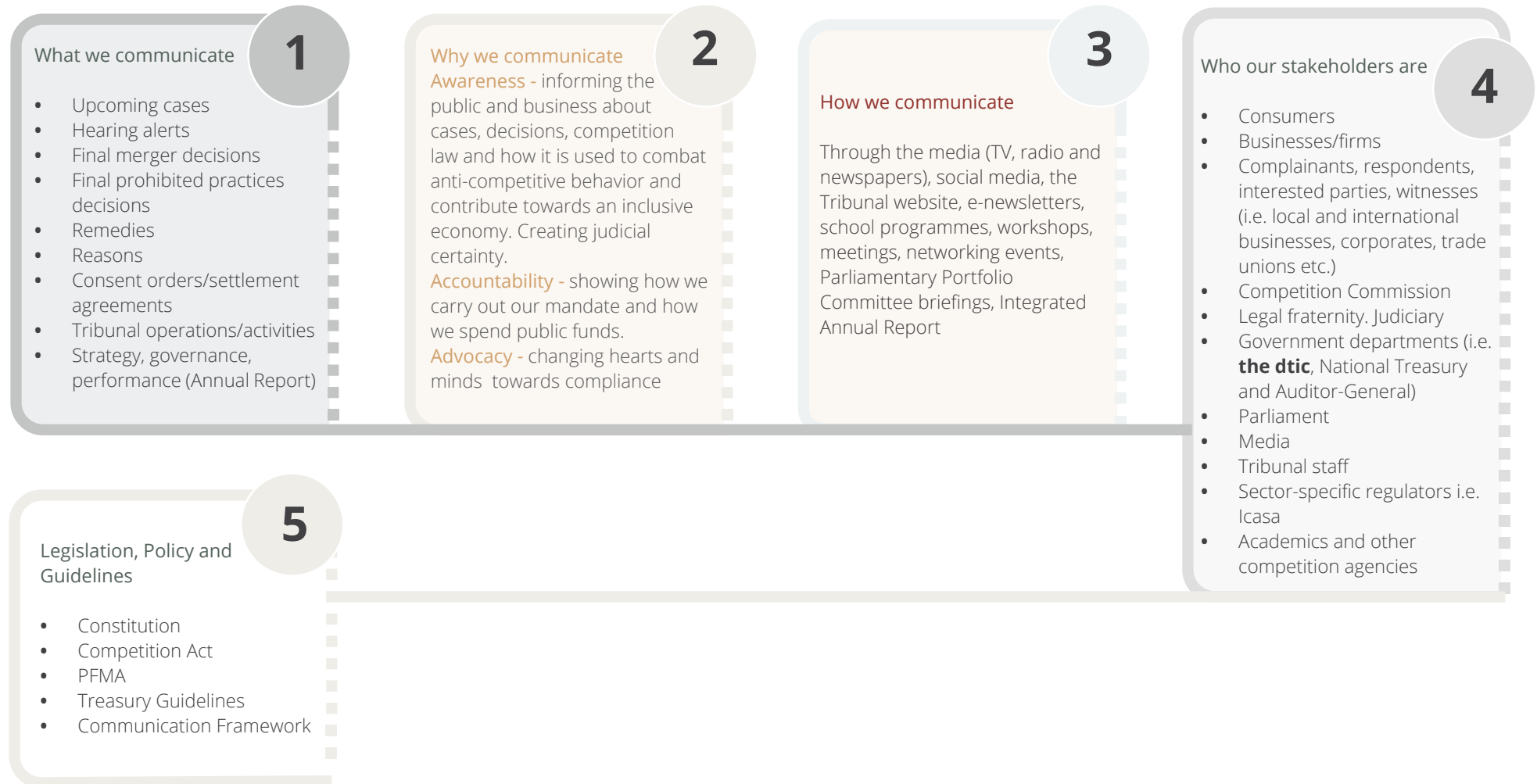
COMMUNICATION AND INFORMATION SHARING

The Tribunal places great importance on providing effective, accurate, objective and timeous communication on our decisions and activities. Transparent communication is central to our accountability and maintaining trust with all of our stakeholders, particularly the public whom we serve. In this way, we also promote awareness of competition law enforcement in South Africa as an avenue to address competition-related and public interest concerns.

We continue to nurture professional and appropriate relationships with our stakeholders, with the ultimate objective of contributing effectively towards the realisation of inclusive markets and advancing the welfare of all South Africans. Among others, our stakeholders include the public, the media, corporate entities, legal advisors, government departments and Parliament.

Our communication activities are underpinned by a Communications Framework to ensure that communication takes place in a coordinated manner according to prescribed guidelines. We review it annually to ensure that we continue to communicate in innovative, effective and efficient ways. The WHO, WHY, HOW and WHAT we communicate is illustrated below:

Diagram 19: Communication diagram



## REACHING OUR STAKEHOLDERS

During the reporting period, in which the global COVID-19 pandemic persisted, we continued to successfully use technology to host virtual hearings and communicate case outcomes. We regard the Tribunal's website as the primary online information platform for the public and other stakeholders, both locally and abroad. In addition to issuing media releases, we make use of the Twitter social media platform to communicate our decisions, hearing alerts and merger alerts. We have also kept our stakeholders informed through the Government Gazette, our Integrated Annual Report, virtual and in-person meetings as well as telephonic and email communications.

Media releases are one of the main tools we use to communicate our decisions, to make them more accessible and to make our decisions better understood by the public. Anyone can receive the Tribunal's media releases by subscribing to our online electronic database. We also publish all of our media releases on our website and on the Twitter social media platform. In addition to raising awareness around the Tribunal's decisions and reasons, we believe that our media releases aid in encouraging compliance with competition law and serve as a deterrent for transgressors for the law.

The image shows a media release from the Competition Tribunal of South Africa. The document is dated 12 October 2021 and is titled "COMPETITION TRIBUNAL FINES TOURVEST APPROXIMATELY R5 MILLION FOR COLLUSIVE TENDERING". It details a finding of collusive tendering between Tourvest Holdings (Pty) Ltd and Siyazisiza Trust in relation to a tender for arts, crafts and curio retail leasing opportunities at OR Tambo International Airport. The Tribunal ordered Tourvest to pay an administrative penalty of R5 181 073. The document is structured into sections: BACKGROUND, ORDER AND REASONS, REMEDIES, ARGUMENTS, and THE RESPONDENTS. It includes contact information for the Tribunal and a summary of the case.

**COMPETITION TRIBUNAL FINES TOURVEST APPROXIMATELY R5 MILLION FOR COLLUSIVE TENDERING**

The Tribunal has found Tourvest Holdings (Pty) Ltd ("Tourvest") and Siyazisiza Trust ("the Trust") guilty of collusive tendering in relation to an Airports Company South Africa ("ACSA") tender for arts, crafts and curio retail leasing opportunities at OR Tambo International Airport in Johannesburg ("OR Tambo").

In addition to the finding that Tourvest and the Trust contravened section 4(1)(b) (ii) of the Competition Act ("the Act"), the Tribunal has ordered Tourvest to pay an administrative penalty (a fine) of R5 181 073 (nine million, one hundred and eighty one thousand, and seventy three Rand). The Tribunal has used its discretion to not impose any administrative penalty on the Trust.

The Tribunal's non-confidential order and reasons will be available on [its website](#) in due course. Below is a summary thereof.

**THE RESPONDENTS**

Tourvest conducts business in the tourism industry. Among others, it operates arts, crafts and curio retail stores and branded homeware stores in the international departures terminal section of OR Tambo.

The Trust is a broad-based craft enterprise development agency which works with multiple rural crafters. It sells the crafters' products to retailers, government entities, corporate clients and foreigners. The Trust's operations are financed through donor funding and revenue derived from craft sales.

**BACKGROUND**

In February 2013, ACSA published a request for bids for a tender in relation to arts, crafts and curio retail leasing opportunities at OR Tambo. The tender involved three separate shops i.e. three separate retail opportunities. The tender, which was to be for a period of five years, was divided into three, viz., Shop DF02 ("Opportunity 1"), DF Shop 20 ("Opportunity 2") and Shops IPR 04, DFE 04, BS 02 ("Opportunity 3"). The conduct of Tourvest and the Trust relates to their bids for Opportunity 3.

Tourvest assisted the Trust to prepare its bid for Opportunity 3 and they concluded a Memorandum of Understanding ("MOU") in this regard. During the bid evaluations, ACSA noticed similarities in Tourvest and the Trust's bids, for example, the bids included the same projections in pricing, suggesting possible collusive conduct between the two. Tourvest, however, argued that there had been full disclosure of the arrangement between it and the Trust. The Commission, however, disputed this and said that there was significant under-disclosure by the parties to ACSA.

In April 2014, the Commission received a complaint of collusion from ACSA. Based on its subsequent investigation, the Commission concluded that Tourvest and the Trust had colluded when bidding for the tender, in contravention of section 4(1)(b) (ii) of the Act (i.e. collusive tendering).

**ORDER AND REASONS**

In its order and reasons, the Tribunal notes that, in considering the factual evidence, it must determine the following: (i) whether the parties are in a horizontal relationship i.e. whether they are in a relationship as competitors, and if so (ii) whether the case involves collusive tendering within the meaning of section 4(1)(b)(ii) of the Act.

What is relevant to the Tribunal's purposes is the respondents' conduct in relation to the ACSA tender for Opportunity 3. It was common cause that Tourvest assisted the Trust with its bid for Opportunity 3, that their two bids contained significant similarities and that they concluded an MOU.

The Tribunal notes: "... the respondents' argument that because the Trust could not have fulfilled the requirements of the tender by itself absent the agreement with Tourvest (as a service provider) – even though it had submitted its own bid – does not find support in competition jurisprudence. The ability of a party to a collusive agreement to ultimately perform is not relevant when deciding whether or not there was an agreement to collude...

... we find that at the point the bid was submitted, the Trust was in fact holding itself out as a competitor of Tourvest and the other bidders. We, therefore, conclude that Tourvest and the Trust were in a horizontal relationship...

The Tribunal notes that the parties agreed that the financial details provided by the Trust in its bid would be identical to the information which Tourvest would provide. The financial details form the basis of the bid rigging and collusive tendering allegations against the respondents.

The Tribunal has found that: "The scheme of the arrangement designed by Tourvest properly characterized was an arrangement to subvert competition in contravention of the Act. Sight must not be lost of the fact that Tourvest submitted its own independent bid for ACSA's Opportunity 3, whilst reaching agreement with the Trust about its bid for the same opportunity."

The Tribunal concluded that the conduct of Tourvest and the Trust, and the agreement (MOU) concluded by them, read with Tourvest's own independent bid:

1. was an agreement between parties in a horizontal relationship;
2. was entered into to subvert competition; and
3. contravenes section 4(1)(b) (ii) of the Act.

**REMEDIES**

The Tribunal considered various factors when determining the appropriate penalty amount "in relation to the instigator of the collusive conduct, Tourvest". These are discussed in detail in the Tribunal's reasons. The Tribunal reduced the administrative penalty payable by Tourvest significantly since the respondents expressly disclosed, to an extent, certain details of the relationship between them in their bidding documents to ACSA.

In relation to the Trust, the Tribunal (using its discretion) has decided not to impose any penalty on the Trust for its involvement in the collusive conduct "given its size and purpose, the fact that it did not benefit from the conduct, as well as its role in the conduct. On the factual evidence before us Tourvest clearly was the mischief-maker behind and leader in the collusive bidding. It drew the Trust into the collusive conduct for its own intended financial benefit..."

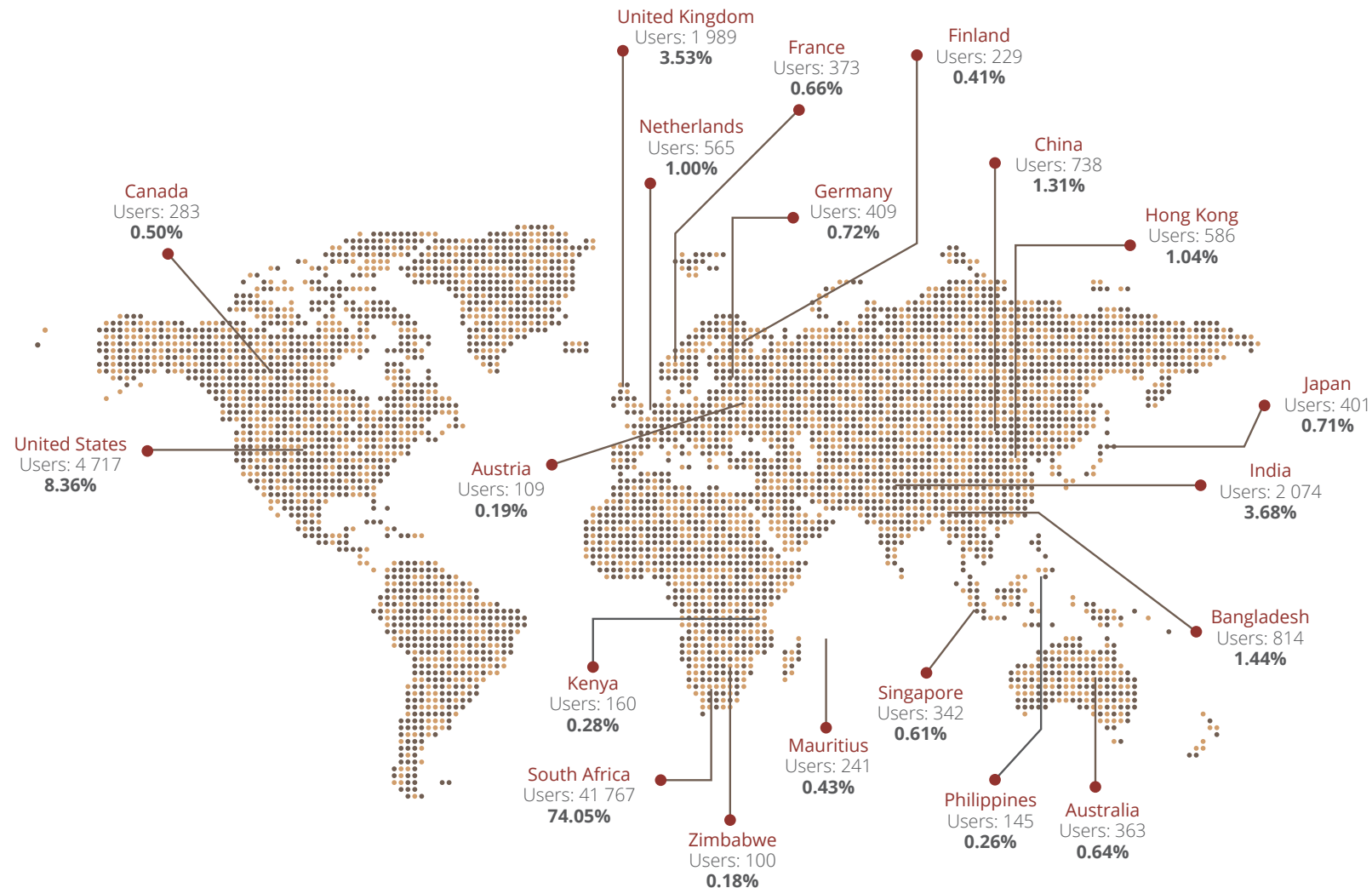
**Issued by:**  
William du Gayre, Communications Officer  
On behalf of the Competition Tribunal of South Africa  
Cell: +27 (0) 82 418 1188  
E-Mail: [William.DuGayre@cta.co.za](mailto:William.DuGayre@cta.co.za)  
Twitter: @dureyg

Example of a Tribunal media release

## Tribunal website

Away from the hearings, the Tribunal's website is the portal through which anyone, anywhere in the world can access our decisions, reasons and other case information. Diagram 20 reflects the Tribunal's website visitors per country. We obtained these figures from our website service provider who calculated the figures based on a 31% year-on-year increase noted in previous years.

Diagram 20: Top 20 Tribunal website users per country 2021/22



Media monitoring

Tribunal cases continued to feature prominently in the media during the reporting period, thus ensuring that our stakeholders and the public at large remained informed about the Tribunal’s decisions. As with the previous reporting period, COVID-19 related matters again featured prominently in the media. In what was possibly the most publicised of these, the Tribunal confirmed six separate consent agreements involving three leading South African pathology laboratories who agreed to reduce the prices of their COVID-19 PCR and rapid tests respectively. More information on these agreements is contained earlier in this section of the report.

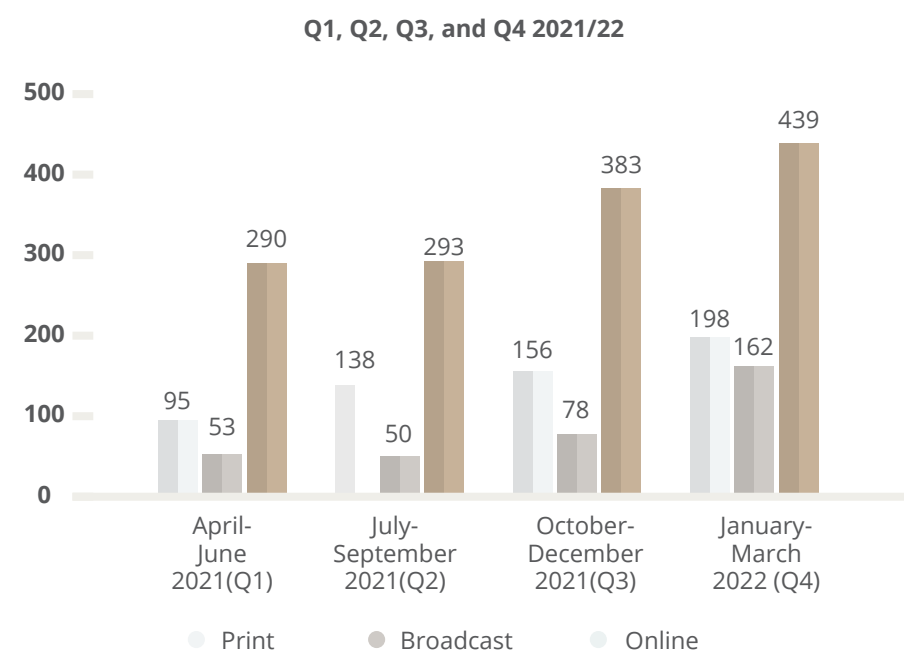
Merger conditions involving public interest considerations such as a greater spread of ownership, B-BBEE shareholding and ESOPs also generated media coverage (and, thus, public attention) during the reporting period through various mergers including the highly publicised transaction involving Burger King.

Daily media monitoring enabled us to determine the extent and reach of media coverage and, thus, the extent to which our communication reached the South African public. Through data obtained from Newsclip Media Monitoring Services (Newsclip), we were also able to do extensive analysis and report on media coverage quarterly during the reporting period.

Analysis of media coverage

There was a total of 2 335 news stories on Tribunal decisions and activities in the media comprising 587 stories in print media, 343 in broadcast and 1 405 in online media platforms. Diagram 21 shows how many news stories were published in each quarter, with a breakdown of print, broadcast and online media platforms respectively:

Diagram 21: Number of Tribunal news stories in print, broadcast and online media



To measure media and news coverage, we also use Newsclip’s Advertising Value Equivalency (AVE) data. The AVE is the perceived value of what the coverage would have cost had it been purchased as advertising space/time, that is, a comparable commercial worth. The total news coverage during the reporting period generated an AVE of R107 672 666.

AVE value is influenced by where, for example, an article is placed in a publication (front page vs inside pages) and the time of a broadcast (peak listening times vs times outside peak periods). News coverage is also influenced by what the media perceive to be the most “newsworthy” stories on any particular day as well as available space/time in news platforms.

Through our media monitoring it is evident that the newsworthiness of Tribunal decisions influences the likelihood that the decision will be reported on in the media. Many of the matters that received media coverage during the reporting period focused on general public and consumer interest. This demonstrates that media coverage is more likely when the matter directly affects consumers.



However, our press releases do not exclusively focus on what may be perceived to be newsworthy matters as our stakeholders and recipients of our media releases extend beyond the media i.e. competition law practitioners and market players also subscribe to our media release mailing list. The content of our media releases extends beyond the outcomes of mergers and prohibited practice matters and may, for example, include the reasons for decisions.



Below, we highlight some of the Tribunal matters that received moderate to widespread media coverage during the reporting period:

- In June 2021, the Tribunal confirmed a consent agreement whereby **Pick n Pay** exclusivity provisions in lease agreements were immediately scrapped against privately black-owned supermarkets, small businesses and speciality stores. This matter received widespread media coverage across print, broadcast and online media platforms;
- In September 2021, the Tribunal approved the intermediate merger whereby ECP Africa Fund IV LLC & ECP Africa Fund IV A LLC (ECP Africa Fund) would acquire Burger King (South Africa) RF (Pty) Ltd (**Burger King SA**) and Grand Foods Meat Plant (Pty) Ltd (Grand Foods). Burger King SA and Grand Foods are owned by Grand Parade Investments Ltd (Grand Parade). The merger was initially prohibited by the Commission on public interest grounds that the shareholding of HDPs in Burger King would decrease from more than 68% to 0% as a result of the merger. Following a hearing, The Tribunal approved the transaction with a set of proposed conditions addressing various public interest issues. The matter received widespread media coverage;
- In September 2021, the Tribunal found **Tourvest Holdings (Pty) Ltd** (Tourvest) and Siyazisiza Trust (the Trust) guilty of collusive tendering in relation to an Airports Company South Africa (ACSA) tender for arts, crafts and curio retail leasing opportunities at OR Tambo International Airport in Johannesburg. In addition to the finding that Tourvest and the Trust contravened section 4(1)(b)(iii) of the Act, the Tribunal ordered Tourvest to pay an administrative penalty (a fine) of R9 181 073. This matter received moderate media coverage;
- In November 2021, the Tribunal confirmed, as an order, a consent agreement whereby a school uniform supplier/retailer agreed to no longer enter into exclusive supply agreements with schools and school groups – and to change existing supply agreements to this end. The consent agreement between McCullagh and Bothwell (Hyde Park) (Pty) Ltd; McCullagh and Bothwell (Pty) Ltd; and DRRW Investments (Pty) Ltd (collectively, “**McCullagh and Bothwell**”) and the Commission formed part of greater efforts to increase competition, reduce barriers to entry and ensure cheaper prices in the school uniforms market. This matter received widespread media coverage;
- In December 2021, the Tribunal confirmed six separate consent agreements heard on an urgent basis, involving three leading South African pathology laboratories who agreed to reduce the prices of their COVID-19 PCR and rapid tests respectively. Drs Du Buisson, Kramer, Swart, Bouwer Incorporated t/a Ampath (**Ampath**); Drs Mauff AC & Partners t/a Lancet Laboratories (**Lancet**); and Drs Dietrich, Voigt, Mia & Partners and Dr WJH Vermaak Incorporated (**PathCare**) agreed to immediately reduce and cap their prices for COVID-19 PCR tests at R500 (including VAT) and to immediately reduce their prices for COVID-19 rapid antigen tests to a maximum of R150 (including VAT) for a two-year period. These consent agreements generated widespread media coverage;
- Between January and March 2022, a price-fixing case involving **tyre manufacturers** garnered widespread media coverage. The online Tribunal hearing included numerous witnesses testifying from local and overseas locations. At the time of writing, the proceedings were scheduled to continue; and
- In March 2022, an online Tribunal hearing involving five **liquefied petroleum gas (LPG) companies** accused of involvement in a price fixing cartel, generated widespread media coverage. At the time of writing, a decision in the matter is pending.

THE FOLLOWING NEWS CLIPPINGS ARE A SAMPLE OF THE TRIBUNAL'S MEDIA COVERAGE DURING THE REPORTING PERIOD

**Times LIVE**

NEWS POLITICS COVID-19 SPORT TIMESLIVE LIFESTYLE BUSINESS

**SOUTH AFRICA**

# Collusive curio tender at OR Tambo airport lands company R9m fine

12 October 2021 • 12:40  
BY TIMELIVE



The Competition Tribunal has fined Tourvest R9m for collusive tendering. File photo. Image: Acsa

Tourvest Holdings and Siyazisiza Trust have been found guilty of collusive tendering for arts, crafts and curio retail leasing opportunities at OR Tambo International Airport (OTIA) in Johannesburg by the Competition Tribunal.

**Collusive Tendering**

# Competition Tribunal slaps Tourvest with R9.2 m fine

**GIVEN MAJOLA**  
given.majola@ml.co.za

THE COMPETITION Tribunal has ordered Integrated Tourism Group Tourvest to pay an administrative penalty of close to R9.2 million within 30 days from the date of the order after Tourvest and the Siyazisiza Trust were found guilty of collusive tendering or price-fixing, in contravention of Section 4 of the Competition Act.

complaint against Tourvest and the Siyazisiza Trust for allegedly colluding when bidding for tender for "opportunity 3".

According to the commission's 53-page report, during the evaluation of the bids, Acsa noticed that the respondents were similar in the projected rental value and annual minimum rental, the annual income, cash flow and business plan, the marketing plans, the statistical substantiations and analyses and the

**Herald LIVE**

COVID-19 BUSINESS SPORT OPINION MULTIMEDIA LIFESTYLE BUSINESS DIR

# Private laboratories agree to reduce price of Covid-19 rapid test to R150

**ERNEST MABUZA**  
2019-03-07  
24 December 2021



Three private laboratories have agreed to reduce the price of a Covid-19 rapid antigen test to R150, including VAT.

Image: 123RF/iamzews

Three of SA's private pathology laboratories — PathCare, Lancet and

**fin24**

# R500m will help Burger King take on competition with buns blazing, say analysts

fin24 London Business



The Competition Tribunal's decision to approve the sale of Burger King to EPC fund is a landmark case in South Africa's competition law history.

Analysts say the conditions that the Competition Tribunal attached to Burger King takeover in SA will help the franchise grow.

**FRANCIS**

# Green light for sale of Burger King, with additional empowerment

*Competition Tribunal approves sale of BKSA franchise to EPC fund*

**FRANCIS**

SA's Competition Tribunal has given the go-ahead for the sale of Burger King South Africa (BKSA) to a new owner, EPC Fund, subject to conditions aimed at promoting empowerment and job creation.

The tribunal's decision is a landmark case in South African competition law, as it marks the first time a major franchise has been sold to a predominantly Black-owned fund.

The tribunal also ordered the new owner to create 1,000 new jobs for Black people within 18 months of the sale.

The tribunal's decision is a landmark case in South African competition law, as it marks the first time a major franchise has been sold to a predominantly Black-owned fund.



Pathcare joins other lab companies in the country in lowering PCR test price

By Abigail Kwa. Dec 14, 2021





NOT ALONE. Hundreds of such cases investigated by the Competition Commission have yet to be settled. Picture: Shutterstock

## Denso fined for collusion

PROBE: PENALTY RELATES TO PRICE FIXING

→ Alleged transgressions involved supply of parts for five different Nissan and Toyota vehicles.

By Cenkayee

Moneyweb

**J**apanese car parts manufacturer Denso Corporation has agreed to pay a fine of R447 258 in terms of a settlement agreement reached with the Competition Commission related to alleged collusion to fix prices, divide markets, and tender collusively.

The settlement agreement, which has been confirmed as an order by the Competition Tribunal, follows a Competition Commission investigation launched in October 2014 into allegations of collusion by its automotive component manufacturers involving 350 separate instances of alleged collusion and 99 automotive components.

The large number of firms and components involved in the alleged collusion resulted in the commission issuing the implicated firms to settle the cases against them, while warning that those that elected not to settle would be referred to the Competition Tribunal for prosecution.

**Terms**  
In terms of the settlement agreement, with Denso, the corporation has agreed, among other things, to refrain from engaging in conduct in contravention of the Competition Act in the future and to continue to implement and monitor a competition law compliance programme.

Among the alleged transgressions of the Competition Act uncovered by the investigation was that Denso and global vehicle spark plug manufacturer and supplier NGK Insulators (NGK) had colluded

to fix prices, divide markets, and tender collusively in contravention of the Act. These alleged transgressions related to the supply of parts for five different Nissan and Toyota vehicles between 2004 and 2011.

Although Denso has agreed to the terms of the consent agreement, it does not admit liability in respect of the conduct alleged by the commission.

The commission has in turn agreed to enter into the consent agreement with Denso without an admission of liability because of the longstanding nature of the effects of Denso's conduct in South Africa. The commission reported in July that it had referred NGK Spark Plug Company and its South African subsidiary to the Competition Tribunal for prosecution for alleged contraventions of the Competition Act.

The tribunal confirmed on Wednesday the case has been referred to the tribunal, but a date has not yet been set for it to be heard.

**Spark plugs**

The commission said spark plugs are one of the components that have been subject to collusive behaviour by automotive component manufacturers such as NGK. It said the investigation into the conduct of NGK found that, from at least 2008, NGK colluded with Denso Corporation in contravention of the Competition Act when responding to a request for quotation issued by Fiat Heavy Industries for the supply of spark plugs for the ARB engine installed in its Tofur Impreza, Subaru Forester and Subaru Legacy vehicles sold in South Africa.

It said NGK Limited is a global player in the market for the manufacture and supply of spark plugs to original equipment manufacturers.

The commission is seeking an order from the tribunal to levy an administrative penalty equivalent to 10% of the annual turnover of either NGK Limited or NGK South Africa.

NEWS ▾ ELECTIONS LIFESTYLE SPORT FEATURES OPINION MADIBA

HOME » BUSINESS »

### Competition Tribunal to hear argument over price fixing against tyre manufacturers

31 January 2022, 1:42 AM | SABC | @sabcnews

Image: Reuters

[The image] Used tyres are seen in a container at a recycling park near Brussels, Belgium.

The Competition Tribunal will from Monday hear argument in a virtual siding regarding the Competition Commission's pursuit of administrative penalties for alleged price fixing against tyre manufacturers Continental, Goodyear and the Tyre Manufacturers Conference.

The price fixing allegedly occurred from 1995 to 2007.

It was allegedly done through the Manufacturers Conference.

SPORT PHAKAATHI LIFESTYLE ENTERTAINMENT TRAVEL

BUSINESS NEWS

## Competition Tribunal approves sale of Northern Cape solar power plant

Atlantica Sustainable Infrastructure wants to acquire South African owned solar power plant Kaxu Solar One.

TRIBUNAL

## W Cape health products distributor to pay penalty for tender collusion

STAFF WRITER

A WESTERN Cape distributor of insurance products has agreed to pay a penalty of R20 000 for allegedly colluding on a provincial Health Department tender.

The Competition Tribunal of South Africa said the tender related to the supply of diagnostic sets to hospitals and health institutions under the Western Cape Department's central clinicians use diagnostic sets to examine patients' eyes, ears, noses and throats.

"In September 2019, the Commission received a complaint from the Department of Health Western Cape. It had alleged that competitors, Intemed and RMS Medical colluded when tendering for the supply of diagnostic sets.

There were similarities in the tender documents which led the department to believe that Intemed and RMS had colluded with each other.

"The commission's investigation found in June 2019, Intemed and RMS had indeed assisted each other when completing their tender documents. The commission concluded that this conduct amounted to collusive tendering in contravention of the Act," it said.

The parties, RMS Medical and the Competition Commission, have since entered into a consent agreement – RMS Medical agreed to implement a competition law compliance programme and to refrain from engaging in any anti-competitive conduct in contravention of the Competition Act in future. The consent agreement was confirmed as an order by the tribunal.

RMS Medical agreed to the terms of the consent agreement, but did not admit that it contravened the act, as alleged by the commission.

The commission, in turn, agreed to enter into the consent agreement with RMS Medical without an admission of liability, with the remedies in the consent agreement, based on a number of factors, including that RMS Medical is a small firm. Other factors included that the tender was small – estimated at R1 000 000 for three years; RMS Medical did not win the tender; and RMS Medical is a first-time offender.

In September, the tribunal also confirmed a consent agreement between the commission and Intemed – over the same tender.





PART 4  
GOVERNANCE IN  
THE TRIBUNAL

## WHAT OVERSIGHT STRUCTURES DO WE HAVE?

The Tribunal currently has two independent oversight structures in place, namely: the Audit Committee and the Risk Committee. During the course of the financial year, the Fraud Prevention Committee was merged with the Risk Committee for reasons of efficiency and cost saving. These committees have oversight and provide assurance over the governance of the Tribunal as set out in their respective Charters. The committees are chaired by independent non-executive members and convene at least four times per financial year.

The Audit Committee's main role is to assist the Accounting Authority in fulfilling her responsibilities of financial reporting, compliance with the law, accuracy of performance information against pre-determined objectives and governance. The Risk Committee is an oversight committee responsible for assisting the Accounting Authority in discharging her responsibility of implementing an effective Risk Management Framework and to monitor the implementation of risk management and governance. The Risk Committee also has oversight over fraud prevention and its role is to ensure that the necessary mechanisms are in place to prevent, detect and investigate fraud at the workplace.

The Audit and Risk Committees, respectively, consist of a maximum of five independent non-executive members who collectively must have the required skills, experience and qualifications to fulfil their duties. Members' terms are limited to three years and they may serve a second term subject to a maximum of two terms. A member of the Audit Committee may be a member of the Risk Committee. Details pertaining to the members, their attendance and remuneration are illustrated diagram 22.

The current Chairpersons of the Audit Committee and Risk Committee are Ms M Mofokeng and Ms S Harrop-Allin, respectively. Mr Ryno Pepler joined the Audit and Risk Committees during the financial year when the Fraud Committee was merged with the Risk Committee.

Diagram 22: Governance structures, meeting attendance and remuneration

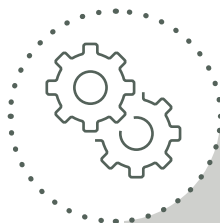
		Independent/Non-Executive Members				Executive Members	
Name		M Mofokeng	S Harrop- Allin	A Mlate Thulare	R Pepler	M Mazwai	O Josie
Audit Committee Meetings	4 meetings held	4	4	4	4	4	4
	Member attendance	4	4	3	4	4	4
	<b>Fees</b>	<b>R48 448.00</b>	<b>R39 336.32</b>	<b>R0.00</b>	<b>R39 336.32</b>	<b>R0.00</b>	<b>R0.00</b>
Risk Committee Meetings	3 meetings held	3	3	3	3	3	3
	Member attendance	3	3	2	3	3	3
	<b>Fees</b>	<b>R29 502.48</b>	<b>R36 336.00</b>	<b>R0.00</b>	<b>R29 502.48</b>	<b>R0.00</b>	<b>R0.00</b>
	<b>Totals</b>	<b>R77 950.48</b>	<b>R75 672.32</b>	<b>R0.00</b>	<b>R68 838.80</b>	<b>R0.00</b>	<b>R0.00</b>
	Area of Expertise	Financial	Compliance	Governance	Governance	Accounting Authority	COO

*Ms A Mlate is currently not remunerated as a Non-Executive Member, as she is working for an organ of the state.*



## MANAGING AND MONITORING ETHICAL BEHAVIOUR

The first two principles of King IV require that the Tribunal Chairperson, as the Accounting Authority, leads the Tribunal ethically and effectively and ensures that an ethical culture is established. The Tribunal has implemented numerous practices and policies that seek to avoid conflicts of interest and enforce good governance. Other practices and policies in place include, but are not limited to, the following:



### OPERATIONAL

- Any gift to the value of R300 or more has to be declared and recorded in the gift register;
- Mandatory disclosure requirements with regard to conflict of interest and financial interest are in place;
- All contracts of employment impose an obligation of disclosure on the employee;
- All employees and service providers (appointed on contract) are required to sign a non-disclosure agreement and an anti-fraud statement;
- A code of conduct policy is in place and is applicable to all employees; and
- A conflict of interest policy is in place that covers specific situations which may constitute a conflict of interest (e.g. persons using their position to obtain private gifts or benefits; diverting business opportunities in which the Tribunal may have an interest, away from the Tribunal and using the Tribunal's resources for personal gain).



### ADJUDICATIVE

- Full-time and part-time Tribunal members and case managers are required to annually complete a financial interest disclosure form;
- Part-time Tribunal members are required to sign the roll to confirm that they do not have a direct financial or other interest in the matter in which they are sitting as a panel member;
- Tribunal members are required to disclose any conflict of interest that becomes evident during case proceedings;
- The Tribunal is accountable to the public through Parliament and presents both its plans and outcomes to Parliament's Portfolio Committee on Trade, Industry and Competition annually;
- In the case of a dissenting decision by a Tribunal panel member, the writing of a majority and a minority decision is possible. This also helps to frustrate any efforts by parties to unduly influence the panel members;
- Parties may object to the composition of a panel on grounds set out in the Act;
- The Act allows parties to claim information as confidential and the Tribunal will honour these requests if the information qualifies as confidential information in terms of the Act;
- *In camera* portions of hearings are recorded as such and marked as such in transcriptions and not made public;
- Written reasons are issued for all Tribunal decisions (other than consent / settlement agreements and certain interlocutory decisions that do not require written reasons) which ensures that the panel's decisions are transparent and fully motivated;
- No party to a case may address any single panel member at any time outside of the hearing;
- Case related side discussions with legal representatives are always held in chambers in the presence of all panel members and all parties to the case;
- Tribunal members are precluded from speaking to the media on cases. This ensures that no single member's views are expressed about a particular case. Parties to a matter and the public are exposed only to the panel's view on a matter, as expressed in a written judgment; and
- All hearings are open to the public. However, when a firm's confidential information is being presented, this is done *in camera* with appropriate procedures that are in place.



## GOVERNANCE STRUCTURES

- Declarations of independence are to be signed by all members of interview panels and Bid Adjudication and Bid Evaluation Committees;
- Charters for the Audit Committee and Risk Committee all contain clauses pertaining to ethical conduct; and
- Committee members are required to sign a non-disclosure agreement and an anti-fraud statement.

## IDENTIFYING AND MANAGING RISKS

The Tribunal has a robust risk management process in place and a risk culture that permeates the entity with nearly 50% of the full-time staff being directly involved with the risk management process. There has been a continuous improvement in risk management and the level of maturity has improved. A strong internal control environment and effective risk management are essential to achieving our objectives. Risk management has been integrated with internal business processes (governance, planning, operations, management and reporting) within the Tribunal.

This approach to risk management has assisted us to effectively and proactively identify, assess, and mitigate risks, including emerging risks. There are many structures in place for managing risk within the Tribunal, including the Office of the COO (Chief Risk Officer), OPCOM, Risk Management Committee and Risk Committee.

The Risk Committee is a formal oversight governance committee of the Tribunal, responsible for assisting the Accounting Authority in discharging her responsibilities with respect to risk management. At each of its meetings, the Risk Committee reviews the risk reports presented by the Chief Risk Officer and the extent to which risk management has been implemented in terms of the risk implementation plan. The Risk Committee submits a report, which is included in this Integrated Annual Report, providing assurance that risks are adequately managed in the Tribunal.

The Chief Risk Officer, together with OPCOM (comprising the Heads of Registry, Case Management, Finance, Corporate Services and IT) manages risk on an operational level.

A risk is defined as any event that may impact negatively or positively on the Tribunal's ability to achieve its objectives. Diagram 23 illustrates the Tribunal's strategic risks. The Accounting Authority is responsible and accountable for the overall process of risk management in terms of the PFMA. However, implementation is the responsibility of management and staff. The Combined Assurance Plan is used to optimise assurance coverage from all the different lines of defence (management, risk practitioners, internal auditors, external auditors, oversight committees and other assurance providers).

In the financial year under review, 11 strategic risks were identified on the Tribunal's risk register. Each risk is categorised according to its origin, inherent and residual exposure and the effectiveness of mitigating controls. A risk owner is assigned to each risk in order to develop action plans to address the risk exposure. On a quarterly basis, assurance providers assess mitigating controls and provide documentary evidence for the conclusions they make on their effectiveness. Early signals of increasing or decreasing risk exposure are obtained from key risk indicators (KRIs) assigned to each risk. Each KRI has a specific tolerance limit or acceptable level of exposure. Risk owners must measure actual exposure against these limits and in instances where these are exceeded, determine an appropriate risk response and corrective action to be implemented. The Risk Management Committee monitors progress of these actions against set target dates. Quarterly risk meetings are also used by management to identify any risks to be added or removed from the register as well as identify any emerging risk management needs that need to be considered.

Diagram 23: The Tribunal's strategic risks as at 31 March 2022

Risk profile	The Tribunal's strategic risks						
Risk no.	Risk name	Category and risk type	Link to strategic goal	Inherent risk exposure	Control effectiveness	Residual risk exposure	Risk response
1	Lack of capacity	Human resources	SG1	Extreme	Unsatisfactory	High	Treat
2	Poor and ineffective case management	Reputation	SG1	Extreme	Satisfactory	Moderate	Treat
3	Inability to retain Tribunal members, case managers and other critical positions	Human resources	SG1	Extreme	Satisfactory	High	Treat
4	Compromised independence	Reputation	SG1	Extreme	Satisfactory	High	Treat
5	Lack of funding	Financial stability	SG2	Extreme	Unsatisfactory	High	Treat
6	Inadequate information security	Information integrity and reliability	SG2	Extreme	Satisfactory	Moderate	Treat
7	Lack of systems and processes	Operational	SG2	High	Good	Within risk tolerance	Treat
8	Lack of information sharing	Multiple categories	SG1 & 2	Moderate	Good	Within risk appetite	Tolerate
9	Business interruption	Business continuity planning	SG1 & 2	High	Satisfactory	Within risk tolerance	Treat
10	Inadequate financial management and reporting	Strategic	SG2	High	Weak	High	Treat
11	Poor governance ethics and regulatory compliance	Regulatory / Statutory / Legal	SG2	High	Good	Within risk tolerance	Treat

## REPORT OF THE RISK COMMITTEE

The Risk Committee has adopted the appropriate formal Terms of Reference, as per its Charter, and has regulated its affairs in compliance with its Charter in the discharge of its responsibilities as contained therein.

The Risk Committee Charter includes the Committee's responsibilities to:

- Assist the Accounting Authority to review the risk management policy and recommend same to the Accounting Authority for approval;
- Monitor the implementation of the risk management framework and, through structured systems and processes designed for that purpose, ensure that:
  - > management disseminates the risk management policy and plan throughout the entity; and
  - > management ensures that the risk management plan is integrated into the daily activities of the business.
- Express formally to the Accounting Authority their opinion on the effectiveness of risk management systems and processes, based upon the reports of management and any reviews by internal and external auditors; and
- Review the risk management report at each meeting and have particular regard to:
  - > ensuring that a process exists where risk management frameworks and methodologies are implemented to increase the possibility of anticipating unpredictable risk;
  - > ensuring that a process exists where risk management assessments are performed on a continuous basis;
  - > ensuring that management considers and implements appropriate risk responses; and
  - > ensuring that continuous risk monitoring by management takes place.

In supporting these objectives, the Committee conducted the following activities:

- Overseeing the review of the entity's risk management policy;
- Reviewing procedures to ensure that the entity's risk management framework was properly implemented throughout the operations and that the requisite training was undertaken;
- Reviewing the implementation of the risk management plan and assessing whether the implementation efforts were successful and consistent with desired outcomes; and
- Assisting the Accounting Authority in determining the material strategic and operational risks and the concomitant opportunities that could potentially impact or benefit the entity.

For the year under review, the Committee is satisfied that it has complied with its Charter which has been formalised to include principles contained in King IV and guides the Committee in performing its duties during the year. The Committee further confirms that in the current period the Tribunal has continued to rigorously manage its strategic and operational risks in order to achieve its mandate.

The membership of the Committee is made up of four independent non-executive members, and members of executive management, namely M Mazwai and O Josie. The external auditors as well as internal auditors have a standing invitation to the meetings and have attended all the scheduled meetings during the year. The Committee met three times during the year under review.



Suzanne Harrop-Allin  
Risk Committee Chairperson  
31 August 2022

## PREVENTING FRAUD

The Tribunal's Fraud Prevention Plan is incorporated in the Risk Management Strategy which complies with the PFMA and National Treasury regulations. The Risk Committee has independent oversight over the implementation of fraud prevention, ensuring the necessary mechanisms are in place to prevent, detect and investigate fraud. In addition, it addresses policy and processes for the reporting, investigation and resolution of fraud matters.

The Fraud Prevention Plan is communicated to all employees. They are required to sign an anti-fraud statement, thus confirming their commitment to the Tribunal's policy of zero tolerance towards fraud. The functions, authority and responsibilities of the Risk Committee in respect of fraud prevention is detailed in its charter and is a standing item on the agenda of its meetings.

The Risk Committee also ensures that fraud risks are identified, evaluated and assessed as part of the Tribunal's risk management process. The Risk Committee meets on a quarterly basis. During the period under review there have been no alleged incidents of fraud that required investigation or reporting. Owing to COVID-19 restrictions, the Tribunal resorted to online fraud prevention messages and held a virtual staff workshop on fraud prevention, risk and cyber security in the fourth quarter.

## INFORMATION TECHNOLOGY AND GOVERNANCE

### Maintaining effective IT Governance in the Tribunal

The Tribunal has worked on ways to decrease and streamline the number of internal governance documents in place without losing content or substance. The IT department therefore decided to consolidate internal information technology policies to achieve this goal.

The Internet Usage Policy, E-mail Usage Policy, Hardware Usage Policy and Software Usage Policy were consolidated into one information technology user manual that is given to new employees. This manual is called the IT Use Manual. In addition, the Firewall Policy and Procedure was absorbed into the IT Security Policy and Procedure as a separate section.

Since the consolidation, new employees entering the Tribunal must sign consent to only one information technology document. This assists with the enrolment process by decreasing the number of documents new employees must read and understand.

## Disaster recovery

Our Disaster Recovery Plan underwent a review process during the reporting period. After the approval process was finalised, we performed a successful disaster recovery simulation. We plan disaster recovery simulations once per financial year. The objective of the simulation is to ensure that all role players know their responsibilities and know how to act in the event of a disaster. We also tested the process, ensuring that every step in the recovery portion of the simulation was effective and successful.

### Cyber security in the Tribunal

We placed a large focus on cyber security during the reporting period as it presents one of the biggest threats and primary risks to businesses. It is imperative that employees are educated in protecting themselves and the workplace against cybercrime.

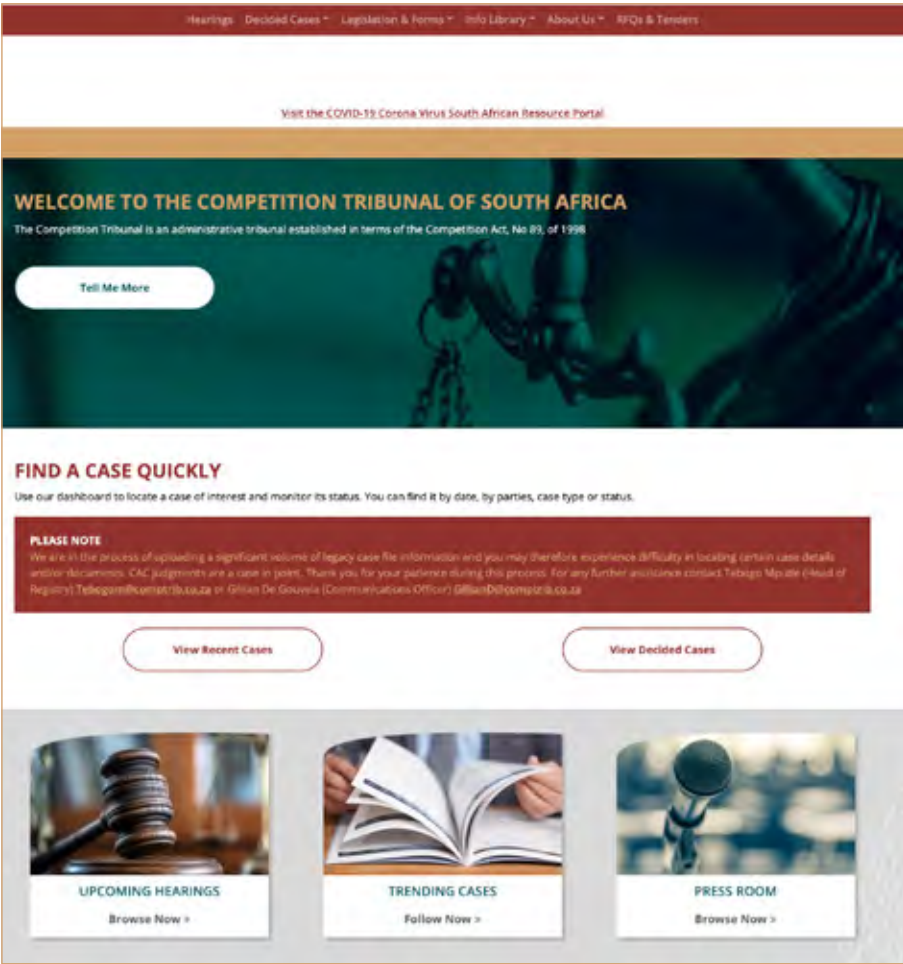
To increase awareness, we provided cybercrime and fraud awareness training to employees as well as monthly e-mail communication providing cybercrime awareness tips and methods to implement best practices pertaining to personal computer and business computer security.

The appointed internal auditors performed a security vulnerability assessment in February 2022 to assess cyber risks on our information systems and to compare the findings with a previous assessment that was done in the 2020 financial year. The post vulnerability assessment report indicated that there was a substantial improvement to our security controls to remove and block vulnerabilities from our information systems. We plan to perform a vulnerability assessment once per financial year to assess our controls and security.

The tools and applications we have in place to protect our software systems and hardware infrastructure are of a good standard and proved to be effective in protecting the Tribunal and its information throughout the reporting period. There were no cyber security breaches that we are aware of.

IT Projects and system enhancements.

In the first half of the financial year we implemented major improvements to the website's overall search engine and case information search engine. The development work also improved the navigation and functionality of specific content management sections that required enhancements. This enhanced the overall performance of the website and accuracy of its search engines.



IT Budget

The IT budget for the reporting period was set at R 2,76 million. Diagram 24 details the IT expenditure line items.

Diagram 24: IT expenditure line items

Items	Budget	Actual	Variance
Computer equipment	R88 147	R28 509	R59 638
Software, services and renewals	R881 982	R796 449	R85 538
Repairs and maintenance combined	R1 609 774	R1308 252	R301 517
Multifunction copier leases	R187 034	0	R187 034
Totals	R2 766 937	R2 133 210	R633 727

The information technology budget variance was due to the non-delivery of a replacement multifunction copier that had been ordered for our Registry division. The service provider failed to deliver the device by the end of the reporting period due to the procurement processes being placed on hold. However, as the purchase order process was completed before the end of the financial year, the lease was disclosed as a commitment in the Annual Financial Statements. The commitment amounts to R187 000.00.

There was also a reduction in the monthly cost for the backup and restoration services as the number of physical devices that required this service decreased. Below, we highlight portions of the information technology budget expenditure for the period under review:

- The expenditure for information technology hardware was used for the replacement of essential laptops that reached their end of useful life; and
- The expenditure for software, services and renewals was used to renew licenses, services and applications used by the Tribunal to assist in achieving its mandate. Examples of these are our internal case management system, security software and intelligence reporting tools. The repairs and maintenance budget was utilised for various expenses that assisted in maintaining our information technology infrastructure. Examples of these are the monthly costs of our backup and restoration services, monthly costs of certain security services and upgrades to our internal case management system.



## Report of the Audit Committee

We are pleased to present our report for the financial year ended 31 March 2022. The Audit Committee (the Committee) is required, as per the approved Charter, to meet at least four times per annum. During the period under review the Committee held four meetings.

### Audit Committee responsibility

The Committee reports that it has complied with its responsibilities arising from section 55 (1) of the PFMA and Treasury regulations 27.1.7 and 27.1.10(b) and (c). The Committee also reports that it has adopted appropriate formal terms of reference as approved by the Accounting Authority. The Committee has regulated its affairs in compliance with its Charter and has discharged all its responsibilities as contained therein.

### The effectiveness of internal control

The system of controls is designed to provide cost effective assurance that assets are safeguarded and that liabilities and working capital are efficiently managed.

In line with the PFMA and the King IV report on corporate governance requirements, internal audit provides the Committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes.

From the various reports of the internal auditors, the audit report on the Annual Financial Statements, any qualification and/or emphasis of matter, and the management letter of the Auditor-General, it was noted that no significant or material non-compliance with prescribed policies and procedures has been reported. Accordingly, we can report that the system of internal control for the period under review was efficient and effective.

### The quality of in year management and monthly/quarterly reports submitted in terms of the PFMA

Monthly and quarterly reports on performance information and the Tribunal's finances were presented and reported in Committee meetings and were monitored throughout the year. The Committee is satisfied with the content and quality of monthly and quarterly reports prepared and issued by the Accounting Authority of the Tribunal in the year under review.

## Evaluation of Annual Financial Statements

The Committee has:

- reviewed and discussed the draft Annual Financial Statements to be included in the Integrated Annual Report, with the Auditor-General and the Accounting Authority;
- reviewed and discussed the performance information with management;
- reviewed changes in accounting policies and practices; and
- reviewed the entities compliance with legal and regulatory provisions.

The Committee would like to highlight that the Tribunal is highly dependent on the approval of the retention of accumulated surplus from National Treasury, as well as the approval of the annual grants from the Department of Trade, Industry and Competition in order to maintain its going concern status. The Committee is satisfied that the entity continues to be a going concern per the assessment that has been performed by management.

### Internal audit

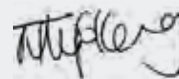
We are satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the Tribunal in its audits.

### Auditor-General of South Africa

We have met with the Auditor-General to ensure that there were no unresolved issues.

### Combined Assurance

The Tribunal has implemented a formalised combined assurance plan that encompasses four lines of defence. The Committee has received assurance from management as well as internal and external assurance providers that risks are being appropriately managed.



**Maggie Mofokeng**  
Chairperson of the Audit Committee  
31 August 2022

## AUDITING OUR WORK, PROCESSES AND PROCEDURES

The Tribunal maintains an effective internal and external audit function in compliance with section 188 of the Constitution, section 4(3)(a) of the Public Audit Act, 2004, section 5(1)(a)(ii) of the PFMA, Treasury Regulation 27.22.2 and section 40(10) of the Competition Act.

The external audit function is a statutory function performed by the Auditor-General, South Africa and its current focus is on the financial accounts and management, compliance with the law and performance against predetermined objectives. This audit is performed at year-end and an audit opinion is provided as to whether the financial statements present a true reflection of the Tribunal's financial position and financial performance.

The respective responsibilities of the Accounting Authority and the Auditor-General, South Africa with regard to the annual audit are contained in an engagement letter. An Audit Steering Committee consisting of the COO, the Head of Finance and representatives of the Auditor-General, South Africa meet regularly to discuss matters pertaining to the audit and to monitor progress against the plan.

The COO and the Head of Finance are responsible for resolving audit findings reported in the management report. In the prior period, a clean audit was obtained, and two findings were raised, none of which were significant matters. The audited financial statements, as presented to the Accounting Authority and Audit Committee as well as the audit report, are presented in Part 6.

We are pleased to report that the Tribunal has once again received a clean audit with one finding that will be addressed in the forthcoming financial year. Since inception the Tribunal has had 23 audits performed by the Auditor-General and we are proud to report that we have never received a qualified report. In addition, 65% (15) of these audits have been clean audits (no qualifications or emphasis of matter reported) while the other 35% (8) were unqualified.

While the external auditors perform a single audit per annum, the internal audit is conducted throughout the year. The internal audit function has been outsourced to Nexia SAB&T. The names, qualifications and years of service of each member of the internal audit team are set out in Diagram 25:

Diagram 25: Internal audit team

Team Management	Qualification/s	Year of experience
Philemon Mawire	CA(SA)	18
Busisiwe Tshabalala	BTech Internal Audit	10
Herman van der Merwe	CA(SA) CISA	19
Vincent Mano	CISA ; CIA- IT	17
<b>Audit Team</b>		
Refiloe Thebele	B Tech Internal Audit	3
Fadzai Gandawa	B Com (Hons), Internal Audit Technician	5

The Tribunal has implemented and adheres to a combined assurance model and, therefore, where possible the functions of the various assurance providers such as management, risk management, internal and external audit are co-ordinated to ensure proper coverage and reduce duplication where possible. The audit is risk-based and is conducted in accordance with standards of conduct and codes of ethics prescribed by the Institute of Internal Auditors (IIA) while an Internal Audit Charter defines the purpose, authority, terms of reference, objectives, powers, duties and responsibilities of this function. A total of seven audits were performed by internal audit during the financial year under review and findings are shown in Diagram 27.

Diagram 26: Internal audits

Audit Area	Major	Significant	Moderate	Low	Total findings
Case Management Review			2	1	3
Performance Information Review					0
Information Financial Control					0
IT Application Controls Review				1	1
IT Vulnerability Assessment Review			1		1
SCM Review		1			1
Follow-up Review					0
Total					6

Management has, in consultation with the internal auditors, adopted an effective corrective action process for resolving prior year audit findings. We are pleased to report that the internal auditors have concluded their audit and that 13 (69%) of the prior year's audit findings have been resolved. There are currently six internal audit findings outstanding from the 2021/2022 financial year, of which four are ready for audit and one is not yet due for audit. The diagram below reflects the status of all internal audit findings as at 31 March 2022:

Diagram 27: Status of all internal audit findings

Status	Prior Years	2021/2022	Total	%
Resolved (R)	12	1	13	69%
Partially Resolved	1	0	1	5%
Not Resolved	0	0	0	0%
Ready for Audit	0	4	4	21%
Not Yet Due	0	1	1	5%
Total Findings	13	6	19	100%

## EVALUATING OUR OVERSIGHT STRUCTURES

On an annual basis the Tribunal does an assessment of the Audit and Risk Committee members to determine their performance levels and to identify any gaps that require improvement. The assessment for the current reporting period was completed by Audit Committee members and the COO. Assessments were conducted during the reporting period for the Audit Committee, Risk Committee and Internal Audit. The performance areas that are below the maximum average will be reviewed and shortcomings addressed accordingly.

The Audit Committee Chairperson was assessed in four areas and achieved the following scores:

• Meeting preparation, participation and direction	95.83%
• Behaviour	95.00%
• Committee performance	92.50%
• Committee development	95.00%

The Audit Committee was assessed in 16 areas and achieved the following scores:

• Term of reference	100%
• Independence	100%
• Relationship with the Executive	100%
• Other participants	100%
• Terms of appointment	100%
• Range of skills	100%
• Training and development	100%
• Conflict of interest	100%
• Relationship with Internal Audit	100%
• Relationship with Auditor-General	100%
• Relationship with Internal Audit and Auditor-General	100%
• Fraud	100%
• Internal controls	100%
• Reporting to the Executive Authority/Accounting Authority	100%
• Additional skills	90.00%
• Financial reporting	96.36%

The Risk Committee Chairperson was assessed in four areas and achieved the following scores:

• Meeting preparation, participation and direction	70.67%
• Committee performance	70.67%
• Behaviour	68.00%
• Committee development*	58.00%

The Risk Committee was assessed in five areas and achieved the following scores:

• Composition and quality	80.61%
• Understanding the business and associated risks	80.00%
• Process and procedures	81.78%
• Monitoring activities	81.67%
• Communication activities	83.33%

Internal Audit was assessed in eight areas and achieved the following scores:

• Skills and experience	90.00%
• Relationship with the Committee	91.43%
• Quality of delivery	94.29%
• Quality of people and service	95.25%
• Understanding of role and responsibilities	82.50%
• Charter, structure and positioning	88.64%
• Performance and audit plan	83.57%
• Robustness of the audit	85.00%



*\*The committee members undertook to do their own development.*

Diagram 28: Legislation and areas of compliance that guide our operations

Legislation/ guideline	Application in our day-to-day activities
Competition Act and Rules	Prescribes the functions, powers, activities, procedures and rules of the Tribunal. Compliance is monitored quarterly by <b>the dtic</b> and annually by Parliament.
The PFMA and Treasury Regulations	Prescribes requirements for accountable and transparent financial management. Compliance is monitored quarterly by <b>the dtic</b> and annually by the Auditor-General.
Occupational Health and Safety (OHS) Act	Requirements are implemented by an OHS Committee and compliance is monitored internally and by the Tribunal's Risk Committee.
Levies and taxes	Compliance internally and by the Auditor-General to ensure that we are registered for and meet our obligations in respect of required and legislated levies and taxes.
Ethics	Internal policies and procedures adopted and implemented to ensure that we maintain high ethical standards and compliance to principles of honesty, integrity and independence.
Internal audit	The internal audit function is outsourced and its function is defined in a charter. The audit is conducted in accordance with an internal audit plan approved by the Audit Committee.
External audit	In accordance with the PFMA, this audit is conducted by the Auditor-General so as to provide an independent opinion on the financial statements of the Tribunal and report findings regarding predetermined objectives, compliance with laws, regulations and internal controls. See the Auditor-General's report in Part 6 for its detailed findings.
Broad- Based Black Economic Empowerment	The Tribunal is compliant with the relevant sections of the Act in terms of promoting black economic empowerment.
COVID-19 policy	The Tribunal developed a COVID-19 policy and it has been implemented as per the Department of Public Service and Administration and Department of Labour guidelines. The Tribunal is compliant with all COVID-19 regulations.







PART 5

HOW DID WE MANAGE  
OUR HUMAN AND  
FINANCIAL RESOURCES?

HOW DID WE MANAGE OUR HUMAN RESOURCES?

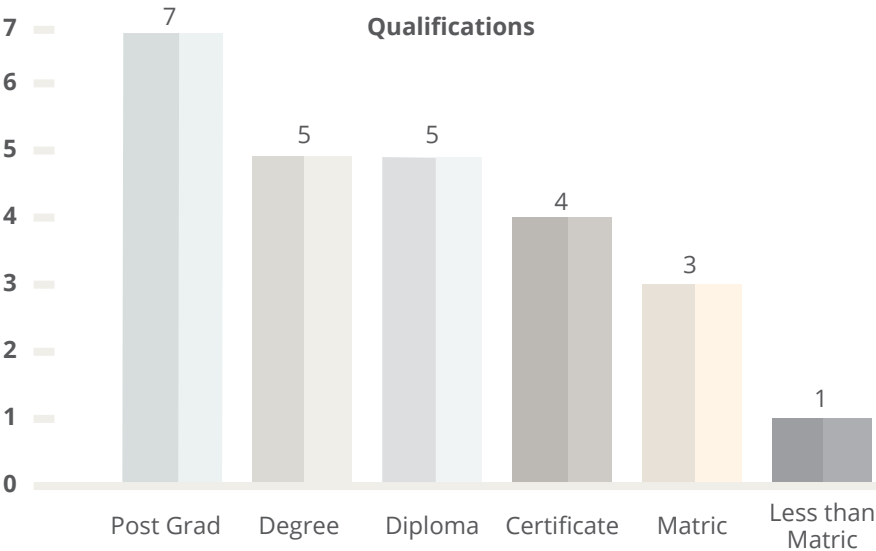
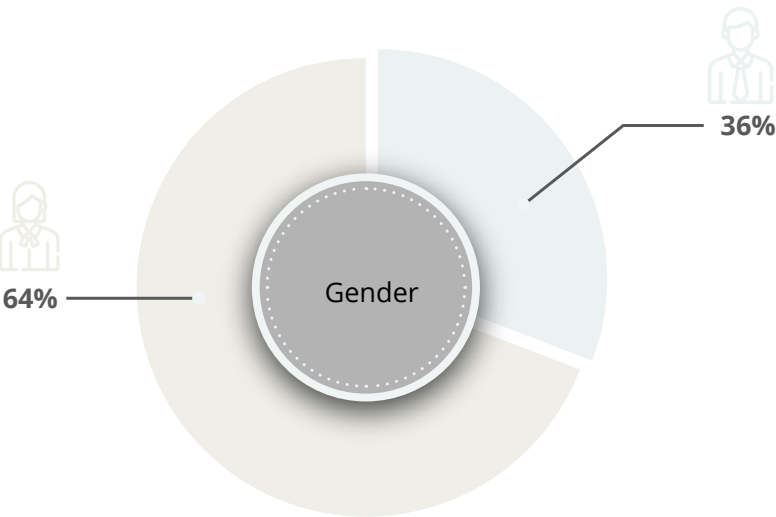
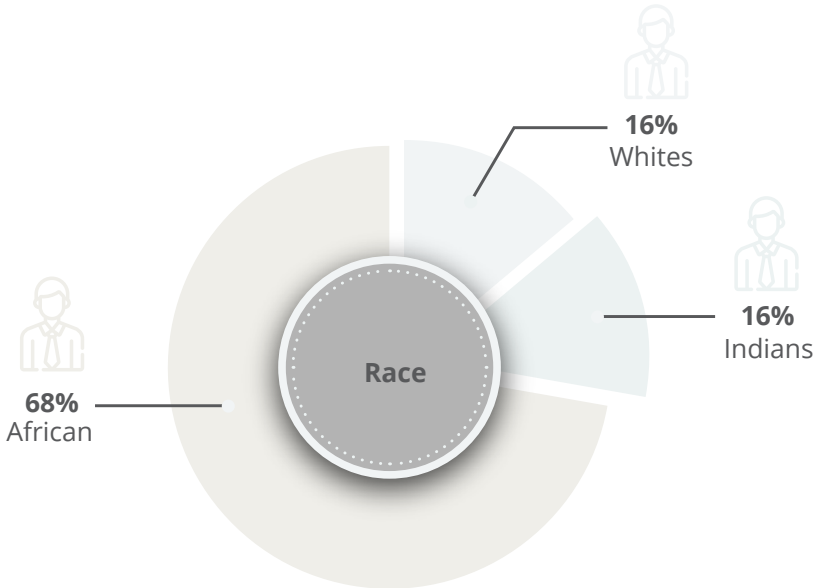
Human resource management is the management of an organisation's most valuable asset, their human capital. It deals with people related issues such as remuneration and benefits, recruitment, performance management, training and development, occupational health and safety and employee wellness.

As at the end of March 2022, the Tribunal had three full-time members, eight part-time members (including three acting members) and a staff complement of 22.

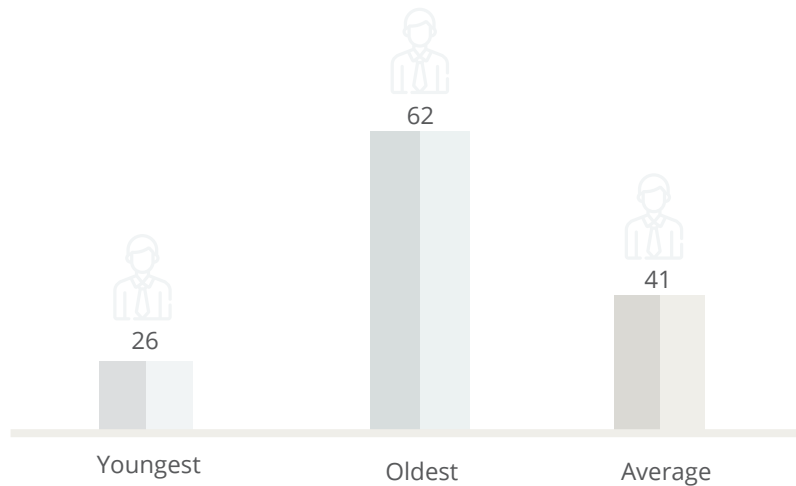
The Deputy Chairperson's five year term ended on 31 December 2021. He was re-appointed as an acting part-time member from January to June 2022. During the reporting period the Tribunal also bid farewell to a part-time member whose term ended on 31 December 2021. In addition, the Tribunal also appointed two acting part-time members from 1 January 2022.

The Tribunal employed four interns in the Case Management division during the reporting period, thereby enabling them to gain valuable skills that will enhance their career development. Our internships also develop the talent pool within competition law enforcement and competition economics.

The following graphics are representative of the Tribunal's 22 staff members as well as the three full-time panel members.

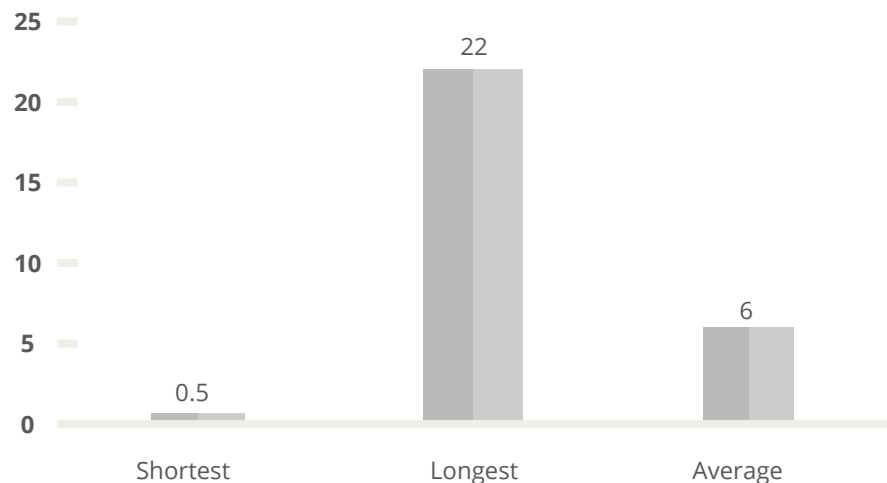


### Age analysis



The Tribunal's staff composition comprises an average age of 41, indicating both depth and dynamism in our staff complement.

### Years of service



### Employment equity

The Tribunal took into account employment equity in recruiting staff and this is reflected in the racial and gender distribution. The Tribunal has complied with the requirements of the Employment Equity Act in ensuring that suitably qualified employees from designated groups have an equal opportunity and are equitably represented in all occupational categories and levels of the workforce.

In the 2021/22 financial year, the equity ratio for female and male representation was 69% and 31%, respectively. During the period under review, the Tribunal's race and gender profile is as follows:

FEMALE			MALE		
African	Indian	White	African	Indian	White
12	2	2	5	2	2

### Making changes to our staffing

During the reporting period, the critical position of Head of Case Management was filled, including two case manager and junior case manager positions. Given the continued increase in the volume and complexity of the matters being brought before the Tribunal, we recognised that there was a need to increase the skills capacity in our Case Management Division and, to this end, we appointed a Senior Case Manager to the existing vacancy of Senior Economist. As the average stay at the Tribunal is 3 to 5 years, retention strategies are ongoing.

The Tribunal accepted six resignations (Head of Case Management, two Case Managers, Junior Case Manager, Junior Economist and a Financial Officer) where staff left the Tribunal for higher positions and salaries. As at 31 March 2022, five full-time positions had been filled and recruitment was underway for two positions.

The position of Head of Corporate Services is vacant and was not funded in the current year of assessment due to budget cuts in 2019/2020. The organisational structure review currently underway will assess this position.

## How do we remunerate our human capital?

The total cost to company (TCC) remuneration structure is applied in the Tribunal and it includes compulsory medical and retirement contributions. Additional benefits include risk cover, parking, contributions to an employee assistance programme (EAP) and a communication allowance. All these benefits are subject to perks tax.

Annual cost of living adjustments, applicable and implemented in the public sector, are used as a basis for annual salary adjustments for Tribunal staff, subject to budget availability. During the reporting period, both senior management and non-senior management received a cost-of-living adjustments of 1.5%. In addition to the 1.5% salary adjustment, employees received a non-pensionable cash allowance of between R1200 and R1695 depending on their job grade as negotiated by the Department of Public Service and Administration (DPSA) for the 2021/2022 financial year. Tribunal members were not awarded any increase during the period under review.

The salary scales of Tribunal staff are structured to include a range of job grades. Grades range from junior positions (Grade 16) to senior positions (Grade 3). As per Diagram 29, each job grade represents a salary band of pay ranges that are structured to reflect a minimum, midpoint, and maximum payment level for each grade.

Diagram 29: Tribunal salary scales

Peromnes Grade	Equate Grade	Band ranges (as at March 2022)		
		Min	Mid	Max
18	1	139 245	143 516	147 787
17	2	149 995	163 342	176 691
16	3	179 336	195 294	211 252
15	4	212 528	231 439	250 348
14	4	212 528	231 439	250 348
13	5	254 100	282 831	311 561
12	6	305 124	332 271	359 419
11	7	376 700	410 221	443 741
10	8	455 059	496 271	537 482
9	9	637 997	702 914	767 830
8	10	675 181	770 868	866 553
7	11	770 420	919 309	1 068 196
6	12	913 047	1 157 529	1 402 009
6 U	12	961 377	1 304 809	1 648 240
5	13	1 191 007	1 541 443	1 891 879
4	14	1 443 565	1 751 907	2 060 249
3	15	1 781 876	2 198 098	2 617 780

## Performance Management

The performance management system is used by divisional heads to assess their employee's performance, putting in place measures to improve poor performance where necessary and to identify training and development needs. In the year under review, 22 performance assessments were conducted. The average evaluation score was 4.01 out of 5.

There were no performance bonuses paid at the end of the 2020/2021 financial year due to budget cuts pertaining to COVID-19.

## Training and human resource development

Training and development of staff is important with regard to improving qualifications, developing skills and adding value. The Tribunal has provided its employees with opportunities for personal development and further education. Having a focused and effective training programme can improve employee retention and reduce employee turnover.

Training and development programmes provided in the year under review took place in person and virtually in the form of local training, workshops and webinars. The Tribunal held its annual workshop virtually in June 2021. There was a gain in doing the workshop virtually as there were a variety of local and international speakers, including speakers from the continent. The delegates included full-time members, part-time members and case managers.

The following OHS related training took place during the period under review:

- SHE Representation on 19 October 2021;
- Fire Fighting on 25 January 2022;
- Evacuation planning on 25 November 2021; and
- Incident investigation on 22 November 2021.

The Tribunal continues to encourage staff members to undertake further education and training through the Tribunal's bursary and study loan scheme, thus providing them with career advancement opportunities through general education. Study loans are converted into bursaries on the employee successfully completing a course.

During the year under review, study loans totalling R21 527.92 were awarded to two staff members and a study loan totalling R10 226.00 was converted into a bursary. As per the Tribunal's policy, study loans are converted into bursaries when employees pass their registered modules at the end of the study term. Employees are then required to provide services to the Tribunal for a minimum period stipulated in the contractual agreement.

## Employee Wellness

Through the employee assistance programme, we continued to provide an opportunity for employees and their families to seek support and guidance at no additional cost to themselves. The programme provides a range of services including, among others, emotional, psychological, legal and financial counselling and support, thus enabling employees to address personal and work-related challenges.

In addition, we issued monthly desk drops to staff to create awareness around a range of issues including prevention and treatment of medical and other conditions. A wellness day was organised for employees in March 2022. Staff who attended provided both positive feedback and valuable suggestions for future improvement. Employees participated in selected clinical health screening services on a voluntary basis.

## Occupational Health and Safety

The Tribunal is obliged, in terms of the Occupational Health and Safety Act, to ensure a healthy and safe environment for its employees. The OHS Committee performs its duties as per the legislative requirements. Committee representatives continue to attend the training required for their respective roles, thus ensuring their readiness for an emergency situation. The representatives also perform monthly and quarterly checklists and report to the Risk Committee.

The HR Officer is responsible for ensuring compliance with OHS. OHS risks or potential safety hazards are assessed for inclusion in the risk register and controls are implemented and monitored so that risks can be mitigated. A quarterly OHS report is presented to the Audit and Risk Committee for review and discussion.

## MANAGING OUR BUDGET AND FINANCIAL RESOURCES

Effective financial oversight, management and sustainability form a strategic pillar of the Tribunal. The Tribunal takes pride in its financial management, which is founded in disciplined budgeting, clear policies reflecting best practice, effective controls and accountability.

As a public entity, we view seriously our duty to be transparent about the use of funds allocated to us and to be accountable for the manner in which it is spent. We maintain a set of policies that conform to the PFMA and relevant National Treasury regulations. These policies are periodically reviewed and approved by the Accounting Authority or the delegated authority.

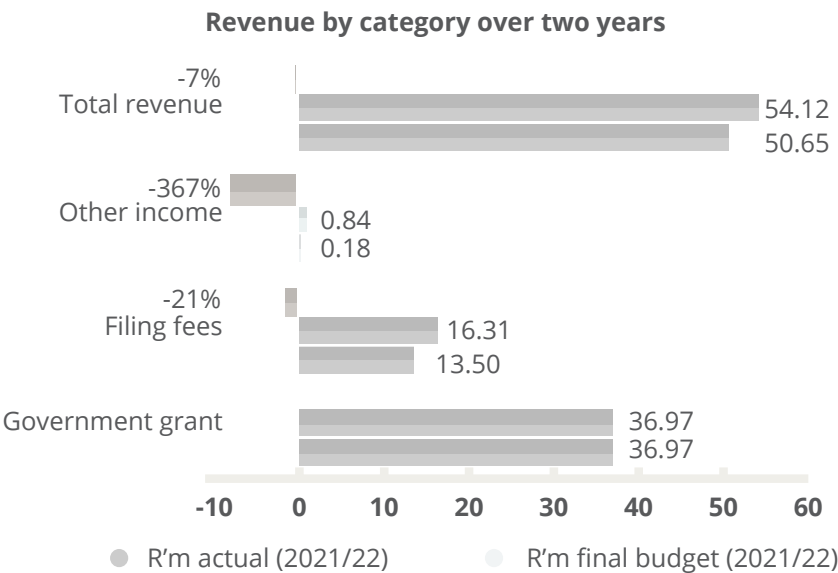
The Head of Finance produces monthly management accounts which are reviewed by the Chief Operating Officer and finally by the Accounting Authority before submission of the accounts to **the dtic**. Quarterly financial reports are submitted to National Treasury and the Annual Financial Statements are submitted to Parliament after being audited by the Auditor-General South Africa.

### HOW DID WE BUDGET?

The Tribunal's 2021/2022 initial budget included in its APP was approved by **the dtic** in April 2021. The annual budget was revised in December 2021 upon approval from the National Treasury, in terms of Section 53(3) of the Public Finance Management Act (Act 1 of 1999), to retain R7.61 million cash surpluses accumulated as at 31 March 2021 to provide for projected budget shortfalls during the 2021/22 financial year.

The Tribunal planned to spend the R7.61 million on a number of projects. However, the implementation of these projects was impacted by National Treasury's advisory note, that was effective from 16 February 2021, suspending all procurement over R30 000. The Tribunal applied for an exemption from PPPFA regulations which was received in the next financial year.

Diagram 30: Analysis of the Revenue Budget



*\*The final budget refers to the budget after adjustment in December 2021*

The Tribunal's revenue budget for the year comprises three components: a government grant (73% of total revenue); filing fees (26.6% of total revenue); and other income (0.4% of total revenue).

The first component of revenue is an approved government grant from **the dtic** which was R36.97 million and received in full in the first quarter of the financial year.

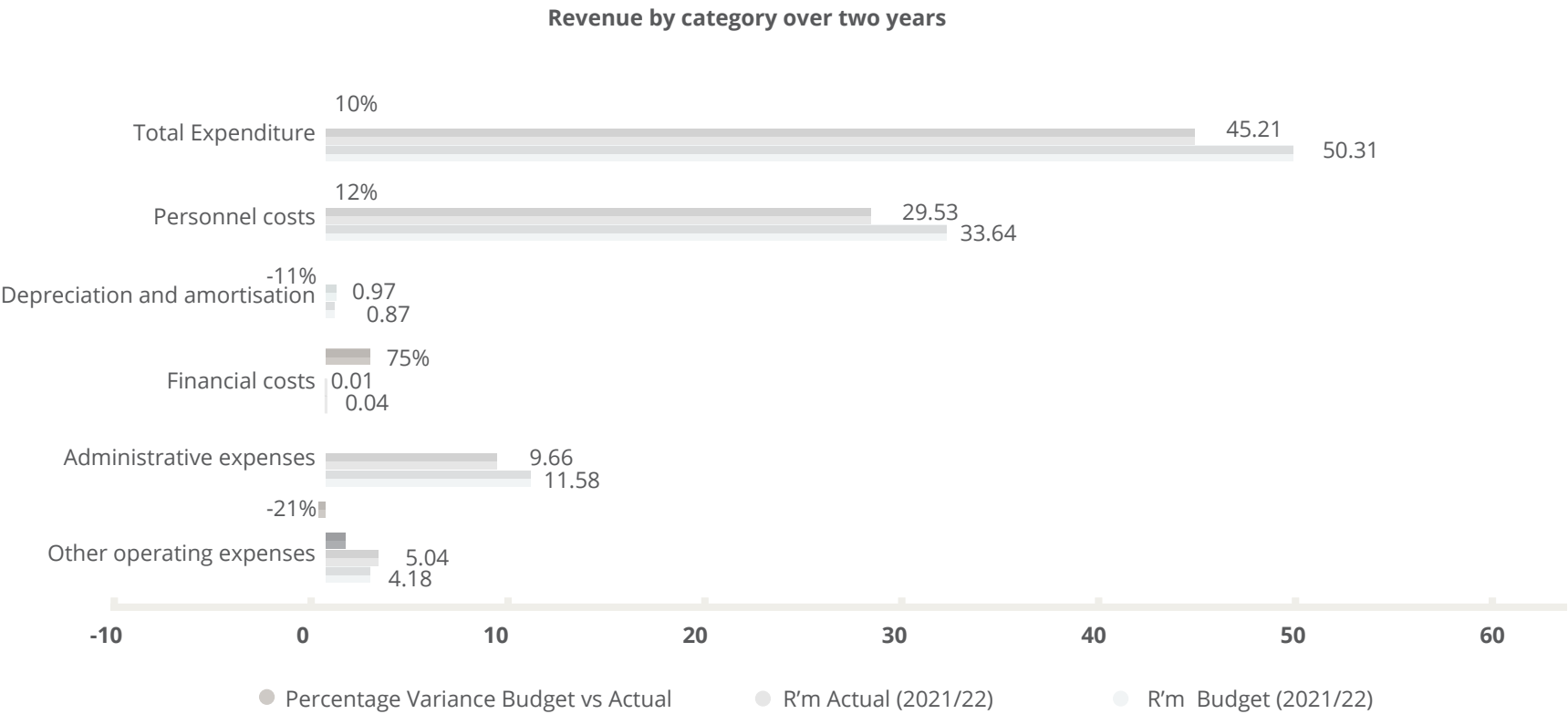
The second component of revenue is filing fees. In terms of a memorandum of agreement between the Commission and the Tribunal, the Tribunal receives 30% of all large merger filing fees and 5% of all intermediate merger filing fees received by the Commission, which are paid over by the Commission to the Tribunal on a monthly basis. Given the anticipated decline in merger activity due to the COVID-19 pandemic during the 2020/2021 financial year, the annual budgeted amount of filing fee income was R13.50 million. However, the Tribunal received 21% more filing fee income than budgeted for since merger activity increased during the current year.



The final component of revenue, “other income”, pertains to interest received on cash balances in the bank. These are held between the South African Reserve Bank and the Tribunal’s commercial bankers, ABSA. The Tribunal received 367% more interest in the current year as the bank balances were higher than expected during the year. The bank balances consisted of the full grant received in the first quarter and accumulated cash surpluses held in the bank throughout the year.

The Tribunal’s reported total revenue received was 7% above the budgeted amount. This variance related mainly to the higher filing fee income received than budgeted for.

Diagram 31: Analysis of the Expenditure Budget



The Tribunal's expenditure budget as per the APP was R50.32 million (excluding capital expenditure) and R50.65 million (including capital expenditure).

Personnel costs account for the bulk of the Tribunal's total expenditure. The Tribunal did not spend 12% of the budgeted personnel costs for the year due to two full-time Tribunal member vacancies not being filled throughout the year as well as savings from vacancies due to resignations during the year.

Other operating expenses included costs relating to acting part-time members, training and development, consultants and repairs and maintenance. The Tribunal over spent by 21% of what was budgeted for as three new part-time members were appointed in January 2022. Savings from personnel costs were used to fund the additional part-time member costs. The part-time member budget did not include the new acting part-time member positions.

Administrative expenses included costs relating to office rental, audit, governance, travel and other general expenses required for the day-to-day running of the Tribunal. The Tribunal did not spend 17% of the budgeted administrative expenses in the year. As the COVID-19 pandemic continued throughout the year, employees continued working from home which lead to cost savings on administrative expenses such as travel and other office related costs.

Furthermore, the Tribunal has made a conscious effort to reduce spending in accordance with cost containment measures which contributed to the lower spending against the 2021/2022 annual budgeted expenditure.

## **WHAT DOES IT COST US TO MEET OUR STRATEGIC GOALS?**

We conclude this section with an illustration on page 83 of how our budget was allocated and spent across the Tribunal's strategic objectives. The table is inclusive of capital expenditure. From the results it is clear that the Tribunal is an efficient organisation, having spent 76% of its total expenditure on its strategic objectives in the financial year.

Diagram 32: Budget across the Tribunal's strategic objectives

2021/22					
Objectives	Budget (R)	% budget by objective	Expenditure (R)	% spend of total expenditure	% of budget spent
<b>Responsive and Reliable Adjudication</b>	<b>26 627 524</b>	<b>53%</b>	<b>22 241 500</b>	<b>49%</b>	<b>84%</b>
Effective Case Management procedures	9 494 404	19%	9 293 148	21%	98%
Effective and timeous issuing of orders and reasons	17 133 120	34%	12 948 353	29%	76%
<b>Transparent, Accountable and Sustainable Tribunal</b>	<b>12 359 969</b>	<b>24%</b>	<b>12 280 978</b>	<b>27%</b>	<b>99%</b>
Effective communication and information sharing	1 252 099	2%	1 235 743	3%	99%
Integrated knowledge management and effective records management	3 609 386	7%	3 484 920	8%	97%
Sound governance	3 723 960	7%	3 763 597	8%	101%
Effective financial management	3 043 700	6%	3 170 513	7%	104%
Capacity development, retention and training	730 824	1%	626 206	1%	86%
<b>Total Strategic Objectives</b>	<b>38 987 493</b>	<b>77%</b>	<b>34 522 478</b>	<b>76%</b>	<b>89%</b>
<b>Total Other Expenditure</b>	<b>11 662 507</b>	<b>23%</b>	<b>10 746 255</b>	<b>24%</b>	<b>92%</b>
Administration	10 355 714	20%	9 730 909	21%	94%
Depreciation	871 612	2%	972 709	2%	112%
Appeal Court	100 000	0%	14 128	0%	14%
Capital Expenditure	335 181	1%	28 509	0%	9%
<b>Total Expenditure</b>	<b>50 650 000</b>	<b>100%</b>	<b>45 268 733</b>	<b>100%</b>	<b>89%</b>

*\*Overspend resulted from underestimation of expenses and underestimation of depreciation for one printer*





## REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON COMPETITION TRIBUNAL

### Report on the financial statements

1. I have reviewed the financial statements of the Competition Tribunal set out on pages 96 to 127, which comprise the statement of financial position as at 31 March 2022, the statement of financial performance, statement of changes in net assets and 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.

### Basis for conclusion

2. Based on my review, nothing has come to my attention that causes me to believe that the financial statements do not present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2022, and its financial performance and cash flows for the year then ended in accordance with Standards of General Recognised Accounting Practice (Standard of GRAP) and the requirements of the Public Finance Management Act 1 of 1999 (PFMA).

### Responsibilities of the accounting authority for the financial statements

3. The accounting authority is responsible for the preparation and fair presentation of the financial statements in accordance with the Standard 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.
4. 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/s or to cease operations, or has no realistic alternative but to do so.

### Auditor-general's responsibilities for the review of the financial statements

5. My responsibility is to express a conclusion on the accompanying financial statements. I conducted my review in accordance with the International Standard on Review Engagements (ISRE) 2400 (Revised), Engagements to Review Historical Financial Statements. ISRE 2400 (Revised) requires me to conclude on whether anything has come to my attention that causes me to believe that the financial statements, taken as a whole, are not prepared in all material respects in accordance with the applicable financial reporting framework. This standard also requires me to comply with the relevant ethical requirements.
6. A review of financial statements in accordance with ISRE 2400 (Revised) is a limited assurance engagement. I am required to perform procedures, primarily consisting of making inquiries of management and others within the entity, as appropriate, and applying analytical procedures, and evaluating the evidence obtained.
7. The procedures performed in a review engagement are substantially less than those performed in an audit conducted in accordance with International Standards on Auditing. Accordingly, I do not express an audit opinion on these financial statements.

### Report on the annual performance report

8. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I have a responsibility to report material findings on the usefulness and reliability of the reported performance information against predetermined objectives presented in the annual performance report. The accounting authority is responsible for the preparation of the annual performance report.
9. I performed procedures to evaluate the usefulness and reliability of the reported performance information on selected performance indicators in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice.
10. I performed the procedures in accordance with the AGSA audit methodology. This engagement is not an assurance engagement. Accordingly, I do not express an opinion or an assurance conclusion.



11. My procedures address the usefulness and reliability of the reported performance information on the selected performance indicators, which must be based on the public entity/s approved performance planning documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the public entity enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
12. I performed procedures to determine whether the reported performance information was properly presented and whether the performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the selected performance indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
13. I selected the following material performance indicators contained in Outcome 1: Responsive and Reliable Adjudication presented in the public entity's annual performance report for the year ended 31 March 2022 set out on pages 130 to 141. I selected the indicators that measure the public entity's performance on its primary mandated functions and which are of significant national, community or public interest.

Performance Indicators
% of large mergers set down for the beginning of a hearing or a pre-hearing, within 10 business days of filing of the merger referral.
% of intermediate and small merger considerations set down for the beginning of a hearing or a pre- I hearing within 10 business days of the receipt the request for Consideration.
% of matters classified as complex or very complex where a pre-meeting is held by the panel members and case managers prior to the first scheduled hearing date.
% of matters classified as complex or very complex where a post-meeting is held by the panel and case managers after the hearing is concluded.
% of large merger orders issued to parties within 10 business days of last hearing date.
% of reasons for large mergers issued to parties within 20 business days of order being issued.
% of orders for intermediate and small merger reconsideration issued to parties within 10 business days of last hearing date.
% of reasons for intermediate and small merger reconsiderations reasons issued to parties within 20 business days of the order being issued.
Reasons for prohibited practice cases classified as simple are issued to parties within 100 business days of the last hearing date.
Reasons for prohibited practice cases classified as complex are issued to parties within 125 business days of the last hearing date.
Reasons for prohibited practice cases classified as very complex are issued to parties within 150 business days of the last hearing date.
% of procedural matter orders issued to parties within 45 business days of the last hearing date.
% orders for consent orders and settlement agreements issued to parties within 10 business days of the last hearing date.
% of reasons in interim relief matters issued to parties within 20 business days of last hearing date.

14. I did not identify any material findings on the usefulness and reliability of the reported performance information for the selected material performance indicators.

## Other matter

15. I draw attention to the matter below.

## Achievement of planned targets

16. Refer to the annual performance report on pages 130 to 140 for information on the achievement of planned targets for the year and management's explanations provided for the under and over achievement of targets.

## Report on compliance with legislation

17. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the public entity's compliance with 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.

18. I performed procedures to test compliance with selected requirements in key legislation in accordance with the AGSA audit methodology. This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.

19. 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 adequately available to report in an understandable manner. The selection is done through an established AGSA process. The selected legislative requirements are as follows:

Legislation	Sections or regulations
Public Finance Management Act 1 of 1999 (PFMA)	Sections 51(1)(b)(ii); 51(1)(e)(iii); Sections 53(4); 54(2)(c); 54(2)(d); Sections 55(1)(a)-(b); 55(1)(c)(i); Sections 66(3)(c); 66(5)
Treasury regulations	TR 16A3.2(a); 16A 3.2 {fairness}; 6.1; TR 16A6.2(a) & (b); TR 16A6.3(a)-(c); 16A6.4; 16A6.5; TR 16A6.6; 16A.7.1; 16A.7.3; TR 16A.7.6; 16A.7.7; 16A8.3; I TR 16A9.1(b)(ii); 16A9.1(d)-(f); TR 16A9.2(a)(ii); TR 30.1.1; 30.1.3(a) - (b); 30.1.3(d); TR 30.2.1; 31.2.1; 31.2.5; 31.2.7(a); TR 32.1.1(a)-(c), 33.1.1, 33.1.3
Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) regulations (PPR), 2017	Sections 2.1(a),(b) and {f }
Preferential Procurement regulations (PPR), 2017	Regulations 4.1 ; 4.2; 5.1; 5.3; 5.6 ; 5.7 Regulations 6.1; 6.2; 6.3; 6.5; 6.6; 6.8 Regulations 7.1; 7.2; 7.3; 7.5; 7.6; 7.8; 8.2; 8.5 Regulations 8.2; 8.5; 9.1; 10.1; 10.2 Regulations 11.1 ; 11.2

Legislation	Sections or regulations
Prevention and Combating of Corruption Activities Act 12 of 2004 (PRECCA)	Section 34(1)
NT SCM Instruction Note 05 of 2009/10	Par 3.3
NT SCM Instruction Note 04 of 2015/16	Par 3.4
NT SCM Instruction Note 03 of 2016/17	Par 8.1; 8.2; 8.3; 8.5
NT SCM Instruction Note 4A of 2016/17	Par 6
NT SCM Instruction Note 07 of 2017/18	Par 4.3
NT SCM Instruction note 03 of 2019/20 [Annexure A- FIPDM]	Par 5.5.1 (vi); 5.5.1 (x)
NT SCM Instruction Note 08 of 2019/20	Par 3.1.1; 3.6; 3.7.2; 3.7.6 (i) - (iii)
NT SCM Instruction Note 03 of 2020/21	Par 3.6; 3.7; 5.1 (i); 6.1; 6.3
NT SCM Instruction Note 05 of 2020/21	Par 3.2; 3.7; 4.3; 4.6; 4.8; 4.9; 5.3
Erratum NT SCM Instruction Note 05 of 2020/21	Par 1; 2
Second Amendment to NT SCM Instruction Note 05 of 2020/21	Par 1
NT Instruction Note 11 of 2020/21	Par 3.1; 3.4(b); 3.9
NT SCM Instruction note 02 of 2021/22	Par 3.2.1; 3.2.4(a); 3.3.1; 4.1
SCM Practice Note 8 of 2007/08	Par 3.3.1; 3.3.3; 3.4.1; 3.5
SCM Practice Note 7 of 2009/10	Par 4.1.2

20. I did not identify any material findings on compliance with the selected legislative requirements.

#### Internal control deficiencies

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

#### Professional ethics and quality control

22. I am independent of the public entity 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 engagements in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.

23. In accordance with the International Standard on Quality Control 1, the Auditor-General of South Africa maintains a comprehensive system of quality control that includes documented policies and procedures on compliance with ethical requirements and professional standards.

*Auditor-General*

Pretoria

31 July 2022



## STATEMENT OF RESPONSIBILITY

The Accounting Authority is responsible for the preparation, integrity and fair presentation of the financial statements of the Tribunal for the year ended 31 March 2022.

The financial statements presented on pages 96 to 127 have been prepared in accordance with the South African Statements of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 55 of the Public Finance Management Act to the extent as indicated in the accounting policies, and include amounts based on judgments and estimates made by management.

The Accounting Authority, in consultation with the management committee, prepared the other information included in the Integrated Annual Report and is responsible for both its accuracy and its consistency with the financial statements.

The going concern basis has been adopted in preparing the financial statements. The Accounting Authority has no reason to believe that sufficient funding will not be obtained to continue with the official functions of the Tribunal. These financial statements support the viability of the Tribunal. The Accounting Authority initially approved and submitted the annual financial statements to the Auditor-General South Africa on 31 May 2022.

The reports and statements set out below comprise the Annual Financial Statements presented to the Parliament:

	Page
Chairperson's Report	92-95
Statement of Financial Position	96
Statement of Financial Performance	97
Statement of Changes in Net Assets	98
Cash Flow Statement	99
Statement of Comparison of Budget and Actual Amounts	100
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Notes to the Annual Financial Statements	112-127



## CHAIPERSON'S REPORT

### 1. INTRODUCTION

2021 continued to be a year of learning and adapting, following the disruption to the way of life and work since the pandemic. This resulted in fiscal consolidation. The lessons learned are that we must be resilient and prudent with public spending in these tough economic times.

The coronavirus pandemic in 2020 found South African competition law and policy at an inflection point where the Competition Act had recently (in 2019) been amended. The amendments were aimed at addressing the high concentration levels that continue to plague the economy, 20 years after the Competition Act was in force. The amendments have, *inter alia*, strengthened the merger, abuse of dominance and market inquiry provisions in order to reduce barriers to entry in markets, to increase ownership and participation, particularly by SMMEs and HDIs in the economy. In essence the amendments seek to foster fair, competitive and inclusive markets.

While COVID-19 slowed down the traction that the amendments sought to achieve as businesses closed circa 2020, jobs were lost and the economy plunged further into recession, consumers benefitted from the 2019 amendments as the competition authorities swiftly dealt with the excessive pricing of essential goods such as face masks and sanitisers necessary to combat the spread of the coronavirus. The Tribunal found many of the firms involved to have contravened the Act.

As economic activity resumed in 2021, we aligned our core actions with the imperatives of, *inter alia*, the Economic Reconstruction and Recovery Plan which sets out the framework for rebuilding the economy following the outbreak of the coronavirus pandemic. The Tribunal will need to be particularly vigilant against the economy reverting to its anti-competitive past. During this economic recovery period, our core action is to adjudicate for fair, competitive and inclusive markets. This outcome is based on two pillars: Reliable and Responsive Adjudication; and Governance.

The Tribunal has continued to exercise prudent financial management on the expenditure side. We have addressed areas of cost containment and savings in response to budget cuts necessitated by the reprioritization of funds by National Treasury towards relief packages in 2020/21 and 2021/22. We have been in the fortunate position of being able to rely on the use of accumulated funds to cover

budget shortfalls in prior years, however, this will no longer be the case in the future. We obtained approval from the National Treasury in October 2021 to retain the cash surplus of R 7.61 million accumulated as at 31 March 2021 for use in the 2021/22 financial year. The cash surplus is calculated using the prior year balances as cash and cash equivalents add receivables less current liabilities. The use of this accumulated surplus was impacted by National Treasury's advisory note that requested that all procurement over R30 000 after 16 February 2022 be placed in abeyance due to legal challenges to the PPPFA regulations. We applied for an exemption from the application of the PPPFA regulations from National Treasury, which was granted.

At the end of the financial year (2021/22), the Tribunal reported a surplus of R8.88 million. A significant portion of this was as a result of vacancies which were filled during the year and two Tribunal Member vacancies which are in the process of being filled.

Over the years, the Tribunal's expenditure has increased at a fairly constant rate. The grant allocated to the Tribunal reflects a slower growth, at a rate based mainly on inflation as opposed to changes in the Tribunal's operational requirements. Filing fees fluctuate significantly year-on-year, and it is difficult to predict these fluctuations or to accurately estimate what they will be in the future. The uncertainty with regards to this revenue source is the main concern to our budgeting process.

The Tribunal operates a 'lean' budget. Any reduction in expenditure will have a detrimental impact on the achievement of the Tribunal's strategic objectives which include the administration of the Competition Appeal Court. It is a matter of institutional pride year-on-year that the Tribunal has received a clean audit.

In the period April 2021 to March 2022, the Tribunal heard 159 matters, this included 87 mergers, 5 contested cartel cases, 1 contested covid-19 excessive pricing case, 30 consent settlement agreements, 34 procedural matters and 2 interim relief applications. 20 of the large mergers were approved subject to public interest and other conditions, including employment, the promotion of SMMEs and/or HDIs, and the greater spread of ownership.

This snapshot of case adjudication illustrates the diverse nature of our work, and the increasing demand for our services. It is ever more important to build the capacity of the competition authorities to tackle the challenges that lie ahead in rebuilding the economy.

The Tribunal remains committed to adjudicating for fair, competitive and inclusive markets.

## 2. NATURE OF BUSINESS

The Competition Tribunal is an independent adjudicative body established in terms of section 26 of the Competition Act, No. 89 of 1998 ("the Act"). It has jurisdiction throughout the Republic of South Africa. The Tribunal adjudicates on competition matters including mergers and acquisitions, and prohibited practices (anti-competitive conduct). It exercises its functions in accordance with the Act, the Constitution and without fear, favour or prejudice.

The Tribunal is one of three independent authorities established in terms of the Act. These are the Competition Commission which is the investigative and enforcement authority; this Tribunal which adjudicates on matters referred to it by the Commission or by private parties, and the Competition Appeal Court, which considers appeals or reviews against Tribunal decisions.

The Tribunal can *inter alia*: a) prohibit or approve large mergers (with or without conditions) or intermediate mergers decided by the Commission and brought to it for consideration; b) adjudicate in relation to any conduct prohibited in terms of chapter 2 or 3 of the Act, and c) consider consent agreements and grant an order for costs in terms of section 57 of the Act on matters. Once the Tribunal arrives at a decision, it is required to publish its reasons.

### MEMBERS

In all matters, the Tribunal holds hearings which are open to the public. In most cases, apart from a certain procedural cases, three Tribunal members must hear a case and make a decision.

Tribunal members are appointed by the President of the Republic, on recommendation by the Minister of Trade, Industry and Competition. These members are appointed on either a full-time or part-time basis for a five-year term.

The members holding this office in the period under review are as follows:

	Full/Part Time	Date of appointment
Mondo Mazwai (Chairperson)	Full-time	Appointed in August 2019
Enver Daniels (Deputy Chairperson)	Full-time	Appointed in January 2017 *Term ended 31 December 2021
Yasmin Carrim	Full-time	Reappointed in August 2019
Andreas Wessels	Part-time	Reappointed in August 2019
Halton Cheadle	Part-time	Appointed in January 2017 *Term ended 31 December 2021
Andiswa Ndoni	Part-time	Reappointed in August 2019
Antion Roskam	Part-time	Reappointed in January 2018
Fiona Tregenna	Part-time	Reappointed in April 2019
Thando Vilakazi	Part-time	Appointed in August 2019
Imraan Valodia	Part-time	Reappointed in January 2018
Enver Daniels	Acting Part-time	Appointed in January 2022
Liberty Mncube	Acting Part-time	Appointed in January 2022
Shaista Goga	Acting Part-time	Appointed in January 2022

## 3. OBJECTIVES AND TARGETS

The year in review is measured against the objectives set in the 2021/22 Annual Performance Plan. This in turn is informed by the 2017 - 2021 Medium Term Expenditure Framework.

I am pleased to report that we met or exceeded 24 of the 34 targets set. Four targets were not measurable as there was no activity for the four indicators during the reporting period, while the remaining 6 targets were not met.

Our highest area of achievement was in relation to our two strategic goals a) responsive and reliable adjudication, b) transparent, accountable and sustainable Tribunal.

The area of under-achievement relates to certain matters not being set down, heard and adjudicated within the targeted timeframes. The reasons for this include: parties not being available or ready to proceed on dates open in the Tribunal's calendar, unavailability of Tribunal members, Tribunal members' capacity and complexity of matters.

#### 4. FINANCIAL HIGHLIGHTS AND PERFORMANCE

	2022 R '000	2021 R '000
<b>Total Revenue</b>	<b>54 121</b>	<b>46 560</b>
<b>Expenditure</b>	<b>(45 241)</b>	<b>(45 390)</b>
<b>Net surplus/(deficit)</b>	<b>8 880</b>	<b>1 170</b>
<b>Total assets</b>	<b>25 433</b>	<b>16 994</b>
<b>Total liabilities</b>	<b>3 745</b>	<b>4 186</b>

The financial objective of the Tribunal is to be sustainable while meeting its adjudicative objectives. The budget was accordingly set to meet operational expenses.

Revenue comprises two elements. The first component of revenue is a grant from the Department of Trade, Industry and Competition. In 2021/22 the grant received was R36.97 million and was 14% higher than the grant received in the prior year. The second component of revenue is filing fees. R16.31 million was received from filing fees. In terms of a memorandum of agreement between the Commission and the Tribunal, the Tribunal is entitled to a set portion of filing fees that the Commission levies for mergers. Filing fees increased by 23% from the previous year because of an increase in merger activity. This resulted in a 16% increase in total revenue year-on-year.

The Tribunal's total expenditure was R45.24 million. Personnel costs, which account for the bulk of the Tribunal's total expenditure, dropped by 2% to R29.54 million from the prior year. This is mainly due to vacancies during the year.

The net effect is that the Tribunal reported a net surplus of R8.88 million at the end of the financial year. The Tribunal also received an advisory note from National Treasury that requested that all procurement over R30 000 after 16 February 2022 be placed in abeyance due to legal challenges to the PPPFA regulations. In terms of Section 53 (3) of the Public Finance Management Act, the Tribunal will request permission from National Treasury and the Department of Trade, Industry and Competition to retain the accumulated surplus as a source of funding over the Medium Term Expenditure Framework (MTEF) period.

#### 5. SUBSEQUENT EVENTS

There were no subsequent events identified.

#### 6. MANAGEMENT COMMITTEE

In compliance with Treasury Regulation 28.1.1 the annual financial statements disclose remuneration in respect of the persons in charge of the entity, the Chairperson, Deputy Chairperson, Members and the Chief Operating Officer. These are found in Note 26.

#### 7. NUMBER OF EMPLOYEES

At year-end, the Tribunal's personnel complement comprised 27 people in total: 3 full-time Tribunal members, 22 full-time staff members and 2 interns.

#### 8. IRREGULAR AND FRUITLESS AND WASTEFUL EXPENDITURE

It is a point of institutional pride that the Tribunal has not incurred any irregular or fruitless and wasteful expenditure in the 2021/22 financial year.

#### 9. MANAGEMENT FEE PAID TO THE COMPETITION COMMISSION

The Tribunal and the Commission share premises and therefore certain services. In terms of a memorandum of agreement (MOA) signed between the two institutions, the Tribunal pays a monthly management fee to the Commission for services related to the use of these premises. The management fee for the period under review was R60 657 per month. The MOA and management fee are reviewed annually.

## 10. ADDRESS

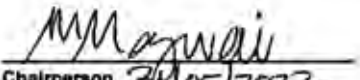
Business address                      Mulayo Building  
77 Meintjies Str  
Sunnyside 0132

Postal address                        Pvt Bag X24  
Sunnyside  
0132

## 11. GOING CONCERN

The annual financial statements are prepared on the basis of accounting policies applicable to a going concern and that the Department of Trade, Industry and Competition has neither the intention nor the need to liquidate or curtail materially the scale of the Tribunal.

The Tribunal performed a going concern assessment and concluded that the entity is solvent, and the liquidity ratios are favourable. The cash flows are such that the Tribunal can maintain its operations for at least one year of the reporting date of the financial statements. There are no contingent liabilities that may jeopardise the Tribunal's ability to operate.

  
Chairperson 31/05/2022

## STATEMENT OF FINANCIAL POSITION AS AT 31 MARCH 2022

	Note(s)	2022 R '000	2021 R '000
<b>Assets</b>			
<b>Non-Current Assets</b>			
Property, plant and equipment	2	1 300	1 932
Intangible assets	3	2 341	2 757
		<b>3 641</b>	<b>4 689</b>
<b>Current Assets</b>			
Cash and cash equivalents	4	20 386	10 211
Inventories		11	11
Receivables from exchange transactions	5	914	1 558
Prepayments		481	525
		<b>21 792</b>	<b>12 305</b>
<b>Total Assets</b>		<b>25 433</b>	<b>16 994</b>
<b>Liabilities</b>			
<b>Non-Current Liabilities</b>			
Finance lease obligation	6	-	25
<b>Current Liabilities</b>			
Finance lease obligation	6	25	167
Operating lease liability	7	-	1 157
Payables from exchange transactions	8	2 049	1 166
Provisions	9	1 671	1 671
		<b>3 745</b>	<b>4 161</b>
<b>Total Liabilities</b>		<b>3 745</b>	<b>4 186</b>
<b>Net Assets</b>		<b>21 688</b>	<b>12 808</b>
Accumulated surplus		21 688	12 808



## STATEMENT OF FINANCIAL PERFORMANCE

	Note(s)	2022 R '000	2021 R '000
<b>Revenue</b>			
<b>Revenue from exchange transactions</b>			
Fees earned	10	16 310	13 208
Other income		1	-
Interest income	11	840	1 010
<b>Total revenue from exchange transactions</b>		<b>17 151</b>	<b>14 218</b>
<b>Revenue from non-exchange transactions</b>			
<b>Transfer revenue</b>			
Government grants & subsidies	12	36 970	32 342
<b>Total revenue</b>		<b>54 121</b>	<b>46 560</b>
<b>Expenditure</b>			
Personnel costs	13	(29 535)	(30 256)
Depreciation and amortisation	14	(973)	(963)
Finance costs	15	(11)	(30)
Administrative expenses	16	(9 656)	(9 765)
Loss on disposal of assets	17	(30)	-
Other operating expenses	18	(5 036)	(4 376)
<b>Total expenditure</b>		<b>(45 241)</b>	<b>(45 390)</b>
<b>Surplus for the year</b>		<b>8 880</b>	<b>1 170</b>

## STATEMENT OF CHANGES IN NET ASSETS

	Accumulated surplus R '000	Total net assets R '000
<b>Balance at 01 April 2020</b>	<b>26 338</b>	<b>26 338</b>
Changes in net assets		
Surplus for the year	1 170	1 170
Transfer of accumulated cash surplus to National Treasury	(14 700)	(14 700)
Total changes	(13 530)	(13 530)
<b>Balance at 01 April 2021</b>	<b>12 808</b>	<b>12 808</b>
Changes in net assets		
Surplus for the year	8 880	8 880
Total changes	8 880	8 880
<b>Balance at 31 March 2022</b>	<b>21 688</b>	<b>21 688</b>

## CASH FLOW STATEMENT

	Note(s)	2022 R '000	2021 R '000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Receipts</b>			
Grants		36 970	37 403
Interest income		840	1 010
Fees received		16 954	13 793
		<b>54 764</b>	<b>52 206</b>
<b>Payments</b>			
Employee costs		(29 534)	(29 478)
Suppliers		(14 922)	(15 820)
Finance costs		(11)	(30)
Grant returned due to budget cuts		-	(5 061)
		<b>(44 467)</b>	<b>(50 389)</b>
<b>Net cash flows from operating activities</b>	19	<b>10 297</b>	<b>1 817</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Purchase of property, plant and equipment	2	(28)	(683)
Proceeds from sale of property, plant and equipment	2	73	-
Purchase of other intangible assets	3	-	(322)
<b>Net cash flows from investing activities</b>		<b>45</b>	<b>(1 005)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Finance lease payments		(167)	(194)
Transfer of accumulated cash surplus to National Treasury		-	(14 700)
<b>Net cash flows from financing activities</b>		<b>(167)</b>	<b>(14 894)</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b>10 175</b>	<b>(14 082)</b>
Cash and cash equivalents at the beginning of the year		10 211	24 293
<b>Cash and cash equivalents at the end of the year</b>	4	<b>20 386</b>	<b>10 211</b>

## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

Budget on Accrual Basis

	Approved budget R '000	Adjustments R '000	Final Budget R '000	Actual amounts on comparable basis R '000	Difference between final budget and actual R '000	Reference
<b>Statement of Financial Performance</b>						
<b>REVENUE</b>						
<b>REVENUE FROM EXCHANGE TRANSACTIONS</b>						
Fees earned	13 500	-	<b>13 500</b>	16 310	<b>2 810</b>	Note a
Other income	-	-	-	1	<b>1</b>	
Interest income	180	-	<b>180</b>	840	<b>660</b>	
<b>Total revenue from exchange transactions</b>	<b>13 680</b>	-	<b>13 680</b>	<b>17 151</b>	<b>3 471</b>	
<b>REVENUE FROM NON- EXCHANGE TRANSACTIONS</b>						
<b>TRANSFER REVENUE</b>						
Government grants and subsidies	36 970	-	<b>36 970</b>	36 970	-	
<b>Total revenue</b>	<b>50 650</b>	-	<b>50 650</b>	<b>54 121</b>	<b>3 471</b>	
<b>EXPENDITURE</b>						
Personnel	(33 642)	(2 734)	<b>(36 376)</b>	(29 535)	<b>6 841</b>	Note b
Depreciation and amortisation	(872)	-	<b>(872)</b>	(973)	<b>(101)</b>	
Finance costs	(46)	-	<b>(46)</b>	(11)	<b>35</b>	
Administrative expenses	(11 577)	-	<b>(11 577)</b>	(9 656)	<b>1 921</b>	Note c
Other operating expenses	(4 178)	(4 474)	<b>(8 652)</b>	(5 036)	<b>3 616</b>	Note c
<b>Total expenditure</b>	<b>(50 315)</b>	<b>(7 208)</b>	<b>(57 523)</b>	<b>(45 211)</b>	<b>12 312</b>	
<b>Operating (deficit)/ surplus</b>	<b>335</b>	<b>(7 208)</b>	<b>(6 873)</b>	<b>8 910</b>	<b>15 783</b>	
Loss on disposal of asset	-	-	-	(30)	<b>(30)</b>	
<b>Actual amount on a comparable basis</b>	<b>335</b>	<b>(7 208)</b>	<b>(6 873)</b>	<b>8 880</b>	<b>15 753</b>	Note d

## REASONS FOR DIFFERENCES BETWEEN THE COMPARISON OF BUDGET AND ACTUAL AMOUNTS

**Note a:** The Tribunal's budget estimate for filing fees from the Commission is based on the expected merger activity during a particular financial year. Given the anticipated decline in merger activity due to the COVID-19 pandemic, the initial estimate was revised downwards. However, merger activity increased during the year and this resulted in an increase in filing fees of R2.81 million (21%).

**Note b & c:** National Treasury approved that the Tribunal retain accumulated surpluses of R7.61 million in October 2021 to be spent in the 2021/22 financial year. The total budget adjustment for the year comprises of this amount of which R2.73 million relates to personnel costs for salary increases and performance bonuses. R4.47 million relates to other operating expenses for other projects to be implemented by the Tribunal and the remaining R0.41 million was allocated to capital expenditure. The variance on personnel costs is mainly the result of the vacancies. The variance on other operating expenditure relates to the advisory note received from National Treasury that requested that all procurement over R30 000 after 16 February 2022 be placed in abeyance due to legal challenges to the PPPFA regulations.

**Note d:** The variance of R15.75 million is made up of the actual surplus of R8.88 million and R6.87 million of the approved accumulated surplus(excluding capital expenditure). The reasons for the differences are explained in notes a,b and c.

## ACCOUNTING POLICIES

### 1. BASIS OF PREPARATION

The annual financial statements 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 in accordance with Section 91(1) of the Public Finance Management Act.

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention.

All figures have been rounded to the nearest thousand rand.

These accounting policies are consistent with the previous period.

### 1.1 SIGNIFICANT JUDGEMENTS 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 judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Significant judgments include:

#### Provision for accumulated leave

Management took the number of annual leave days due per employee as at year end and estimated a cost for this provision by multiplying the number of days due per employee by the daily wage per employee as reflected in payroll.

#### Amortisation of internally generated software

The Tribunal developed an electronic document management software system that was officially signed off in February 2013 and became fully operative from this date. All development costs associated with this development (development costs, legal fees, technical support, project management, etc.) were capitalised and the entire cost is amortised over 15 years from this "go live date".

#### Useful life of property, plant and equipment and other assets

The Tribunal's management determines the estimated useful life and related depreciation charges for property, plant and equipment and other assets. This



estimate is based on the pattern in which the asset's future economic benefits or service potential is expected to be consumed by the Tribunal.

## 1.2 GOING CONCERN ASSUMPTION

These annual financial statements have been prepared based on the expectation that the entity will continue to operate as a going concern for at least the next 12 months.

## 1.3 PRESENTATION CURRENCY

These financial statements are presented in South African Rands, which is the functional currency of the Tribunal.

## 1.4 FINANCIAL INSTRUMENTS

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.

A financial asset is:

- cash;
- 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 entity.

### Classification

The Tribunal has the following types of financial assets (class 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
Trade receivables	Financial asset measured at fair value

The Tribunal 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
Trade payables	Financial liability measured at fair value

### Initial recognition

The Tribunal recognises a financial asset or a financial liability in its statement of financial position when the Tribunal becomes a party to the contractual provisions of the instrument.

### Initial measurement of financial assets and financial liabilities

The Tribunal measures a financial asset and financial liability, other than those subsequently measured at fair value, initially at its fair value plus transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability.

### Subsequent measurement of financial assets and financial liabilities

The entity measures all financial assets and financial liabilities after initial recognition using the following categories:

- Financial instruments at fair value;
- Financial instruments at amortised cost; and.
- Financial instruments at cost.

### Fair value measurement considerations

Short-term receivables and payables are not discounted where the initial credit period granted or received is consistent with terms used in the public sector, either through established practices or legislation.

### Gains and losses

A gain or loss arising from a change in the fair value of a financial asset or financial liability measured at fair value is recognised in surplus or deficit.

## Derecognition

### Financial assets

The entity derecognises a financial asset only when:

- the contractual rights to the cash flows from the financial asset expire, are settled or waived.

On derecognition of a financial asset in its entirety, the difference between the carrying amount and the sum of the consideration received is recognised in surplus or deficit.

## 1.4 FINANCIAL INSTRUMENTS (continued)

### Financial liabilities

The Tribunal removes a financial liability (or a part of a financial liability) from its statement of financial position when it is extinguished - i.e. when the obligation specified in the contract is discharged, cancelled, expires or is waived.

## 1.5 STATUTORY RECEIVABLES

### Identification

Statutory receivables are receivables that arise from legislation, supporting regulations, or similar means, and require settlement by another entity in cash or another financial asset.

Carrying amount is the amount at which an asset is recognised in the statement of financial position.

The cost method is the method used to account for statutory receivables that requires such receivables to be measured at their transaction amount, plus any accrued interest or other charges (where applicable) and, less any accumulated impairment losses and any amounts derecognised.

Nominal interest rate is the interest rate and/or basis specified in legislation, supporting regulations or similar means.

The transaction amount (for purposes of this Standard) for a statutory receivable means the amount specified in, or calculated, levied or charged in accordance with, legislation, supporting regulations, or similar means.

## 1.6 INVENTORIES

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

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

The Tribunal measures its inventories at the lower of cost and current replacement cost as they are held for:

- (a) distribution at no charge or for a nominal charge; or
- (b) consumption in the production process of goods to be distributed at no charge or for a nominal charge.

The costs of purchase of inventories comprise the purchase price, import duties and other taxes (other than those subsequently recoverable by the Tribunal from the taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and supplies. Trade discounts, rebates and other similar items are deducted in determining the costs of purchase.

Current replacement cost is the cost the entity incurs to acquire the inventory on the reporting date.

The cost of inventories is assigned using the weighted average cost formula. The same cost formula is used for all inventories having a similar nature and use to the entity. Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average is calculated as each delivery is received.

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

When inventories are donated or issued to other entities for no cost/nominal values, inventories shall be measured at the lower of cost and net realisable value.

## 1.7 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.

## 1.7 PROPERTY, PLANT AND EQUIPMENT (continued)

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 entity; and
- the cost or fair value 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 the date of acquisition.

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

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

The useful lives of items of property, plant and equipment have been assessed as indicated in the table below.

Item	Depreciation method	Average useful life
Furniture and fixtures	Straight line	Between 5 and 18 years
Motor vehicles	Straight line	Between 5 and 9 years
Office equipment	Straight line	Between 5 and 18 years
IT equipment	Straight line	Between 3 and 10 years
Other leased assets	Straight line	Period of lease

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

The depreciation method used reflects the pattern in which the asset's future economic benefits or service potential are expected to be consumed by the entity. The depreciation method applied to an asset is reviewed at least at each reporting date and, if there has been a significant change in the expected pattern of consumption of the future economic benefits or service potential embodied in the asset, the method is changed to reflect the changed pattern. Such a change is accounted for as a change in an accounting estimate.

The entity assesses at each reporting date whether there is any indication that the entity 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 entity revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

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 entity separately discloses expenditure to repair and maintain property, plant and equipment in the notes to the financial statements.

## 1.8 INTANGIBLE ASSETS

An intangible asset is an identifiable non-monetary asset without physical substance. An asset is identifiable if it is either:

- separable, i.e. is capable of being separated or divided from an entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, identifiable assets or liability, regardless of whether the entity intends to do so; or
- arises from binding arrangements (including rights from contracts), regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.

A binding arrangement describes an arrangement that confers similar rights and obligations on the parties to it as if it were in the form of a contract.

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 entity; and
- the cost or fair value of the asset can be measured reliably.

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.

Expenditure on research (or on the research phase of an internal project) is recognised as an expense when it is incurred.

An intangible asset arising from development (or from the development phase of an internal project) is recognised when:

- it is technically feasible to complete the asset so that it will be available for use or sale;
- there is an intention to complete and use or sell it;
- there is an ability to use or sell it;
- it will generate probable future economic benefits or service potential;
- there are available technical, financial and other resources to complete the development and to use or sell the asset; and
- the expenditure attributable to the asset during its development can be measured reliably.

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

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date. Internally generated software refers to our electronic case management system and a customised reporting tool. It has been estimated to have a useful life of 15 years as the system is very sustainable and does not need to be replaced before this time. Any enhancements to the system are reflected as additions to the value of the asset in the period they occur and are amortised over the remaining useful life of the asset.

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

Item	Useful life
Computer software, internally generated	Between 5 and 15 years
Computer software, other	Between 5 and 15 years

The entity discloses relevant information relating to assets under construction or development, in the notes to the financial statements (see note 5).

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).

## 1.9 IMPAIRMENT OF NON-CASH GENERATING ASSETS

Non-cash generating assets are assets other than those that are primarily held for service delivery purposes i.e. assets not generating a commercial return.

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

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

Recoverable service amount is the higher of a non-cash-generating asset's fair value less costs to sell and its value in use.

### Identification

When the carrying amount of a non-cash generating asset exceeds its recoverable service amount, it is impaired.

The Tribunal assesses at each reporting date whether there is any indication that a non-cash generating asset may be impaired. If any such indication exists, the Tribunal estimates the recoverable service amount of the asset.

Irrespective of whether there is any indication of impairment, the Tribunal also tests a non-cash generating intangible asset with an indefinite useful life or a non-cash generating intangible asset not yet available for use for impairment annually by comparing its carrying amount with its recoverable service amount. This impairment test is performed at the same time every year. If an intangible asset was initially recognised during the current reporting period, that intangible asset was tested for impairment before the end of the current reporting period.

### Value in use

Value in use of non-cash generating assets is the present value of the non-cash-generating assets remaining service potential.

The present value of the remaining service potential of non-cash generating assets is determined using the following approach:

### Depreciated replacement cost approach

The present value of the remaining service potential of a non-cash generating asset is determined as the depreciated replacement cost of the asset. The replacement cost of an asset is the cost to replace the asset's gross service potential. This cost is depreciated to reflect the asset in its used condition. An asset may be replaced either through reproduction (replication) of the existing asset or through replacement of its gross service potential. The depreciated replacement cost is measured as the reproduction or replacement cost of the asset, whichever is lower, less accumulated depreciation calculated on the basis of such cost, to reflect the already consumed or expired service potential of the asset.

### Recognition and measurement

If the recoverable service amount of a non-cash generating asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable service amount. This reduction is an impairment loss.

An impairment loss is recognised immediately in surplus or deficit.

After the recognition of an impairment loss, the depreciation (amortisation) charge for the non-cash generating asset is adjusted in future periods to allocate the non-cash-generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

### Reversal of an impairment loss

The Tribunal assess at each reporting date whether there is any indication that an impairment loss recognised in prior periods for a non-cash-generating asset may no longer exist or may have decreased. If any such indication exists, the Tribunal estimates the recoverable service amount of that asset.

A reversal of an impairment loss for a non-cash-generating asset is recognised immediately in surplus or deficit.

After a reversal of an impairment loss is recognised, the depreciation (amortisation) charge for the non-cash generating asset is adjusted in future periods to allocate the non-cash-generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

## 1.10 ACCUMULATED SURPLUS

The Tribunal's surplus or deficit for the year is accounted for in the accumulated surplus in the statement of changes in net assets.

The accumulated surplus/deficit represents the net difference between total assets and total liabilities of the entity. Any surpluses and deficits realised during a specific financial year are credited/debited against accumulated surplus/deficit. Prior year adjustments relating to income and expenditure are debited/credited against accumulated surplus when retrospective adjustments are made.

## 1.11 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.

### Leased assets

The Tribunal recognises assets acquired under finance leases as assets and the associated lease obligations as liabilities in the statement of financial position. The assets and liabilities shall be recognised at amounts equal to the fair value of the leased asset, or if lower, the present value of the minimum lease payments, each determined at the inception of the lease.

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

Minimum lease payments are apportioned between finance charges and reduction of the outstanding liability. The finance charge shall be allocated to each period so as to achieve a constant periodic rate of interest on the remaining balance of the liability.

Finance charges are charged to surplus or deficit in the statement of financial performance.

A finance lease gives rise to a depreciation expense for depreciable assets as well as finance expense for each accounting period. The depreciation policy for depreciable leased assets must be consistent with that for depreciable assets that are owned, and the depreciation recognised shall be calculated in accordance with the Standard of GRAP on Property, Plant and Equipment. Refer to note 6 for detail on finance leases.

### 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 liability. This liability is not discounted.

## 1.12 PROVISIONS AND CONTINGENCIES

Provisions are recognised when:

- the Tribunal has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits 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 obligation at the reporting date.

Where the effect of time value of money is material, the amount of the 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.

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 will be required to settle the obligation.



## 1.12 PROVISIONS AND CONTINGENCIES (continued)

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

A contingent liability is:

- a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or
- non-occurrence of one or more uncertain future events not wholly within the control of the entity; or
- a present obligation that arises from past events but is not recognised because:
  - it is not probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
  - the amount of the obligation cannot be measured with sufficient reliability.

## 1.13 EMPLOYEE BENEFITS

Employee benefits are all forms of consideration given by the Tribunal in exchange for services rendered by employees.

### 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:

- 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; and
- 13<sup>th</sup> cheque and performance related payments payable within twelve months after the end of the reporting period in which the employees render the related service.

When an employee has rendered service to the Tribunal during a reporting period, the Tribunal 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 Tribunal 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 Tribunal 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 entity recognises the expected cost of bonus, incentive and performance related payments when the Tribunal 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.

## 1.14 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 Tribunal receives assets or services, or has liabilities extinguished, and directly give 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.

#### 1.14 REVENUE FROM EXCHANGE TRANSACTIONS (continued)

When the outcome of a transaction involving the rendering of services can be estimated reliably, revenue associated with the transaction is recognised by reference to the stage of completion of the transaction at the reporting date. The outcome of a transaction can be estimated reliably when all the following conditions are satisfied:

- the amount of revenue can be measured reliably;
- it is probable that the economic benefits associated with the transaction will flow to the entity;
- the performance obligations are met and at reporting date can be measured reliably; and
- the costs incurred for the transaction and the costs to complete the transaction can be measured reliably.

When the outcome of the transaction involving the rendering of services cannot be estimated reliably, revenue shall be recognised only to the extent of the expenses recognised that are recoverable.

Service revenue is recognised by reference to the stage of completion of the transaction at reporting date. Stage of completion is determined by the number of cases filed at the Competition Commission.

Revenue is measured at the fair value of the consideration received or receivable and represents the amounts receivable for goods and services provided in the normal course of business.

##### Filing fees

In terms of a memorandum of agreement between the Commission and the Tribunal, the Tribunal receives a portion of the filing fees paid to the Commission on notification of mergers. Filing fees due to the Tribunal are recognised as receivables by the Tribunal when the papers have been filed with the Commission and the filing fees have been paid to the Commission. Any filing fees paid to the Commission for cases but not filed or those that lapse for the periods stipulated in the Competition Act are refunded by the Commission to the parties. In the event that the Tribunal had received a portion of these fees they would be reflected as payables or netted off against receivables due from the Commission.

##### Interest income

Revenue is recognised as interest accrues using the effective interest rate.

##### Other income

Other income is recognised on an accrual basis. Other income received by the Tribunal may include monies due/paid for photocopying of documents or insurance refunds.

#### 1.15 REVENUE FROM NON-EXCHANGE TRANSACTIONS

Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, an entity 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.

##### 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 Tribunal 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.

##### Government grants

Government grants are recognised in the year to which they relate, once reasonable assurance has been obtained that all conditions of the grants have been complied with ie. the submission of required reports to the parent department, the grant has been received and there is no liability to repay the amount in the event of non-performance.

##### Measurement

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

## 1.16 COMPARATIVE FIGURES

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

## 1.17 FRUITLESS AND WASTEFUL EXPENDITURE

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

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

## 1.18 IRREGULAR EXPENDITURE

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including:

- (a) this Act; or
- (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- (c) any provincial legislation providing for procurement procedures in that provincial government.

National Treasury practice note no. 4 of 2008/2009 which was issued in terms of sections 76(1) to 76(4) of the PFMA requires the following (effective from 1 April 2008).

Irregular expenditure that was incurred and identified during the current financial year and which was condoned before year end and/or before finalisation of the financial statements is recorded appropriately in the irregular expenditure register. In such an instance, no further action is required with the exception of updating the note to the financial statements.

## 1.18 IRREGULAR EXPENDITURE (continued)

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end is recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements.

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements is updated with the amount condoned.

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority is recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps are thereafter taken to recover the amount from the person concerned. If recovery is not possible, the Accounting Officer or Accounting Authority may write off the amount as debt impairment and disclose such in the relevant note to the financial statements. The irregular expenditure register is updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto remains against the relevant programme/expenditure item, is disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

## 1.19 BUDGET INFORMATION

The Tribunal 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 something similar.

The approved budget is prepared on the accrual basis and presented by functional classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 1 April 2021 to 31 March 2022.

The annual financial statements and the budget are on the same basis of accounting therefore a comparison with the budgeted amounts for the reporting period have been included in the Statement of comparison of budget and actual amounts.

## 1.20 COMMITMENTS

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

## 1.21 RELATED PARTIES

The entity operates in an economic sector currently dominated by entities directly or indirectly owned by the South African government. As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

Management are those persons responsible for planning, directing and controlling the activities of the entity, including those charged with the governance of the entity in accordance with legislation, in instances where they are required to perform such functions.

Close members of the family of a person are considered to be those family members who may be expected to influence, or be influenced by, that management in their dealings with the entity.

Only transactions with related parties not at arm's length or not in the ordinary course of business are disclosed.

## 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 entity will adjust the amount recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred.

The entity 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 STANDARD IN ISSUE NOT YET EFFECTIVE

Standards in issue but not yet effective, are disclosed in the financial statements as well as the impact on the financial statements in future periods. Refer to note 31.

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 2. PROPERTY, PLANT AND EQUIPMENT

	2022 R '000			2021 R '000		
	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	1 280	(750)	530	1 280	(663)	617
Motor vehicles	205	(12)	193	415	(108)	307
Office equipment	56	(46)	10	56	(41)	15
IT equipment	1 966	(1 424)	542	2 150	(1 335)	815
Photocopiers (Leased)	201	(176)	25	586	(408)	178
<b>Total</b>	<b>3 708</b>	<b>(2 408)</b>	<b>1 300</b>	4487	<b>(2 555)</b>	<b>1 932</b>

#### Reconciliation of property, plant and equipment - 2021/2022

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	617	-	-	(87)	530
Motor vehicles	307	-	(103)	(11)	193
Office equipment	15	-	-	(5)	10
IT equipment	815	28	-	(301)	542
Photocopiers (Leased)	178	-	-	(153)	25
	<b>1 932</b>	<b>28</b>	<b>(103)</b>	<b>(557)</b>	<b>1 300</b>

#### Reconciliation of property, plant and equipment - 2020/2021

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	706	-	-	(89)	617
Motor vehicles	103	205	-	(1)	307
Office equipment	22	-	-	(7)	15
IT equipment	609	478	-	(272)	815
Photocopiers (Leased)	373	-	-	(195)	178
	<b>1 813</b>	<b>683</b>	<b>-</b>	<b>(564)</b>	<b>1 932</b>

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### Pledged as security and contractual commitments

During the financial year, there was no property, plant or equipment pledged as security.

The Tribunal has not entered into any contractual commitments to acquire new property, plant and equipment.

### Assets subject to finance lease (Net carrying amount)

	2022 R '000	2021 R '000
Leased assets	25	178

### 3. INTANGIBLE ASSETS

	2022 R '000			2021 R '000		
	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Computer software, internally generated	4 713	(2 786)	1 927	4 713	(2 456)	2 257
Computer software, acquired	832	(418)	414	882	(382)	500
<b>Total</b>	<b>5 545</b>	<b>(3 204)</b>	<b>2 341</b>	<b>5 595</b>	<b>(2 838)</b>	<b>2 757</b>

### Reconciliation of intangible assets - 2021/2022

	Opening balance	Amortisation	Total
Computer software, internally generated	2 257	(330)	1 927
Computer software, acquired	500	(86)	414
	<b>2 757</b>	<b>(416)</b>	<b>2 341</b>



## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 3. INTANGIBLE ASSETS (CONTINUED)

Reconciliation of intangible assets - 2020/2021

	Opening balance	Additions	Amortisation	Total
Computer software, internally generated	2 346	230	(319)	2 257
Computer software, acquired	489	92	(81)	500
	<b>2 835</b>	<b>322</b>	<b>(400)</b>	<b>2 757</b>

#### Pledged as security and contractual commitments

During the financial year, there was no intangible assets pledged as security.

The Tribunal has not entered into any contractual commitments to acquire new intangible assets.

### 4. CASH AND CASH EQUIVALENTS

Cash and cash equivalents comprise cash that is held with registered banking institutions. As the interest rate risk at these institutions is deemed to be insignificant, the carrying amount of these assets approximates their fair value.

There are no restrictions on the use of cash.

	2022 R '000	2021 R '000
Cash on hand	5	2
Bank balances	20 381	10 209
<b>Total</b>	<b>20 386</b>	<b>10 211</b>

### 5. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Receivables	911	1 558
Other debtors	3	-
<b>Total</b>	<b>914</b>	<b>1 558</b>

Trade receivables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice. The effect of discounting was considered and found to be immaterial since the carrying value of receivables approximates its fair value.

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 6. FINANCE LEASE OBLIGATION

	2022 R '000	2021 R '000
<b>Minimum lease payments due</b>		
- within one year	26	177
- in second to third year inclusive	-	26
	26	203
<b>less: future finance charges</b>	(1)	(11)
Present value of minimum lease payments	25	192
<b>Present value of minimum lease payments due</b>		
- within one year	25	25
- in second to third year inclusive	-	167
	25	192
<b>Non-current liabilities</b>	-	25
Current liabilities	25	167
	25	192

The Tribunal is leasing one photocopier under a finance leases. There are no restrictions imposed on the Tribunal in terms of the leases. There are no escalation clauses reflected in the lease agreements. The obligation under the finance leases are secured by the lessor's title to the leased assets. The leases can be extended for a further period after the initial period has expired. The average lease period is 3 years and the average effective borrowing rate used is 10.33% per annum. The effect of the change in interest rates were considered and the impact was immaterial therefore no adjustments were made.

### 7. OPERATING LEASE LIABILITY

Current liability	-	(1 157)
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The Tribunal entered into a 5 year lease agreement for building occupation on **the dtic** Campus which commenced on 1 April 2017 and terminated on 31 March 2022 with monthly payments which escalated by 10% annually. The Tribunal has extended the lease by 1 year only at an annual cost equivalent to the prior year.

<b>Minimum Lease payments due</b>		
- within one year	6 830	6 830

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 8. PAYABLES FROM EXCHANGE TRANSACTIONS

	2022 R '000	2021 R '000
Creditors	87	573
Accrued performance bonus	1 587	-
Other accruals	375	593
	<b>2 049</b>	<b>1 166</b>

Trade payables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice. The effect of discounting was considered and found to be immaterial since the carrying value of trade and other creditors approximates its fair value.

During the period under review there were no breaches of contracts or agreements held with the Tribunal and it was not necessary to negotiate any new terms with suppliers.

### 9. PROVISIONS

#### Reconciliation of provisions - 2021/2022

	Opening balance	Additions	Utilised during the year	Reversed during the year	Total
Leave provision	1 671	1 671	(555)	(1116)	1 671

#### Reconciliation of provisions - 2020/2021

Leave provision	893	1 671	(205)	(688)	1 671
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The leave provision is calculated based on the leave due and daily salary paid to an employee as at the end of the financial year. This leave is paid out if and when an employee leaves the entity. The uncertainty with regard to the provision is that we have no indication as to whether an employee will or when they will leave the entity. In addition this leave may be used or may continue to accumulate during the next financial year. The leave policy allows for leave to be taken for a further 6 months after a 12 month cycle. If the accumulated leave is not taken, the leave is forfeited.

### 10. FEES EARNED

	2022 R '000	2021 R '000
Filing fees earned from cases registered	16 310	13 208

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 11. INTEREST INCOME

	2022 R '000	2021 R '000
<b>Interest revenue</b>		
- Bank deposits	840	1 010

### 12. GOVERNMENT GRANT AND SUBSIDIES

Department of Trade, Industry and Competition	36 970	32 342
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### 13. PERSONNEL COSTS

Basic salaries	14 001	16 162
Performance bonus and service awards	1 468	4
Medical aid - company contributions	786	893
Statutory contributions	193	154
Insurance	286	306
Other salary related costs	303	149
Defined contribution pension plan expense (see Note 20)	1 022	1 168
Executive management	11 476	11 420
	<b>29 535</b>	<b>30 256</b>

### 14. DEPRECIATION AND AMORTISATION

<b>Depreciation</b>		
Furniture and fittings	87	89
Motor vehicles	11	1
Office equipment	5	7
IT equipment	301	272
Photocopiers (Leased)	153	195
<b>Amortisation</b>		
Computer Software	416	399
	<b>973</b>	<b>963</b>

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 15. FINANCE COSTS

	2022 R '000	2021 R '000
Finance lease	11	30

### 16. ADMINISTRATIVE EXPENSES

Audit committee members' fees	127	209
Risk committee members' fees	95	54
Fraud prevention committee members' fees	-	7
Audit committee meeting expenses	-	2
General expenses	475	395
External audit fees	987	967
Internal audit fees	346	449
Travel and subsistence	47	69
Building occupation	5 674	5674
IT Expenses	1 876	1 855
COVID-19 expenses	29	84
	<b>9 656</b>	<b>9 765</b>

### 17. NET GAIN/(LOSS) ON DISPOSAL OF ASSETS

Loss on disposal of property, plant and equipment	(30)	-
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### 18. OTHER OPERATING EXPENSES

Consultants, contractors and special services	1 543	1 581
Staff training and development	106	120
Fees paid to part-time Tribunal members	3 320	2 537
Legal fees	-	2
Maintenance, repairs and running costs	67	136
<b>Total</b>	<b>5 036</b>	<b>4 376</b>

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 19. CASH GENERATED FROM OPERATIONS

	2022 R '000	2021 R '000
Surplus	8 880	1 170
<b>Adjustments for:</b>		
Depreciation and amortisation	973	963
Loss on disposal of assets	30	-
Movements in operating lease liability	(1 157)	(536)
Movements in provisions	-	778
<b>Changes in working capital:</b>		
Inventories	-	1
Receivables from exchange transactions	644	585
Prepayments	45	(405)
Payables from exchange transactions	882	(739)
	<b>10 297</b>	<b>1 817</b>

### 20. EMPLOYEE BENEFIT OBLIGATIONS

#### Defined contribution plan

The Competition Tribunal Pension Fund, which is governed by the Pensions Fund Act of 1956 as amended, is a compulsory defined contribution plan for all employees in the Tribunal. The fund is administered by Sanlam Retirement Fund Administrators. The Tribunal is a participating employer on the Sanlam Umbrella Fund. The scheme offers the members various investment options for their pension fund contributions. As an insured fund, the Sanlam Umbrella Fund and thus the Competition Tribunal as participating employer, complies with regulation 28 of the Pension Fund Act of 1956. (see Note 14).

### 21. INCOME TAX EXEMPTION

The Tribunal is currently exempt from Income Tax in terms of section 10 (1) (a) of the Income Tax Act, 1962.



## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 22. FINANCIAL RISK MANAGEMENT

The main risks arising from the Tribunal's financial instruments are market risk, liquidity risk and credit risk.

#### Credit risk

The Tribunal trades only with recognised, creditworthy third parties. It is the Tribunal's policy that all customers who wish to trade on credit terms are subject to credit verification procedures. In addition, receivables balances are monitored on an ongoing basis with the result that the Tribunal's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed in Note 5. There is no significant concentration of credit risk within the Tribunal.

With respect to credit risk arising from the other financial assets of the Tribunal, which comprise cash equivalents, the Tribunal's exposure to credit risk arises from default of the counterparty, with a maximum exposure equal to the carrying amount of these instruments. The Tribunal's cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is limited.

#### Exposure to credit risk

The maximum exposure to credit risk at the reporting date from financial assets was:

	2022 R '000	2021 R '000
Cash equivalents	20 381	10 209
Receivables	911	1 558
<b>Total</b>	<b>21 292</b>	<b>11 767</b>

#### Concentration of credit risk

The maximum exposure to credit risk for financial assets at the reporting date by credit rating category was as follows:

The Tribunal's cash is either held in an ABSA current account or invested with the Corporation for Public Deposits.

	Rated and government R '000	Unrated R '000
<b>2021/22</b>		
Cash equivalents	20 381	-
<b>2020/21</b>		
Cash equivalents	10 209	-

## NOTES TO ANNUAL FINANCIAL STATEMENTS

The following table provides information regarding the credit quality of assets which may expose the Tribunal to credit risk

	Neither past due nor impaired R '000	Past due but not impaired - less than 2 months R '000	Carrying value R '000
<b>2021/22</b>			
Cash equivalents	20 381	-	-
Receivables	911	-	-
<b>2020/21</b>			
Cash equivalents	10 209	-	-
Receivables	1 558	-	-

### Market risk

Market risk is the risk that changes in market prices, such as the interest rate will affect the value of the financial assets of the Tribunal.

### Interest rate risk

The Tribunal 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 Tribunal's exposure to interest risk is managed by investing surplus funds in the Corporation for Public Deposits as the interest rate is favourable and still allows easy access to funds both in terms of movement from and movement to.

The change in net surplus of a 1% change in interest is based on year end exposure.

### Sensitivity Analysis

	Change in Investments	Increase/(decrease) in net surplus for the year	
		Upward change	Downward change
<b>2021/22</b>			
Cash equivalents	1.00%	203	(203)
<b>2020/21</b>			
Cash equivalents	1.00%	102	(102)

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### Liquidity risk

Liquidity risk is the risk that the Tribunal would not have sufficient funds available to cover future commitments. The Tribunal regards this risk to be low; taking into consideration the Tribunal's current funding structures and availability of cash resources.

The following table reflects the Tribunal exposure to liquidity risk from financial liabilities:

	Carrying amount R '000	Total cash flow R '000	Contractual cash flow within 1 year R '000	Contractual cash flow between 1 and 5 years R '000
<b>2021/22</b>				
Finance lease obligation	25	25	25	-
Payable from exchange transactions	2 049	2 049	2 049	-
<b>2020/21</b>				
Finance lease obligation	192	192	167	25
Payable from exchange transactions	1 166	1 166	1 166	-

### Financial instruments

The following table shows the classification of the Tribunal's principal instruments together with their carrying value:

Financial Instrument		
Cash equivalents	Financial asset measured at fair value	20 381
Trade debtors	Financial asset measured at fair value	911
Payables from exchange transactions	Financial asset measured at fair value	2 049
		10 209
		1 558
		1 166

The accounting policies for financial instruments have been applied to the items above.

### 23. COMPARATIVE FIGURES

There were no significant adjustments to the prior year figures.

### 24. FRUITLESS AND WASTEFUL EXPENDITURE

The Tribunal has not incurred fruitless and wasteful expenditure in the current and prior year.

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 25. IRREGULAR EXPENDITURE

Opening balance as previously reported

Less: Amounts not recoverable and condoned

#### Amounts awaiting condonation

The Tribunal has not incurred irregular expenditure in the current year.

2022 R '000	2021 R '000
-	33
-	<b>33</b>
-	(33)
-	-

### 26. RELATED PARTIES

#### Related party

The Competition Commission

Industrial Development Corporation

International Trade Administration Commission

The Department of Trade, Industry and Competition

Members of key management

#### Relationship

Public entity in the National Sphere

Public entity in the National Sphere

Public entity in the National Sphere

National Department in the National Sphere

Management committee members

#### Related party balances

#### Amounts included in trade receivables regarding related parties

Filing fees due from the Commission

#### Related party transactions

##### The Competition Commission

Filing fees

Facility fees

##### The Department of Trade, Industry and Competition

Unitary payments

Administrative costs

##### The Department of Trade, Industry and Competition

Government grant

2022 R '000	2021 R '000
888	1 516
16 310	13 208
(728)	(728)
(6 830)	(6 209)
(4)	(3)
36 970	32 342

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 26. RELATED PARTIES (CONTINUED)

#### Remuneration of management

##### Executive management

2021/22	Package	Performance bonus	Statutory benefits	Other salary related benefits	Total
<b>Name</b>					
Full-time member/Chairperson: M Mazwai	2 443	-	24	70	2 537
Full-time member/Deputy Chairperson: E Daniels	1 867	-	18	26	1 911
Full-time member: Y Carrim	2 276	-	22	67	2 365
Full-time member: A Wessels	2 212	-	22	64	2 298
Chief Operating Officer: O Josie	2 146	135	21	63	2 365
	<b>10 944</b>	<b>135</b>	<b>107</b>	<b>290</b>	<b>11 476</b>

2020/21	Package	Performance bonus	Statutory benefits	Total
<b>Name</b>				
Full-time member/Chairperson: M Mazwai	2 443	16	68	2 527
Full-time member/Deputy Chairperson: E Daniels	2 276	15	33	2 324
Full-time member: Y Carrim	2 276	15	65	2 356
Full-time member: A Wessels	2 136	14	62	2 212
Chief Operating Officer: J de Klerk (resigned July 2020)	579	5	17	601
Chief Operating Officer: O Josie (appointed September 2020)	1 352	12	36	1 400
	<b>11 062</b>	<b>77</b>	<b>281</b>	<b>11 420</b>

Deputy Chairperson, Enver Daniel's employment contract ended in December 2021. Thereafter, he was appointed as a Part-time member for a period of six months effective from 1 January 2022.

## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 27. CONTINGENT LIABILITIES

In terms of Section 53(3) of the PFMA, a public entity may not accumulate surplus funds without approval from the National Treasury. Approval will be requested from the National Treasury to retain estimated cash surpluses amounting to R17.06 million to fund projects in the future financial years. As approval has not yet been granted, this is reflected as a contingent liability.

### 28. CHANGE IN ESTIMATE

#### Property, plant and equipment

In the current period, management has extended the estimate of the useful life of some IT equipment and furniture and fittings with the intention of containing costs at the Tribunal. Further to this, there were a few other assets that could be used for a longer period and therefore the useful life was extended. The effect of this revision has decreased the depreciation charges for the current year by an insignificant amount.



## NOTES TO ANNUAL FINANCIAL STATEMENTS

### 29. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE

Reconciliation of budget (deficit)/surplus with the (deficit)/surplus in the statement of financial performance:

	2022 R '000	2021 R '000
(Deficit)/surplus per the statement of financial performance	8 880	1 170
<b>Adjusted for:</b>		
Transfer from retained income	7608	8 207
<b>Adjustments for items reflected as capital expenditure on budget:</b>	-	(224)
Leased equipment	(646)	(995)
Capital expenditure		
<b>Income under/(in excess of) budget:</b>		
Filing fees from the Commission	(2 810)	(3 472)
Interest received	(660)	(50)
<b>Over/(under) expenditure on budget:</b>		
Personnel	(6 841)	(1 796)
Part-time Tribunal member fees	728	67
Local training	-	60
Overseas training	-	(105)
Professional fees	6	(1 125)
Recording and transcription services	61	(708)
Recruitment costs	(17)	(157)
Administrative expenses	(1 500)	(314)
Facilities and capital	(22)	(14)
Competition Appeal Court	(85)	(210)
Other IT expense	(438)	(334)
Other projects	(4 427)	-
Depreciation	163	-
<b>Net (deficit)/surplus per approved budget</b>	-	-

# NOTES TO ANNUAL FINANCIAL STATEMENTS

## 30. COMMITMENTS

### Total commitments

Apart from those commitments relating to signed contracts with service providers, the Tribunal signed four purchase orders with a total value of R500 047 where the goods and services were not completed by 31 March 2022.

## 31. NEW STANDARDS AND INTERPRETATIONS

### 31.1 STANDARDS AND INTERPRETATIONS ISSUED, BUT NOT YET EFFECTIVE

The entity has not applied the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after 01 April 2022 or later periods:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
GRAP 104 (amended): Financial Instruments	01 April 2025	Unlikely there will be a material impact



# PART 7

## APPENDICES

Appendix A: Annual Performance Information Report  
Appendix B: Abbreviation

## APPENDIX A: ANNUAL PERFORMANCE REPORT

Outcome - Responsive and Reliable Adjudication												
	Annual		Quarter 1		Quarter 2		Quarter 3		Quarter 4		Year to Date	Reason for Deviations The deviation from the annual budget as per the approved APP is 16% and this is mainly due to savings from the 2 tribuna member vacancies that were not filled throughout the financial year.
Total Outcome Budget	R 26 627 524		R 6 656 886		R 6 656 886		R 6 656 880		R 6 656 872		R 26 627 524	
Total Outcome Expenditure	R 22 241 500		R 5 430 059		R 5 232 611		R 5 067 124		R 6 511 706		R 22 241 500	
1. Effective Case Management Procedures to Ensure Hearings Set Down Within Legislated Time frames												
Output budget	R9 494 404		R2 373 603		R2 373 603		R2 373 600		R2 373 598		R9 494 404	
Output expenditure	R9 293 148		R2 475 773		R1 976 993		R1 967 538		R2 872 844		R9 293 148	
Output Indicator	Annual Target	Prior Year Annual Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Annual Actual	Explanations for Deviations
			Q1	Q1	Q2	Q2	Q3	Q3	Q4	Q4	Year to Date	
% of large mergers set down for the beginning of a hearing or a pre-hearing, within 10 business days of filing of the merger referral.	80%	97%	80%	100%	80%	87%	80%	95%	80%	82%	92%	The target has been exceeded for the quarter and for the year. 80 of the 87 matters were set down within 10 business days. No corrective action is required
% of intermediate and small merger considerations set down for the beginning of a hearing or a pre-hearing within 10 business days of the receipt of the Request for Consideration.	65%	0%	65%	no set downs	80%	100%	65%	100%	65%	No matters set down	100%	Target exceeded for the year. Both matters were set down within 10 business days. No corrective action is required.
% of matters classified as complex or very complex where a pre-meeting is held by the panel members and case managers prior to the first scheduled hearing date.	70%	100%	70%	100%	70%	100%	70%	No complex or very complex hearing	70%	100%	100%	Target has been exceeded for the year. No corrective action is required.

OUTCOME - RESPONSIVE AND RELIABLE ADJUDICATION												
% of matters classified as complex or very complex where a post-meeting is held by the panel members and case managers after the hearing is concluded.	80%	100%	80%	100%	80%	100%	80%	No complex or very complex hearing	80%	No complex or very complex hearing	100%	Target has been exceeded for the year. No corrective action is required.
<b>2. Effective and Timeous Issuing of Orders, and Reasons</b>												
<b>Output budget</b>	<b>R17 133 120</b>		<b>R4 283 283</b>		<b>R4 283 283</b>		<b>R4 283 280</b>		<b>R4 283 274</b>		<b>R17 133 120</b>	
<b>Output expenditure</b>	<b>R12 948 353</b>		<b>R2 954 286</b>		<b>R3 255 619</b>		<b>R3 099 586</b>		<b>R3 638 862</b>		<b>R12 948 353</b>	
OUTPUT INDICATOR	ANNUAL AND QUARTER TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
			Q1	Q1	Q2	Q2	Q3	Q3	Q4	Q4		
% of large merger orders issued to parties within 10 business days of last hearing date (See 1 of Definitions and rules ).	95%	100%	95%	313%	95%	96%	95%	100%	95%	100%	100%	The target has been exceeded for the year. All 86 orders issued were issued within 10 business days. No corrective action is required
% of reasons for large mergers issued to parties within 20 business days of order being issued.	70%	72%	70%	86%	70%	90%	70%	96%	70%	94%	92%	The target has been exceeded for the year. 77 of the 84 reasons were issued within 20 business days. No corrective action is required
% of orders for intermediate and small merger reconsideration issued to parties within 10 business days of last hearing date. (See 1 of Definitions and rules).	70%	100%	70%	No order issued	70%	100%	70%	No order issued	70%	No order issued	100%	The target has been exceeded for the year. An order was issued in one case and it was issued within 10 business days. No corrective action is required



## OUTCOME - RESPONSIVE AND RELIABLE ADJUDICATION

### 2. Effective and Timeous Issuing of Orders, and Reasons (continued)

OUTPUT INDICATOR	ANNUAL AND QUARTER TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	ANNUAL ACTUAL	EXPLANATIONS FOR DEVIATIONS
			Q1	Q1	Q2	Q2	Q3	Q3	Q4	Q4	YEAR TO DATE	
% of reasons for intermediate and small merger reconsiderations reasons issued to parties within 20 business days of the order being issued.	50%	No reasons issued	50%	0%	50%	No reasons issued	50%	0%	50%	No reasons issued	0%	Target not met for the year. The delay was caused by a lack of resources. Increasing the number of full time Tribunal members and more senior support staff would improve our efficiencies.
Reasons for prohibited practices cases (see 2 of Definitions and rules) classified as simple (see 3 of Definitions and rules) are issued to parties within 100 business days of the last hearing date.	75%	No reasons issued	75%	No reasons issued	75%	No reasons issued	75%	No reasons issued	75%	No reasons issued	No reasons issued	Target could not be measured for the year because there were no reasons issued. No corrective action required
Reasons for prohibited practices cases classified as complex (see 3 of Definitions and rules) are issued to parties within 125 business days of the last hearing date.	65%	0%	65%	No reasons issued	65%	0%	65%	No reasons issued	65%	No reasons issued	0%	Target not met for the year. Reasons were issued in one matter. The delay was caused by a lack of resources. Increasing the number of full time Tribunal members and more senior support staff would improve our efficiencies.
Reasons for prohibited practices cases classified as very complex (see 3 of Definitions and rules) are issued to parties within 150 business days of the last hearing date.	65%	67%	65%	No reasons issued	65%	No reasons issued	65%	No reasons issued	65%	No reasons issued	No reasons issued	Target could not be measured for the year because there were no reasons issued. No corrective action required

OUTCOME - RESPONSIVE AND RELIABLE ADJUDICATION												
% of procedural matter (see 3 of Definitions and rules) orders issued to parties within 45 business days of last hearing date.	65%	90%	65%	100%	65%	83%	65%	83%	65%	75%	84%	The target has been exceeded for the year. 16 of the 19 orders issued were issued within 45 business days. No corrective action required.
2. Effective and Timeous Issuing of Orders, and Reasons (continued)												
OUTPUT INDICATOR	ANNUAL AND QUARTER TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
			Q1	Q1	Q2	Q2	Q3	Q3	Q4	Q4		
% orders for consent orders and settlement agreements issued to parties within 10 business days of the last hearing date.	75%	92%	75%	83%	75%	100%	75%	100%	75%	100%	97%	The target has been exceeded for the quarter and for the year. 31 of the 32 orders were issued within 10 business days. No corrective action required.
% of reasons in interim relief matters issued to parties within 20 business days of last hearing date.	65%	0%	65%	No reasons issued	65%	No reasons issued	65%	No reasons issued	65%	No reasons issued	No reasons issued	Target could not be measured for the year because there were no reasons issued. No corrective action required

OUTCOME - TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL												
			QUARTER 1		QUARTER 2		QUARTER 3		QUARTER 4		YEAR TO DATE	REASON FOR DEVIATIONS
CURRENT BUDGET	R 12 359 969		R 2 710 443		R 3 616 526		R 3 389 642		R 2 643 358		R 12 359 969	The deviation from the annual budget as per the approved APP is 1% which is not material.
ACTUAL EXPENDITURE	R 12 280 978		R 2 751 580		R 3 687 888		R 2 409 737		R 3 431 773		R 12 280 978	
3. Effective Communication and Information Sharing												
Output budget	R1 252 099		R313 023		R313 023		R313 024		R313 029		R1 252 099	
Output expenditure	R1 235 743		R293 368		R307 490		R309 271		R325 614		R1 235 743	
OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	ANNUAL ACTUAL	EXPLANATIONS FOR DEVIATIONS
			Q1	Q1	Q2	Q2	Q3	Q3	Q4	Q4	YEAR TO DATE	
% press releases of final merger decisions communicated within 3 business days of order date.	90%	90%	90%	61%	90%	54%	90%	100%	90%	100%	77%	Target not met. Press releases can only be issued after confidentiality claims by parties are settled. Merger Alerts have been implemented to communicate merger decisions timeously.
% press releases of prohibited practice decisions communicated within 3 business days of order date.	90%	71%	90%	n/a	90%	0%	90%	n/a	90%	n/a	0%	Target not met. Press releases can only be issued after confidentiality is finalised. Alerts have been implemented to communicate decisions timeously.
Annual publication (update) of juris-prudence handbook	Handbook updated and published	Handbook updated and published on Tribunal website	N/A	Handbook updated and published in Quarter 1 on Tribunal website	N/A	Handbook updated and published in Quarter 1 on Tribunal website	N/A	Handbook updated and published in Quarter 1 on Tribunal website	Handbook updated and published	Handbook updated and published in Quarter 1 on Tribunal website	Handbook updated and published on Tribunal website	Target met.

OUTCOME - TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL												
4 & 5. Effective Business Processes (4. Intergrated Knowledge Management and 5. Effective Records Management)												
Output budget	R3 609 386		R963 342		R988 342		R988 347		R669 355		R3 609 386	
Output expenditure	R3 484 920		R975 939		R785 385		R727 307		R996 289		R3 484 920	
OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
Approved electronic records management policy and filing system. Approved file plan and system implemented according to project plan milestones.	No target set due to lack of funding.	No target set for the year	N/A	No target set for the year	N/A	No target set for the year	N/A	No target set for the year	N/A	No target set for the year	No target set for the year	Target could not be measured. No target set for the year.
The outcomes of the review of processes, including forms and procedures for simplicity and necessity	Quarterly report sent to dtic	New indicator	1 report	1 report	1 report	1 report	1 report	1 report	1 report	1 report	1 report	Target met.

**OUTCOME - TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL**
**6. Sound Governance**

Output budget	R3 723 960		R498 987		R1 362 992		R1 153 172		R708 809		R3 723 960	
Output expenditure	R3 763 597		R536 815		R1 589 937		R655 056		R981 789		R3 763 597	
OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	ANNUAL ACTUAL	EXPLANATIONS FOR DEVIATIONS
			Q1	Q1	Q2	Q2	Q3	Q3	Q4	Q4	YEAR TO DATE	
Percentage of prior financial year audit (internal and external) findings resolved in terms of agreed timelines with auditors.	100%	100%	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	100%	100%	100%	Target met.
At least one meeting held annually to inform the Tribunal employees of stated APP performance targets and to assess performance against these targets and implement corrective action or revise targets as required	One meeting	one meeting	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	One meeting	1 meeting held	1 meeting held	Target met.
No material finding by the Auditor-General at year end.	No material findings	No finding	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3		No material findings	No material findings	Target met.

**OUTCOME - TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL**
**7. Effective Financial Management**

<b>Output budget</b>	<b>R3 043 700</b>		<b>R760 926</b>		<b>R760 926</b>		<b>R760 928</b>		<b>R760 920</b>		<b>R3 043 700</b>	
<b>Output expenditure</b>	<b>R3 170 513</b>		<b>R775 225</b>		<b>R771 426</b>		<b>R635 574</b>		<b>R988 288</b>		<b>R3 170 513</b>	
<b>OUTPUT INDICATOR</b>	<b>ANNUAL TARGET</b>	<b>PRIOR YEAR ANNUAL ACTUAL</b>	<b>TARGET Q1</b>	<b>ACTUAL Q1</b>	<b>TARGET Q2</b>	<b>ACTUAL Q2</b>	<b>TARGET Q3</b>	<b>ACTUAL Q3</b>	<b>TARGET Q4</b>	<b>ACTUAL Q4</b>	<b>ANNUAL ACTUAL YEAR TO DATE</b>	<b>EXPLANATIONS FOR DEVIATIONS</b>
Percentage variance on expenditure against budget	-10%	-9%	-10%	-10%	-10%	-12%	-10%	-14%	-10%	-10%	-10%	Target met.
No material findings of fruitless & wasteful expenditure reported on in the final audited financial statements.	No material findings	No findings	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	No material findings	No material findings	No material findings	Target met.
No material findings of irregular expenditure reported on in the final audited financial statements.	No material findings	1 finding - not material	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	No material findings	No material findings	No material findings	Target met.
No material misstatements in AFS submitted to National Treasury at 31 May.	No material misstatements	None	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	None	None	No material misstatements	Target met.
Monitor the levels of B-BBEE suppliers in order to promote transformation in procurement practices.	Quarterly report sent to the dtic	New target	1 report	1 report	1 report	1 report	1 report	1 report	1 report	1 report	1 report	Target met.

**OUTCOME - TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL**
**8. Capacity Development, Retention and Training**

Output budget	R730 824		R174 165		R191 243		R174 171		R191 245		R730 824	
Output expenditure	R626 206		R170 234		R233 650		R82 529		R139 793		R626 206	
OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
Average employee performance evaluation score (see 7 of Definitions and business rules)	3,5	3,7	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	3,5	4.01	4.01	Target met.
Percentage vacancy rate (see 8 of Definitions and business rules)	7%	4%	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	7%	15,00%	15,00%	"Target not met. Appointments to fill the two of the four vacancies were made and incumbents will start 01 May 2022. This will leave two vacancies of the Financial Officer and the Head of Corporate Services.(7%) The Financial Officer and Head of Corporate Services positions are pending the outcome of the organisational structure review and salary benchmarking."



OUTCOME - TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL												
8. Capacity Development, Retention and Training (continued)												
Output budget	R730 824		R174 165		R191 243		R174 171		R191 245		R730 824	
Output expenditure	R626 206		R170 234		R233 650		R82 529		R139 793		R626 206	
OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
Percentage staff turnover (see 9 of Definitions and business rules)	20%	12%	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	20,0%	27,00%	27%	"Target not met. There were six resignations during the financial year. One from the finance division (Financial Officer) and five from case management. Of the five in case management, four were case managers (including one fixed-term contract) who were offered higher positions and one was the Head of Case Management who took a sabbatical. As at 31 March 2022, the positions of Head of Case Management and two case managers were filled. Recruitment for the remaining two case managers has been finalised and the incumbents will start in the new financial year. The Financial Officer and Head of Corporate Services positions are pending the outcome of the organisational structure review and salary benchmarking.

**OUTCOME - TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL**
**8. Capacity Development, Retention and Training (continued)**

Output budget	R730 824		R174 165		R191 243		R174 171		R191 245		R730 824	
Output expenditure	R626 206		R170 234		R233 650		R82 529		R139 793		R626 206	
OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	TARGET	ACTUAL	ANNUAL ACTUAL	EXPLANATIONS FOR DEVIATIONS
			Q1	Q1	Q2	Q2	Q3	Q3	Q4	Q4	YEAR TO DATE	
At a minimum send at least one representative annually to an OECD competition forum and at least one representative to the annual ICN conference	One person per conference/ forum/per year	Not Achieved	N/A	No target set in quarter 1	N/A	No target set in quarter 2	N/A	One person attended the OECD and four attended ICN	One person per forum	4 people attended OECD	5 people attended	Target met.
Facilitate an annual capacity building workshop for case managers and Tribunal members.	1	No target set for the year	N/A	1	N/A	No target set in quarter 2	N/A	No target set in quarter 3	1	Target met in quarter 1	1	Target met. Workshop held in quarter 1
Number of long-term case management interns appointed.	2	2	2	2	0	No target set in quarter 2	0	No target set in quarter 3	0	Target met in quarter 1	2	Target met. 2 interns appointed in quarter 1
4 quarterly reports sent to the dtic on the implementation of the Employment Equity plan	4 quarterly reports sent	New target	1 report	1 report	1 report	1 report	1 report	1 report	1 report	1 report	1 report	Target met.

## DEFINITIONS AND BUSINESS RULES

NOTE	ITEM	EXPLANATION
1	Hearing Date	A business rule has been established where “hearing date” can refer to any one of the following: actual hearing, telephonic hearing, paper hearing (date on which required documents are submitted – currently referred to as “last submission date”)
2	Reasons in prohibited practice cases	In exceptional cases an order may be issued before reasons but in most instances orders and reasons are issued simultaneously and therefore reasons date is taken as the indicator
3	Simple/Complex/Very Complex Matters	Throughout the document we refer to matters as Simple matter, Complex matter or Very Complex matter. Factors that determine the complexity of a matter include but are not limited to length of case, size of the record and complexity of legal argument. The complexity is determined by the Head of Case Management at the beginning of the hearing.
4	Prohibited Practices - 100%	The target is binary in that it is either 0% or 100% for example if one out of one set of reasons is not issued within the timeframe then the target is not achieved. The three-year target is set at 100% as stricter monitoring processes are followed.
5	Procedural matters	While we refer to procedural matters they include interlocutory applications.
6	Percentage expenditure against budget	While this is a new indicator we do have the information to reflect prior performance and therefore determine a target based on prior performance
7	Average employee performance evaluation score	These three targets are measured annually and there is therefore no target set for the first three quarters of the year
8	Percentage vacancy rate	The targets reflected are based on prior period figures as well as an estimation of how many vacancies the Tribunal can accommodate for a short period of time
9	Percentage staff turnover	The targets reflected are based on prior period figures as well as an estimation of what level of turnover the Tribunal can accommodate for a short period of time

## APPENDIX B: ABBREVIATIONS

The Act	Competition Act of 1998 (Act 89 of 1998)
APP	Annual Performance Plan
B-BBEE	Broad-based black economic empowerment
CAC	Competition Appeal Court
CMS	Case management system
COO	Chief Operating Officer
The Commission	The Competition Commission South Africa
COVID-19	Coronavirus disease
<b>the dtic</b>	The Department of Trade, Industry and Competition
ESOP	Employee share ownership programme
HDPs	Historically disadvantaged persons
KPIs	Key performance indicators
KRIs	Key risk indicators
MANCOM	Management Committee
The Minister	The Minister of Trade, Industry and Competition
NDP	National Development Plan
OHS	Occupational Health and Safety
OPCOM	Operations Committee
PFMA	Public Finance Management Act 1 of 1999
SMMEs	Small, medium and micro enterprises
The Tribunal	The Competition Tribunal South Africa



2021/2022 MERGER HIGHLIGHTS

*\*This is not an exhaustive list of mergers approved by the Tribunal during the reporting period. It merely highlights a few examples of mergers approved with public interest conditions.*

At the heart of our work is adjudicating for competitive and inclusive markets, which advances both competition and public interest objectives in the Act. This includes more equitable, diverse and inclusive participation in markets that ultimately offer lower prices, greater product choices and fair access to markets for all South Africans.

The 2019 amendments to the Act revised existing public interest grounds and introduced new public interest grounds which oblige the Tribunal to consider the effect that a merger has on “*the promotion of a greater spread of ownership, in particular to increase the levels of ownership of historically disadvantaged persons and workers in firms in the market*”. We are obliged to consider the ability of small and medium-sized businesses and firms owned or controlled by HDPs to “*effectively enter into, participate in or expand within the market*”.

During the reporting period, we heard 159 matters and issued 140 orders, of which 87 were for mergers. 31 of the mergers were approved with conditions, of which 20 included public interest conditions. Below are a few examples of how public interest considerations were advanced through mergers we adjudicated (greater detail is provided in Part 3 of this report):

EMPLOYEE SHARE OWNERSHIP PROGRAMMES (ESOPS)

The Tribunal approved the **Burger King SA** transaction subject to a package of conditions which involved, among others, an ESOP that would provide an effective 5% share interest to workers in Burger King SA.

The Tribunal approved the **DP World Logistics FZE and Imperial Logistics Limited** merger subject to public interest conditions including the establishment of an ESOP through which employees in South Africa would have an effective 5% interest in Imperial Logistics South Africa Group (Pty) Ltd, a subsidiary of Imperial.

In the **Sinosteel Group Corporation Ltd And Deen Holdings Corporation Ltd** merger, neither of the merging parties had B-BBEE shareholding or an ESOP pre-merger. Addressing how the proposed transaction would promote a greater spread of ownership, the merging parties submitted that Samancor had applied for a mining right. If successful, Samancor would be required to increase its existing levels of ownership by HDPs in respect of the Mineral Right Holding Entity ( MRHE). As a condition to the merger approval, Samancor would allocate shareholding in the MRHE to an ESOP if it was successful in its mining right application.

B-BBEE OWNERSHIP / GREATER SPREAD OF OWNERSHIP

In **Atlantica Sustainable Infrastructure plc And the employees of Abengoa South Africa (Pty) Ltd and the assets of Kaxu CSP O&M Company (Pty) Ltd**, the Tribunal conditionally approved the merger subject to, among others, Atlantica South Africa Operations implementing a B-BBEE ownership transaction, ensuring that a minimum of 8% of its issued share capital is held by black persons who are also employees of Atlantica South Africa Operations.

The Tribunal approved the **Air Products South Africa (Pty) Ltd And Weldamax (Pty) Ltd** merger with conditions relating to the establishment of a fund to enable small businesses and HDPs to enter into, participate in and expand within the market, as well as increasing the HDP or B-BBEE ownership interest in the merged entity.

In **Sun Valley Estate (Pty) Ltd And Ascendis Vet (Pty) Ltd, Ascendis Animal Health (Pty) Ltd, Kyron Laboratories (Pty) Ltd, Kyron Prescriptions (Pty) Ltd**, the Tribunal approved the transaction subject to a Transformation Initiative condition. The acquiring group committed to enter into a B-BBEE transaction with a B-BBEE investment partner post-merger. The B-BBEE transaction would result in the investment partner having a specified percentage of (indirect) shareholding in Sun Valley and the target firms would be black-owned.

The Tribunal approved the transaction involving **TLG Midco (Pty) Ltd And The Logistic Group (Pty) Ltd** subject to conditions relating to the implementation of an empowerment transaction that involved increasing the levels of ownership by HDPs. The HDP transaction involved the acquiring group's commitment to transfer a shareholding of no less than 25% in TLG Acquisition Holdings to one or more HDPs. The merging parties wished to implement a new black economic empowerment structure at the TLG shareholder level, by procuring a black economic empowerment partner as an indirect shareholder of TLG, holding no less than an effective 25% equity interest in TLG.

The conditions in the **Air Liquide Large Industries South Africa (Pty) Ltd (ALLISA) and the Business of Owning and Operating 16 Air Separation Units of Sasol South Africa Ltd** merger involved a commitment by the merging parties to enter into a transaction that would promote a greater spread of ownership by introducing B-BBEE shareholding into ALLISA.

EMPLOYMENT

Conditions imposed on the **Burger King SA** merger included the employment of no less than 1250 HDPs as permanent employees in Burger King SA (in addition to current permanent employees) and increasing the payroll value and employee benefits (in respect of the 1250 employees) by an amount of no less than R120 million within five years from the implementation of the merger.

In the **Net1 Applied Technologies South Africa (Pty) Ltd And Ovobix RF (Pty) Ltd and Luxanio 227 (Pty) Ltd** merger, the merging parties confirmed that the transaction would not result in any retrenchments. There were pre-merger retrenchments at Net1 SA due to operational reasons unrelated to the merger. Considering the current economic climate and South Africa's unemployment rate, the merging parties agreed to a condition for a 24-month period involving retrenched employees being given preference when vacancies become available in the merged entity within certain limitations.

Conditions imposed on the merger involving **Air Liquide Large Industries South Africa (Pty) Ltd (ALLISA) and the Business of Owning and Operating 16 Air Separation Units of Sasol South Africa Ltd** ensured that there would be no merger-related retrenchments for a two-year period, even though the transaction would not negatively impact employment. In addition, ALLISA would spend approximately R20 million to train and upskill employees transferred from Sasol.

In the **Sinosteel Group Corporation Ltd And Deen Holdings Corporation Ltd** merger, the merging parties submitted that the transaction would not lead to any retrenchments. They disclosed historic and contemplated retrenchments at Samancor which they claimed were based on operational requirements. The retrenchments were found not to be merger related. However, considering South Africa's current economic climate and unemployment rate, the parties agreed to a two-year moratorium on merger-specific retrenchments and a two-year “vacancies clause” giving preference to the retrenched employees when vacancies arise.

In **DSV South Africa (Pty) Ltd And Globeflight Worldwide Express SA (Pty) Ltd** the Tribunal imposed conditions reducing the number of retrenchments from 522 employees to 205, saving 317 jobs. DSV would also maintain a database of all retrenched employees who could be informed of any vacancies in the DSV Business for three years after the merger. DSV would also establish a Fund to re-skill or re-train eligible skilled employees who had been retrenched, in accordance with specified principles and conditions including R15 000 for training for each eligible employee.

The **Premier FMCG (Pty) Ltd And Lodestone Brands (Pty) Ltd** transaction raised concerns over anticipated merger-related retrenchments. In terms of the conditions imposed by the Tribunal, the total number of potential retrenchments was limited to six employees. The Tribunal approved the merger subject to the condition, among others, that should vacancies become available due to resignation or natural attrition during the 24-month moratorium period, Premier would endeavour to fill the vacancies from the 19 non-executive employees who would otherwise be retrenched after the 24-month moratorium.

The Tribunal approved the international merger involving **DSV Panalpina A/S And Global Integrated Logistics Business of Agility Public Warehousing Company K.S.C.P** on the condition that the merged entity would not retrench any employees in South Africa as a result of the merger, for a two-year period following the merger implementation date. In light of the moratorium on retrenchments, the transaction was unlikely to have a negative impact on the public interest.

**Sandvik Aktiebolag Plc And DSI Underground Holdings S.A.R.L (DSI-U)** was another international merger wherein the Tribunal imposed employment-related conditions to protect local jobs. The following employment-related conditions were imposed: (i) The merging parties could not retrench any employees in South Africa as a result of the merger, for a period of two years after the merger had been implemented; and (ii) Should the need to retrench employees arise after the moratorium period, the merging parties would, for a further period of 24 months, give preference to any affected employees in relation to any available vacancies.

DEVELOPMENT AND INVESTMENT

The **Burger King SA** transaction included expansion commitments involving an investment of no less than R500 million in capital expenditure and increasing the number of Burger King outlets in South Africa from 90 to at least 150. In addition, as part of commitments relating to South African suppliers, the merged entity would improve compliance with the Enterprise Supplier Development element of the merger parties’ B-BBEE scorecard.

In the **DP World Logistics FZE and Imperial Logistics Limited** merger, Imperial agreed to increase its enterprise and supplier development expenditure in South Africa, its spend on corporate social responsibility initiatives and training and development of black persons and procurement from black persons. Imperial also committed to incur capital expenditure of no less than R2.1 billion in South Africa over four years, ending 30 June 2025.

In **Net1 Applied Technologies South Africa (Pty) Ltd And Ovobix RF (Pty) Ltd and Luxanio 227 (Pty) Ltd**, the merging parties made commitments to supplier and enterprise development initiatives and socio-economic development investments. In terms of the Tribunal's imposed conditions, Net1 Inc would make a combined contribution equivalent to R12 million in Net1 Inc's current financial year, to supplier and enterprise development initiatives, together with socio-economic development investments.

The conditions in the **Air Liquide Large Industries South Africa (Pty) Ltd (ALLISA) and the Business of Owning and Operating 16 Air Separation Units (ASU's) of Sasol South Africa Ltd** merger involved the establishment of a supplier development fund of approximately R100 million aimed at supporting and developing opportunities for SMMEs and firms owned and controlled by HDPs in ALLISA's value chain. The merging parties also committed an additional amount of approximately R100 million to localisation initiatives to drive industrialisation.

In the **Dis-Chem Pharmacies Ltd (Dis-Chem) And Pure Pharmacy Holdings (PPH) (Pty) Ltd** merger, Dis-Chem committed to use reasonable endeavours to procure locally made products from its current and new SMME and HDP suppliers and, if possible, improve its local procurement, including from SMMEs and HDPs. The conditions also required that Dis-Chem develops its South African supplier base and promotes local manufacturing. In addition, Dis-Chem would ensure that it increased its procurement spend on South African HDP controlled businesses to a specified percentage over a cumulative period of five years.

The **NMI Durban South Motors (Pty) Ltd And The Barloworld Motor Retail Business** merger was approved with conditions, among others, that Barloworld SA and NMI ensure that the merged entity continues to participate in the Barloworld Supplier Development Programme for two years after the merger's implementation and that, during this period, the merged entity develops its own Supplier Development Programme which will replace the target firm's participation in Barloworld's Supplier Development Programme. In addition, the merged entity will contribute a minimum percentage of its profit after tax to the Supplier Development Programme, subject to certain criteria.

The conditions imposed on the merger between **ETG Chem FZE LLC and Cure-Chem SA** involved the acquiring group increasing expenditure towards existing public interest initiatives including: (i) enterprise development (assisting HDPs to establish, expand or improve their business); (ii) skills development (providing bursaries to HDPs for tuition); (iii) supplier development (procuring from and providing technical support to existing HDP suppliers); and (iv) socio-economic development (recruiting, placing and training previously unemployed youth on a production technology learnership programme).



# 2021/22 CASE HIGHLIGHTS



competitiontribunal  
SOUTH AFRICA

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