

# INTEGRATED ANNUAL REPORT

2019/20



*competition***tribunal**  
SOUTH AFRICA



## OUR VISION

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

## OUR MISSION

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

## OUR VALUES

In pursuing its legislated mandate the Competition 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 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



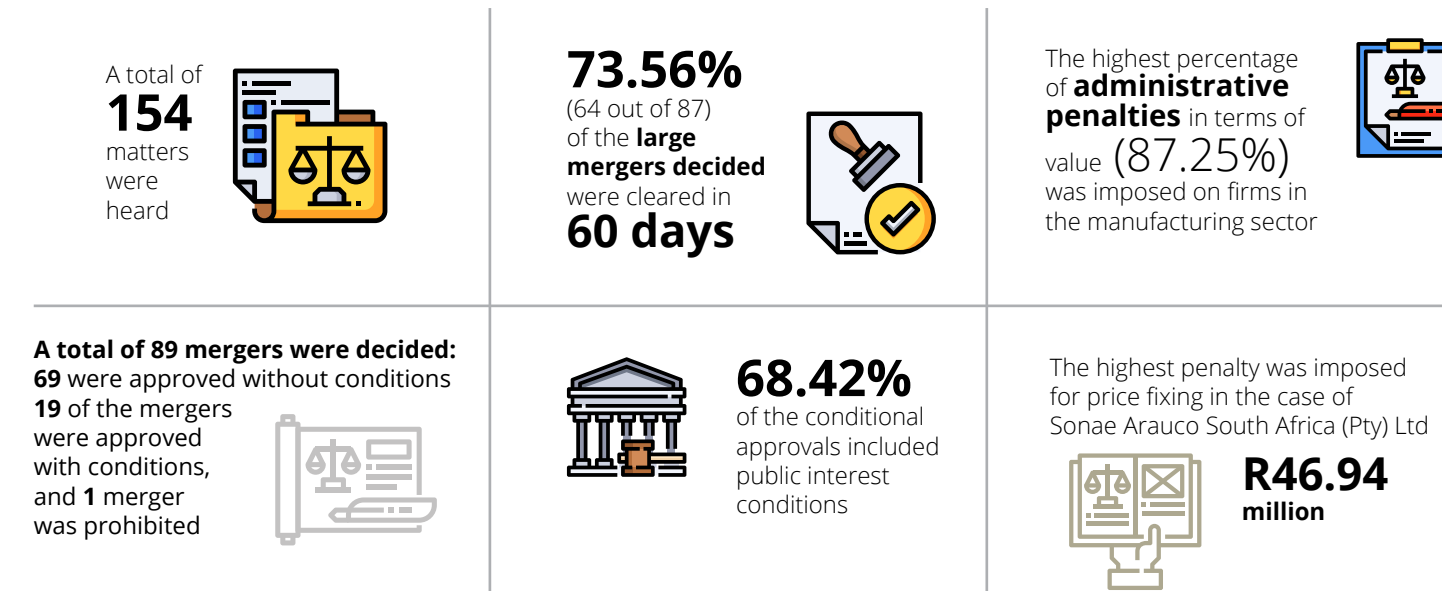
**(g)** detect and address conditions in the market for any particular *goods or services*, or any behaviour within such a market, that tends to impede, restrict or distort competition in connection with the supply or acquisition of those *goods or services* within the Republic.

# Table of CONTENTS

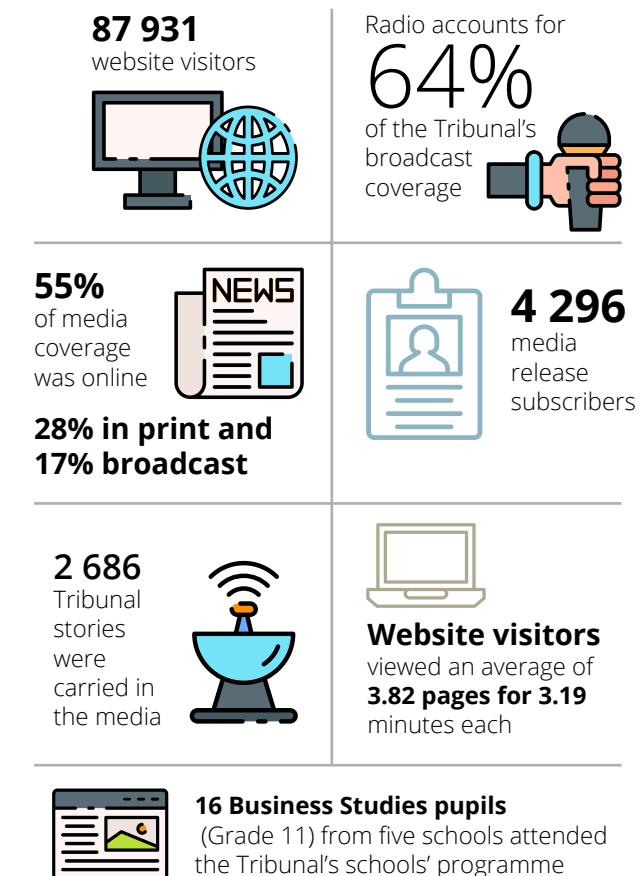
<b>PART 1</b> At a glance	<b>8</b> Statement of responsibility <b>9</b> Boundary and scope	<b>PART 4</b> Governance in the Tribunal	<b>66</b> What oversight structures do we have? <b>67</b> Managing and monitoring ethical behaviour <b>68</b> Preventing fraud <b>70</b> Report of the Risk Committee <b>71</b> Identifying and managing risk <b>73</b> Information Technology and Governance <b>74</b> Report of the Audit Committee <b>76</b> Auditing our work, processes and procedures <b>78</b> Evaluating our oversight structures
<b>PART 2</b> Who we are	<b>18</b> Who we are <b>20</b> Adding value <b>22</b> Tribunal in operation <b>25</b> Our people	<b>PART 5</b> How did we manage our Human and Financial Resources?	<b>82</b> How did we manage our Human Resources? <b>84</b> Managing our budget and Financial Resources <b>84</b> How did we spend the budget? <b>86</b> What does it cost us to meet our strategic goals?
<b>PART 3</b> How did we perform?	<b>26</b> Setting strategic goals and objectives <b>28</b> Priorities for the year <b>29</b> Looking forward <b>30</b> Measuring the adjudicative process <b>49</b> How did we perform against our predetermined adjudication objectives? <b>51</b> Our relationship with stakeholders <b>58</b> How did we perform against our predetermined stakeholder relationship objectives? <b>58</b> Being accountable, transparent and sustainable <b>60</b> Did we achieve our objectives of accountability, transparency and sustainability?	<b>PART 6</b> How did we use our Financial Resources?	<b>89</b> Report of the Auditor-General to Parliament on the Competition Tribunal <b>92</b> Statement of responsibility <b>94</b> Annual Financial Statements
		<b>PART 7</b> Appendix A	<b>131</b> Annual Performance Report

# HIGHLIGHTS FOR 2019/2020

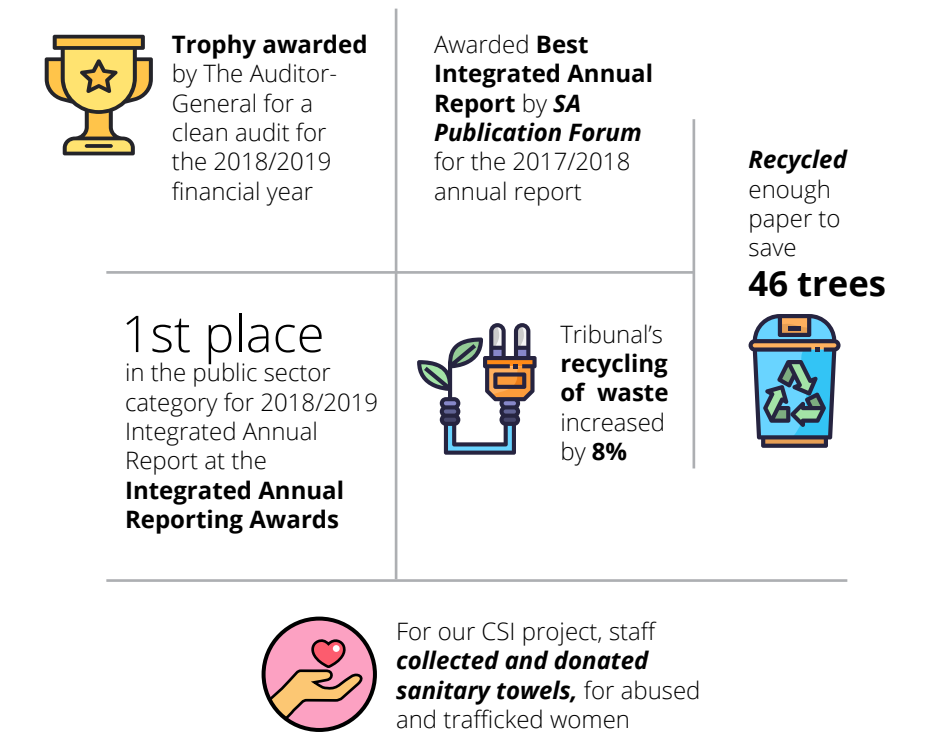
## ADJUDICATIVE EXCELLENCE



## STAKEHOLDER RELATIONSHIPS



## ACCOUNTABLE, TRANSPARENT AND SUSTAINABLE





# STRATEGIC OBJECTIVES

## ADJUDICATIVE EXCELLENCE

The Tribunal heard 154 matters in the period under review of which 89 were mergers. 69 were approved without conditions and 19 of the mergers were approved with conditions, of which 13 included public interest conditions. 1 merger was prohibited.

Cartels remain the most egregious contravention of the Act. Due to their secrecy they are often difficult to detect. In the period under review, we heard 6 cartel cases, compared to 9 in the prior period. This is partly because in cartel cases where a leniency application has been made, respondents opt to settle with the Commission.

The Tribunal heard 27 and confirmed 24 consent orders and settlement agreements; 17 of these being collusion or cartel cases and 3 being abuse of dominance cases.

Interlocutory applications delay the hearing of the cases on the merits. In this period the Tribunal issued orders in 44 interlocutory applications ranging from postponement or extension applications, applications for the discovery of documents or access to confidential information and jurisdictional points.

Abuse of dominance cases are more complex as they involve the balancing of conduct which may be pro-competitive but may be harmful if engaged in by the dominant firm. As such abuse of dominance cases tend to be fewer. In the relevant period, we decided one abuse of dominance case. We also heard two interlocutory applications in respect of two pending abuse cases, one a state owned entity, Passenger Rail Services of South Africa (PRASA) and the other a subsidiary of listed technology company Business Connexion Group (BCX). These are discussed in more detail on page 46.

## STAKEHOLDER RELATIONSHIPS

The Tribunal delivers accurate, objective and timely communication of its decisions and activities in order to promote an awareness of competition law enforcement in South Africa.

A total of 2 686 news stories on Tribunal decisions and activities were carried in the media during the period under review.

Following the outbreak of the COVID-19 pandemic, the public took a keen interest in the record number of excessive pricing complaints reported to the Competition Commission and how these were concluded at the Tribunal.

## TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE

The Tribunal is ultimately accountable to Parliament. We are an efficient organisation, allocating 72.95% and spending 73.97% of expenditure budget on our strategic objectives. The balance of the budget is allocated to administration and capital expenditure.

We are pleased to report that we have stayed within budget for the period under review and recorded a 7.85% surplus (R4.15 million). While we are not a profit-making institution, surpluses assist to offset the variability of filing fees. The Tribunal has received approval from National Treasury and DTIC to sustain deficits from its accumulated surplus over the Medium-Term Expenditure Framework.

The Tribunal's value of transparency is borne out in the strong track record of clean audits and winning awards for its Integrated Annual Report.

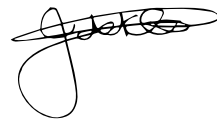


## STATEMENT OF RESPONSIBILITY

The Chair 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 Chair on 30 September 2020.



Mondo Mazwai  
Chair



Janeen de Klerk  
Chief Operating Officer

## BOUNDARY AND SCOPE

This 2019/2020 Integrated Annual Report covers the performance of the Tribunal for the year ending 31 March 2020. In this report we focus particularly on the amendments to the Competition Act which serve to strengthen the competition authorities and equip us to do more in order to create competitive and inclusive markets for all participants in South Africa's economy, i.e. consumers, business, workers, trade unions and the government.

The Tribunal is primarily tasked with adjudicating for competitive markets, as well as advancing certain public interest objectives. This includes more equitable, diverse and inclusive participation in markets that ultimately offer lower prices, greater product choice to customers and consumers and fair access to markets. In essence, giving South Africans an opportunity to participate in the economy is at the heart of the Tribunal's work.

In this Integrated Annual Report we also focus on the Tribunal's three strategic goals which are: adjudicative excellence; stakeholder relationships; and being an accountable, transparent and sustainable entity. We also 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 for that and, where possible, corrective action to be taken.

We also provide an overview of our governance structures and information on how we ensure adherence to effective corporate governance.

Infographics are used in our Integrated Annual Report to make for easier understanding of our work and performance.





# AT A GLANCE

## MINISTER'S FOREWORD

*This Annual Report provides an account of the Competition Tribunal for the past financial year ending March 2020. In the last month of the financial year, the effects of the Covid-19 pandemic began to affect the work of agencies.*

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

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



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

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

During the financial year, the Competition Tribunal went through a smooth transition of leadership. At the end of 2019, Mr Norman Manoim concluded his successful 10-year tenure as the Chairperson of the Tribunal. Ms Mondo Mazwai, formerly a Tribunal member and experienced competition practitioner, as the first female Chairperson of the Tribunal.



This year saw the further evolution of Competition Law, through the promulgation of sections of the Competition Amendment Act 18 of 2018. The amendments are a bold move to strengthen the competition authorities in a number of ways to deal with, inter alia, certain public interest objectives including the promotion of worker ownership. These amendments represent a landmark in our Competition Law.

On 19 March 2020, I issued Regulations prohibiting dominant firms from charging excessive prices for specified goods and services necessary to prevent the spread of Covid-19. I can now report that the Tribunal made provision for complaint referrals to be heard remotely during the national lockdown. The highest profile case was the successful prosecution of Dis-Chem, which was fined R1,2 million for excessive pricing, having raised the price of its face masks by as much as 261% at the onset of the pandemic.

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

*This year saw the further evolution of Competition Law, through the promulgation of sections of the Competition Amendment Act 18 of 2018.*

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

To repair the damage of Covid-19 and reconstruct the economy to create more jobs, bring more young people into entrepreneurship and increase economic inclusion, we need to think boldly and implement smartly.

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

Every agency of the dtic can play its role in ensuring a steady recovery from the pandemic, and to continue execution of the re-imagined industrial strategy, outlined by President Ramaphosa at the start of this administration. In the case of the Tribunal, it contributes greatly through the strength of the institution and the quality of decisions that give effect to the transformative vision of the South African Constitution and the Competition Amendment Act.

Covid-19 has been a dark cloud over the South African economy and it has exposed the fault-lines upon which inequality sits. As we rebuild our economy, I urge all institutions within the dtic to address these faults in the interests of delivering on the promise of an inclusive economy that will create prosperity for all.

I wish to thank Chairperson Mondo Mazwai for her work and contribution to the evolution of South Africa's competition jurisprudence, together with the eminent Panel of Tribunal members (drawing on a wide talent pool of South Africans) and the staff of the institution. I thank Norman Manoim who served the Tribunal with dedication and distinction for so many years.



Ebrahim Patel  
Minister of Trade, Industry and Competition.



# CHAIRPERSON'S REPORT

*It is a pleasure to present my first Integrated Annual Report as the Chair of the Tribunal. At the end of July 2019, we bid farewell to the outgoing Chair, Norman Manoim. I take this opportunity to thank him for his leadership and enormous contribution to the development of competition jurisprudence over his 20-year career at the Tribunal. Also, I thank the management team for ensuring a smooth transition and delivering on our strategic goals.*

This year South Africa celebrated 20 years of progressive competition regulation. This coincided neatly with the amendments to the Competition Act, which came into force in July 2019. The amendments ushered in new provisions to strengthen the competition authorities in addressing persistently high levels of economic concentration, so as to open up access to markets for small businesses to participate equitably in the economy.

The mandate of the Tribunal is the enforcement of competition for fair and inclusive markets. In total we issued orders in 89 mergers, 7 prohibited practices and 24 consent orders, as well as 44 interlocutory matters.

I highlight examples of cases that have either created jurisprudence or were of public interest.

*I am pleased to report that the Tribunal has published a handbook of 20 years of jurisprudence as a guide to competition practitioners and South African business.*



The first matter is a case where the Naspers Group, a South African multi-national company sought to acquire a local car buying business, WeBuyCars. This was the first matter heard by the Tribunal that involved such a high level of online markets where access to user data was an important element of competition.

Nasper's subsidiary, OLX, is a major participant in the online horizontal classified advertising platform and has more private vehicle listings than other platforms locally. The merger would combine Naspers' complementary online classified advertising business OLX, and its online used car trader AutoTrader, with WeBuyCars, the largest car buying service in South Africa. Significantly, the Tribunal considered evidence that prior to the merger, Naspers intended to enter the market through its recently acquired Berlin based car buying service, FCG which was poised to enter the South African market in competition with WeBuyCars. We prohibited the merger on grounds that it would remove FCG's entry as a potential competitor to WeBuyCars. Furthermore, the merger raised portfolio effects in that the leads generated on OLX's online advertising platform combined with data collected through AutoTrader would provide crucial data to WeBuyCars thereby entrenching its dominance and raising barriers for new entrants.

The second matter is a case where Simba, a local subsidiary of US multi-national PepsiCo, acquired Pioneer, a local manufacturer of food and beverages including brands such as Weetbix, Ceres and Liquifruit. The merger raised no competition concerns but generated public interest issues. The Minister responsible for Trade, Industry and Competition intervened in the proceedings raising concerns that the workers' participation in the equity of Pioneer may be diluted. The Minister and the merging parties resolved the public interest dispute amongst themselves by agreeing to a set of conditions to the merger. The Tribunal during the hearing sought clarity and raised various questions about the public interest conditions, which ultimately enhanced the agreed conditions, and we were satisfied that they complied with the Act. Without the amendment to the Act, this public interest concern could not have been considered. This was 1 of 19 conditional approvals in the year, 13 of which were public interest related.

Cartels remain the most egregious contravention of the Act. We heard six cartel cases in the current reporting period, and all were dismissed for various reasons. We discuss these cases on page 47 - 48 of this report.

Abuse of dominance cases are more complex, as they involve the balancing of conduct which may be pro-competitive but harmful if engaged in by a dominant

firm. As such abuse of dominance cases tend to be fewer. In the relevant period the Tribunal decided on an abuse of dominance case against Uniplate and found that Uniplate had abused its dominance through long-term exclusive supply agreements with its customers. The Tribunal also heard two interlocutory applications in respect of two pending abuse cases, PRASA and BCX. The Tribunal dismissed an interim relief application by Africa People Mover whereby the privately-owned commercial bus company sought to retain its access to the Johannesburg Park Station. The Tribunal granted Vexall interim relief against BCX in a dispute over a computer program known as Unisolve which is used by pharmacies nationally to dispense medicine. These are discussed on page 46 of this report.

In commemorating 20 years of adjudicating for inclusive markets, the Tribunal has published a handbook of jurisprudence as a guide to competition practitioners and South African business. I thank my colleague Yasmin Carrim for championing this publication. It covers 20 years of rulings and pertinent issues that frequently arise in our proceedings. It should serve as a useful and instructive guide to parties coming before the Tribunal.

In March, South Africa was gripped by the COVID-19 pandemic. As consumers scrambled to buy protective equipment and essential items, they were confronted by instances of suppliers of essential goods necessary for combating the corona virus, taking advantage of the crisis by hiking prices. These were reported to the Competition Commission, investigated and referred to the Tribunal. Notwithstanding the challenges of working under lockdown, we heard and decided the matters expeditiously via virtual hearings.

The flurry of activity around these excessive pricing cases placed a lot of pressure on our systems. I thank the Tribunal members and staff for rising to the call of duty to deliver on the promise of adjudicating for fair markets. It is a privilege to lead this team and to serve the people of South Africa.

*M. Mazwai*

Mondo Mazwai  
Chairperson

30 September 2020



# CHIEF OPERATING OFFICER'S REPORT

The 2019/2020 report represents the Tribunal's seventh Integrated Annual Report. We were exceptionally pleased to have received first prize for the 2018/2019 Integrated Annual Report at the annual CSSA/JSE Integrated Reporting Awards function in November 2019.

The journey we embarked on seven years ago to fully embrace the concept of integrated reporting has been challenging but it has forced us to critically evaluate our operations to determine how successful we have been in achieving our stated objectives and delivering on our mandate. We have used this method of reporting to illustrate how and where the Tribunal adds value. Successes have been highlighted and corrective action for under-achievement has been addressed. The report provides a detailed analysis of the Tribunal's work during the 2019/2020 period, and we provide some forward looking focus, particularly with regard to our main objective – adjudicative excellence.

We have found that an Integrated Annual Report that includes detailed narratives is less interesting for the reader and we have therefore continued to use infographics in an innovative way to support the narration and therefore create a more user friendly report.

The basic structure of the report has remained consistent over a number of years as we found it provides a logical and holistic picture for the reader.

2019/2020 has been a year of changes in the Tribunal and in Part 1 the Minister and the Tribunal Chairperson refer to the changes in leadership, the amendments to the Act and the impact of COVID-19 on the Tribunal during the year under review. In Part 2 we provide the reader with an explanation of who the Tribunal is, what our role is and who comprises the Tribunal.



Part 3 is, in essence, a detailed description of the Tribunal's engine room. We highlight the strategic objectives set by the Tribunal over the five year planning period and cascade these down into annual priorities. We provide a glimpse into future focus areas for the Tribunal and, in particular, the impact of the current COVID-19 pandemic on the Tribunal's activities and budget.

Each strategic objective is addressed in detail. With regard to our core business, we highlight statistics related to the type and number of matters heard as well as matters where orders and reasons were issued. In addition, we provide a detailed narrative on particularly interesting cases considered by the Tribunal and any remedies or penalties imposed. We also look at our relationship with stakeholders, who they are and how and what we communicate. Much of our stakeholder communication relates to decisions made by the Tribunal and the reasons for these decisions and we provide substantial detail with regard to media coverage. We provide an overview of achievement against the targets set for our third objective – being a transparent, accountable and sustainable entity.

For each of the three objectives addressed in Part 3, we address achievement of the target i.e. whether we exceeded, met or failed to achieve the predetermined target. We provide explanations for both under and over performance and where there has been under performance corrective action is addressed.

In Part 4 we address compliance, ethical behaviour and fraud and risk management. We provide answers to various questions: who are we accountable to, how do we govern ourselves internally, what governance structures are in place, what is their role with regard to 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 National Treasury.

It is pleasing to note that the Tribunal has once again achieved a clean audit, the third in a row. As the audit performed by the Auditor-General relates to financial and non-financial operations, it is indeed testimony to effective governance in financial and performance reporting. This is the result of the hard work of all in the Tribunal and I thank the Divisional Heads for managing their divisions effectively and for the support given to me by them as part of the OPCOM.

Thanks must also go to the Tribunal Chairperson and MANCOM for their leadership and guidance during the year. We hope the reader finds the report interesting and gains useful insight into the Tribunal's operations.

I retire from the Tribunal after 20 years. It has been an honour and a privilege to serve my country at this fine institution. I wish my colleagues all of the best, and leave comforted that the value of excellence is well entrenched in the Tribunal.

Janeen de Klerk  
Chief Operating Officer  
30 September 2020



# WHO WE ARE

The Tribunal adjudicates for competitive and inclusive markets, with a view to fair and inclusive economic participation for all South Africans.

Historically the economy was highly concentrated, built on enforced exclusion and dominated by monopolies.

After 1994, it was clear that the old system needed to be changed for a proper functioning economy and to redress past inequality and access to the national economy by small businesses and firms owned by previously disadvantaged persons.

The democratic government established a new framework of competition regulation in 1998, the Competition Act, No. 89 of 1998 (the Act), to regulate competition amongst companies, to ensure full and free participation in the economy by all South Africans as well as optimal prices and choices for consumers.

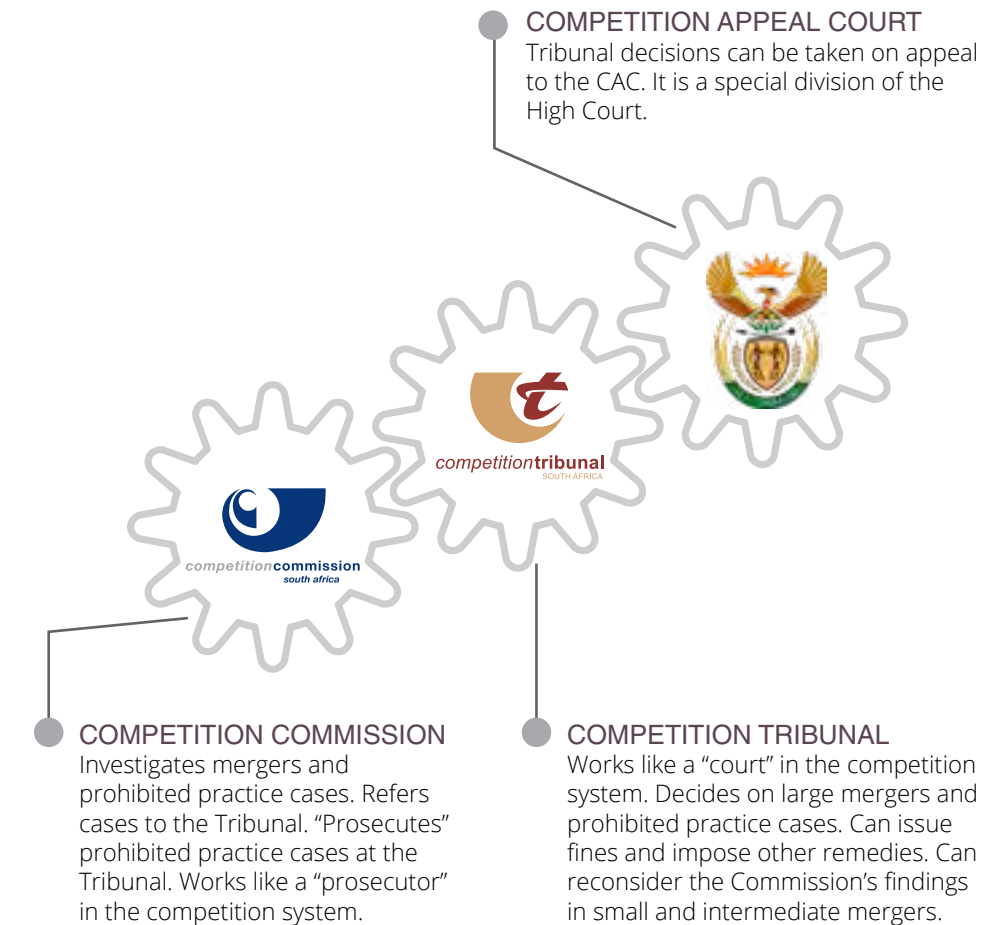
The Act provides for three independent institutions, namely: the Competition Commission, the Competition Tribunal and the Competition Appeal Court.

The Tribunal, an independent adjudicative body, derives its mandate from the Competition Act and has jurisdiction throughout South Africa. The Competition Act provides for the Tribunal to regulate two broad areas of competition - mergers and acquisitions on the one hand and prohibited practices on the other. Prohibited practices fall within two categories: cartel conduct or collusion and the abuse of a dominant position.

The most recent amendments to the Competition Act in 2019 empower us to play a significant and more robust role in tackling the persistently high levels of concentration in the economy. The most notable amendments are public interest issues to promote inclusivity in the economy, while merger provisions have been amended to include a consideration of creeping mergers, cross-shareholdings by the merging firms and ownership by historically disadvantaged individuals and workers.

Abuse of dominance provisions have been strengthened with a "buyer power provision" to, inter alia, prohibit a dominant firm from charging unfair prices or imposing unfair trading conditions on small and medium businesses or firms controlled by historically disadvantaged persons.

Our role as the Tribunal is to interpret the law in a clear, consistent and predictable way and to balance the interest of various stakeholders so as to encourage investment and enable small businesses to participate in the economy, as well as to promote ownership by previously disadvantaged persons.



## PART 2





# ADDING VALUE

In executing its mandate the Tribunal strives to meet the following objectives:



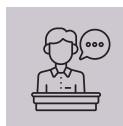
## Predictability

We strive to offer legal certainty in the adjudicative process and in the substance of the decisions we issue.



## Due process

In pursuit of administrative justice, fairness, accuracy and completeness the Tribunal strives to hear all sides to disputes brought before it, even when these values may lengthen the adjudicative process.



## Confidentiality

The Act allows parties to file confidentiality claims over information they submit. The Tribunal has developed practices to protect confidentiality including holding certain sessions during public hearings in camera in order to respect the confidentiality of a firm's information or evidence.



## Independence

In terms of our adjudicative function we remain independent of the Competition Commission and the State. Hearing panels consist of three Tribunal members.



## Flexibility

In the interest of justice, the Tribunal upholds flexibility over rigid legal precedents where circumstances warrant this approach.



## Transparency

As enjoined by the Act, the Tribunal promotes transparency and accessibility through various means such as: opening our hearings to the media and the public; issuing written reasons for decisions and accounting to Parliament annually on our performance.



## Detachment

The Tribunal ensures that no panel members adjudicate on cases they may have a conflict of interest in. This takes place through a declaration of no conflict which the panel members sign before each hearing and allowing objections to be raised by stakeholders on the composition of a panel.



## Accountability

Administratively the Tribunal reports to the DTIC and is accountable to Parliament through annual briefings and ad hoc parliamentary requests.



## Efficiency

The Tribunal invests in processes and systems aimed at improving its efficiency. These include technology that has improved our data analysis, modern adjudication techniques that improve the quality of our decisions and additional human resources to better service our stakeholders' needs.



## Expertise

Each Tribunal panel consists of three members. The Tribunal members are either economists or lawyers with varied industry, academic and professional experience. The majority of the Tribunal members serve in a part-time capacity which enables them to bring their external and on-going experience to bear on current Tribunal matters. The Tribunal currently has four full-time members (including the Chairperson and Deputy-Chairperson) and six part-time members.

## 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 businesses or firms controlled or owned by historically disadvantaged individuals to become competitive, worker participation in firms, the impact of mergers on 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 matters where there are disputes, contraventions or mergers, 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 and 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 would consider, among other things, if the practice discouraged innovation.

# TRIBUNAL IN OPERATION

The Tribunal comprises ten members who are appointed by the President, on the recommendation of the DTIC Minister, for five-year terms. These members hear cases, rule on them and issue written reasons. For most matters a quorum requires three members.

The current full-time members are: Ms Mondo Mazwai (Chair), Mr Enver Daniels (Deputy Chair), Ms Yasmin Carrim and Mr Andreas Wessels. The Tribunal has six part-time members as listed below.

Given the legal and economic considerations required in competition law, it is imperative that the panel has the requisite skills. The current pool of members comprises six lawyers and four economists.

In terms of the Act, Tribunal members must be South African citizens and must represent a cross section of our population.



**Full Time Member**  
**Mondo Mazwai**

**Appointed** 01 Jan 2013

**07** Number of years at the Tribunal

**Appointed Chair on 1 August 2019**  
**Lawyer**



**Full Time Member**  
**Yasmin Carrim**

**Appointed** 01 Aug 2004

**15** Number of years at the Tribunal

**Lawyer**



**Full Time Member**  
**Norman Manoim**

**Appointed** 01 Aug 1999

**20** Number of years at the Tribunal

**Completed two terms as Chair on 31 July 2019**  
**Lawyer**



**Full Time Member**  
**Enver Daniels**

**Appointed** 01 Jan 2017

**03** Number of years at the Tribunal

**Deputy Chair**  
**Lawyer**



**Full Time Member**  
**Andreas Wessels**

**Appointed** 01 Aug 2009

**10** Number of years at the Tribunal

**Economist**



**Part Time Member**  
**Medi Mokoena**

**Appointed** 01 Aug 2004

**15** Number of years at the Tribunal

**Completed third term on 31 July 2019**  
**Lawyer**



**Part Time Member**  
**Andiswa Ndoni**

**Appointed** 01 Aug 2009

**10** Number of years at the Tribunal

**Lawyer**



**Part Time Member**  
**Dr Thando Vilakazi**

**Appointed** 01 Aug 2019

**00** Number of years at the Tribunal

**Economist**



**Part Time Member**  
**Anton Roskam**

**Appointed** 01 Jan 2013

**07** Number of years at the Tribunal

**Lawyer**



**Part Time Member**  
**Prof. Imraan Valodia**

**Appointed** 01 Jan 2013

**07** Number of years at the Tribunal

**Economist**



**Part Time Member**  
**Prof. Fiona Tregenna**

**Appointed** 01 Aug 2014

**06** Number of years at the Tribunal

**Economist**



**Part Time Member**  
**Halton Cheadle**

**Appointed** 01 Jan 2017

**03** Number of years at the Tribunal

**Lawyer**



Tribunal staff is referred to as the Secretariat which is headed by the Chief Operating Officer (COO).

The Secretariat comprises four divisions: Case Management; Finance; Registry; and Corporate Services.

The 4 Divisional Heads and the COO constitute the Operations Committee (OPCOM) which assists the Chair in her role as the Accounting Authority. The OPCOM has oversight responsibilities for all operational functions and is required to ensure good governance.

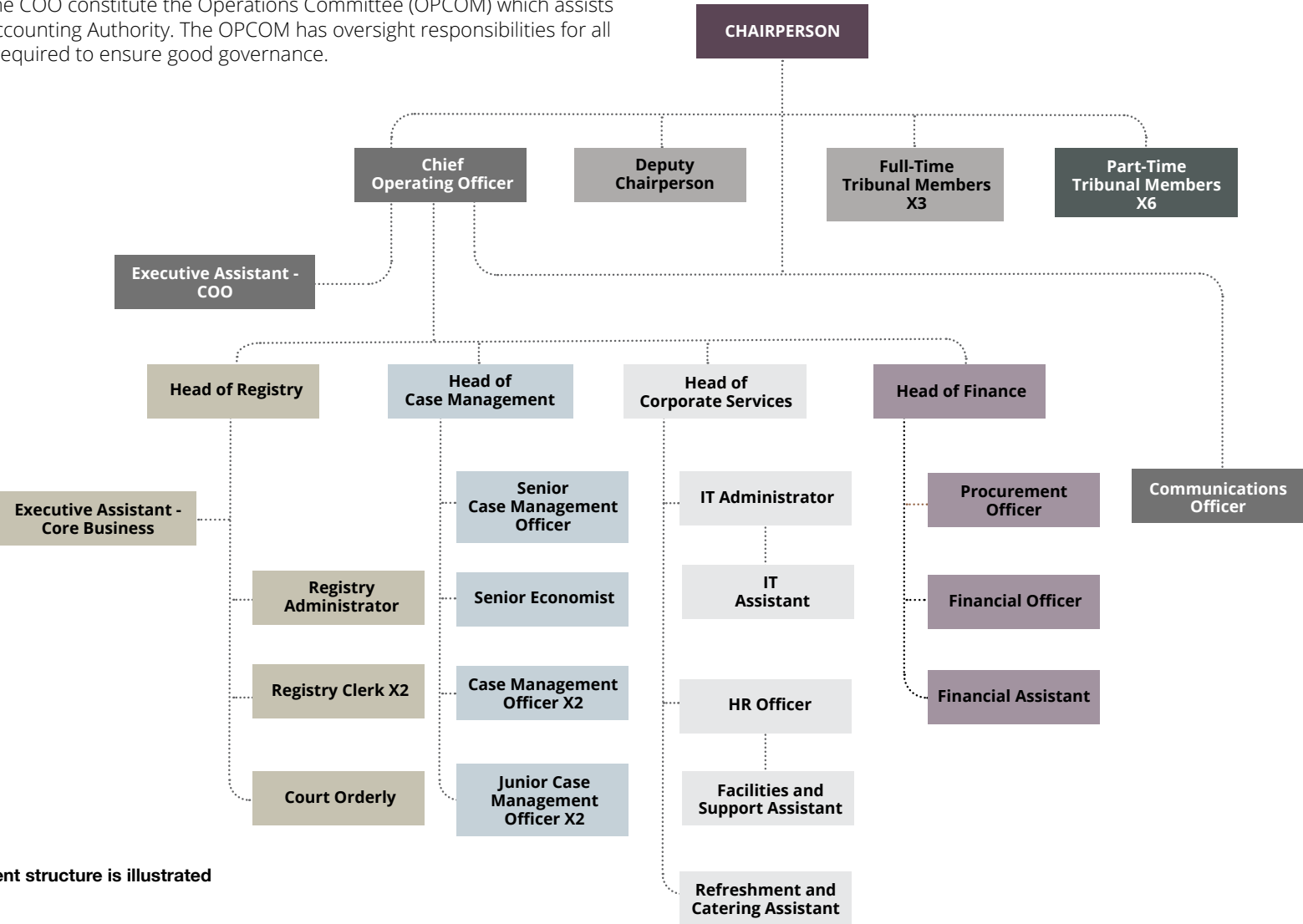
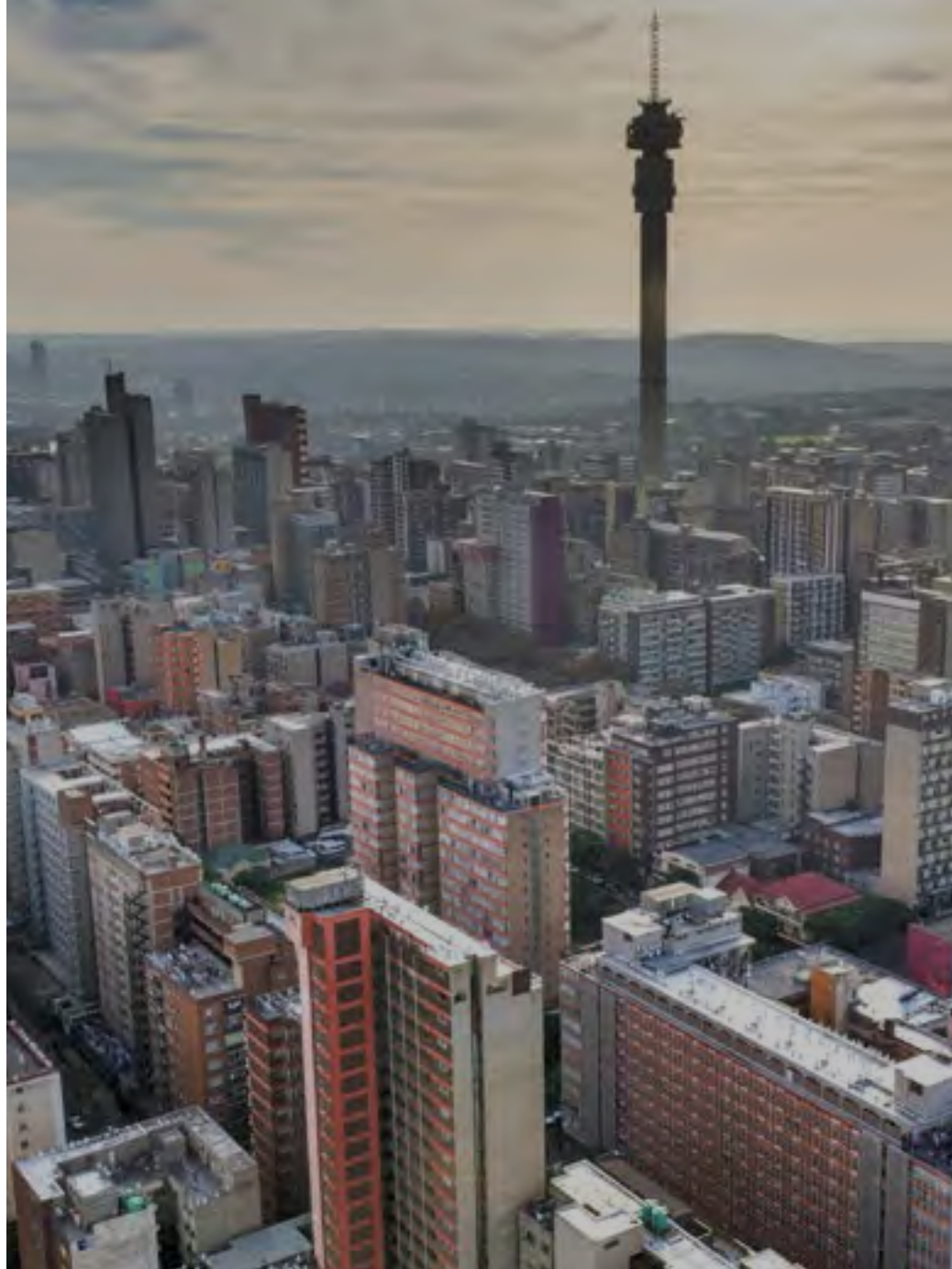


Diagram 1: The Tribunal's current structure is illustrated

# OUR PEOPLE







# HOW DID WE PERFORM?

## SETTING STRATEGIC GOALS AND OBJECTIVES

The Tribunal has three strategic goals. Each goal includes objectives which have key performance indicators (KPIs) and targets assigned to it. Our performance is measured against these targets.

The Tribunal has set and consistently achieved high KPIs relating to the adjudicative process and stakeholder relationships over the five-year strategic period. We reassess targets annually and, where relevant, adjust them based on a three-year average baseline performance.

Targets are not set at 100% as we cannot always attribute partial or no achievement of our KPIs to the Tribunal. Not fully achieving the KPIs or set targets may 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 the prioritising of certain matters based on relative urgency or importance.

The Tribunal budget is allocated according to each strategic goal and we are therefore able to report expenditure against each goal and determine the direct cost of our core function, being adjudication.

We provide a detailed narrative of performance against the 26 targets set for the period under review in this section and have summarised financial and non-financial performance in Diagram 2.

15 Targets relate to our core business and businesses processes, 4 to stakeholder awareness and 7 to operational effectiveness.

*The Tribunal has set and consistently achieved high KPIs relating to the adjudicative process and stakeholder relationships over the five-year strategic period.*



PART  
3



# PRIORITIES FOR THE YEAR

The 5-year strategic plan is cascaded down into an annual performance plan (APP) that sets out what the Tribunal intends doing in the upcoming financial year.

The Tribunal's budget is allocated according to each of the three strategic goals. We are therefore able to annually report expenditure against each goal and determine the direct cost of our core function: adjudication.

The three strategic goals reflect our priorities year-on-year. The first (effective and efficient adjudication) is our raison d'être. This goal requires us to set matters down for hearings and issue orders and reasons within adopted delivery timeframes. In the period under review 15 of the 26 KPIs and targets are aligned to this goal and 54.12% of the budget is allocated to it.

During the current reporting period, we have issued 100% of orders within the required time frames. We have improved our performance in relation to setting

down mergers for a hearing within the required ten business days. We discuss this in more detail later in the report.

The second priority is stakeholder awareness. We believe that raising awareness of our competition activities and decisions contributes towards maintaining and improving judicial certainty and compliance with competition law. 2.35% of the budget was allocated to this goal in the period under review. A dedicated Communication Officer is tasked with fulfilling this function and achieving the targets assigned to four of the 26 KPIs aligned to this goal.

The final priority – being an accountable, transparent and sustainable entity accounted for 16.47% of the budget and the remaining seven targets in the period under review. We therefore allocated 72.94% of our expenditure budget towards our strategic objectives.

We provide a detailed narrative of performance against the 26 targets set for the period under review in the section that follows.

We have summarised financial and non-financial information in the diagram below while a detailed performance matrix is attached as Appendix A to this Integrated Annual Report.

Strategic orientated outcome goal	Goal statement	Budget allocated	Budget spent	Number of indicators	Number achieved or exceeded	Number partially achieved	Number that could not be measured
Adjudicative excellence	To ensure effective and efficient adjudication on matters brought before the Tribunal	R33 366 795.00	R26 803 458.75	15	6	8	1
Stakeholder relationships	To build and develop effective stakeholder relationships	R1 449 561.68	R1 260 394.59	4	3	1	0
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.	R10 155 846.24	R8 515 014.60	7	7	0	0
Other expenses		R16 683 869.08	R12 878 247.34				
TOTAL		R61 656 072.00	R49 457 115.28	26	16	9	1

Diagram 2: Strategic focus areas and performance this financial year

# LOOKING FORWARD

We expect 2020/2021 to be busy for the Tribunal on three accounts. Firstly, the July 2019 amendments to the Competition Act will require the interpretation of new law; secondly, we expect continued activity in excessive pricing complaints and finally we anticipate merger and acquisition activity as the economy restructures from the effects of COVID-19.



The 2019 amendments have allowed the Commission to conduct inquiries into markets that exhibit oligopolistic outcomes, even if no fault is attributable to any particular firm. Such conditions can be found in markets with few participants and significant barriers to entry. In this regard, we anticipate activity in relation to market inquiries completed by the Competition Commission, such as the Data Services Market Inquiry.

We also expect activity in relation to the new buyer provisions contained in the amendments to the Act as powerful buyers may seek to shift the economic hardship resulting from the pandemic, to smaller suppliers. The buyer power amendments seek to prevent a dominant firm from imposing unfair prices and trading conditions on small businesses and firms controlled by historically disadvantaged persons.

Further, we anticipate protracted proceedings with new challenges to the amendments where little or no precedent exists. We remain ready and prepared to interpret the law in a manner consistent with adjudicating for competitive and inclusive markets to ultimately grow the economy and participation in it.

Excessive pricing cases commenced at the tail end of the financial year with the Commission referring such matters in the context of the COVID-19 pandemic. Given the tremendous risk to human life, the Tribunal galvanised its resources to prioritise and expedite matters relating to the pandemic, which included holding its first hearing via video conference.

As at 30 September, we had issued 24 consent orders or settlement agreements against firms that had charged excessive prices for face masks, sanitisers, gloves and other essential products necessary to reduce the spread of the virus. Dis-Chem and Babelegi contested the claim by the Commission that they had charged excessive prices for face masks during the COVID-19 health crisis. Following virtual hearings, the Tribunal found both Dis-Chem and Babelegi guilty.

The Tribunal also confirmed a consent order against Food Lover's Market for charging excessive prices for ginger, considered an essential food item under the Regulations published by the Minister.

Further, we expect the economic effects of the COVID-19 pandemic to continue to have an impact on our work. In this environment it will be even more important for the competition authorities to ensure that mergers do not in the medium-to-longer term substantially prevent or lessen competition in the relevant markets.

Digital markets are increasingly receiving the attention of competition authorities worldwide. In the aftermath of the COVID-19 pandemic, as more and more business is conducted online, it will be critical, especially for SMMEs to have fairly priced and high-quality access to the internet.

It would be remiss to not mention the impact of COVID-19 on our resources. We have had an 11.3% reduction in the 2020/2021 grant from the DTIC (from R37.4 million to R33.1 million). Further to this, we have budgeted for 51.3% less revenue in filing fees as a result of reduced merger activity. We therefore anticipate a 24.7% reduction in total revenue.

In response to the revenue reduction we have revised our budget to achieve a significant 22.7% expenditure cut. We have reduced benefits to staff, set aside the filling of all but critical vacancies, deferred capital expenditure and are negotiating rental relief. These measures are only sustainable in the short-term.

The net effect of these revisions is a 7.6% (R5.8 million) revenue deficit. We are cognisant of the tremendous pressure on the national fiscus and have made provision to fund this deficit from our prior years' surpluses. These surpluses have been accumulated over a number of years through judicious management of resources, and are held with the approval of National Treasury to mitigate the variable nature of our revenues.



# MEASURING THE ADJUDICATIVE PROCESS

The core function of the Tribunal is to adjudicate matters brought before it by the Competition Commission.

With large mergers, the Commission conducts an investigation before making a recommendation to the Tribunal. The Tribunal then hears the matter and makes a decision, and publishes written reasons.

With small and intermediate mergers the Competition Commission is mandated to investigate and make decisions. Merging parties may apply to the Competition Tribunal to reconsider the Competition Commission's decision to prohibit or conditionally approve a small or intermediate merger.

We are able to monitor progress through our electronic case management system (CMS). Our system and reporting tools that have been developed in-house allow us to mine data sets in relation to our work, providing accurate performance metrics and useful statistics in relation to the adjudicative process.

We are, for example, able to measure our efficiency in setting down matters and issuing decisions within the required timeframes. We are also able to make comparative analysis of our performance against various benchmarks. During the current reporting period, we have issued 100% of orders within the required timeframes. This is an improvement on the 96.97% achieved in the previous financial year. In addition, we have also improved our performance in relation to setting down mergers for a hearing within the required ten business days. Here the figure has increased to 88.00%, up from 67.33% in the previous reporting period.

The merger clearance period is a performance measure which enables us to determine how efficient the competition authorities are in assessing and deciding large mergers. It measures the time period between when a large merger is notified to the Commission and when the Tribunal issues an order. The Act stipulates that this period should be 60 business days (40 business days for the Commission to investigate; ten business days for the Tribunal to hear the matter; and a further ten business days for the Tribunal to issue an order). The Commission can however request the extension of its investigation period in the case of large mergers.

However, the above time frames do not differentiate between complex and non-complex large mergers. Non-complex matters (referred to as Phase 1 and Phase 2 merger investigations by the Commission) take less time to be investigated by the Commission and adjudicated by the Tribunal. However, the complex matters (so-called Phase 3 merger investigations) generally require a longer investigation period by the Commission and the Tribunal's adjudication process may also take more time, depending on the complexity of the matter and other case-specific issues. The latter also applies to the consideration of small and intermediate mergers by the Tribunal since these tend to be complex in nature and they have either been prohibited by the Commission or approved conditionally.

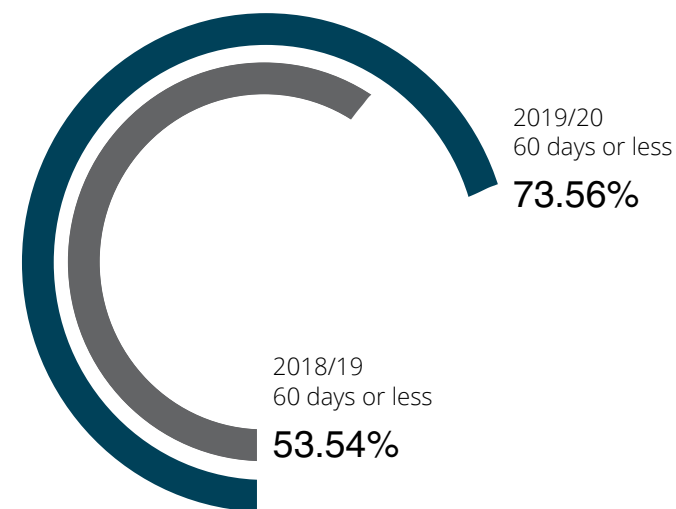
The number of matters heard and decided, as well as the number of reasons issued over the past two financial years are illustrated below.

YEAR	2019/2020	2018/2019	2019/2020	2018/2019	2019/2020	2018/2019
Case Type	Number heard		Orders issued		Reasons issued	
Large merger	86	101	87	99	87	96
Small/Intermediate Merger considerations	1	4	2	3	4	2
Complaints from the Commission	9	18	7	5	7	5
Consent Orders/ Settlement Agreements	27	45	24	48	0	0
Complaints from Complainant/ High Court	0	0	0	0	0	0
Interim relief	3	1	3	0	2	0
Interlocutory/Procedural matters	28	46	44	32	*28	12
Total	154	215	167	187	128	115
* Not all procedural / interlocutory matters require reasons to be issued.						

Diagram 3: Matters heard and decided over two years



Taking all large mergers into account, the graph below illustrates the merger clearance period over the current and prior financial year. 73.56% (64 out of 87) of the large mergers decided were cleared in 60 business days as compared to 53.54% (53 out of 99) in the prior year.



**Diagram 4: Merger clearance period**

Furthermore, it should be noted that in the vast majority of cases where the Commission's investigation period for large mergers is extended, the Commission and the merger parties agree on this. A small number of requests by the Commission for an extension of its investigation period in the case of large mergers tend to be opposed by the merger parties and these matters are decided by the Tribunal.

However, we are able to provide explanations for any delays in adjudication on the Tribunal's part.

There have, however, been delays in the setting down and hearing of some large mergers, sometimes at the request of the merger parties due to their or their counsel's availability.

**As indicated, extensions of the Commission's investigation period lead to extensions in the adjudicative process and are requested by the Commission for various reasons which include but are not limited to:**

- more time being required to investigate the effects of the proposed merger on either competition or public interest;
- information requested by the Commission from competitors or customers;
- outstanding information requests from the merger parties; and
- the testing of tendered remedies in the market with customers and competitors.

#### **Mergers – an overview**

The amendments to the Competition Act have introduced additional powers for the competition authorities. The amendments seek to address the high levels of concentration which characterise the South African economy 20 years since the Competition Act came into force. Access to markets by SMMEs remains a challenge partly due to structural barriers to entry which are historical.

The amendments also seek to address the lack of diversity and spread in the ownership of the South African economy. The reason for this is cited in the DTIC Minister's December 2018 explanatory memorandum to the Competition Amendment Bill tabled before Parliament in which he states: *"Concentrated markets ... inhibit new entrants and ... exclude large numbers of black South Africans from the opportunity to run successful enterprises [and] are not a strong basis for sustained growth."*

Accordingly, the amendments seek to promote inclusivity and broader participation in the economy. To this end, the amendments empower the Tribunal to enquire into the interests of SMMEs and workers, in particular historically disadvantaged persons. This requires us, for example, to take into account worker ownership in businesses when assessing mergers. Traditionally, the Tribunal has considered employment as a public interest consideration. The amendments have now enhanced the public interest considerations.

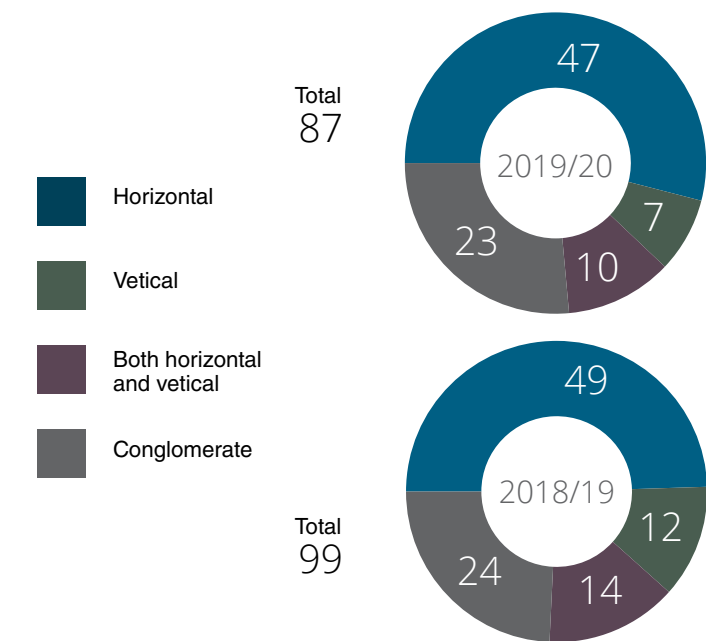
The amendments seek to ensure that workers are also able to participate in the equity of the firms where they are employed. This speaks directly to the diversity and spread in the ownership of the economy. Therefore, when assessing mergers, the Tribunal can consider employee participation in the business.

This, in turn, promotes broader participation and inclusivity in the economy. To this end, the amendments empower the Tribunal to consider small businesses and workers, in particular historically disadvantaged persons and communities in its decisions.

Mergers are a normal occurrence in an economy and have the ability to alter the structure of markets. The Tribunal considers 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.

When vertically integrated competitors merge, a transaction could have both horizontal and vertical effects, for example when a motor manufacturer with a car dealership buys a competitor that also owns a dealership.



**Diagram 5: Types of large mergers decided by the Tribunal**

As a general proposition, horizontal mergers pose a greater threat to effective competition than vertical or conglomerate mergers since they result in one less competitor in the market. In addition, the merged entity will have gained market share and potentially more market power.

In both financial years more than 49% of the large mergers decided were classified as horizontal transactions and more than 24% as conglomerate transactions. In general, vertical mergers are less likely to negatively affect competition, but both potential input and customer foreclosure must be assessed as part of the competition analysis.

For a transaction to require mandatory notification it must constitute a merger as defined, have an effect within South Africa and meet the asset and turnover thresholds established in terms of the Competition Act. Three categories of mergers are identified, namely small, intermediate and large mergers of which only intermediate and large mergers require mandatory notification. The rationale for this is to bring forward transactions that could potentially alter the structure of markets and thus harm competition. The Tribunal has jurisdiction to approve, conditionally approve or prohibit large mergers. Small and intermediate mergers are decided by the Commission. However, small and intermediate merger prohibitions by the Commission or conditional approvals can be taken to the Tribunal for reconsideration by the merger parties.

The diagram below provides a comparative overview of the value of large merger transactions decided by the Tribunal over the last two financial years.

	2019/20	2018/19
Total combined turnover	R3 040 001 289 886	R2 536 286 094 906
Minimum combined turnover	R149 973 441	R168 183 542
Maximum combined turnover	R224 059 088 146	R179 013 652 566
Average combined turnover	R34 942 543 563	R25 619 051 464
Number of large mergers decided	87	99
Total transaction value	R1 810 481 756 865	R1 120 517 014 734

Diagram 6: Value of large merger transactions decided by the Tribunal

In terms of the Competition Act, the Tribunal has to decide whether a contemplated transaction is likely to lead to a substantial prevention or lessening of competition. The Tribunal considers both competition and public interest issues before a merger can be approved, conditionally approved or prohibited.

Most mergers do not significantly harm competition, while some could be pro-competitive if they benefit consumers by lowering cost or increasing innovation. However, in some situations, mergers will substantially prevent or lessen competition by enhancing the merged entity's market power or have a negative effect on the public interest such as the employment, small business or participation by historically disadvantaged persons. In the year under review the vast majority of mergers (78%) were approved without conditions; the Tribunal prohibited one merger (1% of total mergers), whilst 19 mergers were conditionally cleared (21%).

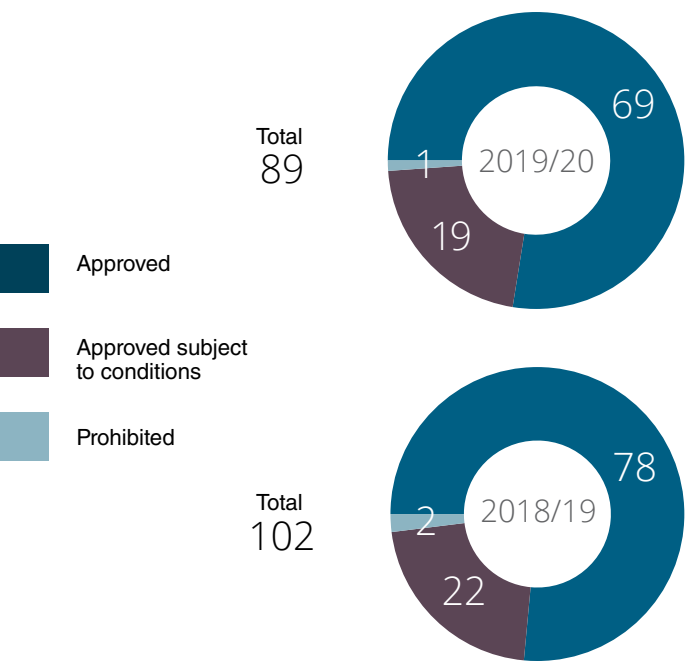


Diagram 7: Comparative figures for all mergers decided over two years





# ADJUDICATING MERGERS

## Giving effect to public interest considerations

The 2019 Competition Amendment Act increased the role of the public interest in the consideration of mergers in section 12A(3). The promotion of a greater spread of ownership for historically disadvantaged persons and workers in the market, as well as their ability to enter into, participate and expand within a market will be central in the analysis of the public interest. While structural constraints which require industrial policy co-ordination and intervention remain, the amendments will further lead to the promotion of competition and economic transformation through addressing the structural constraints, for example a greater spread of ownership, within a market.

Certain public interest grounds were enhanced whilst a new public interest ground was added for the Commission and Tribunal to consider. The amendment sees consideration being afforded to include SMMEs, and a further analysis as to whether the merger has an effect on SMMEs to participate within relevant markets. A newly introduced ground sees consideration being given to the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.

The following are three examples of transactions in which the Tribunal adjudicated through considering significant public interest factors, such as worker participation in the firms and saving jobs:

### Simba and Pioneer Food Group

On 6 March 2020, the Tribunal approved one of PepsiCo's largest acquisitions outside the United States of America, with a wide-ranging package of public interest conditions.

PepsiCo acquired Pioneer Food Group Ltd, one of South Africa's largest food and beverage producers, through its subsidiary Simba (Pty) Ltd. Pioneer owns well-known brands such as Spekko, White Star, Weetbix, Ceres and Liquifruit, among others.

The transaction did not substantially prevent or lessen competition in any of the product markets identified from a horizontal or vertical perspective. However, the merging parties, the Commission and Minister had agreed to certain public interest conditions prior to the Tribunal considering the matter. The Tribunal, after the clarification and enhancement of the tendered public interest conditions, approved the transaction subject to those conditions including:

- The merger parties agreed to implement a B-BBEE ownership plan whereby it would issue common stock to the value of R1.6



billion to a South African broad based workers' trust which, after 5 years, will be converted into direct shareholding in Pioneer of up to 13%;

- There will be no merger related retrenchments for a period of 5 years. The merged entity is committed to grow direct employment by creating 500 jobs and indirect employment by creating 2 500 job opportunities;
- Its head office will remain in South Africa and it will remain a tax resident in South Africa;
- The aggregate productive capacity and capabilities associated with production operations and related facilities in South Africa shall be kept in place and it commits to expand operations of the merged firm in South Africa over a 5 year period to the value of R1 billion;
- It also undertook to make a cumulative investment of R5.5 billion over 5 years in developing Pioneer's overall operations;
- It committed to expanding local production and made several local procurement commitments;
- It will maintain all sale and distribution agreements with historically disadvantaged persons and SMMEs for a period of 2 years; and
- It will make available R600 million as a development fund for investment in programmes in South Africa with respect to education, SMMEs, enterprise and agricultural development.

### Milco and Clover

In September 2019, the Tribunal approved the merger involving Milco SA (Pty) Ltd (Milco) and Clover Industries Ltd (Clover) subject to a range of employment, local procurement of bulk juice concentrate, and information sharing conditions. The Commission and various unions raised concerns about merger specific retrenchments flowing from Project Sencillo, a Clover project to be undertaken over five years to ensure better utilisation of its assets.

However, while the Tribunal hearing was ongoing, the merger parties agreed to lower the net effect on employment as a result of the completion of Project Sencillo from the original 516 anticipated job losses to a maximum of 277 job losses, after updating the numbers and further considering a range of mitigating factors as suggested by the Tribunal. The Tribunal accepted these new figures and increased the moratorium on the retrenchments as a result of the completion of Project Sencillo from the tendered two-year period from the implementation date to a three-year period.

Among others, the Tribunal ordered that the merged entity may not retrench any employee in South Africa as a result of the merger. The merged entity also undertook to contribute R5 million to relocation and R5 million to training costs for the affected employees that successfully apply for a vacant or new position in Project Masakhane, a Clover project to increase its distribution reach. Given that 550 new permanent jobs would be created as a result of Project Masakhane over a five-year period and the significant reduction in the net effect on employment as a result of the

completion of Project Sencillo, read with all the other employment-related conditions, the Tribunal was satisfied that the proposed transaction would not have an overall adverse effect on employment in South Africa.

### Boundary Terraces and Bravo Group

The Tribunal approved, with a range of public interest conditions, a proposed merger whereby Boundary Terraces 042 (Pty) Ltd (Boundary Terraces) acquired Bravo Group (Pty) Ltd (Bravo), a company involved in the manufacturing of lounge furniture and sleep products.

Boundary Terraces is a newly incorporated investment vehicle. The Bravo Group is the owner of lounge furniture brands such as Lazy Boy, Crafton Everest, Alphine Lounge and Gomma Gomma and sleeping product brands, such as Sealy, Edblo, Slumberland and King Koil.

The Minister responsible for Trade, Industry and Competition, as well as the South African Clothing and Textile Workers Union raised concerns, particularly regarding employment, in relation to the merger.

The employment concerns arose out of a restructuring process that Bravo undertook two months before the transaction was filed and while negotiations concerning the transaction had already started. 253 employees were retrenched as a result of this process. The Tribunal remedied these concerns by imposing a moratorium on all merger related retrenchments for a period of three years. Other public interest conditions included:



- Bravo and its subsidiaries must set up a development fund for the 253 employees who were retrenched before the merger at Bravo's Alpine factory in Cape Town and Grafton Everest factory in KwaZulu-Natal and who have not been re-employed by Bravo or its subsidiaries;
- Bravo and its subsidiaries must also use reasonable endeavors to inform these affected employees of any relevant job opportunities that arise in the firms. If they apply for the jobs and if they are suitably qualified for the relevant job, they must be given preference over other candidates;
- The development fund will be funded by Bravo and its subsidiaries with an initial amount of R6 325 000; and
- Each affected employee will be allocated a maximum of R25 000 from the development fund for purposes of training or reskilling or for seed capital to establish a small business venture or for educational purposes for a close family member.

## OTHER CASE HIGHLIGHTS

### BREACH OF MERGER CONDITIONS

The Tribunal considers any breach of merger conditions as contemptuous. In this financial year it heard two cases where the merger parties were accused of breaching the conditions that the Tribunal had imposed when it approved their mergers.



In the first matter, the Tribunal ordered South African Breweries (Pty) Ltd to set aside a portion of its BEE Scheme's top-up benefits for former employees, pending the outcome of a Commission investigation. This followed an application for urgent interim relief by Coca Cola Beverages South Africa (CCBSA). This matter is discussed in more detail below.

In the second matter, the Tribunal found that global beer brewer, AB-InBev did not breach the conditions relating to its merger with SABMiller PLC (SAB) through its exclusive branding rights with outlets. However, the Tribunal did order the Commission to re-investigate AB-InBev's exclusive pouring arrangements with stadia. We also take a closer look at this matter below.

Any breach of merger conditions undermines efforts to create conditions for competitive and inclusive markets. In certain instances, such as in the example below, breaches of merger conditions can undermine the amendments to the Competition Act and efforts to promote a greater spread of ownership and worker participation in firms.

### Coca-Cola Beverages South Africa And Anheuser-Busch InBev SA/NV and others

In a complaint of alleged breach of merger conditions against AB-InBev, Coca Cola Beverages South Africa (CCBSA) on behalf of its employees claimed that the conditions of the merger whereby the Coca Cola Company bought SABMiller shares held in Coca Cola Beverage Africa (CCBA) had been breached.

Former SABMiller employees, transferred to CCBSA as a result of that merger, continued to remain beneficiaries under the SAB Zenzele Employment Trust, through a condition that was imposed by the Tribunal.

During the merger hearings SABMiller undertook that these former employees would continue to benefit from the Zenzele scheme as if the merger never happened. The employees had subsequently been excluded from additional top-up benefits allocated to SAB employees during December 2019.

The top-up allocations had become the subject of the application for urgent interim relief to interdict the respondents from allocating the top-up benefits before the Commission had concluded its investigation.

CCBSA believed that the former SABMiller employees must be included in the top-up allocation and the Commission was still in the process of investigating the complaint.

The Zenzele Scheme matured on 31 March 2020. The Tribunal, on 31 March 2020, issued an order instructing the respondents to set aside a portion of its BEE Scheme's top-up benefits for former employees, pending the outcome of the final determination of the Commission's investigation regarding the breach of merger conditions.

### Distell Limited and Anheuser-Busch Inbev SA and the Competition Commission

On 17 February 2020, the Competition Tribunal found that global beer brewer, AB-InBev did not breach the conditions relating to its merger with SABMiller PLC (SAB) through its exclusive branding rights with outlets. However, the Tribunal did order the Commission to re-investigate AB-InBev's exclusive pouring arrangements with stadia.

Distell had filed a complaint with the Commission in November 2016 alleging that AB-InBev had violated the merger conditions imposed by the Tribunal in the June 2016 merger. It accused AB-InBev of breaching the merger conditions by (i) entering into exclusive branding agreements with outlets by not allowing outlets to offer space to Distell to make its products available and visible to consumers during promotions; and (ii) entering into exclusive agreements with stadia to supply AB-InBev products at events, referred to as pouring rights.

The Commission's investigation found that the conduct did not amount to a violation of the conditions. Distell thereafter applied to the Tribunal seeking an

order declaring that the conduct did amount to a breach, in the alternative, to mandate the Commission to re-investigate the complaint.

The Tribunal found that, in relation to AB-InBev's exclusive branding rights, the alleged removal of competitor advertising materials from outlets by AB-InBev's representatives did not constitute a breach of the merger conditions. The Tribunal found that the merger conditions did not seek to regulate the space on walls and surfaces for signage and promotional purposes and was inconsistent with the theory of harm that the conditions had sought to address.


On the second complaint the Tribunal found that "stadia" fell within the definition of "outlets" which was given a broader definition in the merger decision and said that it would be in the interests of justice to provide certainty on whether AB-InBev's exclusive agreements relating to pouring rights with stadia amounted to a breach of the merger conditions.

It therefore required the Commission to conduct a focused investigation on the understanding that stadia fell within the definition of "outlet" as contemplated in the merger conditions. The investigation had to be completed within 120 days of the date of the Tribunal's order.





PROHIBITED CONDUCT MATTERS BEFORE THE TRIBUNAL

 Section 4 of the Competition Act regulates restrictive horizontal practices amongst competitors, also known as cartel conduct. Cartels can operate in almost any industry, locally, regionally, nationally or internationally. Cartels harm other businesses and consumers by artificially raising prices and reducing output and choice.

The Tribunal heard a number of cartel cases during this financial year. Some were brought as consent orders or as settlements between the Commission and respondents, while a number were heard as complaint referrals (see diagram 9 on consent orders and settlement agreements during the reporting period).

In most cases remedies for cartel conduct include the payment of an administrative penalty. When determining an appropriate penalty, the Tribunal takes into account a wide range of factors, such as the nature, gravity and extent of the contravention, the loss or damage suffered as a result of the contravention, market circumstances in which the contravention took place and the degree to which the respondent has co-operated with competition authorities.

In the year under review, the highest percentage of penalties (87.25%) in terms of value was imposed on firms in the manufacturing sector. In the prior period this sector accounted for 37.18% of the total penalties imposed in terms of value.

Sector	2019/20	%	2018/19	%
Manufacturing	R75 887 709	87.25%	R124 093 697	37.18%
Construction	R9 129 543	10.50%	R15 396 643	4.61%
Human health and social work activities	R1 250 000	1.44%	R0	0.00%
Professional scientific and technical activities	R 286 846	0.33%	R59 451 298	17.81%
Transportation and storage	R 240 647	0.28%	R99 899 801	29.93%
Wholesale and retail trade - repair of motor vehicles and motorcycles	R139 400	0.16%	R2 700 914	0.81%
Administrative and support service activities	R40 300	0.05%	R23 496	0.01%
Financial and insurance activities	R0	0.00%	R204 182	0.06%
Information and communication	R0	0.00%	R20 767 828	6.22%
Arts, entertainment and recreation	R0	0.00%	R1 021 256	0.31%
Water supply - sewerage waste management and remediation activities	R0	0.00%	R10 209 519	3.06%
TOTAL	R86 974 445	100%	R333 768 634	100%

Diagram 8: Fines issued per sector over two years

Diagram 9 below indicates that in both the current and the prior financial year more than 79% of the penalties imposed by the Tribunal were imposed for cartel conduct. Although cartels are immensely difficult to detect, firms do from time to time blow the whistle on their co-conspirators. Many of the cartel cases that came before the Tribunal were as a result of the Commission's Corporate Leniency Policy and tip-offs by government agencies that became aware of bid rigging in a tender process.

SECTIONS OF THE ACT	2019/2020			2018/2019		
	Number of cases	Amount	%	Number of cases	Amount	%
Restrictive horizontal practices Sections 4(1)(b)(i), (ii) and (iii)	17	R69 242 731	79.61%	43	R312 768 730	93.71%
Abuse of dominance- Sections 8(c),8(d)(i),8(d) (iii)	1	R16 192 315	18.62%	0	R0	0.00%
Failure to notify - Section13A(3)	1	R1 250 000	1.44%	1	R1 000 000	0.30%
Resale price maintenance - Section 5(2)	2	R289 400	0.33%	1	R20 000 000	5.99%
Total	21	R86 974 446	100.00%	45	R333 768 730	100.00%

Diagram 9: Penalties imposed per section of the Act over two years

### Abuse of dominance

The Competition Act was further strengthened by the amendment in 2019 of section 8, which addresses conduct that abuses a dominant position, by, inter alia, transforming section 8(d) into an open list of known, predictable exclusionary acts and to accommodate a more general cost standard that enables the authorities to determine which cost benchmark out of a possible range of options is best-suited to the facts and circumstances of a particular case when deciding predatory pricing complaints.

The definition of an exclusionary act was also amended by expanding its ambit to include not only barriers to entry and expansion within a market, but also to participation in a market.

Conduct is exclusionary if it has the effect of excluding competitors from the market, thereby hampering the growth of a robust economy. Where a dominant firm requires a customer not to deal with a competitor, competition and customers or consumers may be harmed. Such was the case against Uniplate.

The Tribunal found that the largest manufacturer and distributor of number plate blanks and embossing machines in South Africa, Uniplate Group (Pty) Ltd, had abused its dominant position in the relevant market between 2010 and 2014. Uniplate used long term exclusive agreements to contractually oblige its customers who did the actual embossing of number plates, when purchasing a Uniplate embossing machine, to only purchase their number plate blanks and embossing materials from Uniplate.

The Tribunal found that these exclusive agreements limited the ability of Uniplate's rivals from selling to Uniplate customers. Uniplate customers who were tied into these exclusive agreements were similarly unable to access competitor blanks even when competitors' prices were lower. This discouraged entry and expansion of competitors in the blanks market because the demand for blanks was tied up in contracts enduring for ten years or longer, since some of the contracts contained automatic renewal clauses and had no termination clauses.

The Tribunal found that Uniplate had contravened section 8(d)(i) of the Act and ordered it to pay an administrative penalty of R16 192 315. The Tribunal's order and reasons were issued in June 2019.



### CONSENT ORDERS AND SETTLEMENT AGREEMENTS

One of the most significant consent orders heard by the Tribunal during the financial year under review resulted from a market inquiry on high data prices and affordability, initiated by the Commission in 2017.

The amendments to the Competition Act in 2019 served to enhance the market inquiry provision in order to empower the Commission to inquire into market structures with oligopolistic features where

no fault by the firms in the market can be found. The Commission can decide on interventions and remedies to enhance competition and advance the purposes of the Competition Act.

In terms of its settlement with the Commission, Vodacom agreed to reduce headline bundle prices within the 30-day data bundle portfolio across all channels, to make available all of its current zero-rated services on its ConnectU platform, with increased focus on consumers in poorer communities.

Vodacom committed to extend current zero rating to essential state and emergency sites. It also undertook to extend personalised discounts to

prepaid customers in communities where the majority of the population has income levels below the upper bound food poverty line.





**Crown Relocations**  
**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

Crown Relocations admitted that it agreed with its competitors to impose a levy of R350 to be charged to customers when they transport goods along the Gauteng E-toll roads.

**Penalty**  
**R240 647.05**



**Cables for Africa**  
**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

Cables for Africa and Freefall Trading admitted that they discussed their respective bids and prices for the tender issued by City Power with one another.

**Penalty**  
**R10 079.50**



**Freefall Trading**  
**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

Cables for Africa and Freefall Trading admitted that they discussed their respective bids and prices for the tender issued by City Power with one another.

**Penalty**  
**R10 724.15**



**GVK Siyazama Building Contractors (GVK)**

**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

GVK admitted that it:

- a. Entered into an agreement with Group Five to tender collusively in respect of a tender issued by Mediclinic Group for the construction of a hospital for Cape-Gate Mediclinic.

**Penalty R2 012 950.00**

- b. Entered into an agreement with NMC to tender collusively in respect of the Tygervally shopping mall tender.

**Penalty R2 012 950.00**

- c. Entered into an agreement with NMC to tender collusively in respect of a tender issued by Akila Trading for the construction of a new warehouse and office building projects.

**Penalty R2 012 950.00**



**D and D Roof Insulation**

**Sections of the Act**

4(1)(b)(i),  
4(1)(b)(ii) Cartel conduct

**Conduct**

D and D Roof Insulation admitted to entering into a Memorandum of Understanding ("MOU") with its competitors to ensure that:

- a. their products do not displace one another;
- b. D and D Roof Insulation would not have a price advantage over its competitors;
- c. there was no competition in terms of price when supplying their customers; and
- d. none of the competitors would change the specifications to its own brands in the event a customer specified any of their respective brands.

**Penalty**

**R1 670 379.00**



**More Asphalt**  
**Sections of the Act**

4(1)(b)(ii)  
Cartel conduct

**Conduct**

More Asphalt admitted that it concluded an agreement with Much Asphalt to divide markets in respect of the provision of hot mix asphalt products in the Western Cape.

**Penalty**  
**R579 204.57**



**Law Society of Northern Provinces (LSNP)**  
**Sections of the Act**

4(1)(b)(i),  
4(1)(b)(ii) Cartel conduct

**Conduct**

LSNP admitted that some of its rules contravened sections 4(1)(b)(i) and (ii) of the Act in that they constituted price fixing and market allocation. Alternatively, the fixing of trading conditions.

**Penalty**  
**No Penalty imposed**



**Mail and Guardian Media**  
**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

Mail and Guardian Media admitted that through the medium of the Media Credit Coordinators (MCC), that it, together with competitors, agreed to offer similar discounts and payment terms to advertising agencies that placed adverts with MCC members.

**Penalty**  
**R286 846.39**



**Power Construction**  
**Sections of the Act**

4(1)(b)(ii)  
Cartel conduct

**Conduct**

Power Construction admitted that it provided a cover quote for a competitor in the tender bidding process for the N1 Section 4 Touws River to Laingsburg road maintenance tender.

**Penalty**  
**R3 069 887.43**



**Hendok**  
**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

In the steel wire cartel case, Hendok and Wireforce both admitted that they and some of their competitors agreed to fix the price of wire and wire related products and that this was achieved through the exchange of agreed price lists.

**Penalty**  
**R5 001 364.34**



**Wireforce**  
**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

In the steel wire cartel case, Hendok and Wireforce both admitted that they and some of their competitors agreed to fix the price of wire and wire related products and that this was achieved through the exchange of agreed price lists.

**Penalty**  
**R4 319 951.22**



**Senwes Ltd and Trade Vantage Grain (Pty) Ltd**

**Sections of the Act**

8(c)  
Abuse of Dominance

**Conduct**

Senwes acknowledged a once-off technical contravention of a 2013 consent order whereby competitively sensitive information was exchanged between Tradevantage and Farmwise regarding the storage of sunflower seeds. The relevant clauses in the 2013 consent order were amended in a second consent order to prevent a repeat transgression in future.

**Penalty**

**No penalty imposed**



**Lenmed Health (Pty) Ltd (Lenmed)**

**Sections of the Act**

13A(3)  
Prior implementation of a merger

**Conduct**

Lenmed admitted to the prior implementation of an intermediate merger in 2010 that saw it increase its shareholding in eThekwin Hospital.

**Penalty**

**R1 250 000.00**



**Sonae Arauco South Africa (Pty) Ltd (Sonae)**

**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

Sonae admitted that it engaged in price fixing which affected certain price increases and prices of specific wood-based commodity products sold to certain customers.

**Penalty**

**R46 944 495.00**



**Kewberg Cables and Braids (Pty) Ltd (Kewberg)**

**Sections of the Act**

4(1)(b)(i)  
Cartel conduct

**Conduct**

The members of the Association of Electric Cable Manufacturers of South Africa (AECMSA) including Kewberg, agreed on input prices or costs in relation to products used to manufacture communication and power cables.

**Penalty**

**R30 000.00**



**Stuart Graham Furnishing Fabrics CC (Stuart Fabrics)**

**Sections of the Act**

5(2)  
Resale Price Maintenance

**Conduct**

Stuart Fabrics demanded that Sandton Fabrics increase the prices of its fabrics by at least 50% or it would terminate its account.

**Penalty**

**R150 000.00**



**CC and iFlight Technology Co Ltd**

**Sections of the Act**

5(2)  
Resale Price Maintenance

**Conduct**

iFlight had required a local distributor of drones, Smashtronics, to sell its drone products at a specified minimum retail price in May 2017.

**Penalty**

**R139 400.00**



**Wesgrow Potatoes (Pty) Ltd (Westgrow)**

**Sections of the Act**

5(1), 8(d)(ii)  
Restricted vertical practices; Abuse of Dominance

**Conduct**

A previous exclusive agreement between HZPC Holland B.V. and Wesgrow excluded other South African potato seed growers from growing and selling the Mondial potato seed variety. The settlement agreement ensures that South African potato seed growers will have ongoing access to the Mondial seed potato varietal.

**Penalty**

**No Penalty imposed**



**Timrite (Pty) Ltd (Timrite)**

**Sections of the Act**

4(1)(b)(ii)  
Cartel conduct

**Conduct**

Timrite and Tufbag Ltd (Tufbag) concluded a product supply agreement in terms of which Tufbag had an exclusive right to manufacture mining bags and Timrite had the exclusive right to distribute and on-sell mining bags manufactured by Tufbag. The conduct amounted to market division by allocating services.

**Penalty**

**R1 000 000.00**



**Greensweep Consortium**  
**Sections of the Act**

4(1)(b)(iii)

**Conduct**

Bidrigging in a tender for cleaning services whereby Greensweep agreed to submit a higher tender than Quintax with the understanding that Quintax will subcontract it if it won the tender.

**Penalty**

**R40 300.59**



**Vodacom**  
**Sections of the Act**

8(1)(a)

**Conduct**

Commission's market enquiry into high prices for data by mobile companies.

**Penalty**

**No penalty imposed**

**Diagram 10: Consent orders and settlement agreements confirmed during the reporting period**

## INTERIM RELIEF

The Tribunal may grant interim relief to a complainant in respect of an alleged prohibited practice. A party seeking such relief must do it simultaneously with, or after filing, a complaint with the Commission.

### Africa People Mover v PRASA

The Tribunal dismissed an interim relief application by Africa People Mover (APM) whereby the privately-owned commercial bus company sought to retain its access to the Johannesburg Park Station. APM owed the Passenger Rail Agency of South Africa (PRASA) a significant sum of money after it defaulted on its payments for use of the Park Station facilities.

APM, an emerging bus operator, requested that the Tribunal interdict and restrain PRASA from: (i) preventing buses operated by APM from entering Park Station and from loading or off-loading passengers; or (ii) engaging in exclusionary behaviour as contemplated in section 8(c) of the Competition Act, including but not limited to engagement in a “margin squeeze”.

It argued that it could not afford to pay the amounts charged by PRASA for accessing the Park Station terminal, the only bus terminal in Johannesburg where it can legally load and off-load passengers for inter-city travel. It argued that PRASA was failing in its mandate as a public entity to ensure that its facilities were accessible to all bus operators.

PRASA opposed the interim relief application arguing that it was a contractual dispute between PRASA and APM and not a matter for Competition Law adjudication.

The Tribunal found that the issue was a commercial dispute and not a competition issue. The Tribunal nevertheless still considered whether the matter raised competition issues, and concluded that no abuse of dominance was established for purposes of the interim relief.

### Vexall (Pty) Ltd v Business Connexion (Pty) Ltd

In February 2020, the Tribunal granted Vexall (Pty) Ltd (Vexall) interim relief against Business Connexion (BCX) in a dispute over a computer program known as Unisolve which is used by pharmacies nationally to dispense medicine.

It ordered that BCX was prohibited from selling or offering a Unisolve licence on condition that customers also purchase value added services from BCX for six months. The Tribunal also ordered costs against BCX.

In October 2019, Vexall lodged a complaint against BCX at the Commission, accusing BCX of tying and bundling. It alleged that BCX, as a dominant company, was forcing its customers to purchase value added services together with the licence to use Unisolve.

The Tribunal found that Vexall had made out a prima facie case that BCX was a dominant firm in the relevant market and that it was tying the purchase of its Unisolve licence with the purchase of its value-added service. The Tribunal was satisfied that the licence and the value added services provided by BCX were unrelated to the object of its licensing of Unisolve and the services in question did not need to be sold as a package.

## EXCEPTIONS TO PLEADINGS

The Tribunal has the discretion to consider objections to pleadings. In the so-called Forex cartel case, the Tribunal was faced with exception applications from all the respondent banks. The Tribunal rejected the banks’ call for the referral to be dismissed and ordered that the Commission redraft its referral in 40 days.

In the redraft, the Tribunal required that the Commission confine its case to one of a single over-arching conspiracy and provide more detail on such a conspiracy.

Regarding jurisdiction, the Tribunal found there to be three broad categories of banks in the case: (i) local; (ii) local peregrini; and (iii) pure peregrini. The local banks (Investec and Standard Bank of South Africa Limited) raised no jurisdiction concerns.

The pure peregrini banks were those foreign banks which had no presence in South Africa, namely: Bank of America Merrill Lynch International Limited; Merrill Lynch Pierce Fenner and Smith Inc; JP Morgan Chase & Co; Australia and New Zealand Bank Limited; Standard New York Securities Inc; Nomura Limited; Credit Suisse Securities (USA) LLC; Macquarie Bank Limited; and HSBC Bank USA, National Association Inc.

The Tribunal held that it did not have jurisdiction to issue an order requiring pure peregrini to pay any administrative penalty because the order would not be enforceable and therefore ineffective. It thus constrained the Commission to seek only an order declaring the conduct of these banks to be anti-competitive.

Local peregrini were those foreign banks which had representation in South Africa, namely: BNP Paribas; JP Morgan Chase Bank N.A; Standard Chartered Bank; Credit Suisse Group; Commerzbank AG; HSBC Bank PLC; and Bank of America, N.A. The Tribunal found that because an order requiring the payment of a penalty against such banks could be enforced, the Commission could seek to extract an administrative penalty, but only to the extent that such a penalty was calculated on the turnover of the representative office in South Africa.

The Tribunal required that the Commission, in its redraft, allege that the conduct of the foreign banks (local or pure peregrini) had an effect in South Africa that met the internationally recognised threshold of being direct or immediate, and substantial before the Tribunal could assert its jurisdiction in making any order.

## BALANCING INDEPENDENCE AND ACCOUNTABILITY

The Competition Act provides for three independent institutions, namely: the Competition Commission, the Competition Tribunal and the Competition Appeal Court.

Administratively, these institutions report to the Department of Trade, Industry and Competition, however, their decisions are independent of the DTIC.

Further, the entities are themselves independent from one another, and their interaction is designed to produce fair outcomes through due process.

It follows that at times the Tribunal may not agree with the recommendations made by the Commission on a particular matter, or where the Competition Appeal Court may overturn a ruling by the Tribunal.

The cases below demonstrate this independence of thought which we believe delivers fair outcomes for the parties concerned.

We note that it is not unusual to find that there is sufficient evidence of cartel conduct against certain respondents but not all respondents implicated in the Commission’s referral. Often there is ample evidence of cartel conduct by the ringleaders or major participants that are in a horizontal relationship, but not sufficient evidence against certain (often smaller) firms for a conviction. Neither is it unusual that certain firms would admit the cartel conduct and settle the matter with the Commission and others not. Each respondent’s situation must be assessed on its merit and is dependent on the facts and evidence relating to that particular respondent. In some cases, however it could be that there is insufficient evidence against most or all of the respondents implicated in the cartel conduct.

### The Competition Commission v Tourvest Holdings (Pty) Ltd and Trigon Travel (Pty) Ltd

The Commission alleged that the respondents agreed to fix prices and tender collusively when bidding for a government tender to supply certain administrative and management services in respect of domestic flight tickets and accommodation for members of Parliament.

The Commission relied on an inference to prove the alleged agreement. It found that the respondents’ bids were identical in relation to a single bundle transaction fee of R150, their B-BBEE status level

2 contribution and a procurement level of 125%. Both bids were also submitted on the same day. The Commission argued that the Tourvest Group had, as the incumbent service provider, an interest in retaining Parliament’s business within the group either by winning the tender or assisting its affiliates such as Trigon to win the bid.

Based on the evidence supplied, the Tribunal found that the Commission was not able to discredit the explanations given by the respondents on how each firm independently determined its price. The Tribunal could find no evidence to support the conclusion that Tourvest and Trigon colluded and noted that the Commission relied only on the bid documents submitted and the similarities contained therein. In the absence of any direct evidence, the Tribunal could not find sufficient facts or evidence of collusion from the identical bid prices nor prove an incentive to share the bid. The case was dismissed.

### WBHO (N17 Project)

The Tribunal dismissed the Commission’s complaint referral against construction company, WBHO Construction Limited (WBHO). The Commission accused WBHO and Group 5 of having entered into a collusive agreement to fix trading conditions in a tender relating to a portion of the N17 road between New Canada and FNB Stadium in Johannesburg.

The matter centred around a meeting held between construction company representatives in July 2006, under the auspices of the SA Forum of Engineering Contractors (SAFEC). The Commission alleged that the companies agreed to fix trading conditions at this meeting.



The Tribunal found no evidence that the meeting was more than a tender clarification meeting or that the attendance at the meeting could amount to any exchange of information that facilitated the subversion of the competitive process.

#### CC v Ferry Charters and Heritage Charters

The Tribunal dismissed the Commission's price fixing complaint against two companies, Ferry Charters and Heritage Charters, that ferry passengers between Robben Island and the V&A Waterfront in Cape Town.

The case related to a tender issued by Robben Island Museum (RIM) for bidders to be listed on its database as preferred service providers for a 12-month period. The Tribunal found that the evidence, taken as a whole, did not allow it to draw the inference suggested by the Commission that the respondents met at a coffee shop in September 2015 to discuss and agree on price increases in response to the tender.

The Tribunal found that the Commission did not call a witness who had direct knowledge of the events that took place at the coffee shop meeting. The pricing evidence led by Ferry Charters and Heritage Charters and confirmed by the Commission's own witness does not lead to the inference that the respondents had colluded to increase prices for the RIM tender.

#### Cement Cartel

A decade after the Commission launched its investigation into a cement cartel, the matter was finalised with the Tribunal dismissing a case of indirect price fixing and market division against Natal Portland Cement Cimpor (Pty) Ltd (NPC).

The crux of the Commission's case against NPC was that cement producers, following a price war among them, held a series of meetings which culminated in a

1998 meeting held in Port Shepstone. The Commission argued that consensus was reached at that meeting which constituted a cartel that included NPC.

The Tribunal found it was common cause that PPC, Lafarge and AfriSam had reached consensus on maintaining market stability as the price war had hurt them financially. However, the Tribunal found no evidence that NPC was involved in the price war as it was operating at maximum capacity and could not expand. It operated almost exclusively in southern KwaZulu-Natal.

The Tribunal further found it was reasonable to accept that NPC had no interest in the discussions which were held by PPC, Lafarge and AfriSam. NPC had taken steps to expand its capacity after the takeover by Cimpor and these steps, prima facie, were inconsistent with a capacity-based market sharing agreement. In dismissing the Commission's complaint against NPC-Cimpor, the Tribunal noted that discussions amongst Lafarge, AfriSam and PPC centred around the allocation of their market shares, transport costs and profits and there was no evidence that it included NPC.

PPC earlier admitted to being part of the cartel and was granted conditional leniency, in exchange for helping the Commission to prosecute the remaining cartel members. Both AfriSam and Lafarge made admissions and paid penalties. NPC denied involvement and was found not guilty.

#### E-Toll Levy Cartel

The Tribunal also dismissed the so-called "E-toll Levy Cartel", against several furniture removal companies accused by the Commission of agreeing to charge customers a flat rate of R350 to recover the cost of e-tolls.

The case involved eleven furniture removal companies and the association to which they belong. The Commission alleged that they had met in January 2014

under the auspices of the Northern Province Professional Movers Association, during which time they agreed to impose a R350 levy on each quote when transporting furniture along Gauteng e-toll roads.

Three of the companies admitted liability and settled with the Commission. The remaining respondents argued that no agreement had been reached at the 2014 meeting. They also argued that the Commission's jurisdiction to refer the case was ousted by the three years prescription provision in the Competition Act.

It was common cause that that the meeting of 22 January 2014 took place more than three years prior to the initiation of the complaint. In terms of the Competition Act a complaint of a prohibited practice may not be initiated more than three years after the conduct had ceased.

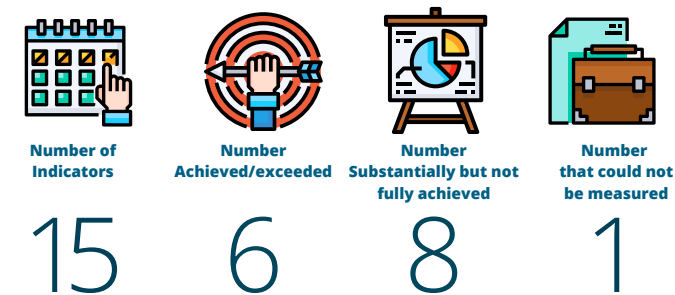
The Tribunal found that the Commission could not establish with sufficient certainty whether an agreement had been reached. In addition, the Tribunal found that the respondents could not be held liable because the agreement would have been concluded more than three years prior to the initiation of the complaint. The complaint had thus prescribed.

#### CC v Roadspan Surfaces (Pty) Ltd and Much Asphalt (Pty) Ltd

The Tribunal dismissed the complaint against two asphalt producers whom the Commission alleged had entered into agreements in 2008 to divide markets in contravention of section 4 of the Act. The Commission alleged that Roadspan Surfaces agreed not to set up an asphalt production plant in Gauteng in competition with Much Asphalt and, in return, to remain a customer of Much Asphalt for the supply of Asphalt in the province. The Tribunal found that the Commission had not discharged its onus to prove the existence of a market division agreement.

## HOW DID WE PERFORM AGAINST OUR PREDETERMINED ADJUDICATION OBJECTIVES?

The Annual Performance Plan (APP) identifies 12 targets that are related specifically to effective case management and the timeous issuing of decisions. A further 3 targets relate to effective business applications. Our performance against these 15 adjudicative targets is as follows:



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 of the DTIC.

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 within time frames that are either stipulated in the Competition Act or determined internally.

In the period under review we exceeded 6 targets, 8 were substantially but not fully met and one could not be measured as there was no activity.

#### To what degree did we not meet certain targets and why?

- Pre-hearings or hearings for small and intermediate mergers for consideration by the Tribunal must be set down within 10 business days. Our internal target for this is set at 70%.

During the financial year under review we had only 2 such merger considerations and both were set down outside the ten days. The explanation for not meeting these targets are similar to those given for large merger set down. However, it should be noted is that small or intermediate merger considerations tend to be complex in nature since these mergers have either been prohibited by the Commission or have been conditionally approved. The applicant would thus request the Tribunal to change or alter the Commission's decision. Third parties may also want to participate in the Tribunal proceedings, which may cause delays. Given the above, we may need to revisit the internal target that we have set.

- The target set for issuing orders relating to small and intermediate merger considerations within 10 business days was set at 80%.

50% of this target was met. As already indicated above, during the financial year under review, decisions were issued in only 2 such matters and these matters tend to be complex in nature. One decision was delayed due to the unavailability of the panel members.

- The target set for issuing reasons in small and intermediate merger considerations in 20 business days was set at 60%.

In the financial period under review, reasons were issued in 4 such matters and three of them were delayed, inter alia, due to a change in case managers, in the other two there were complex issues that were dealt with.

- Reasons for large merger decisions should be issued within 20 business days and the internal target is set at 80%.

We achieved 71% with 25 of the 87 large merger reasons issued not meeting the target. 16 were out by less than 10 days, 5 did not meet the target by between 11 and 19 days, one by 29 days, two by 61 and 63 days and one by 107 days. Delays can occur for any one or a combination

of the following reasons (i) the Tribunal prioritises matters with the most urgent reasons receiving attention, which means that reasons that are complex or raise new issues but are not considered urgent, can be delayed (for example when the order has been issued and no appeal is likely because the matter is settled); (ii) complex matters and matters that deal with novel issues require more time to draft reasons, (iii) lack of Tribunal member capacity, in many instances Tribunal members are sitting on numerous matters and simultaneously are required to draft various reasons.

- Prohibited practices are internally classified as “simple”, “complex” or “very complex matters” based on the complexity of the matter or other technical factors that need to be considered and are required to be issued within 100, 125 and 150 business days respectively.
  - Reasons issued for prohibited practices that are deemed “complex matters” were issued in 6 matters and 4 of these fell outside of the set target. The delays were caused as Tribunal members are simultaneously sitting on panels and have to draft various reasons.
  - Reasons issued in 2 prohibited practices matters deemed to be “very complex matters”. In 1 matter the target was exceeded while in the other we failed to meet the target by 130 days because members were unavailable to review the draft set of reasons timeously as they were sitting on other panels or writing reasons for other matters.
- The target set for the issuing of orders in procedural matters was set at 85% of orders being issued within 45 business days.

20 cases fell outside of this target by between 31 and 167 days. The delays were due to the fact that the drafting of reasons takes longer because of complexity of matters and also because of Tribunal member capacity.

- The target set for the issuing of reasons in interim relief matters was set at 100% being issued within 20 business days.
- In the period under review the Tribunal heard only 2 interim relief matters. Both sets of reasons fell outside of the target because of capacity issues.

We have continued to experience difficulty in appointing panels. This relates particularly to the availability of part-time members whose other full-time work commitments influence their availability to sit on panels. In most instances they are able to sit on single day or short hearings but are less available to assist with longer hearings or the writing of complex reasons. The appointment of additional Tribunal members would effectively alleviate capacity constraints.

We have and will continue to ensure the sustainability of our case management system (CMS) with updates and it remains supported until 2023. The IT Administrator undertakes monthly health checks on the system in order to check its stability and performance.

We continue to make enhancements to both the CMS and Qlikview (the reporting tool for CMS) that increase the functionality of the system and enable us to extract and analyse more data from the system. Developments this year include:

- Removal of a date validation in the courts tab on CMS as it was restricting the user's ability to indicate that a matter has been referred to “Further Courts” when the matter had not yet been decided by the Tribunal.
- The ability for the CMS to communicate and upload documents to the Tribunal website.
- The ability for Case Managers to keep a record of all the activities pertaining to a case by updating the case activities for each case.
- Providing an approval process within CMS when access to information is sought by third parties.

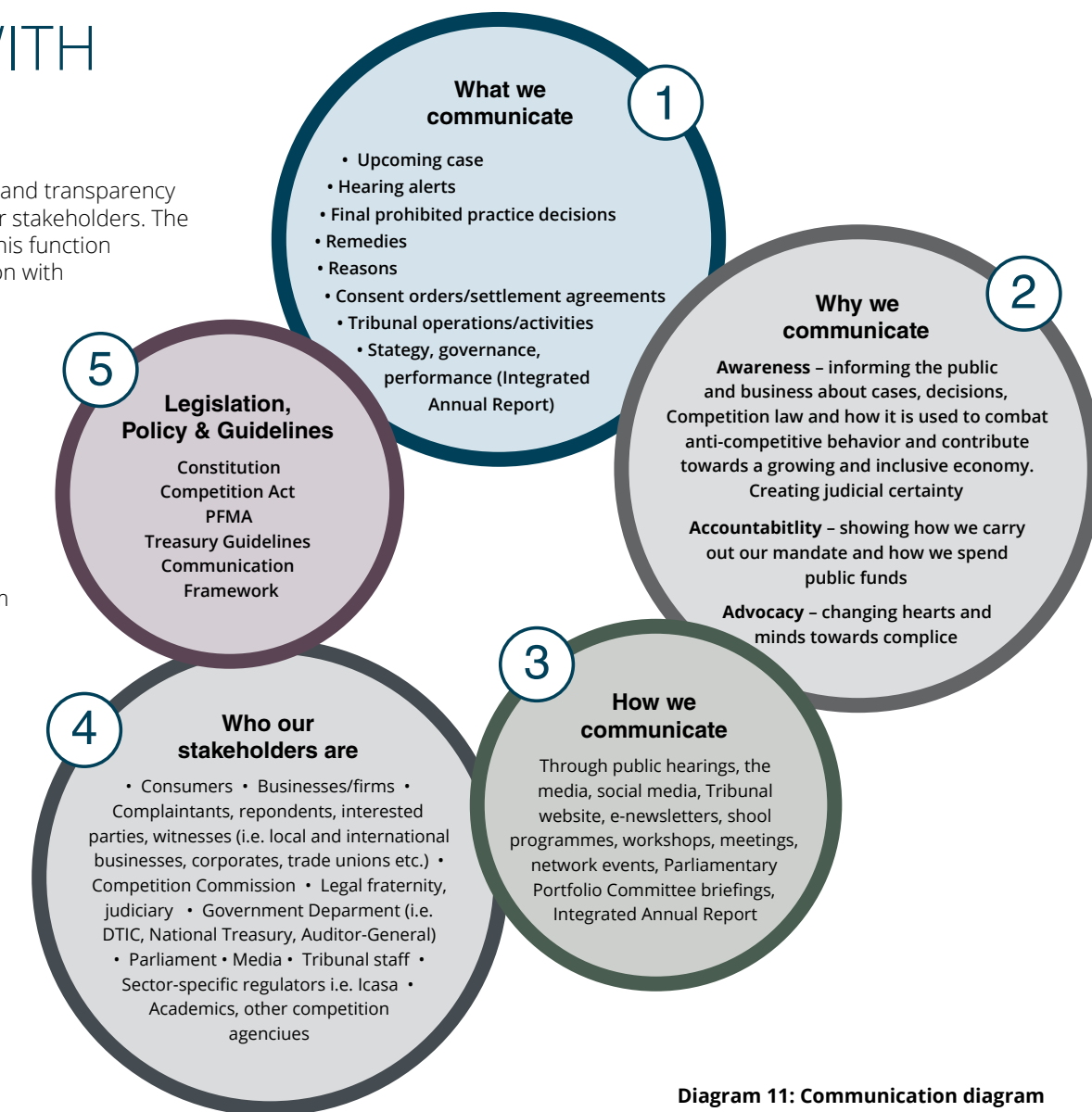
## OUR RELATIONSHIP WITH STAKEHOLDERS

The Tribunal subscribes to a strong culture of communication and transparency and recognises the importance of sharing information with our stakeholders. The Tribunal has a Communications Officer dedicated to fulfilling this function through consistent and efficient communication and interaction with stakeholders, particularly the media.

Delivering accurate, objective and timely communication of our decisions and activities is central in our efforts, among other things to: promote an awareness of Competition law enforcement in South Africa; to inform the public, business and other stakeholders such as trade unions about competition law as an avenue for addressing their competition-related and public interest concerns; and to account to the public and other stakeholders on how we are fulfilling our mandate and utilising state resources. Accountability and maintaining trust with South Africans, whom we serve, is a foundational imperative for the Tribunal.

Communication around the Tribuna's decisions and activities has arguably never been more important as South Africa and the world battles the COVID-19 pandemic. There is a greater public and media interest in the work of the Tribunal due to COVID-19 related price hikes of essential goods, among other things. Issues that have been impacting the economy and consumers, particularly the poorest of the poor, are top of the current affairs and news agenda.

We believe it is also important to raise awareness of our decisions and activities to encourage compliance with Competition law (and to serve as a deterrent for transgressors of the law) for the benefit of consumers, small and previously disadvantaged businesses and ultimately the economy.





Although the COVID-19 pandemic only surfaced in the last quarter of the review period, it has defined this past financial year and will continue to impact how we work and how we communicate with our stakeholders.

Media relations is one of the main ways through which we communicate with stakeholders on our core mandate. It is a way for us to reach large numbers of stakeholders speedily and easily. From a communications perspective, COVID-19 brought with it a renewed consumer and public interest in Competition law enforcement among South Africans.

A record number of excessive pricing complaints, in the context of COVID-19, were reported to the Commission. Consumers, through the media, displayed a keen interest in keeping track of these cases from investigation stage to their conclusion at the Tribunal.

Ongoing public discourse around excessive pricing and related complaint referrals before the Tribunal show that the general public is gaining a keen interest in and a clearer understanding of the Tribunal's work and its impact on consumers, markets and ultimately the economy. Narratives in the public domain also show that consumers are interested in our work and are engaging more meaningfully with our content.

The WHO, WHY, HOW and WHAT we communicate is illustrated in diagram 11.

Reaching our stakeholders

During the period under review we kept our stakeholders informed through the use of press releases and media visits, the Tribunal website, the Integrated Annual Report, social media, electronic newsletters, the Government Gazette, the Tribunal's school programme, participation in the Council of Trade and Industry Institutions (COTII), Communication and Marketing Forum as well as government communications forum and Parliamentary Portfolio Committee (PPC) briefings.

The Tribunal maintains a database of subscribed, unsubscribed and cleaned contacts. A subscribed contact is someone who has opted in to receive our press releases, hearing alerts or the Tribunal's external newsletter. Subscribers can subscribe via the Tribunal's website or through direct requests to the

Communications Officer. An unsubscribed contact is someone who has opted out. The option to unsubscribe is contained in every press release issued. Cleaned contacts have email addresses that have "bounced" and have become invalid.

Our contact database is maintained through an online email automation platform. As at the end of March 2020 we had a total of 4 296 subscribers.

We are pleased to report consistent growth in our Twitter follower numbers. Twitter is the Tribunal's main social media platform through which we report on Tribunal decisions and other activities including live tweets from hearings of public interest. As at the end of the current reporting period, Twitter followers stood at 2 690, an increase from 2 060 at the end of the previous reporting period.

Schools Programme

As part of our communication strategy to reach the youth, we continue to host Business Studies learners at the Tribunal on an annual basis. On 12 March 2020 the Tribunal hosted 16 Business Studies pupils (Grade 11) from 5 schools located in disadvantaged areas around Pretoria.

This was the second consecutive year that the Tribunal's annual Schools' Programme was hosted in conjunction with the Gauteng Department of Education (GDE). The intention is to continue fostering the good working relationship between the Tribunal and the GDE.

The Programme seeks to inform and educate Business Studies pupils about the Tribunal's work and its role in and impact on the South African economy. The Communications Officer works with a GDE official to plan the day's programme around the Grade 11 school syllabus which includes topics, such as mergers. In addition, the programme seeks to inform pupils about potential career opportunities relating to Competition law enforcement.

Tribunal case managers continued to play a leading and central role in presenting the programme to the pupils which included interactive discussion sessions, attending part of a hearing and participating in a role-playing exercise focused on price fixing.

*"This has been a great experience and I have learned more than I thought I would learn. I'm glad the Gauteng Education Department has partnered with the Tribunal because it shows that partnerships can be helpful"*

**Yvonne Raath,  
Eersterust Secondary**

*"This programme is educational because it helps us understand more about cartels and business practices... The Tribunal and Commission is all about protecting businesses and consumers and making sure businesses are not doing prohibited practices"*

**Rhulani Sono,  
Silverton High**

*"I would like to come and visit again. I had so much fun and learned a lot about the Commission and Tribunal"*

**Yonga Zangqa,  
Pretoria Central High**



Our Website

Away from the court room, the Tribunal regards its website as its portal through which anyone, anywhere in the world, can have insight into its decisions and activities.

While much of the previous reporting period had been spent on re-developing, re-designing and re-launching the website, the current reporting period was used to fine tune and bring further improvements to the online platform. Google analytics, used to measure traffic to our website during the reporting period, show that each user viewed an average of 3.82 pages for 3m11s which is comparable to the prior reporting period (3.79 pages for 3m20s). The number of sessions increased from 82 801 to 87 931. The number of new and returning visitors increased by 6.32% and 5.52% respectively when compared to the previous reporting period.

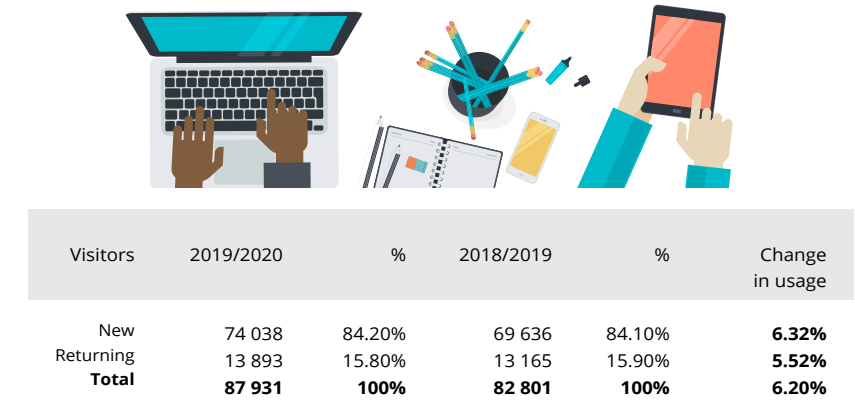


Diagram 12: Visitors to our website

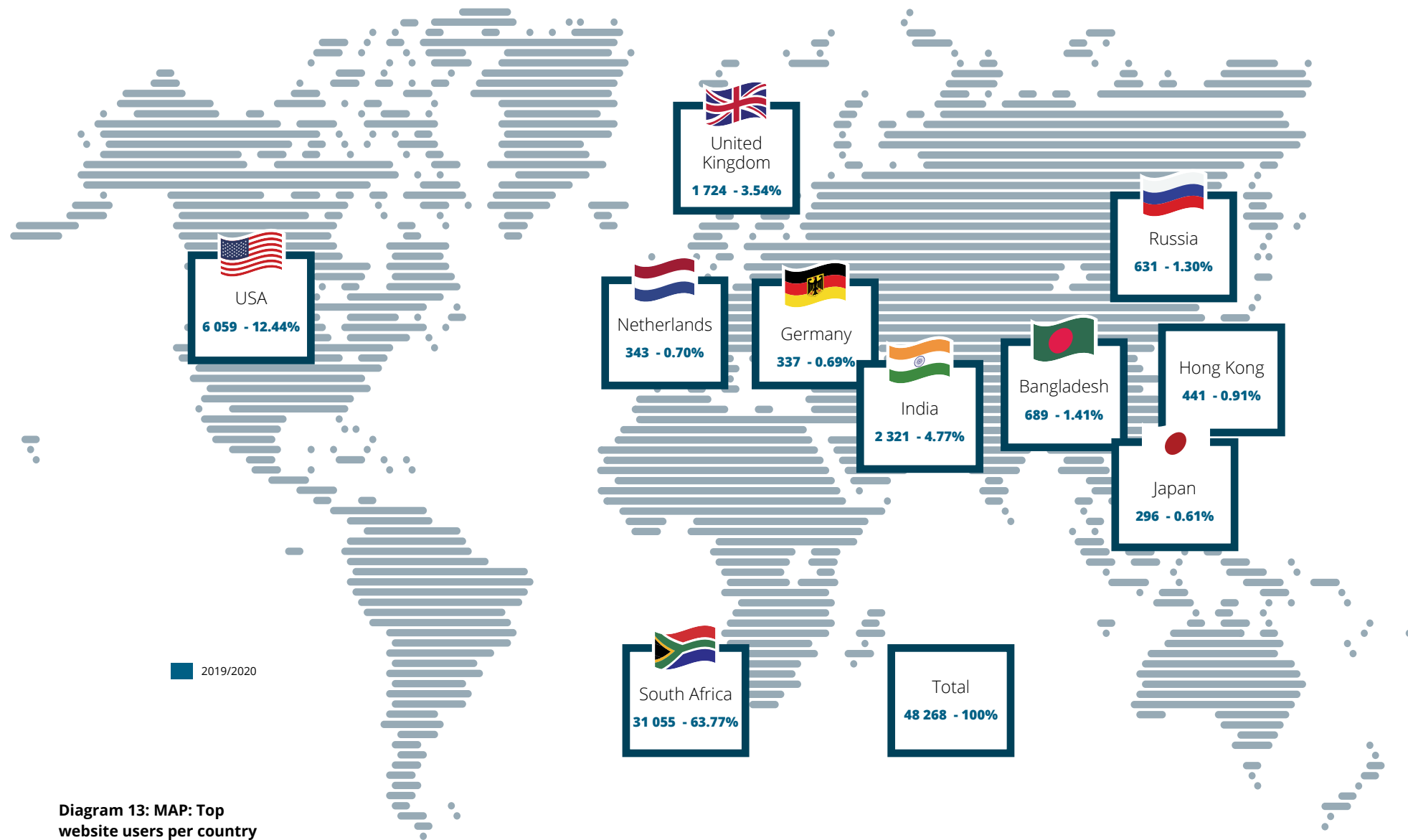


Diagram 13: MAP: Top website users per country

## Awards

The Tribunal is pleased to report that in November 2019 it won an award “1st place in the public sector category” for its 2018/2019 Integrated Annual Report at the Integrated Annual Reporting Awards. The Tribunal previously received merit awards in 2017 and 2018.



Hosted by Chartered Secretaries Southern Africa in partnership with the Johannesburg Stock Exchange, the awards recognise excellence in corporate reporting and offer an opportunity for a peer-on-peer comparison and measure of good corporate governance and risk management practices.

In September 2019, the Tribunal won an award for Best Annual Report from the SA Publication Forum, for its 2017/2018 Integrated Annual Report. It also received a merit award for its revamped website, launched in April 2019.



## Media relationships and media monitoring

Media relations are central to our communication with stakeholders. This involves providing the media with accurate and timely information on hearings and Tribunal decisions and reasons for the purpose of informing the public in a consistent and credible manner.

Typically, this involves the Communications Officer coordinating with editors and journalists through media enquiries, press releases, case alerts and advisories, among others.

Establishing and maintaining good working relationships with journalists and editors is vital. Equally so, is a solid understanding of the news environment, the current affairs space and South Africa's media landscape. We also recognise the importance of communicating complex concepts in a clear, accurate and concise manner while being able to identify possible newsworthy angles and write press releases accordingly.

Face-to-face visits with editors and journalists covering Competition law stories and day-to-day interactions with the media have continued during the period under review. Apart from fostering good working relationships, this also enables the Tribunal to keep track of who is who in a dynamic media environment. Tribunal cases continue to feature in the media. While this ensures that the public and our other stakeholders remain informed of our decisions and activities, daily media monitoring enables us to determine the extent and reach of coverage, to analyse sentiment (negative, positive or neutral reporting) and to timeously address any issues if and when necessary. It is also a very effective way for us to determine the extent to which our communication is reaching communities, through community media.

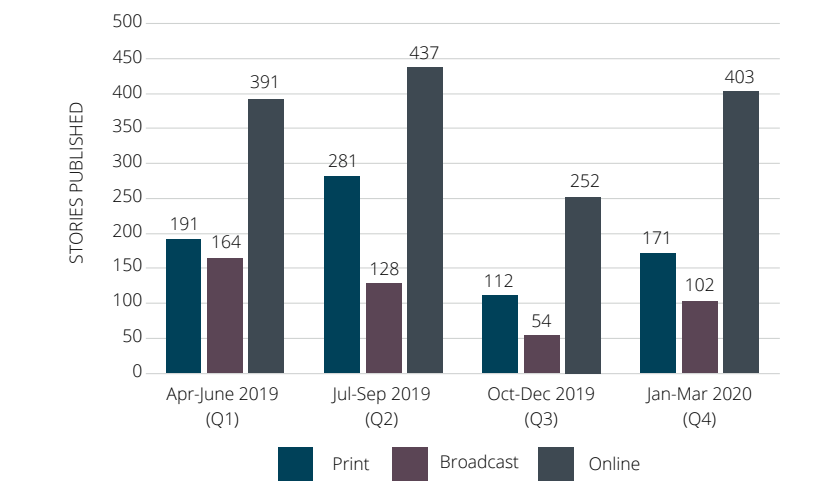
We also do extensive analysis and report on media coverage quarterly. We source data from Newsclip Media Monitoring which provides information relating to print, broadcast and online media coverage.

### Analysis of media coverage

A total of 2 686 news stories on Tribunal decisions and activities were carried in the media during the period under review. This is broadly consistent with the previous reporting period which yielded a total of 2 865 stories.



The graph below illustrates how many news stories were published in each quarter during the reporting period, with a breakdown of stories published in print, broadcast and online media platforms respectively:



Analysis shows that most of the Tribunal's media coverage appeared in online media platforms (55%), followed by print media with 28%. Broadcast coverage accounted for 17% of the Tribunal's media coverage during the reporting period.

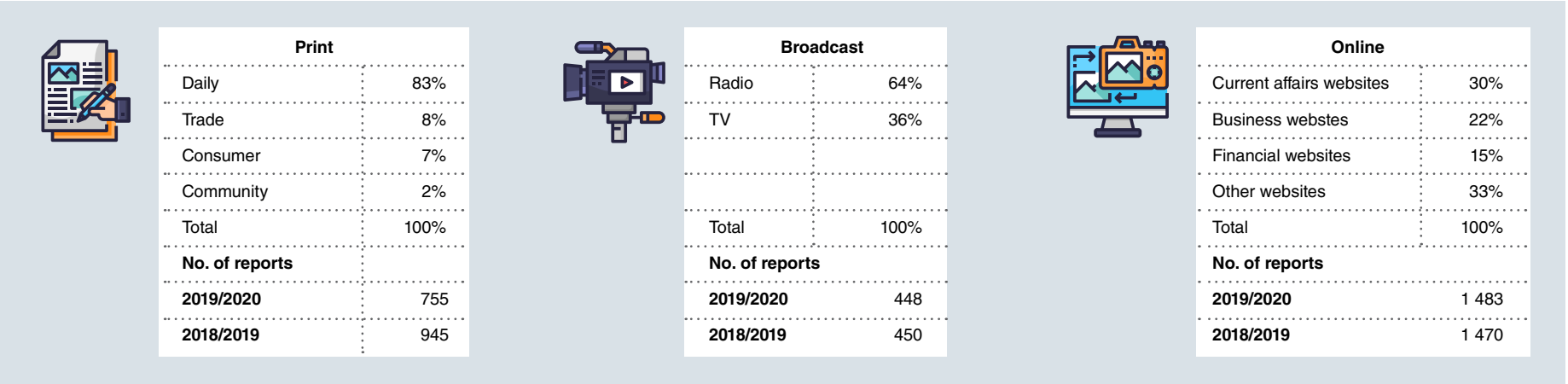


Diagram 14: News coverage by media category

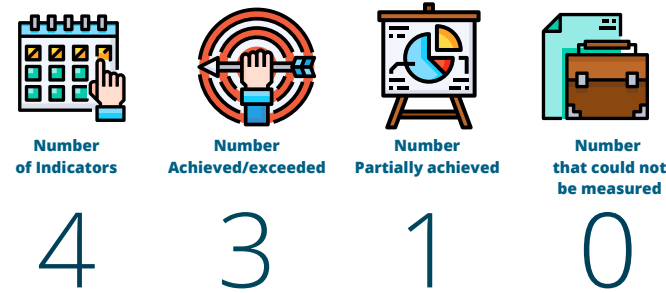
**Some of the Tribunal cases that received widespread media coverage during the reporting period include the following (press release headlines):**

- Tribunal dismisses collusive tendering case against WBHO;
- Tribunal approves IDC, Celrose merger with conditions;
- Tribunal Approves CIVH, Vumatel merger with conditions;
- Tribunal approves Senwesbel, KLK merger with conditions;
- Tobacco industry players oppose British American Tobacco/TWISP merger;
- Tobacco industry players allowed to ‘intervene’ in BAT/Twisp merger;
- Capitec Bank Ltd and Mercantile Bank Holdings Ltd large merger;
- Closing arguments in Parliament travel tender case;
- Tribunal fines Uniplate R16m for abuse of dominance;
- Competition Commission and GVK Siyazama Building Contractors - settlement;

- Hearing into alleged e-toll levy price fixing by furniture removal companies;
- Ostrich merger (reconsideration hearing);
- Tribunal hears Unilever SA prohibited practice matter, closing arguments;
- Mondi must invest R8bn in the next five year, a merger with conditions;
- Mondo Mazwai to head the Competition Tribunal;
- Aton's hostile takeover bid of Murray & Roberts;
- Green light for BAT to acquire Twisp - merger;
- Footgear gets go-ahead to buy Edgars Active;
- Milco and Clover merger;
- Distell accuses AB-InBev, SAB Miller merged entity of breaching merger conditions;
- Ostrich merger (consideration hearing and conditional approval);
- Public version of reasons for prohibiting Mediclinic/Matlosana merger published;
- SAB's acquisition of Smirnoff, Guinness brands approved;
- Robben Island Museum ferry boat operators cleared;
- Computicket to cough up after losing appeal against Competition Tribunal;
- Weelee online platform intervenes in Naspers's WeBuyCars deal;
- Tribunal dismisses bus company's application for interim interdict against Prasa;
- Computicket, Shoprite Checkers challenges Commission in abuse of dominance case; and
- Tribunal dismisses cement industry cartel case against NPC.



# HOW DID WE PERFORM AGAINST OUR PREDETERMINED STAKEHOLDER RELATIONSHIP OBJECTIVES?



The Tribunal's communication activities are underpinned by a guideline document known as a Communication Framework. It is reviewed and updated annually to ensure that the Tribunal keeps abreast of new and innovative ways to communicate effectively and efficiently with stakeholders including the media, the public, corporates, legal and economic advisors, government departments and Parliament.

It also equips the Communications Officer with the necessary guidelines to fulfil the Tribunal's predetermined stakeholder relationship objectives and details various roles and responsibilities to ensure that communication takes place in a coordinated manner and according to prescribed guidelines.

2 Of the annual targets require that the framework be reviewed annually and that quarterly communication reports include progress against strategy and an analysis of media coverage. Both these targets were met fully.

Another target seeks to ensure that final decisions in mergers and prohibited practice cases are made public within stipulated timeframes, that is, press releases are to be issued within 2 business days of the order being issued.

For final merger decisions the target is set at 95% as opposed to 100% as not all merger decisions are deemed newsworthy. In such cases, a press release is not issued. The target was exceeded for the reporting period.

A total of 154 matters were heard – 89 were mergers. Press releases were issued for 89 mergers; 8 press releases were issued in relation to prohibited practice matters; for settlement agreements and consent orders, 25 press releases were issued during the reporting period; case alerts relating to 41 matters were issued to the media and 17 general press releases were also issued during the reporting period.

A target for issuing media releases on final prohibited practice decisions is set at 90%. This target was partially met due to an oversight which was subsequently rectified.

## BEING ACCOUNTABLE, TRANSPARENT AND SUSTAINABLE

The Tribunal's third strategic goal allows us to determine to what extent we have been able to sustain the required capacity and govern the entity in order to achieve effective financial management and reporting.

Through production of an Integrated Annual Report, we have been able to communicate relevant and engaging content while ensuring that our focus is on both financial and non-financial activities.

Through focussing on successes and failures, we achieve transparency and accountability while addressing possible remedies for shortcomings. Later in the report we also focus on governance and ethics.

In this section of the report we focus on capacity building and then address compliance, governance and ethics.

The Tribunal understands the importance of equipping South Africa's youth for the workplace. Internships and on-the-job mentoring are an ideal way of

integrating theory with practical experience and assisting in the development of promising individuals in the field of Competition law enforcement and Competition economics. We continue to host both long and short-term interns from various colleges and universities within our different divisions.

Our Internship programme was launched about a decade ago and continues to develop and grow.

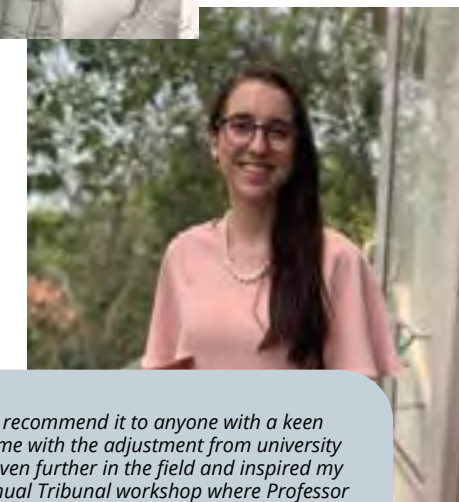
*"I joined the Tribunal as a short-term intern in Economics. I already had an interest in Competition economics prior to joining the Tribunal. Working at the Tribunal further sparked my interest in the field, afforded me the opportunity to work with experienced people and encouraged me to further my studies focusing on Competition economics and regulation. My time at the Tribunal was brief but I learnt a lot. The experience helped me bridge the gap between what I learn at school and its application to real life scenarios. I had such an amazing experience with the staff too - I especially loved the organisational culture and the diversity within the staff"*

**Olwethu Shedi**



*"Being granted the opportunity for a Tribunal internship was an absolute blessing and honour. I learnt quite a lot about myself and the field I would love to venture into in the future, learning about what Competition law truly is about and how it's quite easy to transgress really intrigued me. The different mergers that exist, the effects that trickle through when a market becomes concentrated is all quite fascinating. The Tribunal is quite a lovely space to get introduced into, as a new graduate. The culture and people are lovely. I'm currently in the insurance space and can't quite exactly use what I've learnt but I do want to get back into the competition field when the stars align"*

**Mahlatse Nkosi**

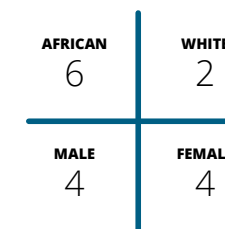


*"My internship experience was invaluable. I would recommend it to anyone with a keen interest in Competition law. The internship assisted me with the adjustment from university to the working environment. It sparked my interest even further in the field and inspired my LLM dissertation topic as I was able to attend the annual Tribunal workshop where Professor R Whish and Advocate Pappadopoulos spoke. Being able to sit in merger hearings and draft reasons has helped me in my current position as a candidate legal practitioner as I work with mergers and I have insight as to the process of how they are conducted"*

**Theodora Michaletos**

2019/2020

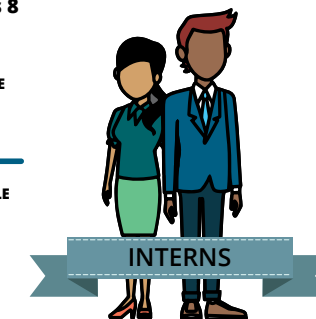
**Number of interns 8**



**DAYS**  
915.13



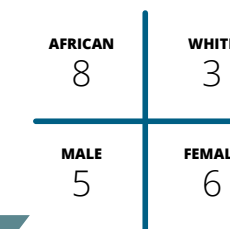
**COST**  
R922 335.80



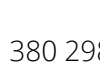
**INTERNS**

2018/2019

**Number of interns 11**



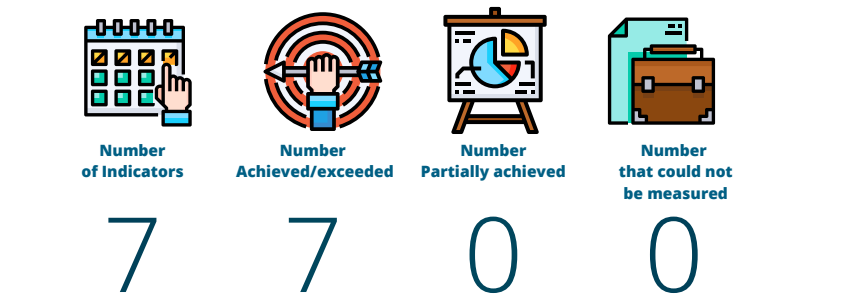
**DAYS**  
1 426.56



**COST**  
R1 380 298.77



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



6 Of these 7 targets relate to the Tribunal's annual audit and compliance relating to Annual Financial Statements, and the seventh target relates to the Tribunal's Internship programme.

BEING ACCOUNTABLE, TRANSPARENT AND SUSTAINABLE

Sustainability can be defined as the ability to be maintained at a certain rate or level or the ability to exist constantly. The concept encompasses financial, social and environmental sustainability. In this section of the report, we give an overview of how our operations impact the community and environment we operate in.

We assess our financial stability by looking at the Tribunal's ability to continue as a going concern. Our finances and financial performance are discussed in detail later in the report.

In terms of the Broad-Based Black Economic Empowerment (B-BBEE) Act, we are required to report on our B-BBEE compliance. We have a system that allows us to collect data on the suppliers we procure from and determine our spend both in terms of B-BBEE level and in enterprise size. We are thereby also able to measure our contribution towards the national agenda of redressing historical imbalances and to advance SMMEs. This is also 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 reflected below.

Level	2019/2020		2018/2019	
	Spend	%	Spend	%
Government entities	R5 686 880	39.26%	R6 929 216	43.05%
B-BBEE 1	R3 508 463	24.22%	R4 120 671	25.60%
B-BBEE 2	R1 640 093	11.32%	R1 471 788	9.14%
B-BBEE 3	R139 982	0.97%	R66 065	0.41%
B-BBEE 4	R2 093 174	14.45%	R2 753 732	17.11%
B-BBEE 5	R86 012	0.59%	R97 603	0.61%
B-BBEE 6	R0	0.00%	R0	0.00%
B-BBEE 7	R0	0.00%	R0	0.00%
B-BBEE 8	R173 363	1.20%	R169 529	1.05%
Not defined	R1 158 386	8.00%	R487 400	3.03%
Total	R14 486 353	100.00%	R16 096 004	100.00%

Diagram 15: Spend by enterprise and B-BBEE level

Recycling initiative

To mitigate any negative impact we may have on the environment, we continue to encourage and monitor recycling in the office. This includes the recycling of paper (and the use of environmentally friendly paper), glass, plastic and computer or electronic equipment, among others.

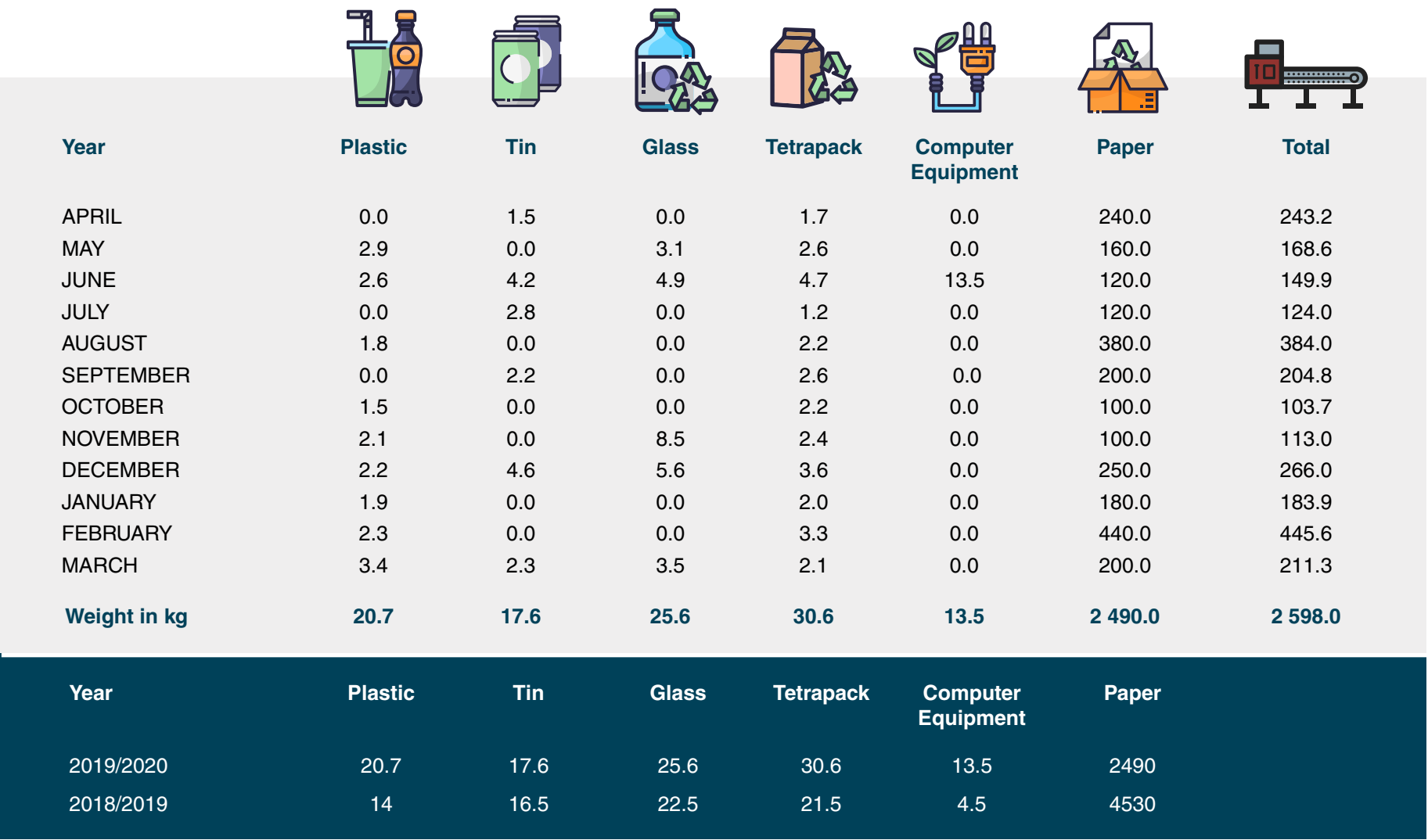
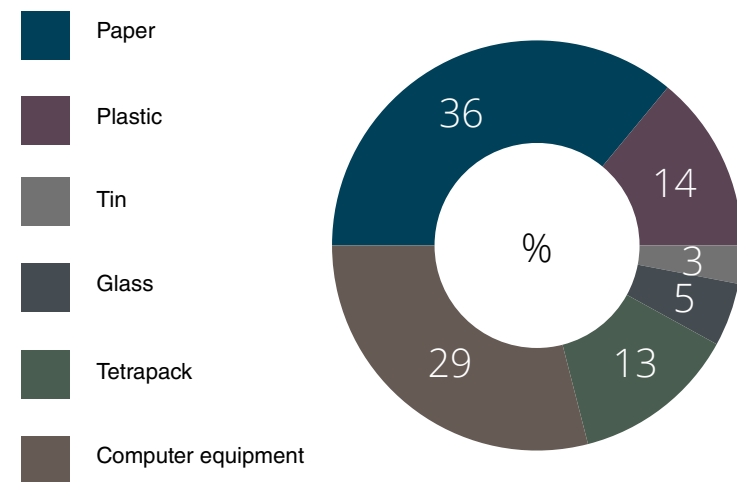


Diagram 16: Recycling figures measured in kilograms



**Diagram 17: 2019/2020 Recycling chart**

In an effort to keep the Tribunal's working environment clean and green, we take great pride in ensuring that all recyclable material is placed in specially designated recycling bins in the workplace. We have seen an increase in recycling during the reporting period (8.09%). This includes an increase in the volume of electronic waste, resulting from the recycling of computer equipment and electronic kitchen equipment.

As expected with the nature of the Tribunal's work, paper is the largest material being recycled. However, a comparison between the 2018/2019 and 2019/2020 financial years shows that the overall amount of paper being recycled has declined. This could be ascribed to the number of cases heard during the reporting period as well as two storerooms having been cleared in the previous period, with large volumes of paper and files sent for recycling. In addition to the decrease in paper recycled, the Tribunal managed to maintain a green work environment as detailed below:



**Diagram 18: What we saved through recycling**


As a government funded entity, the Tribunal is unable to budget for corporate social responsibility projects. However, employees do embark on annual projects to make a difference in the communities they serve and live in. In an effort to promote the dignity of abused and trafficked women, we embarked on a sanitary towel collection drive among staff during the reporting period. During Women's Month, staff visited a women's shelter in Sunnyside in Pretoria where the sanitary towels and a laptop were donated. The shelter will use the laptop to enable women to seek employment and type up Curricula Vitae.



**Sanitary towel handover**







# GOVERNANCE IN THE TRIBUNAL

## OUR OVERSIGHT FRAMEWORK

The Tribunal's Corporate Governance Framework, revised to be aligned to King IV principles, outlines the Tribunal's approach with regard to ensuring best practice and legislative compliance.

## PART 4

# WHAT OVERSIGHT STRUCTURES DO WE HAVE?

The Tribunal has 3 oversight structures in place; the Fraud Prevention Committee, the Risk Committee and the Audit Committee. These committees oversee the governance of the Tribunal as set out in their Charters and are independant of the Tribunal's adjudicative process.

The Fraud Prevention Committee is in place to ensure the necessary mechanisms to prevent, detect and deter fraud are in place.

The Risk Committee is a formal governance committee of the Tribunal responsible for assisting the Accounting Authority in discharging her responsibility of implementing an effective Risk Management Framework.

The Audit Committee's main role is to assist the Accounting Authority in fulfilling her responsibilities of financial reporting and internal governance.

The Risk Committee and the Audit Committee consist of a maximum of five independent non-executive members who collectively must have the required skills, experience and qualifications to fulfil their duties. Member's terms are limited to three years and they may serve a second term subject to a maximum of 2 terms.

A member of the Audit Committee may be a member of the Risk Committee and the chair of the Fraud Prevention Committee is an Audit Committee member. Details pertaining to the members, their attendance and remuneration at the Audit Committee and Risk Committee are illustrated diagram 19 below.

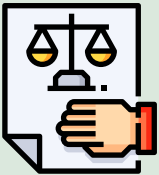
		Independent/Non-Executive Members					Executive Members			
	Name	M Mofokeng	A Moosa	A Mlate	O Josie	S Harrop- Allin	N Manoim	M Mazwai	J de Klerk	A Wessels
Audit Committee Meetings	Required to attend	4	4	4	4	2	2	2	4	0
	Attended	4	4	3	4	2	2	2	4	0
	Fees	R68 130.00	R63 614.66	R0,00	R55 316.70	R28 272.98	0	0	0	0
Risk Committee Meetings	Required to attend	3	3	3	3	2	1	2	3	1
	Attended	3	3	2	3	2	1	2	3	1
	Fee	R34 419.28	R48 777.80	R0,00	R34 419.28	R24 585.93	0	0	0	0
	Area of expertise	Financial	Financial	Compliance	Legal	Governance	AA till 31 Jul 2019	AA from Aug 2019	COO	RMC Chair

Diagram 19: Governance structures meeting attendance and remuneration

# MANAGING AND MONITORING ETHICAL BEHAVIOUR

The first 2 principles of King IV require that the Tribunal Chair, as the Accounting Authority, leads the Tribunal ethically and effectively and ensures that an ethical culture is established.

The Tribunal has implemented various practices and policies that seek to avoid conflicts of interest and enforce the integrity and good reputation of the Tribunal. Other practices and policies in place include, but are not limited to, those listed below:



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 applicable to all employees; and



ADJUDICATIVE

- A Conflict of Interest policy is in place that covers specific situations which may constitute a conflict of interest (e.g. person's 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).
- Full-time, 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 and Industry annually;
- In the case of a dissenting decision by a Tribunal panel member, the writing of a majority and a minority decision are possible. This also helps to dispel 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 Competition Act;
- The Competition 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 Competition Act;



- In camera portions of hearings are recorded as such and marked in transcriptions and not made public;
- Written reasons are issued for all Tribunal decisions (other than consent agreements, 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

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

## PREVENTING FRAUD

### Fraud and Risk Management and mitigation

The PFMA and National Treasury regulations require that a Fraud Prevention Plan is included as a component of a Risk Management Strategy. Pursuant to these requirements the Tribunal has adopted a Fraud Prevention Plan (FPP) and appointed a Fraud Prevention Committee (FPC).

The FPP is developed to ensure that the necessary mechanisms to prevent, detect and deter fraud is in place. In addition, it addresses policy and processes for the reporting, investigation and resolution of fraud matters.

The plan is communicated to all employees and they are required to sign an anti-fraud statement, thus confirming their commitment to the Tribunal's policy of zero tolerance to fraud.

The functions, authority and responsibilities of the FPC are detailed in a Fraud Committee Charter and the report of the FPC is a standing item on the agenda of the Audit Committee and Risk Committee meetings. The FPC also ensures that fraud risks are identified, evaluated and assessed as part of the Tribunal's risk management process.

Any member of the FPC reported for or suspected of fraud may not form part of the Committee until the matter is resolved.

The FPC has met twice in the current reporting period and there have been no incidents of fraud or potential fraud that have been reported or required investigation.



## 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, ensuring that:
  - o Management disseminates the Risk Management Policy and Plan throughout the entity; and
  - o Management ensures that the Risk Management Plan is integrated into the daily activities of the business;
- Based upon the reports of management, and any reviews by internal and external auditors, express formally to the Accounting Authority their opinion on the effectiveness of risk management systems and processes;
- Review the Risk Management Report at each meeting and have particular regard to:
  - o ensuring that a process exists where Risk Management Frameworks and Methodologies are implemented to increase the possibility of anticipating unpredictable risk;
  - o ensuring that a process exists where risk management assessments are performed on a continuous basis;
  - o ensuring that management considers and implements appropriate risk responses; and
  - o 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/benefit the entity.

During 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 five independent non-executive members, and members of executive management, namely J de Klerk and A Wessels, the latter only for the first quarter of the financial year. 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.



Akhter Moosa  
Risk Committee Chairperson  
30 September 2020



## IDENTIFYING AND MANAGING RISKS

The Tribunal has worked hard to ensure that risk management is well embedded within the Tribunal with nearly 50% of the full-time staff being directly involved with the risk management process.

A sound internal control system and effective risk management are integral to ensuring that we can continue to meet our objectives. It is also important that risk management is not seen in isolation but is integrated with all processes (governance, planning, management and reporting) and that it forms part of the Tribunal's culture.

Adopting this approach has allowed us to effectively and proactively identify, assess, quantify, and mitigate risks.

A risk is defined as any event that may impact negatively on the Tribunal's ability to achieve its objectives. Diagram 20 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 lines of defence (management, internal auditors, external auditors and other assurance providers on the Tribunal's risk profile).

In the financial year under review 17 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 (KRI's) 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 Committee tracks 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 to consider.



# INFORMATION TECHNOLOGY AND GOVERNANCE

## Maintaining effective IT Governance in the Tribunal

During the reporting period, the Tribunal created one new IT Policy and revised two. A review of the IT Strategic Framework took place which specifies the methods through which IT can be implemented, managed and monitored in the Tribunal. It also provides guidelines for the effective use of IT resources through individual projects.

The Information Security Policy underwent a review in order to update details on patch management and to add additional security aspects that are in place at the Tribunal. The policy contains a detailed description of how the Tribunal sets out protocols and policy around information technology security.

In addition to the policies above, the Tribunal created a Firewall Policy that details the procedure and protocols for making use of the Tribunal's network. This policy can be seen as an extension of the IT Security Policy, as it deals with the network firewall which is one of the primary components of network security.

## New IT developments

### Digital signature service

In the interest of moving toward a digital environment and becoming less reliant on paper, the Tribunal implemented a digital signature solution. Through this service, we are able to digitally sign any work-related documents and file them digitally. The security applied behind an individual's digital signature is valid for an indefinite period and is legally binding.

This service is accessed through the use of an internet portal which is secured by a username, password and one-time pin.

### Further enhancements on the website

A major part of the agreement with the Tribunal's website service provider was to update the look, feel and functionality of the website.

Currently visitors to the website have the ability to search for upcoming cases, current cases and archived cases. The search result provides case information as well as the documents pertaining to the case, such as the Tribunal's order and its reasons for decision.

An upcoming enhancement to the website will be to have specific static pages in multiple languages, enabling the public to read website pages in their language of choice.

Working together with the service provider, the Tribunal succeeded in providing a more modern look and feel to the new website as well as streamlining menu items and information.

The IT budget for the period under review was set at R3.52 million. The diagram 21 below highlights the IT expenditure line items.










ITEMS		BUDGET	SPENT	VARIANCE
	Computer Equipment	448 590.31	251 779.72	196 810.59
	Software, services and renewals	812 850.31	737 844.97	75 005.34
	Repairs and maintenance	1 017 003.56	863 815.36	153 188.20
	Internet/IT service povider	203 002.90	192 785.28	10 217.62
	Website service provider	226 161.40	185 711.39	40 450.01
	Email	76 003.64	72 175.80	3 827.84
	Intangible assets	581 855.00	265 481.76	316 373.24
	Software under development	0.00	0.00	0.00
	Lease	160 510.56	222 278.84	-61 768.28
TOTAL		3 525 977.69	2 791 873.12	734 104.57

Diagram 21: IT budget and spend

Risk Name	Category	Origin	Inherent risk exposure	Control effectiveness	Residual risk exposure	Risk response
Shortage of Tribunal members to effectively oversee cases	Human resources	Strategic	Extreme	Unsatisfactory	Extreme	Tolerate
Long term funding sustainability	Financial stability	Strategic	Extreme	Satisfactory	High	Treat
Inadequate Information Security	Information integrity and reliability	IT	Extreme	Satisfactory	High	Treat
Business interruption	Business continuity planning	Strategic	Extreme	Satisfactory	Moderate	Treat
Inadequate operational facilities on Dti campus	Multiple categories	Strategic	Extreme	Satisfactory	Moderate	Tolerate
Inaccurate or inadequate performance reporting	Regulatory / Statutory / Legal	Strategic	Extreme	Satisfactory	Moderate	Treat
Poor corporate governance / business ethics and regulatory compliance	Regulatory / Statutory / Legal	Strategic	Extreme	Satisfactory	Moderate	Treat
Poor case management	Reputation	Strategic	Extreme	Good	Moderate	Treat
Ineffective management of OHS within the Tribunal	Safety, security, health and environmental	Strategic	Extreme	Satisfactory	Moderate	Treat
Inadequate procurement management	Fraud and theft	Fraud	Extreme	Good	Within risk tolerance	Treat
Poor management of hearing logistics	Operational	Strategic	Extreme	Good	Within risk tolerance	Treat
Inadequate financial management	Fraud and theft	Fraud	Extreme	Good	Within risk tolerance	Treat
Inadequate record keeping of case documents	Operational	Strategic	Extreme	Good	Within risk tolerance	Treat
Financial non-disclosure and inadequate financial reporting to relevant stakeholders	Regulatory / Statutory / Legal	Strategic	Extreme	Good	Within risk tolerance	Treat
Inability to attract and retain key critical positions within the organisation	Human resources	Strategic	High	Good	Within risk tolerance	Treat
Inadequate Payroll management	Human resources	Fraud	High	Good	Within risk tolerance	Treat
Inadequate physical and financial control over Tribunal assets	Fraud and theft	Strategic	Extreme	Very Good	Within risk tolerance	Treat

Diagram 20: Tribunal's strategic risks

# REPORT OF THE AUDIT COMMITTEE

We are pleased to present our report for the financial year ended 31 March 2020.

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 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 or emphasis of matter, and the management letter of the Auditor-General, it was noted that no significant or material noncompliance 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 monthly and quarterly management 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 DTIC 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 and 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  
30 September 2020



# AUDITING OUR WORK, PROCESSES AND PROCEDURES

The Tribunal has ensured that an internal and external audit function is in place thus ensuring 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 and its current focus is on the financial accounts, financial management, regulatory compliance and performance against predetermined objectives. This audit is performed at year-end and an opinion is provided by the Auditor-General 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 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 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 letter.

In the prior period, a clean audit was obtained, and 6 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 opinion are presented in Part 6. We are pleased to report that the Tribunal has once again received a clean audit with 5 minor findings that will be addressed in the forthcoming financial year.

Since inception the Tribunal has had 21 audits performed by the Auditor-General and we are proud to report that we have never received a qualified report and 62% (13) of these audits have been clean audits (no qualifications or emphasis of matter reported) while the other 38% (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 who are in the second of a five-year appointment.

The names, qualifications and years of service of each member of the internal audit team are set out in the table below:

	 Position	 Experience	 Qualification
Ms. A Nemudzivhadi	Internal Auditor	2 years	Btech: Internal Audit
Ms. B Seleme	Internal Auditor Manager	10 years	CIA
Ms. S Moyo	Internal Auditor Supervisor	9 years	Bcompt Accounting Science
Mr. K Mothapo	Internal Auditor	2 years	Btech: Internal Audit
Ms. N Ndzhukula	Internal Auditor	1 years	Btech: Internal Audit
Ms. P Mahlangu	Senior Internal Auditor	3 years	Btech: Internal Audit
Ms. P Mhlongo	Senior Internal Auditor	1 years	Btech: Internal Audit
Ms. R Tebele	Senior Internal Auditor	2 years	Btech: Internal Audit
Mr. R Galetti	Internal Auditor IT Manager	17 years	Bcompt Accounting Science, CIS
Mr. P Mawire	Director Internal Audit	17 year	CA(SA)

The Tribunal has implemented and adheres to a combined assurance process and therefore where possible the internal audit functions are co-ordinated with other external and internal assurance providers so as 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 8 audits were performed by internal audit during the financial year under review and findings are classified based on the following guidelines:

Finding Rating	Risk Level of Audit Findings Raised
Low	A low level of residual risk exposure due to effective and efficient operation of controls, which provides management with reasonable assurance that risk will be mitigated and that process objectives will be achieved.
Moderate	Exposure identified that is unlikely to have a significant impact on the business unit or area under review but should be resolved as soon as possible. The exposure relates to a weakness in internal control. There is a risk that due to this weakness, fraud and error or resulting losses will not be prevented or detected timely.
Significant	Exposure identified that is likely to have a significant impact on the business unit or area under review and should be resolved as soon as possible. The exposure relates to a weakness in internal control. There is a risk that due to this weakness, fraud and error or resulting losses will not be prevented or detected timely.
Major	Weakness in internal control systems that requires prompt action as these constitute deficiencies, which if unattended, could expose the organisation to significant risk of losses or significant errors.

The following internal audits were performed during this financial year and 28 internal audit findings remain unresolved as at 31 March 2020:

Audit Area	Major	Significant	Moderate	Low	Total findings
Supply Chain Management	0	2	1	0	3
Follow-up of prior year findings	3	8	4	1	16
Audit of Performance information	0	0	1	1	2
Financial Core Controls	0	0	1	0	1
Information Technology Vulnerability	1	0	0	0	1
Case Management	0	1	0	0	1
Registry	0	1	1	0	2
Enterprise Risk management	0	2	0	0	2
<b>Total</b>	<b>4</b>	<b>14</b>	<b>8</b>	<b>2</b>	<b>28</b>

Management has implemented corrective action for the unresolved prior year audit findings. Processes have been implemented and confirmed by internal auditors. Internal auditors have concluded that 93.75% of the prior findings have been substantively resolved, awaiting the Tribunal's updated policies and procedures to be signed off. The illustration below reflects the status of all internal audit findings as at 31 March 2020:

Status	2019/2020	Prior Years	Total	%
Partially Resolved	4	15	19	67.86%
Not Resolved	0	0	2	7.14%
Ready for Audit	3	1	6	21.43%
Not Yet Due	6	0	1	3.57%
<b>Total Findings</b>	<b>13</b>	<b>16</b>	<b>28</b>	<b>100%</b>

# EVALUATING OUR OVERSIGHT STRUCTURES

In order to determine whether Audit Committee members are performing as required and to identify any gaps that require corrective action, an annual assessment of the Audit Committee and internal audit are undertaken.

The assessment for the current reporting period was completed by Audit Committee members and the COO.

**The questionnaires completed relate to the following assessments:**

- Audit Committee members – self-evaluation;
- Evaluation of the Audit Committee;
- Evaluation of the internal auditors; and
- Evaluation of the Audit Committee Chairperson.

The overall conclusion of the assessment is as follows:

- i. The Audit Committee is performing its required role and meeting its responsibilities, evidenced in an overall score of 80.20%;
- ii. The Audit Committee is more than satisfied with the outsourced internal audit function and is of the view that internal audit is meeting its responsibilities and requirements, evidenced in an overall score of 81.75%;
- iii. Audit Committee members perceive their overall performance as meeting defined requirements and scored 81.88%; and
- iv. The Chairperson's performance is seen as meeting defined requirements and received a score of 81.89%.

The Tribunal has implemented a similar assessment process for the Risk Committee and will be reported on in the future Integrated Annual Reports.

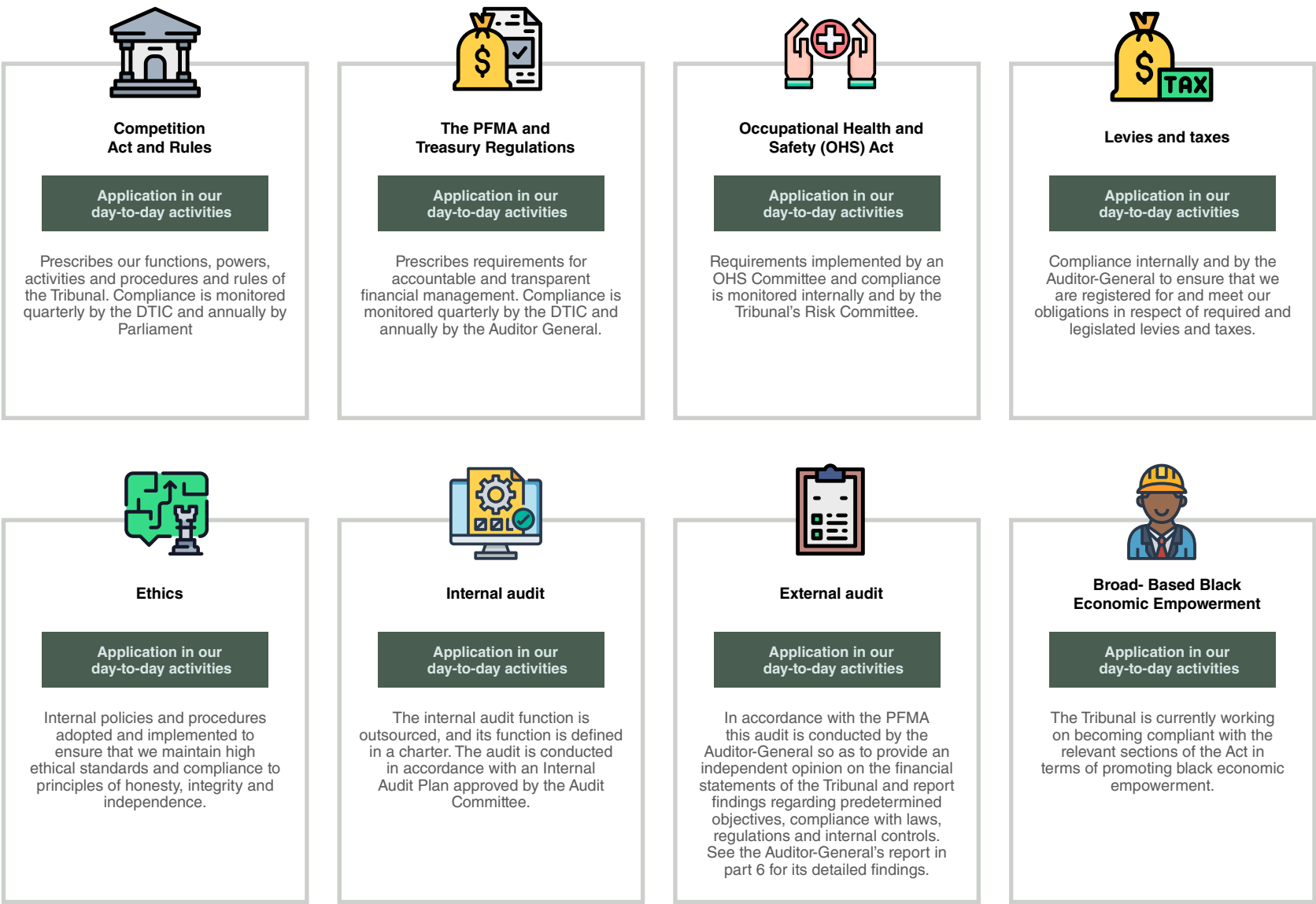
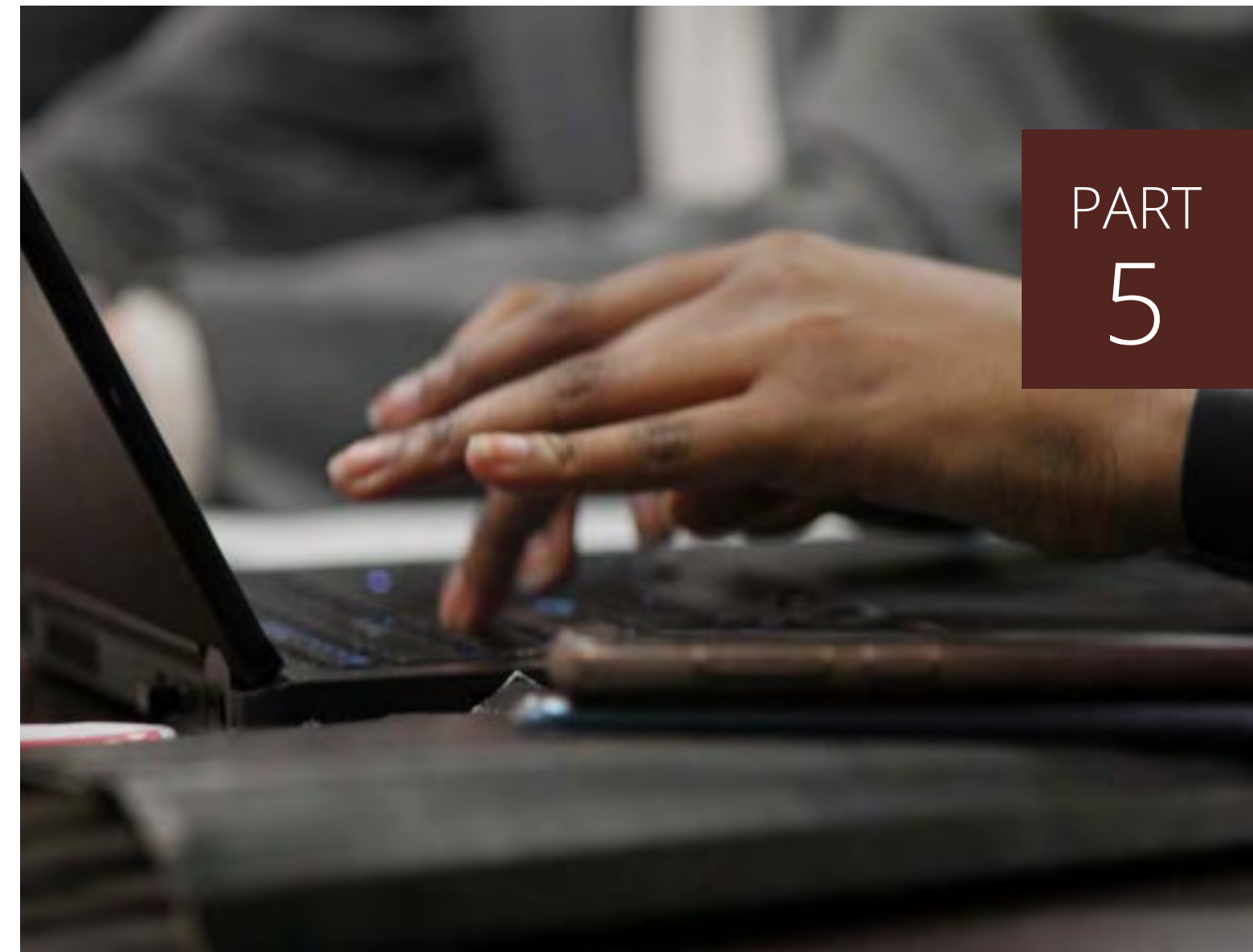


Diagram 22: Legislation and areas of compliance that guide our operations





# HOW WE MANAGED OUR HUMAN AND FINANCIAL RESOURCES



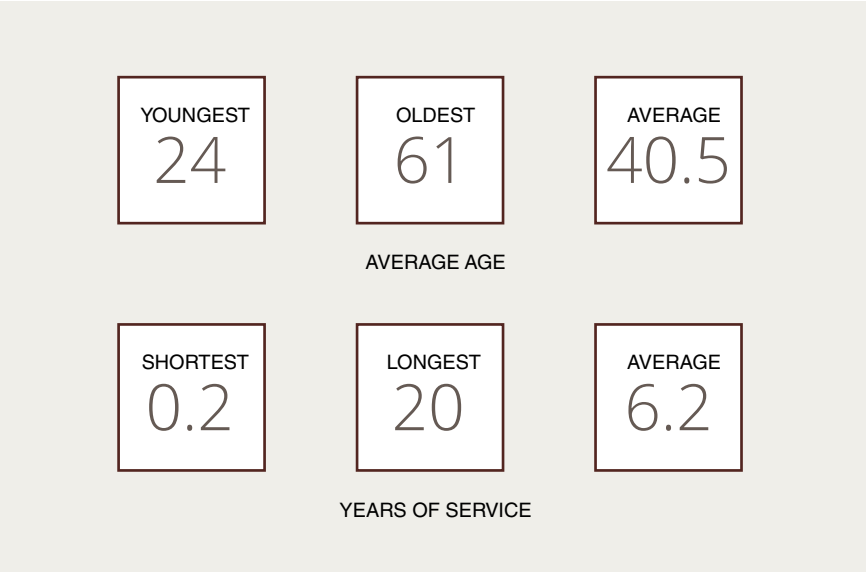
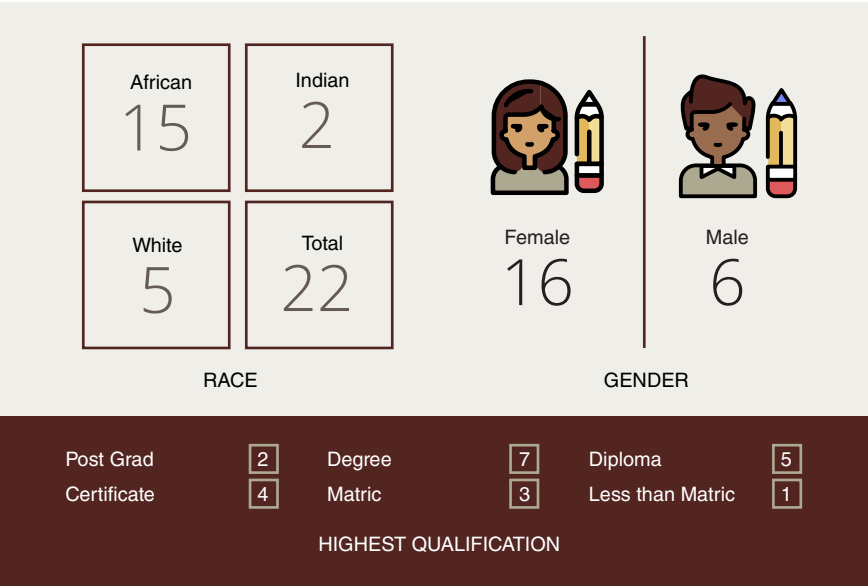
PART  
5

# HOW DID WE MANAGE OUR HUMAN RESOURCES?

The Tribunal's Human Resources division focuses on remuneration and benefits, training and development, performance management, employee wellness and occupational health and safety.

As at March 2020, the Tribunal had 4 full-time Tribunal members, 22 full-time employees, 3 staff on one-year contracts and 5 interns. In addition, the Tribunal had 6 members serving in a part-time capacity.

The Tribunal's staff is presented graphically below with the statistics profiling the demographics, qualifications, age analysis and years of service of the 22 full-time employees excluding interns, Tribunal members and staff on one year contracts.



### Making changes to our staffing

During the period under review, the Tribunal accepted 4 resignations (Head of Corporate Services, Financial Officer and two Case Managers). One position (Financial Officer) has been filled and recruitment for the remaining 3 is in progress.

### How do we remunerate our human capital?

The Tribunal maintains market related salaries and remunerates its employees in line with the designated market. Annual salary adjustments of staff are informed by public sector union settlements. The remuneration structure applied in the Tribunal is a Total Cost to Company (TCC) structure and it includes contributions to retirement plans and a medical aid. In addition to the TCC, the Tribunal pays the group risk cover for employees.

The Tribunal's salary scale is structured to include a range of job grades. Grades range from junior position (Grade 16) to senior position (Grade 3). As per the

diagram 23 below, 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.

Annual cost of living adjustments applicable and implemented in the public sector are used as a basis for annual adjustments for Tribunal staff, subject to budget availability. During the current reporting period, salary adjustments for non-senior management service employees implemented ranged between 5.2% and 6.2% (dependent on salary level), while senior management service employees received an adjustment of 2.8%. There was no cost of living adjustment or any other salary increases for Tribunal members.

In principle Tribunal members' salaries should be aligned with those of High Court judges. However, currently the Tribunal members do not receive certain significant benefits that the judges of the High Court enjoy.

Peromones Grade	Equate Grade	Number of employees	Band range (as at 31 March 2020)		
			Min	Mid	Max
Grade 3	15	1	1 704 410	2 106 628	2 508 846
Grade 5	13	2	1 139 229	1 474 430	1 809 632
Grade 6U	12	1	919 582	1 248 084	1 576 584
Grade 6	12	2	873 353	1 107 206	1 341 058
Grade 7	11	3	736 926	879 343	1 021 758
Grade 8	10	1	643 953	735 214	826 473
Grade 9	9	1	608 488	670 402	732 317
Grade 10	8	4	434 011	473 318	512 623
Grade 11	7	2	352 788	384 181	415 574
Grade 12	6	3	285 755	311 180	336 604
Grade 14	4	1	199 037	216 747	234 456
Grade 16	3	1	167 952	182 898	197 842

Diagram 23: Job grade and salary scales

### Training and development

The Tribunal is committed to making relevant opportunities available to ensure that its employees have the competencies necessary to meet performance and quality standards in their current jobs. Employees attend a variety of competition related conferences and seminars, both locally and abroad, providing that sufficient budget is available. A wide range of internal and external training courses were also arranged in the following areas:

- Competition law;
- Competition policy; and
- Occupational Health and Safety (OHS).

The Tribunal also funded 5 employees on formal studies of education relevant to their profession.

### Performance management

The Performance Management System is used by Divisional Heads to assess their employees' performance and to identify training and development needs. Where there is poor performance, measures are discussed and implemented for improvement. Employees achieving scores that reflect above average performance may be rewarded by means of a promotional adjustment or a performance bonus, provided that there is sufficient budget.

### Employee Wellness

The Tribunal has contracted a wellness company that provides support and guidance to employees and their family members dealing with personal and work-related challenges. The Tribunal created an awareness campaign for employees and hosted a workshop presented by Heath 1st, the appointed wellness service provider.

### Occupational Health and Safety (OHS)

The Tribunal has the responsibility of ensuring that employees are provided with a working environment that is safe and without risk to their health. The OHS Committee has been established and performs its duties as per the legislative requirements. The OHS representatives have all attended training for their respective roles to ensure their readiness for any emergency situation.



In terms of the OHS Act, a section 16.2 official is responsible for ensuring compliance with OHS legislation. In the Tribunal, the Human Resources Officer performs monthly and quarterly reviews. OHS risks or potential safety hazards are assessed for inclusion on the risk register and controls are implemented and monitored so that the risk can be mitigated. A quarterly OHS report is presented to the Risk Committee for review.

The review of the OHS and ERP policies were finalised, and the two policies workshopped with staff in March 2020.

# MANAGING OUR BUDGET AND FINANCIAL RESOURCES

Effective oversight, financial 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, effective controls and accountability.

The Tribunal maintains a set of policies that conform to the Public Finance Management Act (PFMA) and relevant National Treasury regulations. These policies are periodically reviewed by the Management Committee and approved by the Accounting Authority. The Tribunal retained the services of Nexia SAB&T as internal auditors to inter alia (i) verify the correctness of the policies; and (ii) test the Tribunal's compliance with these policies.

The Head of Finance produces monthly management accounts which are reviewed by the Chief Operations Officer and finally by the Accounting Authority before submission 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.

## How did we spend our budget?

The Tribunal's 2019/2020 budget was included in its Annual Performance Plan which was approved by the DTIC in March 2019 and formally tabled in Parliament in April 2019.

The approved budget for the period under review reflected expenditure (exclusive of capital expenditure) of R59.75 million and revenue of R56.35 million with the expected shortfall of R3.40 million being funded from the Tribunal's accumulated cash surpluses as approved by National Treasury.

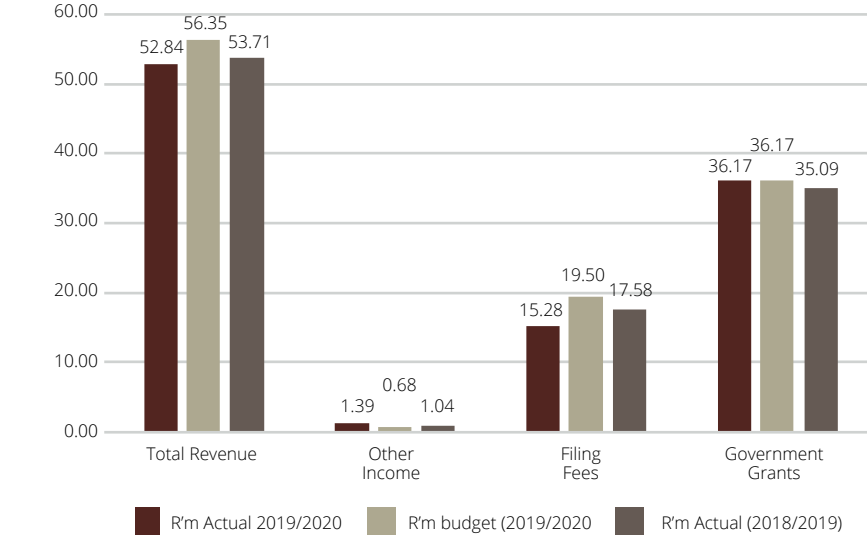


Diagram 24: Revenue by category over two years

Revenue comprises three components. The first is a grant from the DTIC which was received in three equal tranches during the year. This was in line with the budget in an aggregate amount of R36.17 million, and up 3.08% year-on-year.

The second component of revenue is filing fees received in relation to mergers notified to the competition authorities. In terms of a Memorandum of Agreement between the Commission and the Tribunal, the Tribunal receives 30% of large merger filing fees and 5% of the intermediate merger filing fees levied by the Commission which are paid over on a monthly basis. In the 2019/2020 financial year, these fees were 21.64% under budget and 13.08% lower than the prior financial year. These fees fluctuate year on year, given the level of merger activity in the economy. Given this uncertainty, it is prudent for the Tribunal to accumulate surplus over the long term, so that with the approval of National Treasury they can be used to fund deficits.

The final component of revenue, "other income" pertains mainly to interest received on cash balances. These are held between the South African Reserve Bank and the Tribunal's commercial bankers ABSA. This amount was higher than both the budget and the prior year given the increase in accumulated surpluses.

Our total revenue in the financial year under review was therefore 6.23% below budget and 1.62% lower than the prior financial year.

## Analysis of the Expenditure Budget

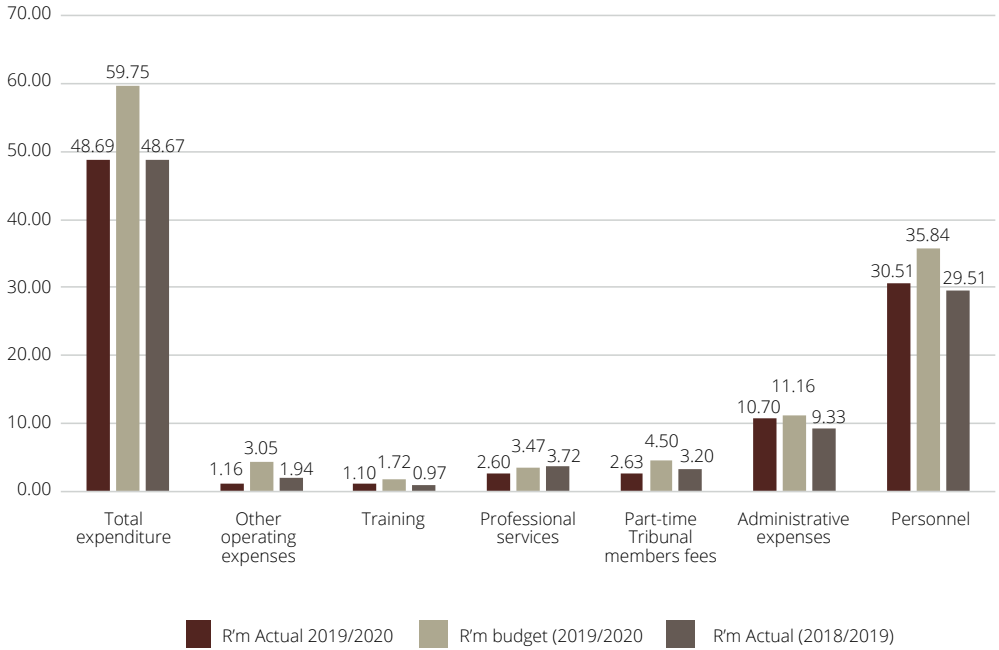


Diagram 25: Expenditure by category over two years

In light of the underrun in revenue, we were prudent to manage expenditure which rose by only 0.04% against the prior year and was 18.51% below budget.

Personnel costs account for the bulk of the Tribunal's total expenditure. In the 2019/2020 year these increased by 3.39% to R30.51 million but were 14.87% below the budgeted amount. The rise in actual expenditure was driven by a cost-of-living adjustment to staff salaries (excluding full-time Tribunal members), whereas the reason for the underspend against budget was the vacancies in Tribunal members. The budget included the filling of one Tribunal member position, and a second vacancy arose on the retirement of the outgoing Chair. Although the Chair was replaced, this was with a sitting member. Although the Tribunal was able to meet its adjudicative goals, these vacancies did place strain on capacity.

The reduction in fees paid to part-time members is due to the fact that fewer matters were heard by part-time members in the current financial year than the prior financial year. Furthermore, there was no cost-of-living adjustment made to the R9 000 daily rate paid to part-time members. The budget for these fees was based on a three-year rolling average of the number of hearing days which turned out to be lower in the current financial year.

We contained costs through a combination of factors including only sending one delegate on overseas training and some conferences took place locally instead of internationally. Notwithstanding this, as illustrated earlier in the report, we have still been able to ensure that skills development has been implemented thus contributing towards our goal of building sustainable capacity.

What did it cost us to meet our strategic goals?

We conclude this section with an illustration of how the budget is allocated and was spent across the Tribunal’s strategic objectives. The table is inclusive of capital expenditure.

The Tribunal is an efficient organisation, allocating 72.94% and spending 73.97% of its expenditure budget on its strategic objectives.

Goal	Budget (R'000)	% budget by objective	Expenditure (R'000)	% spend by objective	% of budget spent
Objectives - Goal 1 - Adjudicative Excellence					
Timeous hearing and issuing of judgments	R29 944 094	48.58%	R23 557 408	47.65%	78.67%
Effective business processes	R3 422 701	5.55%	R3 246 051	6.56%	94.84%
Objectives - Goal 2 - Stakeholder Relationships					
Stakeholder awareness	R1 449 562	2.35%	R1 260 395	2.55%	86.95%
Objectives - Goal 3 - Accountable, Transparent and Sustainable Entity					
Effective oversight	R3 758 983	6.10%	R3 734 379	7.55%	99.35%
Effective financial management	R3 079 293	4.99%	R2 953 316	5.97%	99.91%
Sustainable capacity	R3 317 570	5.38%	R1 827 320	3.69%	55.08%
Other Expenses					
Administration	R12 845 965	20.83%	R10 833 490	21.90%	84.33%
Depreciation	R1 278 169	2.07%	R931 964	1.88%	72.91%
Capital	R1 832 978	2.97%	R770 499	1.56%	42.04%
*Appeal Court	R726 757	1.18%	R342 295	0.69%	47.10%
TOTAL	R61 656 072	100.00%	R49,457,115	100.00%	80.21%

\*The Tribunal manages all the expenditure of the Competition Appeal Court except for employee costs.







# HOW DID WE USE OUR FINANCIAL RESOURCES?

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

### REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

#### Opinion

1. I have audited the financial statements of the Competition Tribunal set out on pages 96 to 129, which comprise the statement of financial position as at 31 March 2020, statement of financial performance, statement of changes in net assets, cash flow statement and statement of comparison of budget and actual amounts for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2020, and its financial performance and cash flows for the year then ended in accordance with the Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA).



## PART 6

Basis for opinion

- 3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
- 4. I am independent of the public entity in accordance with sections 290 and 291 of the Code of ethics for professional accountants and parts 1 and 3 of the International Code of Ethics for Professional Accountants (including International Independence Standards) of the International Ethics Standards Board for Accountants (IESBA codes) as well as the ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA codes.
- 5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Responsibilities of the Accounting Authority for the financial statements

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

Auditor-General's responsibilities for the audit of the financial statements

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

- 9. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

REPORT ON THE AUDIT OF THE ANNUAL PERFORMANCE REPORT

Introduction and scope

- 10. In accordance with the Public Audit Act of South Africa 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected strategic focus area presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.
- 11. My procedures address the usefulness and reliability of the reported performance information, which must be based on the approved performance planning documents of the public entity. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the public entity enabled service delivery. My procedures also do not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
- 12. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected strategic focus area presented in the annual performance report of the public entity for the year ended 31 March 2020:

Strategic focus area	Pages in the annual performance report
Strategic focus area 1 – Adjudicative Excellence	132 - 134

- 13. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.

- 14. I did not identify any material findings on the usefulness and reliability of the reported performance information for strategic focus area 1: adjudicative excellence.

Other matters

- 15. I draw attention to the matters below.

Achievement of planned targets

- 16. Refer to the annual performance report on pages 132 to 136 for information on the achievement of planned targets for the year and explanations provided for the under and overachievement of a number of targets

Adjustment of material misstatements

- 17. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information of strategic focus area 1 – adjudicative excellence. As management subsequently corrected the misstatements, I did not raise any material findings on the usefulness and reliability of the reported performance information.

REPORT ON THE AUDIT OF COMPLIANCE WITH LEGISLATION

Introduction and scope

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

OTHER INFORMATION

- 20. The accounting authority is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report and the selected strategic focus area presented in the annual performance report that has been specifically reported in this auditor's report.

- 21. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
- 22. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected strategic focus area presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
- 23. I did not receive the other information prior to the date of this auditor's report. When I do receive and read this information, if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

INTERNAL CONTROL DEFICIENCIES

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

Auditor General

Pretoria  
30 September 2020



AUDITOR-GENERAL  
SOUTH AFRICA

Auditing to build public confidence



## 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 2020.

The financial statements presented on pages 96 to 129 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 July 2020.







# ANNUAL FINANCIAL STATEMENTS

- 95 Introduction
- 98 Statement of Financial Position
- 99 Statement of Financial Performance
- 100 Statement of Changes in Net Assets
- 101 Cash Flow Statement
- 102 Statement of Comparison of Budget and Actual Amounts
- 104 Accounting Policies
- 112 Notes to the Annual Financial Statements

## INTRODUCTION

### 1. NATURE OF BUSINESS

The Competition Act regulates mergers and acquisitions, and prohibited practices (anti-competitive conduct).

The Competition Tribunal is an independent adjudicative body established in terms of section 26 of the Competition Act, No. 89 of 1998 (Act). It has jurisdiction throughout the Republic of South Africa. It exercises its functions in accordance with the Act, the Constitution and without fear, favour or prejudice.

The Competition 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 Competition Tribunal which adjudicates on matters referred to it by the Competition Commission; and the Competition Appeal Court, which considers appeals or reviews against Tribunal decisions.

The Competition Tribunal is required to; a) grant exemptions, authorise or prohibit large mergers (with or without conditions) or prohibit a merger; b) adjudicate in relation to any conduct prohibited in terms of chapter 2 or 3 of the Act, and c) grant an order for costs in terms of section 57 of the Act on matters presented to it by the Competition Commission. Once the Competition Tribunal arrives at a decision, it is required to publish its reasons on the site.

### MEMBERS

In all matters, the Competition Tribunal will hold hearings which are open to the public. In almost all cases, apart from a few procedures type cases, three Tribunal members must hear a case and make a decision.

Competition Tribunal members are appointed by the President of the Republic, on recommendation by the Minister responsible for Trade, Industry and Competition. These members are appointed on 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:

Name	Full/part time	Date of appointment
Mondo Mazwai (Chairperson from 1 August 2019)	Full-time	Appointed in August 2019
Norman Manoim (Chairperson to 31 July 2019)	Full-time	Term ended 31 July 2019
Enver Daniels (Deputy Chairperson)	Full-time	Appointed in January 2017
Yasmin Carrim	Full-time	Reappointed in August 2019
Andreas Wessels	Full-time	Reappointed in August 2019
Halton Cheadle	Part-time	Appointed in January 2017
Medi Mokuena	Part-time	Term ended 31 July 2019
Andiswa Ndoni	Part-time	Reappointed in August 2019
Anton 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

### 2. OBJECTIVES AND TARGETS

The year in review is measured against the objectives set in the 2019/20 Annual Performance Plan. This in turn is informed by the 2015 - 2019 Medium Term Expenditure Framework

I am pleased to report that we met or exceeded 16 of the 26 targets set. One target was not measurable, while the remaining 9 targets were partially or substantially achieved.

Our highest area of achievement was in our three strategic goals; a) adjudicative excellence, b) effective stakeholder engagement, and c) accountability, transparency and sustainability.

The area of under-achievement relates to 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, due to them sitting on other matters, or the complexity of the matter leading to a protracted hearing. In other instances, cases raised new questions of law which set precedent.



3. FINANCIAL HIGHLIGHTS AND PERFORMANCE

	2020 ·000	2019 ·000
Total Revenue	52,835	53,709
Expenditure	(48,687)	(48,666)
Net surplus/(deficit)	4,148	5,043
Total assets	31,216	26,920
Total liabilities	4,878	4,730

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

Revenue comprises two elements. The first is a grant from the Department of Trade, Industry and Competition. This was received as expected in an amount of R36,1 million, up 3,1% year-on-year. The second component of revenue is 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. In the period under review filing fees decreased by 13,1%. This resulted in a 1,6% decline in total revenue year-on-year.

Personnel costs, which account for the bulk of the Tribunal's total expenditure, increased by 3.4% to R30.5 million. Through prudent management, we reduced other expenses by 5.1% thereby containing the increase in total expenditure to less than 1.0%.

The net effect is that the Tribunal reported a surplus of R4.1 million. 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 surplus as a source of funding over the Medium Term Expenditure Framework (MTEF).

4. SUBSEQUENT EVENTS

On 15 March, the President declared a National State of Disaster due to the COVID-19 pandemic.

Subsequent to the reporting date we have seen an increase in complaint referrals related to COVID-19 Excessive Pricing. These referrals attract no fees from the parties concerned. Simultaneously we saw a sharp reduction in merger notifications, which would attract fees from the merging parties, due to the severe downturn in economic activity. Furthermore, the Tribunal's 2020/2021 grant from the Department was reduced.

In response, the Tribunal tabled a revised Annual Performance Plan that accommodated this revenue shortfall while preserving its operational integrity and ensuring job security.

5. MANAGEMENT COMMITTEE

In compliance with Treasury Regulation 28.1.1 the annual financial statements disclose remuneration in respect of the person in charge of the entity, the chief financial officer and persons serving on the public entity's senior management. These are found in Note 26.

6. NUMBER OF EMPLOYEES

At the year-end the Tribunal's personnel complement comprised 38 people in total; 10 Tribunal members (four fulltime and six part-time), 22 full-time staff members, 3 fixed-term employees and 3 interns.

7. IRREGULAR AND FRUITLESS AND WASTEFUL EXPENDITURE

It is a point of institutional pride that the Tribunal has not incurred any fruitless and wasteful expenditure but an immaterial amount of irregular expenditure in the 2019/20 financial year. See note 25

8. MANAGEMENT FEE PAID TO THE COMPETITION COMMISSION

The Commission and the Tribunal 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 R61 379 per month. The MOA and management fee are reviewed annually.

9. ADDRESS

Business address	Mulayo Building 77 Meintjies Str Sunnyside 0132
Postal address	Pvt Bag X24 Sunnyside 0132

10. 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.

Despite the significant revenue reductions, the Tribunal's revised budget indicates that it continues business, with its full complement of employees and fulfillment of its mandate under the current economic conditions. 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.

*M. Mazwai*

Chairperson

## STATEMENT OF FINANCIAL POSITION

	Note(s)	2020 '000	2019 '000
<b>Assets</b>			
<b>Current Assets</b>			
Cash and cash equivalents	2	24,293	20,102
Inventory		12	42
Receivables from exchange transactions	3	2,143	1,864
Prepayments		120	122
		<b>26,568</b>	<b>22,130</b>
<b>Non-Current Assets</b>			
Property, plant and equipment	4	1,813	1,835
Intangible assets	5	2,835	2,955
		<b>4,648</b>	<b>4,790</b>
<b>Total Assets</b>		<b>31,216</b>	<b>26,920</b>
<b>Liabilities</b>			
<b>Current Liabilities</b>			
Finance lease obligation	6	195	143
Operating lease liability	9	536	-
Payables from exchange transactions	7	1,905	1,770
Provisions	8	893	926
		<b>3,529</b>	<b>2,839</b>
<b>Non-Current Liabilities</b>			
Finance lease obligation	6	192	227
Operating lease liability	9	1,157	1,664
		<b>1,349</b>	<b>1,891</b>
<b>Total Liabilities</b>		<b>4,878</b>	<b>4,730</b>
<b>Net Assets</b>		<b>26,338</b>	<b>22,190</b>
Accumulated surplus		26,338	22,190

## STATEMENT OF FINANCIAL PERFORMANCE

	Note(s)	2020 '000	2019 '000
<b>Revenue</b>			
<b>Revenue from exchange transactions</b>			
Fees earned	10	15,279	17,579
Other income		15	2
Interest income	11	1,369	1,023
Gain on disposal of assets	12	-	19
<b>Total revenue from exchange transactions</b>		<b>16,663</b>	<b>18,623</b>
<b>Revenue from non-exchange transactions</b>			
<b>Transfer revenue</b>			
Government grants & subsidies	13	36,172	35,086
<b>Total revenue</b>		<b>52,835</b>	<b>53,709</b>
<b>Expenditure</b>			
Personnel costs	14	(30,514)	(29,506)
Depreciation and amortisation	15	(933)	(950)
Finance costs	16	(45)	(26)
Administrative expenses	17	(10,696)	(9,328)
Loss on disposal of assets	12	(19)	(15)
Other operating expenses	18	(6,480)	(8,841)
<b>Total expenditure</b>		<b>(48,687)</b>	<b>(48,666)</b>
<b>Surplus for the year</b>		<b>4,148</b>	<b>5,043</b>



## STATEMENT OF CHANGES IN NET ASSETS

	Accumulated surplus	Total net assets
	'000	'000
<b>Balance at 01 April 2018</b>	<b>17,147</b>	<b>17,147</b>
Changes in net assets		
Surplus for the year	5,043	5,043
Total changes	5,043	5,043
<b>Balance at 01 April 2019</b>	<b>22,190</b>	<b>22,190</b>
Changes in net assets		
Surplus for the year	4,148	4,148
Total changes	4,148	4,148
<b>Balance at 31 March 2020</b>	<b>26,338</b>	<b>26,338</b>

## CASH FLOW STATEMENT

	Note(s)	2020 '000	2019 '000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Receipts</b>			
Grants		36,172	35,086
Interest income		1,369	1,023
Other income		15	2
Fees earned		15,000	18,397
		52,556	54,508
<b>Payments</b>			
Employee costs		(30,548)	(29,489)
Suppliers		(16,978)	(18,338)
Finance costs		(45)	(26)
		(47,571)	(47,853)
<b>Net cash flows from operating activities</b>	19	<b>4,985</b>	<b>6,655</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Purchase of property, plant and equipment	4	(368)	(607)
Proceeds from sale of property, plant and equipment	4	-	19
Purchase of other intangible assets	5	(242)	(314)
<b>Net cash flows from investing activities</b>		<b>(610)</b>	<b>(902)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Finance lease payments		(184)	(160)
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b>4,191</b>	<b>5,593</b>
Cash and cash equivalents at the beginning of the year		20,102	14,509
<b>Cash and cash equivalents at the end of the year</b>	2	<b>24,293</b>	<b>20,102</b>

## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

	Budget	Adjustments	Approved Budget	Actual amounts	Variance	Reference
	'000	'000	'000	'000	'000	
<b>Statement of Financial Performance</b>						
<b>REVENUE</b>						
<b>REVENUE FROM EXCHANGE TRANSACTIONS</b>						
Fees earned	19,499	-	19,499	15,279	(4,220)	Note a
Other income	-	-	-	15	15	
Interest income	679	-	679	1,369	690	Note b
<b>Total revenue from exchange transactions</b>	<b>20,178</b>	<b>-</b>	<b>20,178</b>	<b>16,663</b>	<b>(3,515)</b>	
<b>REVENUE FROM NON-EXCHANGE TRANSACTIONS</b>						
<b>TRANSFER REVENUE</b>						
Government grants and subsidies	36,172	-	36,172	36,172	-	
<b>Total revenue</b>	<b>56,350</b>	<b>-</b>	<b>56,350</b>	<b>52,835</b>	<b>(3,515)</b>	
<b>EXPENDITURE</b>						
Personnel	(35,843)	-	(35,843)	(30,514)	5,329	Note c
Depreciation and amortisation	(1,278)	-	(1,278)	(933)	345	Note d
Finance costs	(25)	-	(25)	(45)	(20)	
Administrative expenses	(11,162)	-	(11,162)	(10,696)	466	Note e
Other operating expenses	(11,441)	-	(11,441)	(6,480)	4,961	Note e
<b>Total expenditure</b>	<b>(59,749)</b>	<b>-</b>	<b>(59,749)</b>	<b>(48,668)</b>	<b>11,081</b>	
<b>Operating (deficit)/ surplus</b>	<b>(3,399)</b>	<b>-</b>	<b>(3,399)</b>	<b>4,167</b>	<b>7,566</b>	
Loss on disposal of asset	-	-	-	(19)	(19)	
<b>Actual amount on a comparable basis</b>	<b>(3,399)</b>	<b>-</b>	<b>(3,399)</b>	<b>4,148</b>	<b>7,547</b>	<b>Note f</b>

## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

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

Note a:

Our budget estimate for filing fees from the Commission is based on their expected merger activity and filing fee budget. Activity was lower than anticipated and therefore the variance.

Note b:

The Tribunal held a larger deposit with the Corporation for Public Deposit than expected and therefore interest earned was higher than budget. Funds are monitored and transferred only when required.

Note c:

The variance on personnel costs is the result of a number of factors. The Tribunal provided for the appointment of two full-time members (one for eight months and one for 12 months) during the year, as well as a 2.5% cost of living adjustment for full-time members. No appointments were made, and no adjustments were made. The variances also include normal vacancies during the year.

Note d:

The depreciation budget is an estimate based on current and expected asset purchases. The variance is due to the deferral of the purchase of the motor vehicle and the extension of the useful life of computer equipment by one year.

Note e:

A more detailed explanation of variances is provided in the annual report and various notes in the AFS. The Tribunal has also made a conscious effort to reduce spending in accordance with cost containment measures. The Tribunal took a conscious decision to reduce the budgeted expenditure on conferences and therefore less conferences were attended and where possible staff were sent to local instead of international conferences.

Note f:

The Tribunal received approval from National Treasury to utilise a portion of its accumulated surplus to fund the budget deficit when it tabled its Annual Performance Plan. The actual performance reported a surplus, therefore the portion of accumulated surplus was not utilised.





# 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.

# ACCOUNTING POLICIES

## 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.

#### 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.

ACCOUNTING POLICIES

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.

- 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;

ACCOUNTING POLICIES

- 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



## ACCOUNTING POLICIES

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.

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

## ACCOUNTING POLICIES

- 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
- 13th 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.

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.

ACCOUNTING POLICIES

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 nonexchange 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.

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.

ACCOUNTING POLICIES

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 2019 to 31 March 2020.

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

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 THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
<b>2. CASH AND CASH EQUIVALENTS</b>		
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.		
Cash on hand	3	2
Bank balances	24,290	20,100
	<b>24,293</b>	<b>20,102</b>
<b>3. RECEIVABLES FROM EXCHANGE TRANSACTIONS</b>		
Receivables	2,143	1,855
Other debtors	-	9
	<b>2,143</b>	<b>1,864</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 imaterial since the carrying value of receivable proximate its fair value

#### 4. PROPERTY, PLANT AND EQUIPMENT

	2020			2019		
	Cost	Accumulated depreciation	Carrying value	Cost	Accumulated depreciation	Carrying value
Furniture and fixtures	1,280	(574)	706	1,163	(486)	677
Motor vehicles	210	(107)	103	210	(106)	104
Office equipment	56	(34)	22	56	(25)	31
IT equipment	1,673	(1,064)	609	1,542	(884)	658
Photocopiers (Leased)	586	(213)	373	606	(241)	365
	<b>3,805</b>	<b>(1,992)</b>	<b>1,813</b>	<b>3,577</b>	<b>(1,742)</b>	<b>1,835</b>

#### 4. PROPERTY, PLANT AND EQUIPMENT (continued)

##### Reconciliation of property, plant and equipment - 2019/2020

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	677	119	(1)	(89)	706
Motor vehicles	104	-	-	(1)	103
Office equipment	31	-	-	(9)	22
IT equipment	658	249	(18)	(280)	609
Photocopiers (Leased)	365	200	-	(192)	373
	<b>1,835</b>	<b>568</b>	<b>(19)</b>	<b>(571)</b>	<b>1,813</b>

##### Reconciliation of property, plant and equipment - 2018/2019

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	509	250	(14)	(68)	677
Motor vehicles	109	-	-	(5)	104
Office equipment	29	10	-	(8)	31
IT equipment	703	347	(2)	(390)	658
Photocopiers (Leased)	137	386	-	(158)	365
	<b>1,487</b>	<b>993</b>	<b>(16)</b>	<b>(629)</b>	<b>1,835</b>

##### Pledged as security and contractual commitments

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

The Tribunal has entered into a contractual commitment to acquire a new motor vehicle in March 2020.

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

Leased assets	373	365
---------------	-----	-----

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

### 5. INTANGIBLE ASSETS

2020			2019		
Cost	Accumulated depreciation	Carrying value	Cost	Accumulated depreciation	Carrying value
4,483	(2,137)	2,346	4,298	(1,851)	2,447
790	(301)	489	773	(265)	508
5,273	(2,438)	2,835	5,071	(2,116)	2,955

#### Reconciliation of intangible assets - 2019/2020

	Opening balance	Additions	Amortisation	Total
Computer software, internally generated	2,447	185	(286)	2,346
Computer software, acquired	508	57	(76)	489
	<b>2,955</b>	<b>242</b>	<b>(362)</b>	<b>2,835</b>

#### Reconciliation of intangible assets - 2018/2019

	Opening balance	Additions	Amortisation	Total
Computer software, internally generated	2,535	162	(250)	2,447
Computer software, acquired	426	152	(70)	508
	<b>2,961</b>	<b>314</b>	<b>(320)</b>	<b>2,955</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.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

### 6. FINANCE LEASE OBLIGATION

#### Minimum lease payments due

- within one year	226	173
- in second to third year inclusive	203	249
	<b>429</b>	<b>422</b>
less: future finance charges	(42)	(52)
<b>Present value of minimum lease payments</b>	<b>387</b>	<b>370</b>

#### Present value of minimum lease payments due

- within one year	195	143
- in second to third year inclusive	192	227
	<b>387</b>	<b>370</b>
Non-current liabilities	192	227
Current liabilities	195	143
	<b>387</b>	<b>370</b>

The Tribunal is leasing photocopiers under three finance leases and 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 is 10.33% per annum.



## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
<b>7. PAYABLES FROM EXCHANGE TRANSACTIONS</b>		
Creditors	423	52
Accrued performance bonus	891	1,128
Other accruals	591	590
	<b>1,905</b>	<b>1,770</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.

## 8. PROVISIONS

### Reconciliation of provisions - 2019/2020

	Opening balance	Additions	Utilised	Reversed	Total
Leave provision	926	893	(516)	(410)	893

### Reconciliation of provisions - 2018/2019

	Opening balance	Additions	Utilised	Reversed	Total
Leave provision	909	926	(253)	(656)	926

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.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
<b>9. OPERATING LEASE LIABILITY</b>		
Non-current liabilities	1,692	1,664
Current liability	(536)	-
	<b>1,156</b>	<b>1,664</b>
The Tribunal entered into a 5 year lease agreement for building occupation on the DTI Campus which commenced on 1 April 2017 and terminates on 31 March 2022. The monthly payment escalates by 10% annually.		
<b>Minimum Lease payments due</b>		
-within one year	6,210	5,645
-in second to fifth year inclusive	6,830	13,040
	<b>13,040</b>	<b>18,685</b>
<b>10. FEES EARNED</b>		
Fees earned from cases registered	15,279	17,579
<b>11. INTEREST INCOME</b>		
<b>Interest revenue</b>		
- Bank deposits	1,369	1,023
<b>12. NET GAIN/(LOSS) ON DISPOSAL OF ASSETS</b>		
Gain on disposal of property, plant and equipment	-	19
Loss on disposal of property, plant and equipment	(19)	(15)
	<b>(19)</b>	<b>4</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
<b>13. GOVERNMENT GRANT AND SUBSIDIES</b>		
Economic Development Department	36,172	35,086
<b>14. PERSONNEL COSTS</b>		
Basic salaries	15,016	16,911
Performance awards	857	1,004
Medical aid - company contributions	844	807
Statutory contributions	215	230
Insurance	239	263
Other salary related costs	161	222
Defined contribution pension plan expense (see Note 20)	1,108	1,146
Executive management	12,074	8,923
	<b>30,514</b>	<b>29,506</b>
<b>15. DEPRECIATION AND AMORTISATION</b>		
<b>Depreciation</b>		
Furniture and fixtures	89	68
Motor vehicles	1	5
Office equipment	9	8
IT Equipment	280	390
Photocopiers (Leased)	192	158
<b>Amortisation</b>		
Computer Software	362	321
	<b>933</b>	<b>950</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
<b>16. FINANCE COSTS</b>		
Trade and other payables	45	26
<b>17. ADMINISTRATIVE EXPENSES</b>		
Audit committee members' fees	216	197
Risk committee members' fees	142	144
Audit committee training	68	82
Audit committee meeting expenses	31	23
General expenses	949	1,102
External audit fees	882	635
Internal audit fees	435	206
Travel and subsistence	448	419
Building occupation	5,674	5,674
Fraud prevention committee	24	6
IT expenses	1,809	840
COVID19 expenses	18	-
	<b>10,696</b>	<b>9,328</b>
<b>18. OTHER OPERATING EXPENSES</b>		
Consultants, contractors and special services	2,596	3,722
Staff training and development	1,099	969
Fees paid to part-time Tribunal members	2,626	3,199
Legal fees	33	-
Software under development	40	-
Maintenance, repairs and running costs	86	951
	<b>6,480</b>	<b>8,841</b>



## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
<b>19. CASH GENERATED FROM OPERATIONS</b>		
Surplus	4,148	5,043
<b>Adjustments for:</b>		
Depreciation and amortisation	933	950
Gain on disposal of assets	-	(19)
Loss on disposal of assets	19	15
Movements in operating lease liability	29	542
Movements in provisions	(33)	17
<b>Changes in working capital:</b>		
Inventory	30	(24)
Receivables from exchange transactions	(279)	817
Prepayments	2	27
Payables from exchange transactions	136	(713)
	<b>4,985</b>	<b>6,655</b>
<b>20. EMPLOYEE BENEFIT OBLIGATIONS</b>		
<b>Defined contribution plan</b>		
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 Competition 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).		
<b>21. INCOME TAX EXEMPTION</b>		
The Tribunal is currently exempt from Income Tax in terms of section 10 (1) (a) of the Income Tax Act, 1962.		

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
<b>22. FINANCIAL RISK MANAGEMENT</b>		
The main risks arising from the Tribunal's financial instruments are market risk, liquidity risk and credit risk.		
<b>Credit risk</b>		
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 3. 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.		
<b>Exposure to credit risk</b>		
The maximum exposure to credit risk at the reporting date from financial assets was:		
Cash equivalents	24,290	20,100
Receivables	2,143	1,855
<b>Total</b>	<b>26,433</b>	<b>21,955</b>
<b>Concentration of credit risk</b>		
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.		
<b>2019/2020</b>	<b>Rated and government</b>	<b>Unrated</b>
	'000	'000
Cash equivalents	24,290	-
<b>2018/2019</b>	<b>Rated and government</b>	<b>Unrated</b>
	'000	'000
Cash equivalents	20,100	-

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

22. FINANCIAL RISK MANAGEMENT (continued)

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

2019/2020	Neither past due nor impaired	Past due but not impaired - less than 2 months	Carrying value
	‘000	‘000	‘000
Cash equivalents	24,290	-	24,290
Receivables	2,143	-	2,143
2018/2019	Neither past due nor impaired	Past due but not impaired - less than 2 months	Carrying value
	‘000	‘000	‘000
Cash equivalents	20,100	-	20,100
Receivables	1,855	-	1,855

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.

22. FINANCIAL RISK MANAGEMENT (continued)

Sensitivity analysis

2019/2020	Increase/(decrease) in net surplus for the year		
	Change in Investments	Upward change	Downward change
Cash equivalents	1.00%	243	(243)
2018/2019			
	1.00%	201	(201)

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's exposure to liquidity risk from financial liabilities:

2019/2020	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
	‘000	‘000	‘000	‘000
Finance lease obligation	387	387	195	192
Payable from exchange transactions	1,907	1,907	1,907	-
2018/2019	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
	‘000	‘000	‘000	‘000
Finance lease obligation	370	370	143	227
Payable from exchange transactions	1,770	1,770	1,770	-



NOTES TO THE ANNUAL FINANCIAL STATEMENTS

		2020	2019	
		'000	'000	
22.	FINANCIAL RISK MANAGEMENT (continued)			
	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	24,290	20,100
	Trade debtors	Financial asset measured at fair value	2,143	1,855
	Payables from exchange transactions	Financial liabilities measured at fair value	1,905	1,770
	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.			
25.	IRREGULAR EXPENDITURE			
	Opening balance	10	1,061	
		10	1,061	
	Add: Irregular expenditure - current year	33	54	
	Less: Amounts not recoverable and condoned	(10)	(1,105)	
	Amounts awaiting condonation	33	10	

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
Incidents/cases identified in the current year include those listed below:		
During the current financial year, the irregular expenditure incurred relates to costs associated with legal services which were not approved by the Accounting Officer before the appointment of the service provider.		
26.	RELATED PARTIES	
Related party	Relationship	
The Competition Commission	Public entity in the national sphere	
Industrial Development Corporation	Public entity in the national sphere	
International Trade Administration Commission	Public entity in the national sphere	
The Department of Trade, Industry and Competition	National department in the national sphere	
Economic Development Department	National department in the national sphere	
Members of key management	Executive committee members	
Related party balances		
Amounts included in trade payables regarding related parties		
The Department of Trade, Industry and Competition	2	3
Amounts included in trade receivables regarding related parties		
Refund on administrative expenses due from the Commission	97	98
Filing fees due from the Competition Commission	1,930	1,823
Facility fee due to the Competition Commission	-	(147)
Related party transactions		
The Competition Commission		
Filing fees	15,279	17,579
Facility fees	(737)	(906)
Administrative costs	61	98

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

		2020 '000	2019 '000			
<b>26. RELATED PARTIES (continued)</b>						
<b>The Department of Trade, Industry and Competition</b>						
Unitary payments		(5,645)	(5,132)			
Administrative costs		(29)	(36)			
<b>Economic Development Department</b>						
Government grant		36,172	35,086			
<b>Remuneration of management</b>						
<b>Executive management</b>						
<b>2019/2020</b>						
Name	Package	Bonuses and performance related payments	Leave payout	Statutory benefits	Other salary related benefits	Total
Full-time member/Chairperson: M Mazwai	1,986	-	-	19	59	2,064
Full-time member/Chairperson: N Manoim	862	-	146	10	21	1,039
Full-time member/Deputy Chairperson: E Daniels	2,254	-	-	21	33	2,308
Full-time member: Y Carrim	2,254	-	87	23	63	2,427
Full-time member: A Wessels	2,103	-	162	22	60	2,347
Chief Operating Officer: J de Klerk	1,723	94	-	19	53	1,889
	<b>11,182</b>	<b>94</b>	<b>395</b>	<b>114</b>	<b>289</b>	<b>12,074</b>

### 26. RELATED PARTIES (continued)

#### Executive management

#### 2018/2019

Name	Package	Bonuses and performance related payments	Leave payout	Statutory benefits	Other salary related benefits	Total
Full-time member/Chairperson: N Manoim	2,438	-	-	23	60	2,521
Full-time member/Deputy Chairperson: E Daniels	2,285	-	-	12	40	2,337
Full-time member: Y Carrim	2,119	-	-	21	56	2,196
Chief Operating Officer: J de Klerk	1,646	156	-	18	49	1,869
	<b>8,488</b>	<b>156</b>	<b>-</b>	<b>74</b>	<b>205</b>	<b>8,923</b>

Mr. Norman Manoim's term as the Chairperson ended on 31 July 2019 and the new Chairperson Ms. Mondo Mazwai was appointed from 1 August 2019.

The leave payout expenses incurred in 2019/2020 relates to payment made to full time members for leave balances as at the end of their term, 31 July 2019.

### 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 R5.8 million for the 2020/2021 financial year. As approval has not yet been granted, this is reflected as a contingent liability.

The part time member fee increases amounting to R825 772 is calculated based on a proposed increase for the financial year. The payment of the increase is subject to approval by the Minister of DTIC. 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 revised the estimate of the useful life of IT equipment with a 3 year useful life to a 4 year useful life. Further to this, there were a few other assets that were also extended. The effect of this revision has decreased the depreciation charges for the current year by an insignificant amount.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

	2020 '000	2019 '000
<b>29. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE</b>		
Reconciliation of budget (deficit)/surplus with the (deficit)/surplus in the statement of financial performance:		
(Deficit)/surplus per the statement of financial performance	4,148	5,043
<b>Adjusted for:</b>		
Other income	(15)	(2)
Gain on the disposal of assets	-	(19)
Loss on disposal of asset	19	15
Transfer from retained income	5,306	1,734
<b>Adjustments for items reflected as capital expenditure on budget:</b>		
Leased equipment	(161)	(239)
Capital expenditure	(1,832)	(1,195)
<b>Income under/(in excess of) budget:</b>		
Filing fees from the Commission	4,220	991
Interest received	(690)	(144)
<b>Over/(under) expenditure on budget:</b>		
Personnel	(5,329)	(2,701)
Part-time Tribunal member fees	(1,880)	(967)
Local training	(343)	(392)
Overseas training	(404)	(995)
Professional fees	(905)	(1,137)
Recording and transcription services	(565)	304
Recruitment costs	(117)	33
Administrative expenses	(483)	(196)
Facilities and capital	(355)	(96)
Competition Appeal Court	(384)	(177)
Other IT expenses	(230)	140
<b>Net (deficit)/surplus per approved budget</b>	<b>-</b>	<b>-</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

### 30. COMMITMENTS

This committed expenditure relates to the purchase of a server and a motor vehicle in March 2020. The assets were not delivered prior to the end of the financial year as a result of the lockdown effected on 26 March 2020 by the President, therefore the Tribunal discloses this as a commitment of R327 503.

### 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 2020 or later periods:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
• GRAP 104 (amended): Financial Instruments	01 April 2020	Unlikely there will be a material impact



# APPENDIX A



## ANNUAL PERFORMANCE REPORT

1 APRIL 2019 – 31 MARCH 2020



PART  
7

STRATEGIC FOCUS AREA 1 - 1 APRIL 2019 - 31 MARCH 2020

	ADJUDICATIVE EXCELLENCE					YEAR TO DATE	REASON FOR DEVIATIONS
			CURRENT BUDGET	R33 366 795.00	R33 366 795.00	The underspend is related to less case volume than budgeted for and two vacancies with regard to full-time member positions budgeted for but not filled.	
			ACTUAL EXPENDITURE	R26 803 458.75	R 26 803 458.75		
GOAL STATEMENT	TO ENSURE EFFECTIVE AND EFFICIENT ADJUDICATION ON MATTERS BROUGHT BEFORE THE TRIBUNAL						
STRATEGIC OUTCOME							
STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS	
Matters brought before the Tribunal are heard within the adopted delivery time frames.	Hearings are set down within required time frames.	% 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	80%	67.33%	88%	The target has been exceeded for the year to date. Finalisation of set down dates is determined by the availability of parties and Tribunal members and they were available for most of the dates requested. 75 of the 85 matters were set down within 10 business days. With regard to the 10 matters not set down within the required 10 days - 4 were late by one day, one was late by 3 days, 3 were late by 14 days and the remaining 2 were out by 15 and 23 days respectively. <i>No corrective action is required .</i>	
		% of intermediate and small merger considerations to be set down for the beginning of a hearing or a pre-hearing within 10 business days of the receipt of the Commission's record. <i>(A business rule has been established and is reflected in the technical indicator description to use "receipt of the Commission's record" as the point of departure for measurement as opposed to "filing of request for consideration" as indicated in the Act)</i>	70%	25%	0%	Target not met for the year to date. Two matters were set down and they were both set down outside the required time. One was set down 12 days outside the required time due to an internal administrative oversight. This matter has been addressed internally. The other was set down 7 days outside the required time due to the unavailability of parties. <i>No action is planned because if parties are not ready for a hearing on the proposed date the hearing cannot be held.</i>	
Improvement in the issuing of judgements/decisions in line with adopted time frames.	Expeditious conclusion of matters.	% of large merger orders issued to parties within 10 business days of last hearing date. <i>(A business rule has been established where "hearing day" can refer for 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"))</i>	95%	96.97%	100%	The target has been exceeded for the quarter and for the year. All 87 matters decided were decided within 10 business days. <i>No corrective action is required .</i>	
		% of large merger reasons issued to parties within 20 business days of the date the order was issued on.	80%	75.00%	71%	The target was not met for the year to date. 25 of the 87 reasons issued in the year were not issued within the required 20 days. 16 of these did not meet the target by less than 10 days, five did not meet the target by between 11 and 19 days, one by 29 days, two by 61 and 63 days and one by 107 days. Delays can occur for any one or a combination of the following reasons (i) more complex matters require more time to draft reasons, (ii) lack of Tribunal member capacity - in many instances Tribunal members are sitting on matters and simultaneously are required to draft reasons. <i>The Tribunal is unable to implement an action plan that addresses delays caused by the complexity of a matter. We can however implement action where delays are related to lack of Tribunal member capacity and we have engaged with the DTIC to secure more Tribunal members to address this issue.</i>	
		% of intermediate and small merger consideration orders issued to parties within 10 business days of last hearing date. <i>(A business rule has been established where "hearing day" can refer for 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"))</i>	80%	100.00%	50%	Target not met for the year to date as the panel was comprised part-time members with other work commitments. One of the two orders issued was issued late by 160 days. <i>The Tribunal is engaging with the DTIC to secure more Tribunal members in order to address the capacity issues.</i>	
		% of intermediate and small merger considerations reasons issued to parties within 20 business days of the date the order was issued on	60%	0.00%	25%	Target not met for the year to date. Three of the four reasons issued were issued out of time. In one there was a change in case managers, in the other two the issues to be considered were complex thus delaying the finalisation of the reasons. The three reasons issued late were late by 53, 89 and 281 business days respectively. <i>The Tribunal is unable to implement an action plan that addresses delays caused by the complexity of a matter. We can however implement action where delays are related to lack of Tribunal member capacity and we have engaged with the DTIC to secure more Tribunal members to address this issue.</i>	

Targets Not met Met Exceeded Not measured

STRATEGIC FOCUS AREA 1 - 1 APRIL 2019 - 31 MARCH 2020

STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS
					YEAR TO DATE	
Improvement in the issuing of judgements/decisions in line with adopted time frames.	Expeditious conclusion of matters.	Reasons for prohibited practices cases (Prohibited practice cases refer to all complaints from the commission, the complainant and the High Court) issued to parties in accordance with the delivery timeframes per category: A,B or C from last hearing date. <i>(Prohibited practice cases refer to all complaints from the Commission, the complainant and the High Court - A refers to a simple matter, B to a complex matter and C to a very complex matter)</i>	A (A refers to Simple matter, B to complex matter and C to Very Complex matter) - 100 business days (100%)	No reasons issued	No reasons issued	Target cannot be measured for the quarter or the year to date as there were no reasons issued. <i>No corrective action required .</i>
			B - 125 business days (100%)	50.00%	33%	Target not met for the year to date. Reasons were issued in six matters and four issued late by 2, 37, 52 and 78 days respectively. The delays were caused as Tribunal members are simultaneously sitting on panels and therefore find it difficult to draft reasons. <i>The Tribunal has engaged the DTIC to secure more Tribunal members to address the issue of Tribunal Members capacity.</i>
			C- 150 business days (100%)	50%	0%	Target not met for the year to date. Reasons were issued in one matter and it was out of time by 130 business days. Members were unavailable to review the draft set of reasons timeously as they were sitting on other panels and/or writing reasons for other matters simultaneously. <i>The Tribunal has engaged with the DTIC to secure more Tribunal members to address the issue of Tribunal Members capacity.</i>
		% of procedural matter (Procedural matters includes interlocutory applications) orders issued to parties within 45 business days of last hearing date. <i>(A business rule has been established where "hearing day" can refer for 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"))</i>	85%	90.63%	55%	Target was not met for the year to date. The drafting of reasons take longer because of complexity of matters and also because of Tribunal Members capacity. The total out for the year to date were 20 cases out by between 31 and 167 days. <i>The Tribunal is unable to implement an action plan that addresses delays caused by the complexity of a matter. We can however implement action where delays are related to lack of Tribunal member capacity and we have engaged with the DTIC to secure more Tribunal members to address this issue .</i>
		% of orders for consent orders and settlement agreements issued to parties within 10 business days of last hearing date. <i>(A business rule has been established where "hearing day" can refer for 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"))</i>	95%	97.92%	96%	Target exceeded for the quarter and for the year to date. The target was exceeded as the matters were not as complex and there was no substantial deliberation required in drafting the orders. <i>No corrective action required .</i>
		% of interim relief reasons issued to parties within 20 business days of last hearing date. <i>(A business rule has been established where "hearing day" can refer for 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"))</i>	100%	No reasons issued in interim cases therefore the target cannot be measured	0%	Target not met for the year to date. Reasons were issued in two matters and were out because of capacity issues. The reasons were out by 23 and 63 days. The Tribunal have engaged with the DTIC to secure more Tribunal members to address the issue.

Targets Not met Met Exceeded Not measured

STRATEGIC FOCUS AREA 1 - 1 APRIL 2019 - 31 MARCH 2020

STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS
					YEAR TO DATE	The underspend is related to less case volume than budgeted for and two vacancies with regard to full-time member positions budgeted for but not filled.
Enhancing record keeping, performance and case flow management by harnessing facility and functionality of business applications.	Improved management information to inform strategic decision making and access to historical data.	CMS deemed to be sustainable.	CMS assessed to determine period of sustainability. Action plan implemented if sustainability limited to less than 5 years	Sustainability of the system being determined and measures taken to ensure its sustainability with the implementation of current available updates.	The sustainability of the system remains at less than five years. However, an action plan has been developed to ensure that the system remains sustainable for a further five years.	Target has been met as an action plan to ensure sustainability beyond 5 years has been drafted and currently being finalised. <i>No corrective action required but action plan in place and to be implemented .</i>
		Review CMS to determine if any additional enhancements required	Report progress against minor enhancements and scopes of work (SOW) approved	Enhancements identified and implemented	Five substantial enhancements to the functionality of the system were implemented during the current financial year. These included enhancements to the process for "pushing" documents to the case file in the Tribunal's website, validations within the system with regard to referrals to the CAC, processes to record non-hearing activities on a case and therefore update a case status, approval processes for access to information requests and changing the default status for new cases from pending hearing to filing in process. The Tribunal is currently working on a change where due dates for reasons will automatically be calculated based on regulations in the Act or internal rules.	While no indicator is set with regard to number of enhancements this has been set so as to ensure that the system is constantly assessed to ensure better functionality and to facilitate better and more accurate data capturing. The enhancements implemented have achieved this and those planned (including updates) are such that the system can track due dates for reasons. Thus enabling effective monitoring of reasons that may be near due date or overdue. All enhancements effected through change requests or scopes of work are noted in an ITSC meeting. <i>No corrective action required but we continue to look at ways to enhance the system.</i>
		Models developed and implemented that generate statistics pertaining to the adjudicative process	Implement enhancements/ new models based on agreed plan d conduct annual assessment to determine further enhancements or new models	Enhancements identified and implemented	Models were finalised that amongst other enable us to more effectively assess the status of prohibited practices and procedural matters and therefore more accurately determined the number of cases deemed to be "active". We also used the system to develop a model on our accounting system that extracts spend by BBEE status quickly and more accurately.	As indicated above we have not set targets to develop or enhance models that extract data from the Tribunal's CMS as we are constantly assessing areas were reporting can be enhanced/refined or new reports developed that enable us to provide the kind of statistical information we do or want to include in our annual integrated report or reports to our line department. <i>No corrective action required but we continue to look at enhancing the system.</i>

Targets    Not met    Met    Exceeded    Not measured

STRATEGIC FOCUS AREA 2 - 1 APRIL 2019 - 31 MARCH 2020

STRATEGIC FOCUS AREA 2:		STAKEHOLDER RELATIONSHIPS				YEAR TO DATE	REASON FOR DEVIATIONS
				CURRENT BUDGET	R1 449 561.68	R1 449 561.68	The variance is primarily related to underspend on website development as there was no need for further development during the year.
				ACTUAL EXPENDITURE	R1 260 394.59	R1 260 394.59	
GOAL STATEMENT		TO BUILD AND DEVELOP EFFECTIVE STAKEHOLDER RELATIONSHIPS					
STRATEGIC OUTCOME							
STRATEGIC OBJECTIVE	STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS
						YEAR TO DATE	
STAKEHOLDER AWARENES	Ensure that an integrated communication plan is developed and implemented.	A structured and focussed process to create and enhance awareness of the work of the Tribunal.	E-newsletter developed and placed on website.	Service provider sourced to develop e-newsletter that is fully implemented and available on website.	Service provider appointed, website to go live in April. E-newsletter being distributed	External e-newsletter developed internally with assistance of website service provider and uploaded on website	Target met during the year under review. No corrective action required.
			Communication framework reviewed annually and quarterly communication report on strategy and media coverage presented to EXCO.	Annually review framework and report quarterly on communication strategy and media coverage.	Progress is being made with regard to finalising framework (Being workshoped with staff before final approval). Quarterly reports are in place	PCommunication reports produced and distributed quarterly. Reports address media coverage and strategy. Communication Framework reviewed and approved in first quarter	Target met during the year under review. No corrective action required.
	Ensure communication pertaining to final decisions in mergers and prohibited practice cases are made public within adopted delivery timeframes.	Timely and compliant communication of adjudication outcomes.	% of press releases of final merger decisions communicated within two business days of order date.	95%	96.97%	95.45%	Target exceeded for quarter and year to date. 84 of the 88 press releases issued for final merger decisions were issued within the required two business days. No corrective action required.
			% of press releases of final prohibited practice decisions communicated within two business days of order date.	90%	60%	85.71%	Target for the year not met.1 of the 7 press releases issued was issued out of time due to a lack of effective communication internally. A process with regard to communication regarding decisions has been developed in order to prevent reoccurrence.
	Identify and address stakeholder needs and expectations in order to meet or exceed requirements.	Level of stakeholder satisfaction.	Stakeholder satisfaction survey results.	No target set for this period.	No stakeholder survey was undertaken.	No target set for this year.	

Targets    Not met    Met    Exceeded    Not measured



## STRATEGIC FOCUS AREA 3 - 1 APRIL 2019 - 31 MARCH 2020

GOOD GOVERNANCE	Increase the level of compliance with the prescripts of good governance.	Accountable and transparent public entity.	Achieve an unqualified audit outcome year on year.	Unqualified audit – no issues of governance raised.	Final audit report - clean audit opinion - no governance issues raised.	The final audit report indicates we achieved a clean audit opinion - no issues of governance raised.	The target was exceeded. We aimed for an unqualified report and received a clean audit. <i>No corrective action required.</i>
EFFECTIVE OVERSIGHT STRUCTURES	Maintain effective oversight structures that promote solid business practice.	Sound business practice.	Achieve an unqualified audit outcome year on year.	Unqualified audit – no issues of governance raised.	Final audit report - clean audit opinion - no governance issues raised.	The final audit report indicates we achieved a clean audit opinion - no issues of governance raised.	The target was exceeded. We aimed for an unqualified report and received a clean audit. <i>No corrective action is required.</i>
EFFECTIVE MANAGEMENT OF THE BUDGET	Ensure financial management that promotes effective and efficient use of resources.	Optimal financial resource allocation and utilisation.	Achieve an unqualified audit outcome year on year.	Unqualified audit-no findings of fruitless / wasteful expenditure.	Final audit report - clean audit opinion - no findings on fruitless and wasteful expenditure.	The final audit report indicates we will receive a clean audit - no issues on fruitless and wasteful expenditure.	The target was exceeded. We aimed for an unqualified report and received a clean audit. <i>No corrective action required.</i>
FINANCIAL GOVERNANCE AND REPORTING	Ensure a sound control environment and monitor and maintain compliance and ensure that all reporting requirements are met.	Compliance to requirements as an accountable, transparent institution.	No material misstatements for May submission.	No material misstatements in May submission.	No material misstatements in May submission.	The final audit report indicates we will receive a clean audit - no material misstatements.	The target was exceeded. We aimed for an unqualified report and received a clean audit. <i>No corrective action is required.</i>
		Integrated risk management processes and combined assurance.	Submission against annual deadline.	Annual reporting submission dates met May and July.	May and July 2018 deadlines were met.	The May and July deadlines were both met.	The target was met for the year. <i>No corrective action is required.</i>
			Achieve an unqualified audit outcome year on year.	Unqualified audit – no issues of risk management raised.	Final audit report - clean audit opinion - no issues on risk.	The final audit report indicates we will receive a clean audit - no issues on risk.	The target was met for the year. <i>No corrective action is required.</i>
SUSTAINABLE CAPACITY	Ensure that the Tribunal effectively leverages employee skills by recruiting, retaining and developing high quality people.	Strengthen the Tribunal's organisational capacity and performance to deliver on its legislative mandate.	Implementation of case management graduate internships against plan.	Minimum of two graduate interns (one-year internship) appointed.	2 LT interns appointed for period. 3 vacation interns employed in the Tribunal during the July vacation.	2 graduate interns appointed in January for a year (to end December 2019) 3 vacation interns appointed during the July vacation.	Graduate internship targets meet plan requirements. <i>No corrective action is required.</i>

Targets    Not met  Met  Exceeded  Not measured 

## PROTECTING THE PUBLIC INTEREST

It is in the public interest that South Africa has an inclusive, vibrant and competitive economy. We are mandated through the Act to consider the effects of mergers on employment and small businesses. We also consider worker participation in firms and the interests of firms controlled or owned by historically disadvantaged individuals (HDIs). We encourage vitality and diversity in all sectors of the economy and geographic regions with a view to stimulating competitiveness.



### Promoting and protecting worker participation and the interests of HDIs

- In the Simba and Pioneer Food Group merger (PepsiCo's acquisition of Pioneer) the merging parties agreed to implement a B-BBEE ownership plan whereby common stock valued at R1.6 billion would be issued to a South African broad-based workers' trust. After five years it will be converted into direct shareholding in Pioneer of up to 13%.
- The merged entity also agreed to maintain all sale and distribution agreements with HDIs and SMMEs for two years.
- The Tribunal issued an order instructing South African Breweries to lay aside a portion of its BEE Scheme's top up benefits for former employees excluded as beneficiaries, pending the outcome of an investigation by the Commission. This followed an application for urgent interim relief by Coca Cola Beverages South Africa that claimed the conditions of a merger, whereby the Coca Cola Company bought SABMiller shares held in Coca Cola Beverage Africa, had been breached.

### Saving and creating jobs

- In PepsiCo's acquisition of Pioneer the merged entity agreed to no merger related retrenchments for five years. It will also create 500 jobs and 2500 job opportunities.
- In the Milco SA and Clover Industries merger (Milco and Clover) the merging parties agreed to lower the number of planned retrenchments as a result of Clover's Project Sencillo from the original 516 job losses to a maximum of 277 jobs.

- Further the moratorium on Project Sencillo retrenchments from two years to three years and ordered that no South Africans may be retrenched as a result of the merger.
- In the Boundary Terraces and Bravo Group merger, Bravo and its subsidiaries must set up a development fund of R6 325 000 for 253 employees who were retrenched before the merger.
- ArcelorMittal South Africa's acquisition of the manufacturing and production of structural steel and rail business of Highveld Steel & Vanadium saw 176 employees retained as a result of the transaction.
- In Klein Karoo International and Mosstrich (the Ostrich merger) a three-year moratorium on merger related retrenchments was imposed. The ostrich industry was said to be suffering serious decline at the time.

### Small business development

- R600 million will be made available as a development fund for investment in programmes in South Africa with respect to education, SMMEs, enterprise and agricultural development. This stems from PepsiCo's acquisition of Pioneer.

### Foreign direct investment

- In PepsiCo's acquisition of Pioneer the merging parties undertook to make a cumulative investment of R5.5 billion over five years in developing Pioneer's overall operations. Its head office will remain in South Africa and it will remain a tax resident in South Africa.
- The Tribunal approved the acquisition of South African e-cigarette seller, Twisp by international cigarette giant, British American Tobacco subject to a range of competition and employment conditions, including a moratorium on merger-related retrenchments.

## LEVELLING THE PLAYING FIELD



South Africa's economy has historic and persistently high levels of concentration and barriers to entry. We adjudicate with a view to stimulating competitive, inclusive and equitable market practices. Diversifying the economy through a greater spread of ownership as well as encouraging access to markets are crucial considerations for the Tribunal. In making decisions the Tribunal is also cognisant of the rights and interests of consumers.



### Tackling barriers to entry, concentration and access to markets

- The Tribunal prohibited the MIH eCommerce and WeBuyCars merger. The Commission earlier recommended a prohibition, arguing that the transaction would eliminate a potential competitor and that the acquisition would entrench WeBuyCars' market position and raise barriers to entry.
- In the Ostrich merger the conditions imposed by the Tribunal sought to ensure access to the merging parties' abattoirs and tanneries in South Africa as well as the availability locally of ostrich feathers to producers of various feather-related products, among others. The Tribunal imposed a condition whereby the merged entity, for as long as it has excess capacity, will have to offer access to its abattoirs and tanneries to any party requiring access on terms that are fair, reasonable and non-discriminatory in respect of pricing, quality and timeliness. If it declines to provide any party with access, it must provide detailed and specific written reasons within seven days of receiving the request. The merged entity must also honour access agreements with its current customers, which will remain in place indefinitely, subject to a 24-month notice period. The two customers in question will not be restricted from competing with the merged entity.
- The Tribunal found that the largest manufacturer and distributor of number plate blanks and embossing machines in South Africa, Uniplate, had abused its dominance between 2010-2014. Uniplate used long term exclusive agreements to contractually oblige its customers who did the actual embossing of number plates, when purchasing a Uniplate embossing machine, to only purchase their number plate blanks and embossing materials from Uniplate. This discouraged entry and expansion of competitors in the blanks market. Uniplate was fined R16 192 315.
- The Tribunal approved the merger whereby Community Investment Ventures Holdings gained sole control of Vumatel, which provides open access fibre network infrastructure in residential areas allowing homes to connect to broadband internet. The Tribunal approved the transaction subject to conditions which require that the merged entity retains an open access service provision model for certain of its services post-merger, as well as increased transparency mechanisms and an obligation not to discriminate against its customers who compete with Vumatel.

## CREATING JUDICIAL CERTAINTY

Policy certainly is key to investor confidence and economic growth. We provide certainty for firms through the consistency of our adjudicative process, and the fairness and substance of our decisions. This fosters both domestic and foreign direct investment.



### Playing fair

The Tribunal dismissed several cartel cases brought by the Commission against respondents, due to a lack of evidence. These are discussed in detail in Part 3 of this report. While the Tribunal regards cartel conduct as the most egregious of competition law violations, the dismissal of such cases speaks to the Tribunal's independence, legislative fairness and objectivity as an adjudicative body.

## REPARATION

Reparation serves to remedy the damage or harm caused and can also serve to achieve social justice. We approve remedies requiring firms, for example, to pay administrative penalties. At times we also require firms to contribute to a development fund over and above the penalty imposed. This is in relation to some prohibited practices where the conduct is considered to have a serious impact on the economy.



### Administrative penalties

- Sonae Arauco South Africa admitted that it engaged in price fixing which affected certain price increases and prices of specific wood-based commodity products sold to certain customers. The firm was fined R46,944,495.00 in terms of a consent order confirmed by the Tribunal;
- Local construction firm, GVK Siyazama Building Contractors, was fined R6 038 852.00 after admitting to collusive tendering in three construction projects in the Western Cape. The admission formed part of a consent agreement confirmed as an order of the Tribunal;
- In the so-called steel wire cartel, Hendok and Wireforce both admitted that they and some of their competitors agreed to fix the price of wire and wire related products and that this was achieved through the exchange of agreed price lists. In terms of settlement agreements, confirmed as orders of the Tribunal, the firms paid fines of R5 001 364.34 and R4 319 951.22, respectively.



## INNOVATION

Innovation in a business context refers to improving processes, services or products. We view the impact on innovation as an important factor when considering both mergers and prohibited practice complaints. The concept of innovation also applies to the Tribunal's application of the amendments to the Act and the development of legal precedent in relation to competition law. Precedent in the context of the amendments is an important element in the strengthening of legal certainty.

### Growing markets

- In PepsiCo's acquisition of Pioneer the merged entity agreed that the aggregate productive capacity and capabilities associated with production operations and related facilities in South Africa shall be kept in place and committed to expand operations of the merged firm in South Africa over a five year period to the value of R1 billion. It committed to expanding local production and made several local procurement commitments.

- Potato seed growers in South Africa will now have ongoing access to the Mondial seed potato varietal, after the Tribunal approved a settlement agreement amongst a Netherlands-based seed potato grower, its exclusive South African distributor and the Competition Commission. The approval of the settlement agreement also ensures that consumers will ultimately benefit from greater competition in the market for the production and supply of the Mondial seed potato varietal.
- The Tribunal imposed a volume supply condition in the Ostrich merger relating to the merged entity's supply of ostrich meat in South Africa for consumption. This means a certain percentage of their ostrich steaks and fillets, as well as ostrich trimmings, must be made available for sale in South Africa in each financial year. Various wholesalers, retailers, restaurants and caterers purchase ostrich meat in the local market.

### Saving businesses

- The Tribunal unconditionally approved ArcelorMittal South Africa's acquisition of the manufacturing and production of structural steel and rail business of Highveld Steel & Vanadium. The Tribunal found that the transaction would potentially benefit South Africa's steel industry by creating capacity to domestically produce main line rails for Transnet.
- The Tribunal approved the Ostrich merger subject to a range of conditions. While the Commission had recommended that the merger be prohibited, the Tribunal found that the transaction was necessary to stabilise the ostrich industry which was suffering significant decline.
- The Tribunal approved a merger whereby a new company, K2019216440 (South Africa), purchased Edgars Consolidated Stores Limited (ECSL). The Edcon Group was in financial distress and at risk of being forced into liquidation. The merger intended to achieve a restructuring and recapitalisation of the debt and equity structure of Edcon Limited. Merger conditions involved increasing local procurement, BEE participation (replacing the Edcon Staff Empowerment Trust to safeguard the rights and interests of beneficiaries) and ensuring that there were no job losses as a result of the merger. Edcon's shareholding in Celrose had also been acquired by the Industrial Development Corporation (IDC).

### Innovation in the context of the amendments

- The amendments enhance the market inquiry process in order to analyse and address structural problems in a market. One of the most significant consent orders heard by the Tribunal resulted from a market inquiry on high data prices and affordability, initiated by the Commission in 2017. In terms of its settlement with the Commission, confirmed as an order of the Tribunal, Vodacom agreed to reduce headline bundle prices within the 30-day data bundle portfolio across all channels.



# TRIBUNAL GENERAL INFORMATION

**Registered name:**  
Competition Tribunal of South Africa

**Physical address:**  
1st Floor, Mulayo Building  
The DTI Campus  
77 Meintjies Street  
Sunnyside  
Pretoria

**Telephone number:** +27 (0) 12 394 3300  
**Fax:** +27 (0) 12 394 0169  
**Email:** [ctsa@comptrib.co.za](mailto:ctsa@comptrib.co.za)  
**Website address:** <http://www.comptrib.co.za>  
**Twitter:** @comptrib

**RP344/2020**  
**ISBN: 978-0-621-48829-6**



# ADJUDICATING FOR INCLUSIVE MARKETS 2019/2020 HIGHLIGHTS



**competitiontribunal**  
SOUTH AFRICA