



COMPETITION TRIBUNAL

ANNUAL PERFORMANCE PLAN (APP)
2024/2025

PORTFOLIO COMMITTEE ON TRADE, INDUSTRY AND COMPETITION

PRESENTED BY
Ms Mondo Mazwai (Chairperson)
Ms Sherylee Moonsamy (Acting COO)

Outline

- **Constitution**
- **Who we are**
- **PART A: Mandate**
- **PART B: Our Strategic Focus**
- **PART C: Measuring Our Performance**
- **Current Challenges**

Constitution

Section 34 of The Constitution of the Republic of South Africa, 1996 states that:

“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”

Who we are

- The Competition Tribunal (Tribunal) is an independent adjudicative body established in terms of section 26 of the Competition Act, No. 89 of 1998 (Act).
- The Tribunal has jurisdiction throughout the Republic of South Africa.
- The Tribunal is one of three independent institutions established in terms of the Act; these are:
 - The Competition Commission (Commission), which is the investigative and enforcement authority
 - The Competition Tribunal, which adjudicates on matters referred to it by the Competition Commission, and
 - A Competition Appeal Court (CAC), which considers appeals or reviews against Tribunal decisions.
- It functions like a court of first instance in balancing the interest of various stakeholders (consumers, workers, business and other) before it.

Part A: Mandate



Mandate

Legislative Mandate

The Tribunal is an independent and impartial body with jurisdiction throughout South Africa. It is required to perform its functions without fear, favour or prejudice, subject only to the Constitution, the law, and its legislated mandate.

The Tribunal's purpose is to promote and maintain competition in the Republic in order to:

- a) promote efficiency, adaptability, and development of the economy.
- b) provide consumers with competitive prices and product choices.
- c) promote employment and advance the social and economic welfare of all South Africans.
- d) expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic.
- e) ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy.
- f) promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons; and
- g) detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, which tends to impede, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic.

Mandate

Legislative Mandate

- The Tribunal adjudicates on competition matters (mergers and prohibited practices-).
- It exercises its functions in accordance with the Act and the Constitution without fear, favour or prejudice.
- It does not set priorities – the quasi-judicial nature of the Tribunal precludes the Tribunal from setting pro-active outcomes or priorities.
- The Tribunal, however, aligns its outcomes with those of the NDP, GNU Strategic Priorities, the dtic policy imperatives and the three overarching joint/integrated dtic outputs (Industrialisation, Transformation and a Capable State), within the confines of its mandate as set out in the Competition Act.
- The two outcomes of the Tribunal in terms of its APP are set out below and reflect the strategic objectives of the core and secretariat functions of the Tribunal:

**RELIABLE AND
RESPONSIVE
ADJUDICATION**

**TRANSPARENT,
ACCOUNTABLE AND
SUSTAINABLE ENTITY**

Mandate

Alignment to GNU Priorities

- Following the general elections, the Government of National Unity for the 7th Administration outlined three strategic priorities:
 - Inclusive growth and job creation;
 - Reduce poverty and tackle the high cost of living; and
 - A capable, ethical and developmental state.
- The Tribunal is aligned to the above strategic priorities through its two outcomes: Responsive and Reliable Adjudication and Transparent, Accountable and Sustainable Entity.
- Through responsive and reliable adjudication of matters across all sectors in the economy, the Tribunal contributes to both priorities of inclusive growth and job creation and reducing poverty and tackling the high cost of living.
- For example, in merger control all decisions taken by a Tribunal when adjudicating on matters it must consider, in addition to competition issues (relating to consumer welfare and efficiency), various public interest factors which include:
 - The effect of a merger on a particular industrial sector or region;
 - Employment;
 - The spread of ownership and the promotion of HDIs;
 - The ability of national industries to compete in international markets; and
 - The ability of SMMEs and HDIs to effectively enter, participate in or expand in a market.
- Through transparent, accountable, and sustainable entity, the Tribunal contributes to a capable, ethical and developmental state. This includes good governance, financial management, business process, transformation through procurement, capacity, development and retention of staff.

Mandate

Alignment to NDP Priorities

- The NDP five-year implementation plan has been developed in order to advance and guide planning that is responsive to the attainment of NDP priorities. The Tribunal's mandate is also aligned with certain of the priority outcomes contained in the NDP. These are as follows:
 - NDP Outcome 1 – Economic transformation and job creation
 - NDP Outcome 2 – Education, skills and health
 - NDP Outcome 6 – A capable, ethical and developmental state
 - NDP Outcome 7 – A better Africa and world
- The Tribunal is aligned to the above joint indicators through its two outcomes, Responsive and Reliable Adjudication and Transparent, Accountable and Sustainable Entity.
- Through responsive and reliable adjudication of matters referred to it across all sectors in the economy, the Tribunal contributes to the outcomes of economic transformation and job creation by the NDP and the dtic, including education, skills and health (e.g., Mediclinic).
- Through responsive and reliable adjudication and participation in international and regional forums, the Tribunal contributes to a better Africa and world. Public Interest decisions are noted.
- Through being a transparent, accountable and sustainable entity, the Tribunal contributes to a capable, ethical and developmental state. This includes governance, financial management, business process, transformation through procurement, capacity, development and retention of staff.

Mandate

Alignment to dtic Outputs

- The dtic has three joint indicators which are the implementation plans aligned to the NDP. These are as follows:
 - Industrialisation - opportunities to grow the domestic market through localisation, sector partnerships (Masterplans), Green economy initiatives, investment expansion/promotion, African and Global exports.
 - Transformation - opportunities to promote BBBEE, worker empowerment, addressing economic concentration and SMME promotion.
 - Delivery/Capable State - initiatives to build entity staff and governance capacity, participate in the shared services of the dtic and undertake internal business processes improvements.

- The Tribunal is aligned to the above joint indicators through its two outcomes: Responsive and Reliable Adjudication and Transparent, Accountable and Sustainable Entity.

- Through responsive and reliable adjudication of matters across all sectors in the economy, the Tribunal contributes to the outcomes of industrialisation and economic transformation (e.g. through the assessment of competition and public interest considerations in mergers, as appropriate) of the dtic.

- Through transparent, accountable, and sustainable entity, the Tribunal contributes to a capable state. This includes governance, financial management, business process, transformation through procurement, capacity, development and retention of staff.

Part B: Our Strategic Focus



Our Strategic Focus

Outcome 1: Reliable and Responsive Adjudication

- The Tribunal's core business and therefore its strategic focus is the adjudication of mergers and prohibited practice cases (cartels and abuse of dominance) brought before it either by the Commission or directly by third parties, or in some circumstances by higher courts.
- Upon a matter being referred to it, the Tribunal must hear the matter according to the principles of natural justice and fairness.
 - Hearings are conducted in public; and
 - Reasons for decisions are written and published.
- Public Participation:
 - The Tribunal encourages participation from interested parties to ensure access to justice for less powerful entities and maximise available information.
 - Representation has included competitors, customers, franchisees, trade unions, industry associations, government entities, and NGOs.
 - The Competition Act allows the Minister of Trade, Industry, and Competition to make public interest representations in merger cases and to appeal Tribunal decisions.
 - The Tribunal maintains effective relationships with key stakeholders, including the media to promote consumer welfare across South Africa.

Our Strategic Focus

Outcome 1: Reliable and Responsive Adjudication

- The Tribunal can, among others:
 - a) prohibit or approve (with or without conditions) large mergers after consideration of the Commission's recommendation;
 - b) prohibit or approve (with or without conditions) intermediate mergers decided by the Commission and brought to it for consideration;
 - c) adjudicate matters in relation to any conduct prohibited in terms of chapters 2 or 3 of the Act (cartels and abuse of dominance cases);
 - d) adjudicate interim relief applications;
 - e) determine appeals arising from market inquiries;
 - f) consider consent agreements; and
 - g) grant an order for costs in terms of section 57 of the Act.

The Tribunal's decisions have the same legal weight as the judgments of the High Court and may be taken on appeal to the CAC and the Constitutional Court. The Tribunal is enjoined to retain its independence and impartiality in the exercise of its powers and in carrying out its duties.

Our Strategic Focus

Outcome 2: Transparent, Accountable and Sustainable Tribunal

- The Tribunal also places its second strategic outcome, namely Transparent, Accountable and Sustainable Tribunal through:
 - Effective financial management and reporting;
 - Governance, risk, audit and compliance; and
 - Capacity building

Our Strategic Focus

Performance Overview

PERFORMANCE OVERVIEW

- The demand in the Tribunal's services has increased, however, this is not always reflective in the number of matters heard year-on-year.
- The matters raised complex legal and economic issues and required extensive consideration.
- For example, small/intermediate merger reconsiderations are contested and therefore more complex. Similarly, interim relief applications are complex and contested as jurisprudence under the amendments evolves.

The table below reflects matters heard over the past five years which reflects fluctuation from year-to-year.

| Type of case | 2019/2020 | 2020/2021 | 2021/2022 | 2022/2023 | 2023/2024 |
|-------------------------------------|------------|------------|------------|------------|------------|
| Large merger | 86 | 66 | 86 | 99 | 87 |
| Intermediate/ small merger | 1 | 2 | 1 | 1 | 5 |
| Complaints from the Commission | 9 | 4 | 6 | 4 | 1 |
| Consent order/ settlement agreement | 27 | 63 | 30 | 19 | 22 |
| Complaints from third parties | 0 | 0 | 0 | 1 | 0 |
| Interim relief | 3 | 1 | 2 | 2 | 7 |
| Interlocutory/ procedural matters | 28 | 16 | 34 | 73 | 28 |
| Total | 154 | 152 | 159 | 199 | 150 |

Our Strategic Focus

Performance 2023/24

PERFORMANCE OVERVIEW

- **Case performance breakdown for the 2023/24 financial year:**
 - **92 Mergers;**
 - **1 Complaint from the Commission (Received five, only one was ready for hearing);**
 - **22 Consent Orders/Settlement Agreements;**
 - **7 Interim Relief matters; and**
 - **28 Interlocutory/procedural matters (including access to records, access to confidential information, amendments, condonations, extensions, exceptions and intervention applications).**

Our Strategic Focus

Situational Analysis

Impact of 2018 Amendments:

- Increased complexity of cases and demand for Tribunal services.
- Expanded merger control considerations, and public interest aspects.
- Longer hearings due to interventions from third parties.
- Expected increase in market inquiries and interim reliefs in the medium to long term.



Interim Reliefs:

- Significant rise in demand and complexity of interim reliefs.
- Prior to amendments, interim relief was under-utilised;
- From 1999 to 2023, a total of 32 interim relief applications were handled;
- In 2023/24 alone, 9 applications have been received, which represents 28% of what has been received in the last 24 years.



Tribunal's Appellate Functions in market inquiries:

- Tribunal's mandate expanded due to 2018 amendments.
- Commission's findings in market inquiries are now binding; Tribunal has appellate functions and has been evoked for the first time.
- Tribunal needs adequate skills and resources to handle these new responsibilities efficiently.
- Since the Commission's release of its report on the online mediation platform market enquiry, the Tribunal has received five appeals.
- Following the Group Five Constitutional Court decision (which held that reviews under the Promotion of Administrative Justice Act must be brought either to the Competition Appeal Court or the High Court – thus removing the Tribunal's powers of review of the Competition Commission's decisions), one party has filed an appeal in the High Court against the Commission's finding in the online mediation platform market.
- Since the outcome of the review may impact the other four appeals (which raise similar issues), filing has momentarily been suspended pending this review in the High-Court.

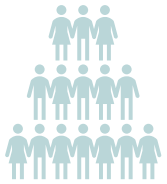


Our Strategic Focus

Situational Analysis

■ Performance and Capacity:

- The Tribunal has been effective in getting merger cases set down and decided within statutory timelines.
- There is a need for improvement in completing and issuing reasons for decisions in opposed cases.
- Steps taken to improve turnaround times include strengthening case management by appointing more senior case managers. The Tribunal now has nine case managers (two vacancies).
- Appointment of additional Tribunal members is required (at least three, two of whom must be lawyers). Continuous engagement with the dtic for the appointment of full-time and part-time members to increase Tribunal efficacy.



Our Strategic Focus

Situational Analysis

- **Budgetary Constraints:**

- National Treasury has mandated stricter spending measures to improve efficiency and maintain a sustainable fiscal framework.
- Immediate reduction in the Tribunal's grant allocation for 2023/24 to 2026/27, including:



- A budget reduction of R4.3 million for 2023/24.
- A further reduction of R15.4 million over the Medium-Term Expenditure Framework (MTEF) period.
- Overall budget reduction of 10% to 12% in the MTEF.

- **Impact on Tribunal Operations:**

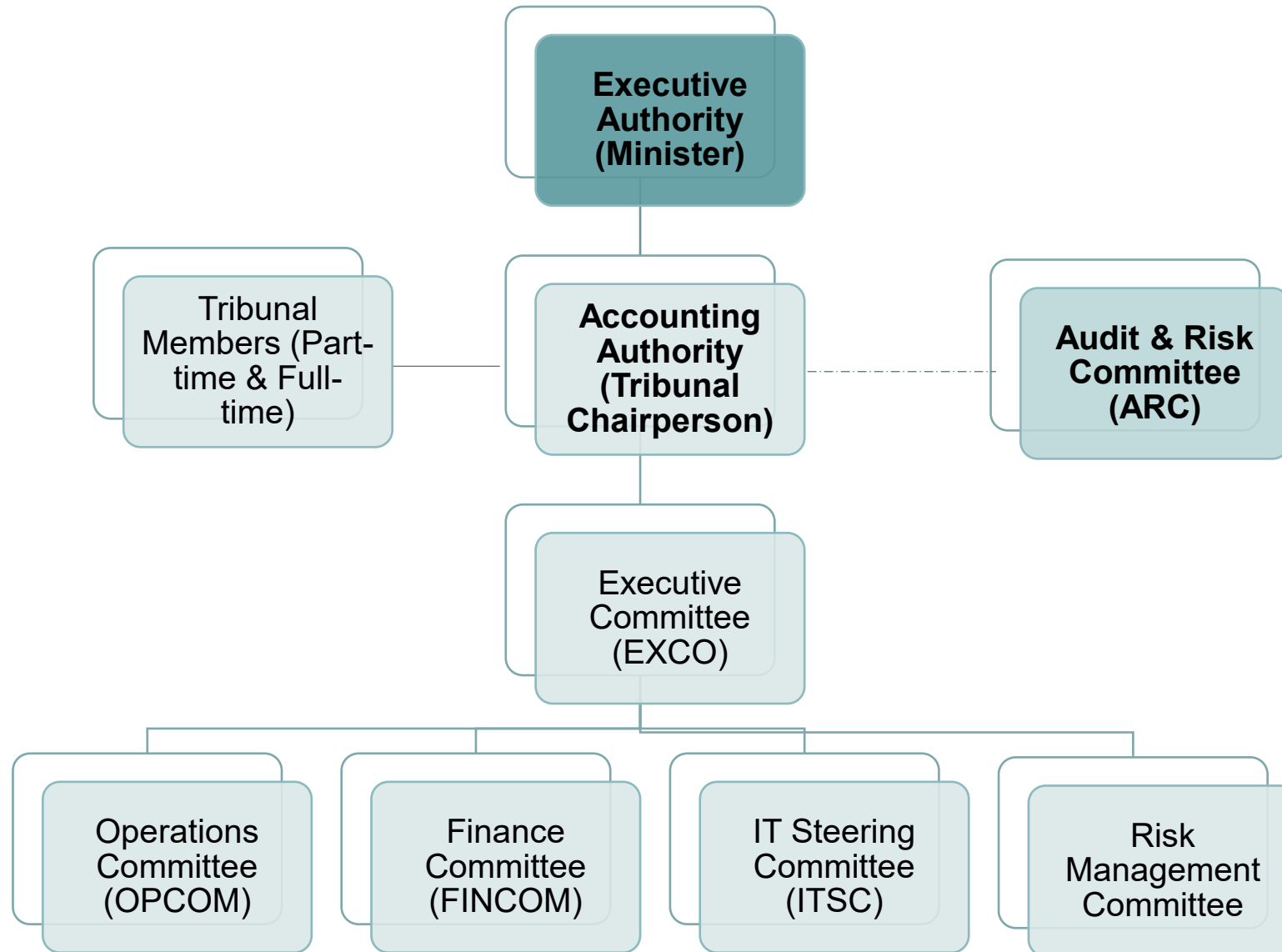
- Significant impact on the Tribunal's ability to fulfill its mandate due to high reliance on human capital (72% of costs are personnel-related).
- Despite the need for more resources and capacity, budget constraints hinder the ability to fill critical vacancies.
- Six out of ten prioritised positions for 2023/24 have been filled, but sustaining costs for these new employees is uncertain.
- The budget reductions will delay critical initiatives such as organizational growth and securing additional office space.

- **Funding Structure:**

- The Tribunal's funding is composed of approximately 60% from a government grant and 40% from filing fees, which are unpredictable and not directly correlated with activity levels.
- As per the Memorandum of Understanding between the Commission and the Tribunal, the Tribunal receives 30% of fees from large mergers and 5% from intermediate mergers are received by the Tribunal.
- The combined effect of budget reductions and funding constraints affects the Tribunal's ability to effectively meet its mandate.

Our Strategic Focus

Tribunal Governance Structures

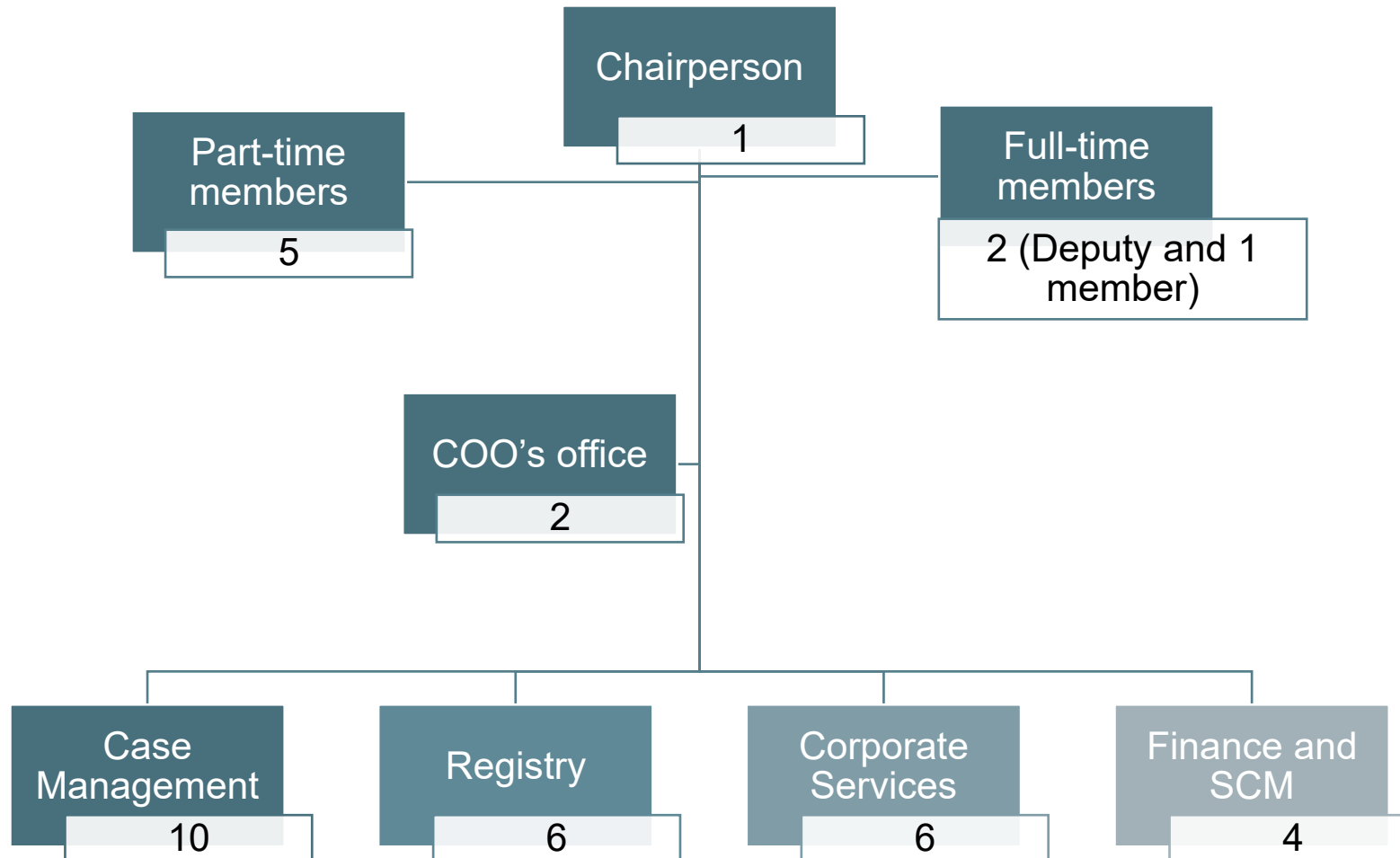


Our Strategic Focus

Human Capital

STAFF

- Staff complement of the Tribunal is **28** employees and **3** full-time members



Part C: Measuring Our Performance



Measuring Our Performance

Institutional Programme Performance Information

- The Tribunal has identified two outcomes: Reliable and Responsive Adjudication; and Transparent, Accountable and Sustainable Entity.
- These outcomes enable the Tribunal to operate within its mandate as a credible institution within the public sector and pursue its commitment to keep the public informed.
- Seven outputs have been identified that will enable the Tribunal to achieve these two outcomes. In turn we have identified 20 indicators linked to these outputs that are measured quarterly and annually.

| Tribunal Outcome | Output | Number of indicators |
|--|--|----------------------|
| Outcome 1: Responsive and Reliable Adjudication | Effective case management procedures to ensure hearings are set down within legislated timeframes. | 8 indicators |
| | Effective and timeous issuing of orders and reasons | |
| Outcome 2: Transparent, Accountable and Sustainable entity | Effective communication and information sharing | 14 indicators |
| | Sound governance | |
| | Effective financial management | |
| | Transformation in procurement practices | |
| | Transformation, capacity development, retention and training | |

Measuring Our Performance

Outcome 1: Responsive and Reliable Adjudication

| RESPONSIVE AND RELIABLE ADJUDICATION | | | | | | |
|--|--|---------|---------|--------------|---------|---------|
| EFFECTIVE CASE MANAGEMENT PROCEDURES TO ENSURE HEARINGS ARE SET DOWN WITHIN LEGISLATED TIMEFRAMES. | AUDITED ACTUAL PERFORMANCE | | | MTEF TARGETS | | |
| OUTPUT INDICATOR | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 |
| Percentage of mergers scheduled for a hearing or pre-hearing within 10 business days of filing. | 92% (large) 100% (intermediate/small) | 90% | 94% | 85%* | 85%* | 85%* |

* The target is not always achievable due to availability of parties or Tribunal members and the readiness of the matters for a pre-hearing or hearing.

Measuring Our Performance

Outcome 1: Responsive and Reliable Adjudication

| RESPONSIVE AND RELIABLE ADJUDICATION | | | | | | |
|--|--|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| EFFECTIVE AND TIMEOUS ISSUING OF ORDERS AND REASONS | AUDITED ACTUAL PERFORMANCE | | | MTEF TARGETS | | |
| OUTPUT INDICATOR | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 |
| Percentage of merger orders issued to parties within 10 business days following conclusion of the hearing. | 100% (large) 100% (intermediate/small) | 100% | 100% | 85% | 85% | 85% |
| Percentage of reasons for mergers issued to parties within 20 business days of order being issued. | 92% (large) 0% (intermediate/small) | 88% | 81% | 75% | 75% | 75% |
| Number of reports regarding competition and public interest considerations in mergers. | 4 reports sent to the dtic | 4 reports sent to the dtic | 4 reports sent to the dtic | 4 reports sent to the dtic | 4 reports sent to the dtic | 4 reports sent to the dtic |
| Reasons for prohibited practice cases are issued to parties within 120 business days following conclusion of the hearing | No reasons issued (simple) 0% (complex) No reasons issued (very complex) | 0% | 25%* | 65% | 65% | 65% |

*Targets relating to prohibited practices, interim relief and procedural matters are not always achievable due to the complexity of legal and economic issues in these matters. In addition, Tribunal members simultaneously sit in multiple hearings and draft reasons including managing pre-trial processes in other matters.

Measuring Our Performance

Outcome 1: Responsive and Reliable Adjudication

| RESPONSIVE AND RELIABLE ADJUDICATION | | | | | | |
|--|----------------------------|---------|---------|--------------|---------|---------|
| EFFECTIVE AND TIMEOUS ISSUING OF ORDERS AND REASONS | AUDITED ACTUAL PERFORMANCE | | | MTEF TARGETS | | |
| OUTPUT INDICATOR | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 |
| Percentage of procedural matter orders issued to parties within 45 business days following conclusion of the hearing. | 84% | 57% | 40%* | 65% | 65% | 65% |
| Percentage orders for consent orders and settlement agreements issued to parties within 10 business days following conclusion of the hearing | 97% | 100% | 100% | 80% | 80% | 80% |
| Percentage of reasons in interim relief matters issued to parties within 30 business days of last hearing date. | No reasons issued | 0% | 33%* | 65% | 65% | 65% |

*Targets relating to prohibited practices, interim relief and procedural matters are not always achievable due to the complexity of legal and economic issues in these matters. In addition, Tribunal members simultaneously sit in multiple hearings and draft reasons including managing pre-trial processes in other matters.

Measuring Our Performance

Outcome 2: Transparent, Accountable and Sustainable Tribunal

| TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL | | | | | | |
|---|----------------------------|---------|---------|--------------|---------|---------|
| EFFECTIVE COMMUNICATION AND INFORMATION SHARING | AUDITED ACTUAL PERFORMANCE | | | MTEF TARGETS | | |
| OUTPUT INDICATOR | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 |
| Percentage of press releases of final merger decisions issued within 3 business days of the order date and after finalisation of confidentiality claims. | 77% | 99% | 100% | 90% | 90% | 90% |
| Percentage of press releases of prohibited practice decisions issued within 3 business days of the order date and after finalisation of confidentiality claims. | 0% | 100% | 100% | 90% | 90% | 90% |

Measuring Our Performance

Outcome 2: Transparent, Accountable and Sustainable Tribunal

| TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL | | | | | | |
|--|----------------------------|---------------------|---------------------|--------------|---------------------|---------------------|
| SOUND GOVERNANCE | AUDITED ACTUAL PERFORMANCE | | | MTEF TARGETS | | |
| OUTPUT INDICATOR | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 |
| Percentage of prior financial year audit findings (internal and external) resolved in terms of agreed timelines with the auditors. | 100% | 100% | 100% | 100% | 100% | 100% |
| Audit Outcome | Unqualified opinion | Unqualified opinion | Unqualified opinion | Unqualified* | Unqualified opinion | Unqualified opinion |

*For the 2023/24 financial year, the Tribunal has achieved eight consecutive clean audit outcome.

Measuring Our Performance

Outcome 2: Transparent, Accountable and Sustainable Tribunal

| TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL | | | | | | |
|---|----------------------------|---|---|--|--|--|
| TRANSFORMATION IN PROCUREMENT PRACTICES | AUDITED ACTUAL PERFORMANCE | | | MTEF TARGETS | | |
| OUTPUT INDICATOR | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 |
| Percentage of expenditure against budget | 90% | 96% | 112% | 90% | 90% | 90% |
| Percentage of expenditure on B-BBEE suppliers | New indicator | 97,15% of expenditure spent on suppliers between the B-BBEE levels 1-4, 22,32% of which was on women, youth or PWDs | 98.66% of expenditure spent on suppliers between the B-BBEE levels 1-4, 42% of which will be on women, youth or PWDs. | 80% of expenditure spent on suppliers between the B-BBEE levels 1-4, 20% of which will be on women, youth or PWDs. | 80% of expenditure spent on suppliers between the B-BBEE levels 1-4, 20% of which will be on women, youth or PWDs. | 80% of expenditure spent on suppliers between the B-BBEE levels 1-4, 20% of which will be on women, youth or PWDs. |
| Percentage of expenditure on EME suppliers | New indicator | New indicator | 55.41% of expenditure on suppliers that are classified as EME suppliers | 30% of expenditure on suppliers that are classified as EME suppliers | 30% of expenditure on suppliers that are classified as EME suppliers | 30% of expenditure on suppliers that are classified as EME suppliers |

Measuring Our Performance

Outcome 2: Transparent, Accountable and Sustainable Tribunal

| TRANSPARENT, ACCOUNTABLE AND SUSTAINABLE TRIBUNAL | | | | | | |
|--|----------------------------|---------------|---------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| TRANSFORMATION, CAPACITY DEVELOPMENT, RETENTION AND TRAINING | AUDITED ACTUAL PERFORMANCE | | | MTEF TARGETS | | |
| OUTPUT INDICATOR | 2021/22 | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 |
| Percentage of staff retention | 27% | 90% | 94% | 80% | 80% | 80% |
| Percentage of staff training expenditure against total employee costs | New Indicator | New Indicator | 85% | 2% | 2% | 2% |
| Number of capacity building workshops for Case Managers and Tribunal members. | New Indicator | New Indicator | Four training initiatives | One annual capacity building workshop | One annual capacity building workshop | One annual capacity building workshop |
| Number of interns provided with opportunities within the Tribunal | 2 | 2 | 2 | 2 | 2 | 2 |
| Percentage of employment equity representation of employees from the designated groups | New Indicator | 85% | 94% | 75% | 75% | 75% |

Measuring Our Performance

Medium term Budget Allocations 2024/25 – 2026/27

| BUDGET LINE ITEM | ACTUAL | MEDIUM TERM EXPENDITURE FRAMEWORK | | | TOTAL MTREF |
|--|----------------|-----------------------------------|---------------|---------------|----------------|
| | | 2024/25 | 2025/26 | 2026/27 | |
| Revenue | 2023/24 | R '000 | R '000 | R '000 | |
| Fees earned | 15 461 | 21 047 | 23 155 | 23 155 | 67,357 |
| Interest Income | 2 646 | 2 000 | 2 000 | 2 000 | 6,000 |
| Grant received | 38 433 | 40 159 | 41 492 | 42 905 | 124,556 |
| Total | 56 721 | 63 206 | 66 647 | 68 060 | 197,913 |
| | | | | | |
| Expenditure | | | | | |
| Employee related costs | 44 190 | 45 421 | 48 707 | 49 758 | 143,886 |
| Other operating costs | 21 788 | 17 785 | 17 940 | 18 302 | 54,027 |
| Total | 65 978 | 63 206 | 66 647 | 68 060 | 197,913 |
| Surplus/ (Deficit) for the year | (9 257) | - | - | - | - |

- The Tribunal receives about 60% of its funding from government grants and 40% from filing fees.
- Filing fees fluctuate and depend on merger activity. For the 2023/24 financial year, the filing fees earned was R15.5 million against a budget of R19 million.

Measuring Our Performance

Budget Allocation by Outcome

- **Adjudicative Nature:**
 - The Tribunal is a reactive body, handling cases as they are brought before it.
 - Accurate prediction of the number of cases to be heard annually is challenging.
- **Budgeting Challenges:**
 - Difficulties in accurate budgeting due to the unpredictable number of cases.
 - Variances often arise between actual and budgeted expenditure.
 - The Tribunal's budget is operational, not driven by specific programs or projects.
 - National Treasury approved the surplus allocation from 2022/23 of R18 million to be used mostly on additional capacity. The requested surplus retention for 2023/24 is R9 million, which is required to assist with additional member capacity.
- **Strategic Outcomes and Budget Allocation:**
 - Strategic outcomes focus on the Tribunal's mandate, core business, oversight, and financial management.
 - The budget is allocated across different focus areas, outputs, and outcomes.

| FOCUS AREA | OUTPUTS | BUDGET |
|---|---|-------------------|
| Responsive and Reliable Adjudication | Effective and timeous issuing of orders and reasons | 18,942,894 |
| | Effective case management procedures to ensure hearings are set down within legislated timeframes | 16,901,247 |
| Communication | Effective communication and information sharing | 1,329,131 |
| Business Process, Governance, Financial Management, Human Resources | Effective record management | 3,424,793 |
| | Sound governance | 3,729,531 |
| | Effective financial management | 4,012,743 |
| | Capacity development, retention and training | 4,027,694 |
| Other expenses | Administration (incl. depreciation) | 10,021,870 |
| | Capital Expenditure | 450,000 |
| | Competition Appeal Court | 364,805 |
| | TOTAL BUDGET | 63,205,708 |

Current Challenges

CAPACITY CHALLENGES

- FY2023/24 the Tribunal heard 150 cases, issued 171 orders and 141 reasons (compared to FY2022/23 the Tribunal heard 199 cases, 165 orders and 117 reasons).
- There is a lack of predictability in case load volume and increase in complexity of the cases.
- There are three full-time members and for most cases a panel comprises of three members.
- There are five part-time members (only remunerated for cases they sit on).
- Mergers have short time periods (set down for hearing in 10 days and decided within 10 days of hearing)
- We have performed well in dealing with mergers with 94% of cases set down and 100% decided within the 10 days respectively. However, for contested mergers and prohibited practices which run for a longer periods, there is insufficient capacity to handle these simultaneously with the mergers mentioned, exacerbated by the unavailability of part-time members to sit for long periods of time due their full-time job commitments.

Current Challenges

CAPACITY CHALLENGES

▪ TRIBUNAL MEMBERS

- Full-time members are appointed by the President on recommendation of the Minister dtic for a period of 5 years.
- Maximum number of members in terms of the Act is 14 (including the Chairperson) and not less than three.
- Following the 2018 amendments, the Minister may appoint acting part-time members (currently two of the five part-time members are such appointments).
- 3 full-time members - consists of Chairperson, Deputy Chairperson and one member.
- Members are lawyers and economists.

Current Challenges

CAPACITY CHALLENGES

- Appointment of three additional full-time members, at least two of which must be lawyers, will reduce capacity constraints and improve efficiencies .
- Budget allocation previously included three full-time members, however, due to reductions in both budget and filing fees, this was reduced.
- Currently there is insufficient budget for additional members.
- In addition, two Senior Competition Law Counsel are required.

Current Challenges

ORGANISATIONAL STRUCTURE REVIEW

- Organisational structure review concluded in 2023.
- Review recommended increasing staff complement, with specific focus on increasing the number of full-time members and strengthening the case management division.
- Implementation will be on a phased-in approach, organically over the next three years, dependent on budget availability.

Current Challenges

FUNDING

- The Tribunal receives about 60% of its funding from government grants and 40% from filing fees.
- Filing fees fluctuate and depend on merger activity.
- Year-on-year budget allocations since inception have been based on inflationary increases and not in proportion to the Tribunal's increased volume and complexity of cases.
- In September 2023, the Tribunal received a 10% (R4 million) budget cut.
- In November 2023, the reduction was extended to the MTREF period, with an overall budget reduction of about 10-12% (R15 million) over the next three years.
- Budget reductions and cost containment measures introduced in the 2023/24 financial year have placed significant pressure on the ability to perform against the Tribunal's targets and planned expansion.



THANK YOU