



competitioncommission  
south africa

# ANNUAL REPORT 2016-17



*In memory of Nolela Nokele  
who diligently served at the  
Competition Commission  
from 2008 to 2017*







***competition*commission**  
***south africa***

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PART 1: ABOUT US



## ABOUT US

### OUR ROLE

The Competition Commission (Commission) is one of three independent statutory bodies established in terms of the Competition Act, No. 89 of 1998 (the Act) to regulate competition between firms in the market. The other bodies are the Competition Tribunal (Tribunal) and the Competition Appeal Court (CAC). The Commission is the investigating and prosecuting agency in the competition regime while the Tribunal is the court. The CAC hears appeals against decisions of the Tribunal. Although each of the bodies functions independently of each other and of the State, the Commission and Tribunal are administratively accountable to the Economic Development Department (EDD), while the CAC is part of the judiciary.

### OUR VISION AND MISSION

The Commission's 'Vision 2030' is the attainment of a growing and inclusive economy that serves all South Africans. This includes the eradication of poverty and unemployment by 2030 in line with the National Development Plan (NDP). The emphasis of the new vision is on the transformational role of the Commission in the economy. The Commission must play a role in ensuring a vibrant economy and economic growth to attain the vision of the NDP and contribute to the attainment of its operational plan, the New Growth Path (NGP).

In this strategy cycle, the Commission's mission is to undertake "*competition regulation for a growing and inclusive economy*". This entails adopting a dynamic view to enforcement, considering both immediate and long-term implications of the Commission's decisions on the economy. At the same time these efficiency objectives have to be balanced with the public interest, broadly understood.

### OUR STRATEGIC GOALS

The Commission has identified three strategic goals that it aims to achieve to contribute to the attainment of a growing and inclusive economy. These are discussed below.

#### Strategic goal 1: Effective competition enforcement and merger regulation

The Commission effectively uses its mandated instruments as per the Act. This includes the regulation of mergers and acquisitions, the investigation and prosecution of instances of abuse of dominance and restrictive conduct and the unmasking and dismantling of cartels through the primary tools of investigation, prosecution, and remedies, including financial penalties.

#### Strategic goal 2: Strategic collaboration and advocacy

The Commission develops strategic partnerships with complementary stakeholders to attain inclusive growth through various instruments, including competition and industrial policy. The implementation of these policies, to achieve inclusive growth, requires strong co-ordination. This bolsters the case for collaboration with those who are also mandated to have a positive impact on job creation, small, medium and micro enterprises (SMMEs), market entry of historically disadvantaged persons (HDPs) and consumer welfare.

#### Strategic goal 3: A high performance agency

The Commission successfully delivers on its objectives through a cohesive, well-structured organisation in which people, processes and systems perform optimally. In the attainment of this goal, the Commission optimises its human capital, resources, systems and processes to be an effective agency. The Commission also builds strong, reliable and integrated information management systems underpinned by the best-in-range IT platform where data can be securely shared, stored and managed. To become a high-performing organisation, it is important that the Commission's resources are optimally utilised across the organisational structure to deliver on its strategic objectives.

THE EXECUTIVE



Tembinkosi Bonakele  
Commissioner



Hardin Ratshisusu  
Deputy Commissioner



Khanyisa Qobo  
Divisional Manager: Advocacy and  
Public Affairs



Lebo Mabidikane  
Acting Divisional Manager:  
Mergers and  
Acquisitions Division



Liberty Mncube  
Chief Economist



Makgale Mohlala  
Divisional Manager:  
Cartels Division



Molatlhegi Kgauwe  
Chief Financial Officer



Alex Kuhn  
Divisional Manager:  
Office of the Commissioner



Andile Gwabeni  
Acting Divisional Manager:  
Corporate Services Division



Bukhosibakhe Majenge  
Chief Legal Counsel

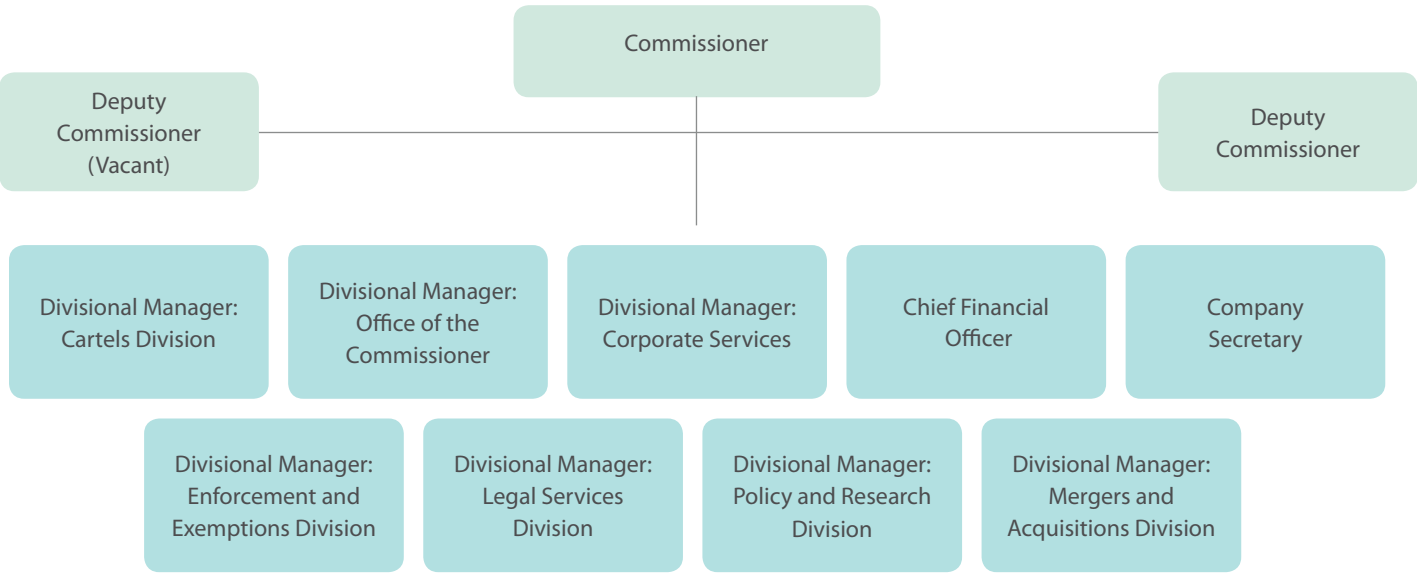


Nompucuko Nontombana  
Divisional Manager:  
Enforcement and Exemptions  
Division



Mduduzi Msibi  
Company Secretary

ORGANISATIONAL STRUCTURE





## OUR VALUES

**Communication:** Listening. Being open to other ideas. Conveying information effectively.

**Ownership:** Commitment. Accepting responsibility for my actions. Working ethically and cost-effectively.

**Professionalism:** Integrity. Demonstrating a good work ethic and respect. Showing empathy.

**Making a difference:** Making a positive impact on society. Focus on the Commission's goals.

**Employee welfare:** Achieving my full potential while maintaining a healthy balance.

**Teamwork:** Trust. Working well with others to achieve common goals. Building a group identity.

**Efficiency:** Measuring how well resources are used in pursuit of quality results. Value for money.



## LINKING COMPETITION POLICY TO ECONOMIC POLICY

The Act is one of the legislative tools for achieving inclusive economic growth in South Africa. The purpose of the Act finds its application in the various functions the Act prescribes, but also in the strategic choices the Commission makes in pursuit of South Africa's economic objectives.

The structure of the Commission's annual report is centred on our three strategic objectives: (1) effective competition enforcement and merger regulation; (2) strategic collaboration and advocacy; and (3) a high performance agency. The content of the report sets out the Commission's functions throughout the financial year. These functions reflect the Commission's purpose and priorities as depicted by the connections illustrated in this diagram.

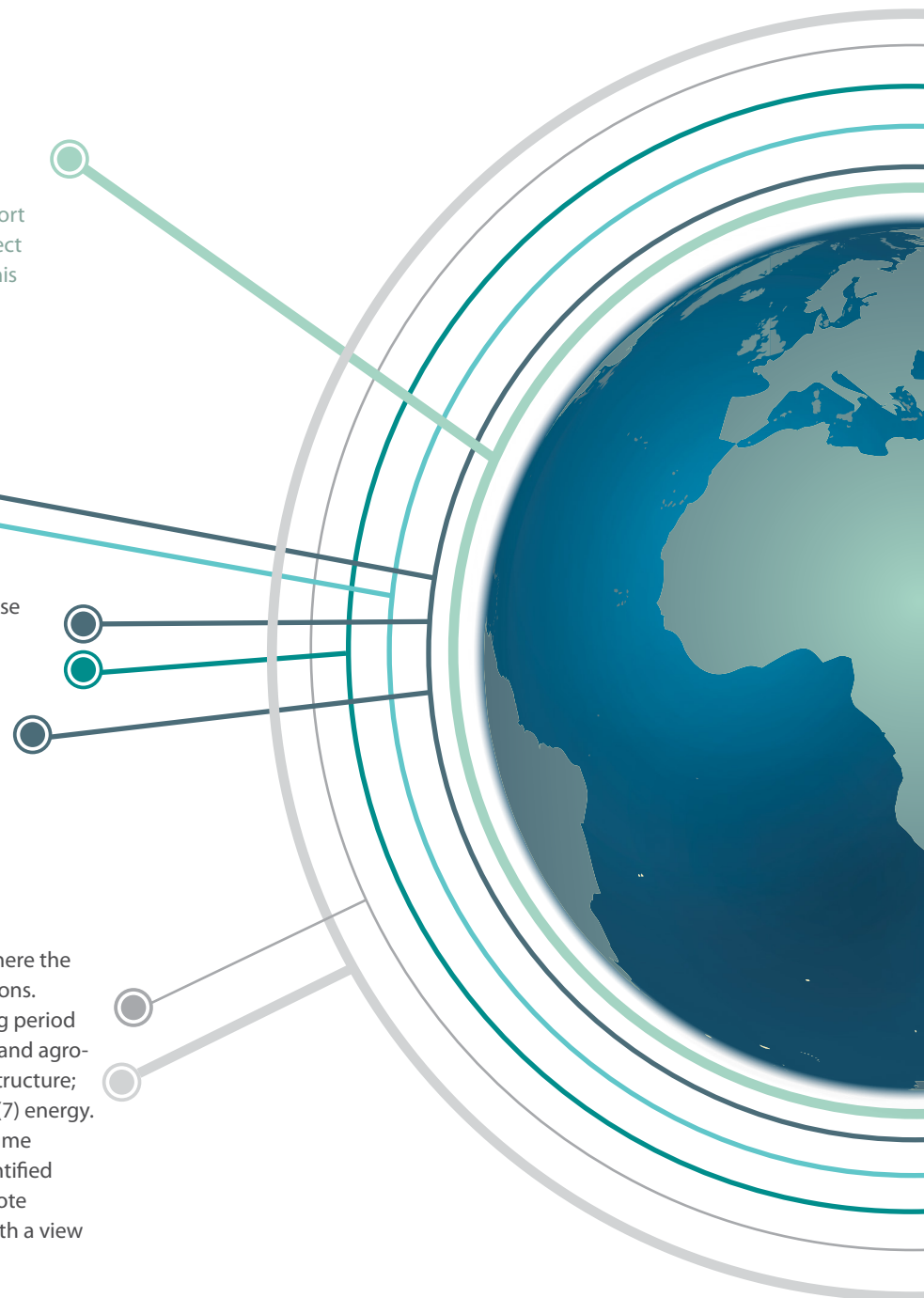
## OUR PURPOSE

The purpose of the Act is to promote and maintain competition in South Africa to:

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

## OUR PRIORITIES

As one of the economic role players, the Commission has a responsibility to contribute solutions to South Africa's challenges. These challenges require a strategic approach, where the Commission is both responsive to the environment and proactive in contributing solutions. Against this ideal, the Commission chose to target seven priority sectors in the reporting period for proactive intervention. The Commission's priority sectors for this period are (1) food and agro-processing; (2) healthcare; (3) intermediate industrial inputs; (4) construction and infrastructure; (5) banking and financial services; (6) information and communication technology and (7) energy. The sectors were selected taking into account South Africa's economic policies, the volume of complaints received in the sector and market failures which the Commission has identified through past investigations and scoping exercises. The Commission has a duty to promote competitiveness in these sectors to level the playing fields and open up the markets, with a view to promoting economic growth.



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## ACRONYMS AND ABBREVIATIONS

<b>ACF</b>	African Competition Forum
<b>BEE</b>	Black Economic Empowerment
<b>BRICS</b>	Brazil, Russia, India, China and South Africa
<b>CAC</b>	Competition Appeal Court
<b>CD</b>	Cartel Division
<b>CLP</b>	Corporate Leniency Policy
<b>Commission</b>	Competition Commission of South Africa
<b>CSD</b>	Corporate Services Division
<b>DAFF</b>	Department of Agriculture, Forestry and Fisheries
<b>E&amp;E</b>	Enforcement and Exemptions Division
<b>EDD</b>	Economic Development Department
<b>FAS</b>	Federal Antimonopoly Service of Russia
<b>FTC</b>	Federal Trade Commission of the United States
<b>HDP</b>	Historically disadvantaged person
<b>HMI</b>	Healthcare Market Inquiry
<b>ICT</b>	Information and communication technology
<b>ICN</b>	International Competition Network
<b>IPAP</b>	Industrial Policy Action Plan
<b>IRC</b>	Information Resource Centre
<b>ITAC</b>	International Trade Administration Commission of South Africa
<b>LPG</b>	Liquefied Petroleum Gas
<b>LSD</b>	Legal Services Division
<b>M&amp;A</b>	Mergers and Acquisitions Division
<b>MOU</b>	Memorandum Of Understanding
<b>NDP</b>	National Development Plan
<b>NGP</b>	New Growth Path
<b>NIP</b>	National Infrastructure Plan
<b>NPA</b>	National Prosecuting Authority
<b>NT</b>	National Treasury
<b>OTC</b>	Office of the Commissioner
<b>P&amp;R</b>	Policy and Research Division
<b>PFMA</b>	Public Finance Management Act of 1999
<b>PPS</b>	Preference Price System
<b>SADC</b>	Southern African Development Community
<b>SARS</b>	South African Revenue Services
<b>SMME</b>	Small, Medium and Micro Sized Enterprises
<b>TAC</b>	Total Allowable Catch
<b>The Act</b>	Competition Act of 1998 as amended (Act No. 89 of 1998)
<b>Tribunal</b>	Competition Tribunal of South Africa



## GLOSSARY OF TERMS

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

<b>“Abuse of dominance”</b>	means engaging in prohibited practices as provided in sections 8 and 9 of the Act.
<b>“Advisory opinion”</b>	refers to a non-binding written opinion provided by the Commission to a requester, who may be an individual or a firm, setting out the Commission’s likely view on the subject matter of the opinion.
<b>“Advocacy”</b>	refers to activities aimed at the promotion of voluntary compliance to the Act, through non-enforcement mechanisms.
<b>“Consent agreement”</b>	refers to an agreement concluded between the Commission and a respondent, and which is confirmed as an order of the Competition Tribunal in terms of Section 49D of the Act, setting out: (i) the alleged contravention, (ii) where appropriate, an admission by the respondent, (iii) a penalty where applicable and (iv) where applicable, a remedy addressing the harm occasioned by the alleged contravention of the Act. Also referred to as a settlement agreement.
<b>“Enforcement”</b>	refers to the investigation and/or prosecution of anti-competitive conduct.
<b>“Exemptions”</b>	refers to the granting of exemption from prosecution to firms for engaging in anti-competitive conduct for a specific period of time, through the process and criteria prescribed in Section 10 of the Act.
<b>“Non-referral”</b>	means that, after conducting an investigation, the Commission has decided not to refer a particular case to the Competition Tribunal for prosecution.
<b>“Public interest”</b>	refers to the consideration of socio-political and economic issues, as prescribed in Section 12A of the Act, in the evaluation of merger and acquisition notifications.
<b>“Referral”</b>	refers to the submission by the Commission of a complaint to the Tribunal for prosecution, upon completion of its investigation.

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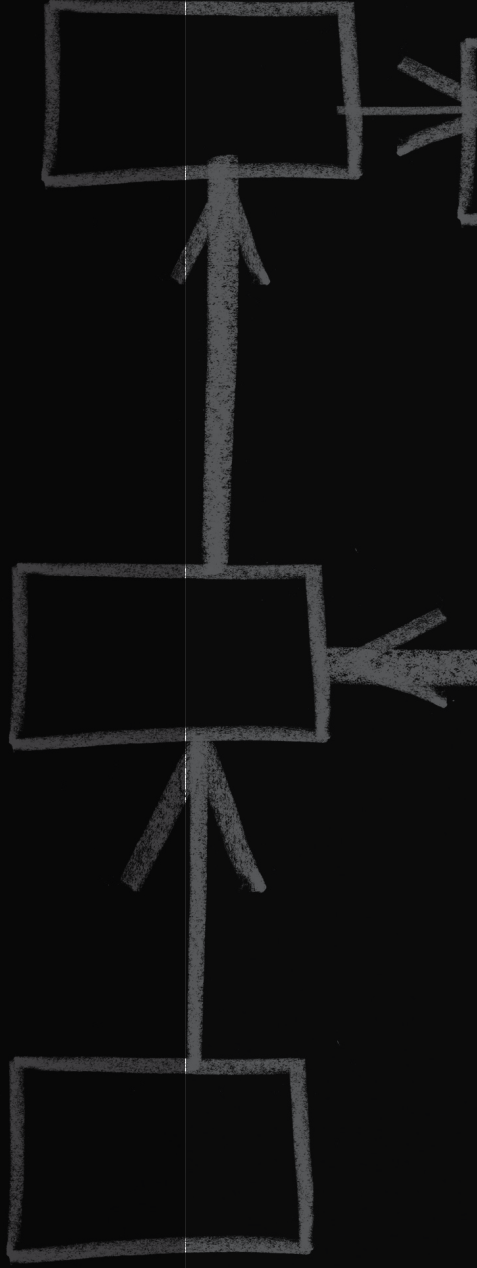
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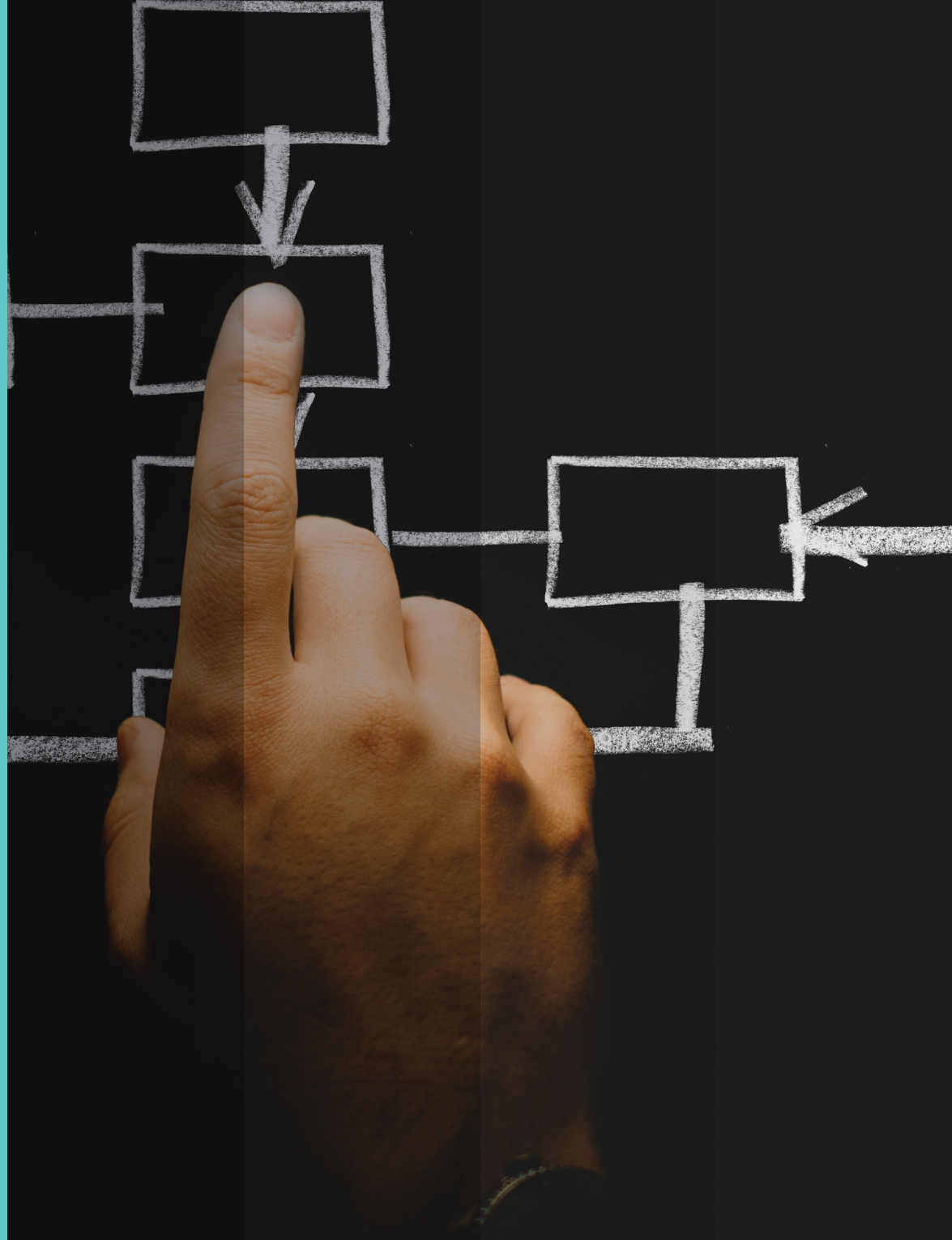
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## PART 2: VIEW FROM THE TOP





## ARE WE THERE YET?

THE MINISTER OF ECONOMIC DEVELOPMENT, **EBRAHIM PATEL**, SHARES HIS VIEW ON HOW FAR THE COMMISSION HAS COME IN 18 YEARS AND HOW MUCH MORE IT HAS TO DO.

The changes in South Africa's political system in 1994 created the foundations of an inclusive democracy but left to law-makers, the Executive and an active citizenry the job of ensuring that economic inclusion – in jobs, ownership, economic opportunities and participation – was achieved.

Competition policy has shifted in the past 12 months to the centre of policy discussions about building that inclusive economy.

Our unique history of exclusion required special measures to reverse the deep legacy of the past. In 1998, the legislature set an ambitious vision in the preamble to the Competition Act. Over the past nearly decade, the Executive has championed a purposive interpretation of the Act, with greater attention to ensuring that public interest criteria are considered in mergers & acquisitions, cartels are rooted out and abuse of dominance is challenged.

Much progress has been made and some of these are documented in this Report. To the question 'are we there yet?' I suggest that if 'there' is an inclusive economy, then we are not 'there' yet but we are making solid strides in getting there. I wish to highlight a few milestones in this journey.

This past year saw the largest penalty yet imposed by the competition authorities on a firm in the steel industry, for contravening the Act, and in the beverages sector, arguably the most far-reaching public interest conditions attached to mergers yet. In both sets of cases, the public sector institutions – government departments and regulators – played their specific roles to effect these outcomes. The aim of the Commission that competition policy be linked to wider economic policy is being realised. An integrated approach enables the public authorities to ensure that national economic goals and the constitutional vision of an inclusive

society are achieved through the application of laws, use of fiscal and industrial measures and the building of broad partnerships in the economy.

In the matter involving ArcelorMittal, two sets of regulators (trade and competition) and two Ministries were involved in addressing issues related to the company. The complexity of addressing breaches of the Competition Act as well as historical under-investment in the steel-mills, new pressures on the company as a result of the glut of steel on global markets and rising imports of steel particularly from China, required innovative approaches.

The final settlement with the company included a R1.5 billion penalty, a price-cap on flat steel products, avoidance of retrenchments and R4.6 billion in new investments in capex to improve its dynamic competitiveness. Government liaised with the company and the two sets of



regulators (competition and trade) to enable a comprehensive settlement of issues.

In two large beverage mergers involving soft-drinks (Coca-Cola) and beer (ABInBev/SABMiller), significant public interest issues were at stake, ranging from access for smaller players to the retail infrastructure of the dominant firms, to employment, industrial development, empowerment and small business promotion. This required extensive engagement between government and the merger parties as well as representation on these issues to the regulators.

The mergers were approved with conditions that provided inter alia for significant and extensive employment undertakings, provision of support to small businesses particularly black emerging farmers, access to competitor products in fridges and display cooler units owned by the large firms in certain kinds of spaza shops and taverns and commitments to maintain the African

headquarters of the companies in South Africa. In the soft-drink transaction, black ownership would be increased in the merger company and a locally-inspired brand, Appletiser, would continue to be produced in South Africa.

I point to these examples because they demonstrate that competition policy and regulators can, should and do respond to the ambition and vision of the preamble of the Competition Act.

The Commission is the entry-point of the competition regulatory system and its work provides the foundation for the emergence of 'smart' competition policy.

The new challenge for competition law is to respond to excessive levels of economic concentration that in many cases limits the opportunity for citizens, particularly black South Africans, to participate equitably in the national economy.

These challenges will require a well-resourced Commission and will no doubt keep the competition regulators productively engaged in the period ahead!

I welcome the new Deputy Commissioner, Hardin Ratshisusu, who was appointed during the period covered in the Report. I extend my condolences to the family and colleagues of the late Xolela Nokele who diligently served the Commission for many years and who sadly passed away recently.

I commend the Commission for the work done in the past year and the Commissioner, Tembinkosi Bonakele who ably led the staff of the Commission.



**Ebrahim Patel**  
Minister of Economic Development  
31 August 2017







**Tembinkosi Bonakele,**  
Commissioner of the  
Competition Commission

## LOOKING BACK, FORGING AHEAD

**IT IS MY PLEASURE TO PRESENT TO YOU THE COMMISSION'S 18TH ANNUAL REPORT. ALTHOUGH THE COMMISSION HAS BEEN IN EXISTENCE FOR 18 YEARS, WE STILL EXPERIENCE NEW DEVELOPMENTS, RECORD-SETTING OUTCOMES AND GROUND-BREAKING JUDGMENTS IN OUR CASES. 2016/17 WAS SUCH A YEAR.**

### BREAKING NEW GROUND

At R1.5 billion, the administrative penalty the Tribunal imposed on ArcelorMittal South Africa (ArcelorMittal) was the highest penalty ever imposed in South Africa for contravening the Act. The agreement settled four complaints of collusion, information exchange and excessive pricing against ArcelorMittal for conduct that took place in the long steel, scrap metal, flat steel and wire mesh markets from at least 2003 to the time of the settlement. However, it was not the amount of the penalty that made the Commission's settlement with ArcelorMittal a significant one. It was the far reaching and creative remedies the Commission and ArcelorMittal agreed upon. As part of the settlement, ArcelorMittal undertook that for a period of five years, it would limit its EBIT (earnings before interest and tax) margin to a cap of 10% for flat steel products sold in South Africa. In addition, it committed to a R4.6 billion capital expenditure over the next five years. The full impact of this settlement will only be felt by the steel industry in the coming years but, as the Commission, we are confident that it will lead to a reduction in pricing and improvement in the overall competitiveness of this priority industry.

The largest merger ever considered by South Africa's competition agencies was the transaction between Anheuser-Busch InBev SA/NV (AB Inbev) and SABMiller Plc (SABMiller). This was a large global transaction, which raised a number of competition and public interest concerns for the South African market. Several stakeholders, more particularly the Minister of Economic Development, were concerned about the potential impact of the merger on employment, small businesses, local beer and cider production, access to cold rooms and fridge space. In addition the Commission identified some competition concerns emanating from Coca-Cola and Pepsi's bottling arrangements, AB Inbev's shareholding in Distell Group Ltd (Distell) and foreclosure in the supply of tin metal crowns. Following an agreement between the Minister of Economic Development addressing a wide range of public interest issues, the Commission recommended that the Tribunal approve the deal subject to several conditions designed to address the concerns mentioned above. The Tribunal concurred substantially with the Commission's recommendation. Among the conditions imposed was that AB Inbev had to divest its shareholding in Distell within three years of concluding the merger; the merging parties could not retrench any employee as a result of the merger; and AB InBev committed to make available, over a five-year period, an aggregate amount of R1 billion for investments in South Africa. This investment would be utilised for the development of South African agricultural outputs for barley, hops and maize, as well as to promote entry and growth of emerging and black farmers in South Africa.

The proposed merger between Imerys South Africa (Pty) Ltd (Imerys) and Andalusite Resources (Pty) Ltd (Andalusite Resources) was the first intermediate merger in the history of the competition agencies to be prohibited by the Competition Appeals Court (CAC). In doing so, the CAC concurred with the earlier judgments of the Tribunal and the Commission, who both found that the merger would adversely affect the entire andalusite supply chain in South Africa, particularly smaller firms that lacked the capacity, resources

and bargaining power of their larger competitors to respond to the monopolistic market conditions the merger would create. Andalusite is a mineral from which refractories are made. Refractories are used to line furnaces, kilns and other containers exposed to high temperatures, abrasion and chemical attack in the course of manufacturing iron, steel, cement, ceramics and other products. Locally and internationally andalusite is used by, among others, steel producers. Given the importance of steel and related inputs for industrial development in South Africa, this case fell within the Commission's priorities for the reporting period. The decisive prohibition of this merger by the Commission, Tribunal and ultimately the CAC prevented what would have been a significant lessening of competition in this market.

I should also mention the important legal developments that came from the courts' judgments in two separate cartel cases involving Delatoy Investments (Pty) Ltd (Delatoy) and another involving two bicycle wholesalers: Omnico (Pty) Ltd (Omnico) and Coolheat Agencies (Pty) Ltd (Coolheat). The significance of the former decision was that, going forward, it will allow us to consider group turnover, rather than an individual company's turnover, when imposing an administrative penalty. It could also mean the Commission might impute an administrative penalty on the parent company where its subsidiary has been found to have contravened the Act. The latter case clarified the Commission's obligations when alleging a collusive agreement between parties. In this case the CAC also clarified the level of participation required from firms exchanging sensitive price or trading information, before those firms can be said to have contravened the Act.

In this financial year we completed the market inquiry into the market for liquid petroleum gas (LPG). This is only the second market inquiry we have completed since our inception and the first since the market inquiry provisions were formally introduced into the Act. The Commission initiates a market inquiry when it observes market failures in an industry but cannot attribute them to the

conduct of any specific firm or firms. By its nature the outcome of a market inquiry consists of remedial action and recommendations for actions to be taken by various stakeholders in the industry. As such, the impact of a market inquiry may not be an immediate one. Although we report on the outcomes of the LPG inquiry on page 50, we will only be able to measure the full impact of the inquiry in the years to come.

The managers responsible for case-related functions in the Commission elaborate on all the above matters and other important cases in Parts 4 to 7 of this report.

## HOLDING THE CENTRE

Our core work is the investigation of competition complaints and assessment of mergers. Hence the bulk of our annual report is dedicated to this work. However, the Commission engages in many more functions that are ancillary to the core work, without which the centre would not hold. These include (1) our international relations responsibilities, through which we promote competition policy on the continent and advance the Commission's role as a significant contributor to the global competition discourse; (2) our communications function, which enables us to increase the public's awareness of and access to the Commission; (3) our advocacy function, through which we influence the development of policy and law in favour of competition; and (4) the vast administrative and financial machinery that keeps the Commission functioning effectively on a day-to-day basis.

Some of the most noteworthy developments in these areas over the reporting period were:

- the encouraging findings of five impact assessments we conducted in the agriculture, information and communication technology (ICT) sector, pelagic fish, academic textbook and citrus markets;
- the strengthening of relations with our counterparts in the Brazil, Russia, India, China, South Africa (BRICS) community and the increasing influence South Africa is having on international competition developments; and



- our continued role in uplifting South Africa's youth through our graduate trainee programme and other training initiatives we carried out through the year.

The annual report details all these developments and more from Part 6 onwards.

## OUR BROADER ECONOMIC CONTEXT

There can be no doubt that South Africa is experiencing a turbulent economic period, evidenced by consecutive periods of negative growth that have plunged the country into a recession. The negative growth has resulted in a negative macro and micro-economic outlook linked to a decline in the currency value and the downgrading of the country's rating status, among others. Some of the industries most impacted by South Africa's gradual economic challenges are agriculture, mining and energy.

Having said that, I am of the firm belief that South Africa's challenges also contain opportunities to turn our economy around and for it to work for its citizens and be the beacon of hope for our continent.

As one of the country's economic role players, we believe we have a responsibility to contribute solutions to South Africa's challenges, albeit through the channel of competition law and policy, if South Africa is to attain its vision of a growing and inclusive economy. These challenges require a strategic approach, where the Commission is both

responsive to the environment and proactive in contributing solutions.

Against this reality, in 2016/17 the Commission continued to align its objectives with the objectives set out in the NDP, the NGP, Industrial Policy Action Plan (IPAP) and the National Infrastructure Plan (NIP).

In practical terms, aligning our objectives with those set out in the state's broader economic plans meant that we prioritised seven sectors and targeted them for proactive interventions by the Commission. These included research projects, advocacy initiatives and the initiation of complaints. Our priority sectors were (1) food and agro-processing; (2) healthcare; (3) intermediate industrial inputs; (4) construction and infrastructure; (5) banking and financial services; (6) information and communication technology; and (7) energy. We selected each of these sectors on the basis of their importance for South Africa's economic growth and development.

Most of these sectors are dominated by one to four firms or have a prevalence of cartels. Our interventions are aimed to open up space for entry and/or expansion. It is through new entrants that challenge the dominant incumbents that SMMEs and firms owned by historically disadvantaged individuals will thrive. It is widely recognised that our economy is very concentrated but economic growth and employment is likely to be driven by SMMEs and new entry. This ironically is also the best means to transform the economy.

To emphasise the link between the Commission's work, its purpose and its priorities, we have (1) structured this annual report in chapters covering the Commission's strategic objectives and the ways in which the Commission pursued these objectives in its day-to-day work; (2) designed our contents page as a graphic illustration of how the Commission's functions are linked to its purpose and priorities; and (3) highlighted, in Diagram 1, some of the work of the Commission in the priority sectors it identified.

In the ways mentioned above I believe that in this financial year the Commission has advanced the struggle to achieve inclusive growth and I trust this message is adequately conveyed in the pages of this annual report.

## A FINAL WORD

In conclusion, I would like to acknowledge and thank the staff of the Commission for their hard work during the year in achieving our strategic goals and for the continued support of my Executive Committee. I am also grateful to the Minister and staff of the EDD for helping the organisation to meet its goals.

Let's forge ahead.

*Tembinkosi Bonakele*

**Tembinkosi Bonakele**







## STRATEGIC OPERATIONS, THE LINK

**HARDIN RATSHISUSU IS THE DEPUTY COMMISSIONER. HIS AREA OF RESPONSIBILITY AS DEPUTY COMMISSIONER INCLUDES SUPPORTING THE DIVISIONS IN OPERATIONALISING THE COMMISSION'S STRATEGY. DURING THE REPORTING PERIOD, HE PROVIDED EXECUTIVE DIRECTION ON STRATEGICALLY IMPORTANT CASES AND SPECIAL PROJECTS FALLING WITHIN THE COMMISSION'S PRIORITY SECTORS.**

**Hardin Ratshisusu,  
Deputy Commissioner**

## PERFORMANCE AT A GLANCE

The overall performance of the Commission improved significantly, with 85% of the annual performance plan targets achieved in 2016/17 compared to 71% in 2015/16. The performance result was a product of more focus on the core activities of the Commission, namely cartel enforcement, tackling abuse of dominance in markets, merger regulation focused on anti-competitive market structures and overall impact on society and the economy, as well as advocacy.

## NEED FOR EFFICIENCY IN INVESTIGATIONS

In the Commission's first full year of operation, between April 2000 and March 2001, we investigated 176 complaints against anti-competitive conduct. By the end of the 2015/16 financial year, the number of investigations the Commission conducted for that year amounted to 333, almost double what it had been at the start of the Commission's operations. In addition, the relevance and complexity of the cases brought to the Commission has increased over time, leading it to commit more resources per case than it did at its inception.

To manage the growing number of cases and increased complexities in cases, the Commission has implemented a range of solutions designed to ensure the continued effectiveness of its work. These include effective complaint screening and prioritisation of sectors and cases.

In order to minimise bottlenecks in the case pipeline process the role of prosecuting cartels is shared between the Cartels and the Legal Services Division. In addition to investigating cases the Cartel Division now also prosecutes matters thereby managing their cases from the cradle to the grave. Another initiative to improve the case pipeline process is the implementation of an internal litigation strategy. In this way the Commission wants to limit outsourcing and build expert legal capacity in-house.

### Screening of complaints

The purpose of screening is to determine the prospects of success and relevance of new complaints. To achieve this, the Screening Unit conducts a preliminary investigation of the allegations made in a complaint and, within 45 days, recommends whether it should continue the investigation or whether it should finalise the case without further action.

The screening process has yielded substantial benefits for the Commission. It has reduced the amount of time spent on matters that do not raise competition concerns, thereby allowing investigators to focus on matters that raise competition concerns and speeding up the resolution of these cases. However, as the Commission has adopted a strategy of prioritising certain industries, so too has the need increased for a strategic approach to the screening of complaints. This yields two main benefits: (1) it ensures that the Commission applies uniform and consistent criteria to selecting cases for further investigation; and (2) it ensures that the Commission allocates resources to cases that result in a demonstrable impact on the economy. Screening of cases is now central to the work of the Commission as an increasing number of firms and individuals call on the Commission to intervene in most markets. It also provides the Commission with crucial intelligence on what is happening in markets.

The Commission does not only generate its case work from complaints filed by the general public. An important source is also its own studies that help uncover anti-competitive practices.

### Strategic case selection

It is important that the Commission carefully selects cases with the greatest impact on the economy. Every year the Commission reviews the priority sectors taking into account stakeholder views and the development of the economy. The prioritisation of sectors largely determines how and when the Commission proactively intervenes in markets. However, given the dynamic nature of markets and societies in general, from time to time issues emerge that require the Commission's urgent and strategic response even though they may not fall squarely within its predetermined priority sectors. Two examples of such matters in this financial year were the school uniform complaints and the concerns raised about possible anti-competitive conduct in the automotive aftermarkets.

Given the number of households impacted by the price of school uniforms, and the number of complaints lodged with the Commission about alleged anti-competitive conduct in this industry, we embarked on a multi-pronged strategy, including media outreach, advocacy and initiating an investigation with a view to addressing the competition concerns. This case is discussed in further detail on page 34.

Another market which the Commission focused on this year was the Automotive Aftermarkets. The Commission identified several concerns pertaining to the relationships between original equipment manufacturers and their authorised dealers and their service providers, which had the effect of limiting independent and smaller players from participating in this market. In order to address these concerns the Commission began an advocacy process which targeted stakeholders in the industry. We explain this process fully on page 63.

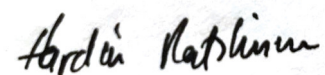
Advocacy is at times a more efficient approach that can lead to an industry-wide solution rather than a firm-specific one. One of the Commission's initiatives in this regard was to hold an Automotive Aftermarkets Workshop in March 2017. As reported on page 63 of this report, the workshop brought together various stakeholders across the industry. This informative workshop highlighted the complexities facing the industry. The workshop concluded with an agreement to form a technical committee to develop a code of conduct that addresses the competition issues in the industry. We will continue to monitor the progress of this matter in the next financial year.

## RELATIONS WITH INTERNATIONAL PARTNERS

On the international front, we have maintained close relations with strategic international partners during this financial year. These included the BRICS Competition Network, the International Competition Network (ICN), Southern African Development Community (SADC), United Nations Conference on Trade and Development (UNCTAD) and the African Competition Forum (ACF). These platforms allow us to share our experiences on competition regulation, particularly from the perspective of a developing economy and, more importantly, these platforms allow us to influence the discourse.

## IN CONCLUSION

The Commission, in carrying out its functions, strives for high performance. This is a culture embraced by all our staff. We look forward to another productive year in partnership with all our stakeholders as we deliver on the mandate entrusted to us.



Hardin Ratshisusu





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## **PART 3: COMMISSION INTERVENTIONS IN PRIORITY SECTORS**



## COMMISSION INTERVENTIONS IN PRIORITY SECTORS

The Commission's priority sectors for this period are (1) food and agro-processing; (2) healthcare; (3) intermediate industrial inputs; (4) construction and infrastructure; (5) banking and financial services; (6) information and communication technology; and finally (7) energy. Below is a table detailing all of the Commission's interventions in these priority sectors during the 2016/17 financial year.

Parts 5 to 7 elaborate on all of the Commissions activities in the priority sectors. The report is arranged in terms of the Commissions three strategic objectives: effective competition enforcement and merger regulate; strategic collaboration and advocacy; and building a high performance agency.

**Diagram 1: Commission interventions in priority sectors during 2016/17**

Priority sector	Type of intervention	Summary
Food and agro-processing	Third party complaint	A complaint lodged by Khoisan Tea Import and Export (Pty) Ltd against Rooibos Ltd for abuse of dominance in the procurement of rooibos from farmers
	Commission initiation	The Commission's complaint against Holland HZPC and Western Free State Potato Growers (Pty) Ltd for an alleged exclusive dealing arrangement
	Commission initiation	The Commission's complaint against Wilmar and others for price fixing and the fixing of trading conditions in the supply of edible oils
	Scoping study	A study into staple food prices
	Impact assessment	The Commission conducted an assessment of an agricultural support fund that was set up in 2014 as part of the conditions to a merger between the then newly incorporated AgriGroupe Holdings and local agricultural commodity trading company, AFGRI Ltd. The purpose of the impact assessment was to establish whether the fund's programmes adequately addressed the public interest concerns raised by third parties during the merger proceedings of 2014
	Impact assessment	The Commission conducted a study into the developments in the pelagic fish market since 2013, when the CAC approved the Oceana Group Ltd's acquisition of Foodcorp (Pty) Ltd's fishing business. The study revealed that the merger is unlikely to have had a significant effect on competition at the downstream marketing level of the canned pilchards value chain and on the end-consumers of canned pilchards, and that the merger is likely to have led to a positive impact on public interest
	Impact assessment	The Commission conducted an assessment to test the direct and indirect impact of the Commission's decisions to grant several exemptions to citrus producers since 2006. The findings from the study indicated that there have been real and positive benefits to the South African economy as a result of the exemptions granted
Information and communication technology	Third party complaint	Complaint by Cell C (Pty) Ltd against both Vodacom (Pty) Ltd and Mobile Telephone Networks (Pty) Ltd on on-net/off-net call rates in mobile telephony
	Third party complaint	Complaints against MultiChoice SA Holdings, MultiChoice Africa (Pty) Ltd and Supersport International (Pty) Ltd relating to exclusive broadcasting rights for content, especially premium sporting events
	Scoping study	Scoping study into mobile phone contracts
	Advocacy: comments on policy and legislation	During the financial year, the Commission considered the draft White Paper on the National Integrated ICT Policy and offered comments on the aspects that had a bearing on the Commission's operations
	Advocacy: comments on policy and legislation	During the financial year, the Commission made submissions on the White Paper on the Audio-visual and Digital Content Policy for South Africa
	Impact assessment	The Commission evaluated the efficacy of an earlier settlement agreement it entered into with Telkom SOC Ltd in remedying the anti-competitive outcomes of Telkom's conduct. The assessment found that, notwithstanding some contributing regulatory and market developments, the settlement agreement had a positive and significant impact on the market



Priority sector	Type of intervention	Summary
Construction and infrastructure	Commission initiation	The Commission's complaint against Afrimat Ltd and its subsidiary for alleged excessive pricing of clinker ash aggregate
	Commission initiation	The Commission's complaint against Blurock Quarries (Pty) Ltd and Procon Precast CC for alleged abuse of dominance in the supply of crusher dust and the manufacture and supply of bricks and blocks
	Commission initiation	The Commission's complaint against ArcelorMittal for collusion, information exchange and excessive pricing
	Commission initiation	The Commission's complaints against Transnet SOC Ltd alleging excessive pricing and price discrimination in the provision of freight rail services and excessive pricing in the provision of port services. We also alleged exclusionary practices in the prioritisation of cargo and berthing at port terminals
	Commission initiation	The Commission's complaint against Idwala Industrial Holdings Ltd, a mining company, for alleged excessive pricing of calcium carbonates
	Commission initiation	The Commission's complaint against Cross Fire and others for alleged price fixing and collusive tendering of fire sprinkler systems
	Merger	The Commission prohibited the proposed intermediate merger between Much Asphalt and five Roadspan asphalt plants. Having filed their appeal of the Commission's decision, the parties later abandoned the merger
Intermediate industrial inputs	Commission initiations	Four cases involving price fixing, division of markets and collusive tendering along the paper manufacturing and packaging value chain The Commission's complaint against PG Bison and Sonae for price fixing in particle boards The Commission's complaints against Glasfit and another for price fixing and market division of automotive glass
	Advocacy: comment on policy and legislation	During the financial year the Commission had engagements with ITAC on the potential impact of the preference price system (PPS) on competition in the scrap metal market. The pricing of scrap metal in South Africa was conducted under the PPS guidelines, which were aimed at curbing scrap metal exports to ensure that domestic end-users of scrap metal were able to access sufficient volumes of good quality scrap metal at reasonable prices.
	Litigation	On 7 December 2016, the Tribunal confirmed as an order a consent agreement between the Commission and Pelchem, a State-Owned Entity, in which Pelchem agreed to remove exclusivity clauses in the agreements it entered with firms it provided with surface fluorination for various uses. The consent agreement ensured that surface fluorination services in South Africa were opened up and no longer restricted through evergreen exclusivity agreements by Pelchem, the sole supplier in South Africa.
Healthcare	Market inquiry	The Commission continued with its inquiry into healthcare during this financial year
	Litigation	The Commission entered into a consent agreement with Life Healthcare Group (Pty) Ltd (LifeHealth) and Joint Medical Holdings Ltd (JMH). The settlement recorded the highest penalty ever imposed on firms for failing to notify a merger to the Commission. In the agreement, which the Tribunal confirmed on 1 April 2016, LifeHealth and JMH agreed to jointly pay an administrative penalty of R10 million and to undergo competition law compliance training.
Banking and financial services	Commission initiation	The collusion case we referred against 17 local and international banks. We alleged that the banks were colluding by agreeing the terms for trading currency pairs – in our case the US Dollar/Rand currency pair – in ways that affected the currency prices in their favour. This has been happening since 2007.
Energy	Market inquiry	This financial year the Commission completed its inquiry into the liquid petroleum gas (LPG) market, and made a range of recommendations to improve the competitiveness of this industry







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## [PART 4: MERGER REGULATION](#)



# MERGER REGULATION

## SUMMARY OF PERFORMANCE AGAINST TARGETS

6	Targets set	6	Targets met or exceeded	0	Targets not met
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### ABOUT MERGER REGULATION

The Mergers and Acquisitions (M&A) Division assesses mergers filed with the Commission to determine whether the merger is likely to substantially prevent or lessen competition in a

market, and whether the merger can or cannot be justified on public interest grounds. Not all mergers that have an effect within South Africa have to be notified to the Commission, only

those that meet the thresholds set out in the Act. The merger thresholds were last revised in April 2009 and are set out in Diagram 2.

Diagram 2: Mergers and acquisitions thresholds as of April 2009

Threshold	Combined turnover or asset value	Target turnover or asset value	Size of the merger	Filing fee
Lower threshold	R560 million	R80 million	Intermediate	R100 000
Higher threshold	R6.6 billion	R190 million	Large	R350 000

Mergers are classified as either small, intermediate or large, depending on the turnover or asset values of the merging firms. As depicted in Diagram 2, the Commission receives a filing fee for every intermediate or large merger filed. According to the Act, it is not compulsory for small mergers to be notified and no filing fee is prescribed. However, the Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds. In terms of the

guidelines on small merger notifications, which it issued in April 2009, the Commission requires any party to a small merger to inform it of that merger if either party is under investigation by the Commission for a contravention of the Act, or if there is an ongoing investigation in the relevant market.

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

has published service standards for merger investigations, particularly the time periods it takes to complete an investigation. These service standards are necessary as the Act has set out timeframes for merger investigations, regardless of their level of complexity. Therefore, the service standards assist in managing our internal deadlines and stakeholders' expectations when notifying mergers with varying levels of complexity. Diagram 3 gives a complete picture of the timeframes set out in the Commission's service standards and the maximum allowable timeframes set for merger assessments in the Act.

Diagram 3: Timeframes set for assessing mergers of varying complexities

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





## THE MERGERS AND ACQUISITIONS DIVISION

### OUTCOMES OF MERGER REGULATION THIS YEAR

*Seema Nunkoo was the acting manager of the M&A Division for the financial year under review. She joined the Commission 17 years ago as an intern in the Enforcement and Exemptions (E&E) Division, after which she joined the M&A team. In 2007 Seema took time off to move to India with her family, but re-joined M&A when they returned two years later. By now, Seema says, merger assessment runs in her veins and she couldn't imagine doing other work. She took some time out of the busyness of M&A transactions to shed light on the past year's activities.*

### Q: IF YOU HAD TO GIVE THE M&A DIVISION A MARK ON ITS REPORT CARD THIS YEAR WHAT WOULD IT BE?

If I were to base the mark on our performance measured against the targets we set ourselves for the year, it would have to be 100%, because we achieved all of them. At the start of the year we set ourselves performance targets against our service standards committed to stakeholders, and to attain 100% compliance with merger conditions. We aimed to keep our turnaround times for phase 1 mergers at or below 20 days, phase 2 mergers at no more than 45 days, phase 3 intermediate mergers at 60 days or less and phase 3 large mergers at 120 days or less. In the reporting period we averaged 17 days for phase 1 mergers, 45 days for phase 2 mergers, 56 days for phase 3 intermediate mergers and 116 days for phase 3 large mergers. This, in a year when we received 418 mergers in total, compared to last year's figure of 391, an increase of 7%. To measure the quality of our decisions, we use the Tribunal's decisions as a benchmark. In the year under review the Tribunal's findings concurred 100% with ours, whether referred to the Tribunal by the Commission or directly by the merging parties. We had targeted a concurrence of at least 75%. We also consider it our responsibility to measure the extent of the merging parties' compliance with the conditions set by the Commission or Tribunal, if any, and this the M&A Division managed to do in 100% of the cases that had conditions imposed on them this year.

Of course, if I were to base the mark on less measurable goals such as our ability to retain experienced resources, our capacity to manage a higher case load, or even more

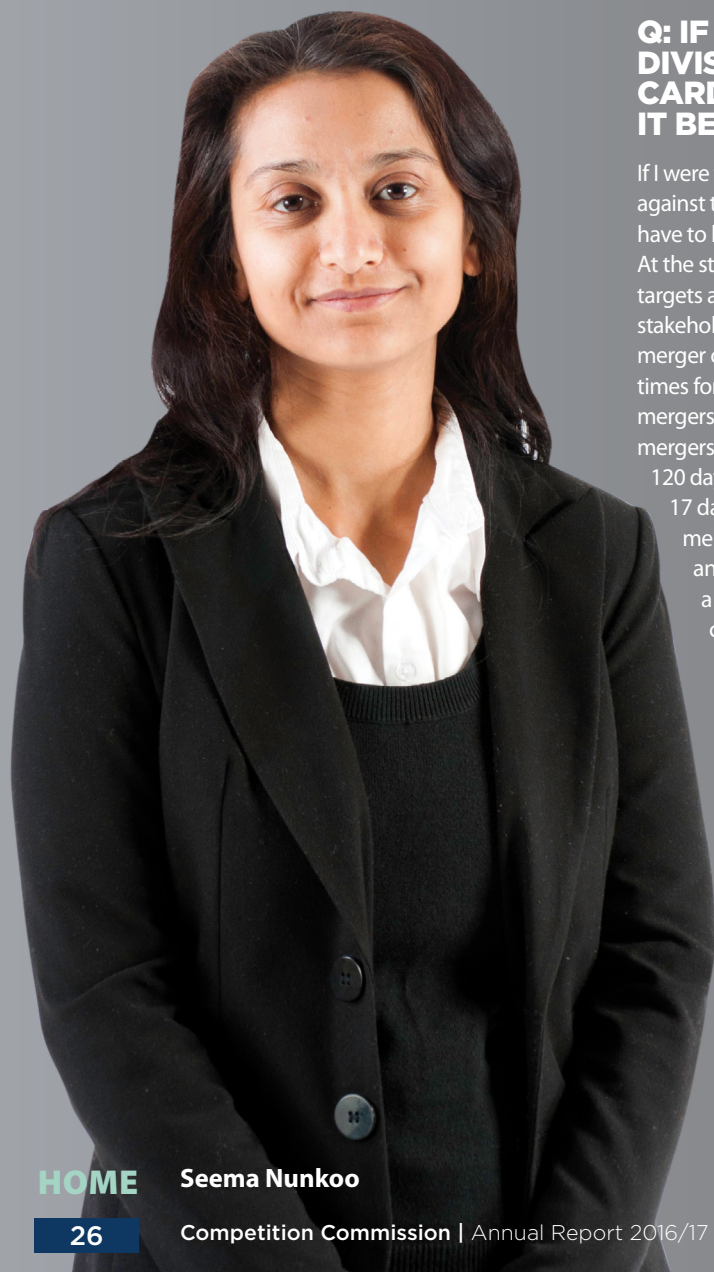
outward looking goals such as contributing to South Africa's economic growth, I would say though we are making good progress, we still have some way to go.

### Q: WHICH CASES ASSESSED BY THE M&A DIVISION THIS YEAR STOOD OUT FOR YOU AND WHY?

The merger between AB Inbev and SAB Miller because of the many public interest concerns it drew from various stakeholders, resulting in conditions that allowed us to mitigate these concerns to ultimately conclude a deal beneficial to all stakeholders. It was a merger that required us to carefully weigh up the potentially pro-competitive effects against the negative impact on the public interest. In the end we recommended to the Tribunal that the merger be approved subject to conditions that eliminated or reduced the likelihood of any anti-competitive effects, which protected the public interest in a number of areas. The Tribunal largely agreed with our assessment and, on 30 June 2016, approved the transaction with conditions largely similar to those we had proposed.

The merger between Mpact Ltd (Mpact) and Remade Holdings (Pty) Ltd (Remade) which occurred in the market for manufacturing container boards and recyclable plastic was also significant. This transaction was important because IPAP and the NGP highlight the potential of the 'green' industry to develop our economy. We were concerned that the merger would significantly harm competition in this market as we anticipated the merged entity would be able to stop or reduce supply to its competitors downstream. However, we recognised that the merger also promised pro-competitive gains for the development of this industry. In order to address this, we recommended to the Tribunal that the merger be approved on condition that the new merged entity should continue to supply its competitors with recyclable paper and plastic.

Infrastructure is a priority sector for the Commission because of its essential contribution to growth and development. Economic growth depends on the availability of reliable infrastructure. In fact, the NIP calls on us to address the supply and competition bottlenecks in steel, cement, wood, coal, bitumen, as well as equipment and machinery. After assessing the merger proposed between Much Asphalt (Pty) Ltd (Much Asphalt) and five asphalt plants owned by Roadspan Holdings (Pty) Ltd (Roadspan), we concluded that this was a merger that threatened the availability of quality asphalt, which is used in the laying of roads at



competitive prices. We found that the new merged entity would be dominant in the market and would not face strong competitive forces that could suppress an increase in price or a decrease in quality. It was also not going to be easy for new firms to enter the market. We were concerned that the structure of this market meant that the merger was going to make it easier for the companies to collude. We could not arrive at acceptable conditions to minimise these anti-competitive effects, therefore the Commission prohibited this merger in September 2016. After that the merging parties applied to the Tribunal for a reconsideration of the Commission's decision, but later abandoned their application.

This year the CAC considered a merger that was previously prohibited by both the Commission and the Tribunal. The CAC upheld the previous two decisions, ending the two-year-long quest by Imerys to acquire Andalusite Resources. These two firms are the only manufacturers of andalusite in South Africa, which means that a merger between them would have resulted in a monopoly. Andalusite is a mineral from which refractories are made. Refractories are used to line furnaces, kilns and other containers exposed to high temperatures, abrasion and chemical attack in the course of manufacturing iron, steel, cement, ceramics and other products. Locally and internationally andalusite is used by, amongst others, steel producers. During its assessment of the deal, the Commission had received many concerns from refractory manufacturers and end-users of andalusite-based refractories regarding the potential effects the merger would have, if allowed. They were concerned that they would be deprived of competitive choice and that the new merged firm would increase price or increase exports. After a Tribunal finding and appeal to the CAC, on 2 March 2017 the CAC handed down its decision agreeing with the Tribunal and Commission's findings and thus prohibiting the deal. This was the first time in our history that the CAC prohibited an intermediate

merger. The finding was an important development for the Commission because this case fell within the Commission's 'industrial inputs' priority sector. As such, the maintenance of competition in this market contributes to economic growth in significant ways.

Once in a while we get our share of movie-style drama and the Country Bird Holdings (Country Bird)/ Sovereign Food Investments Ltd (Sovereign Food) merger provided that. This transaction was a hostile takeover since Country Bird made an unsolicited offer directly to the shareholders of Sovereign Food, without the endorsement of Sovereign Food's management and board. The executive management of Sovereign Food was actively opposed to the deal. Since the merging parties had not signed a merger agreement, it wasn't clear what exact percentage Country Bird would own in Sovereign Foods when the merger was concluded. Nevertheless, the Commission assessed the proposed merger for its competition and public interest effects. Sovereign Foods and its employees submitted that the merger would result in job losses. The Commission was also concerned about the effect of the merger on an empowerment deal proposed by Sovereign Foods before the merger. To address these public interest concerns, Country Bird agreed to two things: (1) it would ensure that there would be no merger-related retrenchments; and (2) it would propose and support an empowerment deal if Sovereign Foods achieved the required shareholding to be able to implement such a condition. We therefore approved the deal subject to these employment and empowerment conditions. The proposed transaction is under review before the Tribunal.

## **Q: WHY THE INCREASED FOCUS ON PUBLIC INTEREST FACTORS IN MERGER ASSESSMENTS? THE COMMISSION SET SPECIFIC TARGETS FOR THIS ASPECT OF YOUR WORK IN ITS PERFORMANCE PLAN**

South Africa has a very high unemployment rate and a history of exclusion. Public interest provisions in the Act are a response to these challenges. Stakeholders such as Government and trade unions are aware of these legal provisions and expect them to be implemented. We consider it important to measure the impact of mergers on employment and to measure the Commission's outcomes in matters that raise employment concerns. We believe doing so will help us understand the Commission's direct impact on the country's development goals, albeit within the competition context.

By measuring these outcomes we've been able to ascertain that the Commission's intervention in mergers resulted in a net saving of 48 403 jobs this year. I should mention that the Parentco (Pty) Ltd (Parentco) and Edcon Ltd (Edcon) merger was an outlier in this regard as 41 151 people stood to lose their jobs if this merger didn't proceed.

## **Q: GIVE US THE MOST IMPORTANT NUMBERS READERS SHOULD TAKE AWAY FROM M&A'S OUTCOMES THIS YEAR**

One number is 100%: this is the rate of success of the Commission's decisions at the Tribunal. 100% is also the score we achieved in our performance targets. 48 403 is the number of jobs saved by the Commission's intervention and 15 is the number of mergers we approved with public interest conditions.





## WORKING IN THE PUBLIC INTEREST

When assessing a merger, the Act requires the Commission to consider both the impact that the merger will have on competition and whether the merger can or cannot be justified on public interest grounds. What this means is that a pro-competitive merger can be prohibited by the Commission solely on the basis of its negative effect on the public interest. Similarly, an anti-competitive merger can be approved if it is in the public interest to do so. As such, the public interest provisions in the Act have far reaching implications. However, the concept is limited to the four public interest grounds set out in the Act, namely employment;

impact on a particular sector or region; the ability of small businesses, or firms controlled by historically disadvantaged persons (HDPs) to become competitive; and the ability of national industries to compete in international markets.

As part of its drive to increase voluntary compliance with the Act, this year the Commission issued a guideline to the public on how it is likely to approach public interest in its merger assessments. This guideline is discussed fully on page 41.

The Commission has the authority to approve or prohibit a merger solely on the basis of its effect on public interest. This has only happened once where a merger was approved on the basis of significant public interest it generated.

Instead, where public interest concerns have been raised, the Commission and/or Tribunal have imposed conditions on the merger, which aim to mitigate or eliminate the public interest concern, thus allowing the merger, but minimising its negative effect on public interest. This trend continued in 2016/17. The Commission imposed public interest conditions on 15 merger cases. Eight of these cases related to employment. Three related to the impact of the merger on a particular sector or industry. One related to the impact on SMMEs and entities owned by HDPs. Three of these had a combination of different public interest conditions. The Commission's intervention in mergers resulted in a net saving of 48 403 jobs.

## THE M&A YEAR IN NUMBERS

Diagram 4: Mergers notified and reviewed over four years

	2013/14	2014/15	2015/16	2016/17
<b>Notified</b>	<b>320</b>	<b>395</b>	<b>391</b>	<b>418</b>
Large	95	119	116	93
Intermediate	209	260	262	319
Small	16	16	13	6
<b>Finalised</b>	<b>329</b>	<b>375</b>	<b>413</b>	<b>385</b>
Large	95	108	129	109
Intermediate	214	251	270	270
Small	20	16	14	6
<b>Approved without conditions</b>	<b>302</b>	<b>321</b>	<b>364</b>	<b>349</b>
Large	84	86	108	91
Intermediate	201	221	246	252
Small	17	14	10	6
<b>Approved with conditions</b>	<b>22</b>	<b>43</b>	<b>37</b>	<b>31</b>
Large	10	18	15	13
Intermediate	11	23	21	18
Small	1	2	1	0
<b>Prohibited</b>	<b>1</b>	<b>5</b>	<b>7</b>	<b>5</b>
Large	0	2	2	1
Intermediate	0	3	2	4
Small	1	0	3	0
<b>Withdrawn / No jurisdiction</b>	<b>4</b>	<b>6</b>	<b>5</b>	<b>3</b>
Large	1	2	4	1
Intermediate	2	4	1	2
Small	1	0	0	0



Diagram 5: Average turnaround times in 2016/17 against service standards

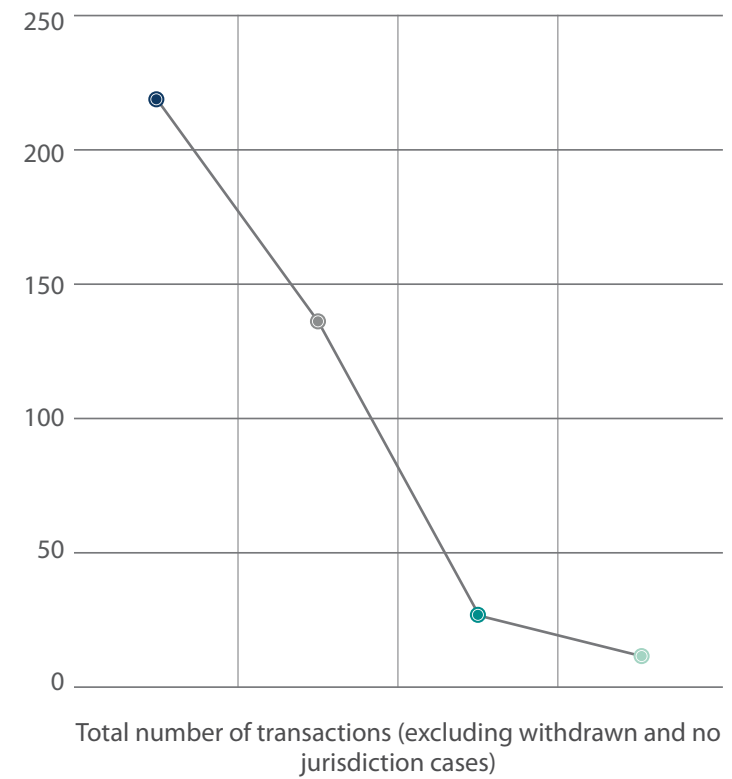
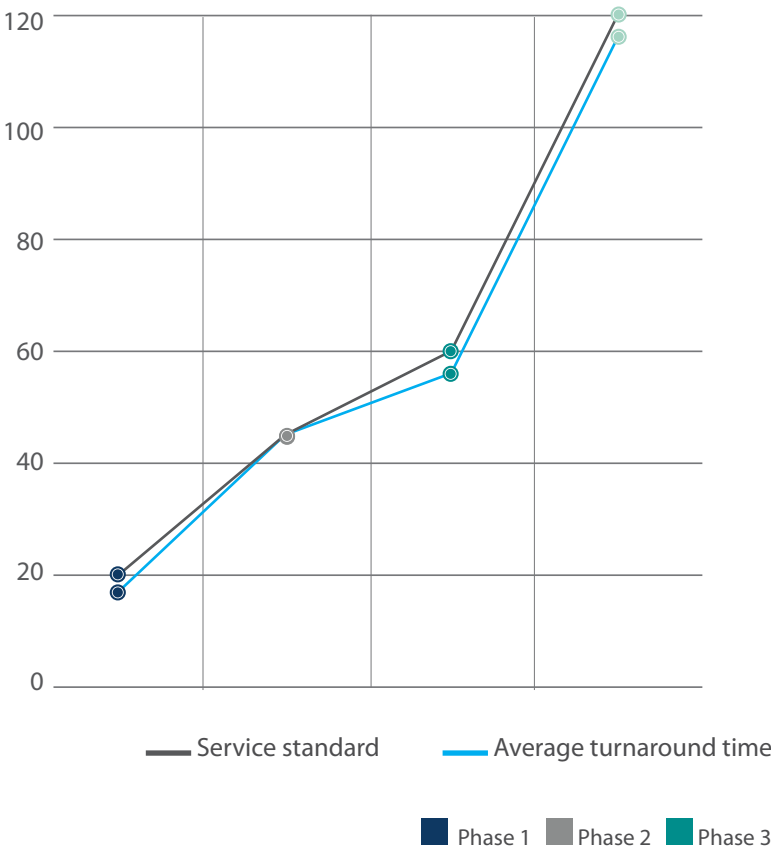


Diagram 6: Merger decisions by sector in 2016/17

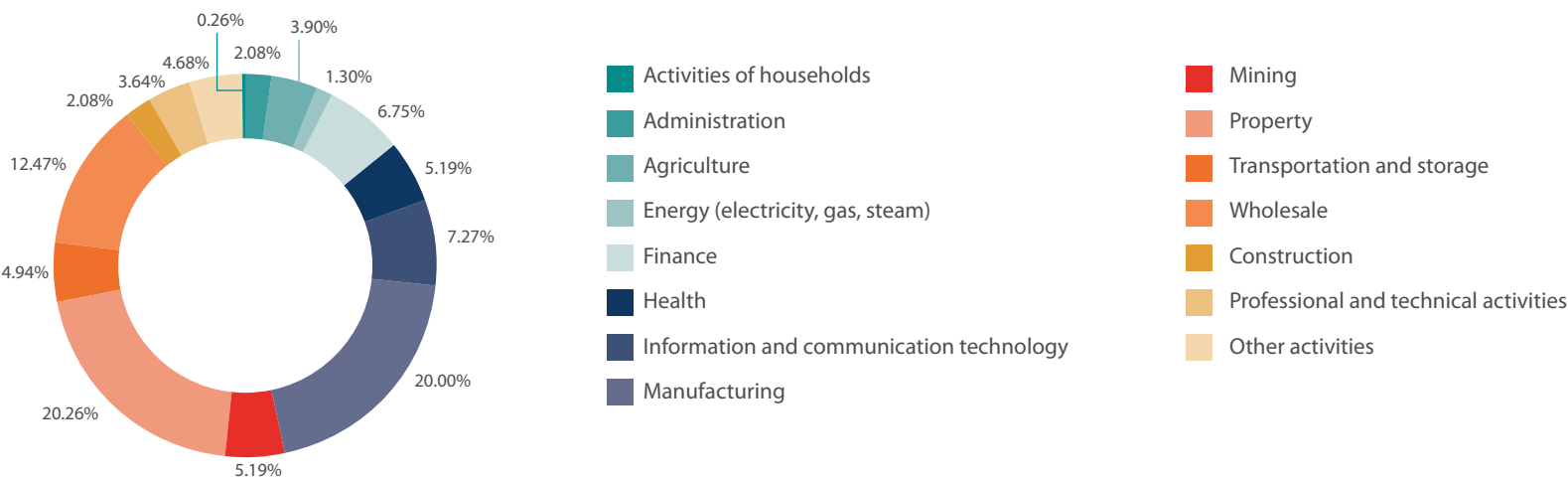


Diagram 7: Mergers approved with behavioural and structural conditions in 2016/17

Case number	Acquiring firm	Target firm	Market	Condition
2016Apr0154	Vukile Property Fund Limited and Diecel Trade & Invest (Pty) Ltd	Protea Glen Shopping Centre (Pty) Ltd in respect of a property letting enterprise known as Protea Glen Shopping Centre	Property	<b>Behavioural:</b> Cross shareholding/information exchange – obligation not to exchange competitively sensitive information.
2015Dec0720	Southern Sun Hotel (Pty) Ltd	Hospitality Fund Property Limited	Hospitality – short-term accommodation provided by hotels	<b>Behavioural:</b> Information exchange – the conditions require that the merging parties physically and technologically separate their operations for as long as the target firm has lease agreements with hotel operators, no cross-directorship between the target and the acquiring firms and the merging parties cannot have the same employees involved in each other's business operations. The merging parties are also required to notify a merger in terms of section 13A if the acquiring firm acquires control of the target firm's hotel properties.
2016Feb0052	AFGRI Operations Limited	Pride Milling Company (Pty) Ltd	Agro-processing	<b>Behavioural:</b> The merging parties shall inform and submit to the Commission the requisite sale agreement in relation to the "tranche B" sale should it be implemented prior to the effective date. If the "tranche B" sale is not implemented prior to the expiration of the effective date, the merging parties shall notify the "tranche B" sale in terms of section 13A.
2016Jul0345	Medpro Pharmaceutica (Pty) Ltd	Allergan GX	Pharmaceuticals	<b>Behavioural:</b> Information exchange – obligation not to exchange competitively sensitive information. <b>Behavioural:</b> Obligation not to appoint same directors who serve on merging parties' boards to serve on the joint venture board.
2016Feb0066	DRS Dietrich, Voigt, Mia & Partners	Dr WJH Vermaak Incorporated	Provision of pathology services	<b>Behavioural:</b> Additional acquisitions – obligation to exercise the option purchase within 18 months, failing which the parties are required to notify the exercise of the option purchase as a merger. <b>Behavioural:</b> Restraint – obligation on merging parties to limit the restraint to a specific km radius of each other.
2016Mar0120	Ferro South Africa (Pty) Ltd	Revertex South Africa (Pty) Ltd	Chemicals – manufacturing of water-based binders	<b>Structural:</b> Obligation to divest Akzo Nobel's 50% shareholding within 12 months by either of the merging parties.
2016May0253	Phumelela Gaming and Leisure Limited	Supabets SA Holdings (Pty) Ltd	Gambling	<b>Structural:</b> Obligation on merged entity to divest of its interest in Century Loop within two years of the approval date.
2016Aug0389	Abbott Laboratories	St. Jude Medical, Inc	Supply of medical devices	<b>Structural:</b> Obligation to divest divestment business to a third party
2016Aug0430	KAP Diversified Industrial (Pty) Ltd	Safripol Holdings (Pty) Ltd	Chemicals	<b>Behavioural:</b> Supply – obligation to supply customers on fair terms.
2016Oct0520	Allcool Investments Proprietary Limited	Fast Gear Trading Proprietary Limited	Property	<b>Behavioural:</b> Cross shareholding/information exchange – obligation not to exchange competitively sensitive information.
2016Jul0371	Vukile Property Fund Limited and Diecel Trade & Invest (Pty) Ltd	Synergy Income Fund Limited	Property	<b>Behavioural:</b> Cross shareholding/information exchange – obligation not to exchange competitively sensitive information.
2016Feb0055	Media24 (Pty) Ltd	Novus Holdings Limited	Media	<b>Structural:</b> Divestiture – obligation on Media24 to divest a portion of its shareholding in Novus.
2016Dec0015	Puratos Group NV	Bidvest Bakery Solutions (Pty) Ltd	Supply of baking ingredients	<b>Behavioural:</b> Obligation to reduce a restraint of trade period.
2017Jan0039	Government Employees Pension Fund duly represented by the PIC	Distell Group Limited	Supply of alcoholic beverages	<b>Structural:</b> Divestiture – obligation on GEPPF to divest a portion of its Distell Shareholding to a BEE entity within 15 months.
2016Oct0554	New GX Capital Holdings (Pty) Ltd	Dartcom SA (Pty) Ltd	Telecommunications	<b>Behavioural:</b> Supply – Dartcom is required to continue supplying its customers on terms that are fair, reasonable and non-discriminatory.
2016Sep0440	Imperial Holdings Limited	Itumele Bus Line (Pty) Ltd	Transport	<b>Behavioural:</b> Obligation to reduce a restraint of trade period.

**Diagram 8: Mergers approved with public interest conditions in 2016/17**

Case number	Acquiring firm	Target firm	Market	Public interest condition
2016Jul0947	enX Group Ltd	Eqstra Newco (Pty) Ltd	Supply of industrial equipment	Employment: restriction of the number of retrenchments for two years
2016Jun0275	ATC South Africa Wireless Infrastructure	Eaton Towers South Africa (Pty) Ltd	Leasing of towers in telecommunications	Employment: obligation to not retrench any non-management employees for a period of three years
2016Aug0410	Country Bird Holdings (Pty) Ltd	Sovereign Food Investments Ltd	Poultry	Employment: moratorium on retrenchments
2016Jun0297	Clicks Retailers (Pty) Ltd	The retail pharmacy business of Netcare Pharmacies 2 (Pty) Ltd within Medicross clinics	Retail pharmacy	Employment: Moratorium on retrenchments for a period of five years and an obligation on Clicks Retailers to employ additional employees. Further the Clicks group is required to make investments in training in the pharmacy industry by providing internships and learnerships. Behavioural – cross shareholding/information exchange: Obligation not to exchange competitively sensitive information. Behavioural – Right of first refusal: merged entity required to amend the current lease agreements to limit Clicks Retailers' right of first refusal.
2016Sep0492	SMG Tygervally (Pty) Ltd	McCarthy Limited in respect of a BMW and MINI Dealership and related approved repair centre, McCarthy Forsdicks Tygervally	Vehicle dealership	Employment: obligation to invite affected employees to apply for vacant positions in merged entity
2016Sep0472	Konecranes PLC	The Terex Handling and Port Solutions Business	Supply Lifting Equipment	Employment: obligation to restrict the number of retrenchments and an obligation to provide a re-skilling allowance for unskilled retrenched employees.
2016Dec0049	Rhodes Food Group (Pty) Ltd	The Ma Baker Companies	Manufacture of pastry products	Employment: moratorium on retrenchments for a period of three years
2016Dec0012	Rhodes Food Group (Pty) Ltd	Pakco (Pty) Ltd	Manufacture of canned vegetables	Employment: moratorium on retrenchments
2016Dec0024	Robor (Pty) Ltd	Mine Support Products (Pty) Ltd	Mining support systems	Employment: obligation to offer employees option to relocate to the acquirer's plant and obligation to set up a training fund for employees who elect to not relocate.
2016Jun0280	Reutech (Pty) Ltd	Nanoteq (Pty) Ltd	Tactical Communication Systems	Public interest – SMMEs and BEE: Obligation to subcontract at least 40% of workshare of Amscor orders to previously disadvantaged BEE and SMMEs. Behavioural – Pricing: Obligation not to change the pricing methodology as of approval date.
2016Jun0322	China National Agrochemical Corporation	Syngenta AG	Manufacture and supply of agrochemicals or crop protection products	Public interest – industrial sector: Obligation not to relocate the manufacturing plant outside of North West for a period of five years.
2015Dec0690	Anheuser-Busch Inbev SA/ NV	SABMILLER plc	Alcoholic beverages	Public interest: employment – no merger-specific retrenchments and continue using owner-drivers BEE relating to the Zenzele Scheme Location of head office in South Africa R1 billion investment invested through fund disbursed over a period of five years for the benefit of agriculture, small business and the benefit of society Local sourcing of inputs to production Procurement of apple juice concentrate for alcoholic beverages shall be procured locally up to 1 million litres Structural: Divestiture of Distell shareholding within nine months Behavioural: Measures to prevent the flow of competitively sensitive information between TCCC and AmBev who bottle for Coca-Cola and Pepsi respectively, access to cold storage and refrigerator space for third parties including micro brewers
2016Jul0359	IFFCO Africa Holdings Pte	FR Waring Holdings (Pty) Ltd	Bulk trading of soft oils, hard oils and oilmeals	Public interest – industrial sector: Obligation to not relocate the manufacturing facilities for a period of three years. Behavioural – additional acquisitions: Obligation to exercise the call option within 18 months of the approval date.
2015Jul0421	Mpact Limited	Remade Holdings (Pty) Ltd & Property Companies	Paper, plastic packaging products, recycles paper, plastic and recyclable material, including paper, plastic, glass and waste.	Public interest – no merger-specific retrenchments for two years. Behavioural – supply: Obligation to continue supply agreements
2016Dec0042	RPC Group Plc	Astrapak Limited	Plastic Packaging	Behavioural – cross shareholding/information exchange: Obligation not to exchange competitively sensitive information. Public interest: Obligation to source locally



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## PART 5: COMPETITION ENFORCEMENT



# COMPETITION ENFORCEMENT

## SUMMARY OF PERFORMANCE AGAINST TARGETS

7	Targets set	6	Targets met or exceeded	1	Target not met
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The Commission did not reach its target of completing 75% of its cartel cases within 12 months because it focused on finalising legacy priority cases that were older than 12 months.

## ABOUT COMPETITION ENFORCEMENT

The Commission's enforcement function is carried out by two divisions: the E&E Division and the Cartels Division (CD). E&E investigates restrictive vertical practices, abuse of dominance and exemption applications. It also assesses exemption applications when these are brought to the Commission. Restrictive horizontal practices are agreements between, or practices amongst, competitors. They can be divided into what is commonly called 'rule of reason' practices, for which firms are entitled to justify their practice when being investigated; and 'hard core cartels' which firms

are not entitled to justify when under investigation. Hard core cartels are investigated by the CD. Firms can apply to the Commission for an exemption if they wish to engage in anti-competitive conduct but their conduct would have to meet one of the objectives set out in the Act, namely: for export purposes; for the ability of small businesses or firms controlled by HDP's to become competitive; for a change in productive capacity necessary to stop decline in an industry; or for the economic stability of an industry designated by the Minister of Economic Development.

The work of these two divisions comes from two main sources: complaints lodged by the public and investigations that are pro-actively initiated by the Commission. The purpose of the screening process is to establish, early on, if the case is competition related or not. Investigations initiated by the Commission are not normally screened because they would have resulted from the Commission's own research or experience in a particular market.







## THE ENFORCEMENT AND EXEMPTIONS DIVISION

### FOCUS ON MARKET ABUSE


*Nompucuko ("Nompu") Nontombana heads up the team acting against market abuse. Having joined the Commission in 2007, she has ten years of experience behind her in this field. Nompu spent some time in the M&A Division before settling into her role as Divisional Manager for the E&E Division. She reflects on the cases that were most important in her division and their link to the Commission's broader objectives.*

### Q: NOMPUCUKO, WHAT DOES PRIORITISATION MEAN TO E&E AND HOW DID IT INFLUENCE YOUR WORK IN 2016/17?

Prioritisation simply means the Commission is responsive to the movements in its external and internal environment. We operate with an awareness of the bigger economic picture in our country and abroad. This is what gives us our direction and priorities. As an economic role player, we feel the Commission has a responsibility to contribute to the country's goal of a growing and inclusive economy. This requires a proactive and strategic approach. In E&E's context, this means that instead of waiting for external complaints, the Commission must, of its own accord, target its investigations to areas that will yield benefits to the economy and consumers. The Commission is well placed to do this, because we are naturally exposed to the competition dynamics of many industries through the various investigations and merger assessments we conduct, as well as our own scoping studies. The Commission's priority sectors are (1) food and agro-processing; (2) healthcare; (3) intermediate industrial inputs; (4) construction and infrastructure; (5) banking and financial services; (6) information and communication technology; and (7) energy.

This year, E&E initiated three investigations in priority sectors. The Commission initiated two complaints against Transnet SOC Ltd, alleging excessive pricing and price discrimination in the provision of freight rail services and excessive pricing in the provision of port services. We also alleged exclusionary practices in the prioritisation of cargo and berthing at port terminals. The third initiation was against Idwala Industrial Holdings Ltd, a mining company, for alleged excessive pricing of calcium carbonates.

All these matters are under investigation and have not yet been concluded. Although this case did not fall within our priority sectors, an investigation was initiated against various schools and school uniform suppliers for allegations of excessive pricing, restrictive vertical practices and exclusionary conduct. This is a market that affects many South African households. The initiation was preceded by an extensive advocacy effort, which entailed working with the Department of Basic Education and school governing bodies across the country. A media campaign was also launched to raise awareness among stakeholders about the problems in the market.



Nompucuko ("Nompu") Nontombana



## Q: ARE THERE ANY SIGNIFICANT CASES YOU REFERRED TO THE TRIBUNAL THIS YEAR?

Well it's been a busy year and our work involves more than abuse of dominance cases. E&E also investigates complaints against restrictive agreements and assesses exemption applications. In total, the division had 57 full investigations including the initiations I mentioned, but excluding preliminary investigations. This number is higher than in the previous three years, mainly because of the complaints we received about school uniforms. We also met or exceeded the three targets we set for ourselves this year. In this regard we (1) completed 94% of our abuse of dominance investigations within 24 months, exceeding our 65% target; (2) initiated four cases alleging abuse of dominance in priority sectors, exceeding our target of three; and (3) completed the assessment of exemption applications within 12 months, as targeted.

One case that stands out is the one we referred to the Tribunal on 31 March 2017, against Wesgro Potatoes (Pty) Ltd (Wesgro) and HZPC Holland BV (HZPC). We initiated the case in March 2015 and, following our investigation, found that the exclusive agreement between the firms had

the effect of preventing other seed growers from competing with Wesgro in the production and sale of the Mondial seed potato varietal. The agreement appointed Wesgro as the only distributor of the Mondial seed potato varietal to commercial farmers in South Africa. We also found that Wesgro required commercial farmers who purchased the Mondial seed potato varietal from it not to sell such varietal to Wesgro's competitors. This requirement served as a barrier to entry and prevented other seed growers from competing effectively with Wesgro. We have now referred this case to the Tribunal and we anticipate that we will be prosecuting it in the months to come.

The second one was a case we referred to the Tribunal on 30 March 2017 against Afrimat Limited (Afrimat) and its two wholly-owned subsidiaries, SA Block and Concrete (Pty) Ltd (SA Block) and Clinker Supplies (Pty) Ltd (Clinker Supplies). We alleged that Afrimat, through Clinker Supplies, had been charging excessive prices, from 2012 until at least 2016, for clinker ash aggregate. This product is a key input in the manufacture of clinker bricks, which are used to build low-cost houses such as RDP homes.

Both these cases, if ruled in our favour, will have far reaching implications for the competitive health of these sectors.

Finally I should mention the Commission's case against the Law Society of the Northern Provinces (LSNP). We referred this case to the Tribunal for adjudication on 29 July 2016 after completing an investigation against the LSNP for a number of their professional rules. We alleged, in the Tribunal, that the LSNP rules, which prohibit attorneys from charging less than their prescribed fees, are anti-competitive. We also alleged that the LSNP rules, which prohibit attorneys from approaching each other's regular clients, are a contravention of the Act. The professional rules which the Commission has now referred to the Tribunal were previously the subject of an exemption application brought by the Law Society of South Africa. We didn't grant the exemption then because we believed the rules had an adverse effect on competition and were not reasonably required to maintain professional standards within the legal profession.

It should be noted that the LSNP recently published new professional rules. However, our case is against the LSNP's previous rules.

As part of the complaint referral, the Commission has requested the Tribunal to declare the LSNP's rules void and impose an administrative penalty equal to 10% of its annual turnover.







## THE CARTELS DIVISION

### WHAT IT TAKES TO BUST CARTELS

*Makgale Mohlala manages the Commission's youngest division: the Cartels Division or CD. It was formed in 2012 to focus exclusively on cartels and has since had an ever growing case load. This year was no different for the CD, and Makgale reports that they are using innovative methods to manage their case load and deliver more competitive markets.*

### Q: MAKGALE, YOU RUN THE DIVISION THAT'S PERCEIVED TO BE FULL OF ACTION: BUSTING CARTELS AND KICKING DOWN DOORS. IS THAT HOW IT'S BEEN THIS YEAR?

We did bust some cartels, but fortunately we haven't had to kick down a door this year. A few years back though, during a dawn raid, my colleagues had to access a closed office to get to the documents inside. Since the employees claimed the owner of the office was on leave with his keys, my colleagues got a locksmith who neatly unscrewed the door from its hinges and put it back when they were done searching. No drama, same results.

About our cases: we initiated 26 cartel investigations this year, completed 33 – including some we had carried over from last year – and referred 27 cases to the Tribunal for adjudication, so we've had a busy year.

An exciting part of our work, though, is dawn raids and we conducted four of them this year. Two of these raids were against companies in the broad food industry, which falls within our priority sectors. The other two were in the packaging industry and in shipping.


The Act gives us the power to enter and search premises with or without a warrant of search, provided certain requirements are met. The term 'dawn raid' is not used in the Act, but in our field this commonly refers to the search and seizure operation we conduct when we believe the premises contains information we need in an investigation.

So many of the cartel cases have interesting elements, but the three most noteworthy matters, in my view, were the cases we investigated in the edible fats and oils market, the asphalt market and the case we referred against banks. We allege that these banks colluded in forex trading involving the US Dollar and Rand currency paid. All of these fall within our priority sectors so their outcomes will yield results, one way or another, for the South African economy.

In the edible fats and oils market we have one case that we have referred to the Tribunal for adjudication and another that is under investigation. The first one emanated from a third party complaint we received in 2012 against Unilever South Africa (Pty) Ltd and Sime Darby Hudson Knight (Pty) Ltd. The two were alleged to have illegally divided markets by allocating specific types of goods in the edible fats and oils market to one another. The investigation revealed that from 2004 to at least 2013, the respondents had a general agreement not to compete with each other in respect of certain products, product sizes and market segments in the supply of edible oils and fats. This agreement has its origin in an agreement concluded by the parties in 2004 when Unilever sold its refinery business to Hudson and Knight, which later became Sime Darby Hudson and Knight. Following our investigation, which included a dawn raid, Sime Darby came forward and settled with the Commission for their part in the conduct. They agreed to pay an administrative penalty of R35 million and also agreed to various behavioural remedies. The Tribunal confirmed this settlement on 18 July 2016. The Commission has referred the case against Unilever to the Tribunal as a contested matter.

Staying with the edible fats and oils investigation, in November 2016 we initiated a complaint against DH Brothers Industries (Pty) Ltd t/a Willowton (Willowton) and others. The respondents are competitors in the market for the manufacturing and supply of refined edible fats and oils, including margarine and baking fats. In its complaint the Commission alleges that the respondents have entered into a collusive agreement or practice to fix prices and trading conditions. This case is currently under investigation and has not yet been concluded.

In the infrastructure sector we referred a cartel case to the Tribunal against Much Asphalt and other



Makgale Mohlala



respondents. We allege that the respondents colluded by engaging in market allocation and collusive tendering in asphalt products. You might recall that Much Asphalt is the same company we prohibited, earlier in the financial year, from merging with five Roadspan asphalt plants because of our concerns about the competition dynamics in this industry.

Then there is the collusion case we referred against 17 local and international banks. We alleged that the banks were colluding by agreeing to terms for trading currency pairs – in our case the US Dollar/Rand currency pair – in ways that affected the currency prices in their favour. This has been happening since at least 2007. The traders used different trading platforms, chat rooms, meetings and phone conversations to co-ordinate their currency trades. They would agree to hold trades, refrain from trading, take turns in trading and, in that way, distort demand and supply enough to reach their desired currency prices and achieve their profit motives. The traders affected currency prices in specified spot or short-term, transactions. In more simple terms, we believe the traders were making money by actually intervening and manipulating currency prices in their favour rather than speculating and betting on the movement of the US Dollar/Rand pair, as currency traders ought to do. This case has drawn much media attention and has helped to raise awareness among consumers about the work of the Commission. So far one firm has settled with the Commission, paying a penalty amounting to R70 million for its part in the collusion, while the remaining respondents are facing prosecution.

Finally, one case we expect will have far-reaching implications when the investigation has been completed is the Commission's initiation against installers of fire sprinklers. The Commission initiated this case on 29 March 2017 against companies that compete in the market for production and supply of fire control and protection systems. We are investigating whether the respondents may have entered into an arrangement or concerted practice to fix prices, allocate markets and tender collusively in respect of tenders issued by customers requiring their services.

### **Q: IN PAST YEARS, THE COMMISSION'S CORPORATE LENIENCY POLICY (CLP) WAS THE LEADING MEANS THROUGH WHICH THE CD GOT NEW CASES. DID THAT TREND CONTINUE THIS YEAR?**

The trend continued, but at a declining rate compared to previous years. This policy enables cartel members to come forward and 'spill the beans', so to speak, on fellow cartel members. Depending on the criteria set out in the policy, we would give the cartel member who comes to us first conditional immunity from prosecution. The immunity is conditional upon full and satisfactory co-operation until the finalisation of the case. This year we received six applications in terms of the CLP, compared to last year's ten. We had nine applications carried over from last year. We decided the outcome of nine applications. Five of these were granted and four were denied. As a result we carried eight CLP applications over to the next financial year.

### **Q: ONE OF THE MAJOR DEVELOPMENTS TO HAVE HAPPENED THIS YEAR WAS THE INTRODUCTION, FROM MAY 2016, OF CRIMINAL LIABILITY FOR EXECUTIVES WHO TOOK PART IN OR KNEW ABOUT COLLUSION IN THEIR FIRMS. HAS THIS NEW PROVISION AFFECTED YOUR WORK AT ALL?**

The speculation before this provision was introduced, was that it might have a chilling effect on leniency applications because executives would be reluctant to seek leniency for their firms where there was a possibility that they themselves would be prosecuted as individuals. We do not know if the new law has actually changed the minds of executives who would otherwise have come forward, but comparing the number of leniency applications brought over time tells us something about the immediate impact of criminalisation on corporate leniency applications. The criminal provisions became effective in May 2016, which was one month into the current financial year.

This year we received a total of six applications for leniency, compared to ten applications for 2015/16, 121 for 2014/15 and five for 2013/14.

Barring the 121 applications for 2014/15, which were mostly in the automotive sector, the number of CLP applications received this year is largely on trend. So we cannot conclude that the introduction of criminal liability has had a negative effect on the CLP, at least not in the short term. It may be an aspect we should analyse over a much longer period though.

### **Q: WHAT'S YOUR ASSESSMENT OF THE CD'S PERFORMANCE THIS YEAR?**

We had set ourselves three targets to reach by the end of the year. We planned (1) to initiate 12 cartel investigations; (2) finalise at least 75% of our cases within 12 months; and (3) together with our Legal Services Division (LSD), win at least 75% of the cases we referred to the Tribunal. We exceeded our first objective in that we initiated 26 investigations, compared to the 12 we were aiming for. We did not meet our second target as we managed to finalise 43% of our investigations within 12 months. This was due to us choosing to focus on clearing the backlog of cases that were older than 12 months. We achieved our third target and won all the cases we referred to the Tribunal this year.

I think this last target is particularly important to the Division because we have completely taken over the litigation of cartel cases. In the past, the CD would investigate cases and pass them on to the legal services function for litigation. Now we carry our cases from the cradle to the grave, as we say, which has a twofold benefit for us: (1) we maintain continuity and first-hand knowledge of the facts throughout the case; and (2) the analysts in the CD get holistic experience – managing all aspects of their cases – which is great for capacity building and the all-round quality of the work we produce.

In a year with a relatively high case load I commend the CD's achievements. Nevertheless, we will be looking to improve on our turnaround times in the year to come.



## ENFORCEMENT YEAR IN NUMBERS

Diagram 9: E&E cases received and finalised in 2016/17

<b>205</b>	Complaints received from the public	<b>3</b>	Complaints withdrawn	<b>11</b>	Complaints closed (non-referred) after full investigation
<b>4</b>	Complaints initiated by the Commission	<b>144</b>	Complaints closed (non-referred) at screening stage	<b>3</b>	Complaints referred to the Tribunal for adjudication after full investigation
<b>43</b>	Screening cases carried over to the next financial year	<b>22</b>	Complaints that became full investigations (excluding those referred to CD for full investigation)	<b>39</b>	Screening cases carried over from last year

Diagram 10: Noteworthy E&E investigations in priority sectors in 2016/17

Priority sector	Case name and summary
Information and communication technology	Complaint by Cell C (Pty) Ltd against both Vodacom (Pty) Ltd and Mobile Telephone Networks (Pty) Ltd on on-net/off-net call rates in mobile telephony Complaints against MultiChoice SA Holdings, MultiChoice Africa (Pty) Ltd and Supersport International (Pty) Ltd relating to exclusive broadcasting rights for content, especially premium sporting events
Construction and infrastructure	The Commission's complaint against Afrimat Ltd and its subsidiary for alleged excessive pricing of clinker ash aggregate The Commission's complaint against Blurock Quarries (Pty) Ltd and Procon Precast CC for alleged abuse of dominance in the supply of crusher dust and the manufacture and supply of bricks and blocks
Food and agro-processing	A complaint lodged by Khoisan Tea Import and Export Pty Ltd against Rooibos Ltd for abuse of dominance in the procurement of rooibos from farmers The Commission's complaint against Holland HZPC and Western Free State Potato Growers Pty Ltd for an alleged exclusive dealing arrangement

Diagram 11: Cartel investigations in priority sectors

Priority sector	Case name and summary
Food and Agro-processing	Commission vs Wilmar and others (price fixing and trading conditions for the supply of edible oils)
Industrial products	Four cases involving price fixing, division of markets and collusive tendering along the paper manufacturing and packaging value chain Commission vs PG Bison and Sonae (price fixing in particle boards) Commission vs Glasfit and another (price fixing and market division of automotive glass)
Transport	Commission vs Maersk and others (price fixing of freight rates from Asia to South Africa) Commission vs various automotive component manufacturers (price fixing, market division and collusive tendering in the market for the supply of automotive components)
Construction and Infrastructure	Commission vs Cross Fire and others (price fixing and collusive tendering of fire sprinkler systems).

Diagram 12: Dawn raids conducted in the financial year

Company raided	Sector	Allegations under investigation
Mpact Ltd and New Era Packaging (Pty) Ltd	Manufacture and supply of packaging paper	Price fixing, dividing markets and collusive tendering
Hamburg Sud South Africa (Pty) Ltd; Maersk South Africa (Pty) Ltd; Safmarine (Pty) Ltd; Mediterranean Shipping Company (Pty) Ltd; Pacific International Lines South Africa (Pty) Ltd; and CMA CGM Shipping Agencies South Africa	Transportation of cargo	Price fixing
DH Brothers t/a Willowton; Africa Sun Oil; FR Waring; Epic Foods; and Wilmar Oils & Fats	Manufacture and distribution of edible fats and oils industry	Price fixing and fixing of trading conditions
Botha Roodt Market Agents CC; Subtropico (Pty) Ltd; RSA Group (Pty) Ltd; Dapper Market Agents (Pty) Ltd; DW Fresh Produce CC; Farmers Trust CC; Noordvaal Market Agents (Pty) Ltd; Marco Fresh Produce Market Agency; Wenpro Market Agents CC; RSA Group (Pty) Ltd; and Fine Bros (Pty) Ltd	Fresh produce market	Price fixing and fixing of trading conditions

Diagram 13: Cartel cases received and finalised in 2016/17

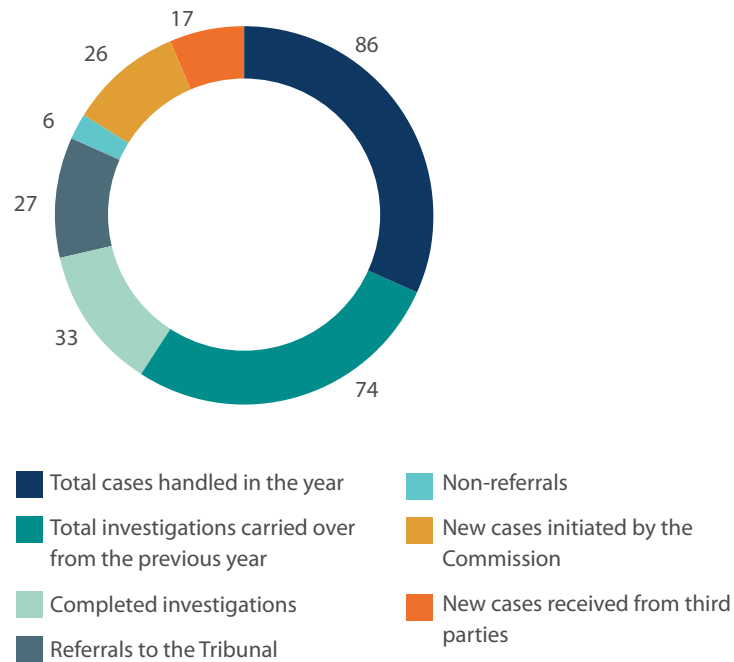


Diagram 14: Leniency applications received and finalised 2016/17

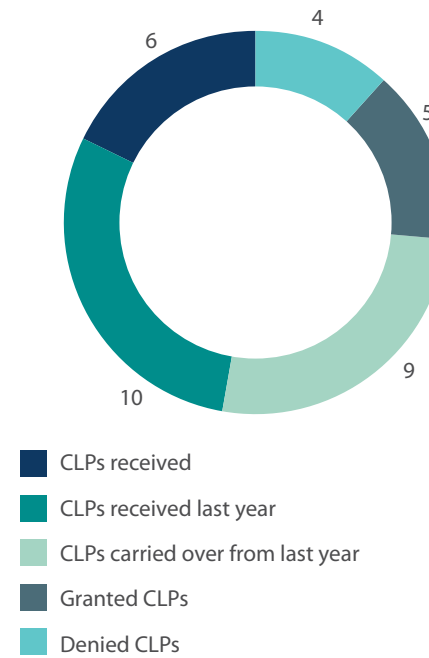


Diagram 15: Sectors with the most complaints: E&E in 2016/17

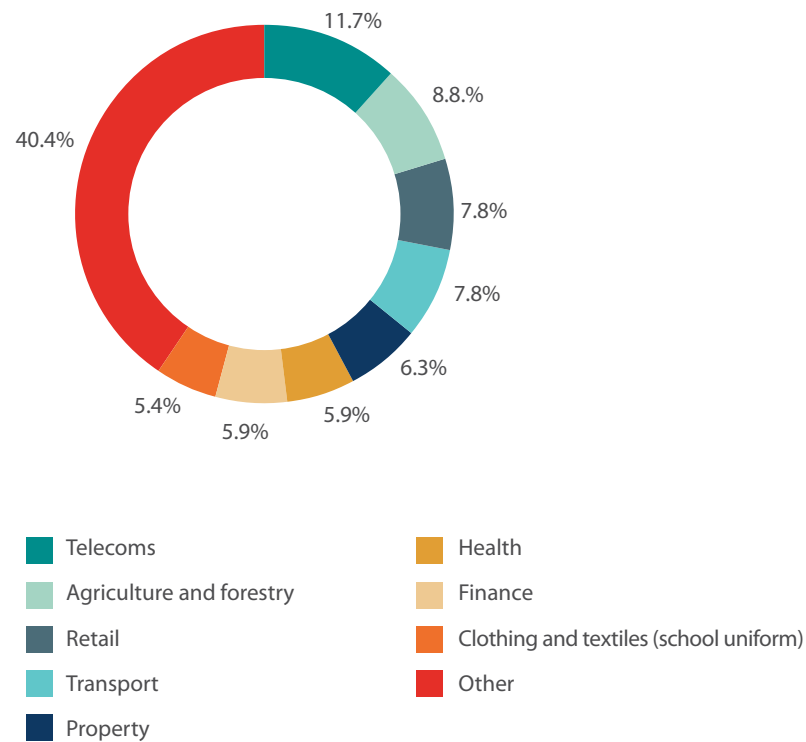
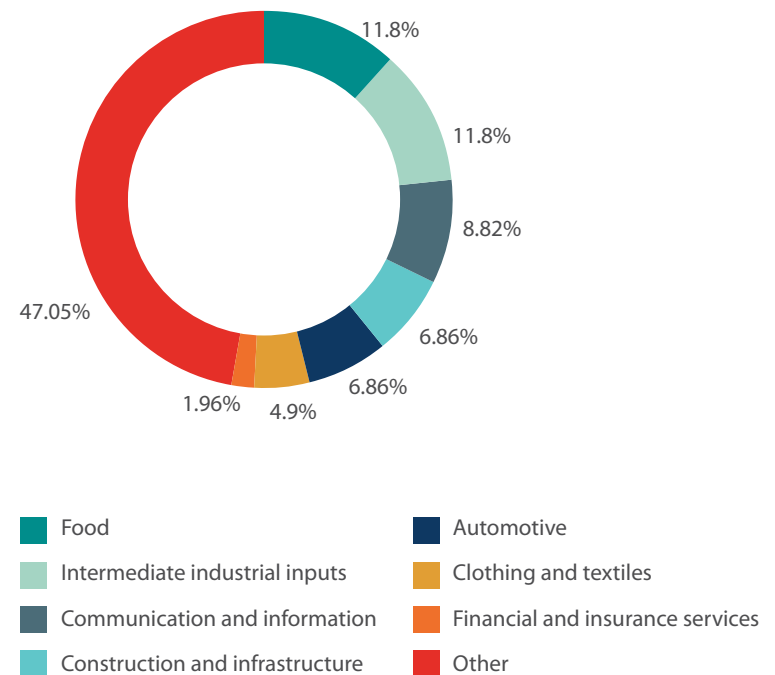



Diagram 16: Cartel investigations by sector in 2016/17







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**PART 6: INCREASING COMPLIANCE AND  
UNDERSTANDING MARKET DYNAMICS**



# INCREASING COMPLIANCE AND UNDERSTANDING MARKET DYNAMICS

## SUMMARY OF PERFORMANCE AGAINST TARGETS

6	Targets set	5	Targets met or exceeded	1	Target not met
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The Commission did not reach its target of initiating a market inquiry this year because it required more time to gather background data.

## INCREASING COMPETITION COMPLIANCE

Part of the Commission's strategy for 2016/17 was to increase voluntary compliance with competition laws. The Commission did this by issuing external guidelines on the application of the Act and offering advice to stakeholders who wished to comply with the law. The Commission carries out these functions through LSD.

### Commission clarifies its position on public interest

On 8 June 2016 the Commission published its final guidelines for how it would assess public-interest factors when considering a merger. It did so in line with the Act, which states that the Commission may adopt guidelines to indicate its policy approach on any matter falling within its jurisdiction.

The publication of these guidelines was an important step in contributing to South Africa's development goals, as set out in various policy documents, because the public interest factors listed in the Act speak directly to employment, economic transformation and building a world-class economy. Furthermore, the assessment of public interest factors has

drawn both support and controversy in the Commission's 18-year history, making it more and more important to offer clarity and a level of certainty to the Commission's stakeholders on this critical aspect of competition regulation.

The document offers guidance to the public on the Commission's approach to analysing mergers and sets out the approach that the Commission is likely to follow and the types of information it may require when evaluating the public interest grounds that appear in the Act.

In preparing these guidelines, the Commission followed a consultative process, which entailed obtaining input from various stakeholders, including legal practitioners, business and civil society, as well as holding workshops to discuss comments received and to get more input from stakeholders. The Commission revised the guidelines to incorporate input from stakeholders before publishing its final version.

The Commission met its annual performance target in this area by publishing one guideline to external stakeholders.

### Encouraging compliance through providing advisory opinions

The Commission offers an advisory service to ensure that firms understand the Act, its interpretation and application to their day-to-day operations. An advisory opinion is a written opinion of the Commission's position on a set of facts submitted by external parties. It offers guidance on the interpretation and application of the Act, as well as the approach the Commission is likely to take when assessing transactions, agreements or practices. An advisory opinion is based entirely on the written facts provided to the Commission, taking into account relevant case law, policies of the Commission and previous opinions issued. These opinions are not binding on the Commission or the parties requesting them. However, when based on complete and accurate facts they offer the necessary guidance and clarity to stakeholders.

The Commission issued 23 advisory opinions in this financial year, 95% of which were issued within three months of receipt, thus exceeding the 65% target set.







## THE LEGAL SERVICES DIVISION

### WORKING AT THE COAL FACE

*Bukhosibakhe ("Bakhe") Majenge has been the divisional manager of LSD since 2014. His introduction to competition law, nine years ago, came through this very division, so he is familiar with the ever shifting sands of the law. The LSD team represents the Commission in the Tribunal and in every court in the judicial system, including the Constitutional Court. In his characteristically calm demeanour, Bakhe recalled the highlights of the 2016/17 financial year.*

**Q: BAKHE, YOUR DIVISION IS AT THE COAL FACE WHEN IT COMES TO PRESENTING THE COMMISSION'S CASES. YOU HANDLE PROSECUTIONS OF ANTI-COMPETITIVE CONDUCT, CONTESTED MERGERS AND SETTLEMENT AGREEMENTS BEFORE THE TRIBUNAL AND IN OTHER COURTS. WHAT ARE THE MAIN CHALLENGES LSD IS FACING IN THIS FUNCTION AND HOW IS THE COMMISSION WORKING THROUGH THEM?**

The biggest challenge for us is our case load. To give you an idea, by the end of the financial year, the Commission had 98 cases in litigation. 91 of these were enforcement cases, six of them were merger-related and one was at appeal or review stage. This excludes the cases directly handled by the CD. The challenge for us is to give all these cases the attention they require, without compromising the quality of our participation.

Some of the solutions we continue to implement in this regard are: (1) encouraging settlement proceedings; (2) spreading the litigation responsibility across divisions; and (3) sourcing external legal practitioners. The Commission encourages settlements in its enforcement cases because they bring about a speedy resolution to matters, which means our competition courts are occupied with the weightier matters in our law. We now expressly include the offer of settlement negotiations as part of our investigation and litigation processes. The Commission entered into 21 settlements this year. It has also spread the litigation burden to other divisions, for non-complex matters. This initiative started with the M&A Division and now includes the CD. Doing so helps to solve two problems: (1) it reduces the burden of legacy cartel cases that has built up because of interlocutory challenges; and (2) a quicker turnaround time reduces the risk of Commission staff turnover or witnesses

**Bukhosibakhe Majenge**

forgetting key events. At the same time, this initiative ensures a seamless continuity of staff from investigation to litigation. The LSD still provides legal input and guidance in these matters, where required. Finally, the Commission makes use of external counsel in cases where it is unable to conduct its own litigation. The Commission remains intimately involved in all the cases, however, and manages them from start to finish. Making use of external counsel has also allowed the Commission to expand opportunities for HDP's in the field of competition law.

**Q: THE PENALTIES YOU COLLECT ARE PAID INTO THE NATIONAL REVENUE FUND AND ULTIMATELY FORM PART OF THE NATIONAL BUDGET DISSEMINATED FOR PUBLIC PURPOSES. HOW MUCH DID THE COMMISSION IMPOSE IN ADMINISTRATIVE PENALTIES THIS YEAR AND HOW DOES THAT COMPARE TO PREVIOUS YEARS?**

We imposed R1.628 billion in administrative penalties this year. R11.05 million accounted for penalties paid by firms who implemented their mergers prior to notifying them with the Commission and R1.617 billion accounted for enforcement cases. Out of the penalties imposed through settlement agreements, R1.5 billion was for a single firm: ArcelorMittal. This was the highest administrative penalty the Commission has ever imposed on a single firm.

Comparing administrative penalties from previous years can be somewhat misleading for two reasons: (1) administrative penalties are calculated as a percentage of turnover, therefore the higher the turnover of the firms concerned, the higher the administrative penalties imposed will be, (2) the penalties recorded in any given year are not an indicator of workload, success or failure. There are various factors that determine the outcome of a penalty calculation, such as the duration

of the conduct or the level of co-operation from the respondents. These factors result in varying amounts of administrative penalties, which can make comparing one to another a superficial exercise.

Nevertheless in 2015/16 we imposed R338 million in administrative penalties, which is 79.24% less than this year. In 2014/15 the Commission imposed R191 million, which is 88.27% less than this year.

Besides imposing penalties, the legal services function also includes debt collection from respondents who have settled with the Commission, but have defaulted on their penalty payments. This year we collected R380 million from defaulting respondents, while R87 million is still outstanding.

**Q WITH 98 CASES IN LITIGATION IT MUST BE DIFFICULT TO CHOOSE JUST A FEW THAT STOOD OUT FOR THE COMMISSION THIS YEAR. CAN YOU HIGHLIGHT SOME MAJOR DECISIONS HANDED DOWN THIS YEAR? WHY WERE THESE CASES IMPORTANT?**

I can highlight eight cases that were significant this year. Some of them were firsts for us, some brought significant legal developments to this area of law and others brought outcomes that improved the level of competitiveness in the Commission's priority sectors.

The Tribunal made a precedent setting decision on 14 April 2016 when it decided that a group of companies may constitute 'a firm' for purposes of the Act. This was a case in which Delatoy Investments (Pty) Ltd and other companies in the Delatoy group were accused of collusive tendering with Cycad Pipeline (Pty) Ltd and Phambili (Pty) Ltd. Before hearing the merits of the collusion case, it became clear that the Tribunal first had to decide if the Delatoy group could be treated as a single economic entity for purposes of the main case against them.

In arriving at its conclusion, the Tribunal followed the European Community approach by not fixating on the structure of the entities within the Delatoy group. Instead the Tribunal considered the behaviour of the directors and how the entities related with one another in the group to conclude that they, in fact, considered themselves to be a single economic entity. The significance of this decision for us is twofold: (1) when determining an administrative penalty against a company in future, the Commission could look to the group turnover rather than an individual company's turnover, where justified; and (2) the Commission could more frequently impute an administrative penalty on the parent company where its subsidiary has been found to have contravened the Act. But it is still early days. The effects of this decision, and the extent to which we can rely on it for future cases, will continue to unfold over time.

Industrial inputs are a priority sector for us, which makes the Pelchem SOC Ltd (Pelchem) settlement important for improved competitiveness. On 7 December 2016, the Tribunal confirmed as an order a consent agreement between the Commission and Pelchem, a state-owned entity, in which Pelchem agreed to remove exclusivity clauses in the agreements it entered with firms it provided with surface fluorination for various uses. The consent agreement ensured that surface fluorination services in South Africa were opened up and no longer restricted through evergreen exclusivity agreements by Pelchem, the sole supplier in South Africa. Surface fluorination is mainly applied to strengthen plastic products, such as containers and pipes for the petrochemical industry as well as electric cables. This settlement is bound to have far-reaching consequences.

In another important decision, the Tribunal asserted the Commission's discretion in applying its leniency policy when, on 10 June 2016, it dismissed an interlocutory application brought by Blinkwater Mill (Pty) Ltd (Blinkwater). In its application, Blinkwater contended that the Commission was not





entitled to grant immunity from prosecution to two firms, namely Premier Foods (Pty) Ltd and Tiger Brands Ltd, for largely the same cartel conduct. Blinkwater asked the Tribunal to set aside the conditional immunity granted to Tiger Brands and to set aside the complaint the Commission brought against Blinkwater. In dismissing Blinkwater's application, the Tribunal found that the Commission was entitled to depart from its policy since the policy was not binding. It also said that adhering mechanically to a previously stated policy would be irrational so the Tribunal did not consider it irrational for the Commission to have granted both Premier Foods and Tiger Brands conditional immunity.

The consent agreement between the Commission, Life Healthcare Group (Pty) Ltd (LifeHealth) and Joint Medical Holdings Ltd (JMH) recorded the highest penalty ever imposed on firms for failing to notify a merger to the Commission. In the agreement, which the Tribunal confirmed on 1 April 2016, LifeHealth and JMH agreed to jointly pay an administrative penalty of R10 million and to undergo competition law compliance training. The consent agreement came after the Commission initially investigated a complaint of collusion between LifeHealth and JMH, firms that both operate as private hospital groups. The investigation revealed that since 2004 LifeHealth and JMH agreed that all their prices would be set jointly and all price negotiations would be conducted by LifeHealth on behalf of JMH. The Commission

also uncovered that, although LifeHealth had a non-controlling shareholding in JMH, the extent of control LifeHealth factually exercised over JMH went beyond what was legally allowed for independent competitors. This led the Commission to conclude that the relationship between LifeHealth and JMH should have been filed as a merger. Subsequently the Commission, LifeHealth and the Commission entered into a consent agreement to settle the matter. As part of the agreement, LifeHealth and JMH admitted that they had failed to notify their merger with the Commission and that they would pay an administrative penalty. The Commission, in turn, agreed that it would not pursue the complaint of collusion against the two.

Staying with record penalties, the highest administrative penalty we have ever imposed on a single firm was in our settlement agreement with ArcelorMittal, which the Tribunal confirmed on 16 November 2016. In the settlement agreement ArcelorMittal agreed, amongst other things, to pay an administrative penalty of R1.5 billion to settle four complaints of collusion, information exchange and excessive pricing against it. ArcelorMittal admitted its role in collusion and information exchange, but it denied that the information exchange was unlawful. In addition to the administrative penalty and other terms, ArcelorMittal undertook that (1) for a period of five years, it would limit its earnings before interest and tax (EBIT) margin to 10% for flat steel products sold in

South Africa; (2) subject to feasibility, it would carry out additional capital expenditure of R4.6 million over the next five years; and (3) it would continue to offer strategic and export rebates to downstream industry players.

On 19 December 2016 the CAC handed down another significant decision for purposes of assessing allegations of collusion, which make up the bulk of our enforcement cases. The CAC's finding in the appeal brought by two bicycle wholesalers: Omnico (Pty) Ltd (Omnico) and Coolheat Agencies (Pty) Ltd (Coolheat) clarified the Commission's obligations when alleging a collusive agreement between parties. The CAC also clarified what it meant to reach agreement between firms exchanging sensitive price or trading information.

The case stemmed from a 2008 allegation that a number of bicycle retailers and wholesalers had met to agree on prices for bicycles and cycling accessories. After a Tribunal hearing on this matter, the Tribunal concluded that Omnico and Coolheat had indeed contravened the Act. In their appeal of this decision, Omnico and Coolheat contended before the CAC that they did not actively participate in any anti-competitive discussions and were effectively passive participants at the meetings. Therefore the CAC had to decide whether or not silent participation by firms at a collusive industry meeting amounted to a contravention of the Act. In short the CAC found it did, because (1) Coolheat and Omnico failed to distance themselves from



the consensus reached at the meetings; (2) neither of them gave any indication that they disagreed with the consensus reached; and (3) neither could prove that they actually priced independently after the meetings.

The CAC also said that when alleging collusion, the Commission was not required to scrutinise and evaluate each and every activity or discussion at the various meetings, and it was up to the appellants to put forward rebuttal evidence to establish that their participation at the meetings was without any anti-competitive intention.

On 20 March 2017, the Constitutional Court handed down its order dismissing Omnico and Coolheat's application for leave to appeal. The CAC's decision relating to silent or passive

participation in a cartel will stand as binding law. Finally I should mention a case that we are still dealing with because, although the case sounds like it's only procedural, we believe its outcome has the potential to curtail the investigative freedoms that the Act and subsequent case law allows us. The Commission wants to protect its ability to initiate and conduct investigations because this is the primary mechanism through which we can pro-actively bring about much needed change in uncompetitive markets. I'm referring to a case brought by Mondi Ltd (Mondi) against the Commission seeking access to the documents that formed the basis of the Commission's decision to initiate an investigation in 2012 against Mondi and Sappi Ltd (Sappi). The Commission's initiation alleges

that Sappi and Mondi have colluded and abused their dominant position.

Through the findings of a series of court applications, the Commission was compelled in April 2016 to disclose the entire unrestricted record upon which it based its decision to initiate its investigation against Mondi and Sappi. The Commission found this unusual and problematic because (1) the Act allows parties only limited access to an investigation record; (2) in the normal course, parties are entitled to the record at a specified time after their case has been referred to the Tribunal; and (3) this finding could open the door to all respondents who want to scrutinise the Commission's decision to investigate and, in that way, avoid or delay an investigation.





# LITIGATION YEAR IN NUMBERS

Diagram 17: Commission’s litigation load at the end of 2016/17

85	Cartel cases in litigation
5	Abuse of dominance cases in litigation
1	Minimum resale price maintenance cases in litigation
1	Contested large mergers in the Tribunal
3	Merger reconsiderations in litigation
1	Appeals and reviews in litigation
2	Prior implementation cases in litigation

Diagram 18: Total administrative penalties levied over the last nine years

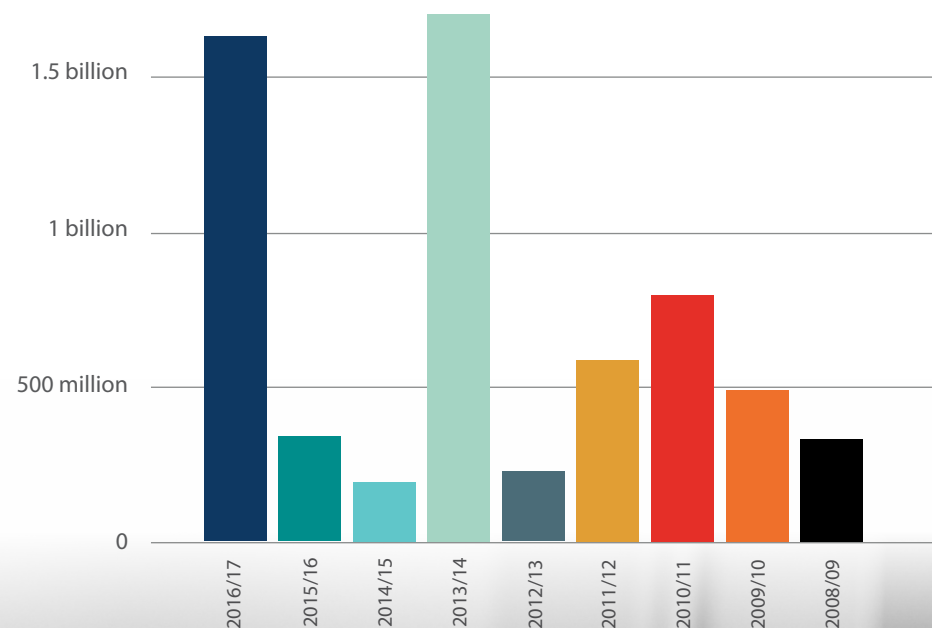


Diagram 19: Settlement and consent agreements confirmed in 2016/17

Party fined	Conduct	Settlement amount
CC Pioneer	Market allocation	R717 960.92
CC and Ton Scrap	Price fixing and market allocation	R3 500 000.00
CC Loungefoam	Price fixing and market allocation	R1 750 000.00
CC Delatoy Investments and 12 Others	Collusive tendering	R4 136 122.02
CC and SAPFPA	Price fixing and collusive tendering	R16 800.00
CC SAMetal (Ben Jacobs Iron)	Price fixing and market allocation	R2 995 922.70
CC and Global Sustainable	Price fixing	R393 626.40
CC and Geomechanics	Price fixing, market allocation and collusive tendering	R1 650 503.18
CC and Arcelormittal SA	Price fixing and market allocation	R1 500 000 000.00
CC and Zara Cleaning Services	Collusive tendering	R167 242.00
CC and Top n Nos	Collusive tendering	R36 935.00
CC and Todays Destiny	Price fixing and collusive tendering	R50 000.00
CC and Raite Security Services	Price fixing and collusive tendering	R1 593 820.00
CC Premium Brand	Resale price maintenance	R300 500.00
CC and NC Specialised Fasteners	Market allocation	R669 566.45
CC and Blinkwater Mills	Price fixing	R10 112 504.20
CC and Murray and Roberts	Price fixing, market allocation and collusive tendering	R4 704 936.00
CC and Eukor Car Carriers Inc	Price fixing, market allocation and collusive tendering	R15 288 976.00
CC and Sime Darby Hudson	Market allocation	R35 000 000.00
CC and BJ Transport Management	Price fixing, market allocation and collusive tendering	R709 073.12
CC and The Good Hope Textile Corp	Collusive tendering	R2 113 335.45

Diagram 20: Penalties imposed for the prior implementation of mergers in 2016/17

Parties involved	Penalty amount
CC and Life Healthcare Group and Joint Medical Holdings	R10 000 000.00
CC and Dickerson Investments	R400 000.00
CC and Deican Invest and New Seasons Invest	R300 000.00
CC and Standard Bank	R350 000.00





## UNDERSTANDING MARKET DYNAMICS IN PRIORITY SECTORS

In order for the Commission to have a lasting impact on the economy, it has to have a deep understanding of the dynamics that make the markets function the way they do. In this way the Commission can recommend or take appropriate action for improved competitiveness and ultimately inclusive growth. The Commission seeks to improve its knowledge of markets in three ways: (1) by carrying out scoping studies; (2) conducting impact assessments; and (3) conducting market inquiries. Some of the highlights in this area are summarised below.

### Scoping studies

Scoping studies determine the Commission's future focus areas because they reveal the state of competition in the markets the Commission looks into. Where scoping studies reveal potential competition concerns, the Commission may initiate an investigation or engage in advocacy initiatives.

This year the Commission conducted scoping studies into:

- Sasol's synthetic wax production operations;
- the identification of dominant firms in South African markets;
- the market for calcium carbonate;
- mobile phone contracts; and
- staple food prices.

### Impact assessments

#### **Agricultural support fund yields tangible results and future lessons**

During this financial year, the Commission conducted an assessment of an agricultural support fund that was set up in 2014 as part of the conditions to a merger between the then newly incorporated AgriGroupe Holdings and local agricultural commodity trading company AFGRI

Ltd (AFGRI). The purpose of the impact assessment was to establish whether the fund's programmes adequately addressed the public interest concerns raised by third parties during the merger proceedings of 2014, specifically those relating to benefits that were available to black farmers through AFGRI prior to the merger, credit facilities and access to grain storage by emerging farmers.

Having assessed the impact of this fund and the other conditions to the merger, three years after their implementation, the Commission found that the AFGRI Fund has been implemented in line with the agreements entered into by the government departments and the merging parties. Further, the various commitments with respect to emerging farmer support, the extension of credit and grain storage discounts have had a positive impact on emerging farmer beneficiaries.

### **Commission's intervention in ICT market contributes to improved competitiveness**

In July 2013, the settlement agreement reached between Telkom SOC Limited (Telkom) and the Commission was confirmed by the Tribunal in terms of a set of complaints lodged by competing network service providers between 2005 and 2007. The settlement agreement sought to remedy the alleged anti-competitive conduct by Telkom in the electronic communications market. An administrative penalty of R200 million was imposed by the Tribunal on Telkom and structural and behavioural conditions were implemented, which included a change in pricing behaviour and a functional wholesale/retail separation of Telkom's business operations.

The purpose of the Commission's impact assessment was to evaluate the efficacy of the settlement agreement in remedying the anti-competitive outcomes of Telkom's conduct. The assessment found that, notwithstanding some contributing regulatory and market developments, the settlement agreement had a positive and significant impact on the market. From a behavioural perspective, the price commitments contained in the agreement resulted in significant savings for Telkom's customers. The distribution of savings were skewed in favour of the upstream market compared to the downstream market, as intended by the settlement agreement. Structurally, the level of entry increased, particularly downstream, as competition tends towards services based competition. Telkom's market share has also come under pressure, primarily in the upstream market, where price commitment reductions by Telkom and non-discriminatory behaviour for upstream input facilitated growth of Telkom's competitors. Overall, these market outcomes were consistent with the pro-competitive goals of the settlement agreement.

### **Review of the academic textbook market shows mixed results**

The objective of this study was to review the Commission's decisions in two previous merger transactions in the academic textbook market. The Commission wanted to establish if it made the appropriate decisions when it prohibited the proposed acquisition of Juta Bookshops

(Juta) by Van Schaik Bookstores (Van Schaik) in 2012 and when it approved the acquisition of Juta Bookstores by Protea Book House in 2013. The study also assessed whether an alternative decision may have led to more competitive market outcomes.

In both merger investigations, the relevant markets were found to be highly concentrated. However, unlike the Van Schaik/Juta transaction, the Commission's investigation found that the Protea/Juta merger did not raise competition concerns, hence the unconditional approval of the merger.

The study found, among other things, that in the years since the two mergers the market has seen a decline in academic book sales and an increase in prices. However, these outcomes were attributed to international factors, local protests and decreased subsidies for universities rather than to the Commission's decisions. On a positive note the study revealed that the bricks-and-mortar academic books market has opened up through the expansion of existing players and the entry of new market participants.

In light of the evidence gathered, the Commission concluded that it made the appropriate decisions to prohibit the Van Schaik and Juta merger in September 2013 and approve the acquisition of Juta Bookstores by Protea in July 2014. An assessment of the evidence therefore confirms that no alternative decisions by the Commission would have led to more competitive outcomes in the market.

### **Assessing the impact of the pelagic fish merger, three years on**

The Commission's study into the developments in the pelagic fish market since 2013, when the CAC approved the Oceana Group Ltd's (Oceana) acquisition of Foodcorp (Pty) Ltd's (Foodcorp) fishing business, revealed that the merger is unlikely to have had a significant effect on competition at the downstream marketing level of the canned pilchards value chain and on the end-consumers of canned pilchards, and that the merger is likely to have led to a positive impact on the public interest.

This was a merger that the Tribunal had approved on condition that the merged entity would have to sell off its Glenryck brand of pelagic fish along with

Foodcorp's total allowable catch (TAC) – a fishing quota allocated by the Department of Agriculture, Forestry and Fisheries (DAFF). The Tribunal's reason for bundling the sale of the brand with the TAC was that the evidence presented throughout the merger hearing showed that the brand would not be a strong competitor in the market without the TAC. The merging parties appealed the Tribunal's decision because they were not interested in pursuing the deal if it came without the TAC. The CAC approved the deal allowing Oceana to sell Glenryck off without the TAC. This took place in 2015 when Bidvest Namibia Fisheries (Bidfish) bought the Glenryck brand, without the TAC.

The Commission's assessment showed that the Glenryck brand had performed poorly both before and after the merger, which means its performance cannot be attributable to the merger. Regarding its performance under Bidfish, the Commission concluded that it was too early to tell how the brand was performing. As mentioned, Bidfish acquired the Glenryck brand in 2015. The study also showed that the merger did not have a significantly negative impact on the prices and brand choice available to consumers. Rather, canned pilchard prices have been affected by the prices of other competing proteins, and customers' ability to switch to or from these when they are cheaper or more expensive relative to canned pilchards. Regarding the positive public interest effects of the merger, the study showed that jobs that would have been lost at the Laaiplek facility were retained, new jobs were created, and the conditions of seasonal workers have improved.

### **Assessment of the citrus export exemption reveals positive effects all round**

In 2005, the Western Cape Citrus Producers Forum (WCCPF) applied for an exemption from the provisions of the Act for an initial period of five years, based on its contention that co-ordinated conduct between its members was necessary to enable its members to maintain and/or promote South African exports of citrus fruit.

Following the Commission's investigation, the WCCPF was granted its first exemption on 14 June 2006 for a period of five years, beginning 1 July 2006 and ending 30 June 2011. The first extension to the exemption application was granted on 17 August 2011 for a further five year



period, beginning on 30 June 2011 and expiring on 30 June 2016. At the time of writing the research project, the Commission made a decision to grant multiple short-term exemptions to the WCCPF from July 2016 to March 2017.

The main rationale of the Commission's assessment was to test the direct and indirect impact of its decisions to grant several exemptions to the WCCPF since 2006. Specifically, the report focused on testing the direct impact of the Commission's interventions in the citrus industry on export volumes of citrus fruit to the USA. In addition, the indirect impact of the Commission's exemption decisions on employment and SMMEs were also assessed.

The findings from the study indicated that there have been real and positive benefits to the South African economy as a result of the Commission's various decisions to grant exemption applications to the WCCPF since 2006. It is unlikely that these benefits would have materialised to the same degree in the absence of the Commission's interventions in the citrus fruit industry. The Commission concluded that the positive benefits to the South African citrus fruit industry as a result of the Commission's exemption decisions outweighed the anti-competitive effects of the co-ordinated conduct which the WCCPF engages in as a result of the Commission's exemption decisions, given that the conduct only affected the USA export market and not the domestic market.

### Update on market inquiries

In April 2013 the Act was amended to give the Commission powers to conduct market inquiries into the general state of competition in any industry. Market inquiries are different from investigations in that, while investigations target specified firms engaged in specified anti-competitive conduct, market inquiries look into any feature or combination of features in a market which may have the effect of distorting or restricting competition without targeting any one firm. During this financial year the Commission had three market inquiries underway: the Liquid Petroleum Gas (LPG) Inquiry; the HMI; and the Grocery Retail Market Inquiry.

### LPG inquiry wraps up with recommendations to improve competition in the sector

The market inquiry into the LPG sector concluded in March 2017 with a set of recommendations to improve competition in this industry. The Commission initiated the inquiry on 15 August 2014 after it observed certain features of the sector that prevented, distorted or restricted competition. Some of the features identified as a cause for concern in this sector were (1) concentration in the market structure; (2) high switching costs; (3) the regulatory environment and its impact on competition; and (4) the limited usage of LPG in homes.

During its inquiry the Commission received a number of submissions from stakeholders at different levels of the value chain. The information they submitted helped the Commission to understand the LPG value chain, the way market participants interact along the value chain as well as the regulatory environment. The Commission also conducted site visits to gather information. Having studied and interacted with the industry and after analysing the information it received, the Commission finalised its inquiry on 29 March 2017.

The final LPG market inquiry report finds that the following features prevent, distort or restrict competition in the LPG sector:

- the overlapping and misaligned regulatory environment that: (1) hinders the ability of competitors to enter and/or expand in the market; and (2) the speedy investment into import, loading and storage facilities;
- the dialogue between market participants on setting uniform deposit fees;
- the widespread practice of long-term contracts and agreements favouring incumbent LPG wholesalers over LPG wholesalers with short-term contracts, or LPG wholesalers who rely on the spot market to receive their supply of LPG from refineries; and
- the restrictions on bulk customers' ability to switch seamlessly due to barriers incumbent LPG wholesalers put in place.

Based on the findings, the Commission has made recommendations to introduce new measures to improve competition in the LPG sector to be implemented between 2017 and 2019. The successful implementation of these measures by the identified stakeholders is essential for an efficient and competitive LPG sector. The Commission intends to publish the report in the Government Gazette and hand over the report to the Minister of Economic Development in the next financial year.

The inquiry's report includes recommendations in favour of price deregulation, recommendations to cap the duration of evergreen contracts in the LPG market and recommendations in favour of aligning the activities of regulators.

### Retail inquiry travels the map to understand traders' concerns

The grocery retail market inquiry got underway in October 2015, and the Commission has since travelled to various provinces across the country to understand the concerns of formal and informal traders in the retail sector. The inquiry was prompted, among other things, by several complaints that the Commission received against exclusive lease agreements between developers and major retailers in shopping centres and malls across South Africa. The Commission broadened the scope of the inquiry to cover:

- the impact, both negative and positive, of the entry of national supermarket chains into townships, peri-urban areas, rural areas and the informal economy;
- the competition dynamics between local and foreign-owned small and independent retailers;
- the impact of long-term exclusive lease agreements and the role of financiers;
- regulations and by-laws as a barrier to entry and expansion in the sector;
- the impact of buyer groups and buyer power of purchasers of fast moving consumer goods on competition in the sector; and
- the impact of certain identified value chains on the operations of small and independent retailers.

The inquiry's direct engagements with spaza shops, hawkers, general dealers, buyer groups, wholesalers, cash & carry's, property developers and financiers, municipalities and provincial government departments have given it a general view on the issues relating to the objectives of the inquiry and the barriers that may exist in the sector affecting grocery retail businesses. The inquiry intends to continue these engagements and provide a final report by the end of the next financial year.

### **Healthcare inquiry continues to make progress**

The healthcare market inquiry (HMI) continued to make good progress this financial year under the chairmanship of the former chief justice, Sandile Ngcobo. The purpose of the inquiry

is to determine whether or not there are anti-competitive features in the private healthcare market and to understand their effects. The vast scope of the HMI, the complexity of the issues being uncovered and the resources required to collect, present, clean, store and analyse the data emerging from the inquiry meant that the initial deadline set for the HMI's completion has had to move from 30 November 2015 to 15 December 2017.

To date, the HMI has collected and processed data from more than 175 stakeholders. It has also completed the following reports in relation to the key data sets:

- data quality and descriptive statistics;
- overall cost trends and attribution analysis;
- prescribed minimum benefits;

- facility analyses;
- practitioner analyses; and
- funder analyses.

These are detailed reports pertaining to analysis conducted on medical schemes data covering over 96% of the industry. The HMI panel is preparing for the publication of these reports in the next financial year.

Moreover, the HMI has completed the profitability analyses on the three largest hospital groups and three largest medical scheme administrators. These reports are also being prepared for publication in the next financial year. Finally, the HMI's analytical reports are under consideration by the panel for publication and the provisional report is being prepared.







The Commission Team







[HOME](#)

## PART 7: STRATEGIC COLLABORATION AND ADVOCACY



# STRATEGIC COLLABORATION AND ADVOCACY

## SUMMARY OF PERFORMANCE AGAINST TARGETS

10	Targets set	9	Targets met or exceeded	1	Target not met
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The Commission did not set a target relating to training and capacity-building initiatives with criminal justice system counterparts, this year but will prepare for implementation of the criminalisation provisions, which were enacted during 2016/17, in the next financial year.

## ABOUT STRATEGIC COLLABORATION AND ADVOCACY

As a function, strategic collaboration and advocacy is carried out primarily by two divisions in the Commission: the Policy and Research Division (P&R) and the Office of the Commissioner (OTC). This part of the Commission's work concerns a range of activities to raise awareness about competition law, raise the profile of the competition agency and encourage compliance among all stakeholders in the private sector, public sector and abroad. These are:

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

Page 60 sets out the Commissions activities, interactions and statistics on stakeholder engagements.

### SEEKING TO INFLUENCE POLICY AND REGULATION

The Commission regularly monitors the regulatory environment and provides competition assessment of government policies and regulation. To this end the Commission made submissions on five of these policies, including the national integrated ICT Policy White Paper and the White Paper on the Audio-visual and Digital Content Policy for South Africa, which we discuss further below.

**Commission comments on the EDD directive to review the current domestic reference price and variable tariff formulae on wheat, maize and sugar**

The International Trade Administration Commission of South Africa (ITAC) on 31 August 2016, formally requested the Commission to comment on the directive from the Minister of Economic Development directing ITAC to urgently review the current domestic reference price and variable tariff formulae on wheat, maize and sugar. The Minister's directive was made in view of the fact that wheat, maize and sugar were basic necessities used by South Africans and that the country was experiencing drought conditions coupled with large exchange rate fluctuations. The Commission offered its insights into the competitive conditions prevailing in this industry, based on past research and investigations conducted, and made recommendations for amending the current tariff on a temporary basis.

### Commission considers the National Integrated ICT Policy White Paper

During the financial year, the Commission considered the draft White Paper on the National Integrated ICT Policy and offered comments on the aspects that had a bearing on its operations. In particular, the Commission commented on its roles and responsibilities, the sector regulator and the economic regulator, as well as on aspects concerning co-ordination, consultation and co-operation amongst regulatory bodies.

### Commission offers its view on audio-visual and digital content

In this financial year, the Commission made submissions on the White Paper on the Audio-visual and Digital Content Policy for South Africa. Overall, the Commission believes that the policy would aid the development of a growing, productive and pro-competitive environment in the South

African broadcasting sector. Having considered the white paper with the benefit of past research and investigations in this sector, the Commission made recommendations on the following areas:

- understanding audio-visual content services;
- the distribution aspects of audio-visual content;
- the South African broadcasting system;
- licensing;
- competition; and
- South African music and TV content.

### Engagements with ITAC on scrap metal

During the financial year the Commission had engagements with ITAC on the potential impact of the preference price system (PPS) on competition in the scrap metal market. The pricing of scrap metal in South Africa was conducted under the PPS guidelines, which were aimed at curbing scrap metal exports to ensure that domestic end-users of scrap metal were able to access sufficient volumes of good quality scrap metal at reasonable prices. The main concerns raised in these engagements pertaining to the scrap metal industry were transport costs, margins achieved and preferential supply arrangements between scrap dealers and customers. This engagement was not a once-off event and is set to continue in future according to the terms and provisions of the memorandum of understanding (MOU) between the Commission and ITAC.



A large graphic in the top left corner featuring a white 'Q' and a white 'A' inside speech bubble shapes, set against a teal background.

## THE POLICY AND RESEARCH DIVISION

### AT THE CENTRE OF ECONOMIC DEBATE

*Dr Liberty Mncube has served almost ten years at the Commission. He is an expert in the application of economics to competition law and is an Honorary Professor of Economics at the University of Stellenbosch. He cut his teeth in the P&R Division at first, but in later years moved into an enforcement role in the E&E Division. Amongst the Commission's highlights for the year is Liberty's role as its economic expert in the merger between Imerys and Andalusite Resources. Liberty testified in favour of prohibiting the deal – a decision that was upheld by the Tribunal and later also the CAC.*

**Q: LIBERTY, THE P&R DIVISION IS PERCEIVED AS THE THINK TANK OF THE COMMISSION. THE WORK YOU PRODUCE IS USED TO INITIATE ENFORCEMENT ACTION AND GUIDE ADVOCACY PROGRAMMES. HOW DO YOU MAKE SURE P&R HAS WHAT IT TAKES TO PRODUCE CREDIBLE ECONOMIC EVIDENCE AND GUIDANCE THAT THE COMMISSION CAN RELY ON?**

Economists in P&R have a tradition of providing complete and sound economic analyses that inform enforcement, litigation and advocacy.

With a staff complement of approximately 30 Masters and PhD-holding economists, P&R plays an essential role in virtually all aspects of the Commission's work, while striving to maintain a quality of economic analysis that rivals work done in universities' economics departments.

The P&R Division has a multi-faceted approach to ensuring that it produces high quality and sound economic analysis. It starts with recruitment and training. Outside of our graduate trainee programme, the division is staffed with experienced economists who have an appreciation for the rigorous and technical application of competition principles but, at the same time, appreciates South Africa's development agenda and our need for inclusive growth. The training and

development programme is an important component of all economists' experience and the Commission offers a family-friendly and collegial work environment.

We also encourage and support all our staff to develop their knowledge in competition economics and to engage in substantial individual research, the results of which are often presented at academic conferences or published in academic journals and other publications. In this regard, P&R economists presented two papers at conferences and published five journal articles and book chapters in this financial year. This ensures an environment of continuous learning, which is all-important in a developing field such as this one.

Besides studying markets and how the behaviour of firms in markets is likely to affect competition, P&R economists get directly involved with cases, forming part of teams investigating complex cases and directing the economic strategy within those teams. This has two benefits. Because we only get involved in strategic or complex cases, we have time for the pro-active agenda which has to do with priority sector studies, impact assessments and so forth. Secondly, we get first-hand experience, along with investigators working on enforcement cases and reviewing mergers, which ensures that we offer more than a theoretical or academic approach to the application of competition law. We offer practical, hands-on solutions.

Finally it's important to note the role of the Commission's Information Resource Centre (IRC) in keeping Commission staff updated and informed on competition developments. Through the IRC the Commission maintains access to international and local databases, as well as various business and marketing resources that are well used. This year the IRC added 184 new titles, eight new competition law and industrial organisation journal titles and three new databases to its collection; and issued 332 publications. The IRC assisted staff with 213 requests for information. 21 new staff members were trained on the IRC's resources and 11 staff attended presentation on the databases.

A portrait of Dr Liberty Mncube, a Black man with a beard and glasses, wearing a grey suit, white shirt, and blue tie. He is standing against a teal background with a faint image of a mountain range.

Dr Liberty Mncube



**Q: BESIDES STUDYING MARKETS AND PRIORITY SECTORS YOU ALSO GIVE INPUT ON THE COMMISSION'S STRATEGIC MATTERS AND SERVE AS ECONOMIC EXPERTS IN TRIBUNAL HEARINGS. WHAT HIGHLIGHTS AND CHALLENGES DID P&R HAVE IN THIS AREA THIS YEAR?**

The past year has been an active and exciting one for economists in P&R. As in years past, a substantial share of our efforts were devoted to reviewing complex proposed mergers and providing economic analysis in enforcement and litigation. The Andalusite decision was definitely a high point for the Commission. The Tribunal and the CAC both agreed with our assessment of the case.

Two mining companies, Andalusite Resources and Imerys, objected to the Commission's decision and later to the Tribunal's decision to prohibit the merger on the grounds that it would "substantially prevent or lessen competition" in South Africa. The companies are the only miners and suppliers of andalusite in South Africa, part of an alumina-silicate group of compounds used in high temperature industrial processes. Locally and internationally andalusite is largely used by steel producers. The Commission had received numerous concerns from both producers and end-users of andalusite-based refractories regarding the effects of the proposed merger. In particular, producers and users were concerned that, as a result of the proposed merger, they would be deprived of competitive choice between Imerys and Andalusite Resources for andalusite, and that the merged entity would increase the price of andalusite locally or increase the amount it exported.

The Tribunal rejected the argument by the two companies that in the absence the proposed merger they would become capacity constrained. Further, the Tribunal considered certain behavioural conditions proposed by the merging parties, but in the end found these proposed conditions inadequate. I agree, in fact, I would add that conduct remedies are generally inadequate to restore competition to premerger levels. I am acutely aware of studies that suggests that even if the merging parties abide by the terms of conduct remedies – an uncertainty on its own – the remedies at best only delay the merged firm's exercise of market power. I am sure you will agree that the market power gained in the transaction does not dissipate during the period of the conduct remedy, and this market power could be available for exploitation. It seems impractical to draft longer behavioural commitments because of

the difficulties in accurately predicting future market or industry changes that the commitment may need to address. Even setting all of that aside, from a practical standpoint, behavioural remedies require constant monitoring, which may be expensive to come by. Pricing and other commitments also may be easier to circumvent than structural remedies or may be loaded with so many caveats that they are rendered effectively useless.

This case demonstrates that a great deal of expertise in competition economics is required to handle competition cases correctly and shows the rigorous economic analysis conducted by economists in P&R. In fact, competition economics is a necessary input into determining which facts are important in a case and which ones are not. Since the right facts and evidence are essential in the law, P&R economists provide the necessary input into competition investigations and litigation. The andalusite case is the tenth merger prohibition by the Tribunal and the only intermediate merger prohibition in which the CAC has upheld a prohibition by the Commission and the Tribunal in 18 years of merger regulation in South Africa.

One of our biggest challenges continues to be managing our case load. In P&R we must walk the delicate balance between getting deeply involved in only a few strategic cases and spreading ourselves thinly over many cases. We find the first approach to be more effective, but it is not always an easy one to apply. If we misjudge the complexity of cases early on in the name of streamlining and efficiency, we can get caught out later when there isn't enough time to apply our minds thoroughly to the matter.

**Q: LOOKING BACK, WHAT IS YOUR OVERALL IMPRESSION, FROM THE IMPACT ASSESSMENTS P&R HAS CONDUCTED, OF THE EFFECT OF THE COMPETITION REGIME ON THE ECONOMY?**

It is important to recognise that competition law interventions rarely target productivity growth directly, instead they focus on promoting competition itself, often measured by lower prices, entry of new competitors or other consumer benefits, and in doing so, contribute to productivity growth and therefore to economic growth overall.

For example, the Telkom impact assessment we carried out this year found a significant decrease in prices in the wholesale infrastructure market and in the downstream retail markets in the period following the settlement agreement.

Significant cost savings were achieved in favour of consumers. We estimated this to be in the order of R350 million, approximately R80 million more than what was envisaged in the settlement agreement. However, the focus on competition leading to lower prices, including lower input prices, lower costs and more economic activity in follow-on markets is incomplete. The larger contribution of competition appears on a much larger canvas. Competition is about markets, and markets enable people to participate in economic activity. The freedom to participate in economic activity, and not to be swept aside, is not only a personal freedom that enhances dignity, but a source of livelihood that lifts people out of poverty by empowering them. For example, the objective of the AFGRI fund was to provide support to emerging farmers.

The impact assessment into the AFGRI fund found that close to 50% of the R60 million committed under the emerging farmer development programme has been allocated to the benefit of 98 farming entities.

As at March 2016, loan finance to the value of over R37 million (or 30%) of the R125 million committed by the Land Bank had been approved to qualifying emerging farmers. The largest portion of this finance (R22.87 million) was allocated to 30 farming entities for the purchase of production inputs (fertilisers, chemicals and seeds). The grain storage discount programme provided qualifying emerging farmers (i.e. farmers that store less than 10 tons of grain per season) with a 40% discount on grain storage rates at AFGRI silos.

**Q: HOW DID P&R PERFORM AGAINST THE TARGETS IT HAD SET FOR THE YEAR?**

We set ourselves targets for (1) the number of scoping studies conducted; (2) market inquiries initiated and completed; (3) impact assessment studies completed; (4) workshops or seminars on competition and trade hosted; and (5) submission or responses to policy or regulation. We met all these targets, except one. We did not initiate a market inquiry this year, as we had targeted, because we needed more time to conduct background research into certain industries before embarking on a market inquiry. We anticipate to initiate an inquiry into one or more markets in the coming financial year.



## BRINGING A DEVELOPMENT PERSPECTIVE TO THE GLOBAL COMPETITION NARRATIVE

Traditionally, the development of competition law has largely been rooted in established Western systems of law. This is where modern competition law was born in generations past, where it developed and consequently where emerging markets seek guidance when introducing and implementing this law in their local economies. However, the traditional Western understanding and application of competition law is, at times, incongruent with the developmental state that many emerging economies find themselves in. As such, it can put the development agenda in jeopardy when it is not applied conscientiously. This necessitates a re-imagining of competition concepts, economic theories and remedies to suit the unique circumstances and requirements of the developmental state. The Commission has found that its partners in the BRICS competition network, the ACF and SADC, face similar challenges in this regard. The BRICS economies, though in different stages of economic development, face concerns of high unemployment and inequality, necessitating a nuanced application of traditional competition principles to suit each country's unique requirements. Similarly with the members of the ACF and SADC. Together with these partners, the Commission is introducing a new perspective on assessing competition matters and is developing new theories for application by agencies in similar positions. Some of the key events undertaken for this purpose and for greater co-operation, in general, among agencies in emerging markets in 2016/17 are set out below.

### BRICS competition authorities pledge to strengthen co-operation in market studies and enforcement

On 19 May 2016, the heads of the BRICS competition authorities signed an MOU to formalise relations between member countries. This took place in St Petersburg, Russia. The MOU on co-operation in the field of competition law establishes a framework for collaboration between the BRICS competition authorities, including exchanging information, joint studies on markets of mutual concern and co-operation and co-ordination in investigations or enforcement proceedings. It came into effect immediately for a

period of four years, with the option to renew or extending it further.

Following the signing of the MOU, on 27 September 2016, the first BRICS working group meeting took place in Moscow. The purpose of the working group is to conduct studies of mutual interest and enhance the capacities of all the member agencies. The inaugural meeting agreed on the composition of the working groups that will study pharmaceuticals, food and agro-processing, automotive markets, construction, telecommunications and edible fats and oils.

### SADC co-operation agreement to help build capacity

On 26 May 2016, a MOU between nine SADC competition authorities was signed in Gaborone, Botswana. The MOU on inter-agency co-operation in competition policy, law and enforcement was signed by the heads of competition authorities from Botswana, Malawi, Mauritius, Namibia, Seychelles, South Africa, Swaziland, Tanzania and Zambia. The MOU commits competition authorities to co-operate by sharing information on cases, co-ordinating investigations, harmonising rules of procedure and undertaking joint capacity building and research activities.

The first meeting of the SADC cartels working group took place on 27 July 2016, in Pretoria, and was chaired by the Zambian Competition and Consumer Protection Commission. The meeting drafted work plans for the group, which they adopted in a SADC co-operation meeting in December along with a work plan for the mergers working group.

### Boosting bilateral relations with strategic partners

In accordance with the Commission's strategic priorities, MOU's were signed in 2016 with the competition agencies of two of South Africa's BRICS partners (Brazil and the Russian Federation) and two African authorities (Kenya and Mauritius). All the MOU's have provisions focusing on the co-ordination of enforcement activities.

### ACF develops new work plan

South Africa is the current chair of the African Competition Forum (ACF). The ACF held a meeting of its steering committee in Kenya on 2 and

3 March 2017. The meeting developed a two-year work plan for the ACF which includes work streams for funding, capacity building and research. The meeting was attended by nine of the 11 ACF steering committee members and was chaired by the Commission. The Nigerian Securities and Exchange Commission (SEC) was accepted as an ACF member at the meeting.

### Commission supports Nigeria in reforming its competition laws

The Commission was invited by the Nigerian SEC, which currently has limited jurisdiction to review mergers and acquisitions, to meet with various stakeholders in Nigeria on the Competition and Consumer Protection Bill, currently before the House of Representatives. The new law will cover all aspects of competition policy and enforcement. Two Commission staff, as well as two officials of the US Federal Trade Commission (FTC), discussed the proposed Bill with the Director-General of the SEC, a member of the Nigerian Senate and a member of the House of Representatives as well as with other stakeholders, mainly lawyers.

The meetings were followed by a capacity building workshop for the SEC and other Nigerian regulators charged with reviewing mergers. It was facilitated jointly by the Commission and the US FTC and covered all aspects of merger review and analysis.

### ACF and World Bank partner to increase knowledge

In June 2016, the World Bank published a report: *Breaking Down Barriers: Unlocking Africa's Potential through Vigorous Competition Policy*, a study it conducted in partnership with the ACF. This study reviewed the status of competition frameworks and implementation in Africa and zoomed in on three important sectors for Africa's competitiveness: cement, fertilisers, and telecommunications. More than 70% of African countries rank in the bottom half of countries globally in terms of intensity of local competition and prevalence of fundamental policies for market-based competition.

This report was a collaborative effort between the World Bank and members of the ACF, reflecting a shared vision for promoting competition policy and effective competition law enforcement across

Africa. Information for this report was gathered through questionnaires, to which 22 jurisdictions responded. This report expanded the scope of earlier ACF studies, considering not only the status of competition law enforcement and competition policy in each economy as a whole but also providing an overview of competition dynamics and challenges in selected markets of key sectors.

Through this report, the ACF and World Bank sought to take a step forward in the application of region-wide analytical tools to understand key risks to competition in vital input sectors, in particular cement, fertiliser, and telecommunications. Competition issues in road freight, air transport, and retail are also explored. The analysis showed that the effects of industry characteristics, regulations, and trade policies shaped the competitive dynamics of these sectors and often spanned borders. There was scope, therefore, for national and regional competition authorities to increase their impact by taking a regional perspective when assessing cases within their jurisdictions. This report brought home the importance of strong co-operation between agencies involved in implementing competition policy.

The study's findings on the range of competition policy frameworks in place across Africa – and the richness of experience in enforcing those frameworks – highlighted the great potential for peer-to-peer learning, both within the region and across regions.

The evidence presented in this report showed how competition policy helped African countries boost inclusive growth and sustainable development. The report found that eliminating competition constraints in food markets could lift families out of poverty. For example, a 10% reduction in the prices of principal food staples is estimated to have the effect of lifting approximately 500 000 people out of poverty in three countries. Fundamental market reforms to increase competition in key input services would also boost economic growth. For example, reforming professional services markets would deliver an additional 0.16–0.43% of additional annual growth in gross domestic product. While the benefits of competition were clearly observable in Africa, there was still considerable effort required to ensure effective implementation of competition laws and policies across the continent. This study provided an overview of factors to be considered in pursuing that effort.

## RAISING AWARENESS

It is notoriously difficult to measure the level of awareness, influence or compliance brought about by the various public engagement tools the Commission makes use of. However the growing list of enforcement matters filed by government and ordinary members of the public, as well as the increasing number of invitations and media requests the Commission is receiving, are all indicators that the Commission's efforts in this area are worthwhile. The Commission finds that competition agency colleagues in several African countries look to it for best practice and capacity building in their efforts to establish or grow competition agencies in their regions.

What follows is a set of tables, lists and statistics detailing the Commission's efforts to raise awareness of competition and, in that way, improve compliance.

### Stakeholder engagement sessions

Diagram 21 sets out the more noteworthy stakeholder engagement sessions the Commission embarked on this year, and the benefits it yielded from them.





Diagram 21: Selected stakeholder engagement sessions in 2016/17

Type of session	Purpose of engagement	Stakeholders targeted
Workshops and seminars		
National Department of Small Business Development, Durban	To enable small businesses to identify market abuse and report it to the Commission	Small business
National Department of Small Business Development, Cape Town	To enable small businesses to identify market abuse and report it to the Commission	Small business
Automotive aftermarket workshop, 17 March 2017	The workshop afforded the Commission an opportunity to hear the complex issues facing the industry, and from multiple industry perspectives.	Business and regulators
Vaal University Council's risk management workshop, 13 June 2016	To raise awareness about the risk of exclusive agreements in procurement by universities	Academic institution
SMME opportunity seminar, 24 May 2016	To raise awareness about how the act benefits SME's	Small business
Joint workshop co-hosted with CRESSE (the European Competition and Regulation European Summer School) October 2016	The workshop represented the Commission's efforts to stay close to the latest international developments in economics and in law with relevance to competition policy and its enforcement	Internal staff
Training sessions		
Bid-rigging training to senior auditors of the Auditor-General SA on 19 to 24 January 2017	To train senior auditors to be able to detect bid rigging in the course of their auditing process	Senior auditors
Conferences		
Annual competition law, economics and policy conference on 6 and 7 October 2016	To keep updated on competition policy developments in South Africa and to create optimal conditions for a stimulating exchange of views	Competition law and economics practitioners, small business and academics
Forums		
Business consultative forum on 28 March 2017	To consult organised business on the Commission's draft guidelines on information exchange between competitors, to share its priority sectors and to highlight the competition risk of information exchange	Business stakeholders
School principals forum, 26 August 2016	The presentation focused on the risk to competition when schools enter into exclusive agreements to procure school uniforms	Schools
Universities' legal practitioners forum, 7 April 2016	To appraise universities on the risk of concluding exclusive agreements	Universities

Communications

The Commission communicates with the public mainly through the website, traditional forms of media and on social media.

The Commission's website remains the gateway to knowledge about the Commission's work and a repository of information for use by all, both within our borders and beyond. The Commission is currently in the process of revamping its website.

The media community remains one of the Commission's key stakeholders as they are the most effective means of informing the public about the Commission's activities. During the period under review, the Commission issued at least 75 media statements. This resulted in numerous regular interviews across print, broadcast and online platforms as well as

general news coverage valued at an advertising value equivalent (AVE) amount of at least R366 million.

This coverage comprises an AVE value of at least R117.5 million for print media coverage; an AVE value of at least R144.3 million for broadcast coverage; and at least R104.8 million for online media coverage.

AVE's are calculated by measuring the column inches (in the case of print), or seconds (in the case of broadcast media) and multiplying these figures by the respective medium's advertising rates (per inch or per second). The resulting number is the equivalent of what you would have paid if you placed an advertisement of that size or for that time period. By assessing media coverage in this way and aggregating all such calculations, a value can be assigned to the coverage received within a specified time period. Social media is one of the fastest growing industries worldwide. The advent of social media is one of the most significant

game changers in the realm of communications since the invention of the mobile phone. When it comes to immediacy, news reporting, marketing, public relations and the art of doing business, social media is king. In the world as we know it, social media has rapidly evolved from a nicety into a necessity. For this reason the Commission is constantly developing its social media platforms in order to: raise awareness about its activities among all stakeholders including the media; to educate, inform and engage with the public; and to inspire dialogue around competition issues in South Africa and beyond.

The Commission, for example, regularly makes use of live streaming for major events, conferences and announcements. This has contributed significantly towards the Commission broadening its audience reach.

Below, is a list of the Commission's social media platforms and the number of followers or subscribers as at 31 March 2017. Non-subscribers frequently view and participate in the Commission's online events as well.



Facebook  
14 814  
friends



Twitter  
7 869  
followers



LinkedIn  
5 485  
connections



SoundCloud  
38  
subscribers



YouTube  
116 subscribers  
79 videos



Instagram  
198  
followers







## THE OFFICE OF THE COMMISSIONER

### KEEPING A BIRD'S EYE VIEW ON THE COMMISSION'S WORK

*For most of the financial year, the OTC consisted of six units: Registry, Communications, Stakeholder Relations, Strategy and Planning, Corporate Governance and International Relations. Alex Kuhn managed the OTC in an acting capacity from June 2016 to mid-March 2017 when she was appointed as its Divisional Manager. Alex continues to oversee International Relations, of which she was formerly the head as well as the Commission's corporate governance and strategy functions, in addition to the overall support to the Commissioner. Being in the OTC also involves many ad-hoc projects – a reality that suits Alex fine as she is a Jack of all trades.*

#### **Q: LOOKING AT THE COMMISSION'S PERFORMANCE REPORT IT WOULD SEEM THERE IS SOME OVERLAP IN THE WORK OF P&R AND THAT OF THE OTC. IS THAT RIGHT? IF SO, WHERE DO YOU DRAW THE LINE?**

The similarities are mainly in the types of events that P&R and the OTC host, but the purpose of these events is different for each of these divisions. In P&R's case, they would host conferences and workshops mainly to build the technical capacity of practitioners in the field, or to deepen understanding about markets and competition economics. In OTC's case, our aim is to raise the Commission's profile and encourage voluntary compliance with the law. This objective drives our content selection and helps us target the appropriate audiences for our message.

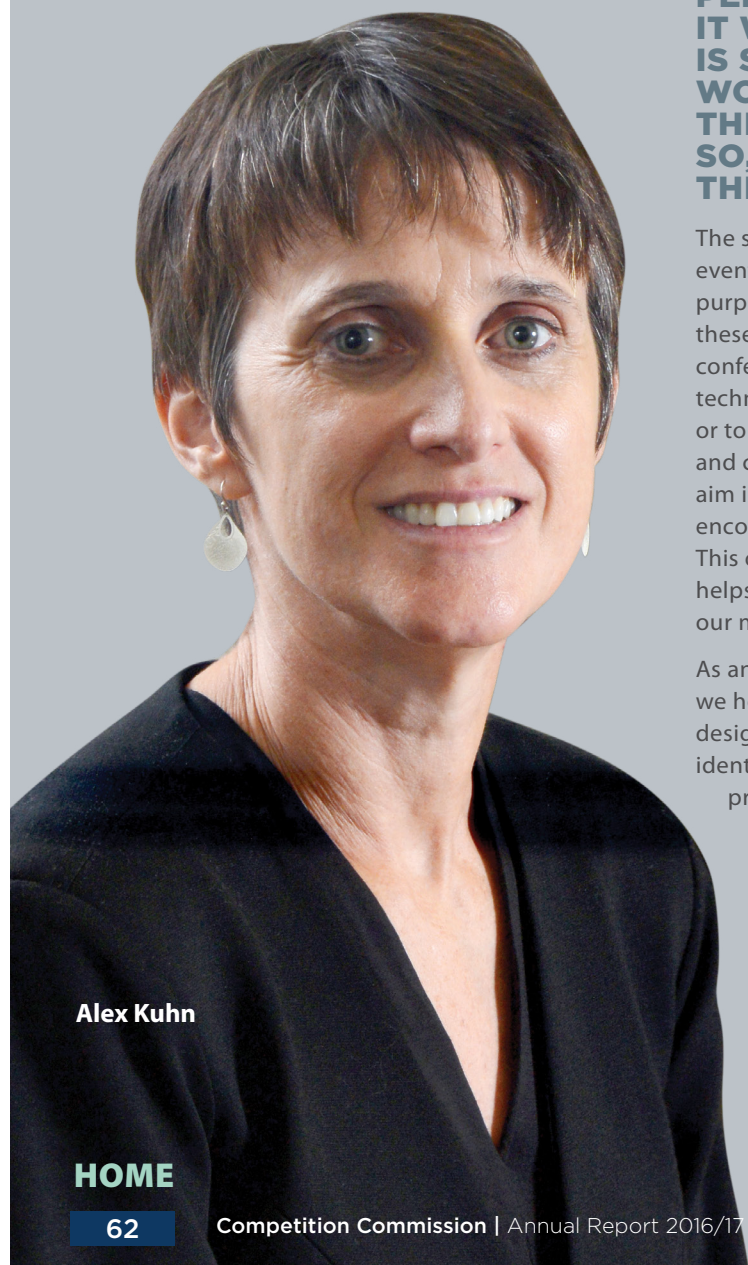
As an example: the bid-rigging workshops we hold with government agencies are designed to help procurement personnel identify collusive tenders in their recruitment process. In this financial year the

Commission received some complaints from government agencies alleging possible collusion in bids they have assessed. This is an indication that our message is filtering through and helping the state root out collusion in its tender system. Our business consultative forums, as another example, are designed to keep the

business sector up to date with competition developments to enable voluntary compliance with the law. This year's business consultative forum, held on 28 March 2017, enabled the Commission to consult organised business on its draft guidelines on information exchange between competing firms, to share its priority sectors and to highlight the competition risk of information exchange.

#### **Q: WITH SUCH A VARIED PORTFOLIO IT MUST BE DIFFICULT TO PULL ONE OR TWO HIGHLIGHTS FROM THE YEAR, BUT CAN YOU THINK OF SOME INITIATIVES OF THIS OFFICE THAT REALLY HELPED TO MOVE THE CAUSE OF COMPETITION FORWARD?**

On the international relations front I think that deepening our relations with the BRICS competition network was an important move for developing competition in South Africa and on the continent. The BRICS network signed a MOU on 19 May 2016 and had their inaugural working group meeting on 27 September 2016. Together these agencies are well positioned to influence the development of competition law in a direction that is sensitive to the call for inclusive growth in a mixed economy. They can do this by establishing the relevance of competition policy in the development agenda; by collaborating to develop competition theories for emerging markets; by conducting joint investigations in competition cases with a



Alex Kuhn

global reach; and by increasing the number of practitioners from emerging markets in this field. Each of the member states is alive to this reality and the important work to move this agenda forward has already begun. The working groups formed under the BRICS competition network have decided which markets they will focus on and how they will conduct their work going forward.

The automotive aftermarkets workshop that the Commission held on 17 March 2017 was a sure step forward in that it gave rise to concrete steps for a more competitive automotive industry that will function better for consumers.

The Commission decided to undertake a comprehensive advocacy drive in the automotive aftermarket sector to address competition concerns, following a large volume of complaints received between 2011 and 2014. A scoping study undertaken by the Commission revealed conduct that creates competition distortions within the industry, brought about primarily by the inherent lack of competition between authorised and unauthorised channels in the primary and secondary markets of the automotive aftermarkets, which raises barriers to entry and increases costs to consumers.

The Commission decided to pursue the case through advocacy. It observed that a similar approach was adopted in various jurisdictions internationally, where industry stakeholders commit to open the market through a code of conduct.

The workshop was attended by over 300 industry delegates, many from varying associations. The workshop afforded the Commission an opportunity to hear the complex issues facing the industry, and from multiple industry perspectives. The Federal Antimonopoly Service of Russia (FAS), by invitation of the Commission, shared its experience in resolving some of the issues flagged with the delegates. The Commission also invited government stakeholders who are involved in the automotive industry.

Following the workshop, the Commission will be convening an industry-representative technical committee to develop a code of conduct which will address the competition matters arising in the market.

### **Q: WHAT ARE SOME OF THE FUTURE PRIORITIES FOR THE OTC?**

Well the OTC is the seat of institutional direction in the Commission and, as such, it is always looking for ways to improve on

delivering its mandate. One of the functions the Commission plans to bring into the OTC in the next financial year is the process for screening complaints. Right now this process is carried out by E&E and the CD, the same divisions that investigate in-depth cases once they've passed the screening phase. We believe bringing this function into the OTC will have two main benefits: (1) it will free up the resources in E&E and the CD to enable them to focus on matters of substance; and (2) it will give the OTC direct oversight over the cases filed in the Commission and the processes surrounding them.

One of our focus areas in the coming year will be to develop a working relationship with our criminal justice system counterparts on anti-cartel activities. The new provisions introducing criminal liability for collusion, and the lack of any kind of rules of engagement between us and the criminal justice system, have the possibility of creating uncertainty amongst our business stakeholders. For this reason we believe it is important to pro-actively engage the criminal justice system.

The OTC is being developed to be the strategic nerve centre of the Commission.

## **BREAKING DOWN BARRIERS** Unlocking Africa's Potential through Vigorous Competition Policy



WORLD BANK GROUP



[HOME](#)

## PART 8: BUILDING A HIGH PERFORMANCE AGENCY



# BUILDING A HIGH PERFORMANCE AGENCY

## SUMMARY OF PERFORMANCE AGAINST TARGETS

5	Targets set	2	Targets met or exceeded	3	Targets not met
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The Commission did not meet its target of having an implemented IT and knowledge management system because inadequate management capacity in year one of this project resulted in continued delays.

The Commission did not meet its target of having a completed re-design of the performance management system, because the poor product delivered by the external service provider resulted in a restart of the process.

The target applies to the 2015/16 financial year: The Commission did not receive a clean audit due to material findings on non-compliance with applicable supply chain management regulations. The Commission received a clean audit for the 2016/17 financial year.

## THE CORPORATE SERVICES FUNCTION

The maintenance of all the operational systems of the Commission lies in the hands of the CSD. This division manages the Commission's human resources and information technology. In this financial year the Commission maintained all the usual corporate services functions, but to fulfil its objective of becoming a high performance agency it prioritised the areas described below.

### Investing in human capital and building a strong culture

The Commission remains vigilant in its quest to attract and retain staff with appropriate skills, talent and profiles. We have initiated a range of human resource interventions aimed at addressing succession planning, career mobility, remuneration, reward and engagement.

During 2015/16, the Commission undertook a culture survey to understand the organisation's culture and values. The outcomes of this process were taken into the current financial year, with the aim of concluding a set of defining values and behaviours for the organisation. The Commission launched its C.O.M.P.E.T.E values in December 2016 and has implemented measures to promote the values across the organisation. We set out these values on page 5.

Capacity building is another critical investment the Commission continued to make in this financial year, having offered staff access to more focused training, multi-skilling opportunities, competency

ladders, mentoring and coaching. Addressing these human capital issues requires a capable human resource function that is able to transcend beyond an administrative role to a strategic one. As part of delivering on this critical organisational need, one of the Commission's targets for the year was a complete re-design of the performance management system. However, we were not able to deliver on this target as the poor product delivered by the external service provider resulted in a restart of the process. The re-design of the Commission's performance management system remains a priority and a new process has already begun to reach this target in the next financial year.

Finally, the effective implementation of the Commission's 2015–2020 strategy requires an appropriate organisational structure. For this reason we targeted a complete re-design of the organisational structure to be done by the end of the financial year. This process has been completed internally and is pending approval by the Minister of Economic Development, as well as a funding allocation from NT.

### Leadership

The Commission recognises that maintaining a consistent team of organisational leaders contributes to stability and increased staff morale in the organisation. In this financial year the Commission filled critical senior positions that had been vacant for some months. These included the position of Company Secretary, Chief

Financial Officer and Deputy Commissioner. The Commission's leadership has remained stable with no executive resignations in the last two years.

## MANAGING OUR FINANCIAL RESOURCES WITH ACCOUNTABILITY

The Commission aims to maintain its strong record of prudent financial resource management and for this reason we included an indicator pertaining to a clean audit as a target in our 2016/17 performance plan.

## INFORMATION TECHNOLOGY AND FACILITIES MANAGEMENT

The security and facilities department is responsible for ensuring a safe and secure environment for all Commission staff and visitors. The department oversees security enabling and guarding services, including access control, within the proper guidelines and procedural responsibilities that will ensure a secure physical environment.

The department also focuses on effectively utilising the limited available space within the Commission to provide its staff with a suitable, safe and comfortable work environment. Regulatory measures around occupational health and safety are effected to ensure that the Commission can provide a safe environment for its staff and visitors.





## THE CORPORATE SERVICES DIVISION

### COVERING ALL SYSTEMS

*Andile Gwabeni is the Divisional Manager of the CSD in the Commission, overseeing its human resource and information technology functions. He joined the Commission in August 2014 as the Acting Manager for Corporate Services for a short period and returned to the role in July 2016, where he assumed the role of CSD Manager in a permanent capacity. Andile looked back on the year to highlight the division's main achievements.*

### **Q: ANDILE, YOU HAVE MAINTAINED A HIGH LEVEL OF OVERSIGHT OVER THE HUMAN RESOURCES FUNCTION OF THE COMMISSION IN THE LAST FEW YEARS. WHAT WERE SOME OF THE IMPORTANT DEVELOPMENTS IN THIS AREA FOR THE YEAR?**

In our 2015–2020 planning we came to realise that the human resources function needed to move from a largely operational line function to a strategic business partner to lend effective support to the managers and the Commission as a whole. For this reason, the Human Resources (HR) Department introduced an HR business partnering model in 2015/16 in which each function was allocated an HR resource to enable HR to focus on both functional and organisation-wide initiatives. We continued this approach in 2016/17.

Concerning performance management, although we had planned to complete our performance management system review by the end of the financial year, we have moved this target to the first quarter of 2017/18 to do a more satisfactory review than what we managed this year.

The Commission is committed to an effective performance management system and to providing the right environment and resources for all employees to perform to their full potential to enable a high-performance culture.

Performance management is a continuous process, performed throughout the year and involving quarterly reviews to ensure that the organisation's strategic priorities and organisational performance against these are aligned and on target. We recognise that performance management is a foundation for organisational success as it impacts on areas such as rewards and recognition, learning and development, succession management and career management, which is why we want to ensure that the performance system we finally adopt is one that takes this pivotal outcome into account.

It is our HR function that oversees the Commission's Graduate Development Programme, employment equity, employee relations and learning and development. Regarding these, I can highlight the following achievements:

- in 2016/17 we recruited 18 graduates, the majority being from historically disadvantaged institutions;



Andile Gwabeni

- we maintained the employment equity targets set by government in the Employment Equity Act, No. 55 of 1998 as amended, and submitted our employment equity report to the Department of Labour. From a gender and national economically active population perspective, the Commission continues to do very well;
- in this year the majority of the Commission's employees were members of the National Education Health and Allied Union. No employees were dismissed during the reporting period;
- we spent R4 263 282.62 on learning and development initiatives, including local training, overseas training and conferences; and

- 35 employees benefited from bursaries and loans offered by the Commission, which amounted to R886 886.86 in total.

**Q: THESE DAYS EVERY ORGANISATION REQUIRES AN EFFICIENT, UP TO DATE ITC FUNCTION TO DELIVER ITS SERVICES EFFECTIVELY. HOW IS THE COMMISSION KEEPING UP WITH THIS NEED?**

The Commission undertook a comprehensive review of its ICT infrastructure in the last financial year. The results highlighted a number of areas that needed improvement as a matter of urgency. These were: (1)

investment in systems that are integrated and fit for purpose for the management of the operations of the Commission; (2) investment in own ICT architecture and therefore reduce reliance on external role-players in key areas of our architecture; and (3) most importantly, improvement of our security architecture.

The Commission has begun a process of acquiring an integrated system that will support our core operations and support functions in a seamless way that enables information-based decision-making. In the next financial year we will improve information security and invest in our ICT infrastructure to modernise our operations and enable the organisation to be more effective in its operations.





# CSD YEAR IN NUMBERS

Diagram 22: Our recruitment footprint for graduate trainees, over three years

Institution	2014/15	2015/16	2016/17
Cape Peninsula University of Technology	1	0	0
Midrand Graduate Institute	1	0	0
Nelson Mandela Metropolitan University	1	0	0
North-West University	3	1	2
Rhodes University	1	0	1
University of South Africa	1	0	0
University of Fort Hare	2	1	1
University of the Free State	1	1	0
University of Johannesburg	1	2	1
University of KwaZulu-Natal	4	0	3
University of Limpopo	4	0	2
University of Pretoria	2	1	2
University of the Western Cape	1	0	0
University of the Witwatersrand	3	1	1
University of Venda	2	1	2
University of Cape Town	0	2	0
Rosebank College	0	0	2
University of Zululand	0	0	1
<b>Total</b>	<b>28</b>	<b>10</b>	<b>18</b>

Diagram 23: Gender profile over five years

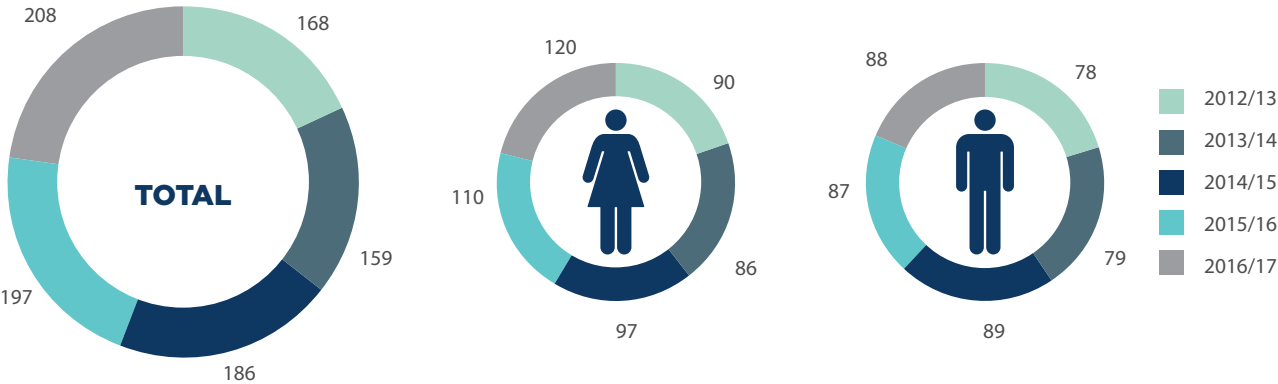


Diagram 24: Race and gender profile as at 31 March 2017

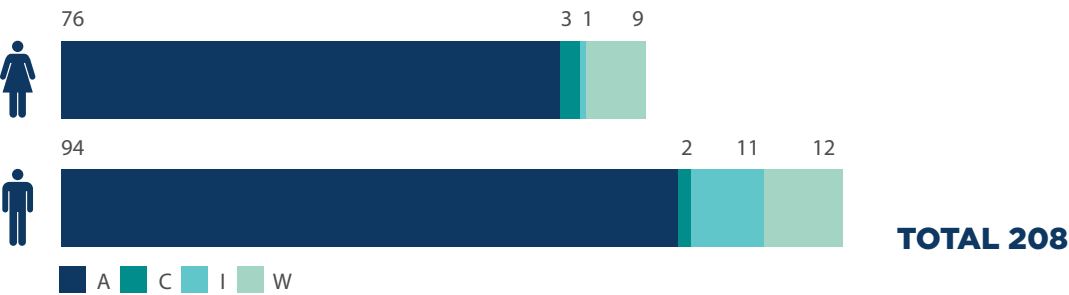


Diagram 25: Staff turnover figures over five years

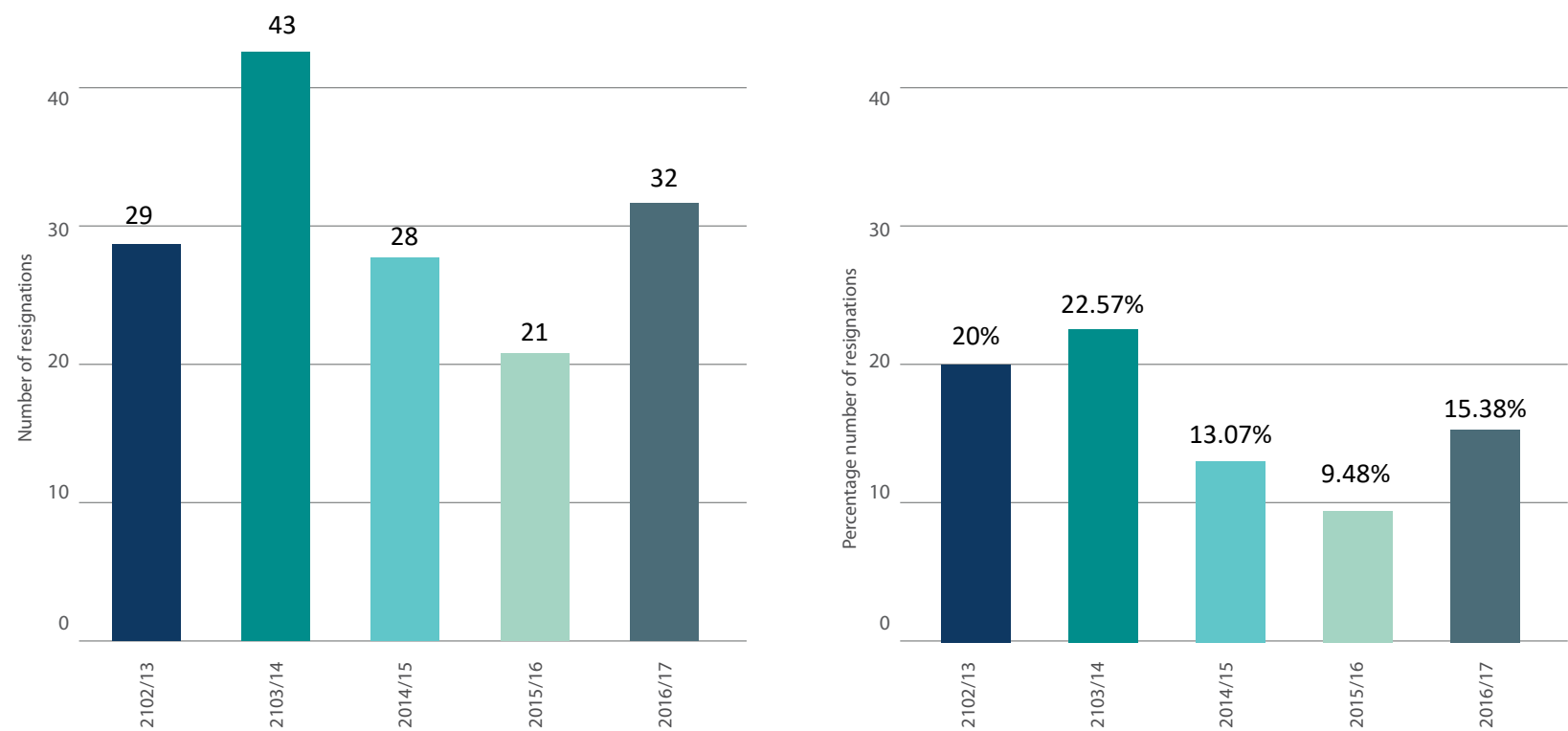
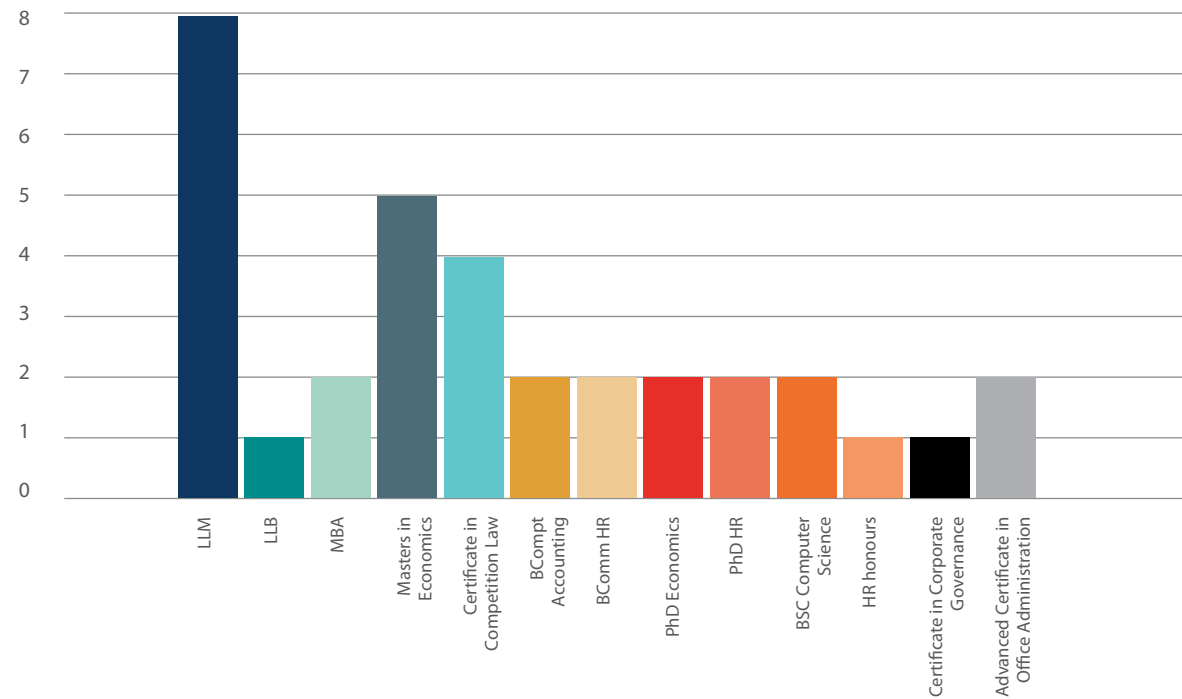


Diagram 26: Study loans registered for 2016/17







**Molatlhegi Kgauwe**

## THE FINANCE DEPARTMENT

### PURSuing 'VISION 2030'

*Molatlhegi Kgauwe was the Commission's Chief Financial Officer (CFO) in the reporting period. Besides controlling the purse strings on a daily basis, Molatlhegi's responsibility is to partner with the Commissioner to make 'Vision 2030' – the Commission's long-term strategic objective – a reality.*

### Q: WHAT WERE THE PRIORITIES OF THE FINANCE DEPARTMENT IN THIS FINANCIAL YEAR?

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

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

### Q: THE COMMISSION IS OFTEN ASKED WHERE THE MONEY FROM THE PENALTIES IT IMPOSES ENDS UP. DOES THE COMMISSION RECEIVE THIS MONEY? AND DOES IT PLAY ANY ROLE IN YOUR BUDGET PLANNING?

The law states clearly that a fine payable in terms of the Act must be paid into the National Revenue Fund, so this is where administrative penalties go. These funds, in turn, form part of the national fiscus which is distributed annually by the State. For good reason, administrative penalties don't play a role in the Commission's financial planning. If they did, the Commission might be incentivised to impose penalties to cover costs. That being said, we do consider administrative penalties imposed as an indicator of our performance as an institution and we use our performance and track record to motivate for budget increases.



**Q: THE ANNUAL FINANCIAL STATEMENTS DETAIL THE COMMISSION'S EXPENDITURE AGAINST REVENUE. CAN YOU GIVE US A SIMPLE BREAKDOWN OF THE COMMISSION'S REVENUE AND EXPENSE ITEMS AND WHAT THE COMMISSION'S EXPENDITURE WAS AT YEAR END?**

The Commission's revenue, which amounted to R289 million for this financial year, comes from four sources: merger filing fees, advisory opinions, a Government grant and interest received. Merger filing fees and advisory opinions came to R56 million for the year. Interest received amounted to R10 million. The balance of our revenue came from Government's quarterly grant.

The year to date expenditure amounted to R370 million, with 49% going towards employee-related costs, as expected, due to nature of the Commission's mandate. The balance relates mainly to operating expenses, which is made up of general expenses and case-related costs.

**Q: FROM THE REPORTS OF OTHER DIVISIONS, ALL INDICATIONS ARE THAT THE COMMISSION'S CASE LOAD IS ON THE RISE, COMPLEXITIES ARE INCREASING AND THE PUBLIC'S EXPECTATIONS GROW MORE AND MORE EACH YEAR. HOW DO YOU INTEND TO KEEP UP FINANCIALLY WITH THESE DEMANDS?**

Well that is the question that occupies much of the Finance Department's time. We have to take

these realities into account and plan well into the future if we are to keep the Commission in a healthy financial position. In the medium term we anticipate our permanent staff complement growing from its current 212 to 342 by 2020/21. We foresee that we'll initiate more market inquiries in this time and we will also see a rise in case related costs over the same period. However, looking at our spending patterns over the last three years, it is becoming clear that we cannot rely on the accumulated surplus to fund our future needs, as this was materially depleted in this financial year. Moreover, we consistently spend more than our government allocation each year. For these reasons we have submitted a new proposed organisational structure to the Minister of Economic Development, along with its budget implications, and will be engaging the Minister on this proposed budget in 2018/19.





## CORPORATE GOVERNANCE

Building a high performance agency requires the Commission to adhere to current standards of corporate governance. The Commissioner's office oversees this function and has established the systems and practices described below to ensure transparency and accountability throughout the organisation.

### Decision-making structures

The Commissioner is the accounting authority of the Commission and is appointed by the Minister of Economic Development. The Commissioner is responsible for general administration; managing and directing the activities of the Commission; supervising staff; and for performing any functions assigned to him in terms of the Act and the Public Finance Management Act, No. 1 of 1999 (PFMA). Mr Tembinkosi Bonakele, after serving as the Acting Commissioner between October 2013 and 19 April 2014, was appointed as the Commissioner on 20 April 2014 for a five-year period, and he performed the duties of Commissioner for the period under review.

### The Commission meeting

The Commission meeting is the highest decision-making structure in relation to case related work of the Commission. The Commission meeting is chaired by the Commissioner, who is assisted by the Deputy Commissioner(s) to carry out the functions of the Commission. The Commission meeting ordinarily meets on a weekly basis with the Chief Legal Counsel, Chief Economist and Divisional Managers responsible for dealing with the statutory, case-related work. They also perform an advisory role to the Commissioners.

The Commission meeting held 41 meetings during the period under review. Its core functions are to receive recommendations and to make decisions on cases, as well as provide guidance and direction in the conduct of investigations. The Commissioners receive updates on important cases, adopt policies and procedures regarding the conduct of cases, receive reports and give direction on advocacy

and communication relating to the work of the Commission, as prescribed by the Act. During the reporting period, the Commissioners consisted of the Commissioner and one Deputy Commissioner.

### The Executive Committee and sub-committees

The Commission's Executive Committee (EXCO) is chaired by the Commissioner and comprises the Deputy Commissioner and the Divisional Managers, including the Chief Financial Officer. The Heads of Department (Strategy and Planning, Human Resources, Information Technology, Stakeholder Relations, Communications, International Relations and Registry) form part of the extended EXCO and participate in EXCO meetings by invitation of the Commissioner. EXCO advises the Commissioner in decision-making on the administrative and operational aspect of his functions.

EXCO held ten ordinary meetings and six special meetings during the period under review.

The key functions of EXCO are to undertake strategic and business planning, monitor the implementation of strategic and business plans, and to mobilise and allocate financial and human resources. EXCO also plays an oversight role over the management of human resources, information technology, security and facilities management, as well as risk management. It is responsible for approving policies relating to operations, provides leadership and sets the tone for the overall operations of the Commission. The company secretary advises EXCO on compliance with relevant legislation and regulations.

Performance against targets is discussed on a quarterly basis at the EXCO meetings to monitor expenditure, activities and progress. The Commission submits quarterly reports to the EDD in terms of the PFMA. EXCO has established five committees to assist it in performing its oversight function and to provide it with guidance on matters falling within the terms of reference for the committees, as described below.

### *The Management Committee*

EXCO is assisted by the Management Committee, which is chaired by the Deputy Commissioner and meets on a biannual basis. The committee comprises all management of the Commission, including members of EXCO and a layer of management below EXCO, which is representative of all functions, including Heads of Department. The Committee held three meetings during the financial year.

The role of the Management Committee is to review and confirm the annual performance plan of the Commission, to approve business plans for respective functions, and to review organisational and functional performance. It provides strategic and operational oversight over investigations to assess progress, review investigative strategies and to complement existing functional and inter-divisional structures.

### *IT Committee*

The IT Committee comprises selected EXCO members and is tasked with overseeing the delivery of strategic IT projects that support the business. It is also responsible for developing and reviewing IT policies and ensuring that these are effectively implemented. The committee held three meetings during the financial year.

### *Finance Committee*

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

- recommending the annual organisational budget to EXCO for adoption;
- ensuring the organisational budget is aligned with the Commission's strategic plan and government priorities;
- monitoring and reporting on the Commission's financial performance against organisational and divisional priorities and approved budgets;
- formulating strategies for improving the Commission's financial position, including the approval and monitoring of organisational budget processes;

- review the interim and annual financial statements for recommendation to the audit and risk committee; and
- monitoring and reviewing under- and over-expenditure.

The committee held three meetings during the period under review.

#### *Human Resources Committee*

The HR Committee comprises selected EXCO members and is tasked with oversight over the implementation of the HR strategy and ensuring that policies are developed, implemented and reviewed. The committee met five times during the period under review.

#### *Risk and Governance Committee*

The Risk and Governance Committee comprises selected EXCO members and representatives from respective functions. It is tasked with oversight over governance and risk management and is chaired by the Deputy Commissioner. The committee met three times during the period under review.

### **Compliance with legislation**

#### *Public Finance Management Act, 1999 and National Treasury Regulations*

In accordance with the PFMA and National Treasury Regulations, the Commission

submitted the following documents to the EDD for approval during the period under review:

- request to retain surpluses generated as at 31 March 2017;
- quarterly reports on the Commission's expenditure, budget variance, activities and performance against set targets;
- monthly expenditure reports;
- annual performance plan for 2016/17; and
- annual report.

#### *Skills Development Act, 1998*

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

#### *Skills Development Levies Act, 1999*

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

#### *Employment Equity Act, 1998*

The Commission submitted its employment equity report.

#### *Unemployment Insurance Act, 2001*

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

#### *Occupational Health and Safety Act, 1993*

During the year under review, the Commission took all reasonable precautions to ensure a safe working environment and conducted its business with due regard for environmental issues.

#### *Income Tax Act, 1962*

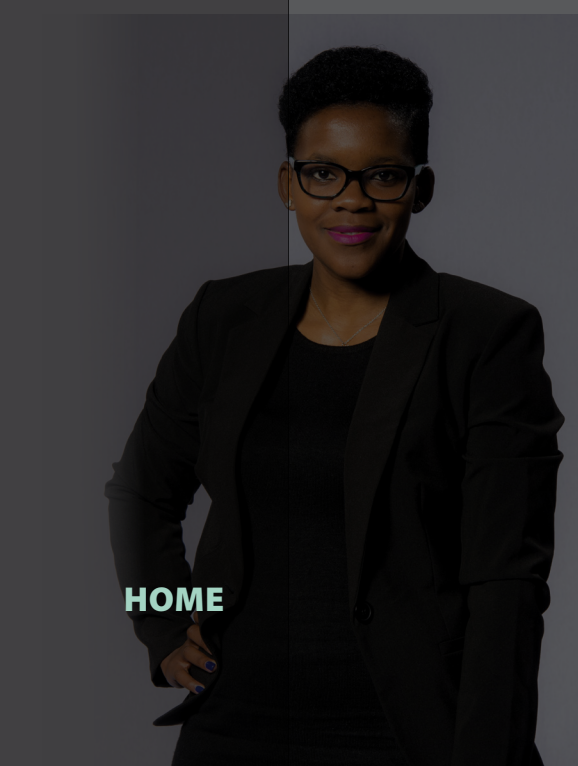
SARS exempted the Commission in terms of Section 10(1)(A)(i) of the Income Tax Act, 1962.

#### *Levies and taxes*

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

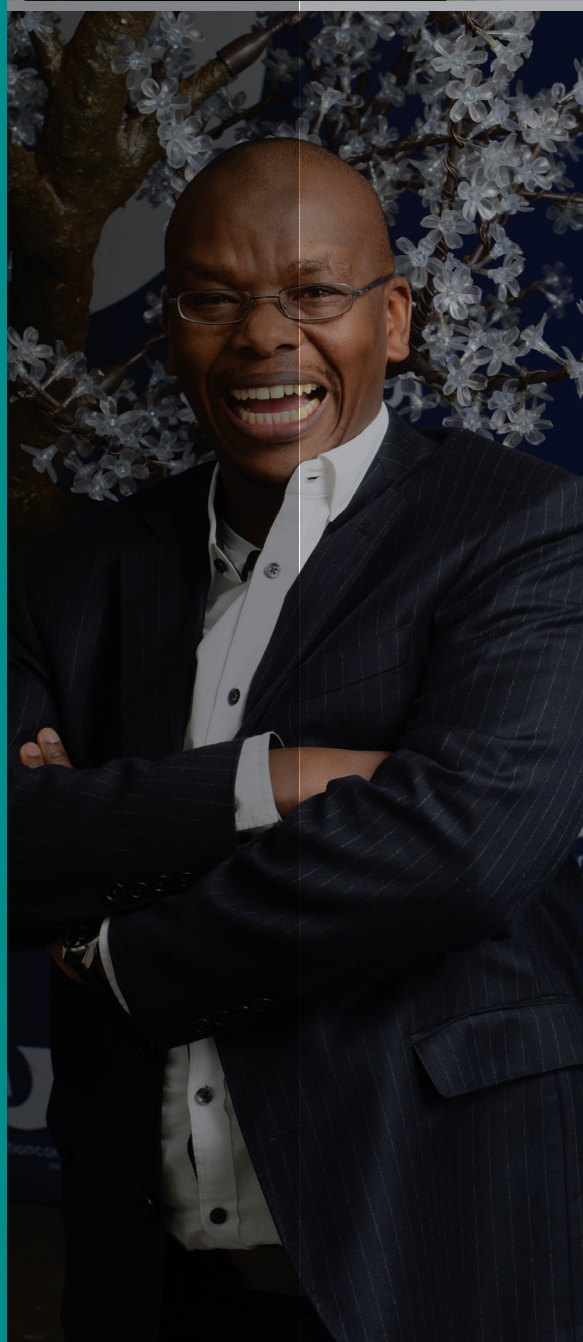
- Skills development levy;
- Workmen's compensation;
- Unemployment Insurance Fund; and
- Pay-As-You-Earn (PAYE).





HOME

## PART 9: ANNUAL FINANCIAL STATEMENTS



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## ACCOUNTING AUTHORITY'S RESPONSIBILITIES AND APPROVAL

The Accounting Authority is required by the Public Finance Management Act (No. 1 of 1999), to maintain adequate accounting records and is responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is the responsibility of the members to ensure that the annual financial statements fairly present the state of affairs of the entity as at the end of the financial year and the results of its operations and cash flows for the period then ended. The external auditors are responsible for reporting on the fair presentation of the financial statements and were given unrestricted access to all financial records and related data.

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

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

The Accounting Authority is responsible for the system of internal financial control established by the entity and place considerable importance on maintaining a strong control environment. To enable the Accounting Authority to meet these responsibilities, system for internal control aimed at reducing the risk of error in a cost effective manner were put in place. The Standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the entity and all employees are required to maintain the highest ethical standards in ensuring the entity's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the entity is on identifying, assessing, managing and monitoring all known forms of risk across the entity. While operational risk cannot be fully eliminated, the entity endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

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

The Accounting Authority reviewed the entity's cash flow forecast for the year ahead, in the light of this review and the current financial position, it is satisfied that the entity has access to adequate resources to continue in operational existence for the foreseeable future.

The entity is wholly dependent on the Economic Development Department for continued funding of operations. The annual financial statements are prepared on the basis that the entity is a going concern and that the Competition Commission has neither the intention nor the need to liquidate or curtail materially the scale of the entity.

The external auditors are responsible for independently reviewing and reporting on the entity's annual financial statements.

The annual financial statements have been prepared on the going concern basis, and were approved by the Accounting Authority on 31 May 2017 and were signed on its behalf by:



Mr T Bonakele  
Commissioner

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

## REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

### Opinion

1. I have audited the financial statements of the Competition Commission set out on pages 82 to 111, which comprise the Statement of Financial Position as at 31 March 2017, and the 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 Commission as at 31 March 2017, and its financial performance and cash flows for the year then ended in accordance with 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).

### 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 my report.
4. I am independent of the public entity in accordance with the International Ethics Standards Board for Accountants' Code of ethics for professional accountants (IESBA code) together with 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 code.
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 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 Competition Commission'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 there is an intention either to liquidate the public entity or to cease operations, or there is 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 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 the 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 the 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 material findings on the reported performance information against predetermined objectives for selected programmes presented in the annual performance report. I performed procedures to identify findings but not to gather evidence to express assurance.

11. My procedures address 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 also did 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 programmes presented in the annual performance report of the public entity for the year ended 31 March 2017:

Programmes	Pages in the annual performance report
Legal Services	113
Mergers and Acquisitions	113
Cartels	113
Enforcements and Exemptions	113

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 the selected programmes.

### Other matter

15. I draw attention to the matter below. My opinion is not modified in respect of this matter.



## Achievement of planned targets

16. Refer to the annual performance report on pages 113 – 114 for information on the achievement of planned targets for the year.

## REPORT ON AUDIT OF COMPLIANCE WITH LEGISLATION

### Introduction and scope

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

### OTHER INFORMATION

19. The Competition Commission's 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 thereon and those selected programmes presented in the annual performance report that have been specifically reported on in the auditor's report.

20. 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.
21. 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 programmes presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on the work I have performed on the other information obtained prior to the date of this auditor's report, I conclude that there is a material misstatement of this other information, I

am required to report that fact. I have nothing to report in this regard.

## INTERNAL CONTROL DEFICIENCIES

22. 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 thereon. I did not identify any significant deficiencies in internal control.

*Auditor - General*

Pretoria

31 July 2017



AUDITOR-GENERAL  
SOUTH AFRICA

*Auditing to build public confidence*

## ANNEXURE – AUDITOR-GENERAL'S RESPONSIBILITY FOR THE AUDIT

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements, and the procedures performed on reported performance information for selected programmes and on the public entity's compliance with respect to the selected subject matters.

### Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in the auditor's report, I also:
  - identify and assess the risks of material misstatement of the financial statements whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
  - obtain an understanding of internal control relevant to the audit in order to design

audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the public entity's internal control.

- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority.
- conclude on the appropriateness of the Accounting Authority's use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Competition Commission's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify the opinion on the financial statements. My conclusions are based on the information available to me at the date of the auditor's

report. However, future events or conditions may cause a public entity to cease to continue as a going concern.

- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

### Communication with those charged with governance

3. I communicate with the Accounting Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also confirm to the Accounting Authority that I have complied with relevant ethical requirements regarding independence, and communicate all relationships and other matters that may reasonably be thought to have a bearing on my independence and here applicable, related safeguards.

# REPORT OF THE AUDIT AND RISK COMMITTEE

We are pleased to present our report for the financial year ended 31 March 2017.

## AUDIT AND RISK COMMITTEE MEMBERS AND ATTENDANCE

The Audit and Risk Committee of the Competition Commission (the "Committee") consists of the members listed hereunder and is required to meet at least 4 times per annum as per its approved terms of reference. During the year under review 6 meetings were held. The Committee's meetings have regularly included the internal auditors and representatives from the Auditor-General South Africa.

Name of member	Number of meetings attended	Number of meetings held
Mr V Nondabula	6	6
Ms M Ramataboe	6	6
Mr S Gounden	5	6
Mr N Mhlongo	4	6

## AUDIT AND RISK COMMITTEE RESPONSIBILITY

The Committee reports that it has complied with its responsibilities arising from section 51(1)(a) of the PFMA and Treasury Regulation 27.1. The Committee also reports that it has adopted appropriate formal terms of reference as its Charter, has regulated its affairs in compliance with this Charter and has discharged all its responsibilities as contained therein.

## THE EFFECTIVENESS OF INTERNAL CONTROL

The system of internal control is designed to provide cost-effective assurance that assets are safe-guarded and that liabilities and working capital are effectively managed. In line with the PFMA requirements, Internal Audit and the Auditor-General South Africa (AGSA) provide the Audit and Risk Committee as well as management with assurance that internal controls are adequate and effective. This is achieved by means of evaluating the effectiveness of the management strategies of identified risks, as well as the identification of corrective actions and suggested enhancements to the controls and processes.

Through the reports from various assurance providers, the system of internal control was effective. However, AGSA, on assessing the entity's financial viability, also identified a significant decrease in cash on hand from the prior years, a negative cash flow from operating activities, as well as a significant increase in the deficit from the prior period. We have noted that management

is putting some strategies and processes in place to address these challenges, and the Committee will be monitoring their implementation very closely.

## The quality of in year management and monthly/quarterly reports

The quality of management and monthly/quarterly reports submitted in terms of the PFMA was adequate.

## EVALUATION OF ANNUAL FINANCIAL STATEMENTS

The Audit and Risk Committee has:

- reviewed and discussed the audited annual financial statements included in the annual report, with the AGSA and the Accounting Authority;
- reviewed the entity's performance information;
- reviewed the Auditor-General of South Africa's management letter and management's responses thereto;
- reviewed the entity's compliance with legal and regulatory provisions; and
- reviewed the adjustments resulting from the audit.

The Committee would like to congratulate the Commission on achieving a clean audit outcome.

## INTERNAL AUDIT

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

## AUDITOR-GENERAL OF SOUTH AFRICA

The Committee has met with the AGSA to ensure that there are no unresolved issues. The Committee concurs and accepts the AGSA's conclusions on the annual financial statements and is of the opinion that the audited financial statements be accepted and read together with the report of the AGSA.



**V Nondabula**

Chairperson of the Audit and Risk Committee  
31 July 2017



# ACCOUNTING AUTHORITY'S REPORT

## 1. NATURE OF BUSINESS

The Commission derives its mandate from the Act (No. 89 of 1998), as amended. The main objectives, as determined by the Act, are the following:

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

## 2. FINANCIAL OVERVIEW

### 2.1 Financial highlights

	2017 R'000	2016 R'000
Revenue	279 424	283 278
Interest received	10 174	12 021
<b>Total revenue</b>	<b>289 598</b>	<b>295 299</b>
<b>Total expenditure</b>	<b>(367 988)</b>	<b>(294 097)</b>
<b>Net deficit</b>	<b>(78 568)</b>	<b>(1 202)</b>
<b>Total assets</b>	<b>117 744</b>	<b>273 860</b>
<b>Total liabilities</b>	<b>(85 139)</b>	<b>(162 687)</b>
<b>Number of merger cases notified and recognised as revenue</b>	<b>412</b>	<b>389</b>

### 2.2. Penalties levied and collected

Penalties levied against case respondents in 2017 amounted to R1 628 million (2016: R338 million).

In 2017, the Commission collected on behalf of the Economic Development Department, R176 million (2016: R763 million) in penalties which were transferred to the Economic Development Department.

### 2.3. Total Revenue

Revenue decreased by R6 million from R295 million in 2016 to R289 million in 2017 which represents a decrease of 2%. Income from the grant (government allocation and transfers) decreased by 3% from R228 million in 2016 to R221 million in 2017. Income from filing fees increased by 4% from R55 million in 2016 to R57 million in 2017 as a result of an increase in the number of cases filed.

Interest earned on temporarily available funds decreased by 15% due to less funds in the bank than in the previous year.

## 2.4. Expenditure

Expenditure increased by R71 million from R296 million in 2016 to R367 million in 2017 reflecting an overall increase of 24%. The increase relates mainly to the expenditure incurred on employee costs and case related costs.

## 2.5. Financial Performance

The Commission incurred a deficit of R78 million (2016: R1.2 million deficit) for the current year.

The approved allocation and transfer from government for the year 2016/17, income from filing fees and any accumulated surplus that the Commission is allowed to retain will ensure that the Commission is able to continue as a going concern.

The Commission carried forward an approved surplus of R109.8 million of which R96 million represented cash. This has been significantly depleted in the 2016/17 financial year. In the current year the Commission carries forward an accumulated surplus of R32 million (cash surplus of R13 million after deducting current liabilities). An application to retain the remaining surplus will be made to NT as the funds are required for the market inquiry into private healthcare, the retail sector market inquiry, and integrated case management business system.

## 3. ACCOUNTING AUTHORITY

The Accounting Authority of the Competition Commission is Mr T Bonakele.

## 4. CHANGES IN NATURE OF PROPERTY, PLANT AND EQUIPMENT

No major changes in the nature of property, plant and equipment or changes in the policy relating to the use of property, plant and equipment took place during the year under review. The useful life of the assets have been reviewed at year end and changes were made thereto.

## 5. MATERIALITY FRAMEWORK

The Commission's business is such that it is not capital intensive and expenditure was regarded as the best indicator of business activity and therefore a percentage of budgeted expenditure was used in determining the materiality figure.

Material facts and losses of a quantitative nature are disclosed when the materiality figure is exceeded, or if they arose through criminal conduct, financial misconduct, irregular expenditure and fruitless and wasteful expenditure as defined by the PFMA. Any disposal of significant assets when overall operational functions of the Commission changes, are disclosed.

## 6. EVENTS SUBSEQUENT TO FINANCIAL POSITION DATE

There are no events that occurred subsequent to the Statement of Financial Position date.

## 7. SECRETARY

The Company Secretary is Mr M Msibi.

Business address	<b>the dti</b> campus	Postal address	Private Bag X23
	Building C: Mulayo		Lynnwood Ridge
	77 Meintjies Street		0040
	Sunnyside		Tshwane
	Tshwane		



# STATEMENT OF FINANCIAL POSITION

AS AT 31 MARCH 2017

	Note(s)	2017 R'000	2016 Restated* R'000
<b>Assets</b>			
<b>Current Assets</b>			
Inventories	2	481	303
Receivables from exchange transactions	3	1 008	3 074
Penalties	33	13 336	86 441
Cash and cash equivalents	4	82 188	171 024
		<b>97 013</b>	<b>260 842</b>
<b>Non-current Assets</b>			
Property, plant and equipment	5	17 650	10 485
Intangible assets	6	3 081	2 533
		<b>20 731</b>	<b>13 018</b>
<b>Total Assets</b>		<b>117 744</b>	<b>273 860</b>
<b>Liabilities</b>			
<b>Current Liabilities</b>			
Finance lease obligation	7	866	100
Payables from exchange transactions	8	82 258	162 513
		<b>83 124</b>	<b>162 613</b>
<b>Non-current Liabilities</b>			
Finance lease obligation	7	1 670	74
Provisions	36	345	-
		<b>2 015</b>	<b>74</b>
<b>Total Liabilities</b>		<b>85 139</b>	<b>162 687</b>
<b>Net Assets</b>		<b>32 605</b>	<b>111 173</b>
Accumulated surplus		32 605	111 173

# STATEMENT OF FINANCIAL PERFORMANCE

FOR THE YEAR ENDED 31 MARCH 2017

	Note(s)	2017 R'000	2016 Restated* R'000
<b>Revenue</b>			
Fee income		57 105	55 051
Other income	11	736	140
Interest received – investment		10 174	12 021
Government grants and subsidies	13	221 583	228 087
<b>Total revenue</b>		<b>289 598</b>	<b>295 299</b>
<b>Expenditure</b>			
Employee related costs	14	(178 931)	(155 718)
Administrative expenses	15	(6 428)	(5 174)
Depreciation and amortisation		(2 239)	(1 308)
Finance costs	16	(177)	(89)
Lease rentals on operating lease		(19 838)	(15 236)
Operating expenses	17	(160 375)	(118 933)
<b>Total expenditure</b>		<b>(367 988)</b>	<b>(296 458)</b>
<b>Operating deficit</b>		<b>(78 390)</b>	<b>(1 159)</b>
Loss on disposal of assets	5	(178)	(43)
<b>Deficit for the year</b>		<b>(78 568)</b>	<b>(1 202)</b>



# STATEMENT OF CHANGES IN NET ASSETS

FOR THE YEAR ENDED 31 MARCH 2017

	Accumulated surplus R'000	Total net assets R'000
Opening balance as previously reported	113 839	113 839
Adjustments		
Correction of errors	(1 464)	(1 464)
<b>Restated Balance at 01 April 2015</b>	<b>112 375</b>	<b>112 375</b>
Changes in net assets		
Deficit for the year	(1 202)	(1 202)
Deficit for the year as previously stated	(1 202)	(1 202)
<b>Restated Balance at 01 April 2016</b>	<b>111 173</b>	<b>111 173</b>
Deficit for the year	(78 568)	(78 568)
Total changes	(78 568)	(78 568)
<b>Balance at 31 March 2017</b>	<b>32 605</b>	<b>32 605</b>

# CASH FLOW STATEMENT

FOR THE YEAR ENDED 31 MARCH 2017

	Note(s)	2017 R'000	2016 Restated* R'000
<b>Cash flows from operating activities</b>			
<b>Receipts</b>		56 588	55 051
Sale of goods and services		221 583	228 087
Grants		10 174	12 021
Interest income		731	140
Other receipts		289 076	295 299
<b>Payments</b>			
Employee costs		(178 931)	(155 718)
Suppliers		(191 001)	(96 745)
Finance costs		(177)	(89)
		(370 109)	(252 552)
<b>Net cash flows from operating activities</b>	18	<b>(81 033)</b>	<b>42 747</b>
<b>Cash flows from investing activities</b>			
Purchase of property, plant and equipment	5	(6 610)	(2 999)
Purchase of other intangible assets	6	(985)	(237)
<b>Net cash flows from investing activities</b>		<b>(7 595)</b>	<b>(3 236)</b>
<b>Cash flows from financing activities</b>			
Finance lease payments		(208)	(589)
<b>Net increase in cash and cash equivalents</b>		<b>(88 836)</b>	<b>38 922</b>
Cash and cash equivalents at the beginning of the year		171 024	132 102
<b>Cash and cash equivalents at the end of the year</b>	4	<b>82 188</b>	<b>171 024</b>



# STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

FOR THE YEAR ENDED 31 MARCH 2017

	Approved budget	Adjustments	Final budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
	R'000	R'000	R'000	R'000	R'000	
<b>Statement of Financial Performance</b>						
<b>Revenue</b>						
Revenue from exchange transactions						
Fee income	55 331	-	55 331	57 105	1 774	37.1
Other income	778	-	778	736	(42)	
Interest received – investment	8 000	-	8 000	10 174	2 174	37.2
<b>Total revenue from exchange transactions</b>	<b>64 109</b>	<b>-</b>	<b>64 109</b>	<b>68 015</b>	<b>3 906</b>	
Revenue from non-exchange transactions						
<b>Transfer revenue</b>						
Government grants and subsidies	221 583	-	221 583	221 583	-	
<b>Total revenue</b>	<b>285 692</b>	<b>-</b>	<b>285 692</b>	<b>289 598</b>	<b>3 906</b>	
<b>Expenditure</b>						
Personnel	(181 767)	-	(181 767)	(178 931)	2 836	37.3
Administration	(7 159)	-	(7 159)	(6 428)	731	
Depreciation and amortisation	(3 910)	-	(3 910)	(2 239)	1 671	37.4
Finance costs	-	-	-	(177)	(177)	
Lease rentals on operating lease	(22 905)	-	(22 905)	(19 838)	3 067	37.5
Operating expenses	(162 744)	-	(162 744)	(160 375)	2 369	37.6
<b>Total expenditure</b>	<b>(378 485)</b>	<b>-</b>	<b>(378 485)</b>	<b>(367 988)</b>	<b>10 497</b>	
<b>Operating deficit</b>	<b>(92 793)</b>	<b>-</b>	<b>(92 793)</b>	<b>(78 390)</b>	<b>14 403</b>	
Loss on disposal of assets and liabilities	-	-	-	(178)	(178)	
<b>Deficit</b>	<b>(92 793)</b>	<b>-</b>	<b>(92 793)</b>	<b>(78 568)</b>	<b>14 225</b>	
<b>Actual amount on comparable basis as presented in the budget and actual comparative statement</b>	<b>(92 793)</b>	<b>-</b>	<b>(92 793)</b>	<b>(78 568)</b>	<b>14 225</b>	

# ACCOUNTING POLICIES

## 1. BASIS OF PREPARATION

The annual financial statements have been prepared in accordance with the Standards of Generally Recognised Accounting Practice (GRAP), issued by the Accounting Standards Board in accordance with Section 91(1) of the Public Finance Management Act (No. 1 of 1999).

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost conventions as the basis of measurement, unless specified otherwise. They are presented in South African Rand.

A summary of the significant accounting policies, which have been consistently applied in the preparation of these annual financial statements, are disclosed below.

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. Critical accounting estimates and assumptions include:

#### Provisions

Provisions were raised and management determined an estimate based on the information available.

#### Depreciation and amortisation

During each financial year, management reviews the assets within property, plant and equipment and intangible assets to assess whether the useful lives and residual values applicable to each asset are appropriate.

### 1.2 Property, plant and equipment

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 of the item can be measured reliably.

Property, plant and equipment are stated at historical cost less accumulated depreciation. Depreciation is calculated on a straight-line basis at rates

considered appropriate to reduce the cost of the assets less their residual value over the estimated useful life. Useful life, depreciation policy and residual value are assessed annually.

There has been no change in the useful live, depreciation policy and residual value in the current year.

The period over which various categories of assets are depreciated is detailed below:

Item	Depreciation method	Average useful life
Furniture and fixtures	Straight-line	12–18 years
Motor vehicles	Straight-line	5–8 years
Office equipment	Straight-line	8–17 years
IT equipment		
- Computer equipment	Straight-line	3–17 years
- Servers	Straight-line	5–9 years
- GPS	Straight-line	3–14 years
Leasehold Improvements	Straight-line	3 years
Cellphone	Straight-line	3 years
Leased assets	Straight-line	Period of lease

The residual value, and the useful life and depreciation method of each asset are reviewed at the end of each reporting date. If the expectations differ from previous estimates, the change is accounted for as a change in accounting estimate. It has been the practice of the Commission to donate all assets except motor vehicles which have reached the end of the useful lives therefore residual values exist only for motor vehicles.

Reviewing the useful life of an asset on an annual basis does not require the entity to amend the previous estimate unless expectations differ from the previous estimate.

Each part of an item of property, plant and equipment with a cost that is significant in relation to the total cost of the item is depreciated separately.

The depreciation charge for each period is recognised in surplus or deficit unless it is included in the carrying amount of another asset.

Items 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.



Impairment losses are determined as the excess of the carrying amount over the recoverable service amount and are charged to surplus or deficit.

1.3 Intangible assets

An asset is identifiable if it:

- is 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.

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.

Intangible assets are initially recognised at cost.

An intangible asset acquired through a non-exchange transaction, the cost shall be its fair value as at the date of acquisition.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date.

Internally generated brands, mastheads, publishing titles, customer lists and items similar in substance are not recognised as intangible assets.

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

Item	Depreciation method	Average useful life
Computer software, other	Straight-line	3–14 years

Intangible assets are derecognised:

- on disposal; or
- when no future economic benefits or service potential are expected from its use or disposal.

Impairment losses are determined as the excess of the carrying amount over the recoverable service amount and are charged to surplus or deficit.

Intangible assets is subsequently measured at cost less accumulated amortisation.

1.4 Financial instruments

Initial recognition and measurement

Financial assets are recognised in the Commission’s Statement of Financial Position when the Commission becomes a party to the contractual provisions of an instrument.

Financial instruments are initially recognised using the trade date accounting method.

Financial assets are classified as financial assets at fair value through surplus or deficit, loans and receivables or held to maturity investments, as appropriate. When financial assets are initially recognised they are measured at fair value.

The Commission determines the classification of its financial assets on initial recognition and, where allowed and appropriate, re-evaluates this designation at each financial year-end.

Impairment of financial assets

At each end of the reporting period the entity assesses all financial assets, other than those at fair value through surplus or deficit, to determine whether there is objective evidence that a financial asset or group of financial assets has been impaired.

Impairment gains/losses are recognised in surplus or deficit.

Impairment losses are reversed when an increase in the financial asset’s recoverable amount can be related objectively to an event occurring after the impairment was recognised, subject to the restriction that the carrying amount of the financial asset at the date that the impairment is reversed shall not exceed what the carrying amount would have been had the impairment not been recognised.

Reversals of impairment losses are recognised in surplus or deficit.

Assets carried at amortised cost

In relation to receivables a provision for impairment is made when there is objective evidence (such as the probability of insolvency or significant financial difficulties of the debtor) that the Commission will not be able to collect all the amounts due under the original terms of the invoice. The carrying amount of the receivable is reduced through use of an allowance account. Impaired receivables are derecognised when they are assessed as uncollectible.

Receivables from exchange transactions

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. After initial measurement loans and receivables are carried at amortised cost using the effective interest method less any allowance for impairment. Gains and losses are recognised in surplus or deficit when the receivables are derecognised or impaired, as well as through the amortisation process.

Trade and other receivables are classified as loans and receivables and due to their short-term nature, the amortised cost approximates their fair value.

### **Payables from exchange transactions**

Trade payables are initially measured at fair value, and are subsequently measured at amortised cost, using the effective interest rate method and due to their short-term nature, the amortised cost approximates their fair value.

After initial recognition, payables are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in surplus and deficit when the liabilities are derecognised as well as through the amortisation process.

### **Cash and cash equivalents**

Cash and cash equivalents in the Statement of Financial Position comprise cash at banks and on hand and cash equivalents with an original maturity of three months or less. For the purpose of the Cash Flow Statement, cash and cash equivalents consist of cash and cash equivalents as defined above, net of outstanding bank overdrafts.

Cash and cash equivalents are initially recognised at fair value and subsequently measured at amortised cost and due to their short-term nature, the amortised cost approximates their fair value.

## **1.5 Leases**

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

When a lease includes both land and building elements, the entity assesses the classification of each element separately.

### **Finance leases**

Finance leases are recognised as assets and liabilities in the Statement of Financial Position at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the Statement of Financial Position as a finance lease obligation.

Leases of assets are classified as finance leases whenever the terms of lease transfer substantially all the risks and rewards of ownership to the lessee.

### **Operating leases – Lessee**

Leases under which the lessor effectively retains the risks and benefits of ownership are classified as operating leases. Obligations incurred under operating leases are charged to the Statement of Financial Performance in equal instalments over the period of the lease. Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability. Any contingent rents are expensed in the period they are incurred.

## **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.

Inventories are measured at the lower of cost and current replacement cost where they are held for;

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

Net realisable value is the estimated selling price in the ordinary course of operations less the estimated costs of completion and the estimated costs necessary to make the sale, exchange or distribution.

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

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

The cost of inventories of items that are not ordinarily interchangeable and goods or services produced and segregated for specific projects is assigned using specific identification of the individual costs.

The cost of inventories is assigned using the first-in, first-out (FIFO) formula. The same cost formula is used for all inventories having a similar nature and use to the entity.

## **1.7 Employee benefits**

### **Short-term employee benefits**

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid vacation leave and sick leave, bonuses, and non-monetary benefits such as medical care), are recognised in the period in which the service is rendered and are not discounted.

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 expected cost of surplus sharing and bonus payments is recognised as an expense when there is a legal or constructive obligation to make such payments as a result of past performance.



## 1.8 Provisions and contingencies

Provisions are recognised when:

- the entity has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement is recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation.

Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense.

A provision is used only for expenditures for which the provision was originally recognised.

Provisions are not recognised for future operating deficits.

If a contract is onerous, the present obligation (net of recoveries) under the contract is recognised and measured as a provision.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note 25.

A financial guarantee contract is a contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a debt instrument.

Loan commitment is a firm commitment to provide credit under pre-specified terms and conditions.

The entity recognises a provision for financial guarantees and loan commitments when it is probable that an outflow of resources embodying

economic benefits and service potential will be required to settle the obligation and a reliable estimate of the obligation can be made.

Determining whether an outflow of resources is probable in relation to financial guarantees requires judgement. Indications that an outflow of resources may be probable are:

- financial difficulty of the debtor;
- defaults or delinquencies in interest and capital repayments by the debtor;
- breaches of the terms of the debt instrument that result in it being payable earlier than the agreed term and the ability of the debtor to settle its obligation on the amended terms; and
- a decline in prevailing economic circumstances (e.g. high interest rates, inflation and unemployment) that impact on the ability of entities to repay their obligations.

Where a fee is received by the entity for issuing a financial guarantee and/or where a fee is charged on loan commitments, it is considered in determining the best estimate of the amount required to settle the obligation at reporting date. Where a fee is charged and the entity considers that an outflow of economic resources is probable, the entity recognises the obligation at the higher of:

- the amount determined using in the Standard of GRAP on Provisions, Contingent Liabilities and Contingent Assets; and
- the amount of the fee initially recognised less, where appropriate, cumulative amortisation recognised in accordance with the Standard of GRAP on Revenue from Exchange Transactions.

## 1.9 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 entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

### Measurement

Revenue is measured at the fair value of the consideration received or receivable, net of trade discounts and volume rebates.

## 1.10 Revenue from non-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 entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

## 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.

Revenue for filing fees is recognised only on receipt of cash and supporting documentation.

## Measurement

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

### 1.11 Fruitless and wasteful expenditure

Fruitless 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.

### 1.12 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) the PFMA; or
- (b) the State Tender Board 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 must also be recorded appropriately in the irregular expenditure register. In such an instance, no further action is also 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 must be 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 must be updated with the amount condoned.

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the NT or the relevant authority must be 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 must thereafter be 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 must also be updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto must remain against the relevant programme/expenditure item, be disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

### 1.13 Budget information

Entities are typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

General purpose financial reporting by entity shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

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

The approved budget covers the fiscal period from 2016-04-01 to 2017-03-31.

The budget for the economic entity includes all the entities approved budgets under its control.

The annual financial statements and the budget are prepared 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.

### 1.14 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, management in their dealings with the entity.



### 1.15 Events after the reporting date

Events after the 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.

### 1.16 Commitments

Commitments represent goods/services that have been ordered, but no delivery has taken place at the reporting date. These amounts are not recognised in the Statement of Financial Position as a liability or as expenditure in the Statement of Financial Performance as the annual financial statements are prepared on an accrual basis of accounting, but are however disclosed as part of the disclosure.

### 1.17 Penalties and Settlements

In terms of Section 59(1) of the Act, the Competition Tribunal may impose an administrative penalty in terms of an order, which is collected by the

Competition Commission and in terms of Section 59(4) of the Act must be paid over to the National Revenue Fund.

In terms of Section 49D of the Act, the Competition Commission and a respondent may agree on the terms of an appropriate order, which the Competition Tribunal may confirm as a consent order in terms of Section 58(1)(b). The consent order may contain a settlement amount which is collected by the Competition Commission. In terms of Section 59(4) of the Act it must be paid over to the National Revenue Fund.

The accepted practice of NT is that no monies are directly paid to the National Revenue Fund, but rather they are paid via a specific department to which the entity reports. In the case of the settlement amounts or administrative penalties, the Competition Commission pays the monies to the Economic Development Department who in turn must pay the monies over to the National Revenue Fund.

The consent orders and orders of the Tribunal may allow the respondents to pay the settlement amount or administrative penalty over more than one financial year to the Competition Commission. This situation will result in an outstanding amount due to the National Revenue Fund which will be collected by the Competition Commission.

In terms of Section 40(1) of the Act, the settlement amounts and the administrative penalties are not listed as a source of finance for the Competition Commission nor are the amounts of revenue defined in terms of GRAP 23. As such these amounts are not recognised in the Statement of Financial Performance. Furthermore, the outstanding amounts do not meet the asset and liability definitions in terms of GRAP 1 and are therefore not recognised on the Statement of Financial Position of the Competition Commission.

## 2. INVENTORIES

	2017 R'000	2016 R'000
Consumable stores	481	303

## 3. RECEIVABLES FROM EXCHANGE TRANSACTIONS

	2017 R'000	2016 R'000
Sundry Debtors	1 008	3 074

### Trade and other receivables pledged as security

None of the trade and other receivables were pledged as security for any obligations.

### Fair value of trade and other receivables

The effect of discounting was considered and found to be immaterial since the carrying value of trade and other receivables approximates fair values.

## 4. CASH AND CASH EQUIVALENTS

Cash and cash equivalents comprise cash that is held with registered banking institutions and are subject to insignificant interest rate risk. The carrying amount of these assets approximates their fair value.

	2017 R'000	2016 R'000
Bank balances	2 889	27 817
Short-term deposits	79 282	143 201
Cash on hand	17	6
	82 188	171 024

### Credit quality of cash at bank and short-term deposits, excluding cash on hand

The credit quality of cash at bank and short-term deposits, excluding cash on hand that are neither past due nor impaired can be assessed by reference to external credit ratings (if available) or historical information about counterparty default rates. None of the financial institutions with which bank balances are held defaulted in the prior periods and as a result a credit rating of high was ascribed by the financial institutions. The entity's maximum exposure to credit risk as a result of the bank balances held is limited to the carrying value of these balances as detailed above. All the bank balances are held with two banking institution which reduces the related banking risk.



## 5. PROPERTY, PLANT AND EQUIPMENT

	2017 R'000			2016 R'000		
	Cost/Valuation	Accumulated depreciation	Carrying value	Cost/Valuation	Accumulated depreciation	Carrying value
Leasehold improvements	990	(28)	962	-	-	-
Furniture and fixtures	5 729	(2 128)	3 601	4 625	(1 836)	2 789
Motor vehicles	2 338	(613)	1 725	1 790	(455)	1 335
Office equipment	2 925	(690)	2 235	1 223	(536)	687
IT equipment	9 975	(3 653)	6 322	8 090	(2 851)	5 239
Cell phone	322	(48)	274	24	(6)	18
Leased assets	2 954	(423)	2 531	2 239	(1 822)	417
<b>Total</b>	<b>25 233</b>	<b>(7 583)</b>	<b>17 650</b>	<b>17 991</b>	<b>(7 506)</b>	<b>10 485</b>

### Reconciliation of property, plant and equipment – 2017

	Opening balance	Additions	Disposals	Depreciation	Total
Leasehold improvements	-	990	-	(28)	962
Furniture and fixtures	2 789	1 104	-	(292)	3 601
Motor vehicles	1 335	548	-	(158)	1 725
Office equipment	687	1 702	-	(154)	2 235
IT equipment	5 239	1 968	(61)	(824)	6 322
Cell phone	18	298	-	(42)	274
Leased assets	417	2 536	(117)	(305)	2 531
<b>Total</b>	<b>10 485</b>	<b>9 146</b>	<b>(178)</b>	<b>(1 803)</b>	<b>17 650</b>

### Reconciliation of property, plant and equipment – 2016

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	2 546	468	-	(225)	2 789
Motor vehicles	502	944	-	(111)	1 335
Office equipment	599	142	-	(54)	687
IT equipment	4 378	1 377	(43)	(473)	5 239
Cell phone	10	14	-	(6)	18
Leased assets	464	54	-	(101)	417
<b>Total</b>	<b>8 499</b>	<b>2 999</b>	<b>(43)</b>	<b>(970)</b>	<b>10 485</b>

## 6. INTANGIBLE ASSETS

	2017 R'000			2016 R'000		
	Cost/Valuation	Accumulated depreciation	Carrying value	Cost/Valuation	Accumulated depreciation	Carrying value
Computer software	5 877	(2 796)	3 081	4 893	(2 360)	2 533

### Reconciliation of intangible assets – 2017

	Opening balance	Additions	Amortisation	Total
Computer software	2 533	985	(437)	3 081

### Reconciliation of intangible assets – 2016

	Opening balance	Additions	Amortisation	Total
Computer software	2 633	237	(337)	2 533



## 7. FINANCE LEASE OBLIGATION

	2017 R'000	2016 R'000
<b>Minimum lease payments due</b>		
- within one year	1 150	120
- in second to fifth year inclusive	1 897	78
	3 047	198
Less: future finance charges	(511)	(24)
Present value of minimum lease payments	2 536	174
<b>Present value of minimum lease payments due</b>		
- within one year	866	100
- in second to fifth year inclusive	1 670	74
	<b>2 536</b>	<b>174</b>
Non-current liabilities	1 670	74
Current liabilities	866	100
	<b>2 536</b>	<b>174</b>

The Commission is leasing equipment under a finance lease. The lease agreement does not impose any restrictions. The average lease term is three years and the average effective borrowing rate was 16% (2016: 16%).

The entity's obligations under finance leases are secured by the lessor's charge over the leased assets, i.e. photocopiers. The lease agreement can be extended at the end of the three-year period for a further period. Three new assets were acquired during the current year.

## 8. PAYABLES FROM EXCHANGE TRANSACTIONS

	2017 R'000	2016 R'000
Trade payables	39 397	43 771
Leave due to employees	6 632	6 072
Accrued performance bonus	17 322	12 086
Accrued expense	5 350	14 143
Operating lease payables	221	-
Penalties payable to the Economic Development Department	13 336	86 441
	<b>82 258</b>	<b>162 513</b>

The 2016/17 performance bonus is the accrued amount due to employees as at 31 March 2017. These bonuses will be paid in 2017/18 financial year. The trade and other payables are interest free and also unsecured. The effect of discounting was considered and found to be immaterial.

## 9. REVENUE

	2017 R'000	2016 R'000
Fee income	57 105	55 051
Other income	736	140
Interest received – investment	10 174	12 021
Government grants and subsidies	221 583	228 087
	<b>289 598</b>	<b>295 299</b>

The amount included in revenue arising from exchanges of goods or services are as follows:

	2017 R'000	2016 R'000
Fee income	57 105	55 051
Other income	736	140
Interest received – investment	10 174	12 021
	<b>68 015</b>	<b>67 212</b>

The amount included in revenue arising from non-exchange transactions is as follows:

	2017 R'000	2016 R'000
<b>Transfer revenue</b>		
Government grants and subsidies	221 583	228 087

## 10. FEE INCOME

	2017 R'000	2016 R'000
Fee income	57 105	55 051

The filing fees relates to revenue generated from merger, exemptions and advisory opinion cases filed.

## 11. OTHER INCOME

	2017 R'000	2016 R'000
Insurance recovered	45	64
Study bursaries recovered	31	51
Mandatory grant (SETA), refunds and photocopies	660	25
	<b>736</b>	<b>140</b>



## 12. INTEREST RECEIVED

	2017 R'000	2016 R'000
<b>Interest revenue</b>		
Interest received on short-term deposits	10 174	12 021

## 13. GOVERNMENT GRANTS AND SUBSIDIES

	2017 R'000	2016 R'000
Government grants and subsidies	221 583	228 087

## 14. EMPLOYEE RELATED COSTS

	2017 R'000	2016 R'000
Basic	140 228	126 262
Performance bonus	16 812	11 867
Cellphone and data allowance	1 187	1 101
Group life and pension administration	1 992	1 890
Medical aid	5 140	4 462
Recruitment fees	2 606	1 112
Other staff related costs	10 966	9 024
	<b>178 931</b>	<b>155 718</b>

### Accounting Authority's emoluments

	2017 R'000	2016 R'000
Annual remuneration	1 882	1 666
Performance bonus	-	-
Subsistence allowance	117	78
	<b>1 999</b>	<b>1 744</b>

### Executive Committee's emoluments

	2017 R'000	2016 R'000
Annual remuneration	13 355	15 359
Performance bonuses	1 691	1 132
Cellphone and data allowance	73	108
Group life and pension administration	636	1 066
	<b>15 755</b>	<b>17 665</b>

## Other employees

	2017 R'000	2016 R'000
Annual remuneration	125 272	109 311
Performance bonuses	15 121	10 735
Cellphone and data allowance	1 114	969
Group life and pension administration	1 234	696
Other Staff related cost – medical aid	5 140	4 462
Other Staff related cost – recruitment cost	2 581	1 112
Other staff related cost – other	10 715	9 024
	<b>161 177</b>	<b>136 309</b>

## 15. ADMINISTRATIVE EXPENSES

	2017 R'000	2016 R'000
General and administrative expenses	5 000	4 227
Auditors remuneration – external audit fees	1 428	947
	<b>6 428</b>	<b>5 174</b>

Included in general administrative expenses are costs relating to bank charges, general and corporate stationery, courier services, email, telephone, printing, postage and parking.

## 16. FINANCE COSTS

	2017 R'000	2016 R'000
Leased assets (Photocopiers)	177	89



## 17. OPERATING EXPENSES

	2017 R'000	2016 R'000
Audit and Risk and Remuneration Committee fees	614	616
Internal audit fees	985	442
Consulting and professional fees	69 730	49 311
Case related costs – legal	46 703	37 823
Research and development costs	4 050	-
Travel and accommodation	6 922	7 105
Education and awareness	14 288	10 466
Maintenance, repairs and running costs	3 285	4 260
Other expenses	13 798	8 910
	<b>160 375</b>	<b>118 933</b>

Included in other expenses are costs related to internal training courses, office flowers, security services, office storage, software licenses, meeting refreshments, gifts, subscriptions, books and publications, workshops and government gazettes.

## 18. CASH (USED IN)/GENERATED FROM OPERATIONS

	2017 R'000	2016 R'000
Deficit	(78 568)	(1 202)
<b>Adjustments for:</b>		
Depreciation and amortisation	2 239	1 308
Gain on sale of assets and liabilities	178	43
Movements in provisions	345	-
Other non-cash items	34	(2)
<b>Changes in working capital:</b>		
Inventories	(178)	72
Receivables from exchange transactions	2 066	(745)
Penalties	73 105	(86 441)
Payables from exchange transactions	(80 254)	129 714
	<b>(81 033)</b>	<b>42 747</b>

## 19. MOVEMENT IN INVESTMENTS

	2017 R'000	2016 R'000
Property, plant and equipment	(9 146)	(2 999)
Intangible assets	(985)	(237)
	<b>(10 131)</b>	<b>(3 236)</b>

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

Reconciliation of budget surplus/deficit with the surplus/deficit in the Statement of Financial Performance:

	2017 R'000	2016 R'000
Net deficit per the statement of Financial Performance	(78 568)	(1 202)
<b>Adjusted for:</b>		
(Increase)Decrease in fee income	(1 774)	1 177
(Increase)Decrease in interest received	(2 174)	598
(Increase)Decrease in other income	42	(8 893)
(Under)/Over expenditure on personnel	(2 836)	5 042
(Under)/Over expenditure on administration	(731)	-
(Under)/Over expenditure on depreciation	(1 671)	(13 114)
(Under)/Over expenditure on finance cost	177	14
(Under)/Over expenditure on operating lease	(3 067)	-
(Under)/Over expenditure on general expenses	(2 369)	(57 884)
(Under)/Over expenditure on losses	178	43
<b>Net deficit per approved budget</b>	<b>(92 793)</b>	<b>(74 219)</b>

## 21. FINANCIAL RISK MANAGEMENT

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

### Credit risk

The Commission trades only with recognised, creditworthy third parties. In addition, receivables balances are monitored on an ongoing basis with the result that the Commission's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed. There is no significant concentration of credit risk within the Commission.

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

### Exposure to credit risk

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

	2017 R'000	2016 R'000
Cash and cash equivalents	82 188	171 024
Trade and other receivables	1 008	3 074
<b>Total</b>	<b>83 196</b>	<b>174 098</b>



## Concentration of credit risk

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

### Ageing of financial assets

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

	Neither past due nor impaired	Past due but not impaired – less than two months	Past due but not impaired – more than two months	Carrying value
<b>2017</b>				
Cash and cash equivalents	82 188	-	-	82 188
Trade and other receivables	1 008	-	-	1 008
	Neither past due nor impaired	Past due but not impaired – less than two months	Past due but not impaired – more than two months	Carrying value
<b>2016</b>				
Cash and cash equivalents	171 024	-	-	171 024
Trade and other receivables	3 074	-	-	3 074

## Market risk

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

### Interest rate risk

As the entity has no significant interest-bearing assets, the entity's income and operating cash flows are substantially independent of changes in market interest rates.

The Commission is exposed to interest rate changes in respect of returns on its investments with financial institutions and interest payable on finance leases contracted with outside parties.

The Commission's exposure to interest risk is managed by investing, on a short-term basis, in current accounts and the Corporation for Public Deposits.

### Liquidity risk

The Commission's risk to liquidity is a result of the funds available to cover future commitments. Taking into consideration the Commission's current funding structures and availability of cash resources, the Commission regards this risk to be low, provided NT approves the retention of the surplus.

The Commission manages liquidity risk by monitoring forecasted cashflows and ensuring that the necessary funds are available to meet any commitments which may arise. Cash which is not utilised is immediately invested in the Corporation for Public Deposits.

### Exposure to liquidity risk

The following table reflects the Commission's exposure to liquidity risk from financial liabilities:

	Carrying amount	Total cash flow	Contractual cash flow within one year	Contractual cash flow between two and five years
<b>2017</b>				
Payables from exchange transactions	82 258	82 258	82 258	-

	Carrying amount	Total cash flow	Contractual cash flow within one year	Contractual cash flow between two and five years
<b>2016</b>				
Payables from exchange transactions	163 288	163 288	163 288	-

## Financial risk management

The entity's activities expose it to a variety of financial risk, market risk, fair value interest rate risk, cash flow interest rate risk and price risk, credit risk, liquidity risk and foreign exchange risk.

### Foreign exchange risk

The entity does not hedge foreign exchange fluctuations.

## 22. COMPARATIVE FIGURES

The comparative figures have been restated in line with the impact as disclosed in note 32.

## 23. INCOME TAXATION EXEMPTION

The Commission is exempted from income tax in terms of Section 10(1)(a) of the Income Tax Act, 1962.

## 24. EMPLOYEE BENEFIT OBLIGATIONS

### Defined contribution plan

All employees are members of a defined contribution scheme administered by Sanlam Limited.

## 25. CONTINGENT ASSETS AND LIABILITIES

### 25.1 Cash accumulated surplus

The accumulated cash surplus of R13 million was classified as a contingent liability as at 31 March 2017, as there was no approval received to retain it. In terms of PFMA Section 53(3), entities are not allowed to accumulate surpluses unless approved by NT. The Commission is obliged to repay to NT, any amount of the surplus not granted for retention. The Commission is of the opinion that NT will grant approval to retain surpluses in the current year therefore the Commission will not be required to repay any amount.

### 25.2 Fees to OECD

The Commission could be liable for the costs of participating in the Organisation for Economic Co-Operation and Development (OECD). The total invoice amount is R1 million, and the possible liability amount is contingent upon receiving a written confirmation from the liable party from the NT.

### 25.3 Cases before the courts

There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded against or for the Commission.

## 26. RELATED PARTIES

### Relationships

The Competition Tribunal	Public entity in National sphere
The Department of Trade and Industry	National Department in National sphere
Economic Development Department	National Department in National sphere
Public Investment Corporation	Public entity in National sphere
Members of key management	Members of the Executive Authority

### Related party balances

	2017 R'000	2016 R'000
<b>Amounts included in trade payables</b>		
The Competition Tribunal	2 264	2 015
The Department of Trade and Industry	91	12 500
Economic Development Department	13 336	86 441
	<b>15 691</b>	<b>100 956</b>

### Related party transactions

	2017 R'000	2016 R'000
<b>The Department of Trade and Industry</b>		
Rental expense	16 661	12 500
Telephone and Internet costs expense	706	1 468
<b>The Competition Tribunal</b>		
Filing fees	13 860	13 440
Facility Fee	764	655
<b>Economic Development Department</b>		
Government grant received	221 583	228 087
<b>Public Investment Corporation</b>		
Rental of office building for the Health Inquiry	2 910	2 736
<b>Penalties collected on behalf of related parties and transferred to related parties</b>		
Economic Development Department	175 876	762 729



## Compensation to key management on the Executive Committee

	2017 R'000	2016 R'000
<b>Commissioner – Mr T Bonakele</b>		
Cost to company	1 882	1 666
*Performance bonus	-	-
Subsistence allowance	117	78
<b>Acting Deputy Commissioner – Adv O Josie (Resigned 03 May 2016)</b>		
Cost to company	147	1 743
*Performance bonus	322	65
Subsistence allowance	-	11
<b>Deputy Commissioner – Mr H Ratshisusu (Appointed 01 November 2016)</b>		
Cost to company	1 757	1 611
*Performance bonus	242	202
Subsistence allowance	54	26
<b>Chief Financial Officer – Mr T Kgokolo (Resigned 30 June 2015)</b>		
Cost to company	-	406
*Performance bonus	-	214
Subsistence allowance	-	-
<b>Divisional Manager: Health Inquiry – Mr C Oellermann (Resigned 29 February 2016)</b>		
Cost to company	-	1 657
*Performance bonus	-	164
Subsistence allowance	-	4
<b>Divisional Manager: Policy and Research – Dr L Mncube</b>		
Cost to company	1 539	1 377
*Performance bonus	239	144
Subsistence allowance	38	2
<b>Divisional Manager: Enforcement and Exemptions – Mr J Khumalo (Resigned 15 October 2015)</b>		
Cost to company	-	784
*Performance bonus	-	-
Subsistence allowance	-	11
<b>Acting Manager: Corporate Services – Mr A Gwabeni (Appointed 20 July 2016)</b>		
Cost to company	928	-
*Performance bonus	-	-
Subsistence allowance	1	-

	2017 R'000	2016 R'000
<b>Divisional Manager: Communications – Mr M Scott (Re-signed 31 August 2015)</b>		
Cost to company	-	606
*Performance bonus	-	-
Subsistence allowance	-	1
<b>Chief Financial Officer – Mr M Kgauwe</b>		
Cost to company	1 551	1 021
*Performance bonus	50	-
Subsistence allowance	1	1
<b>Divisional Manager: Legal Services – Mr B Majenge</b>		
Cost to company	1 502	1 331
*Performance bonus	178	-
Subsistence allowance	8	10
<b>Divisional Manager – Ms W Ndlovu (Resigned 15 April 2016)</b>		
Cost to company	76	1 713
*Performance bonus	226	128
Subsistence allowance	-	16
<b>Divisional Manager: Cartels – Mr MMohlala</b>		
Cost to company	1 596	1 348
*Performance bonus	236	155
Subsistence allowance	55	38
<b>Divisional Manager – Ms A Khun (Appointed 15 March 2017)</b>		
Cost to company	72	-
*Performance bonus	-	-
<b>Divisional Manager – Ms N Nompucuko</b>		
Cost to company	1 744	683
*Performance bonus	198	-
Subsistence allowance	1	2
<b>Divisional Manager – Ms K Qobo (Appointed 15 February 2017)</b>		
Cost to company	232	-
*Performance bonus	-	-
Subsistence allowance	1	-
<b>Company Secretary – Mr M Msibi</b>		
Cost to company	1 152	377
*Performance bonus	-	-
Subsistence allowance	1	1

	2017 R'000	2016 R'000
<b>Company Secretary – Ms T Gwatkin (Resigned 30 October 2015)</b>		
Package	-	780
*Performance bonus	-	60
<b>Acting Manager Mergers and Acquisitions– Ms S Nunkoo (Appointed 1 February 2016–14 February 2017)</b>		
Cost to company	1 433	214
*Performance bonus	-	-
Subsistence allowance	-	-
<b>Acting Manager Mergers and Acquisitions – Ms L Mabidikane (Appointed 15 February 2017)</b>		
Cost to company	174	-
*Performance bonus	-	-
Subsistence allowance	1	-
<b>Acting Manager: Corporate Services – Ms M Nkabinde</b>		
Cost to company	-	759
*Performance bonus	-	-
Subsistence allowance	-	-
	<b>17 754</b>	<b>19 409</b>

\* The performance bonus component disclosed in 2016/17 was previously included in 2015/16 as a provision and was only paid in 2016/17 financial year. The comparative figures were also restated accordingly.

## 27. COMMITMENTS

	2017 R'000	2016 R'000
<b>Approved and contracted</b>		
Existing contracts – goods and services	19 812	32 856
Other goods and services	12 070	2 390
	<b>31 882</b>	<b>35 246</b>
	2017 R'000	2016 R'000
<b>Total capital commitments</b>		
Already contracted for but not provided for	31 882	35 246



This committed expenditure relates to property and will be financed by available bank facilities, retained surpluses, rights issue of shares, issue of debentures, mortgage facilities, existing cash resources, funds internally generated, etc.

#### Operating leases – as lessee (expense)

	2017 R'000	2016 R'000
<b>Minimum lease payments due</b>		
- within one year	13 522	16 486
- in second to fifth year inclusive	25 720	-
	<b>39 242</b>	<b>16 486</b>

## 28. GOING CONCERN

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

The ability of the entity to continue as a going concern is dependent on a number of factors. The most significant of these is that the Economic Development Department continues to procure funding for the ongoing operations for the entity and that the NT approves the retention of surplus.

We draw attention to the fact that as at 31 March 2017, the entity had an accumulated surplus of R32 million and that the entity's total assets exceed its liabilities by R32 million.

## 29. IRREGULAR EXPENDITURE

	2017 R'000	2016 R'000
Opening balance	2 466	-
Add: Irregular expenditure – current year	1 506	1 721
Add: Irregular expenditure – prior year	-	745
Balance at the end of the year	<b>3 972</b>	<b>2 466</b>

The forensic investigation relating to the R745 000 irregular expenditure has been completed and a fraud case has been reported to the South African Police Service in line with the recommendation of the report. The employee involved has resigned and as a result, no consequence management could be instituted.

The investigation relating to the R1.7 million irregular expenditure has been completed and management have submitted a request for condonation to the NT in line with the recommendation of the report. Consequence management has not been effected as no employee was found liable.

### 30. GIFTS

	2017 R'000	2016 R'000
Consumables	-	2

### 31. FRUITLESS AND WASTEFUL EXPENDITURE

	2017 R'000	2016 R'000
Balance at the beginning of the year	23	23
Fruitless and wasteful expenditure incurred during the year	-	-
Balance at the end of the year	23	23

The amount in the prior year relates to payment to a fraudulent bank account. The Commission was fraudulently requested to change the bank account details for one of the service providers. This fraud was identified before any additional payments were made. A case of fraud has been reported to the South African Police Service. Controls have been put in place to ensure that such expenditure is avoided in the future.

### 32. PRIOR YEAR ERROR

Expenses relating to SARS were not accounted for in the previous financial year. Adjustments have been made according to GRAP 3.

The results of the prior period adjustment is as follows:

	2017 R'000	2016 R'000
<b>Statement of financial position</b>		
Payables from exchange transactions	-	1 464
Opening accumulated surplus or deficit	-	(1 464)
<b>Statement of Financial Performance</b>		
Expenditure	-	-

### 33. PENALTIES

In terms of Section 59(1) of the Act, the Competition Tribunal may impose an administrative penalty in terms of an order, which is collected by the Competition Commission and in terms of Section 59(4) of the Act, must be paid over to the National Revenue Fund.

In terms of Section 49D of the Act, the Competition Commission and a respondent may agree on the terms of an appropriate order, which the Competition Tribunal may confirm as a consent order in terms of Section 58(1) (b). The consent order may contain a settlement amount which is collected by the Competition Commission. In terms of Section 59(4) of the Act it must be paid over to the National Revenue Fund.

The accepted practice of NT is that no monies are directly paid to the National Revenue Fund, but rather they are paid via a specific department to which the entity reports. In the case of the settlement amounts

or administrative penalties, the Competition Commission pays the monies to the Economic Development Department who in turn must pay the monies over to the National Revenue Fund.

The consent orders and orders of the Tribunal may allow the respondents to pay the settlement amount or administrative penalty over more than one financial year to the Competition Commission. This situation will result in an outstanding amount due to the National Revenue Fund which will be collected by the Competition Commission.

In terms of Section 40(1) of the Act, the settlement amounts and the administrative penalties are not listed as a source of finance for the Competition Commission nor are the amounts of revenue defined in terms of GRAP 23. As such these amounts are not recognised in the Statement of Financial Performance. Furthermore, the outstanding amounts do not meet the asset and liability definitions in terms of GRAP 1 and are therefore not recognised on the Statement of Financial Position of the Competition Commission.

In terms of GRAP 104 (91b) offsetting is allowed if settlements take place on a net basis. Any penalties which are recognised as outstanding will therefore be the same as the penalties payable which will result in a nil effect for penalties recognised.

To the extent that the amounts in question are due and the respondents are in operation, the Competition Commission should be in a position to recover the penalties in accordance with the provisions of Section 64 (2) of the Act. Section 64 (2) states that the Competition Commission may institute proceedings in the High Court on its own behalf for recovery of an administration penalty imposed by the Competition Tribunal.

Section 64(3) states that proceedings under subsection (2) may not be initiated more than three years after the imposition of the administrative penalty .

	2017 R'000	2016 R'000
Outstanding penalties amount at the beginning of the year	339 998	764 823
Add: amounts of settlements and penalties levied by the Competition Tribunal	1 628 069	337 904
Less: amounts collected by Competition Commission	(175 876)	(762 729)
Outstanding penalties amount at the end of the year	<b>1 792 191</b>	<b>339 998</b>

An amount of R176 million was collected in the current year and R249 million was paid over to Economic Development Department as at 31 March 2017. A balance of R86 million from the prior year was paid to the Economic Development Department in the current year. The balance of R13 million is still to be paid to the Economic Development Department in the next financial year.

The closing balance as at 31 March 2017 included amounts that were due and not yet collected. Management has effected collection processes to recover the outstanding amounts in default. Some of the defaulters have requested a deferral of their payment arrangements due to financial challenges and those requests are being considered by management.

Penalties held by the entity that are not available for use by the economic entity for 2017 amount to R13 336 and R86 441 for 2016.



## 34. NEW STANDARDS AND INTERPRETATIONS

### 34.1 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 2017 or later periods:

Standard	Effective date	Summary and Impact
GRAP 20: Related parties	01 April 2018	This standard prescribes the disclosures that the entity applies in terms of related parties. The impact on the financial results and disclosure is considered to be minimal.
GRAP 109: Accounting by Principals and Agents	01 April 2018	This standard outlines the principles to be used for the accounting by principals and agents. The impact on the financial results and disclosure is considered to be minimal.
GRAP 108: Statutory Receivables	01 April 2018	This standard establishes principles for reporting on transfers of functions between entities in this regard. The impact on the financial results and disclosure is considered to be minimal. However, the impact on disclosure is significant.
GRAP 32: Service Concession Arrangements: Grantor	01 April 2018	This standard prescribes the procedures regarding service concession arrangements. The impact on the financial results and disclosure is considered to be minimal.

## 35. EVENTS AFTER THE REPORTING DATE

There were no material events after the reporting date.

## 36. PROVISIONS

The provision is for costs for and against on cases that have been confirmed by the Courts. The actual costs will be determined by an agreement between parties involved and the Courts, where applicable. The current amounts recognised in the financial statements are based on estimates made by management.



## PART 10: ANNEXURES





## ANNEXURE 1: TABLE OF PERFORMANCE AGAINST TARGETS

Performance measure			Accountable programme	Annual Target 2016/17	Annual results	Reason for variance
Output	KPI no.	Key performance indicators (KPI)				
a) Merger and acquisition decisions	1	Average turnaround time for Phase 1 merger investigations	M&A	≤ 20 days	17 days	Target met
	2	Average turnaround time for Phase 2 merger investigations	M&A	≤ 45 days	45 days	Target met
	3	Average turnaround time for Phase 3 intermediate merger investigations	M&A	≤ 60 days	56 days	Target met
	4	Average turnaround time for Phase 3 large merger investigations	M&A	≤ 120 days	116 days	Target met
b) Merger litigation	5	% of merger decisions upheld by Tribunal and/or courts	LSD	≥75%	100%	Target met
c) Compliance monitoring for merger conditions	6	% of imposed merger remedies and conditions monitored	M&A	100%	100%	Target met
a) Cartel investigations	7	No. of cartel cases initiated	Cartels	12	26	Target exceeded Commission is receiving more tip-offs from the public due to increased awareness of its work
	8	% of cartel investigations completed within 12 months	Cartels	≥75%	39%	Target not met Finalised legacy priority cases which were older than 12 months
b) Cartel prosecutions	9	% of cartel cases won at the Tribunal and the courts	LSD and Cartels	≥75%	100%	Target met
a) Investigations of abuse of dominance and restrictive cases	10	% of abuse of dominance investigations completed within 24 months	E&E	≥65%	94%	Target met
	11	No. of abuse of dominance conduct cases initiated in prioritised sectors	E&E	3	4	Target exceeded. Actual results include a school uniform case which was a priority case but does not fall within the Commission's priority sectors
b) Prosecution of abuse of dominance and restrictive cases	12	% of abuse of dominance cases won at the Tribunal and the courts	LSD	≥50%	100%	Target met
c) Decisions on exemptions applications	13	% of exemption applications completed within 12 months	E&E	≥75%	100%	Target met
a) External guidelines on the application of the Act	14	No. of guidelines on the application of the Act issued to stakeholders	LSD	1	1	Target met
b) Advisory opinions	15	% of advisory opinions issued within three months	LSD	≥65%	96%	Target met
a) Industry scoping studies	16	No. of industry scoping studies conducted in prioritised sectors	P&R	5	5	Target met
b) Market inquiries	17	No. of market inquiries initiated	P&R	1	0	Target not met An extended time was required to conduct the background research needed to initiate the market inquiry
	18	No. of market inquiries completed within 24 months	P&R	1	1	Target met



Performance measure			Accountable programme	Annual Target 2016/17	Annual results	Reason for variance
Output	KPI no.	Key performance indicators (KPI)				
c) Impact assessments on Commission decisions or competition policy	19	No. of impact assessment studies completed	P&R	5	5	Target met
a) Working partnerships with relevant economic stakeholders	20	No. of workshops or seminars on competition, trade/industrial policy and regulatory matters hosted	P&R	4	4	Target met
	21	No. of submissions or responses to policy or regulation and	P&R	5	5	Target met
b) Working relationship with criminal justice (CJ) system counterparts on anti-cartel activities	22	No. of training and capacity-building initiatives with CJ system counterparts hosted	OTC	0	N/A	N/A
c) Relationship-building engagements with BRICS and African competition agencies	23	No. of competition conferences and workshops with African and international partners hosted or participated in	OTC	8	8	Target met
d) Thought leadership on competition and development issues	24	No. of Commission-initiated media engagements (editorial pieces, TV and radio, media events)	OTC	12	36	Target exceeded Increased number of cases referred or investigations initiated led to more media engagements
	25	No. of issues of the Competition Policy Journal published	OTC	4	4	Target met
e) Domestic outreach initiatives	26	Annual competition conferences hosted	OTC	1	1	Target met
	27	No. of stakeholder training and education workshops conducted	OTC	3	16	Target exceeded Increased demand from stakeholders for training
	28	No. of forums with business, labour and government hosted	OTC	4	4	Target met
	29	No. of public exhibitions hosted	OTC	2	3	Target exceeded Increased demand for Commission's participation in strategic events
a) Integrated IT and Knowledge Management System (IMS)	30	An implemented IT and knowledge management system	CSD	Approved implementation report of the IMS	0	Target not met Inadequate management capacity in Year 1 of this project resulted in continued delays
A clean financial audit	31	A clean audit	Finance	Clean audit	0	Target not met* Unqualified audit opinion with material findings on non-compliance with applicable supply chain management regulations
a) Human capital management systems	32	Completed re-design of the PMS	CSD	Approved implementation report of the PMS	0	Target not met Poor product delivered by external service provider resulted in restart of the process
	33	% retention rate of staff complement	CSD	≥85%	95%	Target met
b) A strategy-relevant organisational structure (OS)	34	Completed re-design of the OS	CSD	Approved implementation report of the OS	1	Target met

\*This audit finding applies to the 2015/16 financial year. The Commission received a clean audit for the 2016/17 financial year.





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