

Competition *Tribunal*



Annual Report Presentation to the
Portfolio Committee: Economic
Development

October 2014

PRESENTED BY

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INTEGRATED REPORTING

A new approach to reporting

THE TRIBUNAL IN BRIEF

Who we are and what we do
Case highlights for the year

CELEBRATING 15 YEARS OF COMPETITION ENFORCEMENT

Revisiting milestone cases
Our impact on the food chain

OPERATIONAL HIGHLIGHTS IN THE YEAR

Our performance against targets
Major restructure in 2013 / 2014

MANAGING THE NUMBERS

Highlights from the annual financial statements



INTEGRATED REPORTING:

A new approach to reporting

- Several changes to our reporting when compared to previous years
- Moved away from silo approach of reporting on cases
- Telkom case demonstrates how each Tribunal function adds value to case process
- Construction case demonstrates the difference in costs of settlement and costs of prosecution
- ANSAC, Ashton Canning, concrete pipes cartel and Momentum / Metropolitan cases look back on 15 years of adjudication
- Also looked at our impact on the food chain over 15 years

THE TRIBUNAL IN BRIEF

Who we are and what we do
Case highlights for the year



THE TRIBUNAL IN BRIEF

Who we are and what we do

- The Competition Tribunal is one of three institutions set up to administer the Competition Act 89 of 1998
- Competition Commission investigates and prosecutes
- Competition Tribunal adjudicates mergers and anti-competitive conduct
- Competition Appeal Court hears appeals from Tribunal cases
- 11 members (at 31 March 2014) served as pool of judges to hear competition cases on Tribunal panel. 3 full-time members and 8 part-time members
- Currently 9 members serve as pool of judges

THE TRIBUNAL IN BRIEF

Case highlights for the year

- July 2013 – The Tribunal confirmed the Commission v Telkom Ltd settlement:
 - Telkom admitted to contravening the Act
 - Agreed to penalty of R200 million
 - Importantly, agreed to change Telkom’s pricing behaviour
 - Functional separation between retail and wholesale operations – reduces the incentives for discrimination
 - Implement code of conduct for wholesale operations
 - Committed to real price reductions over 3 years (2014, 2015, 2016) amounting to est. R875 million in savings to the market

THE TRIBUNAL IN BRIEF

Case highlights for the year

- July 2013 – The Tribunal heard settlements between Commission and 15 construction companies:
 - Construction firms admitted to collusion covering several years and major construction projects
 - Collective penalty amounted to R1,46 billion
 - Tribunal received submissions from Corruption Watch, SALGA, SANRAL and Gauteng Provincial Government
 - Tribunal confirmed all the settlement agreements
 - Contested proceedings would have cost the Tribunal alone approximately R9,2 million
 - Tribunal heard 2 construction cartel settlements outside of fast track in the year

THE TRIBUNAL IN BRIEF

Case highlights for the year

- December 2013 – Tribunal approved the Aspen Nutritionals / Pfizer Nutrition merger
 - Decision came after a week long hearing where the Tribunal heard 14 witnesses, most of which were called by the Tribunal
 - This merger was the result of an earlier merger between Nestle and Pfizer which could have had a negative effect on competition and possibly the pricing of baby milk
 - In order to maintain competition, parties to the Nestle deal proposed that the new merged company would license out Pfizer’s baby milk brands for a limited period. Aspen became the preferred firm to receive the Pfizer baby milk brands under license
 - Unique and complex remedy applied in this case which maintained competition for popular baby milk brands

THE TRIBUNAL IN BRIEF

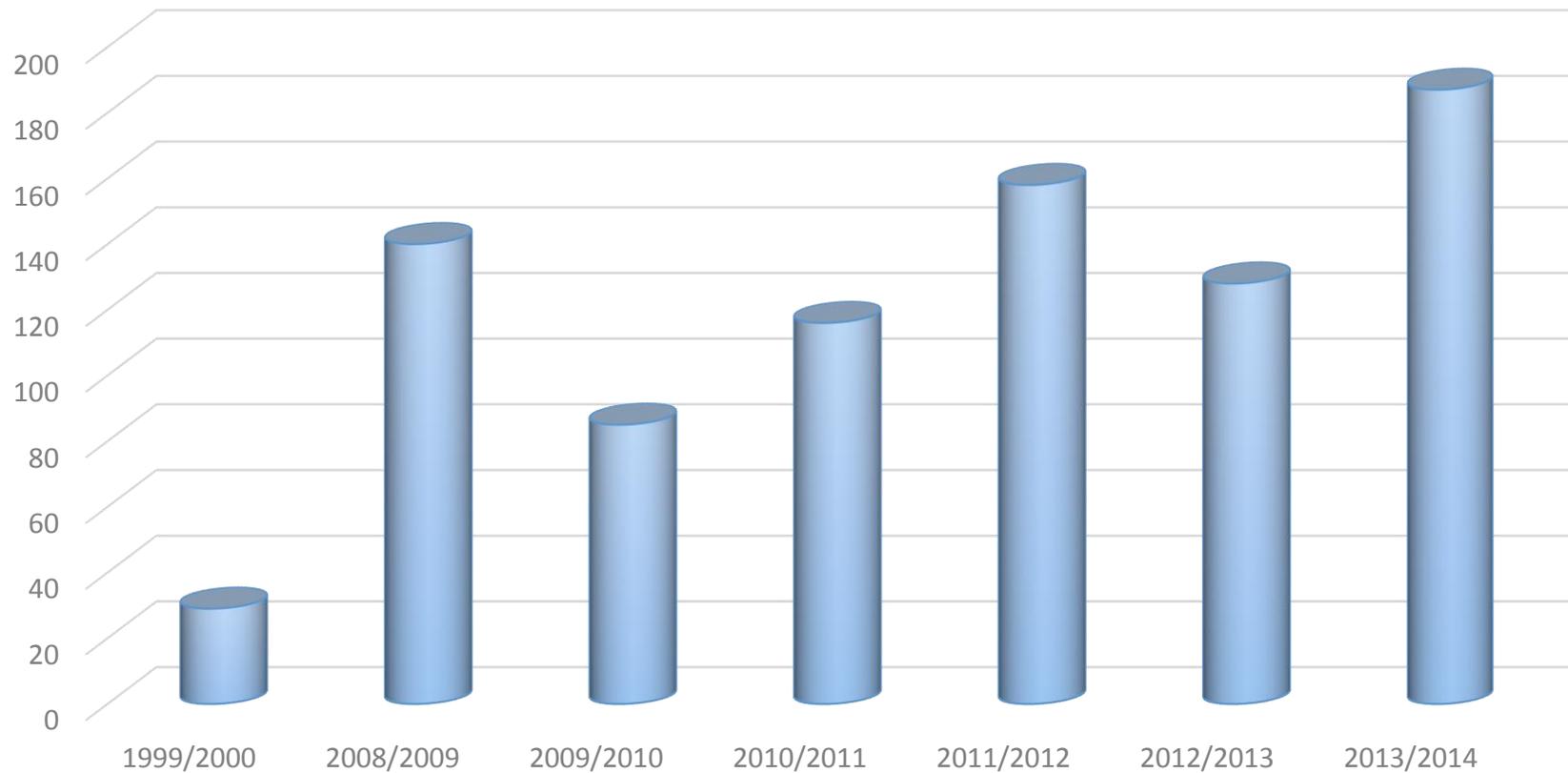
Case highlights for the year

- March 2014 – Tribunal dismissed Competition Commission complaint against SAB
 - Tribunal dismissed the 2007 case against SAB finding that there was not sufficient evidence to prove (1) unfair discrimination between SAB distributors and other customers; (2) exclusive territories for SAB distributors; and (3) refusal to allow discounting on beer sold
 - Judgment went further and offered guidance to the Commission on assessing future cases as the Commission’s entire case only focused on 10% of SAB’s distribution methods

THE TRIBUNAL IN BRIEF

Case highlights for the year

Number of matters fluctuates over time



THE TRIBUNAL IN BRIEF

Case highlights for the year

Orders and reasons issued in two successive financial years

| Type of case | Orders issued 2013/2014 | Orders issued 2012/2013 |
|--------------------------------|-------------------------|-------------------------|
| Large merger | 97 | 69 |
| Intermediate merger | - | 7 |
| Complaints from the Commission | 1 | 4 |
| Consent order | 42 | 14 |
| Complaints from a complainant | 1 | 2 |
| Interim relief | 3 | - |
| Procedural matter | 42 | 27 |
| Exemption appeal | - | 1 |
| Total | 186 | 124 |

THE TRIBUNAL IN BRIEF

Case highlights for the year

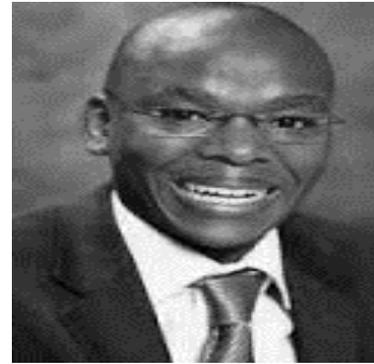
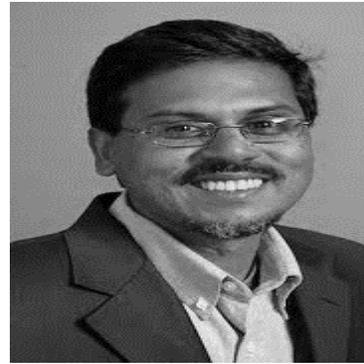
Mergers decided in two successive financial years

| Mergers decided | 2013/2014 | % | 2012/2013 | % |
|--------------------------|-----------|------------|-----------|------------|
| Approved | 82 | 84.54 | 57 | 75 |
| Approved with conditions | 15 | 15.46 | 19 | 25 |
| Total | 97 | 100 | 76 | 100 |

Of the 15 mergers approved with conditions, 40% were approved with public interest conditions.

15 YEARS OF COMPETITION ENFORCEMENT

Revisiting milestone cases
Our impact on the food chain



15 YEARS OF COMPETITION ENFORCEMENT

Revisiting milestone cases

- September 2005 – The Tribunal approved the Ashton Canning merger subject to employment conditions:
 - Merger took place between fruit canning companies in Ashton and affected employees
 - Commission said the merger would cause the loss of 45 permanent jobs and 1000 seasonal jobs, comprising unskilled workers
 - Tribunal approved the deal but ordered a training fund of R2 million for the affected workers
 - On follow-up this year we discovered that the training fund was taken up by few employees and the balance of R2 million was used to set up a broader training fund for the benefit of the whole community

15 YEARS OF COMPETITION ENFORCEMENT

Revisiting milestone cases

- October 2010 – The Tribunal imposed a 2-year moratorium on retrenchments in the Metropolitan / Momentum merger:
 - Merger took place between insurance giants Metropolitan and Momentum (now MMI)
 - Parties argued the merger would lead to 1000 job losses in order to realise efficiencies
 - Parties undertook to provide various training opportunities, which the Commission accepted
 - NEHAWU argued that the job losses were not justifiable
 - After hearing all sides, the Tribunal imposed a 2 year moratorium on job losses
 - On follow-up this year we found the effect was that the 1000 employees kept their jobs for 2 years while they were able to look for alternative work inside MMI or outside

15 YEARS OF COMPETITION ENFORCEMENT

Revisiting milestone cases

- November 2008 – The Tribunal confirmed a settlement between Commission and ANSAC, an association of American soda ash companies:
 - The case had been the longest running case at the time, having been referred to the Tribunal in April 2000
 - Essentially ANSAC was an American cartel allowed, by their laws, to operate in SA but not in America
 - Tribunal order broke up the cartel and compelled association members to trade individually in South Africa
 - On follow-up this year we found that Tribunal order led to South African customers paying the lowest soda ash prices in the world for a period of 4 to 5 years

15 YEARS OF COMPETITION ENFORCEMENT

Revisiting milestone cases

- November 2010 – The Tribunal found Southern Pipeline Contractors and Conrite Walls had been part of concrete pipes cartel:
 - A Commission follow-up study revealed that, after disbanding the cartel:
 - SPC (former cartel member) extended its product offering, which it was not permitted to do under the cartel arrangement
 - SPC and Cobro (former cartel members) expanded their geographic area of operation, which they were not permitted to do under the cartel arrangement
 - 5 new players entered the industry
 - From mid-2009 to June 2011, prices decreased by 37% in Durban area and 27% in Johannesburg area

FROM THE SEED TO THE DINNER TABLE

The Tribunal's Impact On The Food Chain Over 15 Years At A Glance



2005: Tribunal approved the large merger between Langeberg Foods International and Ashton Canning Company (Pty) Ltd subject to conditions aimed at enhancing the employment prospects of fruit canners in the town of Ashton.



1999: Tribunal granted an interim relief application by South African Raisins (Pty) Ltd and another against SAD Holdings Ltd and another ordering the respondents to refrain from requiring or inducing producers of grapes-for-raisins not to deal with SA Raisins.



2011: Tribunal confirmed 15 settlement agreements penalising grain storage and trading companies for colluding by agreeing on the storage rates for SAFEX. The Tribunal imposed a collective penalty of R35 million.



2013: Tribunal confirmed a settlement between the Commission and Senwes Ltd and imposed a remedy for its abuse of dominance.



2011: Tribunal confirmed settlement agreements finding that Rand Merchant Bank (RMB) and NWK Limited (NWK) had divided the grain trading market, in which they competed, by allocating territories and customers. The Tribunal imposed a combined penalty of R26 million.



2008: Tribunal confirmed a settlement agreement between the Commission and Lancelwood Cheese (Pty) Ltd for information exchange in contravention of the Act. The Tribunal imposed a R100 000.00 penalty.



The remaining cases against Clover SA, Woodlands Dairy (Pty) Ltd and others fell away for technical reasons.



2008: The Tribunal prohibited the large merger between Tongaat-Hulett Group Ltd and Transvaal Suiker Bpk merger because competition would be prevented if the merger went ahead.



IMPACT



MONETARY PENALTY

2002: Tribunal approved the intermediate merger between Astral Foods Ltd and National Chick Ltd subject to conditions which protected competition in the chicken breeding or broiler industry and the animal feed industry.

2004: Tribunal approved the large merger between Astral Operations Ltd and Early Bird Farm finding that the merger would pave the way for Algrit to enter the broiler market.

2004: Tribunal approved the large merger between Algrit Operations Ltd and Daybreak Farms (Pty) Ltd enabling Algrit to expand vertically into the broiler market.

2010: Tribunal confirmed a settlement agreement between the Commission and Rooibos Ltd and found that Rooibos had concluded anti-competitive exclusive agreements with Rooibos tea packers and used a system of volume discounts with anti-competitive effects.

2007 and 2008: Tribunal confirmed settlement agreements and imposed a combined penalty of R143 million on Tiger Brands Ltd and Foodcorp for engaging in the bread price fixing cartel.

2010: Tribunal approved a settlement in terms of which Pioneer Foods (Pty) Ltd agreed to pay R500 million as a penalty and towards an agro-processing fund as well as take a price reduction/margin sacrifice on flour and bread for an agreed period.

2011: Tribunal approved the large merger between US based Wal-Mart Stores Inc and local Massmart Holdings Ltd subject to conditions aimed at addressing employment and procurement concerns.

2012 and 2014: Tribunal confirmed settlement agreements, imposing a penalty of R35 million on Oceana Brands Ltd and R2 million on Premier Fishing SA (Pty) Ltd for collusion regarding the service of catching raw pelagic fish.

2014: Tribunal approved the intermediate merger between Oceana Group Ltd and Foodcorp (Pty) Ltd but on condition that Oceana must divest of the Glenryck brand of canned pilchards together with the fishing quota to a willing and able independent third party in order to preserve competition in the canned fish industry.

2010 and 2011: Tribunal confirmed settlements in which Keystone Milling (Pty) Ltd and Carolina Rollermeule (Pty) Ltd admitted to fixing the price of milled white maize. The Tribunal imposed penalties of R6 730 349.00 and R4 417 546.00 respectively.

2011: Tribunal prohibited the large merger between US based Pioneer Hi-Bred International Inc and local firm, Pannar Seed (Pty) Ltd finding that it would not be in the best interest of South African maize farmers and consumers of maize products. Overturned on appeal.



OPERATIONAL HIGHLIGHTS IN THE YEAR

Our performance against targets

Major restructure in 2014



OPERATIONAL HIGHLIGHTS IN THE YEAR

Our performance against targets

| Strategic focus area | Strategic objective | Number of performance indicators | Number of targets achieved or exceeded | Number of targets not met | Number of targets not measured due to inactivity |
|---------------------------------|---|----------------------------------|--|---------------------------|--|
| Tribunal hearings and decisions | To promote and maintain competition within South Africa by holding hearings and adjudicating matters brought before the Tribunal within the adopted delivery timeframes | 11 | 5 | 4 | 2 |
| Stakeholder awareness | To educate and create awareness of competition matters to our stakeholders by communicating the activities and decisions of the Tribunal within the adopted delivery timeframes | 6 | 4 | 2 | N/A |
| Operational effectiveness | To enhance the expertise of Tribunal members and staff | 1 | 1 | 0 | N/A |
| Total | | 18 | 10 | 6 | 2 |

OPERATIONAL HIGHLIGHTS IN THE YEAR

Our performance against targets

- We set a total of 18 targets or performance indicators to be met
- 11 targets related to our core function of hearing cases and issuing decisions
- 2 of these targets related to activities that did not take place this year and could not be measured
- 9 of these targets remained to be measured

OPERATIONAL HIGHLIGHTS IN THE YEAR

Our performance against targets

- We failed to meet 4 of the 9 remaining targets, as explained below:
 - 25 of the 97 large mergers set down for hearing did not meet the target of 10 days within which matters must be set down for hearing. 56% of these missed target by 3 days and the rest was due to parties being unavailable;
 - We failed to issue 1 out of the 2 prohibited practice cases in the required time due to the complexity of the case involved and the allocation of panel members to another complex case in the same period;
 - We missed our target (of issuing 85% of reasons in interim relief cases within 20 days) by 2 days in 2 instances and, in the 3rd instance because the panel member was unavailable. The decision in the 3rd instance was issued within 24 hours;
 - We missed our target (of issuing orders in procedural matters within 20 days) by 2% due to complexity or by agreement with the parties

OPERATIONAL HIGHLIGHTS IN THE YEAR

Our performance against targets

- Of the 18 targets set, 6 related to stakeholder awareness
- 2 of these were not met but do not adversely affect any stakeholders. For example, parties are not prejudiced if we don't place a decision on the website within 24 hours because we send them the decision
- Also, parties often delay the process in order to ensure that confidentiality is not breached

OPERATIONAL HIGHLIGHTS IN THE YEAR

Major restructure in 2013 / 2014

- We underwent a major restructure in 2013 / 2014 financial year
- Why?
 - Increasing governance and compliance demands on the public sector by regulation
 - Needed to improve our IT systems to keep up with growing work load, people and to improve access to information
 - With better access to information came the need to increase administrative and registry capacity
 - Gaps have previously been filled through temporary, unsatisfactory measures

OPERATIONAL HIGHLIGHTS IN THE YEAR

Major restructure in 2013 / 2014

- How we carried the restructure out
 - Assessed adequacy and grading of existing job descriptions
 - Benchmarked our structure with comparable organisations
- From this we created the following positions
 - Chief operating officer – with a birds eye view of the organisation and reporting to the chairperson
 - Procurement officer - responsible for supply chain management
 - Human resources officer – handles recruitment, payroll, training
 - Knowledge manager – to ensure integrity of data

OPERATIONAL HIGHLIGHTS IN THE YEAR

Major restructure in 2013 / 2014

- We formalised intern and consultant positions
- We introduced levels of seniority in the case management department
- All changes have been implemented (except for the knowledge manager position) and are yielding positive results
 - Staff members are better able to focus on key areas of responsibility
 - Institutional memory now rests in systems and core management team rather than the Tribunal members
- Planning to review the process and assess the Tribunal's position since restructure in late 2014

MANAGING THE NUMBERS

Highlights from the annual financial statement



MANAGING THE NUMBERS

Highlights from the annual financial statement

- Audit opinion:
 - Tribunal received a clean, unqualified audit
 - No material findings on the annual performance report concerning the usefulness and reliability of the performance information
- Fruitless and wasteful expenditure
 - We disclose fruitless and wasteful expenditure of R84 141.68 that pertains to penalties paid to SARS
 - R65 785.13 of this is a penalty imposed by SARS on a voluntary disclosure process or VPD submission we made in the 2011/2012 year
 - Disclosure related to incorrect application of perks tax

MANAGING THE NUMBERS

Highlights from the annual financial statement

| | 2013/2014 | 2012/2013 | 2011/2012 |
|----------------------------|---------------|---------------|---------------|
| Total budget | 33.08 million | 31.11 million | 26.42 million |
| Total expenditure | 33.54 million | 27.41 million | 24.54 million |
| Percentage of budget spent | 101.39% | 88.10% | 92.90% |

MANAGING THE NUMBERS

Highlights from the annual financial statement

| Expenditure category | 2013/2014 | 2012/2013 | Percentage change |
|---------------------------------|------------|------------|-------------------|
| Personnel | 49.78 | 51.18 | 17.95 |
| Administration | 16.57 | 19.77 | 1.64 |
| Training | 4.39 | 5.51 | -3.35 |
| Professional services | 11.90 | 9.51 | 51.66 |
| Part-time Tribunal members fees | 10.85 | 3.63 | 26.54 |
| Other operating expenses | 6.51 | 10.40 | 117.27 |
| Total | 100 | 100 | 21.26 |

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