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*Years of
Competition
Enforcement*

2014/15 Annual Report



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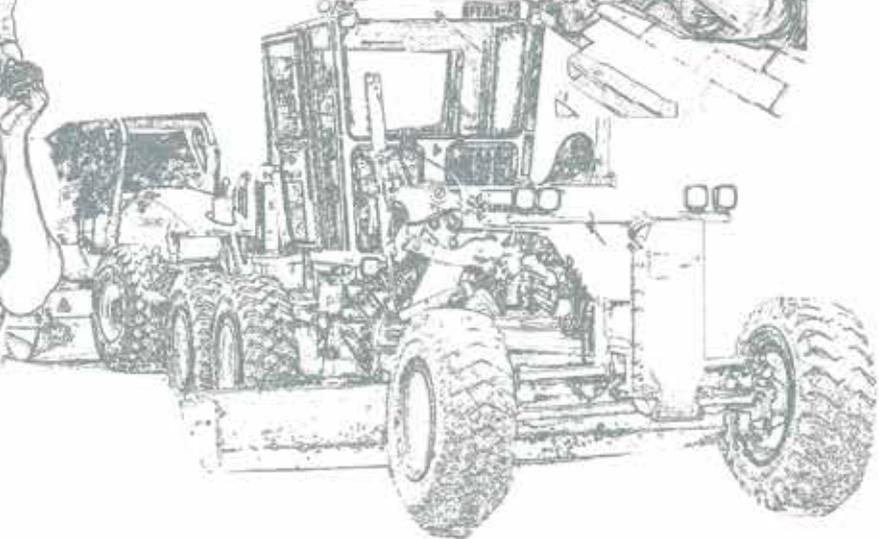
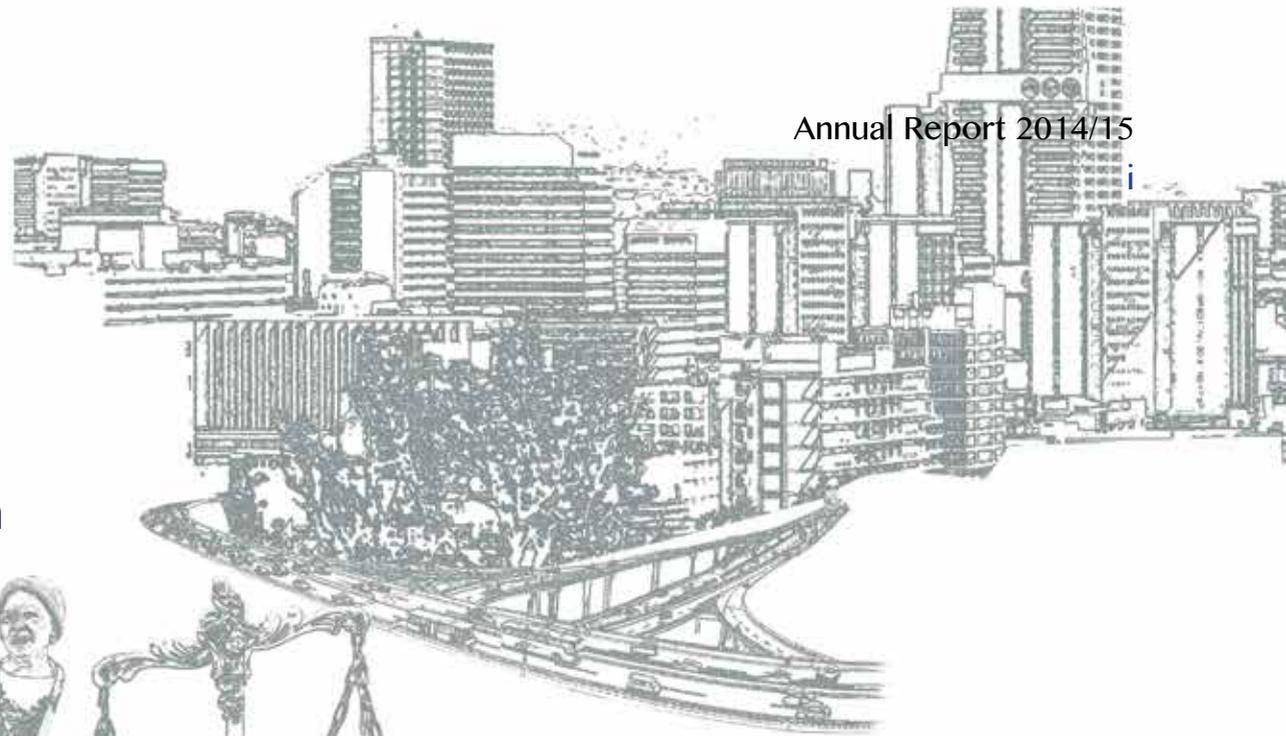


Table of Contents

GENERAL INFORMATION	
1. Introduction	1
2. Mandate and Functions	2
3. The Executive Committee	3
4. Minister's Foreword	4
5. Commissioner's Overview	6
6. Strategic Overview	10
MEASURING ECONOMIC IMPACT	
7. Impact Assessments	13
PERFORMANCE INFORMATION	
8. Organisational Structure	21
9. Enforcement and Exemptions	24
10. Cartels	30
11. Mergers and Acquisitions	34
12. Legal Services Division (LSD)	46
13. Policy and Research (P&R)	54
14. Market Inquiries	60
15. Advocacy & Stakeholder Relations	62
16. Corporate Services	70
17. Corporate Governance	76
APPENDICES	
18. Performance Against Targets	83
ANNUAL FINANCIAL STATEMENTS	90

LIST OF FIGURES

Figure 1: Organisational Structure 2014/15	23
Figure 2: A comparison of complaints received by the Commission in 2013/14 and 2014/15	26
Figure 3: A comparison of CLP applications received, investigations initiated, complaints from 3rd parties and finalised cartel cases in 2013/14 and 2014/15	30
Figure 4: Media Coverage, April 2014-March 2015	68
Figure 5: Trends in staff turnover, 2007/08 to 2014/15	72

LIST OF TABLES

Table 1: Strategic Goals and Programmes	22
Table 2: Enforcement Case Load	25
Table 3: Exemption Applications Received & Granted	28
Table 4: Mergers and Acquisition thresholds as at 1 April 2009	34
Table 5: Mergers notified and reviewed from 2011/12 to 2014/15	36
Table 6: Summary of Turnaround Times	39
Table 7: Public interest conditions placed on mergers in 2014/15	40
Table 8: Behavioural conditions addressing competition concerns	44
Table 9: Structural Remedies	44
Table 10: Comparison of merger decisions' impact on employment 2013/14 and 2014/15	45
Table 11: Settlement agreements concluded in 2014/15 with firms in the Construction Fast Track Process	51
Table 12: Journal articles and publications	58

LIST OF TABLES (CONTINUED)

Table 13: Presentations at conferences	59
Table 14: Sample of stakeholder engagements and presentations made in 2014/15	65
Table 15: Agencies involved in Competitive Dynamics and Regional Trade Flows research programme	66
Table 16: Commission publications and website visits over a five-year period	68
Table 17: Comparative breakdown of staff complement, 2009/10-2014/15	72
Table 18: Study loan programmes registered for 2014/15	73
Table 19: Breakdown of Graduate Trainees per Institution	74
Table 20: Meetings of the Risk and Audit Committees held during the financial year	78
Table 21: Strategic risks and mitigating actions	80
Table 22: Planned outputs and results of the Commission's programmes for the 2014/15 financial year	83

LIST OF CASE STUDIES' BOXES

Case Study 1: New entrant in the milling industry	15
Case Study 2: Hearing of the predatory pricing complaint Against Media 24	27
Case Study 3: Exemptions granted to the National Hospital Network	29
Case Study 4: Exemptions granted to Squid and Lobster Industries	29
Case Study 5: Phase 2 Construction Fast Track Settlement process	31
Case Study 6: Dawn Raids conducted in 2014/15	32
Case Study 7: Price fixing, market division and collusive tendering in respect of electric cables	33
Case Study 8: Fixing the purchase price of scrap metal	33

LIST OF CASE STUDIES' BOXES (CONTINUED)

Case Study 9: Price-fixing in the pelagic fishing market	33
Case Study 10: Preventing market dominance in the merger involving HCI and Atterbell	37
Case Study 11: Merger involving Tsogo Sun and Sunwest and Worcester Casino	38
Case Study 12: Merger involving Ferro Industrial Products and Arkema Resins	38
Case Study 13: Employment considerations in mergers in the furniture industry	45
Case Study 14: The right to the record of the Commission's decision to initiate a complaint	47
Case Study 15: The right to the record of the Commission's decision to refer a complaint to the Tribunal	48
Case Study 16: Review of the Commission's decision to grant conditional immunity in terms of the Corporate Leniency Policy	48
Case Study 17: Safeguarding the rights of consumers to bring civil claims for damages	52
Case Study 18: Inputs into Policy & Regulation	56
Case Study 19: The Netcare Judgement	61
Case Study 20: School Uniform Advocacy	63
Case Study 21: Supermarket retailers	64
Case Study 22: EDD Deputy Minister Outreach Programme	65
Case Study 23: Regional skills training with the US Federal Trade Commission and Department of Justice	67
Case Study 24: Public seminar of on the contribution and impact competition policy on socio-economic rights	69
Case Study 25: 8th Annual Conference and 15-Year Celebration	69

Acronyms and Abbreviations

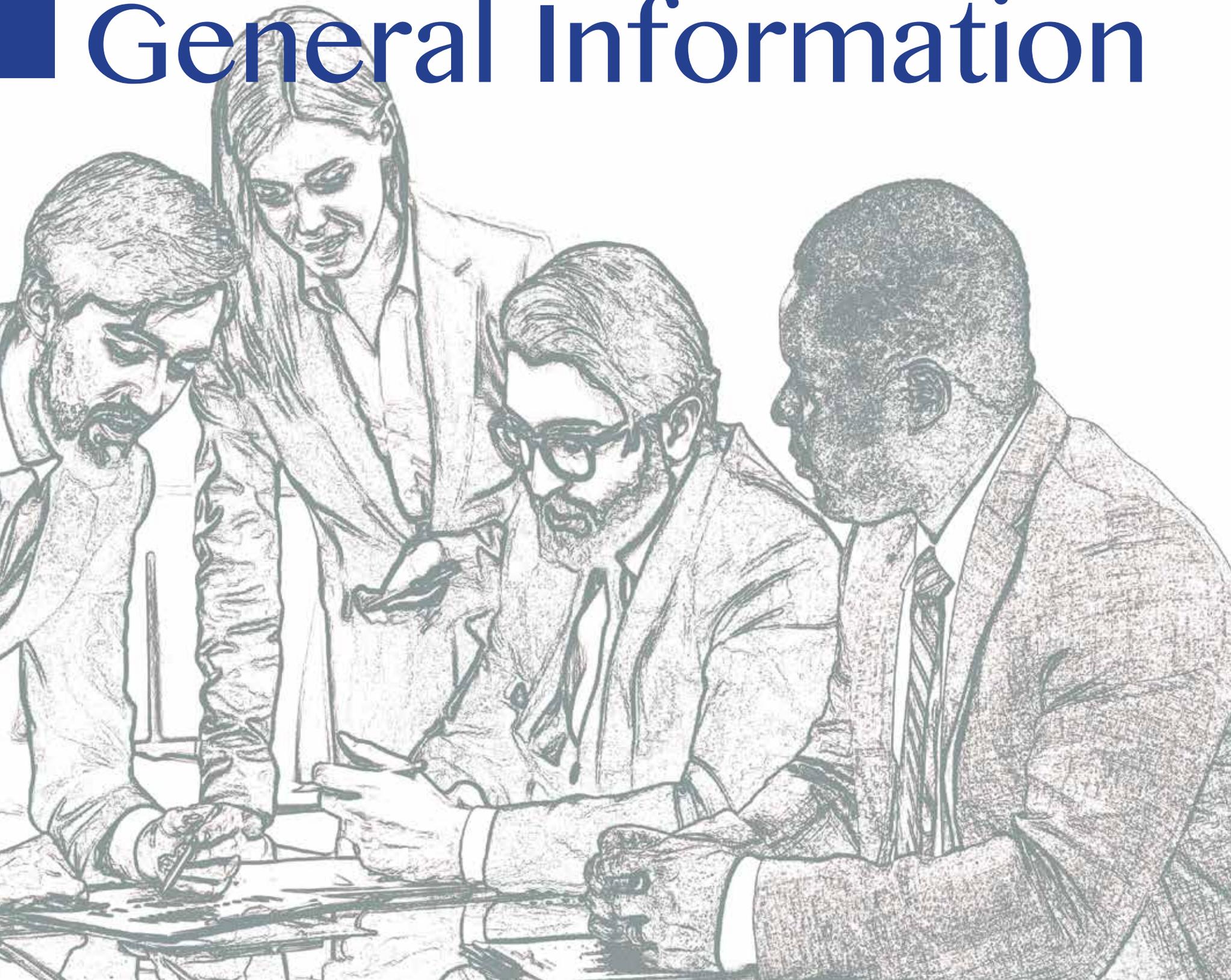
Abbreviation	
ACF	African Competition Forum
ASR	Advocacy & Stakeholder Relations
BRICS	Brazil, Russia, India, China and South Africa
CLP	Corporate Leniency Policy
CMS	Case Management System
Commission	The Competition Commission
E&E	Enforcement and Exemptions
EDD	Economic Development Department
EXCO	Executive Committee
GDP	Gross Domestic Product
HDIs	Historically Disadvantaged Individuals
ICN	International Competition Network
IPAP	Industrial Policy Action Plan
IT	Information Technology
KMS	Knowledge Management System
LSD	Legal Services Division
MANCOM	Management Committee (Divisional Managers, Principals, Heads of Department)
M&A	Mergers and Acquisitions
MTEF	Medium Term Expenditure Framework
NDP	National Development Plan
NEDLAC	National Economic Development and Labour Council
NGP	New Growth Path
OECD	Organisation for Economic Cooperation and Development
P&R	Policy and Research
PFMA	Public Finance Management Act
SMMEs	Small, Medium and Micro Enterprises
The dti	Department of Trade and Industry
Tribunal	The Competition Tribunal

Glossary of Terms

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

- **“Abuse of dominance”** means engaging in prohibited practices as provided in sections 8 and 9 of the Competition Act.
- **“Advisory Opinion”** 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.
- **“Advocacy”** refers to activities aimed at the promotion of voluntary compliance to the Act, through non-enforcement mechanisms.
- **“Consent Agreement”** 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.
- **“Enforcement”** refers to the investigation and/or prosecution of anti-competitive conduct.
- **“Exemptions”** 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 Competition Act.
- **“Non-referral”** means that, after conducting an investigation, the Commission has decided not to refer a particular case to the Competition Tribunal for prosecution.
- **“Public interest”** refers to the consideration of socio-political and economic issues, as prescribed in Section 12A of the Act, in the evaluation of mergers and acquisition applications.
- **“Referral”** refers to the submission by the Commission of a complaint to the Tribunal for prosecution, upon completion of its investigation.

■ General Information



1. Introduction

This document constitutes the Annual Report of the Competition Commission for the financial year 2014/15. It is premised on the Strategic Plan 2012-2017 and Annual Financial Statements, as approved by the Minister of Economic Development. According to the Public Finance Management Act, 1 of 1999 (PFMA), it is a statutory requirement that an entity such as the Competition Commission produces an Annual Report. Accordingly, section 41 of the Competition Act (89 of 1998) requires that the Commissioner must prepare and submit an Annual Report to the Minister, in the prescribed form, who will then table it to the National Assembly.

This Annual Report has been drafted according to the National Treasury Guidelines to public entities¹. It captures the key performance outputs, outcomes and impact of the Competition Commission in the financial year. In addition, the report articulates how the Commission has fared in the management of its resources and in compliance with corporate governance principles, as captured in the Annual Financial Statements and the Corporate Governance sections herein.

The report is organised as follows:

Part 1: General Information

Part 2: Economic Impact

Part 3: Performance Information

Part 4: Appendices, including the Performance Against Targets set in the Annual Performance Plan.

¹ Preparation of the Annual Report for Public Entities, Guide, April 2013.



2. Mandate and Functions

The Competition Commission (“Commission”) is a statutory body constituted in terms of the Competition Act, 89 of 1998 (“Act”). It is one of three, independent competition regulatory authorities, with the other two being the Competition Tribunal (“Tribunal”) and the Competition Appeal Court (“CAC”). While the Commission is the investigative and enforcement agency, the Tribunal is the adjudicative body and the Competition Appeal Court considers appeals against decisions of the Tribunal. The competition authorities are functionally-independent institutions, but are administratively accountable to the Economic Development Department.

In terms of the Act, the Commission is empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions, as well as mergers, in order to achieve equity and efficiency in the South African economy. Its mandate is to promote and maintain competition in South Africa in order 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 Republic;
- 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.

To achieve its purpose, the Commission’s core functions, set out in section 21 of the Act, are to:

- Investigate and prosecute restrictive horizontal and vertical practices;
- Investigate and prosecute abuse of dominant positions;
- Decide on mergers and acquisitions applications;
- Conduct formal inquiries in respect of the general state of competition in a particular market;
- Grant or refuse applications for exemption from the application of the Act;
- Conduct legislative reviews; and
- Develop and communicate advocacy positions on specific competition issues.

In addition, the Commission promotes voluntary compliance with the Act by providing education and advice on the application of the Act. The Commission can negotiate agreements with any regulatory authority to coordinate and harmonise the exercise of jurisdiction over competition matters within the relevant industry or sector, and ensure the consistent application of the principles of the Act. The Commission can also participate in the proceedings of any regulatory authority and advise (or receive advice) therefrom.

3. The Executive Committee



Mr. Tembinkosi Bonakele
LLB (Fort Hare), MBA (GIBS)
Commissioner



Adv. Oliver Josie
LLM (UNISA), MBL (UNISA)
(Graduate School of Business)
Acting Deputy Commissioner



Mr. Hardin Ratshisusu
MCom (Economics) (Wits),
MBL (UNISA)
*Acting Deputy Commissioner,
and Divisional Manager:
Mergers and Acquisitions*



Dr. Liberty Mncube
PhD (Economics), UKZN
Chief Economist



Mr. Bukhosibakhe Majenge
BProc (Fort Hare), LLM (UNISA)
*Acting Divisional Manager:
Legal Services*



Mr. Clint Ollermann
LLB, UNISA
Director: Health Inquiry



Ms. Wendy Ndlovu
LLBS, University of Zimbabwe
Chief Legal Counsel



Mr. Junior Khumalo
M.A. (Econ), Colorado State
University (US)
*Divisional Manager:
Enforcement and Exemptions*



Mr. Makgale Mohlala
LLM (Corporate Law), UP
Divisional Manager: Cartels



Ms. Tracy Gwatkin
LLM (Corporate Law), UJ
Company Secretary



Ms. Nompumelelo Nkabinde
MBA, GIBS
*Chief Human Resources Officer and Acting
Divisional Manager: Corporate Services*



Mr. Thomas Kgokolo
CA (SA), UNISA
Chief Financial Officer



Mr. Mava Scott
BProc, UWC
Divisional Manager: Communications

4. Minister's Foreword

“It is important that we strengthen the competition authorities to deal with market abuse, particularly anti-competitive conduct by large firms who abuse their dominance in key markets of the economy.”

Mr Ebrahim Patel



It gives me great pleasure to table the Annual Report of the Competition Commission for the financial year 2014/15. The competition authorities derive their mandate from the Competition Act, whose objectives combine traditional market efficiency issues with South Africa's very specific socio-economic realities and it places emphasis on public interest considerations that are a critical part of the work of the authorities.

The Competition Act can help South Africa to achieve our bold goals on job creation and inclusive growth, as set out in the National Development Plan and its implementation strategies: the New Growth Path jobs drivers and the action plans on industrial policy and agriculture.

The strategies can best be summarised through six i's:

- Infrastructure development, to lay the foundations for growth and development, building energy plants, transport and logistics systems, information and communication technologies and water infrastructure
- Industrialisation, to improve the size and strengths of the productive sectors of the economy which in turn is critical to beneficiation of the mineral and agriculture resource base and the growth of services sectors
- Investment, including attracting domestic and foreign direct investment to expand the country's productive economy and smart industrial funding partnerships by public entities with the private sector
- Innovation, to bring new ideas and the products of research and development to economic activity and provide opportunities for, and an incentive to grow the quality of, our skills base

- Inclusion, to enable more South Africans to benefit from growth that creates decent work opportunities, that supports small business development, draws young people into the economy and promotes broad-based economic empowerment; and
- Integration, through increased trade and investment on the African continent, building a larger consumer market for our goods and services.

These six areas are connected: inclusion is not simply about ensuring a fair sharing of the fruits of growth, it is also a source of growth when millions of people are lifted out of poverty and become active economic contributors; integration provides the economic logic for deeper levels of investment into our industrial base and infrastructure.

Competition policy is a critical means to achieve these six i's:

- Infrastructure: the competition authorities actions against cartels in the construction industry is helpful to keeping costs down in the public infrastructure programme and thus allow us to more cost-effectively provide the energy, roads and dams that are needed for economic development
- Industrialisation, investment and inclusion: the action against the bread cartel involving Pioneer Foods led to a settlement that included R250 million of the penalties being directed to setting up an Agro Processing Fund that supports both industrialisation (and inclusion) as well as mandatory additional internal investment that the company had to undertake. More than R186 million has been approved from the Fund to 30 enterprises, since April 2011. The co-investment by the IDC leveraged a further R172 million, supporting 2 284 jobs in the production of milk, honey, fruit canning, pasta and animal feed, among a number of agri-processing investments.
- Industrialisation and inclusion: The decision by the Competition Appeal Court to impose a Supplier Development Fund as a condition in the Walmart acquisition of Massmart can support both the industrialisation and inclusion goals, particularly given the focus on support for small businesses in the mandate of the Fund. In the past year, the Fund has made a number of disbursements. I have engaged with Walmart to improve the effectiveness of the Fund and to align its spending more closely with the industrial mandate set out in the court judgement.
- Innovation: the insertion of a research and development condition in the Kansai acquisition of Plascon can help to support innovation in South Africa.

- Inclusion: the Afgri merger conditions include support for small-scale farmers and many mergers have conditions that limit retrenchment of workers. These are vital to ensuring an inclusive economy, in which the pro-competitive gains of transactions do not come at the expense of employment or empowerment. The impact of the Commission's work on employment is demonstrated by the additional 5 340 jobs saved through its merger control during the financial year.

I have supported efforts by the Commission to step up its actions against cartels, because the collusive actions we have investigated clearly undermine the dynamism of the economy, impose higher prices on customers and keep new entrants out of markets.

In the past year, the Commission uncovered a furniture removal cartel, where the Department of Defence was the main affected party. I observe with concern the prevalence of bid-rigging conduct by sections of the private sector, targetted at the public sector. The competition authorities are to be applauded for prosecuting this type of conduct, which will save the state millions of rand in public procurement spending. I am pleased to note progress in the area of remedies imposed as part of efforts to address gaps in the market created by cartel conduct.

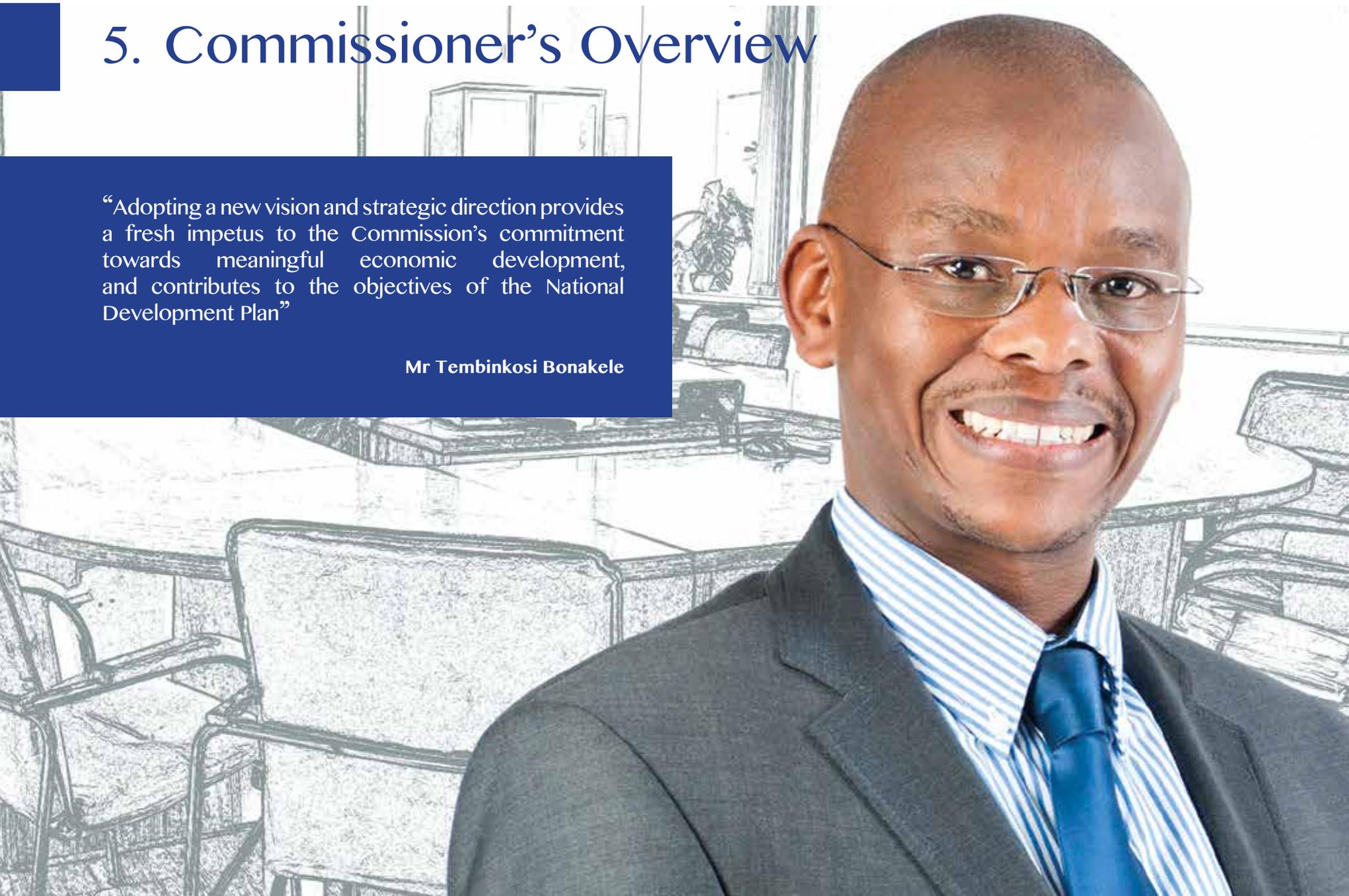
It is important that we strengthen the competition authorities to deal with market abuse, particularly anti-competitive conduct by large firms who abuse their dominance in key sectors of the economy and to strengthen the focus not only on injury to customers but also to suppliers, given the shift of market power to large retailers in many economies. We have commenced a process to amend the Competition Act in order to strengthen the Commission's ability to prosecute abuse of dominance contraventions and to address procedural problems in the processes related to the investigation and litigation of cases. I am confident that the objectives contained in the Commission's new strategic plan and annual plans will enhance the effectiveness of the Commission in rooting out anti-competitive conduct and to contribute to inclusive growth and economic development.


Minister Ebrahim Patel

5. Commissioner's Overview

“Adopting a new vision and strategic direction provides a fresh impetus to the Commission’s commitment towards meaningful economic development, and contributes to the objectives of the National Development Plan”

Mr Tembinkosi Bonakele



I am proud to report on the Competition Commission's performance for the 2014/15 financial year. The period under review marked the year in which the competition authorities celebrated their 15-year anniversary. This milestone was celebrated at our Annual Conference held in September 2014 and it once again brought to the fore the importance of our relationships with the multiple role players who have walked the journey with us. The discourse with and among our stakeholders about the evolution of the Commission certainly reflects a mood of an organisation that has come of age.

The 15-year milestone provided an opportunity to consider the impact of our work on the economy. In this regard, management and staff of the Commission embarked on a strategic planning exercise to craft a vision that will carry the organisation into the next 15 years. The focus of this new "vision 2030" is to undertake Competition Regulation for a Growing and Inclusive Economy. Adopting a new vision and strategic direction provides a fresh impetus to the Commission's commitment towards meaningful economic development, and contributes to the objectives of the National Development Plan. It recognises that Competition Regulation is not only narrowly focusing on growth, but is also concerned about inclusivity.

The Competition Commission vs Sasol

During the year under review the Competition Tribunal made a ground breaking finding in favour of the Commission in an excessive pricing case against Sasol. The Tribunal imposed an administrative penalty of more than R500 million to Sasol, ruling that Sasol's prices of purified propylene and polypropylene to domestic customers, from January 2004 until December 2007, were excessive and in contravention of section 8(a) of the Act.

Sasol lodged an appeal against the Tribunal ruling at the CAC and, at the time of writing, the CAC had overruled the Tribunal's order, finding that Sasol's mark-up above the economic value of propylene and polypropylene was reasonable.

The Commission is appealing the CAC judgement in the Constitutional Court, as it sets an adverse precedent in the computation of "economic value" by dominant firms. The Commission believes that the CAC failed to take into account that Sasol acquired its dominance through state support, rather than through innovation and risk-taking. It further failed to assess the impact of Sasol's pricing on downstream industries. Economic transformation that is likely to have a significant impact on growth and jobs in the sector.

Intensified Cartel Enforcement

This year, the Commission intensified its cartel enforcement by undertaking multiple raids, one of which uncovered a large cartel in the automotive sector. The investigation will continue into the new financial year, thereby addressing artificial growth constraints that may be arising in this important industry.

Competition Commission

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Our work in the construction services sector is also ongoing, having entered into the second phase of the Construction Fast Track Settlement process. This process is a special dispensation that the Commission offered to construction firms involved in bid-rigging, to enter into settlement agreements in exchange for voluntary disclosure of implicated projects. This arrangement was designed to expedite the prosecution of the large volume of cases – over 300 projects – which might otherwise have taken many years to prosecute. In Phase 2 of the process, the Commission is prosecuting firms that:

- Settled certain projects under the Phase 1 process but refused to settle others;
- Participated in Phase 1 but refused to settle projects they disclosed; and
- Did not participate at all in the settlement process but were implicated.

Significant Mergers

The Commission implemented merger regulation in a highly dynamic economic environment during the financial year. The collapse of African Bank had a ripple effect across various industries and sectors, which consequently saw the Commission evaluating multiple mergers in the furniture industry as the trading landscape was reconfigured. A case study in the M&A section of the report narrates the details of these mergers, as a consequence of Ellerines being placed. The Commission's decisions in these furniture transactions led to the saving of 892 jobs.

The Commission also decided upon several other significant mergers: In the food sector, the Commission prohibited a merger between Clover SA (Pty) Ltd and Nkunzi Milkyway Pty (Ltd) over concerns that the merger would have a negative impact on SMMEs as small farmers may not be in a position to negotiate better terms with Clover as they would with Nkunzi. The merging parties challenged the Commission decision at the Tribunal, and the matter was settled with conditions aimed at addressing the public interest concerns identified by the Commission.

The Commission prohibited the proposed merger involving Life Healthcare Group (Pty) Ltd, Lowveld Hospital Group (Pty) Ltd ("Lowveld") and Interstate Clearing (126) (Pty) Ltd. The Commission found that the merger would result in an immediate and significant increase in hospital tariffs for the Lowveld hospital once the hospital fee structure was changed from the current National

Hospital Network (NHN)-based structure (which is used at Lowveld) to the Life Healthcare fee model. There was no credible technological, efficiency or pro-competitive gains submitted by the merging parties that could outweigh the competitive harm identified by the Commission. The merger also raised public interest issues, in that it had a significant negative effect on the healthcare sector in Nelspruit.

In the intermediate industrial input sector, the Commission found that the merger involving Zimco Metals (Pty) Ltd and Atlantis Metals (Pty) Ltd would lead to a monopoly in the lead anode market. However, if the transaction did not proceed, there would be substantial job losses as Atlantis would in all probability exit the market and Zimco would be a de facto monopoly. Through the proposed transaction, 101 jobs were saved. The Commission also found that the merger would have an impact on the local mining industry as mining companies used lead anodes in their production processes. The Commission approved the merger with conditions.

Market Inquiries

The Commission has undertaken a great deal of work in the past year in the Private Healthcare Inquiry. The market inquiry is probing; amongst others, reasons for above inflation increases in private healthcare costs. The Inquiry team, under the leadership of Panel Chairperson, Former Chief Justice Sandile Ngcobo, is now at a stage of compiling and analysing the thousands of submissions received from stakeholders and is gearing up for an important final process of public hearings before it compiles and tables recommendations.

“The focus of this new “vision 2030” is to undertake Competition Regulation for a Growing and Inclusive Economy”.

The Commission also initiated a new market inquiry in the Liquefied Petroleum Gas (LPG) market. The Commission particularly seeks to understand the structural features of this market and factors such as the high switching costs and the generally low usage of LPG by households. It will contribute to a better understanding of constraints in this important energy market.

“I would like to take this opportunity to acknowledge and thank the staff of the Commission for their hard work during the year”

In conclusion, I would like to take this opportunity 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 Economic Development Department for their support to help the organisation meet its goals.

Tembinkosi Bonakele

Mr Tembinkosi Bonakele



Back row, from left to right: Samson Mamba, Elizabeth Hlatshwayo, Mboswobeni Nkhumeleni, Khanyisa Qobo, Mava Scott, Nomsa Zilindile, Mduduzi Msibi, Edward Makola, Themba Mathebula, Thandekile Qinga, Itebogeng Palare, Lydia Molefe, Leonard Morapedi, Freda Mathaba, Gavin Williams.
Front row, from left to right: Nompumelelo Malenga, Nolubabalo Golimpi, Hardin Ratshisusu, Tembinkosi Bonakele, Wendy Ndlovu, Tracy Gwatkin, Mandisa Mbele.

6. Strategic Overview

6.1. Vision

The vision that guided the Competition Commission during the reporting period is that of a South African economy moving “towards a fair and efficient economy for all”. The Commission committed to achieving this vision through:

- Preventing business practices that are anti-competitive and unfair to consumers;
- Enhancing consumer choice and lowering prices of goods and services;
- Promoting improved access to the economy for all and, in particular, for SMMEs as well as historically disadvantaged persons; and
- Promoting employment growth and the creation of decent work in the economy.

6.2. Values

In the Commission’s ongoing management of its operations, it is guided by a set of core values that define the organisational culture. These are to:

- Act independently, subject only to the constitution and the law;
- Strive for an efficient, competitive economic environment;
- Be objective in balancing the interests of workers, owners and consumers;
- Create effective collaborations in regulation, service delivery and management;
- Execute duties with a sense of urgency and in a timely manner;
- Undertake work with rigorous analysis, integrity, teamwork, transparency and professionalism;
- Act impartially without fear, favour or prejudice; and
- Act with respect for all.

6.3. The Strategic Goals

The Commission’s 2012-2017 Strategic Plan is premised on three strategic goals. Each of them represents the main areas of work on which the Commission has focused during the reporting period. Each is supported by a programme and these are summarised as follows:

6.3.1. Goal One

ACHIEVE DEMONSTRABLE COMPETITIVE OUTCOMES IN THE ECONOMY THROUGH PRIORITISATION OF SECTORS AND CASES

The Commission’s mandate requires it to account for its contribution to transforming the economy, especially in response to past and present exclusions and entrenched positions. The Commission’s ability to demonstrate the impact it is making is closely associated with “prioritisation”. To prioritise sectors for investigative and advocacy focus, we need to develop criteria aimed at achieving meaningful and maximum impact.

This approach recognises that the resources of the organisation should be directed at high-impact industry sectors, markets and cases. To achieve this goal, the Commission must place a greater onus on assessing the competitive outcomes it seeks to achieve during investigations, and the extent of its intended impact. The Commission’s priority sectors for the reporting period are identified as follows:

6.3.1.1. Food and agro-processing

The food and agro-processing sector covers economic activity from the production of agricultural products, through the various stages of processing to final consumer products. Due to its long value chains, the sector remains labour-intensive and thus has a significant impact on employment in the country. It also produces essential products purchased by all consumers, including the poor. During the period under review, the Commission was active in this sector through a number of enforcement cases, mergers and advocacy interventions.

6.3.1.2. Intermediate industrial products

Intermediate industrial products include basic chemicals and basic metal products that form key inputs into diversified manufactured products. The manufacturing sector remains a key driver of South Africa’s trade policy, and is regarded as a vehicle for growth and employment. The prices of some products in this sector



have in many instances risen at rates substantially higher than producer and consumer inflation. As it is central to economic policy, this industry remains an integral part of the Commission's priorities.

6.3.1.3. Construction and infrastructure

The infrastructure and construction sectors remain key to South Africa's economic growth and development. These sectors underpin the economy's productivity, while also impacting significantly on the cost of doing business. The Commission's decision to prioritise these sectors is further influenced by Government's decision, and that of state-owned companies, to embark on intensive investment and development programmes in these sectors. Such investment could potentially be undermined by anti-competitive conduct and the Commission's role is integral to ensure competitive outcomes in the economy.

6.3.2. Goal Two

INCREASED COMPETITIVE ENVIRONMENT FOR ECONOMIC ACTIVITY THROUGH STRATEGIC PARTNERSHIP, ENGAGEMENT, DIALOGUE AND ADVOCACY

The Commission recognises that formulating appropriate responses to the changes in the environment will require proactive engagement, dialogue and advocacy with a range of stakeholders. Strategic engagement, dialogue

and advocacy refer to the Commission's activities to promote a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with stakeholders. Communication is the point of departure in strategically engaging with stakeholders. It involves conveying information about its priorities and plans to those the organisation wishes to influence. Conversely, the Commission takes the views of stakeholders into consideration in its decision-making.

6.3.3. Goal Three

REALISE A HIGH-PERFORMANCE COMPETITION REGULATORY AGENCY

The Commission seeks to build on the generally positive perceptions of the organisation as an employer of choice and firmly establish itself as a high-performance competition regulatory agency. The critical success factors necessary for it to become a high-performance organisation were identified as:

- Strengthening and building the leadership and management capability of the Commission;
- Taking full advantage of the potential benefits of knowledge management;
- Strengthening staff retention; and
- Improving the organisation's standard and quality of work, as well as its decision-making.

■ Measuring Economic Impact



7. Impact Assessments

Impact assessments refers to the economic studies the Commission undertakes to evaluate its work in markets. The purpose is to demonstrate to stakeholders the harm of anti-competitive conduct and the gains arising to the public from the Commission's interventions. Impact assessments are carried out under three main categories:

- Estimation of the impact of anti-competitive conduct;
- Ex-post evaluation of specific enforcement interventions; and
- Evaluation of the broader economic impact.

In the period under review, the Commission has sought to demonstrate the results of its work by undertaking several impact assessments. The outcomes of which are explained below.

7.1. The Pioneer Agro-Processing Competitiveness Fund

In 2010 the Commission entered into settlement negotiations with Pioneer Foods ("Pioneer") for its participation in cartel conduct in the bread, wheat and white maize milling, poultry and egg industries. The Commission found that Pioneer's conduct had harmed consumers through higher prices for essential food items, and had further stifled the entry and expansion of competitors, particularly small and medium enterprises. The remedy sought by the Commission included an administrative penalty of R500 million of which R250 million was allocated to establish the Agro-Processing Competitiveness Fund ("APCF" or "Fund") in 2010. The Industrial Development Corporation ("IDC") administers the R250 million of the APCF.

An impact assessment on the disbursement of the funding was completed by analysing information from the IDC as at September 2014. The Commission's analysis found that the Fund had successfully achieved its objectives of facilitating entry and expansion into the affected sectors, and has contributed towards job creation and the crowding-in of funding. More specifically:

- Since the establishment of the APCF in April 2011 until September 2014, R182 673 290 (around 73% of the total fund size) has been approved to 29 enterprises, of which R157 832 462 has been disbursed.
- The Fund has crowded in co-funding from the IDC, which has contributed R172 885 641 in loan finance. The crowding-in of other financiers was made possible by the APCF, without which it would have been unlikely for the investment to have taken place at all.
- Of the enterprises funded, eight (8) are start-up companies and 21 are existing enterprises that qualified for funding to expand their business operations.
- The Fund has led to the creation of 2 266 jobs, of which 969 are attributed to the start-up enterprises. In terms of the sectoral spread, 11 enterprises are active in those sub-sectors that were cartelised through Pioneer's conduct, specifically the flour milling and bread industries. In other agro-processing activities, including poultry, animal feed, and the beverages sector.
- Finally, non-financial business support to the value of R2 867 120 has been awarded to 11 enterprises.

7.2. Interim Assessment of the Massmart Supplier Development Fund

In September 2010, Wal-Mart announced its intention to acquire a controlling interest in Massmart (51% of the target firm's ordinary share capital). On 2 February 2011, the Commission finalised its investigation of the proposed merger and found that the merger was not likely to lead to a substantial prevention or lessening of competition. The only matter of contention was the impact of the merger on public interest issues, namely employment, a particular industrial sector or region, and on small business suppliers.

A major concern from Government (through the Economic Development Department and the Departments of Trade & Industry and Agriculture, Forestry and Fisheries) was that the merged. Such import-substitution would likely compromise the sustainability and participation of SMMEs and HDIs' manufacturing and assembly firms in productive sector activities. The knock-on effect would be an adverse impact on domestic employment and a reduction in output in sectors that economic policy aims to develop, both of which would affect broader economic development goals.

These concerns led to imposition of conditions for the approval of the merger by the CAC, which included the establishment of the R242 million Massmart Supplier Development Fund. To date, over R124 million has been committed to support projects in agriculture (Ezemvelo Direct Farm Programme), manufacturing (Manufacturing SMMEs Programme) and support services (Services to Suppliers Programme). Actual disbursements to qualifying enterprises totalled R71 million to the benefit of 139 smallholder farming enterprises and 24 manufacturing SMMEs. Funding assistance takes the form of zero-interest non-recoverable grants for equipment, materials and factory equipment, secure loans via guarantees issued to commercial lenders, as well as technical assistance.

- The Ezemvelo Direct Farm Programme helps small to medium-sized farmers enter Massmart's fresh produce supply chains. The programme is targeted at historically disadvantaged farmers who would typically not have been able to access these supply chains due to their size, location and trading history. As at December 2014, R31 million had been disbursed for farming projects. At the programme's peak in 2013, 164 smallholder farmers were linked to the supply chain. This decreased to 139 farmers during 2014 due to some projects being discontinued and fluctuating cooperative membership. Smallholder farmers' sales to Massmart and other retailers totalled R13,1 million, with Massmart accounting for 62% or R8,1 million.

- The Manufacturing SMMEs Programme is directed towards cluster projects in the building materials (paint, window frames), bricks, processed commodities (maize meal), processed foods, clothing and textiles sectors, and general merchandise sectors. As at December 2014, R30,3 million had been disbursed to support manufacturing suppliers, which includes R23,5 million in grants and R6,7 million in loan guarantees issued by the Fund on behalf of SMME suppliers. A further R10,6 million has been approved for disbursement during 2015². Of the 24 projects assisted through the Fund, 19 are black-owned, five (5) are classified as microenterprises³ and eight (8) are small businesses⁴. The enterprises supported have created or sustained 1 417 full-time jobs. Since inception of the Fund, manufacturing SMMEs' sales have totalled R106,6 million.

- The Developing Wine Brands Programme assists emerging black-owned and empowered wine brands to gain market access. To date, 15 wine brands have been integrated into Massmart's supply chain, and several wines have been introduced into Walmart stores in the United States, China and Brazil. Local sales through Massmart totalled R1,7 million while international sales exceeded R12 million.

- The Services to Suppliers Programme procures services such as food safety compliance, financial and business management, as well as training, on behalf of enterprise beneficiaries. To this end, Massmart has formed partnerships with organisations such as ABSA Enterprise Development to provide commercial financing to SMMEs beyond traditional grants. The Fund has partnered with intermediaries⁵ to provide technical training on crop production as well as training and in-field mentorships for smallholder farmers.

Case Study 1: New entrant in the milling industry

One of the success stories the Commission unveiled from its engagements with stakeholders is that of Lethabo Milling, a company owned by Xolani Ndzaba. Mr Ndzaba received a grant of R1,6 million from the Massmart/Walmart Supplier Development Fund and has since become a miller. The business produces a brand of maize meal called Lethabo Maize Meal from its Ventersburg premises in the Free State. Lethabo Maize Meal is now available in all Massmart stores and is available to any other retailer or customer. The owner has been able to increase production because of the high demand for Lethabo Maize Meal. Such anecdotes demonstrate the tangible outcomes of the competition authorities' work in the markets and in the lives of South Africans.

7.3. Dairy sector review

The purpose of the dairy sector review was to study the state of competition in the dairy sector following several competition investigations in the recent past. Historically, milk and dairy boards regulated the industry by enforcing minimum price regulation for certain products. While these control boards were abolished in 1998, the Commission has received complaints and investigated allegations of price fixing and market allocation by milk processors both with respect to buying milk from producers (farmers) and selling processed milk products to retailers.

The dairy industry is divided into two segments: the raw milk and dairy products (pasteurised milk, cheese, butter, milk powders) and UHT (ultra-high temperature) milk segments. The dairy sector review found that concentration levels at the milk processing and retailing levels are high, with the six largest⁶ milk processors

purchasing more than 60% of the total annual raw milk production in South Africa. Furthermore, the top five retailers account for around 96% of the retail sector, and about 94% of retail sales of dairy products. Notwithstanding the concentration of retailers, milk is accessible from a number of small distributors, located in close proximity and easily accessible to consumers.

The dairy sector review found that the ability of milk farmers to switch between milk processors is adversely influenced by a number of factors. These include obtaining a financially stable milk processor, location of the milk farmer, duration of the milk supply agreements and incentive schemes by the processors. However, at the milk processor level, the ability to switch between smaller milk farmers, or to stop buying from them, is generally higher, than switching between or stop buying from large farmers. This difference in the ability of milk farmers to switch, compared to milk processors, is consistent with unequal bargaining power across the different levels of the dairy industry value chain, as firms that can easily switch between suppliers or customers are likely to have more bargaining power than those that face difficulties in switching.

Further, calculations by the Commission show that the profits achieved by milk farmers in the Western and Eastern Cape regions are relatively unstable (and negative in some periods), compared to relatively stable profits of milk processors and retailers⁷. This suggests that there could be a degree of unequal bargaining power across the dairy industry value chain, as firms that have more bargaining power are likely to better negotiate trading terms and prices, and thus achieve greater profits compared to those that do not have bargaining power. However, such results should be viewed in context of the limitations of the data available to us, particularly the differences in geographical scope of the information and data obtained from milk farmers, processors and retailers.

² This lag in disbursement is as a result of the lag between the approval and implementation of the project goals by SMMEs.

³ Turnover of below R1,5 million

⁴ Turnover of below R10 million

⁵ Namely Hygrotech Seeds, Bayer Crop Sciences, TechnoServe, Lima Rural Development Foundation and Development Alternatives International.

⁶ This classification is based on the amount of raw milk that each processor bought from milk farmers.



With regards to trends observed in raw milk prices paid to farmers over time, raw milk prices tend to closely follow each other in terms of price increases and subsequent declines in the Eastern Cape, Western Cape and Free State regions. The pricing behaviour observed in these regions may be an indication of conscious pricing parallelism. Firms behave interdependently, taking into account the actions of their rivals when considering their market response (in line with the farmer’s representatives). Firms active in the procurement of raw milk (in the respective regions) may be influenced by the actions of their competitors, making business decisions conscious of each other’s practices.

It is also important to note that South Africa imports (mainly from New Zealand, France, Uruguay, Ireland and Argentina) and exports (mainly to Zimbabwe, Zambia, Angola, Tanzania and Mozambique) various processed dairy products, but the levels of imports and exports are low relative to the total consumption of dairy products in the country. The study showed that the proportion of exports and imports of dairy products remained consistently below 5% of domestic consumption during the period 2002-2012.

7.4. A Review of outcomes of the Banking Enquiry

The Commission initiated the Banking Enquiry in August 2006 in terms of Section 21 of the Competition Act, to examine certain aspects of competition in retail banking in South Africa. The enquiry included a series of hearings and culminated in a report with a list of 28 recommendations. These recommendations can be summarised into three categories, namely those that relate to consumer protection, interchange setting and access into the payment system.

An industry-wide impact assessment was undertaken by interviewing various participants in the banking sector to track the progress made in implementing the Banking Enquiry recommendations. Meetings were also held with industry regulators to better understand why certain recommendations were not implemented.

The Banking Enquiry has largely been successful in improving competition and access to the banking sector. Many of the recommendations have been implemented and gains for consumers have been made. Examples of success include improvements in the ease of switching bank accounts, reduction in penalty fees, greater transparency in bank fees and the ability to withdraw cash from shop tills. The implementation of customer-related recommendations has been mostly pro-competitive, with the Code of Banking Practice amended to facilitate ease of switching and encourage a more transparent disclosure of transaction fees. Other recommendations saw that bank charges targeted at low-income earners were maintained through “Mzansi” accounts and low-cost transaction bundles were put in place.

⁷ Although the operating profit margins for the sample of retailers used by the Commission are moving in opposite directions, they are, on average, steadily increasing over time.

Developments on the interchange front are largely positive. The rule that one cannot withdraw cash at tills has been abolished and this has lowered withdrawal fees. Furthermore, the South African Reserve Bank (SARB) has become the new objective setter of interchange rates and has subsequently set new interchange rates for ATM and card interchange through the Interchange Determination Project (IDP).

A concern is that, although restrictive card rules have been removed and access to the payment system for clearing non-bank participants has been implemented, access to the National Payment System (NPS) remains limited. Access to the NPS as a non-bank clearing system has been limited to Diners Club and Postbank only, and has thus not allowed non-banks to be a settlement participant. Non-banks have to partner with banks in order to settle payments. This reduces the non-banks' ability to be effective competitors and increases the cost of providing a service. It also limits the ability of innovative payment service providers, such as mobile money, to implement services that increase access to financial services for poor people. Although access to the NPS is a concern, SARB and National Treasury are working to address these issues, balancing healthy prudential and competitive needs.

7.5. Monitoring of conditions in Telecoms and Grain Storage and Trading sectors

In the year under review, the Commission monitored the implementation of the remedies it had imposed in its settlement agreements with Telkom and Senwes, respectively. A summary of the cases and the status of the remedial action follows:

7.5.1. First settlement agreement with Telkom SA SOC Limited⁸

On 13 July 2013, the Tribunal confirmed a settlement agreement concluded between the Commission and Telkom. This matter concerned five complaints, lodged by Internet Solutions (Pty) Ltd ("IS")⁹, the Internet Division of Multichoice Subscriber Services (Pty) Ltd ("MWEB")¹⁰, Verizon (Pty) Ltd ("Verizon")¹¹, and Internet Service Providers' Association ("ISPA")¹², against Telkom SA SOC Limited ("Telkom")¹³. In these complaints, it was alleged that Telkom has contravened section 8(a), 8(b), 8(c) and 8(d)(iii) of the Competition Act.

Pursuant thereto, Telkom has to date fully complied with all of the deadlines set out in the settlement agreement, including:

- Concluding the Memorandum of Agreement with the Commission containing a cooperation and dispute resolution procedure;
- Paying an administrative penalty of R200 million in three instalments;
- Circulating a statement to employees summarising the contents of the settlement agreement;
- Implementing 2014 price reductions; and
- Submitting a Competition Law Compliance Programme.

⁸ CT Case No: 016865

⁹ IS' complaint was lodged on 29 June 2005.

¹⁰ Mweb lodged two complaints, the first complaint on 29 June 2005, and the second one on 5 June 2007.

¹¹ Verizon's complaint was lodged on 2 April 2007.

¹² ISPA's complaint was lodged on 12 December 2005.

¹³ All of these complaints were consolidated in terms of Rule 17(2) of the Competition Commission's Rules.

7.5.2. Second settlement agreement with Telkom SA SOC Limited¹⁴

This matter concerns 21 complaints lodged by South African VANS Association (“SAVA”) and Omnilink against Telkom SA SOC Limited (“Telkom”) for contravening section 8(a), 8(b),8(c), 8(d)(i) and 9(1)(a) of the Competition Act. This matter was heard before the Tribunal, which found that Telkom had contravened section 8(b) and 8(d)(i) of the Act. Pursuant thereto, Telkom was fined an administrative penalty in the amount of R449 million.¹⁵ Telkom appealed the Tribunal’s decision to the Competition Appeal Court (“CAC”). The Commission, in turn, cross-appealed the Tribunal’s decision. Subsequent thereto, both Telkom and the Commission agreed to withdraw their respective appeals and concluded a settlement agreement.

Telkom has complied with the terms of the settlement agreement by effecting payment of an administrative penalty in two equal instalments in October 2013 and October 2014.

7.5.3. Settlement agreement with Senwes Limited¹⁶

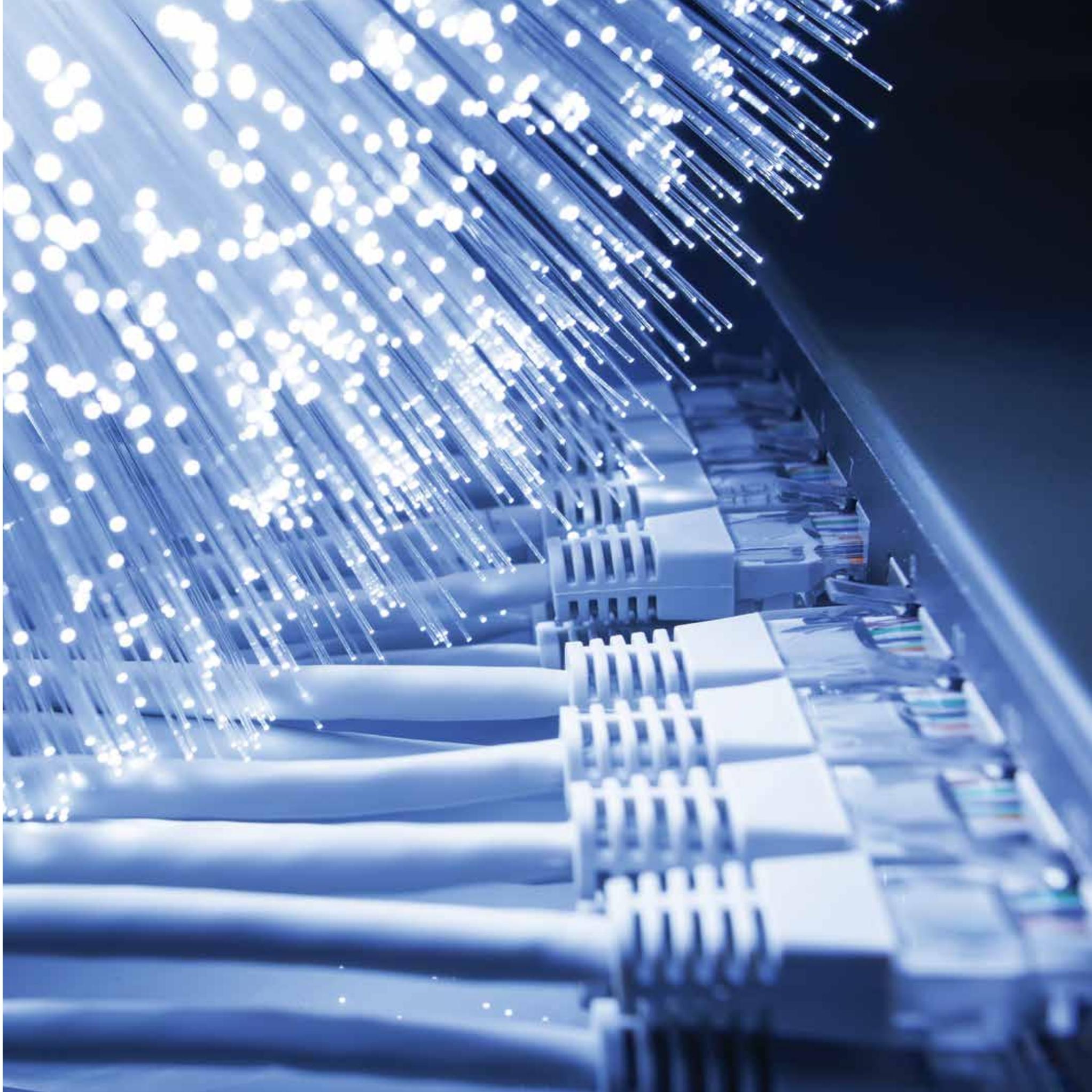
On 15 May 2014, the Tribunal confirmed a settlement agreement between the Commission and Senwes Limited (“Senwes”). This case concerns a complaint lodged by Commodity Trading House (Pty) Ltd (“CTH”) against Senwes for contravening section 8(c) of the Act. Senwes is dominant in the market for the supply of grain storage facilities (“Silos”). It also operates in the downstream level as a grain trader where it competes with other grain traders, including CTH. It is not dominant in the downstream market. In this complaint, it was alleged that Senwes’ practice of charging differential tariffs for storage was exclusionary and had an anti-competitive effect as it impeded or prevented grain traders who compete with Senwes from expanding into the downstream market for grain trading. The Commission investigated this complaint and found that this conduct was a contravention of the Act and that the anti-competitive effect of the differential storage fees charged by Senwes outweighed any technological efficiency or other pro-competitive gain that it might have. The Tribunal decided the matter in favour of the Commission and found that Senwes had indeed contravened section 8(c) of the Act. Both the CAC and the Constitutional Court confirmed the Tribunal’s decision. Subsequently, the Commission and Senwes concluded a settlement agreement, which included behavioural remedies relating, inter alia, to non-discriminatory pricing to grain traders in the downstream level; structural remedies aimed at, among others, separating the trading and silo storage businesses of Senwes and remedies to inhibit flow of commercially sensitive information between Senwes and a newly established company to operate the grain business of Senwes.

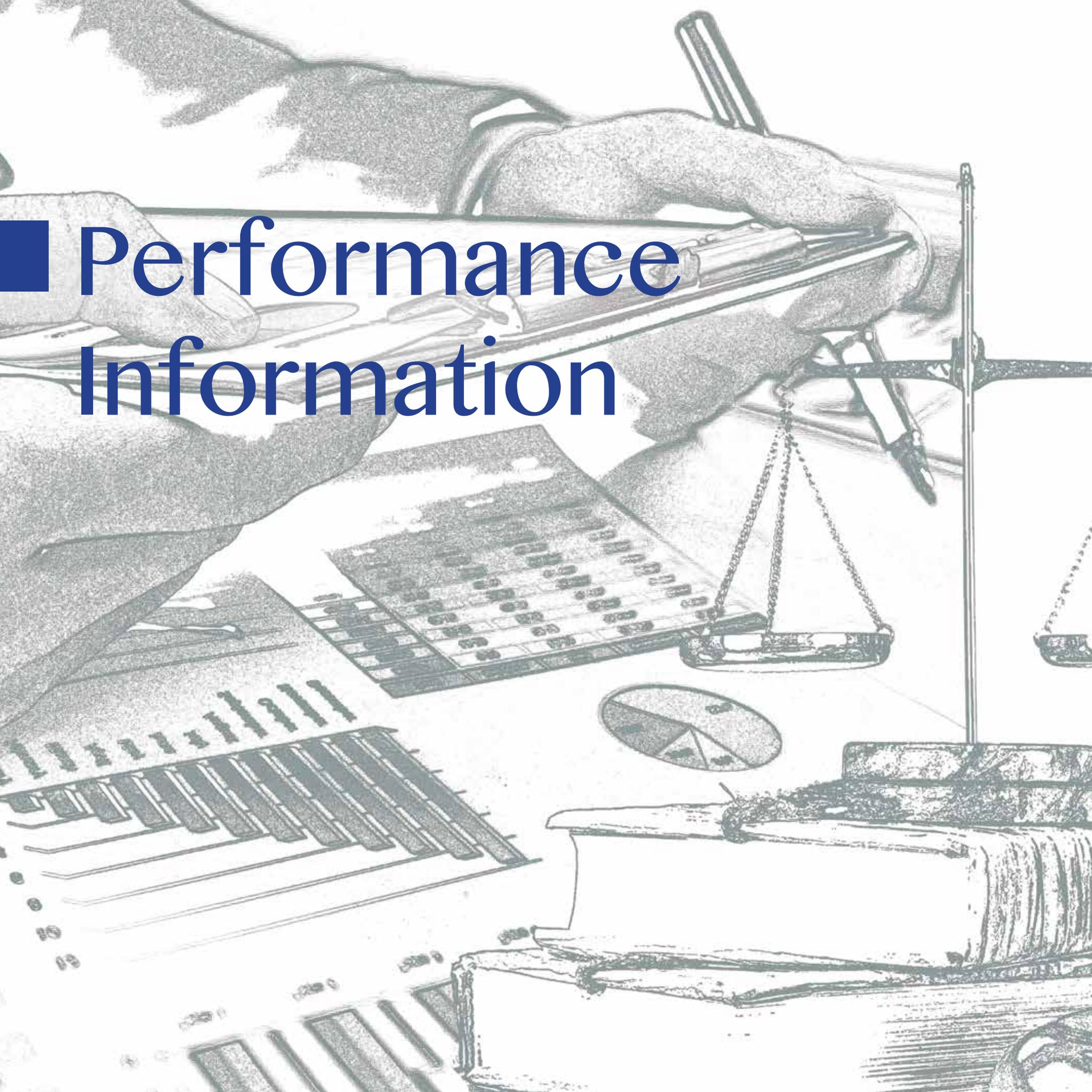
The Commission has been monitoring Senwes’ compliance with the terms of the settlement agreement. It has received and reviewed information provided by Senwes detailing compliance with the settlement agreement, together with two separate independent audited reports prepared by Ernst & Young Inc. The reports confirmed that Senwes had implemented the remedies contained in the settlement agreement.

¹⁴ CT Case No: 11/CR/Feb04

¹⁵ This administrative penalty was to be paid in two instalments: 50% within 6 months of the date of the order, and the balance 18 months from the date of the order.

¹⁶ CC Case No: 2004/Dec1332





■ Performance Information

8. Organisational Structure

This section sets out the performance results that the Commission's programmes and sub-programmes have achieved in pursuing its strategic outcomes-orientated goals.

The Commission has four functions underpinning its mandate:

- Enforcement,
- Advocacy,
- Market inquiries, and the
- Regulation of mergers and acquisitions.

The enforcement function can be divided into sub-categories according to contraventions identified in the Act: abuse of dominance, vertical restrictive practices and horizontal restrictive practices, including cartels. The Commission's analysis and evaluation of mergers and acquisitions relates to corporate bundling and unbundling activities. Advocacy relates to the activities undertaken by the Commission to promote voluntary compliance to the Competition Act. For the purposes of efficiency, the Commission has established an organisational structure that will best attend to these four functions.



Competition Commission

22

The six core programmes under which the Commission organised its work in the reporting period, and their core functions, are as follows:

- Cartels: investigating collusive practices;
- Enforcement and Exemptions: investigating abuse of dominance, vertical restrictive practices and assessing exemptions applications;
- Mergers and Acquisitions: analysing and evaluating corporate bundling and unbundling transactions;
- Policy and Research: providing economic expertise to the organisation and deepening the understanding of market dynamics, including the undertaking of market inquiries;
- Advocacy and Stakeholder Relations: promoting voluntary compliance with the Act; and
- Legal Services divisions: providing litigation services and legal expertise to the organisation and advisory opinions to the public.

Support programs are under the Corporate Services division, which includes Human Resources, Finance, Security and Facilities and Information Technology departments. The Office of the Commissioner completes the support services.

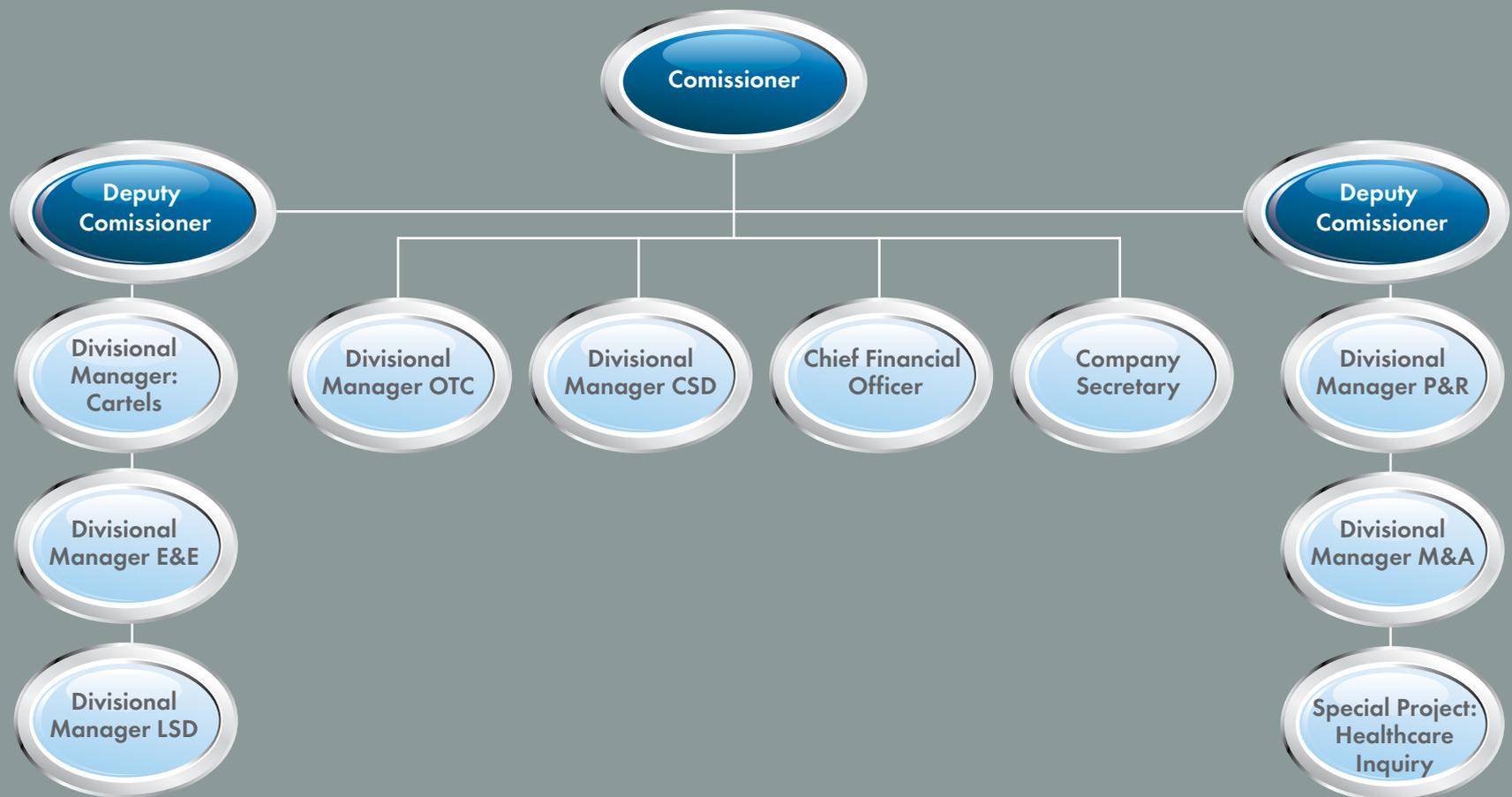
The Table below identifies each of the Commission's programmes and the strategic goals to which they contribute.

Table 1: Strategic Goals and Programmes

Strategic Goals	Accountable Programme
1. Achieve demonstrable competitive outcomes in the economy through prioritisation of sectors and cases	<ul style="list-style-type: none">■ Enforcement and Exemptions■ Cartels■ Mergers and Acquisitions■ Legal Services■ Policy and Research■ Market Inquiries
2. Increase competitive environment for economic activity through strategic partnership, engagement, dialogue and advocacy	<ul style="list-style-type: none">■ Advocacy and Stakeholder Relations
3. A high-performance competition regulatory agency	<ul style="list-style-type: none">■ Corporate Services Division■ All other divisions

Below is an organogram of the Commission.

Figure 1: Organisational Structure 2014/15



9. Enforcement and Exemptions

The Enforcement and Exemption (E&E) Programme is implemented by the E&E Division with the support of the Legal Service and Policy and Research divisions, primarily. This programme focuses on the investigation and prosecution of the abuse of dominant positions, restrictive vertical practices as well as the analysis of exemption applications. The work of the E&E Division comes from two main sources; complaints lodged by the public and investigations that are proactively initiated by the Commission.

The abuse of a dominant position by a firm may include excessive pricing of goods or services, denying competitors access to an essential facility, price discrimination (unjustifiably charging customers different prices for the same goods or services) and other exclusionary acts (such as refusal to supply scarce goods to a competitor, inducing suppliers or customers not to deal with a competitor, charging prices that are below cost so as to exclude rivals, bundling goods or services and buying up a scarce input required by a competitor).

The Act prohibits the abuse of a dominant position by firms in a market, but does not prohibit firms from holding a dominant position. The hurdles for proving abuse of dominance cases are significant and require extensive legal and economic analysis. This is evident in the small number of cases where abuse of dominance has been found and the extensive evidence that has been required for these findings. Firstly, proving allegations of abuse of a dominant position require proof that the respondent is dominant. The Act uses both market share and market power to define dominance. Market power is the ability of a firm to behave in a manner that does not take into account the reactions of its competitors, customers or suppliers, or to control prices. Secondly, there must be evidence that the respondent is abusing its dominance. This evidence relates to substantial foreclosure or consumer welfare (harm).

Restrictive vertical practices are agreements involving firms at different levels of the value chain (such as a supplier and its customers). Certain of these agreements require the Commission to conduct the substantial lessening of competition (SLC) test, which assesses possible justifications for such agreements. However, a category of these agreements that are outright prohibited (*per se* prohibition) exists: those involving the practice of minimum resale price maintenance.

9.1. Performance Overview

9.1.1. Case load

During the period under review, the E&E Division dealt with 188 complaints, of which 144 were from the public, seven (7) were initiated by the Commission and 37 were investigations carried over from the previous financial year). The total quantum of cases handled in the current financial year was 12% lower than in the previous year. This was mainly due to fewer complaints received from the public and fewer investigations being carried over from the 2013/14 financial year.

Of the seven (7) cases initiated by the Commission during the year, three (3) are allegations that the respondents were engaging in the practice of minimum resale price maintenance in contravention of section 5(2) of the Act. The firms implicated are active in the markets for the retail of outdoor-related consumer products (camping, hunting, sports, eyewear, etc.) and optometry products. In the other four (4) investigations initiated, the Commission alleges that the respondents were abusing their respective dominant positions in the markets for milk processing, potato seeds, aggregates or clinker, and event ticket sales.



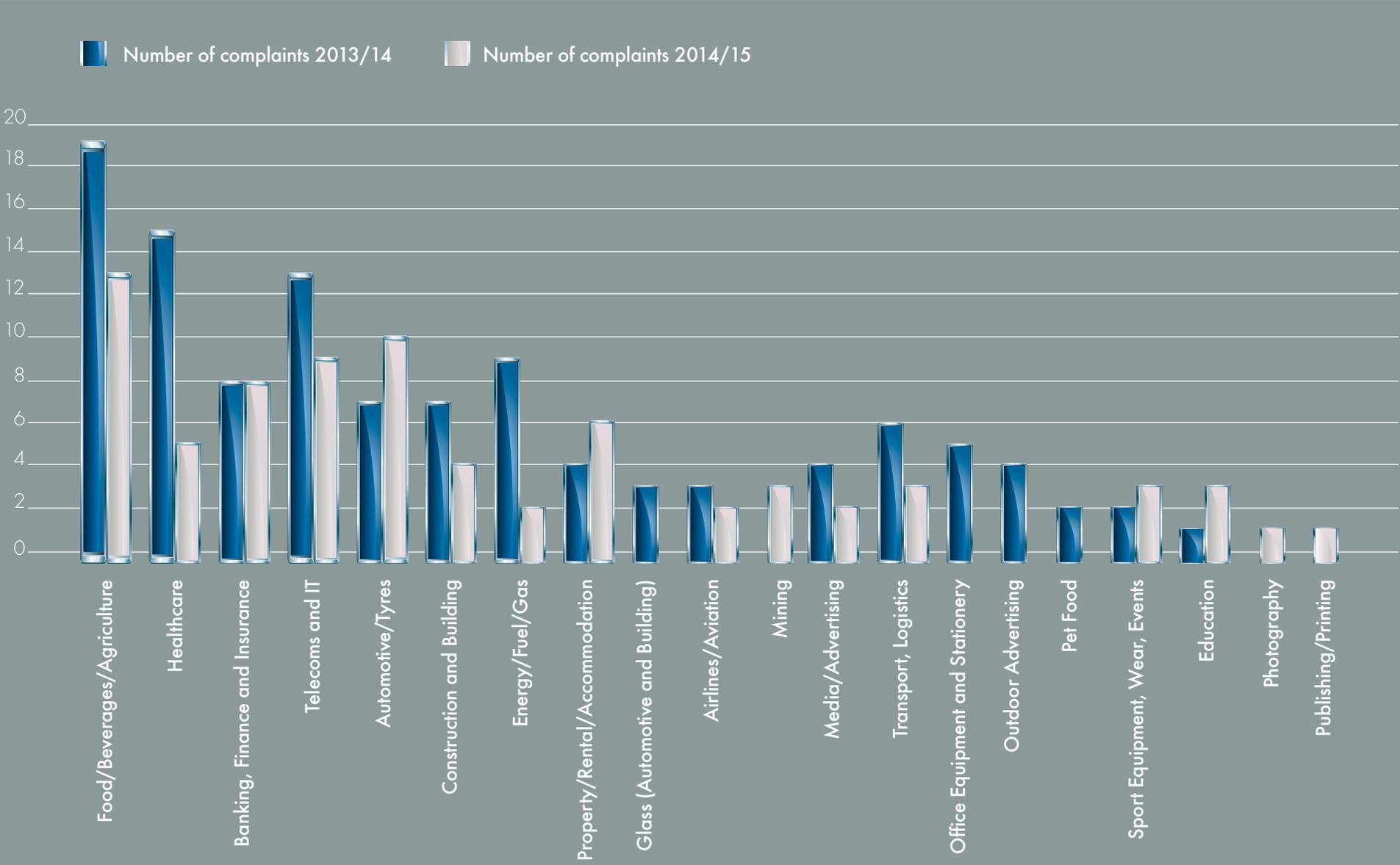
Back row, from left to right: Itumeleng Lesofe, Shadrack Rambau, Mbongiseni Ndlovu, Mulalo Shandukani, Tshegofatso Radinku, Themba Mahlangu, Tlabo Mabye, Kulani Nkuna, Marlon Dasarath, Edward Chiweza, Hlumani Mandla, Isaac Mohale, Yariv Pavese, Louise Du Plessis, Sewela Moshama, Katlego Chuene, Tshegofatso Koma
 Front row, from left to right: Letitia Kgwadi, Selelo Ramohlola, Noluthando Jokazi, Mamontshi Keleme, Junior Khumalo, Unathi Sidali, Cassandra Mongake, Mabochoa Mokobane, Priya Reddy

Table 2: Enforcement Case Load

Complaints	2012-2013	2013-2014	2014-2015
Received from public	177	167	144
Commission's initiations	4	3	7
Cases from previous financial year	86	45	37
Total	267	215	188

The Figure below indicates the sectors or industries that generated most of the complaints for the past two financial years, 2013/14 and 2014/15.

Figure 2: A comparison of complaints received by the Commission in 2013/14 and 2014/15



9.1.2. Tackling abuse of dominance and vertical restrictive practices

The Commission continued investigations in a number of important sectors during the financial year. In the telecommunications sector, progress was made in the investigation of a complaint of abuse of dominance conduct filed by Cell C (Pty) Ltd ("Cell C") against Vodacom (Pty) Ltd ("Vodacom") and Mobile Telephone Networks (Pty) Ltd ("MTN"). Cell C, MTN and Vodacom are mobile network operators and are licensed to provide national mobile cellular telecommunications services in South Africa. Cell C alleges that MTN and Vodacom have engaged in pricing strategies which have the effect of making it cheaper for their subscribers to make on-net calls (calls on the same network) as compared to off-net calls (calls between different networks). The complaint is being investigated under sections 8(a), 8(c) and 8(d)(i) of the Act and the investigation is ongoing.

In the chemicals sector, the Commission continued its investigation into Sasol Chemical Industries Ltd ("SCI") for alleged excessive pricing, margin squeeze (exclusionary conduct), refusal to supply scarce goods and price discrimination of propylene, polypropylene and ethylene in violation of sections 8(a), 8(c), 8(d)(ii) and 9 of the Act. The Commission made significant progress in its investigation of an excessive pricing allegation against ArcelorMittal South Africa ("AMSA") in the steel sector. In addition, several investigations continued during the year in the pay television industry against Multichoice Africa (Pty) Ltd ("Multichoice") and Supersport International (Pty) Ltd ("Supersport") for allegedly engaging in several anticompetitive conduct including tying, refusing access to an essential facility and predatory pricing in contravention of sections 8(b), 8(d)(iii) and 8(d)(iv).

The Commission completed several investigations in other sectors, including waste management, in a complaint by Ecocycle Waste Solutions (Pty) Ltd against Compass Waste Services (Pty) Ltd. Ecocycle alleged that Compass Waste was engaging in abusive predatory pricing conduct in the market for medical waste collection and treatment. It further alleged that Compass Waste and its customers entered into anticompetitive vertical agreements in contravention of section 5(1), the potential anticompetitive clauses were removed from the contracts and the Commission non-referred the allegation. The matter was non-referred as no evidence of predation could be found. Another investigation was against Peresys (Pty) Ltd, a company that provides technological solutions to financial markets for the execution of buy and sell orders. It was alleged that Peresys had abused its dominant position in the market by concluding long-term exclusive agreements with the majority of the buy side institutions (hedge funds and fund management institutions) in South Africa. The matter was non-referred as it was found that Peresys is not dominant in the market for order routing in South Africa.

In the airline industry, the Commission completed an investigation of a complaint by Comair Limited ("Comair") against the South African Airways ("SAA"). Comair's complaint was around the incentive schemes the SAA has been using to incentive travel agents. The investigation was non-referred on the basis that the incentive scheme was found not to be transgressing the Act. Two investigations were completed in the pharmaceutical industry involving the production and supply of antiretroviral drugs for HIV. The Commission initiated one of these investigations and the other was a complaint received from Medicins SANS Frontiers (Doctors without Borders) ("MSF"), both against Aspen Pharmacare Holdings Limited, Mylan Incorporated and its affiliates (Mylan Laboratories Limited and Mylan South Africa Incorporated). The Commission's investigation found no transgression of the Act. The Commission found that it is common practice in the pharmaceutical industry for owners of intellectual property to license to a particular entity the use of their intellectual property either on an exclusive or non-exclusive basis. The Commission found that Aspen's competitors could reasonably access alternative sources of supply. Other investigations that were completed involved the allegation of resale price maintenance in contravention of section 5(2) of the Act against Paintball Africa, Lynx Optics and Honda Motor Southern Africa (Pty) Ltd. All three complaints were non-referred.

Case Study 2: Hearing of the predatory pricing case against Media 24

The hearing of the Commission's case on predatory pricing complaint against Media24 (CC vs Media 24) was concluded in the Tribunal in November 2014. The case is the first prosecution of a predatory pricing complaint by the Commission. The case relates to predatory pricing in the community newspaper market in the Goldfields region in the Free State. The Commission found that Media24 used its publication, Forum, as a fighting brand and undercut Goldnet News by offering prices below its marginal or variable costs in contravention of section 8(d)(iv), alternatively 8(c) of the Act. The Commission also found that this conduct was aimed at undermining Goldnet News' competitiveness and thus designed to secure the market for Media24's more lucrative title called Vista.

Case Study 2: Hearing of the predatory pricing case against Media 24 (continued)

In prosecuting this matter the Commission hopes to establish that section 8(d)(iv) of the Act includes within its scope an incremental cost standard. This requires interpreting the words “average variable cost” (“AVC”) in section 8(d)(iv) to include incremental costs. AVC has historically been interpreted in competition law as a short-run measure, and is generally distinguished from incremental cost and avoidable cost measures in literature. Media 24 is arguing that the legislation intended AVC to have a similarly narrow meaning in section 8(d)(iv), especially having regard to the dangers of prohibiting pro-competitive pricing conduct. The Tribunal’s decision on the matter was still awaited at the end of the financial year.

9.1.3. Exemption applications

The Commission received a total of four (4) exemption applications in this financial year. Three of the applications received are in the built environment and one in the airline sector. Four (4) exemptions were granted during the financial year, one (1) in the healthcare sector (Case Study 3), one (1) in the airline industry and two (2) in the finishing industry (Case Study 4).

In terms of the Act, an exemption is a tool that provides protection or immunity for firms from enforcement action by the Commission. It also precludes third parties from lodging a complaint in relation to the exempted conduct. There are three broader categories of exemptions provided for in the Act:

- single or category exemption (section 10(1));
- exemption for Intellectual Property Rights (section 10(4)); and
- exemption for professional rules by professional associations (Schedule 1).

The first step in assessing an exemption application is to establish whether the conduct sought to be exempted constitutes a prohibited practice. If the answer is in the affirmative, the next step of the analysis is to establish whether the conduct is justifiable on the grounds provided for in the Act. The grounds for single or category exemption are set out in section 10(3)(b) of the Act, which

provides for a firm to apply for an exemption if the objective of the agreement or practice that forms the subject of the application is to:

- maintain or promote exports;
- promote the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive;
- change in productive capacity necessary to stop decline in an industry; and
- economic stability of any industry designated by the Minister.

The grounds for exemption for Intellectual Property Rights are contained in section 10(4) of the Act, whereby firms may apply for an agreement or practice, or category of agreements or practices, that relates to the exercise of intellectual property rights acquired or protected in terms of:

- the Performers’ Protection Act, 1967;
- the Plant Breeder’s Rights, 1976;
- the Patents Act, 1978;
- the Copyright Act, 1978;
- the Trade Marks Act, 1993; and
- the Designs Act, 1993.

The grounds for exemption by professional associations are contained in Schedule 1 Part A of the Act. It provides that the Commission may exempt all (or part) of the rules of a professional association any restriction in those rules that has the effect of substantially preventing or lessening competition in a market that is reasonably required to maintain professional standards and the ordinary function of the profession.

Table 3: Exemption Applications Received and Granted

Exemptions	2012-2013	2013-2014	2014-2015
Exemption applications received	4	11	4
Exemptions granted	1	0	4

Case Study 3: Exemptions granted to the National Hospital Network

In November 2013, the National Hospital Network (“NHN”) filed an application for an exemption in terms of section 10 (1) (b) of the Act. NHN is a non-listed company, which is a cooperative venture controlled by a group of independent private hospitals. NHN was granted two exemptions in the past. As per the previous two applications, the recent application was in respect of collective bargaining between NHN (on behalf of its members) and individual medical schemes and medical scheme administrators, as well as the implementation by the members of NHN of agreements concluded between NHN and the medical schemes and/or medical scheme administrators that result from the collective bargaining.

In particular, NHN requested that it be permitted to engage in the following activities among its members with medical schemes and/or medical scheme administrators:

- NHN’s members to agree collectively to implement prices negotiated and entered into on their behalf by NHN with medical schemes and/or medical scheme administrators; and
- To promote the interest of its members, market their services and provide a base for benchmarking, which would help NHN members to increase efficiencies.

In September 2014, the Commission took a decision to grant NHN the exemption for a period of four years. In arriving at this decision, the Commission took into account the fact that many NHN members, individually, would not be able to negotiate prices that would allow them to compete with the “big three” hospital groups, namely Mediclinic Corporation Ltd, Life Healthcare Group (Pty) Ltd and Netcare Holdings Ltd. Through NHN grouping, the members get the benefit of collectively negotiated prices.

Thus far, exemptions granted to NHN have helped its members (mainly small hospitals) to gain market share in terms of expenditure and movement of patients to NHN hospitals.

Case Study 4: Exemptions granted to Squid and Lobster Industries

During the period under review, the Commission considered two further exemption applications, both from the fishing industry. The first exemption application was filed in July 2013 by African Marine Products (Pty) Ltd, Oceana Lobster Limited, Ovenstone Agencies (Pty) Ltd, Premier Fishing SA (Pty) Ltd, and Ruwekus Fishing (Pty) Ltd (“Applicants”). The Applicants are South African companies active in the catching, processing, marketing and exporting of different species of lobster. The application was filed in terms of section 10(3)(b)(i) of the Act, in respect of practices by which the Applicants would engage in coordinated sharing of commercially sensitive information for purposes of marketing and selling lobster in foreign markets. Section 10 (3) (b) (i) of the Act allows firms to apply for an exemption if the objective of the agreement or practice that forms the subject of the application is to maintain or promote exports. The Commission took a view that the exemption would help the Applicants achieve this objective, and exemption was granted for five years.

The second exemption application was filed by the South African Squid Exporters Association (“SASEA”) in terms of section 10 (3) (b) (i) of the Act and section (ii), which promotes the ability of historically disadvantaged persons to become competitive. SASEA is a non-profit organisation that promotes the collective interests of South African exporters of *Loligo Reynaudi* squid (“Squid”). In terms of the application, SASEA requested it and its members be permitted to exchange commercially sensitive information.

The Commission’s investigation revealed that South African exporters of squid are at a disadvantage when negotiating with foreign buyers due to information asymmetry. The Commission took a view that exempting the applicants from the conduct will provide them with a platform to overcome information asymmetries that exist in relation to foreign markets, strengthen their bargaining position and improve their international competitiveness. As such, the Commission decided to grant the exemption for a period of five years.

10. Cartels

The Cartels Division is responsible for investigating and prosecuting cartel activities. Cartels conduct includes price fixing, market division and collusive tendering, which are prohibited in terms of section 4(1)(b) of the Competition Act. The Cartels Division is also responsible for administering the Commission’s Corporate Leniency Policy (CLP), through which a self-confessing cartel member can approach the Commission and report a cartel in exchange for immunity from prosecution.

During this reporting period, the Cartels Division consolidated its case pipeline by clearing backlogs in order to focus on real-time investigations and sought to embed a proactive approach to cartel investigations. The division continued to develop its investigative and prosecution capacity to expedite the finalisation of cartel cases. The Cartels Division was also central in engaging with the National Prosecuting Authority (NPA) and the South African Police Services (SAPS) on an approach to implement the Competition Amendment Act, which criminalised cartel conduct.

The Cartels Division has successfully administered the Commission’s CLP, which helped uncover the majority of cartel cases under investigation.

10.1. Performance Overview

10.1.1. Corporate Leniency Applications

The Cartels Division carried over 18 applications for Corporate Leniency from the previous financial year and received 121 new applications during the reporting period, thereby managing a total of 139 applications. The number of Corporate Leniency Applications increased from five (5) received in 2013/2014 to 121 in 2014/2015. The majority the applications received are in the automotive components.

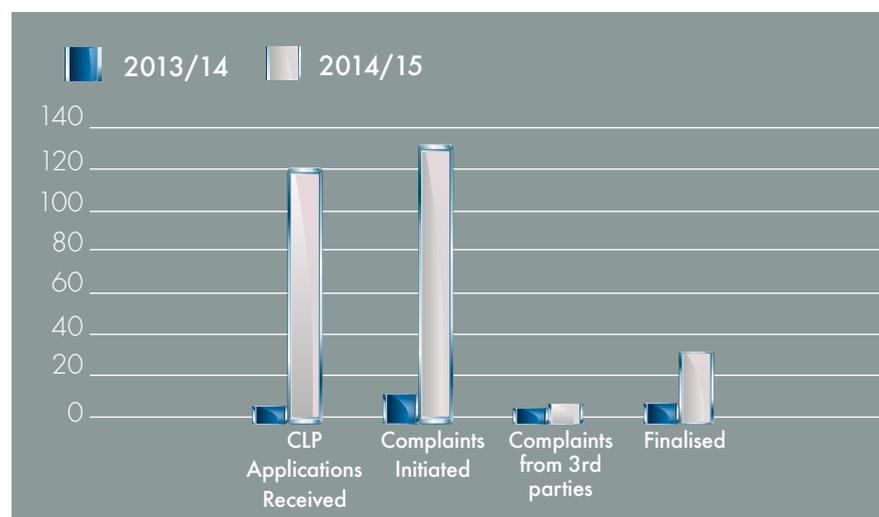
10.1.2. New cartel investigations initiated

During the reporting period, the Commission initiated and investigated a total of 132 new cartel complaints and received six (6) complaints from members of the public. Complaints received from third parties increased from four (4) in 2013/2014 to six (6) in 2014/2015, while the number of complaints initiated increased from 11 in 2013/2014 to 132 in 2014/2015. The majority of the complaints initiated involved automotive components and covered over 100 components.

10.1.3. Cartel investigations

The Cartels Division carried over 59 cases from the previous financial year of which 27 were construction cases. Out of 59 cases that were carried over, the division finalised 31 cases (15 were referrals and 16 non-referrals). The number of cartel cases finalised increased from seven (7) in 2013/2014 to 31 in 2014/2015.

Figure 3: A comparison of CLP applications received, investigations initiated, complaints from 3rd parties and finalised cartel cases in 2013/14 and 2014/15





Back row, from left to right: Katlego Monareng, Tshepo Ramoshaba, Nokuphiwa Kunene, Mehluli Nxumalo, Kgashane Kgomo, Ofentse Moshudi, Fhatuwani Mudimeli, Khotso Modise, Eric Papo, Kwena Mahlakoana, Lesego Moseki, Andrew Masilo, Mfundo Ngobese, Matodzi Sivhaga.
Front row, from left to right: Tsholofelo Letsike, Thandi Nkabinde, Laura Mantshidi, Kelebogile Modingoana, Khomotso Hlongoane, Mosima Tambani, Tshepiso Mnguni, Lebohang Mabidikane.

Case Study 5: Phase 2 Construction Fast Track Settlement process

The Commission finalised five (5) settlement agreements under Phase 2 of the Construction Fast Track Settlement process. The remainder of the bid-rigging cases with firms who did not cooperate were referred to the Tribunal for prosecution (17).

The 17 cases that were referred to the Tribunal for prosecution include the 2010 FIFA World Cup stadia tenders, which were subjected to collusive conduct by major construction companies such as Group Five, WBHO, Stefanutti, Murray & Roberts, Grinaker LTA and Basil Read. These firms agreed on the profit margins to be charged for these tenders, among other contraventions. The firms also allocated the stadia tenders that each should win, and identified which firms should submit cover quotes. Litigation of these cases will commence at the Tribunal once the parties conclude the exchanging of pleadings.

The dismantling of the cartel in the construction sector has set the industry on a new competitive trajectory. Purchasers of construction services, mainly Government, will as a result of the Commission's intervention in the sector, be able to get fair and competitive prices. This will in turn reduce the costs to Government in rolling out its multi-billion infrastructure development projects. The dismantling of the cartel in the construction sector will also enable victims of this collusive conduct to claim damages from the firms found guilty of collusion.

10.1.4. Dawn raids

The Commission has powers to enter premises, search and seize evidence in terms of sections 46 and 47 of the Act. Section 46 of the Act authorises the Commission to enter premises, search and seize evidence only if it has been granted a search warrant by the High Court judge or magistrate. Section 47 on the other hand, authorises the Commission to enter premises, search and seize evidence without warrant if it believes on reasonable grounds that a warrant would be issued if applied for and that the delay that would ensue by first obtaining a warrant would defeat the object of the entry and search.

Undertaking raids is a complex legal and operational exercise that requires a great deal of resources and coordination before, during and after raid.

The Commission conducted four (4) dawn raids (search and seizure operations) during the financial year. The firms raided were:

- Investchem (Pty) Ltd and Akulu Marchon South Africa (Pty) Ltd;
- Sime Darby Hudson & Knight (Pty) Ltd and Unilever Bestfoods Robertsons (Pty) Ltd;
- Belfa Fire (Pty) Ltd, Cross Fire Management (Pty) Ltd, Fireco Gauteng (Pty) Ltd & Fireco (Pty) Ltd, Technological Fire Innovations (Pty) Ltd and Fire Control Systems (Pty) Ltd; and
- Eldan Auto Body CC and Precision & Sons (Pty) Ltd.

The Commission's investigations of these firms continued into the new financial year.

Case Study 6: Dawn Raids conducted in 2014/15

Sime Darby Hudson & Knight (Pty) Ltd and Unilever Bestfoods Robertsons (Pty) Ltd (Fats and Edible Oil)

On 3 April 2014, the Commission carried out search and seizure operations in the premises of Unilever South Africa (Pty) Ltd ("Unilever") and Sime Darby Hudson & Knight (Pty) Ltd ("Sime Darby") and seized evidence in hard copies and electronic format. The allegations against Unilever and Sime Darby are that they concluded a collusive agreement in terms of which Sime Darby will not supply margarine pack sizes that are less than 20kg and which are supplied by Unilever to the retail sector. In addition, Unilever will not supply industrial customers with its Flora brand edible oils while Sime Darby will not supply retail customers with its Crispa brand edible oils.

Eldan Auto Body CC and Precision & Sons (Pty) Ltd (Panel beating)

On 4 July 2014, the Commission carried out search and seizure operations in the premises of Eldan Auto Body CC (Eldan), Precision & Sons (Pty) Ltd (Precision) and Vehicle Accident Assessment Centre (VAAC) and seized evidence in hard copies and electronic format. The companies are alleged to have colluded on auto repair (panel beating) tenders by exchanging cover quotes whenever they are required to bid.

Investchem (Pty) Ltd and Akulu Marchon South Africa (Pty) Ltd (Surfactants)

On 4 December 2014, the Commission carried out search and seizure operations in the premises of Investchem (Pty) Ltd (Investchem) and Akulu Marchon (Pty) Ltd (Akulu) and seized evidence in hard copies and electronic format. The companies are alleged to have agreed to fix the price of surfactants and divide the market by allocating customers to each other in the market for the supply of surfactants.

Belfa Fire (Pty) Ltd, Cross Fire Management (Pty) Ltd, Fireco Gauteng (Pty) Ltd & Fireco (Pty) Ltd, Technological Fire Innovations (Pty) Ltd and Fire Control Systems (Pty) Ltd (Fire control and protection systems)

On 20 March 2015, the Commission carried out search and seizure operations in the premises of Belfa Fire; Cross Fire; Fire Control, Technological Fire Innovations (Pty) Ltd ("TFI") and Fireco and seized evidence in hard copies and electronic format. The companies are alleged to have colluded on fire control and protection tenders by exchanging cover quotes whenever they are required to bid.

10.2. Dismantling Cartels: Case Studies

Case Study 7: Price fixing, market division and collusive tendering in respect of electric cables

On 3 December 2014, the Competition Tribunal confirmed a settlement agreement between the Commission and ATC (Pty) Ltd (ATC) in respect of its involvement in a cartel with Aberdare Cables (Pty) Ltd (Aberdare), Malesela Taihan Electric Cables (M-Tec) and Alcon Marepha (Pty) Ltd (Alcon Marepha). This conduct occurred from 1998 to at least 2010.

ATC admitted having fixed prices, divided market and tendered collusively with Aberdare when supplying power cables to mining companies and municipalities. It also admitted to having divided market and tendered collusively with Aberdare, M-Tec and Alcon Marepha when supplying Eskom tenders Corp 89 and Corp 90 with electric power. Further, ATC admitted to colluding under the auspices of the Association Electric Cables Manufacturers of South Africa wherein members discussed and agreed on a quotation basis to escalate prices when bidding for short- and long-term tenders to supply power cables.

This conduct amounted to price fixing, division of market and collusive tendering, which contravene section 4(1)(b)(i)(ii)&(iii) of the Act. ATC agreed to pay an administrative penalty of R80 million, which represented 5% of its turnover for its 2010 financial year.

Case Study 8: Fixing the purchase price of scrap metal

Following an application for leniency in terms of the Commission's leniency policy, the Commissioner initiated a complaint against firms purchasing scrap metal, for alleged prohibited practices in contravention of section 4(1)(b)(i) of the Act (CC vs ArcelorMittal, Columbus Stainless, Cape Gate, Scaw, Highveld Steel & Vanadium Corporation, Cape Town Iron & Steel Works and the South African Iron and Steel Institute, 2009Dec4844 and CC vs Columbus Stainless Steel (Pty) Ltd) (collectively "Respondents").

Following an investigation, the Commission referred the complaint to the Tribunal on 7 August 2013. The Commission alleged that from 1998 until at least 2008, the Respondents, being firms in a horizontal relationship, entered into an agreement, or engaged in a concerted practice of directly or indirectly fixing the purchase price of scrap metal.

In November 2014, after the Commission's referral of this matter, the Commission and Columbus reached agreement to settle in the amount of R32 576 835,87 (thirty-two million five hundred and seventy-six thousand eight hundred and thirty-five rand and eighty-seven cents) and an admission by Columbus of having contravened section 4(1)(b)(i) of the Act. The remaining respondents in this matter are ArcelorMittal Limited and Cape Gate (Pty) Ltd. The prosecution against the remaining respondents continues.

Case Study 9: Price-fixing in the pelagic fishing market

On 9 July 2014, the Competition Tribunal confirmed a settlement agreement concluded between the Commission and Premier Fishing (SA) (Pty) Ltd ("Premier") in respect of Premier's involvement in a cartel with other fish processors in the pelagic fishing market (CC vs Premier Fishing SA (Pty) Ltd, 2008Jul3827). Pelagic fish is canned fish, often consumed by the poor, and falls within Commission priority sector of food.

The cartel conduct was firstly in respect of price fixing of the catching fees that processors paid to skippers and crew for pelagic fish, and secondly, indirect price fixing of the price of canned fish in the context of processing agreements with other processors. The cartel conduct took place from 2001 to 2008. In terms of the settlement agreement Premier agreed to pay a penalty of R2 121 400 for contravening section 4(1)(b)(i) of the Act.

11. Mergers and Acquisitions

The Mergers and Acquisitions Division administers Chapter 3 of the Competition Act. The division investigates and assesses whether a merger is likely to substantially prevent or lessen competition and whether a merger can or cannot be justified on substantial public interest grounds. Mergers are classified, based on the thresholds for notification, into three different categories: small, intermediate or large. The framework to determine thresholds is set out in Section 11 of the Competition Act. In April 2009, the merger thresholds were revised as reflected in Table 4.

Table 4: Mergers and Acquisition thresholds as at 1 April 2009

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

Any party to an intermediate or large merger is required to notify the Commission of the merger in the manner and form prescribed in the Act. The Commission receives a filing fee for every intermediate and large merger filed. Where a proposed merger does not meet the thresholds of either an intermediate or large merger, it is categorised as a “small merger”. Small mergers do not require compulsory notification and no fees are payable. However, the Commission may call for their notification within six months of implementation if the small merger is likely to substantially prevent or lessen competition, or cannot be justified on substantial public interest grounds. In particular, the Commission expressly requires notification of a small merger if any of the following criteria are met:

- At the time of entering into the transaction any of the firms, or firms within their group, are subject to an investigation by the Commission in terms of Chapter 2 of the Competition Act; or
- At the time of entering into the transaction any of the firms, or firms within their group, are respondents to pending proceedings referred by the Commission to the Competition Tribunal in terms of Chapter 2 of the Competition Act.

The Commission issued guidelines on the notification of small mergers to this effect, effective from April 2009.

The Commission has jurisdiction to decide on intermediate and small mergers notified. However, for large mergers, the Competition Tribunal makes the final decision. The Commission will prohibit, approve with conditions, or approve without conditions any small or intermediate merger filed, but can only make a recommendation on large mergers to the Competition Tribunal. The merging parties or parties who intervene in merger proceedings can appeal the decisions of the Commission and Competition Tribunal.

For operational efficiency, the Commission classifies notified mergers based on the complexity of the competition and/or public interest issue. Categorisation is either Phase 1 (non-complex), Phase 2 (complex) or Phase 3 (very complex). In addition, the Commission has published service standards for merger investigations,



Back row, from left to right: Brenda Maseko, Dineo Mashego, Relebohile Thabane, Grashum Mutizwa, Hugh Dlamini, Mogau Aphane, Thelani Luthuli, Xolela Nokele, Rakgole Mokolo, Amanda Mfuphi, Prishani Maheeph, Seabelo Molefe, Nolubabalo Myoli, Daniela Bove, Hardin Ratshisusu, Maanda Lambani.
Front row, from left to right: Lindiwe Khumalo, Zanele Hadebe, Seema Nunkoo, Portia Bele, Billy Mabatamela, Reabetswe Molotsi, Thato Mkhize, Nompucuko Nontombana

particularly the time it takes to complete an investigation. The service standards are necessary as the Act has set out timeframes for investigations that apply to a merger, irrespective of complexity. Small or intermediate mergers must be reviewed within 20 business days and the Commission can extend this by a maximum of 40 business days. Large mergers must be reviewed within 40 business days and, upon an application made by the Commission, the Tribunal may grant an extension of the investigation period of no more than 15 business days at a time.

11.1. Performance Overview

11.1.1. Merger activity

During the year under review, the Commission received 395 merger notifications. This is a significant increase from the previous year's 320. The majority of mergers received were intermediate mergers. There was an unprecedented increase in mergers in the furniture retail markets, telecommunication industry and the dairy sector. The mergers in the furniture retail market were driven by the Ellerines business being placed under business rescue in terms of the Companies Act.

During this financial year, the Commission finalised 375 merger investigations, a marked increase from 329 in the previous year. Of the 375 cases finalized, 108 were large, 251 intermediate and 16 small mergers. Of the 375 finalised cases, 321 were approved without conditions, 43 with conditions, five (5) cases were prohibited (compared with one in the previous year) and six (6) cases were withdrawn after the Commission started its investigation or due to the Commission not having jurisdiction to investigate the mergers.

The five (5) merger applications prohibited by the Commission were:

- Between Lowveld Hospital (Pty) Ltd and Life Healthcare Group (Pty) Ltd;
- The acquisition of the fresh dairy business of Nkunzi Milkyway (Pty) Ltd by Clover S.A (Pty) Ltd;
- The acquisition of the Gallagher Convention Centre by Hosken Consolidated Investments Limited;
- The acquisition of 40% equity interest in SunWest International (Pty) Ltd and Worcester Casino (Pty) Ltd by Tsogo Sun Holdings Ltd; and
- The acquisition of Arkema Resins (Pty) Ltd by Ferro Industrial Products (Pty) Ltd.

Table 5: Mergers notified and reviewed from 2011/12 to 2014/15

	2011-2012	2012-2013	2013-2014	2014-2015
Notified	291	324	320	395
Large	88	68	95	119
Intermediate	186	223	209	260
Small	17	33	16	16
Finalised	283	327	329	375
Large	85	70	95	108
Intermediate	183	227	214	251
Small	15	30	20	16
Approved without conditions	234	278	302	321
Large	72	55	84	86
Intermediate	155	200	201	221
Small	7	23	17	14
Approved with conditions	33	37	22	43
Large	10	12	10	18
Intermediate	19	22	11	23
Small	4	3	1	2
Prohibited	8	0	1	5
Large	1	0	0	2
Intermediate	4	0	0	3
Small	3	0	1	0
Withdrawn/no jurisdiction	8	12	4	6
Large	2	3	1	2
Intermediate	5	5	2	4
Small	1	4	1	0

Case Study 10: Preventing market dominance in the merger involving HCI and Atterbell

The Commission prohibited the merger between Hosken Consolidated Investments Limited (“HCI”) and Atterbell Investments (Pty) Ltd (“Atterbell”), trading as Gallagher Convention Centre (“GCC”). In its assessment, the Commission found that the merger created an overlap with respect to the provision of conference and exhibition facilities in South Africa and more specifically in the Johannesburg area. HCI offers these services through the Tsogo Sun range of hotels and casinos as well as the Sandton Convention Centre (“SCC”) business, while Atterbell offers these services through the GCC business.

In evaluating the merger, the Commission took into account the history behind the acquisition, the anti-competitive effects likely to arise from the merger, the counterfactual arguments presented by the merging parties and public interest concerns arising from the merger.

The Commission found that SCC and GCC were the closest competitors in the market for providing exhibition venues and exhibition facilities, particularly in the Johannesburg area, where there is no other alternative for some exhibitions. The transaction would therefore not only result in the merged entity being dominant post-merger but would also elevate the concentration levels by reducing the number of players from four (4) to three (3). The post-merger common ownership of SCC and GCC would therefore likely result in unilateral effects as it would allow the merged entity to exert its market power and raise prices in SCC and GCC post-merger to the detriment of exhibition organisers.

Although the merging parties argued that GCC would exit the market should the merger not be approved, the Commission found that there was no guarantee that the GCC business would remain in the market even if the merger was approved. Further, at the investigation stage, the merging parties had not presented sufficient evidence to confirm the counterfactual or GCC’s inevitable exit from the market.

The merging parties approached the Tribunal to reconsider the matter. This was heard in March 2015. The Tribunal subsequently approved the merger subject to conditions, including an obligation to continue running the GCC business for a specified period of time, pricing and ring-fencing obligations.

Case Study 11: Merger involving Tsogo Sun and Sunwest and Worcester Casino

The Commission recommended to the Tribunal that the large merger between Tsogo Sun Holdings Limited ("Tsogo Sun") and SunWest International (Pty) Ltd ("SunWest") and Worcester Casino (Pty) Ltd ("Worcester") be prohibited. Tsogo Sun intended to acquire 40% equity interest in SunWest and Worcester, respectively. SunWest and Worcester are controlled by Sun International (South Africa) Limited ("SISA") and Grand Parade Investments Limited ("GPI"). The Commission considered the acquisition by Tsogo Sun as likely to substantially prevent or lessen competition in the casino market within the general Cape Metropole and Winelands area. The Commission found that the merging parties are likely to coordinate their behaviour, post-merger. In the absence of rivals and no possibility of new entry, the acquiring and target firms have the ability and incentive not to invest in innovation, offer poor quality services and high prices to the detriment of consumers. The matter was still pending before the Tribunal at the close of the financial year, but the merging parties subsequently abandoned the merger during hearings at the Tribunal.

Case Study 12: Merger involving Ferro Industrial Products and Arkema Resins

The Commission recommended to the Tribunal to prohibit the proposed merger involving Ferro Industrial Products (Pty) Ltd ("Ferro") and Arkema Resins (Pty) Ltd ("Arkema") as the proposed merger would result in a substantial prevention and lessening of competition in the manufacture and supply of unsaturated polyester resin (UPR).

In assessing the proposed transaction, the Commission distinguished between UPR used in the mining segment and UPR used in "other segments". The UPR supplied to the mining segment is used for roof support and is a semi-strategic product important for safety. In "other segments", UPR is widely used to reinforce fibreglass for end use applications, such as building and construction, automotive and transportation, marine, and others.

The Commission found that in the mining segment, the merger would lead to a monopoly. In other segments, the Commission found that the merger would result in high levels of concentration, with the rest of the market being accounted for by small ineffective local suppliers and some imports. Further, there are high barriers to entry in the UPR market due to the high capital outlay required, economies of scale and the existence of excess capacity. In the mining segment, there are additional barriers to entry such as reputation, technology, technical expertise and technical specifications required.

The Commission also considered possible remedies, such as a divestiture of Arkema's composite business, but the firm's coatings business is located in the same plant, making it impractical to separate them. The merging parties also proposed a pricing formula for the mining segment, applicable for two years. The Commission was of the view that the pricing formula would not address the anticompetitive effects arising from the structural changes in the market, brought about by the proposed transaction.

On 4 August 2014, the Tribunal approved the proposed merger with conditions that include a divestment and pricing condition.

11.1.2. Turnaround times

During the period under review, the Commission completed a pool of non-complex, complex and very complex investigations at an average turnaround time of 23, 46 and 67 business days, respectively. Where the average turnaround time exceeds the service standard, the difference is minimal. The Table below shows the 369 merger investigations finalised in the current financial year by complexity as well as the average turnaround time for the investigation.

Table 6: Summary of Turnaround times

Phase	Total number of transactions	Average Turnaround time (business days)	Average Turnaround Time (business days)
Phase 1	220	23	23
Phase 2	115	46	46
Phase 3	34	67	67 ¹
Total	369	34	34

Note: This table excludes cases withdrawn by the merging parties or where the Commission did not have jurisdiction.

11.2. Mergers approved with conditions

The Commission approves or recommends the approval of a merger with conditions to the Competition Tribunal where it has found that a specific remedy can address the competition or public interest concerns identified during the merger review. In the current financial year, a total of 43 mergers were approved with either behavioural or structural conditions compared to 22 in the previous financial year.

In this financial year, the Commission monitored more than 100 conditions for compliance. The Commission closed 52 conditions whose obligations on the parties had lapsed.

11.2.1. Behavioural conditions: Addressing public interest concerns

In terms of Section 12A(1) of the Act, the Commission must consider both the impact that a merger will have on competition and whether the merger can or cannot be justified on substantial public interest grounds. This means that the Commission is required to consider the effect of a merger on public interest irrespective of the competition finding.

Section 12A(3) identifies four public interest grounds that the Commission must consider:

- (a) Employment;
- (b) Impact on a particular sector or region;
- (c) The ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive; or
- (d) The ability of national industries to compete in international markets.

Of the 43 mergers approved with conditions, 39 had remedies aimed at addressing a public interest concern. This is a significant increase from 10 cases in the previous financial year.

Most of the conditions imposed by the Commission were designed to remedy job losses, either through a moratorium restricting the number of job losses or retrenchments over a specific time period or by capping the number of job losses at a particular level. Other conditions imposed aimed to promote the competitiveness of small businesses by providing them the opportunity to compete in specific shopping centres by removing the exclusivity clauses in lease agreements. Two cases also had conditions aimed to address a negative impact on an industrial sector or region by obliging parties not to relocate their manufacturing facilities outside South Africa.

¹ There were seven large mergers that took between 93 and 136 days to finalise as a result of extensive competition analysis and lengthy consultations with key stakeholders.

Table 7: Public interest conditions placed on mergers in 2014/15

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Type of Condition
2014Feb0051	Uniprint Labels, a Division of Times Media (Pty) Ltd	The Ferroprint Business and the Cast Arena Assets	Printing	Public interest: employment. Restriction on the number of job losses for two years.
2014Mar0088	Ascendis Health Ltd	Pharma Natura (Pty) Ltd	Pharmaceutical	Public interest: employment. Moratorium on merger-related retrenchments.
2014Mar0103	Eli Lilly Nederland B.V	Lohmann SE	Pharmaceuticals	Public interest: employment. Restriction on the number of job losses for two years.
2014May0182	Arrowhead Properties Ltd	Vividend Income Fund Ltd	Property	Public interest: employment. Moratorium on merger related retrenchments for three years.
2013Nov0580	Bucket Full (Pty) Ltd	The Cartons and Labels business of Nampak Ltd	Packaging	Public interest: employment. Restriction on the number of job losses for three years.
2014Apr0124	BB Investment Company (Pty) Ltd	Adcock Ingram Holdings Ltd	Pharmaceuticals	Public interest: employment. Restriction on the number of job losses for three years.
2014May0185	ABSA Bank Limited and Bytes Technology Group South Africa (Proprietary) Limited	Automated Teller Machines and their related sites (the Assets) owned by Bytes	Banking	Public interest: small businesses. Obligation to remove exclusivity clause.
2014Jul0341	Resilient (Pty) Ltd	Jubilee Mall, The immovable property and the property letting enterprise	Property	Public interest: small businesses. Obligation to remove exclusivity clause in lease agreement.
2014Jun0252	Resilient (Pty) Ltd	Irene Mall (Pty) Ltd	Property	Public interest: small businesses. Obligation to remove exclusivity clause in lease agreement
2014Jul0356	Ziningi Properties (Pty) Ltd and Thina Bantu Trading (Pty) Ltd in respect of Umzimkhulu Mall	Thina Bantu Trading (Pty) Ltd	Property	Public interest: small businesses. Obligation to remove exclusivity clause.
2014May0244	Octodec Investments Limited	Premium Properties Limited	Property	Public interest: small businesses. Obligation to remove exclusivity clause
2014Jun0285	Tourvest Holdings (Pty) Ltd	Three Cities Management (Pty) Ltd	Hotels	Public interest: employment. Restriction on the number of job losses and obligation to offer training opportunities.

Table 7: Public interest conditions placed on mergers in 2014/15 (continued)

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Type of Condition
2014Jun0317	Louis Dreyfus Commodities Africa (Pty) Ltd	Epko Oil Seed Crushing (Pty) Ltd	Edible Oils	<p>Public interest: industrial sector or region. Obligation to continue operating the maize germ facility.</p> <p>Public interest: employment. Moratorium on retrenchments for two years.</p>
2014Jul0338	Zimco Metals (Pty) Ltd	Atlantis Metals (Pty) Ltd	Base Metals	<p>Public interest: employment. Moratorium on retrenchments for two years.</p> <p>Public interest: industrial sector or region/ employment. Obligation to continue supply of lead anodes; Obligation to not relocate plant outside SA.</p>
2014Apr0152	Faurecia Exhaust Systems Proprietary Limited	Cummins Emission Solutions Proprietary Limited	Automotive	<p>Public interest: employment. Obligation to give first preference to target firm's employees.</p>
2014Apr0120	Shoprite Checkers (Pty) Ltd	The assets and liquor licence of the Stone Acres SuperSpar and Tops, Mafikeng of Klipakkers (Pty) Ltd	Retail	<p>Public interest: employment. Obligation to re-employ 45 employees within six months of approval.</p>
2014Jun0259	BidAir Services (Pty) Ltd	The Overnight Airfreight Business owned and operated by Imperial Air Cargo (Pty) Ltd	Logistics	<p>Public interest: employment. Restriction on number of job losses.</p>
2014Jul0334	Eli Lilly and Company	The animal health business of Novartis AG	Animal Health	<p>Public interest: employment. Restriction on number of job losses.</p>
2014Jul0346	NewCo One, Bagshaw Footwear (Pty) Ltd and Bolton (Pty) Ltd	The division, United Fram, Wayne Plastics, Mossop Western Leathers and Jordan Shoes, owned by KAP Manufacturing (Pty) Ltd	Footwear	<p>Public interest: employment. Moratorium on retrenchments for one year.</p> <p>Public interest: industrial sector or region/ employment. Obligation to not relocate plant outside SA.</p>
2014Jun0310	Foster Wheeler M&M Limited	MDM Engineering Group Limited	Engineering	<p>Public interest: employment. Moratorium on retrenchments for three years.</p>

Table 7: Public interest conditions placed on mergers in 2014/15 (continued)

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Type of Condition
2014May0195	The Real Beverage Company (Pty) Ltd	Dairybelle's Yoghurt/UHT Milk businesses	Manufacturing of dairy products	Behavioural and Public interest: Behavioural: Obligation to continue providing distribution services. Public interest: employment. Moratorium on retrenchments and obligation to provide training.
2014Jun0271	Sun International (SA) Limited	GPI Slots (Pty) Ltd	Gaming	Public interest: employment. Moratorium on job losses for two years.
2014Oct0539	Fortress Income 2 Proprietary Limited	Weskus Mall	Property	Public interest: small businesses. Removal of exclusivity clause in lease agreement.
2014Oct0590	Coricraft Group Proprietary Limited	The Dial-a-Bed business of Ellerrine Furnishers (Pty) Ltd	Retail of furniture	Public interest: employment. Obligation to offer employment to affected employees.
2014Oct0579	Mergence Africa Property Investment Trust	Redefine Properties Limited in respect of a portfolio of six property-letting enterprises	Property	Public interest: small businesses. Removal of exclusivity clause in lease agreements.
2014Sep0515	Shogun Holding Und Finanz AG	The Alpha Pharm Group	Pharmaceuticals	Public interest: employment. Restriction on job losses.
2014Sep0517	Dimension Data (Pty) Ltd	Three business divisions of MWEB Connect (Pty) Ltd: MWEB business, Optinet Networks and Optinet Services	Information Technology	Public interest: employment. Restriction on job losses.
2014Oct0558	New Laser Corporation	The KO Energy Assets of the KO Energy business of the Coca-Cola Company	Beverages	Public interest: employment. Obligation to continue with distribution agreement.
2014Nov0667	Shoprite Checkers Proprietary Limited	The assignment of certain leases and the employment of employees of final selected stores of Ellerrine Furnishers Proprietary Limited	Retail of Furniture	Public interest: employment. Obligation to re-employ affected employees.
2014Oct0553	Compugroup Medical South Africa (Pty) Ltd	Medical EDI Services (Pty) Ltd	Information Technology	Public interest: employment. Restriction on job losses.

Table 7: Public interest conditions placed on mergers in 2014/15 (continued)

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Type of Condition
2014Oct0601	Lewis Stores (Pty) Ltd	Ellerine Furnishers (Pty) Ltd t/a Beares	Retail of furniture	Public interest: employment. Moratorium on job losses indefinitely and obligation to employ affected employees.
2014Oct0543	Takealot Online (Pty) Ltd	Kalahari.com, being a division of MIH Internet Africa (Pty) Ltd	Online retailing	Public interest: employment. Restriction on job losses to 200; obligation to consider alternative employment opportunities and to offer training benefits.
2014Oct0538	Fidelity Security Services (Pty) Ltd	Protea Coin Group (assets in transit) and Armed Reaction (Pty) Ltd)	Security	Public interest: employment. Moratorium on job losses for three years. Behavioural: cross- directorships
2014Oct0605	Noorfed Eiendoms Beperk	Empangeni Milling (Pty) Ltd	Manufacturing of milled maize products	Public interest: employment. Restriction on the number of job losses to 78.
2014Nov0663	Bytes People Solutions, a division of Bytes Technology Group South Africa (Pty) Ltd	Inter-Active Technologies (Pty) Ltd	Information technology	Public interest: employment. Restriction on the number of job losses.
2014Dec0741	Famous Brands Management Company (Pty) Ltd	City Deep Storage (Pty) Ltd and Cater Chain Food Services (Pty) Ltd	Supply and processing of meat-related products	Public interest: employment. Obligation to continue supply for two years.
2014Dec0747	Sasfin Bank Ltd	Fintech (Pty) Ltd	Banking	Public interest: employment. Restriction on the number of job losses to eight (8).
2014Dec0763	Mario II Finance Corp	Sigma Aldrich Corporation	Manufacture of chemical products	Public interest: small businesses. Obligation to continue with distribution agreement. Public interest: employment. Restriction on job losses to six (6) for two years.
2014Dec0723	Deltrade 83 (Pty) Ltd	The JHI Retail Division, of JHI Properties (Pty) Ltd and LP Manco, the property management business of Liberty Holdings Ltd	Property	Public interest: employment. Moratorium on retrenchments for two years.

11.2.2. Behavioural conditions: Addressing competition concerns

Behavioural remedies to address competition concerns were imposed in three (3) merger cases during the financial year. This is a significant drop from the 11 remedies imposed in the previous year. In the main, the three (3) remedies were designed to address cross-shareholding (i.e. restrictions on directors to sit on the boards of competing firms and also limiting the exchange of competitively sensitive information) and to limit the restraint of trade in the sale agreement concluded between merging parties.

Table 8: Behavioural conditions addressing competition concerns

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Type of Condition
2014Feb0066	National Asphalt (Pty) Ltd	Shisalanga Construction (Pty) Ltd	Construction	Behavioural: Cross-shareholding and information exchange.
2014Mar0118	Friedshelf 1508 (Pty) Ltd	RTT Holdings Ltd	Logistics	Behavioural: Cross-shareholding and information exchange.
2014May0179	Seaboard Overseas Trading & Shipping Proprietary Limited	The Oilseed business of (i) Atlas Trading and Shipping Division of Grindrod Trading Proprietary Limited; and (ii) Atlas Trading Division of Grindrod Trading (Asia) PTE Limited	Edible Oils	Behavioural: Agreed term of Restraint of Trade clause.

11.2.3. Structural remedy: Addressing structural market distortions

The Commission imposed one (1) structural remedy on merging parties in the financial year. In the Holcim Limited and Lafarge SA merger, the Commission was concerned that Holcim’s minority shareholding in Afrisam, though non-controlling and non-influential in nature, was sufficient to raise concerns around information sharing and possible collusion post-merger. This concern was exacerbated by the fact that Holcim had intimate knowledge of the Afrisam business as, until the beginning of 2014, Holcim used to provide Afrisam with technical assistance, which gave Holcim access to Afrisam’s commercially sensitive information. Further, both Holcim and Lafarge have been implicated in cartel investigations in various international jurisdictions, including South Africa. In relation to South Africa, all the major cement manufacturers were implicated in the cartel. The Commission, therefore, imposed a condition that requires Holcim to divest of its shareholding in Afrisam and that such shareholding should not be offered to any of the major cement manufacturers in South Africa. This condition was imposed to ensure that the merger does not create a structure that would be conducive to collusion.

Table 9: Structural Remedies

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Type of Condition
2014Jul0347	Holcim Limited	Lafarge SA	Manufacturing of cement products	Structural: Divestiture.

11.2.4. Contribution to employment

The Commission imposed remedies to address employment concerns in 32 merger cases. The total number of jobs saved, including those where the Commission did not impose a condition, amounted to 5 340. Of this amount, firms committed to save 3 410 existing jobs as a result of the Commission's intervention by imposing employment-related conditions, while 1 930 jobs were saved directly through the merger. The mergers reviewed during this period resulted in a loss of 2 594 jobs. The net effect of job losses and jobs saved was the saving of 2 746 jobs, in the work of the Commission, where jobs are generally lost

More jobs were saved in the 2014/2015 financial year compared to the previous year. The table below shows the comparison of the impact of merger and acquisition activity on employment between 2013/14 and 2014/15.

Table 10: Comparison of merger decisions' impact on employment 2013/14 and 2014/15

	2013/14	2014/15
Total number of jobs saved	2 231	5 340
Total number of jobs lost	574	2 594
Net effect	+ 1 657	+ 2 746

Case Study 13: Employment considerations in mergers in the furniture industry

There were three (3) mergers in the furniture retail market that had an impact on employment. These transactions arose due to the Ellerines business being placed under business rescue in terms of the Companies Act. In summary, at the time of the filing of these mergers, 2 810 employees out of a total of 7 060 employees at Ellerines were to be retrenched as a result of the restructuring plan. The decision on the three (3) mergers resulted in the total saving of 892 jobs, as below.

Coricraft and Dial-a-Bed

In the merger involving Coricraft Group (Pty) Ltd and the Dial-A-Bed Business of Ellerine Furnishers (Pty) Ltd, the Commission found that 191 employees were employed at Dial-bed and would lose their jobs should the merger not proceed. Further, 23 of these employees were found to be employed in stores that had been identified by Ellerines as non-viable stores. While Dial-a-Bed itself was not underperforming, the possible liquidation of Ellerines would result in the retrenchment of the entire workforce of Ellerines, including the 191 employees employed at the Dial-a-Bed stores. Considering these circumstances, the Commission imposed conditions to ensure the affected employees remained employed.

Lewis Stores and the Beares Business of Ellerines

In the merger between Lewis Stores (Pty) Ltd and Ellerine Furnishers (Pty) Ltd, trading as Beares, the Commission found that the merger would save at least 393 jobs and create a further 126 new employment positions at the Beares stores acquired. The Commission recommended conditions to the Tribunal to ensure that the jobs would be saved and created as specified above.

Shoprite and Ellerines

In the merger involving Shoprite Checkers (Pty) Ltd and Ellerine Furnishers (Pty) Ltd in Business Rescue and as represented by the Business Rescue Partners, in respect of the Assignment of Certain Leases and the Employment of Employees of Final Selected Stores of Ellerine Furnishers (Pty) Ltd, the Commission found that the merger would save 1 241 jobs. However, 933 employees had already accepted voluntary separation arrangements and 308 employees remained. The transfer of all employees was dependent on the transfer of the lease agreements of 217 stores. The Commission therefore recommended conditions to the Tribunal that would ensure that the 308 jobs would be saved.

12. Legal Services Division (LSD)

The Legal Services Programme is implemented by the Legal Services Division (“LSD”). The division is responsible for managing the Commission’s litigation before the Tribunal, Competition Appeal Court (“CAC”), High Court, Supreme Court of Appeal (“SCA”) and Constitutional Court, instructing attorneys and briefing Counsel, and directing and managing the Commission’s strategy in respect of litigation. Legal support is also provided to cartel, abuse of dominance, exemptions and merger investigations.

The division also negotiates and concludes settlement agreements, with the input of other divisions. The settlement process enables the Commission to conclude cases speedily and in the least costly manner. The division provides a low-cost advisory service to members of the public on complying with the Act.

12.1. Performance Overview

12.1.1. Case load

In the year under the review, the Commission:

- Concluded 36 settlement agreement which were confirmed as orders of the Tribunal;
- Referred 16 cartel cases to the Tribunal for adjudication;
- Completed three (3) hearings at the Tribunal on abuse of dominance¹⁷;
- Finalised amendments to two (2) Practitioner Updates;
- Finalised three (3) contested cartel cases in the Tribunal¹⁸; and
- Was involved in four (4) appeal hearings in the Supreme Court of Appeal and the Competition Appeal Court respectively and in three (3) High Court applications.

There were several key judgements of the courts that had implications on competition law practice and enforcement. These judgements cover constitutional issues, such as:

- The right of respondents to review both the Commission’s decision to initiate and to refer complaints to the Tribunal as well as the right of access to the Commission’s record;
- The CAC’s jurisdiction to entertain interlocutory appeals against the Tribunal’s orders;
- The jurisdiction of the Tribunal to issue a section 65 certificate against a leniency applicant;
- Exclusive distribution agreements; and
- The right of employees to be consulted on retrenchments arising as result of a merger transaction.

¹⁷ The Tribunal made decisions on two of the cases (Sasol and SAB) within the financial year, while a decision on the abuse of dominance case against Media 24 is expected in the upcoming financial year.

¹⁸ Although the hearing of an additional contested cartel case was finalised on the merits in the current financial year (CC vs Sam Louw N.O and Others CT017731), the hearing on the determination of the administrative penalty was due to be finalised in the upcoming financial year.



Back row, from left to right: Neo Molefe, Anisa Kessery, Maya Swart, Romeo Kariga, Jabulani Ngobeni, Vhonani Rerani, Layne Quilliam, Thabo Khumalo, Ziyaad Minty, Ngoako Moropene, Andile Mahlangu, Ally Makgopa Nelly Sakata.
Front row, from left to right: Siseko Salela, Lindokuhle Lubisi, Korkoi Ayayee, Bukhosibakhe Majenge, Lerato More, Magdaleen van Wyk, Temosho Sekgobela.

We highlight some of these judgements in the cases studies below.

Case Study 14: The right to the record of the Commission's decision to initiate a complaint

On 12 November 2014, in the case of *Mondi Limited vs Competition Commission*, the North Gauteng High Court delivered a judgment which, inter alia, ordered the Commission to produce documents that formed the basis of its decision to initiate a complaint against Mondi (except documents marked "confidential", which Mondi must request disclosure in terms of section 45 of the Act). In respect of documents marked "restricted" the Court ordered, inter alia, that the Commission must produce documents belonging to Mondi and Sappi. In respect of "other" restricted documents, the Court ordered that the Commission must give Mondi's legal representatives access to portions of each document upon which the Commission had relied in taking the decision to initiate, unless it is not possible to excise such portion from the main document.

Case Study 15: The right to the record of the Commission's decision to refer a complaint to the Tribunal

In the case of Competition Commission vs Computicket, the Supreme Court of Appeal dismissed the Commission's application for leave to appeal against the judgment and order of the Competition Appeal Court on 26 November 2014, on the basis that the SCA had no jurisdiction to entertain the appeal. The CAC had ordered the Commission to produce the record of its decision to refer a complaint to the Tribunal. The Commission was ordered by the CAC to produce the referral report/recommendations, subject to Rule 14 of the Commission's rules, and all evidence placed before the Commissioner when the decision to refer a complaint was taken.

The SCA held that it does not have jurisdiction to hear an appeal from the CAC in respect of a matter that does not fall within section 62(2) of the Competition Act subsequent to the 17th Constitutional Amendment. The SCA went on to point out that even if it had jurisdiction, it would have dismissed the Commission's appeal on the merits. The SCA reasoned that once it is accepted that Computicket has a right to review the Commission's decision to refer a complaint to the Tribunal on the basis of the principle of legality, Computicket is entitled to the record that formed the basis of such a decision to refer.

Case Study 16: Review of the Commission's decision to grant conditional immunity in terms of the Corporate Leniency Policy

The Allens Meshco Group (AMG) brought a review application to the High Court challenging the Commission's decision not to grant them immunity in terms of the Commission's Corporate Leniency Policy (CLP) (Allens Meshco Group vs Competition Commission, NGHC 31044/13). The hearing of the review application took place on 15 September 2014 and the High Court decision is expected in the following financial year.

AMG was the second firm to apply for a marker in the wire product market cartel. There was a prior leniency application by Cape Gate and, as a result, Allens Meshco could not be granted leniency. Under the CLP only a firm that is "first to the door" to apply for leniency qualifies for immunity. In the same matter, on 26 March 2015 the Competition Appeal Court handed down an important decision, which may contribute towards discouraging interlocutory appeals that serve to unnecessarily delay the prosecution of cases in the Tribunal. The CAC found that it has no jurisdiction to entertain an interlocutory appeal against a decision of the Tribunal to refuse a stay of the proceedings because the decision does not dispose of a part or the whole of the relief sought in the main referral application. On 14 January 2015, AMG launched an urgent application to stay proceedings in the Tribunal, which were due to commence on 22 January to 4 February 2015, pending a High Court judgement regarding AMG's application for the review of the Commission's decision not to grant it leniency. Following the decision of the CAC, the case against AMG will be heard in the Tribunal in the following financial year.

12.1.2. Fines Imposed

In the year under review, the Commission levied the following administrative penalties:¹⁹

No	Decision Date	Parties Fined	Case Number	Section Transgressed	Penalty levied	% Turn-over
1	09/04/2014	WBHO Construction (Pty) Ltd	2009May4446	4(1)(b)(iii)	R10 244 136	0.3%
2	18/06/2014	Harding Allison	2009Sep4641	4(1)(b)(iii)	R78 822	2%
3	09/07/2014	Premier Fishing SA (Pty) Ltd	2008Jul3827	4(1)(b)(i)	R2 121 400	2%
4	24/07/2014	B & E International	2009Sep4641	4(1)(b)(iii)	R8 158 447	2%
5	13/08/3014	British Airways PLC	2008Jan3488	4(1)(b)(i)	R21 765 297	5%
6	19/08/2014	Cycad Pipelines (Pty) Ltd	2009Sep4641	4(1)(b)(iii)	R3 394 151	2%
7	27/08/2014	N17 Toll Operators (Pty) Ltd	2009Sep4641	4(1)(b)(iii)	R424 121	2%
8	09/07/2014	Dunlop Industrial Products & Rema Tip Top Holdings (Pty) Ltd	2010Sep5377	13(a)	R500 000	penalty calculation was based on filling fee
9	10/09/2014	Cape Express Removals (Pty) Ltd	2010Nov5447	4(1)(b)(iii)	R645 710	10%
10	03/12/2014	ATC (Pty) Ltd	2010Mar4981	4(1)(b)(ii)(ii)	R80 737 050	5%
11	03/12/2014	Giuricich Coastal Projects (Pty) Ltd	2009May4443	4(1)(b)(iii)	R149 429	1.25%
12	01/12/2014	Fields Wear CC & Camclo CC	2012Jul0450	4(1)(b)(iii)	R1 264 798	1.52%
13	28/11/2014	Patrick Rermovals (Pty) Ltd	2010No5447	4(1)(b)(iii)	R2 230 409	10%
14	19/11/2014	Civcon Construction (Pty) Ltd	2009Sep4641	4(1)(b)(iii)	R798 386	1%
15	19/11/2014	Crown Relocations (Pty) Ltd	2010Nov5447	4(1)(b)(iii)	R849 873	7%
16	12/11/2014	JH Relief Transport CC	2010Nov5447	4(1)(b)(iii)	R4 273 061	10%
17	12/11/2014	Mathee Furniture Removals	2010Nov5447	4(1)(b)(iii)	R159 205	8%
18	12/11/2014	De Wet Human Transport CC t/a/ Viking Transport	2010No5447	4(1)(b)(iii)	R188 064	5%
19	12/11/2014	Transfreight International CC	2011Jun0069	4(1)(b)(iii)	R607 492	7%

¹⁹ The penalties reflected in this table are penalties levied by the Tribunal in 2014/15 and do not denote the amount of penalties received by the Commission. They exclude consent agreements or Tribunal orders where penalties were not payable. The penalties also exclude an amount of R534 million levied in the case of Competition Commission vs Sasol Chemical Industries Ltd, which was appealed to the CAC.

12.1.2. Fines Imposed (continued)

No	Decision Date	Parties Fined	Case Number	Section Transgressed	Penalty levied	% Turn-over
20	12/11/2014	Joel Transport (Pty) Ltd	2011Jun0069	4(1)(b)(iii)	R150 582	5%
21	12/11/2014	Superdoc Thirteen CC t/a Lowe Line Furniture Removals	2010Nov5447	4(1)(b)(iii)	R249 616	8%
22	05/11/2014	Saldanha Foods (Pty) Ltd	2008Jul3827	4(1)(b)(i)	R4 063 750	2.5%
23	08/10/2014	Rhodes Food Group (Pty) Ltd	2009Aug4635	4(1)(b)(ii)(iii)	R1 223 391	9.91%
24	08/10/2014	Propack Removals CC	2010Nov5447	4(1)(b)(iii)	R454 128	10%
25	10/12/2014	Inca Concrete Products (Pty) Ltd	2009Feb5783	4(1)(b)(i)(ii)	R800 000	1.18%
26	18/12/2014	Columbus Stainless (Pty) Ltd	2009Dec4844	4(1)(b)(i)(ii)	R32 576 836	7.9%
27	18/12/2014	Cargolux International S.A	2006Mar2215	4(1)(b)(i)	R10 924 462	5%
28	18/12/2014	Reliable removals	2013Jun0275	4(1)(b)(i)(ii)	R90 564	4%
29	03/02/2015	Del Transport CC T/A De Langes Trnsport	2011Jun0069	4(1)(b)(iii)	R210 415	5%
30	18/03/2014	Western Granite Bricks (Pty) Ltd	2012Feb5783	4(1)(b)(i)(ii)	R100 000	0.7%
31	25/03/2014	Oppertune Trading 126 CCT/A Western transport services	2011Jun0069	4(1)(b)(iii)	R39 260	4%
32	25/03/2015	Airports Company SA	2012Jul0401	4(1)(b)	R1 979 881	5%
Total Penalties Levied					R191 452 737	

12.1.3. Advisory opinions

A decline in the number of advisory requests saw 23 advisory opinions being issued during the 2014/15 financial year, a drop from the 34 issued in the previous year. The bulk of the requests related to whether proposed commercial agreements between firms contravened any specific prohibited practices in the Act. Other requests for opinions largely related to whether proposed transactions constitute notifiable mergers in terms of section 12(1) of the Act. One of the key questions arising from a significant number of requests for advisory opinions is the important issue of exchange of information between competitors. The Commission has advised that the analytical framework for assessing the exchange of information between competitors is section 4(1) of the Act. In assessing the exchange of information between competitors, the Commission considers, inter alia, whether the exchange of information between competitors is likely to facilitate collusion, the structure of the market, the nature of the information exchange, the age and level of aggregation of the information, the frequency of the exchange of information and the manner in which the information is disseminated.

12.2. Settlement agreements

In the year under review, settlement agreements continued to play a key role in quickly resolving cases during the investigation stage and at the litigation stage. The Commission also concluded important settlement agreements on, among others:

- Price fixing of fuel surcharges applied to passenger airline tickets;
- Price fixing in the pelagic fishing market;
- Fixing of the purchase price of scrap metal; and
- Fixing of the minimum tariff of fees for services rendered by veterinarians.

12.2.1. Construction Fast Track Settlement agreements

The Commission further finalised five (5) settlement agreements arising from the Phase 2 Construction Fast Track Settlement process, in respect of collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

The Commission has developed a penalty calculation methodology that is more stringent in this second phase of the project than that used in Phase 1. For example, the Commission decided to use the total annual turnover of the implicated firm as opposed to the annual turnover of the implicated firm within the relevant sub-sector in its case against one of the implicated firms. Another difference was that the percentages of the penalty ranges, which were determined in terms of the number of contraventions, were also higher than the ones used under the Phase 1 Fast Track Settlement process. The names of the firms, and the amount of the agreed administrative penalty in respect of settlement agreements arising from the Construction Fast Track Settlement process, are set out below:

Table 11: Settlement agreements concluded in 2014/15 with firms in the Construction Fast Track Process

Firm	Administrative penalty confirmed by the Tribunal
Harding Allison (Pty) Ltd	R78 821,94
Cycad Pipelines (Pty) Ltd	R3 394 151,00
B & E International (Pty) Ltd	R8 158 447,00
N17 (Pty) Ltd	R424 121,00
Civcon Construction (Pty) Ltd	R798 385,98

Case Study 17: Safeguarding the rights of consumers to bring civil claims for damages

In managing the Construction Fast Track Settlement Process, the Commission sought to safeguard and preserve the rights of affected customers to bring damages claims against certain leniency applicants.

The Commission concluded consent agreements with four leniency applicants - Vlaming (Pty) Ltd, JT Ross (Pty) Ltd, Guricich Bros Construction (Pty) Ltd and G Liviero and Sons Building (Pty) Ltd - in respect of certain projects, in order to record their admissions to the relevant contraventions. These consent agreements with the leniency applicants are an important step in the damages claims process, as the Act stipulates that determining liability or successful prosecution in the Tribunal is a prerequisite for obtaining a section 65 certificate, which empowers affected customers to bring civil claims for damages in ordinary civil courts. The firms implicated by the leniency applicants settled with the Commission at the investigation stage of the case; thus there will be no need for prosecutions in the Tribunal in respect of the relevant projects. These consent agreements with leniency applicants were the first of their kind to be concluded by the Commission.

Further to the issue, the Tribunal's authority to issue a section 65 certificate was challenged in the courts. On 2 August 2013, the North Gauteng High Court delivered a judgement in the case of Premier Foods vs Norman Manoim N O, which ruled in favour of the Commission and consumers that the Tribunal had jurisdiction to issue a section 65 certificate against a leniency applicant who was not necessarily cited in the complaint referral but against whom the Tribunal had made a finding on the merits. The Commission participated in the High Court proceedings, with the interest of safeguarding the rights of consumers to bring damages claims against members of the bread cartel that it had prosecuted. On 23 April 2014, the Supreme Court of Appeal granted special leave to Premier Foods to appeal the High Court judgement. The appeal will be set down for hearing in the Supreme Court of Appeal in the 2015/16 financial year.



12.3. Amendment of the Commission's guidelines

As part of its mandate, the Commission is empowered in terms of section 79 of the Act to prepare and publish guidelines to indicate and clarify its policy approach on any matter within its jurisdiction. These Guidelines are not binding on the Commission, the Competition Tribunal or the Competition Appeal Court when exercising their respective powers.

12.3.1. Amendment of the Commission's Practitioner Update on Risk Mitigation Financial Transactions

In terms of the Commission's Practitioner Update 4 dealing with risk mitigation in financial transactions, registered banking institutions that acquire control over the business assets or the business of the debtor upon default by the debtor of its obligations in terms of the finance agreement, were not required to notify the acquisition to the Commission in terms of the merger notification provisions of the Competition Act, provided that the bank disposes off the assets or its interest in the business of the debtor within a period of twelve (12) months from the acquisition date. The Commission's policy approach to such acquisitions is consistent with international practice and recognises the fact that the principal objective of risk mitigation financial transactions is to secure the interests of the financier to recoup the capital advanced to the debtor.

The Commission has amended its Practitioner Update 4 to:

- Extend the exemption to risk mitigation financial transactions entered into by state-owned finance institutions authorised to provide finance in the ordinary course of business; and
- Extend the 12-month period for the disposal of the assets or the business of the debtor to 24 months.

12.3.2. Amendment of the Commission's Practitioner Update on Asset Securitisation

The Commission has also amended its Practitioner Update 5, which exempted registered banking institutions from notifying asset securitisation schemes. A securitisation scheme is one of the alternative ways to obtain funding in contrast to traditional bank loans, or debt or equity financing.

The Commission extended the exemption in Practitioner Update 5 to asset securitisation schemes entered into by non-banking institutions, provided the asset securitisation scheme is in accordance with the South African Reserve Bank's regulations. The purpose of this amendment to Practitioner Update 5 was to, inter alia, align the Commission's policy approach to the current regulatory framework governing asset securitisation. The Commission intends that these amendments will contribute towards the lowering of transaction costs in respect of risk mitigation financial transactions and asset securitisation schemes.

13. Policy and Research (P&R)

The Policy and Research Division provides economic support for complex cases and policy issues. The division provides economic analysis through:

- Formulating theories of harm;
- Gathering or searching for confirming or denying evidence in documents, from market participants or industry sources; and
- Advising the Commission on the economic merits of alternative decisions.

In addition, the division helps the Commission evaluate the economic impact of its actions by conducting market studies and impact assessment studies.

The key operational responsibilities of the division are to ensure:

- Economic research on sectors and policy issues identified by the Commission as priority areas;
- Sound economic analysis for enforcement cases, merger cases and market inquiries;
- Economic policy, regulation and legislative-related research; and
- Competition policy awareness and advocacy.

The division also acts as a focus for economic debate within the Commission. In particular, the division contributes to the training plan of the Commission by way of capacity building courses and seminars and undertakes research on studies of a general economic nature such as impact assessments, which measure the effectiveness of the Commission's actions in markets and the economy as a whole.

13.1. Performance Overview

The following represents the division's key outputs during the period under review:

- Worked on 25 complex mergers, which was significantly higher than the number envisaged. About 40% of these mergers were approved with conditions addressing competition concerns or prohibited by the Commission;
- Actively contributed to 10 complex enforcement and exemption cases;

- Provided economic input into eight (8) complex cartel cases;
- Initiated one market inquiry;
- Provided input into seven (7) policies; and
- Undertook four (4) impact assessment studies.

13.2. Economic Input into Enforcement Work

13.2.1. Expert reports and submissions to the Competition Tribunal

The division produced expert reports filed at the Competition Tribunal in two (2) mergers during the period under review:

- Holcim Limited ("Holcim") and Lafarge South Africa Holdings (Pty) Limited ("Lafarge SA"); and
- Tsogo Sun Holdings Limited ("Tsogo Sun") and SunWest International (Pty) Ltd ("Sunwest") and Worcester Casino (Pty) Ltd ("Worcester").

Both cases related to the acquisition of minority shareholdings. The main theories of harm explored related to the merging parties' ability and incentive to engage in tacit coordination through information sharing, reduced incentives to deviate and reciprocal shareholding, which leads to or strengthens information exchange post-merger.²⁰ Another theory of harm considered related to anti-competitive unilateral effects, because acquiring a minority shareholding in a competitor makes it more likely that the firms will be able, and find it profitable, to unilaterally raise prices and restrict output and therefore result in increased incentives to compete less aggressively.

Further, the division helped external consultants prepare expert reports in two mergers:

- Ferro Industrial Products (Pty) Ltd ("Ferro") and Arkema Resins (Pty) Ltd ("Arkema"); and
- Hosken Consolidated Investments Limited ("HCI") and Atterbell Investments (Pty) Ltd ("Atterbell").²¹



Back row, from left to right: Liberty Mncube, Hariprasad Govinda, Annalee Van Reenen, Qhawe Mahlalela, Thulani Mandiriza, Ian Mrozek, Ricky Mann, Arthur Mahuma, Yongama Njisane, Ratshidaho Maphwanya, Viresh Ranchod, Thembalethu Sithebe, Linton Reddy, Buhle Nyawo, Raksha Darji, Sunel Grimbeek, Michelle Viljoen, Nomsa Mokoena.

Front row, from left to right: Nonkululeko Moeketsi, Kerschyl Singh, Katerina Barzeva, Khalirendwe Ranyeneni, Keabetswe Mojapelo, Pontso Mathebula, Nonjabulo Sambo, Karissa Moothoo Padayachie, Laila Ncwana.

Both mergers involved the likely removal of an effective competitor and hence the focus was largely on unilateral effects post-merger.

With reference to cartel prosecutions, the division produced an expert report filed at the Tribunal in the case against Cape Gate (Pty) Ltd, Allens Meschco (Pty) Ltd, and others.²² The key economic questions related to:

- The role of price wars in collusion and the implications for the duration of the wire cartel; and
- The extent of harm caused by the cartel in terms of cartel overcharges.²³

²⁰ The merging parties reviewed the Commission's conditional approval of the Holcim Lafarge merger and subsequent to the filing of the Commission's expert economic report, withdrew their application for review at the Tribunal. The Tsogo Sun, Sun West and Worcester merger will be heard during the 2015/16 financial year.

²¹ The Commission prohibited both mergers. The Tribunal subsequently conditionally approved both mergers.

²² These firms are as follows: Hendock (Pty) Ltd, Wireforce (Pty) Ltd, Agri Wire (Pty) Ltd, Agri Wire North (Pty) Ltd, Agri Wire Upington (Pty) Ltd, Cape Wire (Pty) Ltd, Forest Wire (Pty) Ltd, Independent Galvanising (Pty) Ltd, Meshrite and Consolidated Wire Industries.

²³ The matter will be heard at the Tribunal during the 2015/16 financial year.

13.3. Research

13.3.1. Policy research and submissions

As the current chair of the African Competition Forum (ACF), the Commission facilitated a joint research project with the World Bank Group during the period under review. This research project intends to review the state of competition policy and its implementation in Africa. The Commission participated in the drafting of the questionnaire, providing strategic input to the project and liaising with other competition authorities. The Commission will play a critical role in the drafting and consolidation of the final report. This project is expected to be finalised in the next financial year. In addition, during the period under review the Commission made seven (7) policy inputs.

Case Study 18: Inputs into Policy & Regulation

Financial Sector Regulation Bill (“Twin Peaks”)

The Commission provided input into the first draft of the Financial Sector Regulation Bill (colloquially known as “Twin Peaks”) in December 2013, and the National Treasury incorporated its input in the final version of the legislation. The “Twin Peaks” bill substantially alters the framework for regulating the financial sector. The first draft of the bill follows two policy papers that respond to lessons learnt in the 2008 global financial crisis: “A Safer Financial Sector to Serve South Africa Better” released with the 2011 Budget, and a “Roadmap for Implementing Twin Peaks Reforms”, released on 1 February 2013. Following public comments on the first draft, National Treasury revised the Bill and published the second draft in December 2014. An analysis of the revisions indicates that the comments by the Commission and other stakeholders were positively considered. Some of the changes proposed by the Commission and accepted by National Treasury include:

- The definition of “Market Conduct Authority” was revised to “Financial Sector Conduct Authority” (FSCA). This removed potential confusion
- The definition in the revised Bill of “financial sector regulator” is specific to the Prudential Authority (PA), the Financial Sector Conduct Authority (FSCA) and the National Credit Regulator (NCR);
- The definition of “organ of state” has been aligned to the definition in the Constitution and captures other regulators appropriately. A term and definition has also been added for “designated authority” to capture the role of other regulators of financial institutions; and
- Provisions were also added in the revised Bill (Section 29 (1)(f) and 53(1)(g)) so that each of the regulators may now enter into memoranda of understanding with the Competition Commission to cooperate and collaborate to promote sustainable competition in the provision of financial products and financial services.

Case Study 18: Inputs into Policy & Regulation (continued)

National Integrated ICT Policy discussion paper

In February 2015, the Commission submitted inputs to the Department of Telecommunications and Postal Services by way of comments on the National Integrated ICT Policy Discussion Paper. The submission covered various policy options seeking to address competition and access issues in several ICT and telecommunications markets, including broadband, broadcasting, infrastructure, local loop unbundling, and spectrum management, among others. The Commission's submissions considered the likely impact of the various policy options that are being considered on competition and access with a view to ensuring that competition is enhanced and any risks are mitigated. The Commission also commented on the complementarity of the role of the sector regulator and competition authorities in addressing competition and access problems bedevilling the ICT and telecommunications sector.

National Communications Task Team

The Minister of Communications set up a National Communications Task Team with the aim to review, among others, the regulatory framework for the South African broadcasting industry. The Commission was asked to provide input on the dynamics of competition in the broadcasting sector in South Africa, with a particular focus on the Pay-TV segment. In making submissions, the Commission considered the likely competitive effects of the practice of exclusive contracts in respect of premium content, technology convergence and the facilitation of new entry and the competition implications of set-top box interoperability.

13.3.2. Undertaking Impact Assessments

The Commission is increasingly requested by stakeholders, including Government and trade unions, to demonstrate the impact of its interventions in markets and the South African economy as a whole. Impact assessments have been identified as the appropriate tool to measure or estimate the effectiveness of the Commission's intervention. During the period under review the division completed four (4) impact assessments:

- The Banking Enquiry Review;
- The Pioneer Agro-Processing Competitiveness Fund Assessment;
- The Massmart Supplier Development Fund Assessment; and
- The Milk Sector review.

Details of these impact studies are provided in the section on Impact Assessments within this report.

13.3.3. Publications, conference papers and economic briefs

The Commission published four (4) articles in local and international peer-reviewed journals, as detailed in the Table below. The Commission also presented a number of papers at international and local conferences on topics related to competition policy and economics. Eleven briefing papers were prepared for internal purposes and the division facilitated two series of internal capacity-building sessions within the Commission. The Commission also hosted a series of seminars and a capacity-building session with external experts.

²⁵ Tsheshi Kolobe is an analyst at Genesis Analytics, South Africa.

²⁶ Simon Roberts is a Professor of Economics at the University of Johannesburg.

Table 12: Journal articles and publications

Author(s)	Title and Publication	Abstract
Liberty Mncube	The South African Wheat Flour Cartel: Overcharges at the Mill, <i>Journal of Industry, Competition and Trade</i> , 2014 (14) 4: 487-509.	This paper analyses the South African flour cartel, active from 1999 to 2007 and provides an overcharge estimation by using comparator-based methods. The empirical analysis is complemented by a descriptive overview of the history and structure of the South African flour industry. The flour cartel fixed the price of flour and allocated customers from 1999 to 2007. We find that the overcharges to independent bakeries range from 7% to 42%. We also show that the cartel profits were approximately double during the cartel than the price war year (2002) or the post-collusion year (2008).
Hardin Ratshisusu	Limiting Collusion in the Construction Industry: a Review of The Bid-Rigging Settlement in South Africa, <i>Journal of Economic and Financial Sciences</i> , October 2014 7(S), pp 587-606	This paper undertakes a critical case analysis of the process and outcomes of the Commission’s Construction Fast Track Settlement project relative to the mandates of the Commission and the Construction Industry Development Board (CIDB). The study reviews the information from the Commission’s settlements, analysing the breakdown by private and public projects, type of project and the nature of bid-rigging. It provides an assessment of the practices involved and considers the cooperation that is required for the successful implementation of large infrastructure projects and how these can be organised in a way that ensures rivalry while enabling cooperation. The paper further reviews the barriers to entry, and the complementary measures that can be taken to ensure greater effective rivalry and participation. Interventions that could be necessary at the regulatory, procurement and firm level to ensure that the construction sector charts a new sustainable competitive path, are highlighted.
Thembaletu Sithebe & Tshekishi Kolobe ²⁵	Is Vertical Separation a Prerequisite to Enhancing Competition in the South African Energy Industry?, <i>Journal of Economic and Financial Sciences</i> , October 2014 7(S), pp 527-546	Vertical separation is believed to have positive effects in energy sectors where certain phases of the value chain operate under a natural monopoly. This paper discusses whether unbundling is necessary in the South African electricity and piped gas sectors to encourage entry and increase competition based on the experiences of other nations. Despite positive results in some instances, unbundling does not always result in higher levels of competition and benefits for consumers. In fact, in some cases, vertical separation has resulted in energy sectors that are worse off.
Junior Khumalo, Jeffrey Mashiane & Simon Roberts ²⁶	Harm and Overcharge in the South African Precast Concrete Products Cartel, <i>Journal of Competition Law & Economics</i> , 10(3), 621 -646	The harmful effects of cartels depend on a number of features, including the size of the overcharge and the durability of the cartel. This article examines the effect of a very long-running cartel in a market with low barriers to entry and unstable demand: the South African precast concrete products cartel. We describe how the cartel’s arrangements overcame these dual challenges and examine mark-ups against alternative measures of the competitive counterfactual. This includes a discussion of using punishment mechanisms and how cartelists adapted to entrants, the implications of vertical integration, and the effect of information exchange on firms apparently not part of the explicit cartel. These considerations also affect the transition after the end of the explicit cartel arrangements and the extent to which coordinated outcomes may persist. There are further insights from the analysis on determining penalties by competition authorities.

Table 13: Presentations at conferences

Author(s) / Presenter(s)	Title and Event
Selelo Ramohlola Tapera G. Muzata	<i>Review of Recent Competition Commission of South Africa's Experiences in the Telecommunications Sector</i> Creation of Conditions for effective Competition and Suppression of Violations of Competition Law in Telecommunications Markets, Russia
Grace Mohammed	<i>The Elusive Constructs of Barriers to Entry and Countervailing Power: Post-Merger Analyses, The SA Experience</i> Eighth Annual Conference on Competition Law, Economics & Policy
Kholiswa Mnisi	<i>Competition Policy Perspective: The Mis-regulation of the South African Fishing Industry</i> Eighth Annual Conference on Competition Law, Economics & Policy
Magdaleen Van Wyk	<i>Competition and Trade Policy - Frenemies?</i> Eighth Annual Conference on Competition Law, Economics & Policy
Mziwodumo Rubushe	<i>Fostering Competition and Saving State Resources by Combatting Bid-Rigging</i> Eighth Annual Conference on Competition Law, Economics & Policy
Liberty Mncube, Thembalethu Sithebe & Katerina Barzeva	<i>Is Breast the best? Evaluating the Price Effects of the Nestlé/Pfizer Merger in the South African Infant Milk Formula Market</i> Eighth Annual Conference on Competition Law, Economics & Policy
Hariprasad Govinda, Junior Khumalo & Siphamandla Mkhwanazi	<i>Competitive Outcome Post- Intervention of South African Cement Cartel</i> 9 th Anniversary International Conference on Competition and Regulation (CRESSE), Greece
Tembinkosi Bonakele	<i>Airline Competition in South Africa</i> OECD Round Table in Paris
Liberty Mncube	<i>Generic Pharmaceuticals and Competition</i> OECD Round Table in Paris
Romeo Kariga & Neelofah Ally	<i>Can The Commission Fix Competition Problems with Market Enquiries?</i> 1st Annual Competition and Economic Regulation (Acer) Week, Southern Africa
Ratshidaho Maphwanya	<i>The Cartel Decision-Making Equation and Cartel Deterrence: A South African Perspective</i> 1st Annual Competition and Economic Regulation (Acer) Week, Southern Africa

13.4. Information resource centre

The Commission's scope of work requires access to an extensive repository of information sources. The Commission conducts its investigations within the South African legal framework, but due to the convergence of competition law worldwide, it is often necessary to reference overseas jurisprudence. As such, it has maintained access to international and local legal databases, as well as various business and marketing resources that are well used.

Book collections are kept current, with the addition of 25 new titles during the past year and the issuing of 398 publications during the year. Thirteen of the new titles are in e-book format which, will be the preferred format moving forward. Although the Information Resource Centre aims to bring information sources to the desktops of staff, it also assisted with 427 requests for information. Seventy-five staff members received either an orientation or reorientation of the Information Resource Centre's resources and 35 people attended presentations of the different databases.

14. Market Inquiries

14.1. Initiation of Inquiry into Liquid Petroleum Gas (LPG)

The introduction of the market inquiry provisions in terms of Chapter 4A of the Competition Amendment Act (1 of 2009) in April 2013 provides the Commission with a far-reaching tool to investigate industry or sector-wide firm conduct. During the period under review the Commission instituted a market inquiry into the Liquefied Petroleum Gas ("LPG") sector. The key themes identified in the Terms of Reference motivated the rationale to initiate a market inquiry. These themes include:

- Structural features of the market;
- High switching costs;
- Regulatory environment and its impact on competition; and
- Limited usage of LPG by households.

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 pertinent issues in the LPG value chain, the interactions between market participants across the value chain, as well as the regulatory environment. The Commission also undertook various site visits as part of the information-gathering phase. The site visits and engagement with stakeholders assisted the Commission in drafting information requests, which were sent out in March 2015. The Commission is receiving and analysing responses from stakeholders, and the inquiry is anticipated to be completed in the next financial year.

14.2. Update on the Market Inquiry into Private Healthcare

The Commission's work in the market inquiry into Private Healthcare ("Healthcare Inquiry" or "Inquiry") is progressing well, with key milestones having been reached. Under the chairmanship of former Chief Justice, Sandile Ngcobo, the Commission will have a better understanding of the complex dynamics in this market, particularly with regards to its cost drivers.

The purpose of the Healthcare Inquiry is to determine whether or not there are anti-competitive features in the South African private healthcare market and, if so, to identify them and their effects. The Commission published the Terms of Reference for the Inquiry in the Government Gazette on 29 November 2013, as required by the Act. Following the appointment of a panel, the Inquiry finalised and published an Administrative Timetable, Statement of Issues and Guidelines for Participation.

The issues identified in the Statement of Issues include:

- Factors driving costs, prices and expenditure in private healthcare;
- Market power and distortions of competition at various levels of the sector;
- Barriers to entry and expansion by firms at various levels of the sector;
- Factors limiting access by consumers to private healthcare, including affordability;
- Imperfect information as it affects consumers as well as firms in the sector;
- The impact of the regulatory framework (including various statutes, regulations and rules) on competition in private healthcare;
- The specific impact of interventions previously made by the competition authorities in regard to the healthcare sector; and
- The interaction between the public and private healthcare sectors.

The Inquiry commenced its investigative phase by publishing on 1 August 2014 a "Call for Submissions" to all stakeholders wishing to participate in the Inquiry. The closing date for submissions was 31 October 2014. The response was highly encouraging, with a total of 68 submissions received. Over 15 000 pages of submissions were received from various stakeholders, including hospitals, medical schemes, practitioner groups, individuals, regulatory bodies and state institutions. Of the 68 submissions received, 16 claimed confidentiality on certain information contained in their respective submissions. The Inquiry team conducted a detailed review of each to identify the emerging themes articulated by stakeholders.

²⁴ On 15 August 2014, the Commission published the Terms of Reference ("ToR") for the LPG market inquiry in the Government Gazette.



HEALTH INQUIRY TECHNICAL TEAM

Back row, from left to right: Jeffrey Mashiane, Londiwe Senona, Neelofah Ally, Phenyio Montwedi, Pamela Halse, Nqobile Sibanyoni, Tankiso Thibane, Nqobile Skhosana
Front row, from left to right: Tobi Enigbokan, Sesule Mojapelo, Clint Ollermann, Mapato Ramokgopa, Melissa Naidoo, Lorraine Ncube.

The non-confidential versions of the 68 submissions were published on the Inquiry website on 5 February 2015. At a press conference the same day, the Panel Chairperson announced that all stakeholders would be afforded an opportunity until 5 March 2015 to correct inaccurate or misleading information in the above submissions. In addition, particular parties against whom specific allegations of fact had been made or adverse conclusions asserted to in the submissions, were encouraged to provide their responses by 5 March 2015. The Inquiry also published Supplementary Guideline No. 1, dated 5 February 2015, to inform and guide participants in the Inquiry of the immediate follow-up process regarding the submissions received.

The Inquiry received an additional 37 detailed responses relating to the published submissions. The Inquiry team conducted a full technical analysis of all the above submissions and requested further information and data, where applicable. The Panel considers it necessary to elicit further detailed information (in various formats) from particular stakeholders to enable it to carry out its tasks pursuant to the Terms of Reference of the Inquiry, read with Chapter 4A of the Competition Act. Large amounts of data/information are expected in response to these formal requests and the Inquiry has prepared for the management and analysis of such. The process will culminate in the Inquiry holding public hearings in the 2015/16 financial year on the key issues identified.

Case Study 19: The Netcare Judgement

Judgement in the Netcare matter was handed down on 22 August 2014 in the South Gauteng High Court. The Netcare Hospital Group (Netcare) filed a legal challenge, seeking an interdict to prevent the Inquiry from using the services of KPMG, the Inquiry's appointed technical consultants. As a result of this challenge, the Inquiry undertook not to use the services of KPMG until the matter was resolved by the high court. The court dismissed the application by Netcare with costs.

15. Advocacy & Stakeholder Relations

Advocacy is one of the Commission's core functions, and relates to the promotion of voluntary compliance with Competition Act. The role of the Advocacy and Stakeholder Relations programme is to forge and maintain relationships with international and domestic stakeholders in the public and private sector, and to communicate the decisions and activities of the Commission to them.

In addition to general relationship-management, the division engages with respondents in an effort to resolve cases through non-enforcement means, undertaking training workshops and public exhibitions for different groupings of stakeholders, negotiating memoranda of understanding with other economic regulators, coordinating the Commission's efforts in international forums and strategically engaging with the media. The division is also responsible for communicating the Commission's decisions and work internally.

15.1. Stakeholder Relations

15.1.1. Education initiatives

During the year under review, the programme hosted the following workshops:

- Bid-rigging Workshop for the National Department of Justice (28 May 2014);
- Compliance Workshop for Cytek Cycles, Cape Town (12 September 2014);
- Compliance Workshop for Cytek Cycles, Gauteng (16 September 2014);
- Compliance Workshop for Saloojee Cycles (25 November 2014);
- Compliance Workshop for Tricycles (15 December 2014); and
- Bid Rigging Workshop for OR Tambo Municipality(13 March 2015).

The following cases have been resolved through advocacy:

- Animal Welfare – Engaged with the South African Veterinary Association on sharing premises with non-vets. The Commission recommended that the parties apply for an exemption (South African Veterinary Association Case No 2012Mar0150).
- School Uniform Advocacy – (Bernard Slater vs School and Leisure Wynberg, 2014Apr0157). The conduct was the exclusive agreements between school uniform suppliers and schools, which forecloses potential competitors. The Commission advocated opening school uniform procurement to open tender, in order to promote competition. A meeting with the Principal and Deputy Principal of Bergvliet High School was held. The school committed to put out to open tender the school uniform procurement contract within a period of 18 months of the engagement.

Case Study 20: School Uniform Advocacy

During the period under review, the Commission conducted advocacy regarding exclusive agreements in the procurement of school uniform. A Cape Town parent lodged a complaint with the Commission against a school and a specialist school-uniform retailer that stocks unique school-uniform and sportswear ranges for over 60 schools in the Western Cape. The parent alleged that the school and many others in the area have appointed a service provider as their sole stockist for school uniforms, and that prices charged for uniforms are too high, leaving consumers with no alternatives. The Commission is concerned that these long-term exclusive agreements between the schools and stockists or manufacturers of school uniforms are susceptible to a contravention of the Act. Upon completion of the investigation, the Commission took a decision to resolve the matter through advocacy.

The Commission engaged with the provincial education departments and school governing body groups. During the period under review the Commission held meetings with the Departments of Education of the Eastern Cape, the Western Cape and the MEC of Education in Gauteng. On 6 March 2015, the Commission met with the CEO of the School Governing Body Federation ("GBF"), the CEO of the Federation of Governing Bodies of South African Schools ("FEDSAS"), and the Western Cape School Governing Body Association. Both the provincial education departments and the School Governing Body Associations support the Commission's initiative to open up school uniform procurement to an open tender. The Commission was asked to develop an education leaflet for the School Governing Body Associations to raise awareness among members about competition issues of exclusive agreements when procuring school uniform. It was also requested that the Commission draft a Circular for the National Department of Basic Education to help communicate the competition law risk to schools. The Commission has already drafted the leaflet for the School Governing Body Associations and the Circular for the National Department of Basic Education as requested. The opening up of school procurement contracts to tender will promote competition thus providing the competitive prices to the benefit of both the schools and the parents. This advocacy work continues even in the coming financial year.



Case Study 21: Supermarket retailers

The Commission initially investigated certain supermarkets following complaints of the effect of long-term exclusive lease agreements on competition. However, the Commission resolved to address the matter through advocacy. The Commission advocated against the use of long-term exclusive lease agreements in the supermarket sector. These long-term exclusive lease agreements are normally held between the anchor tenants and the developers. Meetings and workshops were held with retailers and property owners through the South African Property Owners Association ("SAPOA") and the South African Council of Shopping Centres ("SACSC"). The Commission also engaged the Banking Council who provided written assurances that banks view an appropriate tenant mix – including one or more anchor tenants – as a minimum risk management requirement for shopping mall development and ongoing sustainability. Banks do not require such anchor tenants to have any exclusivity in their lease agreements. During the Commission's advocacy engagement with the industry stakeholders, SAPOA lodged a formal complaint with the Commission regarding the same conduct. Following the new complaint, the Commission took a decision to launch a market inquiry into the supermarket sector to probe the complex dynamics of this market. The inquiry into supermarket retailers will commence in the new financial year.

15.1.2. Sector Regulators

According to section 21(1)(h) of the Act, the Commission is responsible for negotiating agreements with any regulatory authority to coordinate and harmonise the exercise of concurrent jurisdiction over competition matters within the relevant industry or sector and ensure the consistent application of the principles of the Competition Act.

During the year under review the Commission signed Memoranda of Agreement (MOU) with the following sector regulators:

- North West Gambling Board; and
- Office of the Auditor General.

15.1.3. Presentations

Section 21(1)(b) of the Act provides that the Commission is responsible to implement measures to develop public awareness of its provisions and mandate.

The purpose of the presentations made by the Commission was to:

- Provide feedback to stakeholders on the outcome of the Construction Fast Track Settlement project;
- Promote voluntary compliance with the Act;
- Promote the Commission's Graduate Trainee Programme; and
- Establish partnerships for advocacy.

Examples of stakeholder engagements and presentations for the year are tabulated below:

Table 14: Sample of stakeholder engagements and presentations made in 2014/15

Stakeholder	Nature of engagement
Government	<ul style="list-style-type: none"> ■ Presentation to the Parliamentary Portfolio Committee on Economic Development on 15 May 2014 to inform the committee on the outcome of the Commission's Construction Fast Track Settlement process. ■ Presentation to the Localisation Workshop hosted by the Department of Science and Technology on 1 October 2014 on localisation and its implications for competition. ■ Presentation to the Department of Trade and Industry's Foreign Economic Representatives on 26 March 2015 on the Competition Act, with specific reference to "Exemptions" to promote exports. ■ Presentations to the Deputy Minister of Economic Development Outreach Programme in Free State (23 October 2014); KwaZulu-Natal (4 December 2014); Eastern Cape (6 February 2015) and Limpopo (22 January 2015). The objective of the presentations was to brief the provinces on how the Commission's investigations affected them.
State-owned companies	<ul style="list-style-type: none"> ■ Presentation to TRANSNET Engineering on 20 February 2015 to train Transnet Engineering staff to be able to detect rigged bids. ■ Presentation to the South African Airways (SAA) senior managers on 31 October 2014 on the enforcement cases involving SAA.
Business	<ul style="list-style-type: none"> ■ Presentation to the sales staff of the Belting Services Pty Ltd on 12 March 2015 on Prohibited Practices and Information Exchange.
Trade Unions	<ul style="list-style-type: none"> ■ Presentation made to the South African Commercial Catering and Allied Workers Union ("SACCAWU") on the Role of Trade Unions in Mergers and Acquisitions on 19 June 2014.
Industry Associations	<ul style="list-style-type: none"> ■ A presentation made to members of the Readymix Association on 13 February 2015 on Information Exchange.
Tertiary Institutions	<ul style="list-style-type: none"> ■ Presentation made to the University of South Africa (UNISA)'s students on 9 July 2014, to inform them on the Commission's Graduate Trainee Programme.

Case Study 22: EDD Deputy Minister Outreach Programme

During the period under review the Competition Commission made presentations to the Economic Development Deputy Minister Outreach Programme in the Free State; KwaZulu-Natal; Limpopo and Eastern Cape Provinces. The aim of the outreach programme is to integrate economic development across the three spheres of government (national, provincial and local government). The Commission's presentations raised awareness among the provinces on how they have been affected by anti-competitive conduct and the measures they need to take to prevent the financial losses incurred as a result of anti-competitive conduct, particularly bid-rigging.

15.2. International Relations

15.2.1. BRICS

South Africa continues to be actively involved in the meetings of the heads of the BRICS competition authorities. The competition authorities of Brazil, Russia, India, the People’s Republic of China and South Africa held regular meetings in the period under review. With South Africa hosting the 4th BRICS International Competition Conference on 12-13 November 2015, the Commission’s priorities were to develop a Memorandum of Understanding between BRICS competition authorities and the concept note for the BRICS Working Group for research of competition issues in key markets.

15.2.2. African Competition Forum (ACF)

The African Competition Forum (ACF) continued to grow and, at year-end, had 32 members – 29 national agencies and three regional competition authorities. The Commissioner held the position of Vice-chair of the ACF until September 2014 when the Commissioner was elected as the Chair at the ACF’s bi-annual conference held in Johannesburg. During the period under review, the Commission attended three ACF Steering Committee meetings.

Over a two-year period, the Commission administered the funding provided to the ACF by the International Development Research Centre (IDRC). The IDRC funding was used to conduct the ACF’s capacity development and research

activities during the period under review. The funding came to an end in November 2014.

Three capacity-building workshops were held, with the Commission actively involved in the organisation of all of them. An investigation skills workshop presented by the US Federal Trade Commission was held in Mauritius in May 2014. Attended by 40 participants from 13 countries, the workshop covered topics on how to plan an investigation, gather and manage evidence, and investigation techniques. In June 2014 a workshop on bid-rigging was held for mainly Francophone ACF members in Tunisia. The 40 participants represented 17 countries. The workshop aimed to equip agencies to recognise and take action against bid-rigging. A workshop on agency effectiveness was held for delegates from 15 ACF member countries in October 2014 in Tanzania. Speakers included representatives of the Commission, UNCTAD, and the US Federal Trade Commission. The workshop aimed to identify key elements of well-functioning competition agencies.

The Commission participated in the ACF’s research programme “Competition dynamics and regional trade flows”, also known as “The Six Country Research Study”. It involved six (6) national competition agencies collectively assessing the competition dynamics in three industries: cement, sugar and fertiliser. The table below shows which countries were involved in the research for each industry.

Table 15: Agencies involved in Competitive Dynamics and Regional Trade Flows research programme

	Botswana	Kenya	Namibia	South Africa	Tanzania	Zambia	Total
Cement	✓	✓	✓	✓	✓	✓	6
Sugar	✗	✓	✗	✓	✓	✓	4
Poultry	✓	✗	✓	✓	✗	✓	4
Total	2	2	2	3	2	3	

Besides the valuable insights provided by the individual studies into the sectors, the research study strengthened the ACF as an institution and also offered lessons on building effective collaboration across competition authorities. It represents one part of the ACF’s work to support the capacity of relatively young competition authorities in Africa. The findings of the research were presented at the ICN annual conference held in Morocco in April 2014.

Case Study 23: Regional skills training with the US Federal Trade Commission and Department of Justice

The United States Agency for International Development (USAID) has since 2012 funded a joint regional training programme, whereby experienced staff of the Commission, US Federal Trade Commission (FTC) and the US Department of Justice (DOJ) provide practical training to competition agencies, mainly in the SADC region. Two (2) regional workshops were held in the period under review, bringing the total under this programme to four (4).

The two workshops focussed on developing in greater depth the various lessons and skills from the earlier regional workshops, including developing theories of competitive harm; preparing and using an investigation plan and proof chart; drafting, negotiating, and reviewing requests for documents and information; and preparing for and conducting interviews. Speakers and resource persons were drawn from the Commission, FTC and DOJ.

Between 14 and 18 July 2014, a workshop on planning and conducting investigations was held for participants from 11 countries at the Commission's offices. From 23 to 26 March 2015, a workshop on developing reliable evidence in competition investigations drew participants from nine (9) countries. All parties considered the emphasis on practical skills highly relevant and the regional workshops were very well received.

15.2.3. International Competition Network (ICN)

The Commission continued to participate as an active member in the International Competition Network (ICN), attending the annual conference in Morocco in April 2014, with approximately 520 participants from 90 jurisdictions. South Africa is a member of the ICN Steering Group and contributes to the outputs of the ICN's five working groups.

15.2.4. World Bank Group

The Commission was awarded a World Bank Competition Advocacy Special Honourable Mention for its advocacy on bid-rigging. The award was presented to the Commission at a ceremony in Washington DC in October 2014. The Special Honourable Mention recognised South Africa in the category "Improving the effectiveness of antitrust enforcement through advocacy with relevant public bodies" for its advocacy strategy to tackle bid-rigging in public procurement through capacity building for procurement officials and specific measures to detect cartel behaviour.

15.2.5. Organisation for Economic Cooperation and Development (OECD)

The OECD aims to help nation states foster prosperity and fight poverty through economic growth and financial stability. While South Africa is not one of the OECD's 34 members, it participates through the "enhanced engagement" programme as one of five specially designated key partners. As in the past, the Commission participated in the work of the OECD's Competition Committee, attending meetings in June and October 2014 and submitting papers, including one on generic pharmaceuticals and competition.

15.2.6. United Nations Conference on Trade and Development (UNCTAD)

In July 2014 The Commission attended the 14th session of the Intergovernmental Group of Experts on Competition Law and Policy in Geneva. A paper focusing on the South African steel sector was presented during the session on the role of competition law and policy in fostering sustainable development.

15.3. Communications

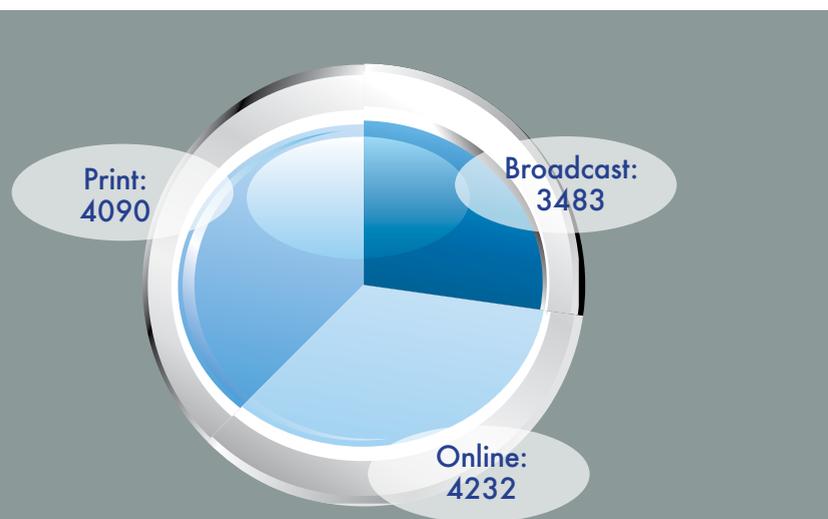
The role of the Communications department is to inform, educate and engage with the public and stakeholders about the mandate and activities of the Commission using various platforms. The Communications department bears the primary responsibility for identifying communication and information opportunities, messages and relevant platforms or tools to use for this function. The unit is also the custodian of the Commission’s external image and brand. Internally, the department informs employees of key internal developments and organises events and activities that contribute towards staff well-being and motivation.

15.3.1. Media Relations

The media community remains one of the Commission’s key stakeholders, as they play a pivotal role in information dissemination by reporting and informing the public on the Commission’s activities. In the current financial year, the Commission issued a total of 50 media releases, and published three opinion pieces in two major weekend newspapers. Furthermore, the Commission organised four (4) media briefings, two (2) of those being on the status of the Market Inquiry into the Private Healthcare Sector. The Commission received a total combined media monitoring units of 11 805. This refers to all mentions of the commission and its activities in the mainstream media across various platforms which account for a 1967 increase in media coverage from the 9 838 in 2013/14.

Figure 4: Media Coverage, April 2014-March 2015

Source: Newsclip Media Monitoring



15.3.2. Corporate Communications

15.3.2.1. Publications and Website

The Commission’s flagship newsletter, The Competition News, provides in-depth analysis of cases and commentary on local and international competition issues. The newsletter is published quarterly and distributed to a wide reach of stakeholders.

The Commission also reaches out to its stakeholders through its website. The website remains the gateway to the Commission and a repository of information for everyone to access and use, including media (local and international), practitioners and the public. The Commission revamped its website in an effort to improve access and the quality of information and communication systems with external stakeholders. The new website was launched in November 2014.

Table 16: Commission publications and website visits over a five-year period

	2010/11	2011/12	2012/13	2013/14	2014/15
Number of editions of the Competition News issued	4	4	3	4	3
Number of times the Commission’s website was visited	65 526	76 422	66 793	109 887	62 770 (since launch)
Number of people visiting the Commission’s website	34 177	47 148	40 676	62 257	33 888 (since launch)

Source: Google Analytics and Competition Commission

15.3.2.2. Social Media

The Commission accelerated communication via Social Media to reach a wider audience. The Commission is now active on four (4) platforms: Twitter, Facebook, LinkedIn and YouTube. Members of the public are able to get their queries answered faster and receive important notices about the Commission's activities in a prompt manner. The platforms have a combined audience/following of 3 170.

Case Study 24: Public seminar on the contribution and impact of competition policy on socio-economic rights

As part of its strategic collaboration with external stakeholders, the Commission collaborated with the University of Pretoria's Centre for Human Rights (Faculty of Law) to organise a public seminar on The Contribution and Impact of Competition Policy on Socio-Economic Rights, at Constitution Hill. Former Chief Justice Sandile Ngcobo delivered a keynote address, which underscored that the Commission must pursue cases that will help iron out the unequal policies of the past by placing the issues of the most vulnerable in our society first.



Case Study 25: 8th Annual Conference and 15-Year Celebration

The Commission successfully hosted its 8th Annual Conference and 15-Year Celebration at the Gordon Institute for Business Science (GIBS), from 4-5 September 2014. The conference attracted 286 professionals from within the South African borders and overseas. Of the 62 abstracts received, 28 were accepted and only 23 made it to the final conference programme. These were high-level papers and the overall quality improved substantially compared to previous conferences. As part of celebrating 15 years of competition enforcement, the Commission and Tribunal produced a high-level "people's account" booklet, highlighting the authorities' successes and challenges over the past years. The Commission also produced a 15-minute video giving insights into the work of the authorities to achieve competition efficiencies across markets in the South African economy.

15.3.3. Internal communications

The Commission revamped its internal newsletter, Chronicles (formerly Newsflash), a monthly electronic offering dedicated to employees. The newsletter is one of the engagement platforms that enable employees and management to share information. The division produced and circulated eight (8) editions of Chronicles and issued 159 News Updates. The division also organised seven (7) social events for employees, including the year-end awards ceremony that recognises exceptional performance.

16. Corporate Services

16.1. Human Resources

The Commission is a fast-paced environment that requires specialists in the areas of Law and Economics. The focus of the Human Resources (HR) function this year has been on identifying and initiating programmes that will ensure an environment where the Commission's employees feel valued and cared for. Employees across all the levels of the organisation participated in a culture survey during the financial year. This initiative will be followed by a number of milestones that will help create a unifying culture across the Commission.

While HR acknowledges that people management is a line function, it is equally important for the HR function to support managers. To that end, the HR function at the Commission has introduced an HR Business Partnering model where each division has been allocated an HR resource. In this way HR will be able to focus on both divisional and organisation-wide initiatives to harness and optimise individual performance.

16.1.1. Performance management

The Commission recognises that its people are significant contributors to achieving its mandate. To that end, the Commission began a process to review its Performance Management system to better align institutional and individual performance during the financial year. This review is also aimed at ensuring that the Commission motivates, recognises, retains, and rewards high performance in a fair and equitable manner.

16.1.2. Recruitment and retention

Through the Commission's strategic resourcing it has been able to continue attracting and retaining diverse skills sets - from junior to management level - which has contributed to the knowledge growth of the institution. The Commission has increased its recruitment efforts by capacitating the Market Inquiry teams

with astute industry experts. In an effort to increase the number of applications from under-represented communities, the Commission has actively participated in Graduate Career Fairs across various institutions in South Africa, such as:

- University of South Africa in Pretoria (9-10 July 2014); and
- Rhodes University (18 March 2015).

The Commission's staff complement has increased to 186 employees. This is complemented by 28 graduates.

16.1.3. Employee Relations

In the year under review, the majority of the Commission's employees were members of the National Education Health and Allied Union (NEHAWU). By year-end, NEHAWU's representation was 57%, which gave them majority rights in terms of the amended Chapter III of the Labour Relations Act (No. 66 of 1998). No employees were dismissed during the reporting period.

16.1.4. Employment Equity

The Commission has made a deliberate effort to comply with the Employment Equity Act, (No. 55 of 1998) as amended ("the EEA"). A new five-year draft of the Employment Equity Plan (2015 -2019) to (2015-2020) is undergoing a governance review and will be signed in the coming financial year. This is a tool the Commission shall utilise to achieve equity in the workplace. In terms of the applicable provisions of the EEA, the Commission's Employment Equity Report was submitted to the Department of Labour. The table below shows the equity breakdown for the past five years, including the year under review. In the year under review the equity ratio for female and male representation is 52% and 48% respectively, which is in line with government targets. The disability statistics for the year under review stood at 3%, which is above the government target of 2% set for the public sector.



Back row, from left to right: Charlotte Sithole, Neo Dikgwejane, Anusha Ellary, Christabelle Roman, Brian Moeng, Andile Mangisa, Abram Tiro, Clifford Malaka, Donation Shilubane, Moranye Phala, Tsholofelo Dlamini, Binu Idiculla.
Front row, from left to right: Caroline Legwai Makena, Londiwe Zwane, Nomfundo Ngidi, Nompumelelo Nkabinde, Lindiwe Sithole, Tshepiso Diremelo, Kelebogile Nkosi.



Back row, from left to right: Tumi Maote, Clifford Mathebula, Mhlangabesi Capha, Rhime Letsoalo, Mimi Makamo, Alet Aucamp, Regina Monyakeni, Edgar Shingange, Susan Nyamane.
Front row, from left to right: Sylvia Mogorosi, Pinky Nxumalo, Thomas Kgokolo, Devrani Moonsamy, Mandisi Silver.

Table 17: Comparative breakdown of staff complement, 2009/10-2014/15

Year	Total number of employees	No. of female employees	No. of male employees
2009/2010	132	59 (45%)	73 (55%)
2010/2011	163	84 (52%)	79 (48%)
2011/2012	171	86 (50%)	85 (50%)
2012/2013	168	90 (54%)	78 (46%)
2013/2014	165	86 (54%)	79 (46%)
2014/2015	186	97 (52%)	89 (48%)

16.1.5. Staff turnover

The Commission’s effort towards a healthy staff retention rate is yielding positive results in that there has been a marked reduction in staff turnover in the year under review, as depicted by the graph below.

Figure 5: Trends in staff turnover, 2007/08 to 2014/15



16.1.6. Review of HR Policies

The following policies are currently under review: the Employment Equity Policy, the Graduate Trainee Policy and the Disciplinary Policy. The policies are being reviewed to ensure compliance with legislation and best practice.

16.1.7. Learning and Development

That the Commission places great emphasis on developing its assets, the people, is evident in the fact that R2 166 869 was spent on learning and development initiatives during the reporting period. The training budget includes local training, overseas training and conferences.

We have spent a significant amount of time developing internal training material to ensure consistent and sustainable training of our employees. This helps ensure that the quality of our outputs is not compromised. To that end, there has been a slight decline in our external training spend from 2013/14 (R1 641 425) to 2014/2015 (R1 555 628).

In line with our aspiration to support the development of our staff, we also provide them with support not only to do their jobs, but also to grow as individuals. In 2014/15, 21 employees benefited from bursaries and loans offered by the Commission.

Table 18: Study loan programmes registered for 2014/15

Programmes	Number of staff
LLM	3
MBA	1
PhD Economics	2
Certificate Programme Telecoms & Law	1
Certificate Investigation & Fraud	2
Master's in Economics	2
BCom Hons (Finance)	1
BCom HR	1
BCom Industrial Psychology	1
BCom Economics	1
BCom Economics	1
BCom Finance	1
BA Marketing	1
B Information Technology in Business	1
NDip Project Management	1
BCom Accounting	1
Total	21

16.1.8. Graduate Training Programme

The Commission is committed to transformation and skills development. These imperatives are deeply entrenched in the manner in which we approach the Graduate Development Programme. In 2014/2015 we enrolled 28 graduates, 10 more than in the preceding financial year. Of these graduates, 60% were female and 40% male. From a racial equity perspective, all graduates were Black and 53% were from historically disadvantaged institutions, as illustrated below.



Table 19: Breakdown of Graduate Trainees per Institution

University	No. of graduates
University of the Witwatersrand	3
University of Limpopo	4
University of Pretoria	2
North West University	3
Nelson Mandela Metropolitan University	1
University of Johannesburg	1
University of KwaZulu-Natal	4
University of the Western Cape	1
Cape Peninsula University of Technology	1
University of Fort Hare	2
Rhodes University	1
University of Venda	2
University of South Africa	1
University of Free State	1
Midrand Graduate Institute	1
Total	28

16.2. Information Technology

The Information Technology (IT) department provides a secure, user-friendly and efficient IT environment for all employees. The Commission's IT network is hosted by that of the Department of Trade and Industry (the dti) as the Commission is located on the dti campus. Managing an IT environment on the dti campus continues to be a complex task due to the intricate nature of the network and lack of access to the networking environment. We have introduced various information and communication technologies to aid the smooth operation of the Commission. Staff access to the IT system is provided through various mobile and direct technologies.

IT governance was the main focus of the year, with the development of an IT strategy, the updating and development of new IT policies, including Identity and Access Management policy, Change Management policy, Mobile Device Usage policy and Disaster Recovery policy. Terms of Reference for the IT Committee were also developed during the financial year. Below are the main areas on which the IT department delivered during the period.

16.2.1. Virtualisation

Virtualisation of the main database and application servers was done, thereby showcasing information technology's most notable contributions to the environment. The sustainability and cost-saving benefits of the server virtualisation service and consolidation of IT services and technologies resulted in reduced hardware and software licensing costs and improved operating efficiencies.

16.2.2. Archiving and retention

To increase the efficiency of the case management system and database management, an archiving system was introduced and merger cases from the previous financial years were archived within this system on a financial-year basis.

16.2.3. Upgrade of databases

Various databases used for case management and financial systems were upgraded to improve database reliability and performance. This update will also improve the security of the databases and their availability to users. A database mirroring system was introduced to protect databases from possible failures that could arise from hardware problems.

16.2.4. Purchase of new laptops and desktops

Eighty new laptops were purchased for staff, to replace redundant equipment. This has improved efficiency and staff are able to work with fewer hardware problems.

16.2.5. ICT infrastructure for the Health Inquiry

In order to meet the ICT requirements of the Private Healthcare Market Inquiry, new ICT infrastructure was installed in the building where the Inquiry is housed, which uses limited hardware and more online resources.

16.2.6. Responding to security risks and enhancing ICT access management

All of the Commission's laptops with Windows software were encrypted during the financial year. The encryption of Commission laptops kicks off a data security initiative that encourages staff to install data encryption software on their laptop computers.

16.2.7. Security breaches/incidents

The Commission systems are protected with industry standard antivirus and intrusion detection and prevention systems. All threats were prevented and no serious security risks were experienced during the year. The Commission also did not experience any system downtime due to security threats. The only downtime on the CMS database was due to the unexpected power supply problems in the server room.

16.2.8. Improving technology support

Various mobile computing technologies and support to different operating systems and programmes were introduced. These included Android, Apple and Windows mobile computing devices.

16.2.9. Case and Knowledge Management system

Case registration and document uploading facilities were upgraded with the latest scanning and optical character recognition (OCR) technology. Extensive training was given to divisions in the use of the Case Management System. As a result, the usage of the system has improved.

17. Corporate Governance

17.1. 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 the general administration; for managing and directing the activities of the Commission; for supervising the Commission's staff and for performing any functions assigned to him in terms of the Competition Act and the Public Finance Management Act (PFMA). Mr Tembinkosi Bonakele, after serving as Acting Commissioner between 21 October 2013 and 19 April 2014, was appointed as Commissioner on 20 April 2014 for a five-year period. He performed the duties of Commissioner for the period under review.

17.1.1. The Commission Meeting

The Commission Meeting is the highest decision-making structure in relation to statutory and the 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 divisions dealing with the statutory, case-related work, performing an advisory role to the Commissioners.

The Commission Meeting held 49 meetings during the period under review. The core functions of the Commission Meetings are to receive recommendations and to take 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 Competition Act.

Between 1 April 2014 and 30 September 2014, the Commissioners consisted of the Commissioner and one Acting Deputy Commissioner; while from 1 October 2014 to end March 2015, there was a Commissioner and two Acting Deputy Commissioners.

17.1.2. The Executive Committee (EXCO) and sub-committees

The Commission's Executive Committee (EXCO) is chaired by the Commissioner and comprises the Deputy Commissioners and the divisional managers, including the Chief Financial Officer. The heads of departments (Strategy & Planning, Human Resources, Information Technology, Facilities, Advocacy and Registry) form part of the extended EXCO and participate in EXCO meetings when invited by the Commissioner. The EXCO is an administrative body that advises the Commissioners in decision-making on the administrative and operational aspect of their functions.

The EXCO held seven (7) ordinary meetings and seven (7) special meetings during the period under review.

The key functions of the 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. The EXCO also plays an oversight role on the management of human resources, information technology, security and facilities

management, and risk management. The Committee 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 the committee on compliance with relevant legislation and regulations.

The Minister of Economic Development approves the Commission's performance targets, as set out in the Strategic Plan and Annual Performance Plan. Performance against targets is discussed on a quarterly basis at the Executive Committee meetings in order to monitor expenditure, activities and progress. The Commission submits quarterly reports to the Economic Development Department in terms of the PFMA.

The EXCO has established four (4) committees to assist it in performing its oversight function and to provide it with guidance on matters falling within the terms of reference of the committees, as described below.

17.1.2.1. Case Pipeline Management Committee

The Commissioners are assisted by the Case Pipeline Management Committee (CPMC), which is chaired by a Deputy Commissioner and meets on a quarterly basis with all divisional managers. The CPMC held four (4) meetings during the financial year.

The functions of the CPMC are to provide strategic and operational oversight on investigations, to assess progress, review investigative strategies and to complement existing divisional and inter-divisional structures. The role of the CPMC is to ensure that divisional targets are aligned to the Commission's strategy and overall performance targets. In addition, it ensures that human capital and financial resources are used to their optimum in the pursuit of organisational goals. The CPMC also has the responsibility to review quarterly and annual operational performance against targets and make recommendations to the Commission.

17.1.2.2. Information Technology Committee

The Information Technology (IT) Committee comprises select members of the EXCO and is tasked to oversee the delivery of strategic IT projects that support the business. The IT Committee is also responsible for developing and reviewing IT policies and ensuring that these are effectively implemented. The IT Committee held two (2) meetings during the financial year.

17.1.2.3. Finance Committee

The Finance Committee comprises the Commissioners and select members of the EXCO. It is tasked with the following responsibilities:

- Recommend the annual organisational budget to EXCO for adoption;
- Ensure the organisational budget is aligned with the Commission's Strategic Plan and Government priorities;
- Monitor and report on the Commission's financial performance against organisational and divisional priorities and approved budgets;
- Formulate strategies for improving the Commission's financial position, including the approval and monitoring of the organisational budget processes;
- Review the Interim and Annual Financial Statements for recommendation to the Audit and Risk Committee; and
- Monitor and review under- and over-expenditure.

The Finance Committee held four (4) meetings during the period under review.

17.1.2.4. Human Resources Committee

The Human Resources (HR) Committee comprises select members of the EXCO and is tasked with oversight of the implementation of HR strategy and ensuring that policies are developed, implemented and reviewed. The HR Committee met five (5) times during period under review.

17.2. External Committees

17.2.1. The Audit and Risk Committees

The Commissioner has appointed an Audit and Risk Committee consisting of non-executive members, including the Chairperson, Victor Nondabula. The Audit and Risk Committees existed as separate committees with respective chairpersons until 21 November 2014, when they were reconstituted into one and carried out the combined responsibilities of the previous Audit and Risk Committees, with common Terms of Reference. The newly formed Audit and Risk Committee held its first, and only, meeting during the period under review, on 19 February 2015. The number of meetings held by the Audit and Risk Committee, including Audit and Risk as separate committees prior to reconstitution as one committee, and attendance of members are shown in the Table below.

17.2.1.1. Audit Committee

The Audit Committee, until 21 November 2014, was chaired by Victor Nondabula who is an independent non-executive member. The Audit Committee supported the Commissioner in fulfilling his oversight responsibilities relating to internal control, risk management, financial management and compliance with

laws and regulations. The Committee consisted of non-executive members who did not carry out any management responsibilities in the Commission. Internal and external auditors had unrestricted access to the Committee and helped provide assurance to it. The Audit Committee held six (6) meetings in the period under review and acquitted its responsibilities according to its approved Terms of Reference. The Committee reviewed quarterly internal audit reports, internal and external audit plans, and the financial statements for the period ending 31 March 2015.

17.2.1.2. Risk Committee

The Risk Committee was chaired by Karen Teixeira who was an independent non-executive member, until 31 October 2014 when her appointment term ended. The primary function of the Risk Committee was to assist the Commissioner in his oversight of risk management by reviewing the effectiveness of the Commission's risk management systems, practices and procedures. The Committee consisted of non-executive members who did not carry out any management responsibilities in the Commission. The committee held three meetings in the period under review to perform its functions as outlined in its approved Terms of Reference.

Table 20: Meetings of the Risk and Audit Committees held during the financial year

Name of Committee Member	Committee Name	Date when meeting was held							Attendance	
		3 April 2014	19 May 2014	28 May 2014	19 June 2014	16 July 2014	21 November 2014	19 February 2015	Attendance (Meetings held): Per committee	Attendance (Meetings held): Total
Mr V Nondabula	Audit	✓	✓	✓	✓	✓	✓	•	6 (6)	10 (10)
	Risk	✓	✓	•	•	•	✓	•	3 (3)	
	Audit & Risk	•	•	•	•	•	•	✓	1 (1)	
Ms K Teixeira*	Audit	✓	✗	✓	✗	✗			2 (5)	3 (7)
	Risk	✓	✗	•	•	•			1 (2)	
	Audit & Risk	•	•	•	•	•			N/A	
Ms M Ramataboe	Audit	✓	✓	✓	✓	✓	✓	•	6 (6)	10 (10)
	Risk	✓	✓	•	•	•	✓	•	3 (3)	
	Audit & Risk	•	•	•	•	•	•	✓	1 (1)	

Table 20: Meetings of the Risk and Audit Committees held during the financial year (continued)

Name of Committee Member	Committee Name	Date when meeting was held							Attendance	
		3 April 2014	19 May 2014	28 May 2014	19 June 2014	16 July 2014	21 November 2014	19 February 2015	Attendance (Meetings held): Per committee	Attendance (Meetings held): Total
Mr N Mhlongo	Audit	✓	✓	✗	✓	✓	✓	•	5 (6)	9 (10)
	Risk	✓	✓	•	•	•	✓	•	3 (3)	
	Audit & Risk	•	•	•	•	•	•	✓	1 (1)	
Mr S Gounden	Audit	✓	✓	✗	✓	✓	✓	•	5 (6)	9 (10)
	Risk	✓	✓	•	•	•	✓	•	3 (3)	
	Audit & Risk	•	•	•	•	•	•	✓	1 (1)	

Key:

- ✓ Present
- ✗ Apology

* The term of appointment expired on 31 October 2014 and the member did not attend meetings after this date.

- A meeting was not convened (Risk was not convened on 28 May, 19 June and 16 July 2014; the last meetings of Audit and Risk as separate committees were held on 21 November 2014; the first meeting of Audit and Risk as a committee was held on 19 February 2015).

17.3. Internal Audit

The Commission's Internal Audit function is outsourced. During the period under review, this function was carried out by Ernst & Young.

17.3.1. Internal financial control

The Commission has policies, procedures and systems in place that have been designed to provide reasonable assurance of the integrity and reliability of its financial statements, and to adequately protect, verify and maintain accountability for its assets. These internal financial controls are implemented by qualified and trained personnel within a system characterised by checks and balances. The effectiveness of internal financial controls is monitored by the Commission's management, as well as by the internal auditors. All significant findings are reported to the Audit and Risk Committee and to the Commissioner. The Commissioner and the external and internal auditors are not aware of any material breakdown in the functioning of these internal controls and systems for the period under review.

17.4. Risk Management

The Commission's executive management is responsible for identifying, evaluating, managing and monitoring all significant risks faced by the Commission. The Commission has adopted a risk management framework and policy, which is in the process of being institutionalised. As part of the strategic review process, the Commission's strategic risk register was revised to ensure that it remains relevant.

The Commission defines a "risk" as the chance of an event or outcome happening in the future that may have an adverse impact or effect on the Commission. Relevant risks for the Commission are those that are within the control of the Commission to mitigate against. A strategic risk is a possible event or outcome that could lead to the Commission not being able to operate or fulfil its mandate. Other types of risks, such as operational risks, are viewed as important but are managed at an operational level and not at a strategic level. The Commission has identified five major risk categories, with specific contributing factors, as well as mitigating actions as follows:

Table 21: Strategic risks and mitigating actions

Risk Category and Contributing Factors	Mitigating Actions
<p>1. Insufficient capacity</p> <p>1.1. Ineffective merger control leading to increased concentration in markets.</p> <p>1.2. Inability to effectively litigate in the Tribunal or in courts.</p> <p>1.3. Inability to effectively detect and investigate the increased sophistication of perpetrators' tactics.</p> <p>1.4. Insufficient human resources to effectively meet the Commission's mandate.</p>	<ul style="list-style-type: none"> ■ The Commission utilises and continuously improves its case management process. ■ Cases are subjected to the Commission's internal decision-making processes, including the Commissioner's meeting. ■ The Commission utilises information garnered through its Corporate Leniency Policy to detect and investigate cartel conduct. ■ The Commission attracts and retains employees with the requisite skills and experience by providing competitive benefits such as fair remuneration, further education and training, as well as favourable working conditions. ■ The Commission's Graduate Trainee Programme creates a future pool of competent people in all relevant fields, such as economics and law.
<p>2. Ineffective advocacy and partnerships</p> <p>2.1. Inadequate response to radical changes in policy and regulation.</p> <p>2.2. Inability to effectively influence policymakers.</p> <p>2.3. Ineffective stakeholder management.</p>	<ul style="list-style-type: none"> ■ The Commission closely monitors for any possible changes to policy and/or regulation and is proactively involved in the consultation processes leading up to the implementation of such changes. The Commission, through its active monitoring for any possible regulatory and/or policy changes, is also able to undertake any required actions such as providing relevant training or changing internal processes and procedures. ■ The Commission's stakeholder management plan identifies all stakeholders and provides for ongoing engagement opportunities with these stakeholders.
<p>3. Information security</p> <p>3.1. Inadequate controls to manage and secure information.</p>	<ul style="list-style-type: none"> ■ The Commission's information security plan ensures that adequate controls are in place to manage and secure information.
<p>4. Regulatory non-compliance</p> <p>4.1. Non-compliance with regulatory and policy requirements.</p>	<ul style="list-style-type: none"> ■ The Commission's regulatory compliance plan ensures compliance with regulatory and policy requirements.
<p>5. Inability to continue with business</p> <p>5.1. Lack of planning for disasters, including "acts of God".</p>	<ul style="list-style-type: none"> ■ The Commission's disaster recovery plan ensures adequate planning for all possible disasters.

17.5. Compliance with legislation

17.5.1. 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 Economic Development Department for approval during the period under review:

- Request to retain surpluses generated as at 31 March 2014 (approval obtained);
- Quarterly reports on the Commission's expenditure, budget variance, activities and performance against set targets;
- Monthly expenditure reports;
- Annual Performance Plan for the period 2015-2016; and
- Strategic Plan and Budget for the five-year period 2015-2020.

17.5.2. Skills Development Act, 1998

The Commission submitted the Annual Training Report and the Annual Workplace Skills Plan on 30 June 2014.

17.5.3. Skills Development Levies Act, 1999

A skills development levy equal to 1% of the total payroll is paid to the South African Revenue Service monthly. This is distributed to the relevant Sector Education and Training Authorities (SETAs), which promote training in various disciplines. Employers are able to claim back part of the skills levies paid as a Skills Grant.

17.5.4. Employment Equity Act, 1998

The Commission submitted its Employment Equity Report in January 2015.

17.5.5. Compensation for Occupational Injuries and Diseases Act, 1993

A return of earnings was submitted in May 2015. This provides an estimated cost of possible claims that can be lodged against the Compensation Fund in terms of this Act.

17.5.6. 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%, capped at a maximum of R148,72 per month.

17.5.7. 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.

17.5.8. Income Tax Act, 1962

The South African Revenue Service exempted the Commission in terms of section 10(1)(A)(i) of the Income Tax Act, 1962.

17.5.9. 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).

■ Appendices



18. Performance Against Targets

The following sections present the Commission's programme performance indicators together with targets. It sets out the specific performance targets that the Commission sought to achieve in the pursuit of strategic outcomes-orientated goals and objectives set out in the Commission's strategic plan.

Table 22: Planned outputs and results of the Commission's programmes for the 2014/15 financial year

Performance Measures			Accountable Programme	Annual Targets	Performance Results	Reason for Variance
Outputs	Indicator Number	Key Performance Indicator				
Cartel cases completed	1	Number of cartel investigations initiated by the Commission	Cartels	10	132	Target exceeded. A higher than anticipated number of cases relating to automotive components were investigated. Initiation of cases is required per component.
	2	Number of cartel investigations completed ²⁷	Cartels	10	31	Target exceeded. A higher than anticipated number of construction cases were finalised.
	3	Number of cases referred to the Tribunal for adjudication	LSD	10	16	Target exceeded. A higher than anticipated number of cartel investigations were completed, leading to a higher number of referrals.
	4	Number of contested cartel cases completed at the Tribunal ²⁸	LSD	4	4	Target met.

²⁷ "Completed" investigations denotes the Commission's decision to refer or non-refer a case.

²⁸ "Completed at the Tribunal" denotes a final decision/order of the Tribunal on the case.

Table 22: Planned outputs and results of the Commission’s programmes for the 2014/15 financial year (continued)

Performance Measures			Accountable Programme	Annual Targets	Performance Results	Reason for Variance
Outputs	Indicator Number	Key Performance Indicator				
Corporate Leniency Applications (CLPs) completed	5	Number of CLP applications received	Cartels	10	121	Target exceeded. The number of CLP applications received was higher than anticipated. A significantly high number of CLP applications was received from the automotive components sector case.
	6	Number of CLP applications granted	Cartels	6	3	Target not met. CLP applications are assessed and granted at the completion of the investigation of the relevant case. Of the 31 cases completed, only three (3) had CLP applications, of which all three (3) were granted.
Abuse of dominance and/or vertical and/or horizontal restrictive cases completed	7	Number of investigations initiated by the Commission	E&E	6	7	Target exceeded. A higher than anticipated number of initiations were finalised.
	8	Number of investigations completed ²⁹	E&E	6	8	Target exceeded. Finalisation of investigations was reprioritised and resources reallocated accordingly.
	9	Number of cases referred to the Tribunal for adjudication	LSD	2	0	Target not met. The two cases targeted for referral were deferred to 2015/2016 for additional evidence.
	10	Number of cases completed at the Tribunal	LSD	2	2	Target met.
Exemption applications completed	11	Number of exemption applications decided	E&E	3	4	Target exceeded. A higher than anticipated number of exemption applications were received.

²⁹ The investigation pool includes complaints initiated by the Commission and complaints submitted by third parties.

Table 22: Planned outputs and results of the Commission's programmes for the 2014/15 financial year (continued)

Performance Measures			Accountable Programme	Annual Targets	Performance Results	Reason for Variance
Outputs	Indicator Number	Key Performance Indicator				
Guidelines on public interest issues in mergers developed	12	Publish guidelines on public interest issues in mergers	M&A	1	0	Target not met. A draft guideline was published for comment. Complex issues arising from stakeholder consultations delayed the finalisation of the guidelines.
Guidelines on information exchange	13	Publish guidelines on information exchange	P&R	1	0	Target not met. A draft guideline has been developed and is going through an internal processes to finalise publication in the new financial year.
Mergers turnaround times	14	Percentage of Phase 1 investigations completed within 20 days	M&A	90%	51%	Target not met. Investigations required more time to finalise, due to complexity.
	15	Percentage of Phase 2 investigations completed within 45 days	M&A	90%	40%	Target not met. Investigations required more time to finalise, due to complexity.
	16	Percentage of Phase 3 investigations completed within 60 days	M&A	90%	74%	Target not met. There were large mergers that took much longer than anticipated to finalise as a result of extensive competition analysis and lengthy consultations with key stakeholders.
Successful prosecutions	17	Percentage of successful prosecutions	LSD	85%	80%	Target not met. There were four (4) successful prosecutions out of five finalised prosecutions. The Commission lost prosecution in one case that was appealed. Another case was won at the Tribunal, but is being appealed by the respondent in the CAC. The latter has not been factored in the performance results, since the final outcomes will be known in the next financial year.

Table 22: Planned outputs and results of the Commission’s programmes for the 2014/15 financial year (continued)

Performance Measures			Accountable Programme	Annual Targets	Performance Results	Reason for Variance
Outputs	Indicator Number	Key Performance Indicator				
Advisory opinions issued	18	Number of advisory opinions issued	LSD	42	23	Target not met. Advisory opinions issued are dependent on requests received. Fewer requests than anticipated were received. Some requests were received towards the end of the financial year and will only be finalised in 2015/2016.
Settlement agreements concluded	19	Number of settlement agreements concluded	LSD	20	43	Target exceeded. A significant number of respondents were willing to settle with the Commission.
Guidelines issued to stakeholders	20	Number of guidelines issued to stakeholders	LSD	1	2	Target exceeded. A need identified during the financial year necessitated development of an additional guideline.
Impact assessments completed	21	Number of impact assessments completed	P&R	3	4	Target exceeded. There was higher demand than anticipated for impact assessments.
Internal review of a priority sector	22	Internal review of a priority sector	P&R	1	1	Target met.
Competition papers and presentations compiled	23	Number of internal economic briefs produced	P&R	8	10	Target exceeded. There was higher demand than anticipated for economic briefs.
	24	Number of policy papers and submissions to national and international forums	P&R	2	7	Target exceeded. There was a higher demand than anticipated for submissions.

Table 22: Planned outputs and results of the Commission's programmes for the 2014/15 financial year (continued)

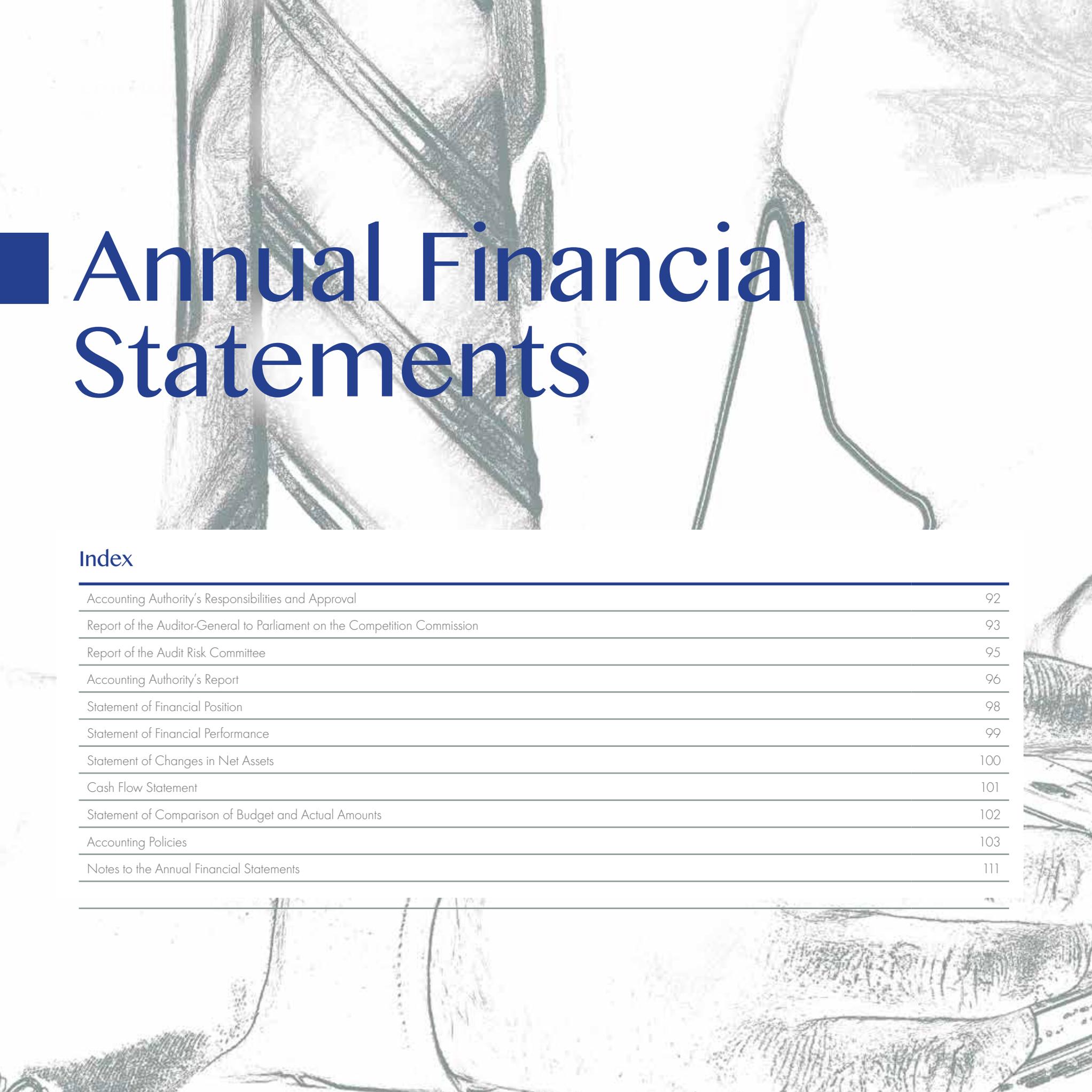
Performance Measures			Accountable Programme	Annual Targets	Performance Results	Reason for Variance
Outputs	Indicator Number	Key Performance Indicator				
Competition papers and presentations compiled	25	Presentations locally and internationally ³⁰	P&R	12	18	Target exceeded. There was a higher demand than anticipated for presentations.
	26	Number of journal articles published	P&R	4	4	Target met.
	27	Number of papers presented at conferences	P&R	6	15	Target exceeded. There was higher demand than anticipated for presentation of papers at conferences.
Market inquiries completed	28	Number of market inquiries initiated	P&R	1	1	Target met.
	29	Number of market inquiries completed	P&R	0	0	No target was set for 2014/2015.
Cases resolved through Advocacy, Awareness and Education	30	Number of cases resolved through advocacy	P&R and ASR	8	3	Target not met. Fewer cases than anticipated required resolving through advocacy.

³⁰ This relates to presentations made at sessions other than conferences, such as seminars and workshops, both locally and internationally.

Table 22: Planned outputs and results of the Commission’s programmes for the 2014/15 financial year (continued)

Performance Measures			Accountable Programme	Annual Targets	Performance Results	Reason for Variance
Outputs	Indicator Number	Key Performance Indicator				
Engagements with stakeholders	31	Number of stakeholder forums hosted	ASR	4	0	Target not met. The target was deferred to 2015/2016.
	32	Number of trade union working groups assembled	ASR	4	1	Target not met. The target was deferred to 2015/2016.
	33	Number of training workshops hosted	ASR	6	10	Target exceeded. There was an increase in Tribunal Orders requiring the Commission to provide compliance training to respondents.
Policy and governance initiatives	34	Review of governance structures	Commissioner’s Office, CSD	1	1	Target met.
Reviewed organisational structure	35	Review of organisational structure	Commissioner’s Office, CSD	1	1	Target met.
Organisational culture assessment	36	Conduct organisational culture assessment	CSD	1	0	Target not met. The last phase of the assessment process will be completed in 2015/2016.
Recruitment and retention of employees	37	Maintain staff turnover rate below target percentage	CSD	<20%	13,07%	Target met.
Review performance management system	38	Review the performance management system	CSD	1	0	Target not met. Finalisation of the process was deferred to 2015/2016.
Employment equity plan submitted	39	Comprehensive Employment Equity Plan	CSD	1	1	Target met.
Performance assessments conducted	40	Number of performance assessments	CSD	2	2	Target met.





Annual Financial Statements

Index

Accounting Authority's Responsibilities and Approval	92
Report of the Auditor-General to Parliament on the Competition Commission	93
Report of the Audit Risk Committee	95
Accounting Authority's Report	96
Statement of Financial Position	98
Statement of Financial Performance	99
Statement of Changes in Net Assets	100
Cash Flow Statement	101
Statement of Comparison of Budget and Actual Amounts	102
Accounting Policies	103
Notes to the Annual Financial Statements	111



Accounting Authority's Responsibilities and Approval

The Accounting Authority is required by the Public Finance Management Act (Act 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 Accounting Authority 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 was given unrestricted access to all financial records and related data.

The annual financial statements have been prepared in accordance with South African Statements 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, standards for internal control aimed at reducing the risk of error or deficit 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 operating risk cannot be fully eliminated, the entity endeavors to minimise it by ensuring that appropriate infrastructure, controls,

systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The Accounting Authority is 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 has reviewed the entity's cash flow forecast for the year and, in the light of this review and the current financial position, 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 Economic Development Department 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 examined by the entity's external auditors and their report is presented on page 96.

The annual financial statements set out on pages 96 to 133, which have been prepared on the going concern basis, were approved by the Accounting Authority on 31 July 2015 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 financial statements

Introduction

1. I have audited the financial statements of the Competition Commission set out on pages 96 to 133, which comprise the statement of financial position as at 31 March 2015, the statement of financial performance, statement of changes in net assets, and cash flow statement and statement of comparison of budget and actual amounts for the year then ended, as well as the notes, comprising a summary of significant accounting policies and other explanatory information.

Accounting authority's responsibility for the financial statements

2. The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No.1 of 1999) (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.

Auditor-general's responsibility

3. My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with International Standards on Auditing. Those standards require that I comply with ethical requirements, and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
4. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in financial statements. The procedures

selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements 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 entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

6. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission as at 31 March 2015 and its financial performance and cash flows for the year then ended, in accordance with SA Standards of GRAP and the requirements of the PFMA.

Report on other legal and regulatory requirements

7. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) and the general notice issued in terms thereof, I have a responsibility to report findings on the reported performance information against predetermined objectives for selected programmes presented in the annual performance report, non-compliance with legislation and internal control. The objective of my tests was to identify reportable findings as described under each subheading but not to gather evidence

Report of the Auditor-General to Parliament on the Competition Commission (continued)

to express assurance on these matters. Accordingly, I do not express an opinion or conclusion on these matters.

Predetermined objectives

8. I performed procedures to obtain evidence about the usefulness and reliability of the reported performance information for the following selected programmes presented in the annual performance report of the public entity for the year ended 31 March 2015:
 - Programme: Cartels on pages 83 to 84.
 - Programme: Legal Service on pages 83 to 86.
 - Programme: Enforcements and Exemptions on page 84.
 - Programme: Policy and Research on pages 85 to 87.
9. I evaluated the reported performance information against the overall criteria of usefulness and reliability.
10. I evaluated the usefulness of the reported performance information to determine whether it was presented in accordance with the National Treasury's annual reporting principles and whether the reported performance was consistent with the planned programmes. I further performed tests to determine whether indicators and targets were well defined, verifiable, specific, measurable, time bound and relevant, as required by the National Treasury's Framework for managing programme performance information (FMPPi).
11. I assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
12. I did not identify any material findings on the usefulness and reliability of the reported performance information for the selected programmes.

Additional matter

13. Although I identified no material findings on the usefulness and reliability of the reported performance information for the selected programmes, I draw attention to the following matter:

Achievement of planned targets

14. Refer to the annual performance report on pages 83 to 88 for information on the achievement of the planned targets for the year.

Compliance with legislation

15. I performed procedures to obtain evidence that the public entity had complied with applicable legislation regarding financial matters, financial management and other related matters. I did not identify any instances of material non-compliance with specific matters in key legislation, as set out in the general notice issued in terms of the PAA.

Internal control

16. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with legislation. I did not identify any significant deficiencies in internal control.

Auditor-General

Pretoria
28 July 2015



AUDITOR-GENERAL
SOUTH AFRICA

Report of the Audit and Risk Committee

We are pleased to present our final report for the financial year ended 31 March 2015.

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 7 meetings were held, 6 of which were prior to the merging of the Audit Committee with the Risk Committee. The 7th meeting was held as the combined Audit and Risk Committee. 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 (re-appointed as AC Chairperson in November 2014)	7	7
Ms K Teixeira (term expired on 31 October 2014)	2	2
Ms M Ramataboe (re-appointed as a member in November 2014)	7	7
Mr N Mhlongo (re-appointed as a member in November 2014)	6	7
Mr S Gounden (re-appointed as a member in November 2014)	6	7

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 conducted its affairs in line with its terms of reference.

The effectiveness of internal control

The quality of management and monthly/quarterly reports submitted in terms of financial information of the PFMA was adequate. However, some improvements are required regarding the generation, collation and reporting of the performance information in compliance with the guidelines from National Treasury.

Evaluation of annual financial statements

The Committee has:

- reviewed and discussed the Annual Financial Statements included in the Annual Report, with the Auditor-General and the Accounting Authority;
- reviewed the Auditor-General South Africa's management report and management's response thereto;
- reviewed the entity's compliance with legal and regulatory provisions;
- reviewed significant adjustments resulting from the audit.

The Committee concurs with and accepts the Auditor-General South Africa's report and is of the opinion that the Annual Financial Statements should be accepted and read together with the report of the Auditor-General South Africa.

Internal audit

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

Auditor General of South Africa

The Committee has met with the Auditor-General South Africa to ensure that there are no unresolved issues.



V Nondabula

Accounting Authority's Report

The Accounting Authority hereby reports on its financial activities to the Executive Authority, Parliament and the public:

1. Nature of business

The Commission derives its mandate from the Competition Act No. 89 of 1998, as amended. The main objectives, as determined by the Competition 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

	2015 R '000	2014 R '000
Revenue	239,990	221,537
Interest received	8,391	5,294
Total Revenue	248,381	226,831
Expenditure	(223,757)	(198,925)
Net surplus/(deficit)	24,624	27,906
Total assets	141,909	116,493
Total liabilities	(32,099)	(31,306)
No. of Merger cases notified	381	320

2.2. Penalties levied and collected

Penalties levied against case respondents in 2015 amounted to R191 million (2014 R2.2 billion). The significant decrease from 2014 to 2015 relates to penalties levied against construction companies that was high in 2014.

In 2015, the Commission collected on behalf of Economic Development Department, R880 million (2014 R1 billion) in penalties which were transferred to the Economic Development Department.

2.3. Total Revenue

Revenue increased from R227 million in 2014 to R248 million in 2015. Income from the grant increased by 6% from R176 million in 2014 to R188 million in 2015. Income from filing fees increased by 18% from R43 million in 2014 to R52 million in 2015 as a result of an increase in the number of cases filed.

Interest earned on temporarily available funds increased due to accumulated cash surpluses retained for the market inquiry into private healthcare.

Accounting Authority's Report (continued)

2.4. Expenditure

Expenditure increased from R199 million in 2014 to R223 million in 2015 reflecting an overall increase of 12%. The increase relates significantly to the expenditure incurred for the market inquiry into private healthcare.

2.5. Financial Performance

The Commission generated a surplus of R24.6 million (2014: R27.9 million) for the current year.

The approved grant funding from government for the year 2014/2015, and income from filing fees plus 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 carries forward an approved surplus of R85.2 million from prior years. An application to retain the surplus incurred in the current financial year of R24.6 million will be made to National Treasury as the funds are required for the market inquiry into private healthcare and the retail sector market inquiry. The accumulated surplus as at 31 March 2015 is R109.8 million.

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 no changes were made thereto.

5. Materiality framework

The Commission determined a materiality figure of R1 459 295 for the year under review. 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 0.5% 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. Disposal of significant assets when overall operational functions of the Commission changes, are disclosed.

6. Events subsequent to financial position date

None.

7. Secretary

The company secretary is Ms T Gwatkin:

Business address: The dti campus
Building C: Mulayo
77 Meintjies Street
Sunnyside
TSHWANE

Postal address: Private Bag X23
Lynwood Ridge
0040
TSHWANE

Statement of Financial Position as at 31 March 2015

	Note(s)	2015 R '000	2014 R '000
ASSETS			
Current Assets			
Inventories	2	375	149
Receivables from exchange transactions	3	2,329	1,452
Cash and cash equivalents	4	132,102	110,567
		134,806	112,168
Non Current Assets			
Property, plant and equipment	5	7,002	3,989
Intangible assets	6	102	336
		7,104	4,325
Total Assets		141,910	116,493
LIABILITIES			
Current Liabilities			
Finance lease obligation	7	654	636
Payables from exchange transactions	8	31,336	28,143
Unspent donor funds	9	-	1,925
		31,990	30,704
Non Current Liabilities			
Finance lease obligation	7	109	486
Provisions	10	-	116
		109	602
Total Liabilities		32,099	31,306
Net Assets		109,811	85,187
Accumulated surplus		109,811	85,187

Statement of Financial Performance as at 31 March 2015

	Note(s)	2015 R '000	2014 R '000
Revenue			
Fee income	12	51,641	43,903
Other income	13	222	746
Interest received-investment	14	8,391	5,294
Government grants & subsidies	15	188,127	176,888
Total revenue		248,381	226,831
Expenditure			
Employee related costs	16	(140,111)	(121,468)
Administrative expenses	17	(5,336)	(4,257)
Depreciation and amortisation		(2,486)	(2,239)
Finance costs	18	(232)	(282)
Operating expenses	19	(75,561)	(70,595)
Total expenditure		(223,726)	(198,841)
Operating surplus		24,655	27,990
Loss on disposal of assets		(31)	(84)
Surplus for the year		24,624	27,906
Attributable to:			
Owners of the controlling entity		24,624	27,906

Statement of Changes in Net Assets as at 31 March 2015

	Accumulated surplus R '000	Total net assets R '000
Balance at 01 April 2013	57,281	57,281
Changes in net assets		
Surplus for the year	27,906	27,906
Total changes	27,906	27,906
Balance at 01 April 2014	85,187	85,187
Changes in net assets		
Surplus for the year	24,624	24,624
Total changes	24,624	24,624
Balance at 31 March 2015	109,811	109,811

Cash Flow Statement as at 31 March 2015

	Note(s)	2015 R '000	2014 R '000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Sale of goods and services		51,641	54,758
Grants		188,127	176,888
Interest income		8,391	5,294
Other receipts		222	746
		248,381	237,686
Payments			
Employee costs		(140,111)	(121,468)
Suppliers		(78,924)	(95,248)
Finance costs		(232)	(282)
		(219,267)	(216,998)
Net cash flows from operating activities	20	29,114	20,688
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	5	(5,292)	(776)
Purchase of other intangible assets	6	(3)	(269)
Net cash flows from investing activities	21	(5,295)	(1,045)
CASH FLOWS FROM FINANCING ACTIVITIES			
Movement in unspent donor funds		(1,925)	(167)
Finance lease payments/(receipts)		(359)	(562)
Net cash flows from financing activities		(2,284)	(729)
Net increase in cash and cash equivalents		21,535	18,914
Cash and cash equivalents at the beginning of the year		110,567	91,653
Cash and cash equivalents at the end of the year	4	132,102	110,567

Statement of Comparison of Budget and Actual Amounts as at 31 March 2015

Budget on Accrual Basis

	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	
Statement of Financial Performance						
Revenue						
Revenue from exchange transactions						
Fee income	52,517	-	52,517	51,641	(876)	12
Other income	703	-	703	222	(481)	13
Interest received-investment	2,822	-	2,822	8,391	5,569	14
Total revenue from exchange transactions	56,042	-	56,042	60,254	4,212	
Revenue from non-exchange transactions						
Taxation revenue						
Government grants & subsidies	188,127	-	188,127	188,127	-	15
Total revenue	244,169	-	244,169	248,381	4,212	
Expenditure						
Personnel	(165,769)	7,830	(157,939)	(140,111)	17,828	16
Administration	(4,548)	-	(4,548)	(5,336)	(788)	17
Depreciation and amortisation	(2,322)	-	(2,322)	(2,486)	(164)	5&6
Finance costs	(80)	-	(80)	(232)	(152)	18
Operating expenses	(119,140)	(7,830)	(126,970)	(75,561)	51,409	19
Total expenditure	(291,859)	-	(291,859)	(223,726)	68,133	
Operating surplus	(47,690)	-	(47,690)	24,655	72,345	
Loss on disposal of assets and liabilities	-	-	-	(31)	(31)	5
Surplus	(47,690)	-	(47,690)	24,624	72,314	
Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement	(47,690)	-	(47,690)	24,624	72,314	

Accounting Policies

1. Basis of preparation

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

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

A summary of the significant accounting policies, which have been consistently applied in prior years, are disclosed below.

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. Additional disclosure of these estimates of provisions are included in note 10 – Provisions.

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 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	Average useful life
Furniture and fixtures	12 years
Motor vehicles	5 years
Office equipment	8 years
IT equipment	
■ Computer equipment	3 years
■ Servers	5 years
■ GPS	3 years
Cellphones	3 years
Leased assets	Period of the lease

Accounting Policies (continued)

1.2 Property, plant and equipment (continued)

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 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 the surplus or deficit.

1.3 Intangible assets

An asset is identified as an intangible asset when it:

- 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, assets or liability; or

- arises from contractual rights or other legal rights, regardless whether those rights are transferable or separate 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	Useful life
Computer software, other	3 years

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

Intangible assets is subsequently measured at cost less accumulated amortisation.

Accounting Policies (continued)

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 investment 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 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.

Accounting Policies (continued)

1.4 Financial instruments (continued)

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 buildings 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 installments 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 is 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 of 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.

Accounting Policies (continued)

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, 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 bonus payments is recognised as an expense when there is a legal or constructive obligation to make the 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 27.

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.

Accounting Policies (continued)

1.8 Provisions and contingencies (continued)

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, an 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 comprises gross inflows of economic benefits or service potential received and receivable by an entity, which represents an increase in net assets, other than increases relating to contributions from owners.

Conditions on transferred assets are stipulations that specify that the future economic benefits or service potential embodied in the asset is required to be consumed by the recipient as specified or future economic benefits or service potential must be returned to the transferor.

Control of an asset arises when the entity can use or otherwise benefit from the asset in pursuit of its objectives and can exclude or otherwise regulate the access of others to that benefit.

Exchange transactions are transactions in which one entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of cash, goods, services, or use of assets) to another entity 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.

Accounting Policies (continued)

Measurement

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

1.11 Borrowing costs

Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset are recognised as an expense in the period they are incurred.

1.12 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.

1.13 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, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- (c) any provincial legislation providing for procurement procedures in that provincial government.

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

Irregular expenditure that was incurred and identified during the current financial 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 National Treasury 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.

Accounting Policies (continued)

1.14 Unspent Conditional Grants/Donor Funds

Funds received from the International Development Research Centre (IDRC) to be managed by the Commission on behalf of the African Competition Forum (ACF) in order to facilitate the administration of conferences and other requirements of the ACF. The funds are not recognised as revenue but rather recognised as a liability as the funds are due to the ACF.

1.15 Budget information

Entity 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 01/04/2014 to 31/03/2015.

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

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

1.16 Related parties

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

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

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

1.17 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.

Notes to the Annual Financial Statements as at 31 March 2015

	2015 R '000	2014 R '000
2. Inventories		
Consumable stores	375	149
3. Receivables from exchange transactions		
Trade debtors from exchange transactions	267	-
Sundry debtors	2,062	1,452
	2,329	1,452
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.		
Bank Balances	19,260	22,093
Short-term deposits	112,834	88,471
Cash on hand	8	3
	132,102	110,567
Cash and cash equivalents held by the entity that are not available for use by the economic entity	25	1,925
Balance held for the African Competition Forum	-	1,925
Penalties collected at year end but transferred after year end	25	-

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 one banking institution increasing the related banking risk. However to mitigate the risk of loss, the entity only transacts with highly reputable financial institutions.

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

5. Property, plant and equipment

	2015			2014		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	4,528	(2,170)	2,358	2,988	(1,895)	1,093
Motor vehicles	846	(393)	453	846	(299)	547
Office equipment	1,197	(627)	570	896	(502)	394
IT equipment	7,629	(4,447)	3,182	4,504	(3,309)	1,195
Cell phone	16	(6)	10	6	(5)	1
Photocopiers	2,185	(1,756)	429	1,913	(1,154)	759
Total	16,401	(9,399)	7,002	11,153	(7,164)	3,989

	Opening balance	Additions	Disposals	Depreciation	Total
Reconciliation of property, plant and equipment – 2015					
Furniture and fixtures	1,093	1,539	-	(274)	2,358
Motor vehicles	547	-	-	(94)	453
Office equipment	394	302	(1)	(125)	570
IT equipment	1,195	3,169	(30)	(1,152)	3,182
Cell phone	1	10	-	(1)	10
Photocopiers under finance lease	759	272	-	(602)	429
	3,989	5,292	(31)	(2,248)	7,002

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	Opening balance	Additions	Disposals	Depreciation	Total
Reconciliation of property, plant and equipment – 2014					
Furniture and fixtures	1,117	87	-	(111)	1,093
Motor vehicles	157	404	-	(14)	547
Office equipment	432	48	-	(86)	394
IT equipment	2,251	237	(84)	(1,209)	1,195
Cell phone	1	-	-	-	1
Photocopiers under finance lease	1,386	-	-	(627)	759
	5,344	776	(84)	(2,047)	3,989

The finance lease agreement does not impose any restrictions.

6. Intangible assets

	2015			2014		
	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer software	4,656	(4,554)	102	4,652	(4,316)	336

	Opening balance	Additions	Amortisation	Total
Reconciliation of intangible assets – 2015				
Computer software	336	3	(237)	102

	Opening balance	Additions	Amortisation	Total
Reconciliation of intangible assets – 2014				
Computer software	258	269	(191)	336

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	2015 R '000	2014 R '000
7. Finance lease obligation		
Minimum lease payments due		
- within one year	719	775
- in second to fifth year inclusive	156	518
	875	1,293
less: future finance charges	(112)	(171)
Present value of minimum lease payments	763	1,122
Present value of minimum lease payments due		
- within one year	654	636
- in second to fifth year inclusive	109	486
	763	1,122
Non current liabilities	109	486
Current liabilities	654	636
	763	1,122

The Commission is leasing equipment under a finance lease. The lease agreement does not impose any restrictions. The average lease term is 3 years and the average effective borrowing rate was 16% (2014: 16%).

The entity's obligations under finance leases are secured by the lessor's charge over the leased assets, ie. 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.

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	Opening Balance	Movement	Total
10. Provisions			
Reconciliation of provisions – 2015			
Provision	116	(116)	-
Reconciliation of provisions – 2014			
Provision	127	(11)	116

The provision relates to the Commissioner's performance bonus that was written off.

	2015 R '000	2014 R '000
11. Revenue		
Fee income	51,641	43,903
Other income	222	746
Interest received-investment	8,391	5,294
Government grants & subsidies	188,127	176,888
	248,381	226,831
The amount included in revenue arising from exchanges of goods or services are as follows:		
Fee income	51,641	43,903
Other income	222	746
Interest received-investment	8,391	5,294
	60,254	49,943
The amount included in revenue arising from non-exchange transactions is as follows:		
Government grants & subsidies	188,127	176,888

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	2015 R '000	2014 R '000
12. Fee income		
Filing fee	51,641	43,903
The filing fees relates to revenue generated from merger, exemptions and advisory opinion cases filed.		
13. Other income		
Insurance recovered	16	13
Study loans recovered	20	43
Other (SASSETA refunds and Photocopies)	186	690
	222	746
14. Interest received		
Interest received on short term deposits	8,391	5,294
15. Government grants and subsidies		
Government grants and subsidies	188,127	176,888

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	2015 R '000	2014 R '000
16. Employee related costs		
Basic	116,842	101,330
Performance Bonus	7,725	8,460
Cellphone allowance	1,038	1,000
Group life and pension administration	1,757	1,500
Medical Aid	4,056	3,566
Recruitment fees	1,732	1,237
Other staff related costs	6,961	4,375
	140,111	121,468
Accounting Authority's Emoluments		
Annual Remuneration	1,642	1,538
Cellphone allowance	12	13
Group life and pension administration	118	59
	1,772	1,610
Executive Committee's Emoluments		
Annual remuneration	12,652	8,582
Performance bonus	1,129	347
Cellphone allowance	91	63
Group life and pension administration	924	681
	14,796	9,673
Other Employees		
Annual remuneration	102,548	91,210
Performance bonus	6,596	8,113
Cellphone allowance	935	760
Group life and pension administration	715	924
Other staff related cost-Medical aid	4,056	3,566
Other staff related cost-Recruitment cost	1,732	1,237
Other staff related-cost other	6,961	4,375
	123,543	110,185

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	2015 R '000	2014 R '000
17. Administrative expenses		
General and administrative expenses	4,194	2,904
Auditors remuneration-external audit fees	1,142	1,353
	5,336	4,257
Included in general administrative expenses are costs relating to bank charges, general and corporate stationery, courier services, email, telephone, printing, postage and parking.		
18. Finance costs		
Leased assets (Photocopiers)	232	282
19. Operating expenses		
Audit committee fees	453	501
Internal audit fees	702	1,364
Consulting and professional fees	30,294	29,491
Case related costs Legal	20,948	20,914
Property rental	10,610	7,547
Research and development costs	-	20
Travel and accommodation	3,881	2,764
Education and awareness	1,729	1,577
Maintenance, repairs and running costs	2,375	1,431
Other expenses	4,569	4,986
	75,561	70,595

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.

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	2015 R '000	2014 R '000
20. Cash generated from operations		
Surplus	24,624	27,906
Adjustments for:		
Depreciation and amortisation	2,486	2,239
Gain on sale of assets and liabilities	31	84
Movements in provisions	(116)	(11)
Changes in working capital:		
Inventories	(226)	-
Receivables from exchange transactions	(877)	(1,071)
Payables from exchange transactions	3,192	(8,459)
	29,114	20,688
21. Movement in investing activities		
Property, plant and equipment	(5,292)	(776)
Intangible assets	(3)	(269)
	(5,295)	(1,045)

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	2015 R '000	2014 R '000
22. Reconciliation between budget and statement of financial performance		
Reconciliation of budget surplus/deficit with the surplus/deficit in the statement of financial performance:		
Net surplus per the statement of financial performance	24,624	27,906
Adjusted for:		
(Increase)/decrease in fee income	876	(3,894)
(Increase)/decrease in interest received	(5,569)	(79)
(Increase)/decrease in other income	481	(3,369)
(Under)/over expenditure on personnel	(17,828)	(15,162)
(Under)/over expenditure on depreciation	164	(2,093)
(Under)/over expenditure on finance costs	152	202
(Under)/over expenditure on general expenses	(50,621)	(3,595)
(Under)/over expenditure on losses	31	84
Net deficit per approved budget	(47,690)	-

23. Financial risk management

The main risks arising from the Commissions 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 Commissions exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed in Note 3. There is no significant concentration of credit risk within the 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 cash and cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is limited.

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	2015 R '000	2014 R '000
23. Financial risk management (continued)		
Exposure to credit risk		
The maximum exposure to credit risk at the reporting date from financial assets was:		
Cash and cash equivalents	132,102	110,567
Trade and other receivables	2,329	1,452
Total	134,431	112,019

Concentration of credit risk

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

2015	AAA and government	Unrated
Cash and cash equivalents	-	132,102
2014	AAA and government	Unrated
Cash and cash equivalents	-	110,567

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

23. Financial risk management (continued)

Ageing of financial assets

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

2015	Neither past due nor impaired	Past due but not impaired-less than 2 months	Past due but not impaired-more than 2 months	Carrying value
Cash and cash equivalents	132,102	-	-	132,102
Trade and other receivables	2,329	-	-	2,329

2014	Neither past due nor impaired	Past due but not impaired-less than 2 months	Past due but not impaired-more than 2 months	Carrying value
Cash and cash equivalents	110,567	-	-	110,567
Trade and other receivables	1,452	-	-	1,452

Market risk

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

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

23. Financial risk management (continued)

Exposure to liquidity risk

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

2015	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Trade and other payables	31,336	31,336	31,336	-
2014	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Trade and other payables	28,142	28,142	28,142	-
Other financial liabilities	116	116	116	-

Financial instruments

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

Financial instrument	Categories	2015 R '000	2014 R '000
Cash and cash equivalents	Financial assets at amortised cost	132,102	110,567
Trade and other receivables	Financial assets at amortised cost	2,329	1,452
Trade and other payables	Financial liabilities at amortised cost	31,336	27,142
Other financial liabilities	Financial liabilities at amortised cost	-	116

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.

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

23. Financial risk management (continued)

	2015 R '000	2014 R '000
Foreign currency exposure at statement of financial position date		
Closing Exchange rates used for conversion of foreign items were:		
GBP	-	14.036

24. Comparative figures

There was no significant adjustment to prior year figures.

25. Income Taxation Exemption

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

26. Employee benefit obligations

Defined contribution plan

All employees are members of a defined contribution scheme administered by Sanlam Ltd. The scheme is currently invested in investment policies underwritten by Metropolitan Life.

27. Contingencies liabilities

Surplus for the current financial year

The surplus of R24.6 million has been classified as a contingent liability as at 31 March 2015 as there is no approval received to retain the surplus as yet. In terms of PFMA Section 53 (3), entities are not allowed to accumulate surpluses unless approved by National Treasury. The Commission has an approved retained surplus of R85.2 million as at 31 March 2014. The Commission is obliged to repay to National Treasury any amount of the surplus not granted for retention. The Commission is of the opinion that National Treasury will grant the approval for R24.6 million which is the surplus and therefore the Commission will not be required to repay this amount.

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

28. 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

	2015 R '000	2014 R '000
Related party balances		
Amounts included in trade payables		
The Competition Tribunal	1,175	285
The Department of Trade and Industry	93	961
The Department of Economic Development	25	-
	1,293	1,246
Related party transactions		
The Department of Trade and Industry		
Rent paid	9,746	9,192
Telephone and Internet costs paid	1,678	971
The Competition Tribunal		
Filing fees refunded	13,288	10,855
Facility Fee	1,953	2,170
Economic Development Department		
Government grant received	188,127	176,888

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

28. Related parties (continued)

	2015 R '000	2014 R '000
Public Investment Corporation		
Rental of office building for the Health Inquiry	2,572	874
Penalties collected on behalf of related parties and transferred to related parties		
Economic Development Department	879,996	1,028,825
Compensation to key management on the Executive Committee		
Commissioner – Mr. T. Bonakele		
Package	1,772	601
Bonus	-	-
Acting Deputy Commissioner – Adv. O. Josie		
Package	1,645	1,575
Bonus	65	-
Acting Deputy Commissioner – Mr. H. Ratshisusu		
Package	1,415	89
Bonus	202	-
Chief Financial Officer – Mr. T. Kgokolo		
Package	1,332	298
Bonus	214	-
Manager: Health Inquiry – Mr. C. Oellermann		
Package	1,551	1,438
Bonus	164	140
Manager: Policy and Research – Dr. L. Mncube		
Package	1,259	299
Bonus	144	24

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

28. Related parties (continued)

	2015 R '000	2014 R '000
Manager: Legal Services – Ms. W. Ndlovu		
Package	1,580	1,459
Bonus	128	158
Manager: Enforcements & exemptions – Mr. J. Khumalo		
Package	1,275	287
Bonus	-	24
Manager: Corporate Services – Mr. A. Gwabeni (Appointed 14 July 2014)		
Package	726	-
Bonus	-	-
Manager: Cartels – Mr. M. Mohlala (Appointed 15 August 2014)		
Package	764	-
Bonus	155	-
Manager: Communications – Mr. M. Scott (Appointed 1 August 2014)		
Package	813	-
Bonus	-	-
Company Secretary – Ms. T. Gwatkin (Appointed 1 May 2014)		
Package	1,126	-
Bonus	60	-
Commissioner – Mr. M. Ramburuth (Resigned)		
Package	-	1,009
Bonus	-	-
Deputy Commissioner – Ms. G. Makhaya (Resigned)		
Package	-	1,588
Bonus	-	-
Chief Financial Officer – Mr. M. Moodley (Resigned)		
Package	-	596
Bonus	-	-

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

28. Related parties (continued)

	2015 R '000	2014 R '000
Manager: Mergers & Acquisitions – Mr. I. Bah (Resigned)		
Package	-	1,063
Bonus	-	-
Company Secretary – Ms. A. Machobane (Resigned)		
Package	-	635
Bonus	-	-
	16,390	11,283

29. Commitments

Approved and contracted

- Property, plant and equipment
- Existing contracts-goods and services
- Other goods and services

Existing contracts comprises of contracts in existence at year end for services to be provided in the next financial periods. Other goods and services consists of orders placed at year end and not delivered at 31 March 2015.

Operating leases – as lessee (expense)

Minimum lease payments due

- within one year
- in second to fifth year inclusive

	-	2,301
	18,481	14,743
	3,197	5,413
	21,678	22,457
	2,687	2,270
	-	2,687
	2,687	4,957

The Commission entered into a 2 year lease agreement for office space for the Health Inquiry which commenced on the 1 April 2014 and terminates on 31 March 2016 and provides for an escalation of 9%. The total commitment amount relating to this lease agreement is R2.6 million. The balance remaining can be attributable to the lease of photocopiers.

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

30. 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 continue to procure funding for the ongoing operations for the entity and that the National Treasury approves the retention of surplus of R24.6 million.

We draw attention to the fact that at March 31, 2015, the entity had accumulated surplus of R109.8 million and that the entity's total assets exceed its liabilities by R109.8 million.

	2015 R '000	2014 R '000
31. Irregular expenditure		
Opening balance	6,763	53,068
Add: Irregular Expenditure-current year	168	6,763
Less: Amounts condoned	(6,931)	(53,068)
Balance at the end of the year	-	6,763
Detail of expenditure		
Legal service providers	-	6,511
Other service providers	168	252
	168	6,763
32. Gifts		
Consumables	1	-

The current and prior year irregular expenditure has been condoned by the Accounting Authority on the basis that the expenditure incurred is valid and value adding. Controls have been put in place to avoid such irregular expenditure in the future.

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

	2015 R '000	2014 R '000
33. Fruitless and wasteful expenditure		
Fruitless and wasteful expenditure	-	227
Less: Amounts condoned	-	(227)
Balance at the end of the year	-	-

34. Reclassification of cashflow statement

Certain prior year comparatives have been reclassified to improve reporting on the current year's presentation of the cash flow statement. In the prior year, the penalties received and paid to the Economic Development Department were disclosed separately on the receipts and payments sections of the cash flow statement. These penalties have now been removed to ensure that only cash flow movements related to the operating activities are presented on the face of the cash statement.

The results of the reclassification of the cashflow statement is as follows:

	2015 R '000	2014 R '000
Cash Flow Statement		
Receipts		
Penalties received on behalf of Economic Development Department	-	1,028,825
Payments		
Penalties paid to Economic Development Department	-	(1,037,565)
Suppliers	-	(86,508)
Cash Flow Statement		
Receipts		
Penalties received on behalf of Economic Development Department	-	-
Payments		
Penalties paid to Economic Development Department	-	-
Suppliers	-	(95,248)

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

35. Penalties

In terms of section 59(1) of the Competition 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 Competition Act must be paid over to the National Revenue Fund.

In terms of section 49D of the Competition 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 Competition Act must be paid over to the National Revenue Fund.

The accepted practice of National Treasury is that no monies are directly paid to the National Revenue Funds 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 Tribunal may allow the respondents to pay the settlement amount or administrative penalty over more than one financial year of 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 Competition 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 takes 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 Competition Act, Section 64 (2) state 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.

	2015 R '000	2014 R '000
Outstanding penalties amount at the beginning of the year	1,453,366	274,879
Add: amounts of settlements levied by the Competition Tribunal	191,453	2,207,312
Less: amounts collected by Competition Commission	(879,996)	(1,028,825)
Outstanding penalties amount at the end of the year	764,823	1,453,366

Notes to the Annual Financial Statements as at 31 March 2015 (continued)

As at 31 March 2015, the penalty received and still to be paid to the Economic Development Department is R24 905. The outstanding amount at the end of the current year that will be collected in the next financial periods agrees to the payment terms as per signed consent orders.

36. New standards and interpretations

36.1 Standards and interpretations not yet effective

The entity has chosen not to early adopt the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after April 01, 2015 or later periods:

Standard	Summary and impact	Effective date
GRAP 18 - Segment Reporting	This standard establishes principles for reporting financial information by segments. The impact on the financial results and disclosure is considered to be minimal.	Issued by the ASB February 2011 Effective date - 1 April 2015
GRAP 20 - Related party disclosures	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.	Issued by the ASB November 2010 Effective date - To be determined by the Minister of Finance
GRAP 105 - Transfers of functions between entities under common control	This standard establishes principles for reporting on transfers of functions between entities in this regard. The impact on the financial results is considered to be minimal. However the impact on disclosure is significant.	Issued by the ASB November 2010 Effective date - 1 April 2015
GRAP 106 - Transfers of functions between entities not under common control	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.	Issued by the ASB November 2010 Effective date - 1 April 2015
GRAP 32 - Service concession arrangements: Grantor	This standard prescribes the procedures regarding service concession arrangements. The impact on the financial results and disclosure is considered to be minimal.	Issued by the ASB August 2013 Effective date - To be determined by the Minister of Finance
GRAP 108 - Statutory receivables	This standard establishes principles for recognising, measuring, presenting and disclosing statutory receivables. The impact on the financial results and disclosure is considered to be minimal.	Issued by the ASB September 2013 Effective date - To be determined by the Minister of Finance



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