

PC econ

11/10/2016

# Annual Report 2015/2016

Presentation to Parliament's Portfolio  
Committee on Economic Development

Commissioner Tembinkosi Bonakele

11 October 2016



*competition regulation for a growing and inclusive economy*

competition **commission**  
south africa

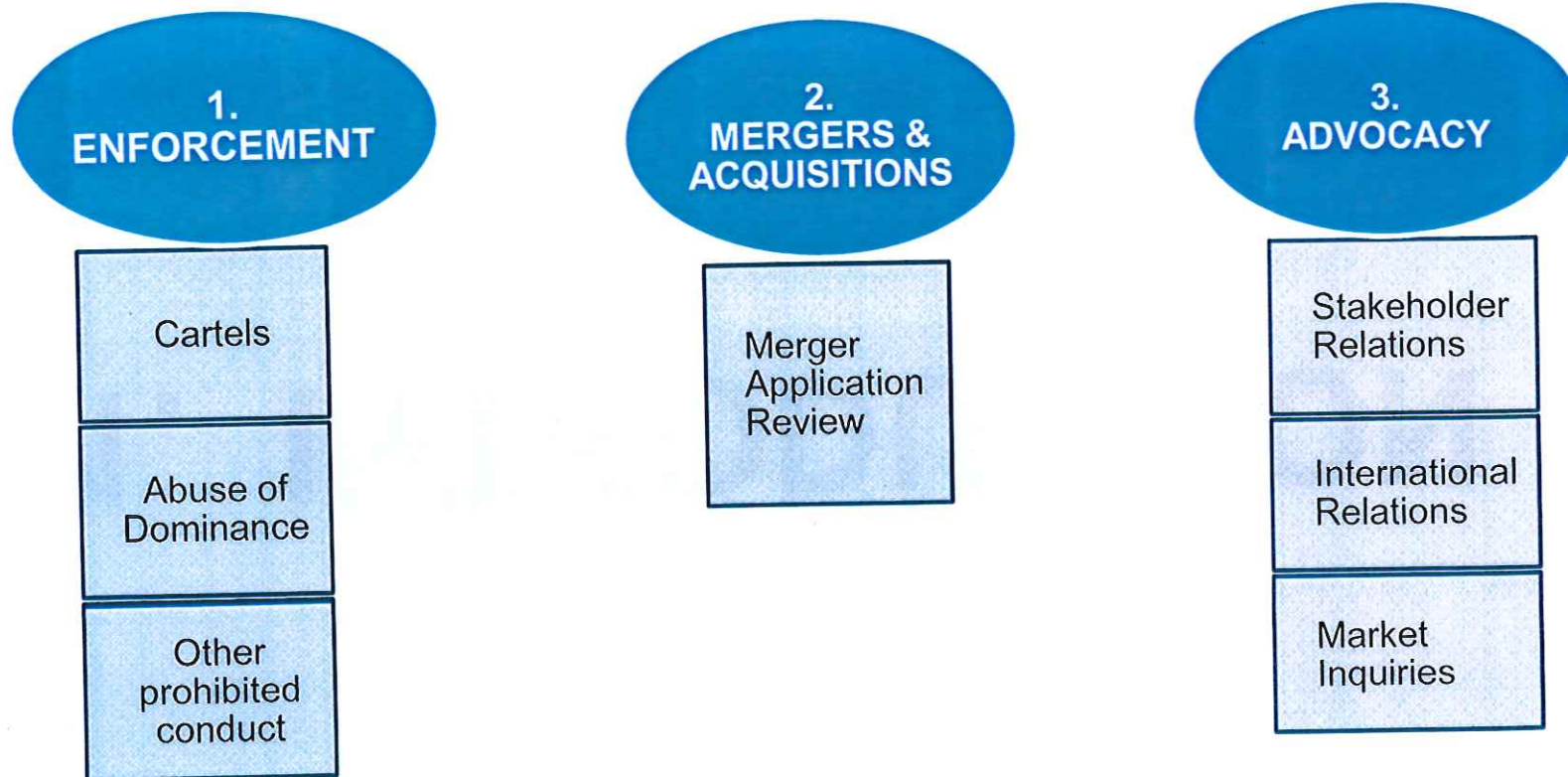
# Content

1. INTRODUCTION
2. HIGHLIGHTS
3. ECONOMIC IMPACT
4. PERFORMANCE OVERVIEW
  - 4.1 M&A
  - 4.2 Cartels
  - 4.3 Enforcement & Exemptions
  - 4.4 Market Inquiries
  - 4.5 Advocacy
5. FINANCIAL PERFORMANCE OVERVIEW
6. AUDIT OUTCOMES
7. AB INBEV/SAB MILLER
8. CONCLUSION

# 1. INTRODUCTION



# Core Functions





# Divisions

competition

1. CARTELS
2. ENFORCEMENT & EXEMPTIONS
3. MERGERS & ACQUISITIONS
4. LEGAL SERVICES
5. POLICY & RESEARCH
6. CORPORATE SERVICES
7. FINANCE
8. OFFICE OF THE COMMISSIONER

# Organizational Profile (1/2)

competition

- 197 total staff complement
- 55.8% female, 44.2% male
- Recruited 22 graduates, the majority being from historically disadvantaged institutions

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	50,2%	85	49.7%
2012/2013	168	90	54%	78	46%
2013/2014	159	86	54%	79	46%
2014/2015	186	97	52%	89	48%
2015/2016	197	110	55.8%	87	44.2%





## 2. HIGHLIGHTS

# Highlights (1/4)

competition

- Period under review is the first year of implementation of the newly adopted 2015-2020 strategy
- Strategy focuses more on sectors that have an impact on the lives of the poor
- The Commission successfully prosecuted its first predatory pricing case:
  - Tribunal ruled that Media24 contravened the Competition Act by engaging in predatory pricing strategy to drive a rival community news publication out of the market in Welkom
- The CAC overturned Tribunal's ruling in excessive pricing case brought by the Commission against Sasol:
  - Tribunal found that Sasol had charged excessive prices for propylene and polypropylene and levied a penalty of R534 million against Sasol
  - The CAC rejected the Commission's evidence in relation to the appropriate cost calculation
  - This outcome demonstrates the complexity and uncertainty of securing favorable results on excessive pricing case and the limits of competition policy to deal with entrenched positions of dominant firms
  - This suggests that an appropriate industrial policy is needed to ensure environment that will be conducive for competitively priced inputs



# Highlights (2/4)

competition

- Procedures Clarified by the Tribunal and the Courts
  - Tribunal held that the reasonable time to grant access was at discovery stages after the close of the pleading in the litigation process. It provides clarity on the correct timing for the production of documents during the Tribunal litigation
  - The Tribunal clarified the level of particularity required when a complaint is initiated in a interlocutory application. Tribunal ruled that level of specificity required in the initiation statement cannot be equated to that required in a referral affidavit
  - High Courts ruled that the marker application and leniency applications are separate and distinct and each process has to comply with its own set of requirements
  - The above clarity contributes significantly to the development of a jurisprudence in competition law and serves to provide guidance on the procedural conduct required by parties
- Public Interest guidelines
  - Commission continued efforts to bring degree of certainty to application of public interest consideration in merger regulations
  - In December 2015, draft guidelines were published on the approach to follow and information required when evaluating public interest consideration
  - Final guidelines were published in June 2016
  - Guidelines aims to make the application thereof transparent and to promote predictability in the analysis thereof
  - These guidelines will encourage analysis of public interest considerations at the onset of a merger in the same way that an economic analysis of the impact on competition is undertaken



# Highlights (3/4)

competition

- **Regulating Mergers in the Telecommunication Sector**
  - The Commission considered merger applications where Vodacom made a bid to acquire Neotel and MTN intended to acquire certain radio access network assets of Telkom
  - The Commission recommended to the Competition Tribunal the Vodacom and Neotel merger with structural and public interest conditions
  - The MTN and Telkom transaction was prohibited on competition grounds
  - The parties involved eventually abandoned those applications.
  - The transactions point to the need to expedite a formal policy development and the finalization of the regulations for licensing access to high-demand spectrum bands as a strategic priority for the sector
- **Strengthening International Collaboration**
  - SA hosted a successful 4th BRICS International Competition Conference
  - The conference provided an opportunity for competition authorities from member countries including African authorities to consider the competition policy in the context of emerging market conditions where both efficiency and distributive outcomes are critical to economic growth and development
  - Commission signed an MoU with the Namibian Competition Authority which concretizes the Commissions commitment to co-operate competition authorities in the South African region
  - Commission was at an advanced stages of negotiating a SADC wide MoU

# Highlights (4/4)

competition

- Lowering prices and increasing the Disposable Income for the Poor
  - The World Bank's South African Economic Update, published in February 2016 provided encouraging independent feedback on how the Commission's effort to competition issues and more particularly on cartel enforcement have contributed to lower prices in specific sectors and in increasing disposable income of the poor
  - This further confirms that the work of the Commission contributes to promoting competitiveness and poverty alleviation

# 3. DEMONSTRATING ECONOMIC IMPACT



# The World Bank Study on Competition Policy

- The World Bank has published a study which examines how competition policy can contribute to promoting faster growth and poverty alleviation
- The study examines South Africa's track record in addressing competition issues, with reference to cartel cases completed by over the past decade
- The study found that the sanctioning of cartels in the maize, poultry and pharmaceuticals sectors stood to lift an estimated 202 000 people above poverty line through lowering the retail prices of these goods
- The study also shows how stronger competition that results from the sanctioning of a cartel in the cement sector lowered prices of cement and spurred new investment and job creation in the sector
- Using telecommunications as an example, the study found that strong regulatory environment contributes to costly and poor-quality services (e.g. broadband) in South Africa

# Review of the Sasol's Activities in the Fertiliser Market (1/2)

- After a prolonged investigation during the period 2003 to 2009, and the subsequent referral of various anti-competitive contraventions in the nitrogenous fertiliser value chain to the Tribunal, Sasol admitted to contravening Section 4(1)(b) of the Competition Act and paid an administrative penalty of approximately R250 million
- The Commission also reached an agreement with the Sasol. Broadly stated, the agreement effectively imposed behavioural and structural conditions on Sasol.
- Sasol undertook to provide fertilisers on an ex-works basis and to refrain from discriminating across customer types (i.e. blenders, traders and end users) and across geographic regions (i.e. inland and coastal regions) and to divest five of its blending plants.



## Review of the Sasol's activities in the fertiliser market (2/2)

- The study found that, there have been some positive outcomes in both the upstream and downstream levels of the nitrogenous fertiliser value chain. Importantly, post-intervention, Omnia entered the upstream market through its investment in a nitric acid plant.
- The study revealed that the Commission's intervention has contributed significantly to the breakdown of artificial barriers to entry in the market.
- In the downstream market, the study found that significant number of smaller players have entered the market at the blending level post-intervention.
- Commission's intervention also contributed to positive price benefits in the fertiliser industry



# Review of the Fruit & Veg merger

competition

- In January 2007, the Commission recommended the prohibition of a merger between Pick n Pay (PnP) and Fruit & Veg City (FVC)
- The Commission's investigation had found that PnP and FVC were effective potential competitors and were individually big purchasers of fresh produce
- Market participants contacted by the Commission as part of the impact study were of the view that the Commission's decision to recommend a prohibition had positive effects
- The study found that FVC has experience substantial growth and evolution over the past 10 years since the merger was abandoned
- FVC's Food Lover's Market brand stores have increased from just two in 2007 to 75 in 2016
- FVC has also rolled out 220 FreshStop stores during the same period and has increased the number of product lines it offers

# Review of CC's intervention in cement industry

- The Commission conducted a qualitative study to focusing on the assessment of competition dynamics in the cement industry post the Commission's intervention
- The study found that various new cement manufacturers have entered into regions that were previously allocated to other manufacturers due to the cartel
- Sephaku, a relatively new entrant that commenced cement production in 2014, has made a competitive impact by supplying cement to most of the regions
- The study also shows that cement importers have also grown in terms of their competitive impact. However, the introduction of provisional anti-dumping tariffs has deterred the ability of imported cement to constrain local manufacturers

# 4. OVERALL PERFORMANCE OVERVIEW



# Performance Against Targets

competition

- Won 100% of cartel cases prosecuted (Target 70%).
- Won 50% of abuse of dominance and restrictive cases prosecute (Target 50%)
- Exceed targets for initiation of new cartel cases
- 34 annual performance targets:
  - 11 Met, 13 Exceeded, 10 Not Met
- Received 391 merger notifications (slight drop from 2014/15: 395)
- Finalised 413 merger cases (significant increase from 2014/15: 375)
- Average turnaround time for mergers:

Phase	Service Standard (business days)	Average Turnaround time (business days)	Total number of transactions
Phase1	20	18	239
Phase 2	45	44	124
Phase 3	60	56	32
Phase 3 (Large)	120	128	13
Total		33	408

# **4.1 M&A**

# **PERFORMANCE**

# **OVERVIEW**

# Mergers & Acquisitions Activity

competition

	2015-2016	2014-2015	2013-2014	2012-2013
Notified	391	395	320	324
Finalised	413	375	329	327
Approved with conditions	37	43	22	37
Approved without conditions	364	321	302	278
Prohibited	7	5	1	0
Withdrawn/no jurisdiction	5	6	4	12



# Mergers & Acquisitions: Conditions Imposed

competition

- A total of 37 mergers were approved with conditions.
  - BEHAVIOURAL to address competition concerns (8).
  - STRUCTURAL to address market distortions (1).
  - PUBLIC INTEREST (28)
    - EMPLOYMENT- restrictions on job-losses.
    - SMALL BUSINESS- promotion of entry.
    - INDUSTRIAL SECTOR/ REGION.
- Total jobs lost 1 399 (2 594 in the previous year)
- Total number of jobs saved 8 274 (5 340 in the previous year)
- Net impact on employment +6 875 (+2 746 in previous year).

# Prohibition of the Casino merger

competition

- Sun International intended to acquire Maxshell (Peermont)
- The Commission found that the merger would increase levels of concentration in the market for gambling and casino in Gauteng
- The Commission also found that the merger was likely to lead to coordinated effects
- Thus, the Commission recommended that the merger be prohibited
- The merging parties initially sought to challenge the Commission's recommendation at the Competition Tribunal but later abandoned the merger.

# Prohibition of the JoJo Tanks merger

competition

- The Commission prohibited the merger whereby JoJo Tanks (Pty) Ltd intended to acquire Nell Tanks CC
- The Commission found:
  - Merger weakened the ability of customers to bargain
  - Merger removed an effective competitor and increased level of concentration
  - Merged entity will be able to increase prices to the detriment of customers
  - Merger was likely to lead to coordinated effects
- Thus, the Commission concluded that was likely to substantially prevent or lessen competition in the manufacture and supply of water tanks in the Western Cape



# Conditional Approval of the Coca-Cola Merger

competition

- The Commission recommended that the merger whereby SABMiller, Gutsche Family and Coca-Cola Company sought to combine bottling operations of their non-alcohol beverages be approved with conditions
- The merger raised public interest concerns, including:
  - Potential job losses of 250 employees
  - Negative impact on the local producers of polyethylene Terephthalate (PET) bottles
  - Lack of access to refrigeration and coolers in retail stores
  - Negative impact on the B-BBEE shareholding
- The Commission and the merging parties agreed on a set of remedies, including:
  - Merging parties will invest no less than R400 million in developing the downstream distribution and retail aspects of the SA non-alcoholic ready-to-drink business of CCBSA
  - For a period of less than three years, the merging parties will maintain the number of employees as are employed by the merging parties
  - Micro and small outlets are to be allowed to provide 10% of the cooler and refrigerator space supplied by CCBSA to competitors' products
  - Merging parties undertook to establish a fund for enterprise development in the agriculture value chain

215

# The Vodacom/ Neotel Merger

competition

- The Commission recommended that the merger whereby Vodacom (Pty) Ltd sought acquire Neotel (Pty) Ltd be approved with conditions
- The Commission found that the merger was likely to substantially lessen competition in the mobile services market as it would compound Vodacom's dominant position
- The merger would confer first mover advantage to Vodacom relating to network speed, capacity and mobile offerings
- The merger was also likely to lead to fewer choice and higher prices to end consumers
- In order to address these concerns, the Commission recommended structural and public interest conditions
- The main condition was that Vodacom shall not directly or indirectly use Neotel's spectrum for the purpose of offering wholesale or retail mobile services to any of its customers for a period of two years
- Following objections from third parties, the merger was abandoned



# MTN and Telkom - sharing and bi-lateral roaming arrangement

- The Commission recommended to the Competition Tribunal the prohibition of the large merger whereby MTN, intended to acquire certain radio access network assets of Telkom.
- Although the transaction did not involve the combination of MTN and Telkom's mobile retail businesses, the Commission found that the proposed transaction would substantially prevent or lessen competition in the mobile services market
- MTN would be able to gain a significant competitive and time advantage, offering a superior network and services that cannot be significantly constrained by rivals
- The Commission found that the merger would effectively limit the ability of Telkom Mobile to grow and independently compete against MTN and other mobile operators
- The merger was also likely to have a significant impact on the structure of the South African mobile markets and future competitive dynamics
- The parties, however, abandoned the merger after the referral



# The Conditional approval of the Telkom and BCX Merger

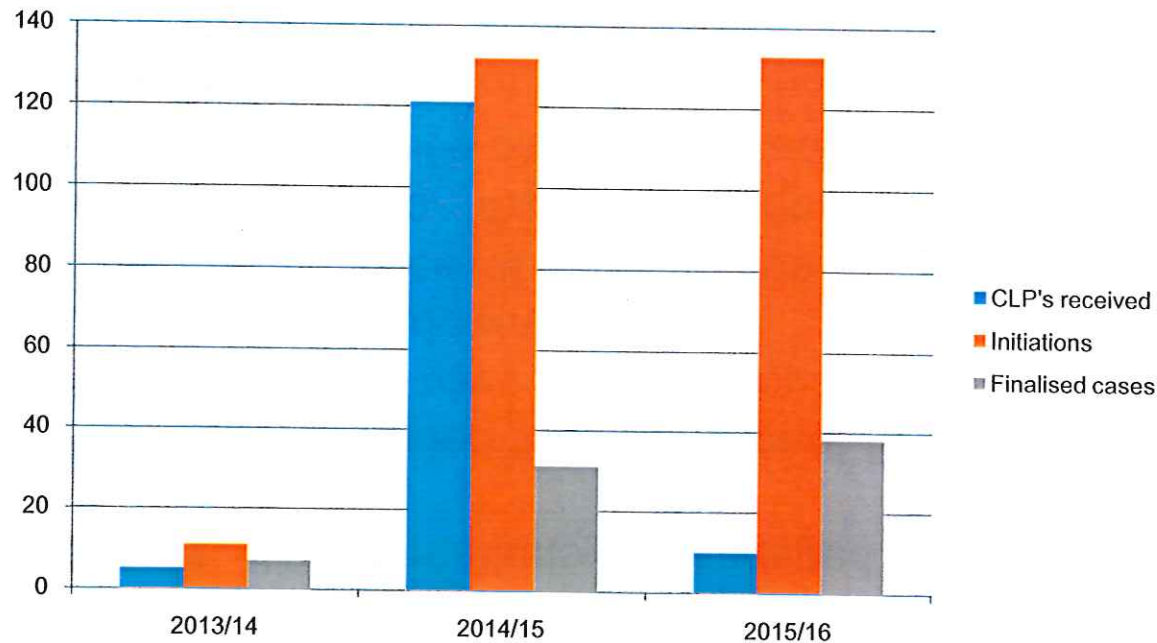
- The Commission recommended an approval with conditions of Telkom and Business Connexion Group Limited (BCX) merger
- It found that Telkom, being the largest provider of wholesale leased lines to downstream customers, had the ability to foreclose its downstream rivals from access to these wholesale leased lines which are essential inputs for the provision of downstream services including managed network services, value-added network services and hosting and information technology services.
- The Commission also found that the merger would result in the merged entity having the ability and incentive to engage in bundling strategies that may result in anticompetitive behaviour.
- To address these concerns, it recommended certain behavioural and employment conditions to the Tribunal.

# **4.2 CARTELS**

## **PERFORMANCE**

### **OVERVIEW**

# Cartels Overview



CLP applications received	10
CLPs Granted	4
Complaints initiated by Commission	133
Completed investigations	38
Referrals to the Tribunal	22

- Most of the cases initiated were in the automotive components sector (over 100 components).



# Dawn Raids Conducted

competition

## **Second down raid on furniture removal companies**

- The Commission conducted a second raid at the premises of furniture removal companies alleged to have continued to collude on auto repair by exchanging cover quotes on furniture removal tenders issued by SADF.

## **Advertisement placement agencies**

- The Commission raided the offices of three recruitment and advertisement placement agencies. These agencies are alleged to have fixed prices, divided markets and engaged in collusive tendering.

## **LPG down raid**

- The Commission raided the premises of five wholesale suppliers of LPG which are alleged to have fixed the deposit fees paid for gas cylinders.

## **Automotive glass fitment down raid**

- PG Glass and Glass fit were raided as part of an investigation into allegations of fixing, market division and collusive tendering in the provision of automotive glass fitment and repair services.

## **Wood-based products**

- The Commission also carried a down raid at the premises of PG Bison and Sonae Novobord. These companies are under investigation for allegedly fixing prices for wood-based products.

# Key cases referred to the Tribunal

competition

## **N17 contractual conditions cartel**

- The Commission referred a complaint against WBHO Construction and Group Five for fixing contractual conditions in relation to the N17 link road between New Canada and the Soccer City Project. The contractual conditions were for a tender issued by SANRAL

## **Panel beaters cartel**

- The Commission has referred a complaint against Eldan Auto Body and Precision & Sons. These firms are alleged to have colluded on auto repair (panel beating) tenders by exchanging cover quotes

## **Waste collection cartel**

- The Commission referred a complaint lodged by Pickitup against Aqua Transport and Plant Hire, Midmar Plant Hire, Casalinga Investments and X-moor Transport. The Commission's investigation found

## **Furniture removal cartel**

- The first complaint against furniture removal companies was referred to the Tribunal. The Commission's investigation found that over 3 500 relocation tenders were subjected to collusion by 66 companies providing furniture removal services. Most of the companies have settled .



# Penalties Imposed

	R'000	R'000	R'000
Years	2015/2016	2014/2015	2013/2014
Penalties levied	337 904	191 453	2 203 312

Significant (>R8m) penalties in 2015/16	
Name of respondent	Amounts
SA Metal Group (Pty) Ltd	22 430 000
Wallenius Wilhelmsen Logistics	95 695 529
Nippon Yusen Kabushiki Kaisha Ltd	103 977 927
Copper Tubing Africa (Pty) Ltd	8 000 000
Malasela Tahan Electric	20 200 000
Compania Sub Americana De Vapores SA	8 813 227
Murray & Roberts	64 141 799



# **4.3 ENFORCEMENT & EXEMPTIONS PERFORMANCE OVERVIEW**

# E&E Overview

competition

Complaints	2015-2016	2014-2015	2013-2014
Received from public	160	144	167
Commission's initiations	4	7	3
Cases from previous financial year	36	37	45
Total	200	188	215

- Increase in complaints received from previous year
- Most complaints in Food& Beverages, followed by retail/ wholesale and construction sectors
- Slight decrease in Commission initiations, from 7 to 4
- 2 exemption applications were received from the airline industry, 1 in the energy sector and 1 in the agricultural sector
- 11 exemption applications were rejected

36

# Abuse of Dominance: Uniplate referred to Tribunal

- The Commission referred two cases against Uniplate Group (Pty) Ltd
- Investigation conducted by the Commission found that Uniplate entered into long-term exclusive agreements with embossers
- These agreements require embossers to exclusively purchase their number plate blanks from Uniplate when acquiring a Uniplate embossing machine
- As a result, Uniplate's competitors cannot gain access to a significant number of embosser
- The Commission found that this conduct substantially lessens competition in contravention of the Competition Act
- The case is currently before the Tribunal for adjudication



# The CBE exemption applications rejected

competition

- The Commission rejected two categories of exemption applications filed by the Council for Built Environment (CBE) on behalf of its professional councils
- The first category related to the identification of work (IDOW rules)
- The second category related to the publication of fee guidelines
- The Commission found that the IDOW rules proposed by CBE were likely to restrict competition between registered and non-registered persons and that they were likely to reduce the number of persons operating in the market
- With regards to fee guidelines, the Commission found that these guidelines were detrimental to consumers who do small projects
- The Commission also found that most of the jurisdictions were doing away with the fee guidelines in the interest of price competition
- Thus, the Commission rejected both the IDOW rules and fee guidelines exemption applications

## 4.4 MARKET INQUIRIES

# Update on the Private Healthcare Market Inquiry

competition

- During the period under review, the inquiry public hearings wherein various stakeholders made oral submissions
- These stakeholders included consumers and consumer groups, service providers, regulators, funders and financiers
- The inquiry also gather extensive information and data from 175 individual stakeholders
- Expected end date is 15 December 2016. Period may be extended



# LPG Market Inquiry

competition

- In January 2016, the Commission published its preliminary findings and proposed recommendations emerging from the market inquiry
- Currently finalising report with input from stakeholders
- Initial date for completion was 30 September 2016.  
However, this date has been revised to 20 December 2016

# Launch of Retail Market Inquiry

competition

- During the period under review, the Commission launched a market inquiry into the grocery retail sector
- inquiry probes six key areas:
  - The impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers
  - The impact of long-term exclusive leases on competition in the sector
  - The dynamics of competition between local and foreign-owned and independent retailers
  - The impact of regulations including municipal town planning and by-laws, on small and independent retailers
  - The impact of buyer groups on small and independent retailers
  - The impact of certain identified value chains on the operations of small and independent retailers.
- The inquiry is still at the information gathering stage

# **4.5 ADVOCACY PERFORMANCE OVERVIEW**



# Stakeholder and International Relations

competition

- Undertook various training workshops on bid-rigging to firms, local and national government.
- Public awareness & Outreach initiatives to numerous stakeholders, including Provincial Governments, Business, SOEs, Trade Unions, Industry Associations and Students.
- The Commission successfully hosted the 4<sup>th</sup> BRICS International Competition Conference in November 2015.
- The conference was attended by 508 delegates coming mainly from BRICS member states and African countries
- One of the conference's principal successes was the way in which it enabled the articulation of new perspective of competition. This was the first conference dedicated to emerging markets and competition matters in the context of social issues and public interest
- During the period under review, the Commission also concluded one MOU with the Namibian Competition Commission, formalising the longstanding relationship of co-operation and assistance between the two agencies

# **5. FINANCIAL PERFORMANCE OVERVIEW**

# Finances

competition

- **Changes Revenue**
  - Government allocation and transfer increased by R40 million from R188 million to R228 million
  - Fee income increased by R3 million from R52 million to R55 million
  - Other income increased by R3,6 million from R8,6 million to R12,2 million
- **Changes in Total Expenditure**
  - Expenditure increased by R73 million from R223 million to R296 million
- **Deficit**
  - A deficit of R1,2 million was generated
  - The deficit was funded by Accumulated Surpluses

DESCRIPTION	2015/16 (R'000)	2014/15 (R'000) Restated	VARIANCE %
Revenue	295 299	248 381	19%
Expenditure	296 501	223 347	32%
Operating (Deficit)/ Surplus	(1,2)	25 034	



# 6. AUDIT OUTCOMES

# Audit Outcomes (1/2)

competition

- **Audit Opinion**

- Financial Statements – No Material findings
- Predetermined Objectives (Performance information) – No Material findings
- Compliance with Applicable legislations – Material findings

- **Audit Finding Action Plan**

- Management developed a detailed audit finding action plan
- The plan was developed with the assistance of Internal Auditors and based on the recommendations of the Auditor General
- Management monitors the plan on a monthly basis
- Audit Committee also monitors the plan on a quarterly basis
- Internal audit provides quarterly audit reports/updates on the progress of the action plan

# Audit Outcomes (2/2)

competition

- **Irregular Expenditure**

- An Investigation has been concluded on the prior year irregular expenditure of R745,000. Identified irregularities in SCM process have been reported to law SAPS
- The remaining balance of R1,7 million relates to SCM and is currently being investigated

- **Fruitless and wasteful Expenditure – (R23,000)**

- The amount relates to payment to a fraudulent bank account
- Commission was fraudulently requested to change the bank account details for one of service providers
- Fraud case has been reported to the South African Police Services
- Controls have been put in place to ensure that such expenditure is avoided in the future



# Audit Outcomes (2/2)

competition

- **Irregular Expenditure**

- An Investigation has been concluded on the prior year irregular expenditure of R745,000. Identified irregularities in SCM process have been reported to law SAPS
- The remaining balance of R1,7 million relates to SCM and is currently being investigated

- **Fruitless and wasteful Expenditure – (R23,000)**

- The amount relates to payment to a fraudulent bank account
- Commission was fraudulently requested to change the bank account details for one of service providers
- Fraud case has been reported to the South African Police Services
- Controls have been put in place to ensure that such expenditure is avoided in the future

# 7. AB INBEV/SAB MILLER

# AB INBEV/SABMILLER

competition

- Was notified with the Commission on 14 December 2015
- Commission identified public and competition interest, thus recommended approval to the Tribunal with conditions
- On 30 June 2016, the Tribunal approved the merger with conditions including:
  - Divestiture of SABMiller's shareholding in Distel Group Limited
  - AB INBEV will supply tin metal crowns to third parties for five years
  - AB INBEV will ensure 10% of refrigerator space is reserved for competing brands
  - AB INBEV will invest R1 billion for agricultural and enterprise development
  - No job losses for five years. If any retrenchment after 5 years, affected employee bears onus to prove loss was merger related
  - AB INBEV will source inputs (glass, cans, paper labels etc.) from local suppliers



# 8. CONCLUSION

# Achievements

- Increase in cartel enforcement
- Increase in transparency with publication of guidelines and communication of decisions on cases
- Improved staff engagement and involvement
- Growing depth and maturity of the organisation
- Improved Commission's visibility

## Key success factors

- Improved integrated planning
- Increased investigative capacity
- Good governance
- Better stakeholder management

## Way forward

- Continued implementation of 2015 – 2020 strategy
- Increase capacity to deal with high volumes and complex cases
- Further contribute to a growing and inclusive economy
- Addressing the structure of the economy for competitiveness

**THANK YOU!**

**Tel: +27 (0)12 394 3200**

**Fax: +27 (0)12 394 0166**

**Email: [CCSA@compcom.co.za](mailto:CCSA@compcom.co.za)**

**Twitter: @compcom**

**Facebook: Competition Commission South  
Africa**



