

Competition Commission Annual Report 2016 - 17



competition commission
south africa

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I. INTRODUCTION



1. About Us

- Our Role
 - One of three bodies established to regulate competition in the market.
 - The Commission investigates complaints, assesses mergers, evaluates exemption applications, undertakes market inquiries and advocacy.
- Our Vision and Mission
 - Vision 2030: *Competition regulation for a growing and inclusive economy.*
- Our Strategic Goals
 - *Effective competition enforcement and merger regulation.*
 - *Strategic collaboration and advocacy.*
 - *A high performance agency.*

2. Our Values

Communication

listening, being open to ideas, conveying information effectively

Ownership

commitment, accepting responsibility for my work, working ethically

Making a difference

a positive impact on society, focus on the Commission's goals

Professionalism

Integrity, demonstrating a good work ethic, showing empathy

Employee welfare

Achieving my full potential while maintaining a healthy balance

Teamwork

Trust, working with others to reach common goals, group identity

Efficiency

Measuring how well resources are used in pursuit of quality results

3. Our Priorities

The Commission's priority sectors in the reporting period were:

- i. Food and agro-processing
- ii. Healthcare
- iii. Intermediate industrial inputs
- iv. Construction and infrastructure
- v. Banking and financial services
- vi. Information and communication technology; and
- vii. Energy

4. Organizational Structure



II. HIGHLIGHTS



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**GOVERNMENT STAKEHOLDER MEETING:
AUTOMOTIVE AFTERMARKET WORKSHOP**

Date: Thursday, 16 MARCH 2017

Venue: The Capital, Menlyn Maine, Pretoria

1. OBJECTIVES

As set out in the concept note, the aim of these two days is to engage all stakeholders within the automotive industry in order to make recommendations and report a way forward for the industry to function in a manner which is consistent with the arrangements/agreements/relationships envisaged in the concept note. The workshop will also identify and discuss in particular the engagement with government stakeholders and yield diverse and positive outcomes in terms of the industry and its contribution to the automotive industry's work to the industry and growth in competition.

2. OUTCOMES

Following the engagement of government stakeholders, the workshop will also identify and discuss in particular the engagement with government stakeholders and yield diverse and positive outcomes in terms of the industry and its contribution to the automotive industry's work to the industry and growth in competition.

5. Commission concluded a far-reaching settlement with ArcelorMittal South Africa

- Mittal was alleged to be engaged in collusion, information exchange and excessive pricing in markets for long steel, flat steel, scrap metal and wire mesh- multiple investigations over since 2008.
- AMSA was alleged to be charging import parity prices in the local market, often higher than what international customers were charged.
- R1,5bn administrative penalty imposed, settling all four complaints. This was the highest penalty ever imposed in South Africa.
- Mittal also agreed to limit its EBIT margin to a cap of 10% for flat steel products, for five years.
- Mittal also committed to a R4,6bn capital expenditure over five years.
- *We believe this settlement will lead to reduction in prices and overall improvement of competitiveness in the steel market.*

6. Merger between Anheuser-Busch Inbev and SABMiller yields public interest benefits

- *This was the largest merger ever considered by the competition authorities in South Africa.*
- Several competition and public interest conditions imposed by the Competition Tribunal, following the Commission's recommendation:
 - AB Inbev had to divest its shareholding in Distell, within 3 years of the deal;
 - Agreed to continue to supply tin metal crowns to third parties for 5 years, granting access (10% of fridge space) to small beer producers in perpetuity and no inducement;
 - Merging parties could not retrench any employees as a result of the merger;
 - AB Inbev committed to make available R1bn for development of agriculture, over five years and to promote entry and growth of emerging and black farmers.

7. Commission prohibited anti-competitive mineral merger

- Commission prohibited the proposed merger between Imerys South Africa and Andalusite Resources because it would have led to a monopoly situation, potentially higher prices and/or reduced quality.
- Merger would have also adversely affected smaller players who lacked the capacity to respond to monopoly conditions.
- Andalusite is an input in the course of manufacturing iron, steel, cement and other products.
- Competition Tribunal and Competition Appeal Court concurred with the Commission's decision.
- ***The prohibition prevented a significant lessening of competition in the market.***

8. Tribunal clarifies the definition of “a firm” in the Act

- In Commission v Delatoy Investments and others, the Tribunal decided that a group of companies may constitute “a firm” for purposes of the Act.
- Delatoy, and other firms in its group, were accused of collusive tendering with Cycad Pipeline and Phambili.
- Tribunal said that in identifying “the firm” what mattered was the behavior of members of the group rather than the structure adopted by the group.
- ***Significance of the decision is that, henceforth, the Commission may consider group turnover rather than single-firm turnover.***
- Moreover the Commission could impute administrative penalty on the parent company, where subsidiary has contravened the Act.

9. CAC clarifies level of participation required to establish collusion

- In Coolheat and Omnico's appeal against the Commission the CAC had to *decide if "silent participation" by firms at a collusive industry meeting amounted to a contravention of the Act.*
- **CAC found it did** because (1) Coolheat and Omnico did not distance themselves from the consensus reached at the meetings; (2) neither of them indicated that they disagreed with the consensus reached; and (3) neither could prove that they priced independently after the meetings.
- The CAC also said that onus was on Omnico and Coolheat to put forward rebuttal evidence to establish that their participation at the meetings was without any anticompetitive intention.
- Constitutional court subsequently dismissed Coolheat and Omnico's request to appeal.

10. Commission finalizes liquid petroleum gas (LPG) inquiry

- The Commission initiates market inquiries when market failures cannot be attributed to a specific firm.
- Some of the market failures in LPG were (1) concentration in the market structure; (2) high switching costs; (3) the regulatory environment and its impact on competition; and (4) the limited usage of LPG in homes.
- The inquiry recommended that ***new measures to improve competition***, in the LPG sector, ***be implemented between 2017 and 2019***. These include:
 - price deregulation;
 - recommendations to cap the duration of long term contracts in the LPG market ;
 - removal of restrictions on switching by bulk customers; and
 - recommendations in favour of aligning the activities of regulators, which sometimes overlap or restrict entry.

11. Commission intervention in ICT benefits consumers

- This year the Commission assessed the impact of the July 2013 settlement it entered into with Telkom SOC. The purpose of the impact assessment was to evaluate the efficacy of the settlement agreement in remedying the anti-competitive outcomes of Telkom's conduct.
- The assessment found that the settlement agreement had a positive and significant impact on the market for internet services, of which Telkom owned the infrastructure and also competed.
- The price commitments contained in *the agreement resulted in significant savings for Telkom's customers of approx. R331m.*
- Structurally, **the level of entry increased**, particularly downstream as competition tends towards services-based competition. Telkom's market share has also come under pressure, primarily in the upstream market, where price commitment reductions by Telkom and non-discriminatory behaviour for upstream input **facilitated growth of Telkom's competitors.**

12. Other operational highlights

- Other highlights for the 2016/17 financial year included:
 - the introduction of **individual criminal liability** for collusion
 - the encouraging findings of **five impact assessments** we conducted in the agriculture, information and communication technology (ICT) sector, pelagic fish, academic textbook and citrus markets;
 - the **strengthening of relations** with our counterparts in the Brazil, Russia, India, China, South Africa (BRICS) community;
 - our continued role in **uplifting South Africa's youth** through our graduate trainee programme.
 - The **promotion of competition law and economics** as a discipline in mainstream academia through partnerships with universities.

III. PERFORMANCE OVERVIEW

Nompucuko Nontombana
Competition Commission
South Africa



COMPETITION
COMMISSION
SOUTH AFRICA

13. Merger Regulation

Summary of M&A performance against targets:

6	Targets set	6	Targets met or exceeded	0	Targets not met
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Highlights:

- 48 403 jobs saved by Commission's intervention.
- 15 mergers approved with public interest conditions.
- Tribunal concurred with 100% of Commission's decisions or recommendations.
- Received 418 merger notifications, compared to last years 391.
- Finalized 385 transactions, compared to last years 413.

14. Competition Enforcement

Summary of E&E and Cartels performance against targets:

7	Targets set	6	Targets met or exceeded	1	Target not met
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E&E highlights:

- Initiated three investigations in priority sectors:
 - Transnet SOC: excessive pricing cases in ports and rail, respectively;
 - Idwala Industrial Holdings: excessive pricing of calcium carbonates;
- Initiated investigation against various schools and uniform suppliers for excessive pricing, restrictive vertical agreements and exclusionary conduct.
- Received 205 complaints from the public.
- Finalized 144 complaints at screening stage.
- Finalized 11 complaints after full investigations.

15. Competition Enforcement (cont.)

Cartel division highlights:

- Conducted four dawn raids in (1) paper packaging market; (2) transportation of cargo; (3) edible fats and oils; and (4) fresh produce.
- Referred case of collusion against 17 local and international banks. One firm has paid R70m penalty for its part.
- Initiated 26 new cases and handled 86 investigations in the year.
- Completed 33 investigations and referred 27 to the Tribunal.
- Received 6 leniency applications, compared to last year's 10.
- Granted 5 leniency applications and denied 4 (including those carried over from last year).

16. Compliance & Litigation

Summary of LSD performance against targets:

6	Targets set	5	Targets met or exceeded	1	Target not met
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Compliance and litigation highlights:

- Published public interest guidelines on 8 June 2016
- Issued 23 advisory opinions
- Oversaw 98 cases at litigation stage
- Entered into 21 settlements with parties
- Imposed R1,628bn in administrative penalties this year. R1,5bn was for ArcelorMittal fine. (Administrative penalties for last year amounted to R338m.)

17. Understanding Market Dynamics

- We conducted **scoping studies** into (1) Sasol's synthetic wax production operations; (2) the identification of dominant firms in South African markets; (3) the market for calcium carbonate; (4) mobile phone contracts; and (5) staple food prices.
- We conducted **impact assessments** on (1) the agricultural support fund established by the AgriGroupe merger; (2) the impact of the 2013 Telkom SOC settlement with the Commission; (3) the competition state of the academic textbook merger following the Commission's interventions; (4) the pelagic fish merger, three years on; and (5) the citrus export exemption the Commission granted between 2005 and 2016.

18. Understanding Market Dynamics (cont.)

- We finalised the [LPG Market Inquiry](#) on 29 March 2017. This inquiry commenced on 15 August 2014.
- The [Grocery Retail Market inquiry](#), which commenced in October 2015, continued this year. It has consulted widely across the country and through all levels of the formal and informal trade. We expect to conclude it by the end of 2017/18 financial year.
- The [Healthcare Market Inquiry](#) is in progress. To date the inquiry has collected and processed data from more than 175 stakeholders. The inquiry is currently drafting preliminary reports.

19. Strategic Collaboration & Advocacy

Summary of P&R and OTC performance against targets:

10	Targets set	9	Targets met or exceeded	1	Target not met
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Highlights:

- We made submissions on **five government policies** and regulations including the National Integrated ICT Policy White Paper and the White Paper on the Audiovisual and Digital Content Policy for South Africa.
- We concluded **bilateral and multilateral MOU's** with SADC and BRICS partners
- We **supported Nigeria** in the development of their competition legislation and continued to **chair the ACF**.

20. Strategic Collaboration & Advocacy (cont.)

- Engagements with Labour, Big Business and Government took place through the annual consultative forums.
- We conducted several stakeholder education and awareness sessions, targeting Government officials, small businesses and the youth.
- We continued our drive to raise awareness on all media forums, with a large social media presence and reach.
- We targeted local community radio stations, undertaking media outreach on competition law and cases in vernacular languages.

21. Advocacy in the school uniform market

- After receiving multiple complaints about the high prices of school uniform, the Commission embarked on an advocacy program to create awareness about the anti-competitive nature of exclusive supplier agreements.
- Engagements were held with various education stakeholders, including Governing Bodies and Principals' forums.
- The Department of Basic Education (DBE) sent out a national circular to all schools, in support of the Commission's work. ***Schools were encouraged to cancel exclusive uniform sale and supply arrangements and/or to end the practice of evergreen contracts.***
- The Commission also embarked on a media campaign- creating awareness through print, radio and TV, with the aim of encouraging compliance.
- The Commission has since initiated a case against various schools and uniform suppliers for excessive pricing.

22. Promoting competition in the Automotive Aftermarkets

- Received +20 complaints between 2011- 2014; concerns in complaints include:
 - Excessive pricing of parts;
 - Process of approving dealer networks;
 - Consumers compelled to get a maintenance/service plans, with no transparency in pricing;
- Subsequent research revealed more competition concerns, largely centred on exclusive arrangements OEMs have with approved dealers, service providers and parts suppliers. ***These arrangements have the effect of excluding independents (SMMEs) from in-warranty service and repair work*** + create restrictions in the sale and distribution of non-branded parts.
- After international benchmarking, the CC decided to pursue advocacy- a more efficient approach to achieving market-wide outcomes. Agreed with the industry to develop a Code of Conduct for Competition- in progress and awaiting public comments till 03 November 2017.

23. Building a High Performance Agency

Summary of CSD & Finance performance against targets:

5	Targets set	2	Targets met or exceeded	3	Targets not met
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Highlights:

- We launched our **C.O.M.P.E.T.E values** in December 2016
- Completed the **re-design of organisational structure**. Awaiting the Minister's approval.
- **Filled key leadership vacancies**: Deputy Commissioner, Company Secretary and Chief Finance Officer.
- Recruited 18 graduates, mainly from historically disadvantaged institutions, for our **graduate trainee program**.
- 35 employees benefitted from **bursaries and loans** totalling R886 886.86
- We spent R4,2m on **learning and development** of staff.



IV. ORGANISATIONAL & FINANCIAL OVERVIEW

24. Organizational Overview

- *Gender Profile over 5 Years:*

YEAR	TOTAL EMPLOYEES	FEMALE EMPLOYEES		MALE EMPLOYEES	
		Count	Percentage	Count	Percentage
2012/13	168	90	54%	78	46%
2013/14	159	86	54%	79	46%
2014/15	186	97	52%	89	48%
2015/16	197	110	55.8%	87	44.2%
2016/17	208	120	57,6%	88	42,3%

- *Race and Gender Profile at 31 March 2017:*

	Males				Females				Total
	A	C	I	W	A	C	I	W	
ACTUAL	94	2	11	12	76	3	1	9	208
%	45,19%	0,96%	5,29%	5,77%	36,54%	1,44%	0,48%	4,33%	

25. Finance

- *Changes in revenue*
 - Total Revenue decreased by R6 million (2%) from R295 million to R289 million.
 - Government allocation decreased by 3% from R228 million to R221 million.
 - Filing fee income increased by 4% from R55 million to R57 million.
 - Interest income decreased by 15% due to less funds in the bank.
- *Changes in total expenditure*
 - Expenditure increased by R71 million from R296 million to R367 million, reflecting an increase of 24%.

26. Finance (cont.)

- *Deficit*
 - The Commission incurred a deficit of R78 million compared to last years R1,2 million.
 - The deficit was funded by accumulated surpluses which are now materially depleted.

DESCRIPTION	2015/16 (R'000)	2016/17 (R'000)
Revenue	295 299	289 598
Expenditure	296 501	367 998
Operating (Deficit)/ Surplus	(1,2)	(78 568)

- The Commission achieved a clean audit for 2016/17 financial year.
- An ***Audit Findings Action Plan*** is already developed to address the immaterial finding, monitored by management and the Audit & Risk Committee.

27. Finance (cont.)

- From a period of significant surpluses, the Commission has now entered period of a period where it needs to rely on government allocation and fee income to support its programs.
- Spending has increased over the years due to growth in volumes complexity of cases, in addition to extension of the Commission's mandate (i.e. Market Inquiries).
- Increased spending was funded by accumulated surpluses, which were materially depleted in 2016/17 financial year.
- The AG reported in its viability assessment of the Commissions that “***If the trend continues (spending), the Commission could run into problems with solvency of the business and in meeting its payment obligations***”

28. Finance (cont.)

Commission's Funding				
	2016/2017	2015/2016	2014/2015	2013/2014
	R'000	R'000	R'000	R'000
Revenue				
Fee Income	57,105	55,051	51,641	43,903
Other income	736	140	222	746
Interest received - investment	10,174	12,021	8,391	5,294
Government grants & subsidies	221,583	228,087	188,127	176,888
Total Revenue	289,598	295,299	248,381	226,831
Expenditure	368,166	296,501	223,347	198,925
Capital expenditure	10,131	3,236	5,295	1,045
Total Expenditure	378,297	299,737	228,642	199,970
Deficit /(surplus)	88,699	4,438	-19,739	-26,861
Accumulated Surplus	32,605	112,637	113,427	85,187

29. Finance (cont.)

Funding Requirements

TOTAL PER MAIN ITEM	2018/19 ANNUAL BUDGET - 70%	2019/20 ANNUAL BUDGET - 90%	2020/21 ANNUAL BUDGET - 100%
Total Expenditure	585,210,737	727,913,242	799,152,750
Projected Revenue	360,000,000	383,807,000	404,916,385
Required Funding	(225,210,737)	(344,106,242)	(394,236,365)

30. Conclusion

- The Commission has met 28 out of 33 applicable targets in 2016/17 (85%).
- There is increased volume of work and complexity in the investigation + prosecution of cases:
 - Longer time frames for litigation in the courts;
 - Specialist skills and industry knowledge required for some investigations.
- Going forward, the Commission requires additional funding to fulfil its mandate, and to regulate towards a growing and inclusive economy.

THANK YOU!

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