

# Annual Report 2017/18

## Presentation to Portfolio Committee on Economic Development

10 October 2018



**competition commission**  
south africa

# Presentation Outline

- I. Introduction
- II. Economic Context
- III. 5 Year Overview
- IV. Performance By Program
- V. Operations
- VI. Finance

# I. Introduction



# Legislative Mandate

- 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, in order to achieve equity and efficiency in the South African economy.
- Purpose of the Competition Act is to promote and maintain competition in order to:
  - Promote efficiency and development of the economy;
  - Provide consumers with competitive prices and product choices;
  - Ensure SMME's an equitable opportunity in the economy;
  - Advance economic welfare of South Africans;
  - Expand opportunities for South African participation in world markets;
  - Promote greater spread of ownership, in particular HDI's.

# What we do: functions of the Commission

## 1. Enforcement

- **Prosecution of anti-competitive behaviour**
  - Cartels
  - Abuse of dominance
  - Other prohibited conduct
  - Exemption Applications

## 2. Mergers & Acquisitions

- **Prevent concentration through control**
  - Review of Merger applications
  - Approvals, Approvals with conditions, Prohibitions

## 3. Market Inquiries

- General probe into state of competition in a market without investigating a particular firm.

## 4. Advocacy

- **Advocacy for pro-competitive conduct**
  - Case/ Sector Advocacy
  - Stakeholder Relations (incl. international)
  - Policy Reviews

# How we work: enforcement process

## PHASE 1: Initiation

- Complaint is lodged on Form CC1 by external party and sent to the Screening Unit
- Complaint is initiated internally by the Commission on Form CC1 and allocated to the Market Conduct Division

## PHASE 2: Screening

- For complaints from external parties the Screening Unit determines if the complaint is competition related and assesses its prospects of success
- The Commission meeting decides to non-refer or investigate further, in which case it refers the complaint to Market Conduct or Cartels Division

## PHASE 3: Information gathering

- The Investigator requests information from internal and external parties using all the available tools
- The Investigator conducts research relevant to the complaint and the market

## PHASE 4: Analysis

- Using the provisions of the Competition Act, local and foreign case law as well as input from the team, the Investigator assess the merits of the complaint

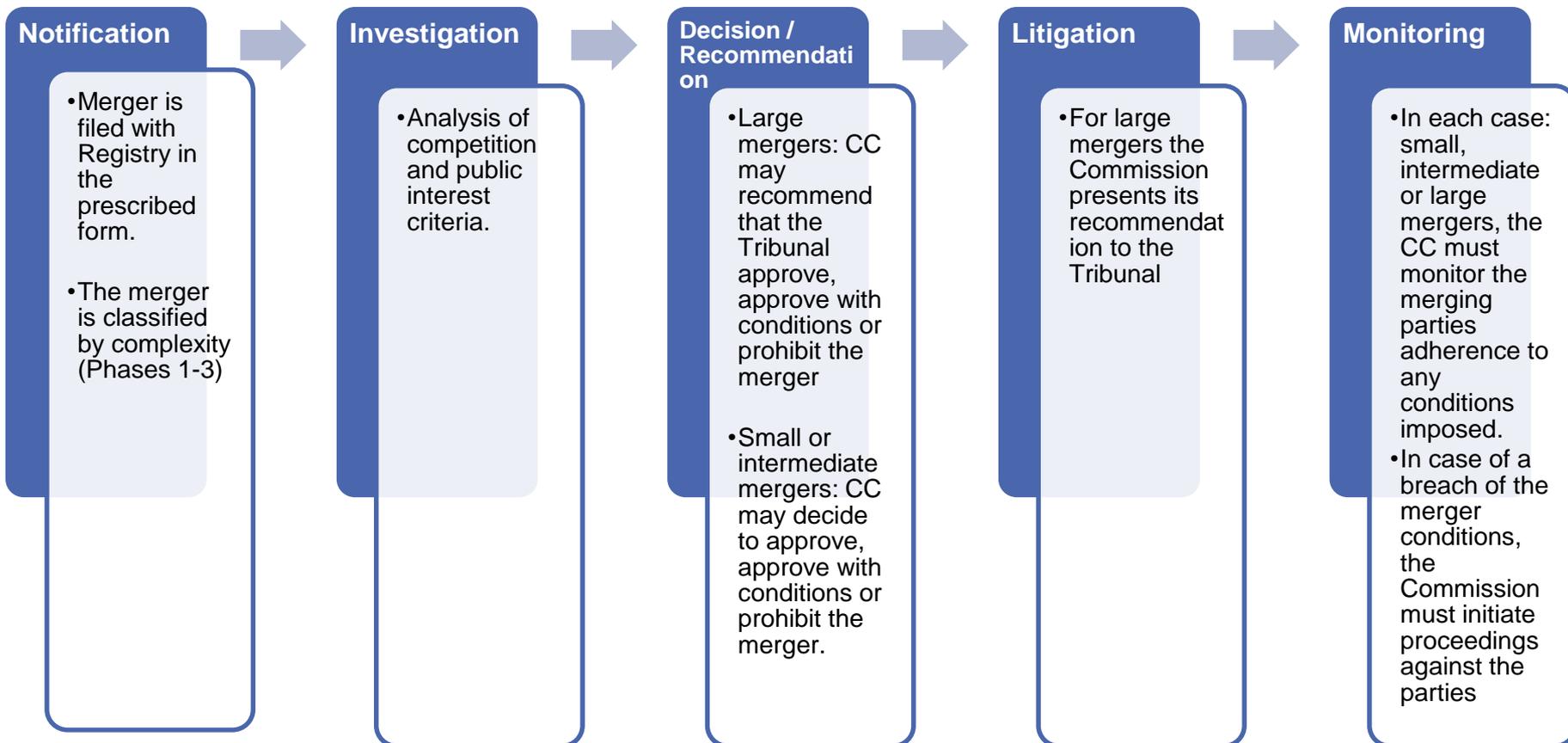
## PHASE 5: Reporting

- The Investigator, with input from the team, drafts progress reports as per the standard procedures
- The Investigator, with input from the team, drafts a final report for presentation to the management meeting and the Commission meeting

## PHASE 6: Decision-making

- Commission's decision to refer case to the Tribunal or to non-refer.

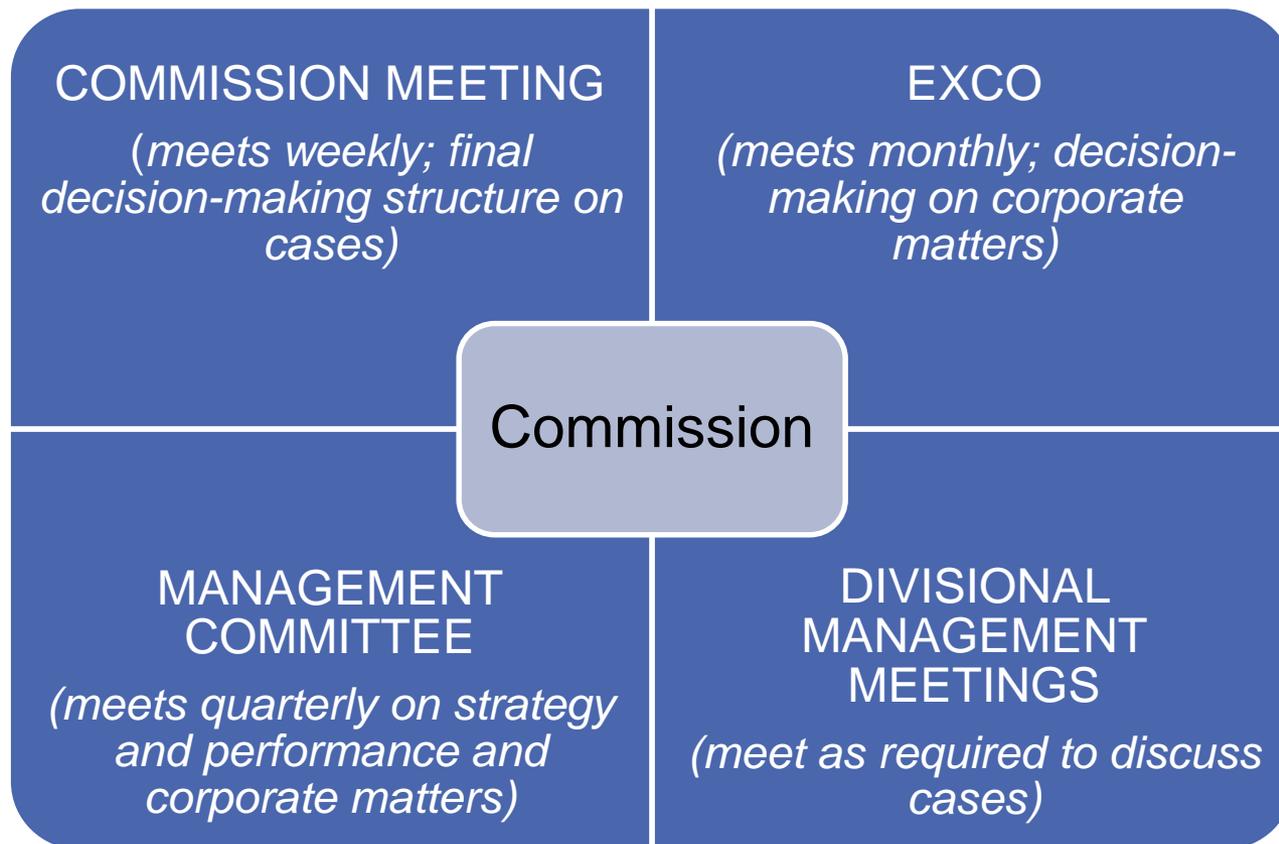
# How we work: mergers process



# How we work: advocacy & research process



# Governance Structures

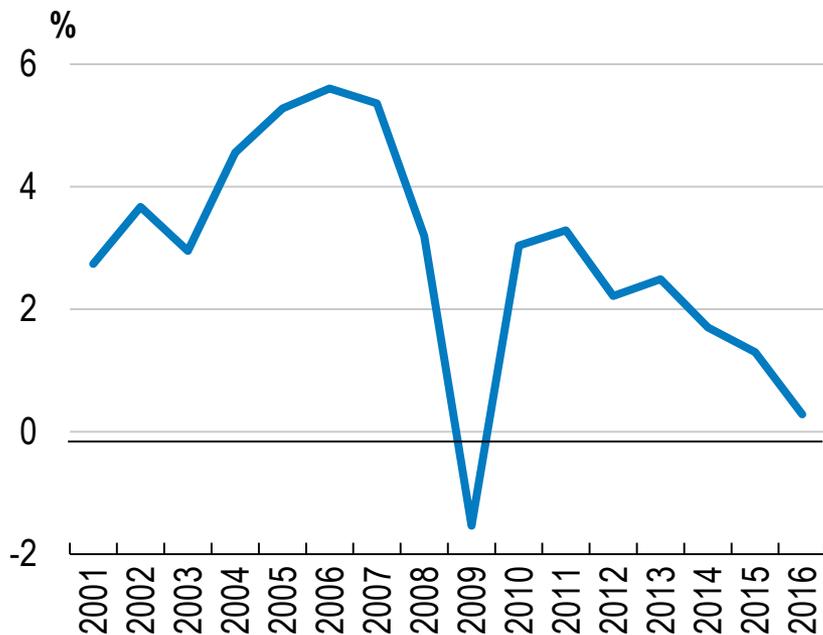


# II. Economic Context

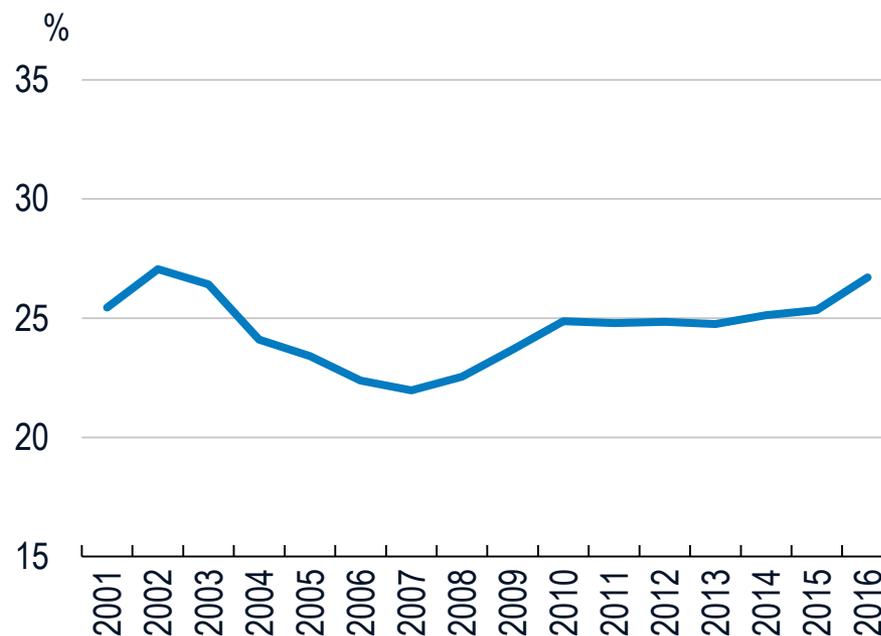


# Economy

- Slow economic growth



- Unemployment is high



- Poverty remains high

# Tensions between efficiency and development

- The consumer welfare paradigm is narrow
  - It means that the Commission should not use its tools unless the conduct provably decreases consumer surplus
- It aggregates all consumers' rands
  - Does not differentiate between rich consumers and poor consumers
- It overlooks problems that are big for South Africa which it does not recognise
  - State restraints, barriers to entry, access to markets
- Competition law in South Africa has developed from roots up, given the context
  - It protects consumer welfare;
  - It promotes efficiency, adaptability and development of the economy;
  - It promotes a set of public interest goals
    - Employment and social and economic welfare
    - Opportunities to participate in world markets (and to recognise foreign competition in South Africa)
    - Equitable opportunities for SMEs to participate in the economy
    - Increasing the ownership stakes of historically disadvantaged persons

# Benefits of Competition

- The Competition Commission



*Enforces the law*

- More competition in markets



*Entry and exit, innovation*

*Lower prices, more product choice*

- High productivity growth



- Economic growth

- When customers can choose between different firms, they benefit and so does the economy as a whole
- The ability to choose forces firms to compete
- Competition between firms also leads to increased productivity and economic growth

- Competitive and inclusive markets enable the people to participate in the economic enterprise
- Competitive and inclusive markets take people out from under the thumb of poverty, inequality, corruption and exclusion

# Our Response: Five Year Strategic Plan

***Vision:** Competition regulation for a growing and inclusive economy*



# Priority Sectors (1)

## Food & Agro-Processing



- ✓ Grocery Retail Inquiry
- ✓ Various Cartels (e.g. Beef, Feedlots)
- ✓ Rooibos

## Infrastructure & Construction



- ✓ Transnet Ports & Rail

## Healthcare



- ✓ Private Healthcare Market Inquiry
- ✓ Pharmaceuticals (cancer drugs)

## Financial Services



- ✓ Forex Cartel
- ✓ SA Taxi Finance

# 8. Priority Sectors (2)

## Energy



- ✓ LPG Inquiry
- ✓ Total Gaz, Afrox, Easigas price fixing

## Intermediate Industrial Inputs



- ✓ Packaging (Mpact, Nampak)
- ✓ Fire Sprinklers
- ✓ Automotive components

## Information & Communication Technology



- ✓ Data Market Inquiry
- ✓ Vodacom

## Transport



- ✓ Public Transport Market Inquiry
- ✓ Airlines
- ✓ Automotive Aftermarkets Advocacy

# III. 5-Year Overview



# Case Highlights

- AMSA settlement - largest fine imposed on a single firm
- AB Inbev, Coca-Cola, Walmart/ Massmart- large mergers with significant public interest issues.
- Andalusite- prohibition of a merger-to-monopoly, confirmed by CAC.
- Construction services cartel.

# Mergers over 5 Years

LARGE MERGERS
  INTERMEDIATE MERGERS
  SMALL MERGERS

2013/14

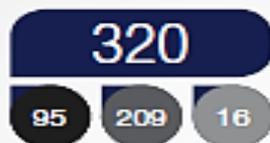
2014/15

2015/16

2016/17

2017/18

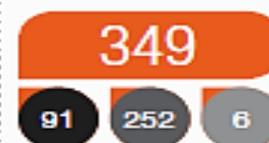
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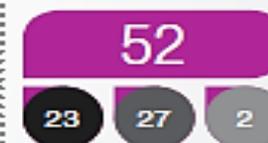
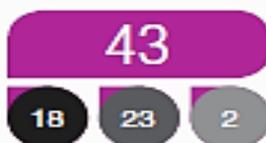
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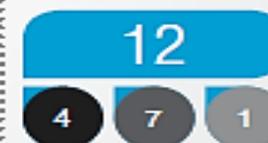
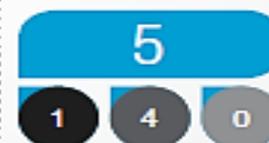
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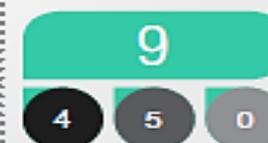
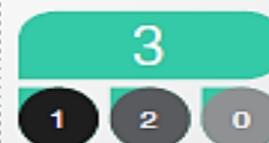
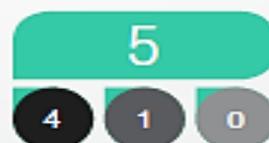
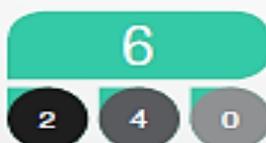
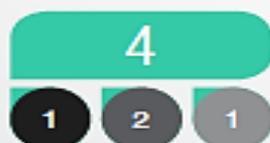
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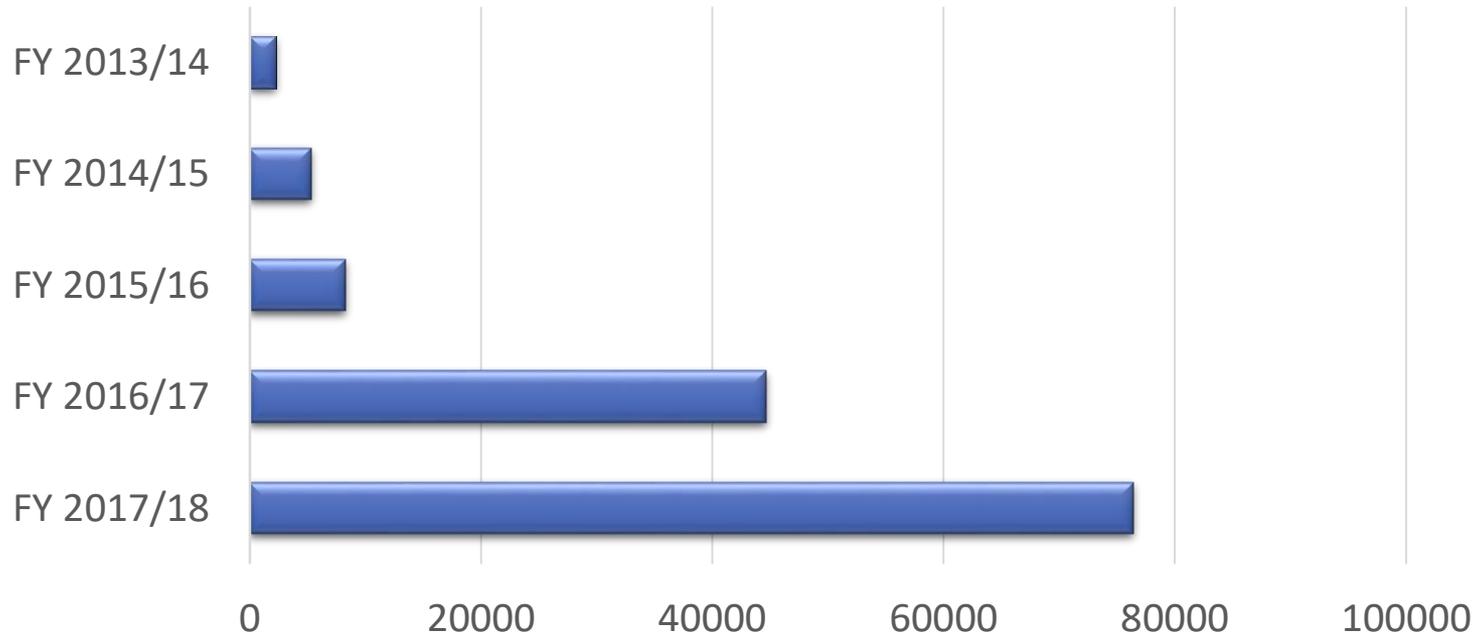


WITHDRAWN/ NO JURISDICTION



# Merger Impact on Employment

**136 952 Jobs Saved**

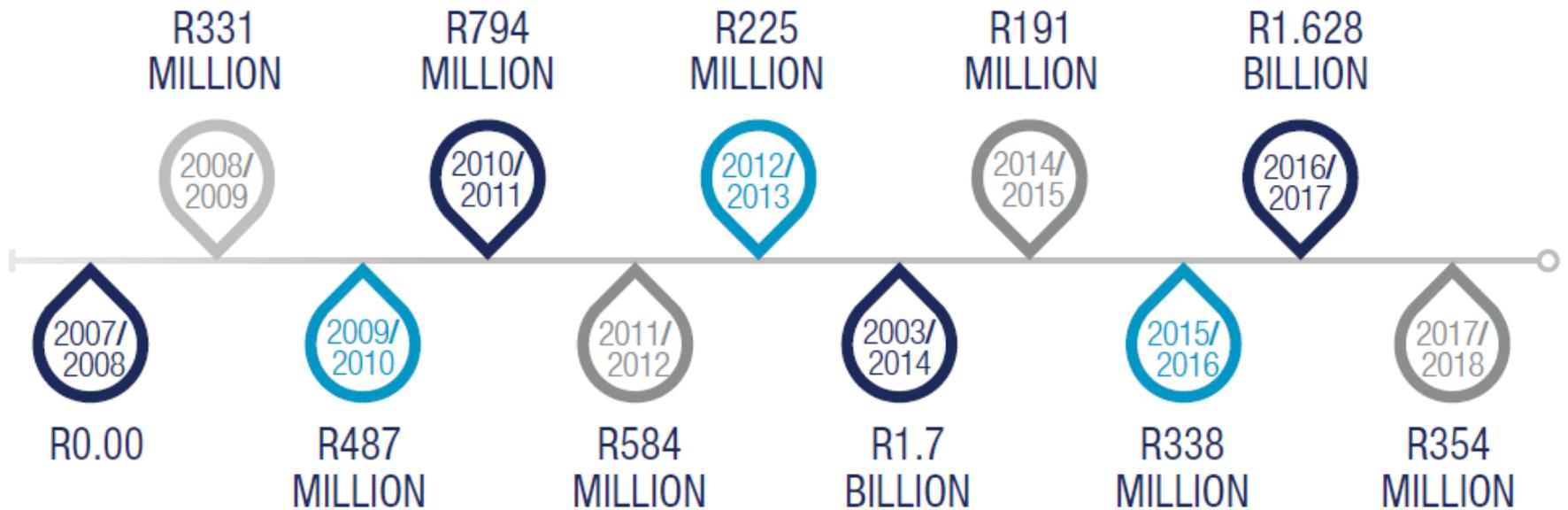


	FY 2017/18	FY 2016/17	FY 2015/16	FY 2014/15	FY 2013/14
■ Jobs Saved	76452	44655	8274	5340	2231

# Cartel Work Load

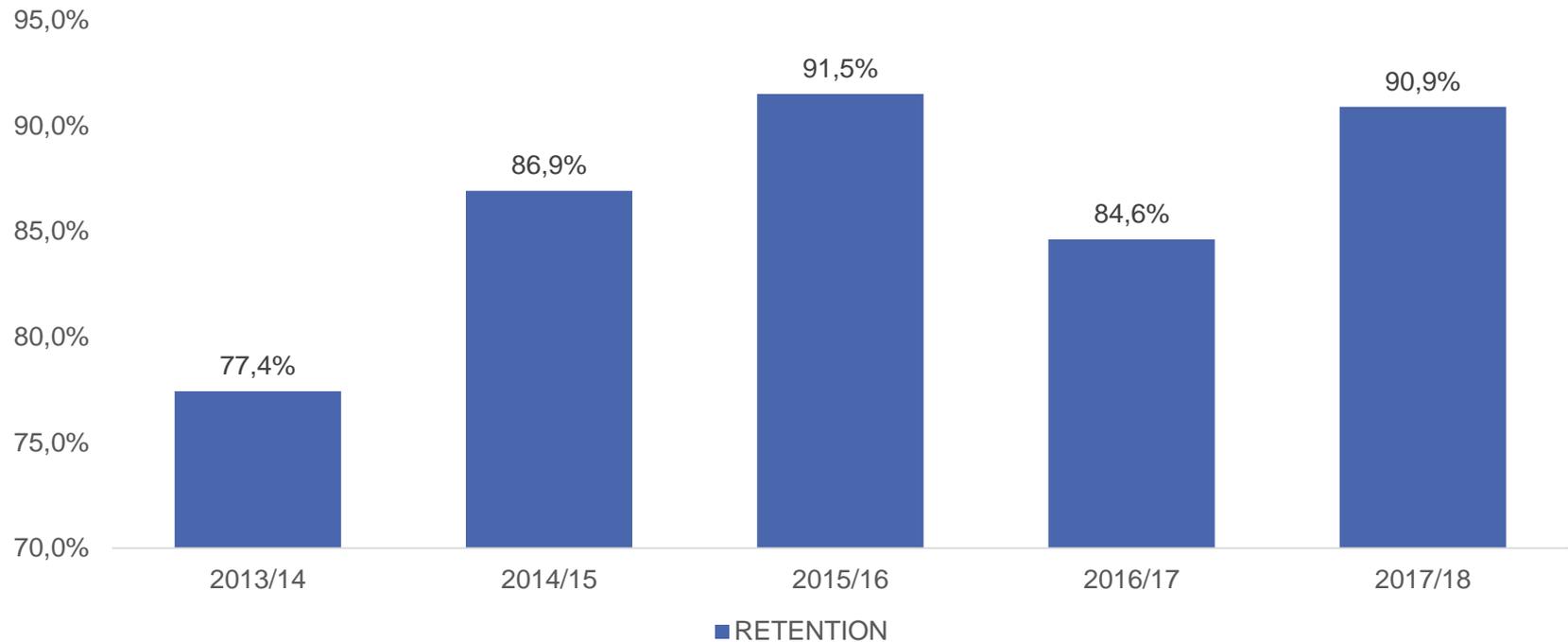
Financial Year	Investigations brought forward from the previous year	Cases received from 3rd Parties	Cases initiated by the Commission	TOTAL CASES HANDLED	Referrals	Non-Referrals	Total cases finalised
2013 / 2014	24	4	11	39	3	4	7
2014 / 2015	32	6	10	48	15	16	31
2015 / 2016	48	10	133	191	27	8	35
2016 / 2017	156	19	26	201	27	6	33
2017 / 2018	168	37	28	233	52	11	63

# Administrative penalties over 10 Years



- ✓ Circa R7billion over 10 years
- ✓ Circa R4.2 billion over 5 years

# Staff Retention



- The retention rates of staff at the Commission have improved from 77.4% in 2013 to 90.9% in the last financial year as illustrated in the table above.

# Challenges

- Increasing case load and complexity
- Litigation: interlocutories
- Bottlenecks in the system
- Resource constraints: funding and human capital
- Unfunded mandate:
  - Market inquiries
  - Collection of penalties
- Outdated Information System
  - A review was conducted in 2017/18 on the ICT systems; an upgrade will cost the Commission about R 30 million and this project has been deferred due to budget constraints.
  - Information security with the advent of Ransomware and other cybercrime challenges has been a big risk for the Commission and this will add on the investment required for Information Management.

# IV. Performance by Program



# Enforcement and Exemptions in numbers

E&E CASES	2017/18	2016/17
COMPLAINTS RECEIVED FROM THE <b>PUBLIC</b>	313	205
COMPLAINTS INITIATED BY THE <b>COMMISSION</b>	5	4
SCREENING CASES <b>CARRIED OVER FROM LAST YEAR</b>	53	39
COMPLAINTS <b>WITHDRAWN</b>	8	3
COMPLAINTS <b>CLOSED</b> (NON-REFERRED) AT SCREENING STAGE	193	144
COMPLAINTS THAT BECAME <b>FULL INVESTIGATIONS</b> (excluding those referred to CD for full investigation)	31	22
COMPLAINTS <b>CLOSED</b> (NON-REFERRED) AFTER FULL INVESTIGATIONS	23	11
COMPLAINTS REFERRED TO THE <b>TRIBUNAL</b> FOR ADJUDICATION AFTER FULL INVESTIGATION	4	3
SCREENING CASES <b>CARRIED OVER TO THE NEXT FINANCIAL YEAR</b>	36	43

# CC vs Computicket (Pty) Ltd

- On 30 April 2010 the Commission referred a complaint against Computicket to the Tribunal, alleging that the exclusive agreements Computicket has with inventory providers are in breach of sections 8(d)(i)/8(c) and alternatively section 5 (1) of the Competition Act.
- Computicket had concluded exclusive agreements with a substantial number of these inventory providers, which had a clause that forbids the inventory providers to utilise services of alternative ticket service provider(s), whilst contracted with Computicket.
- This case was heard from 4-17 October 2017 in the Tribunal. The Tribunal has reserved its decision in the matter.

# CC vs SA Airlink (Pty) Ltd

- In February 2018, the Commission referred three complaints lodged by Mr. Khwezi Tiya, Fly Blue Crane (Pty) Ltd and the OR Tambo District Chamber of Business against SA Airlink involving allegations of excessive pricing and predatory pricing on the Johannesburg – Mthatha route.
- The Commission found that SA Airlink abuse its monopoly position on the route by charging excessive prices from September 2012 to August 2016 on the route. The Commission found that consumers would have saved between R89 million to R108 million had SA Airlink not priced excessively on this route.
- The Commission also found that SA Airlink priced below its average variable costs and average avoidable costs for some of its flights on the route. Variable costs are costs that vary with the output and avoidable costs are those costs that can be avoided if a decision is made to alter the costs of a business or project.
- The Commission also found that SA Airlink's predatory pricing conduct contributed to the exit of Fly Blue Crane, its only competitor at the time on the Johannesburg-Mthatha route.

# CC vs Media 24 (1)

- On 8 September 2015, the Commission won a landmark case against Media24 in its first prosecution of a predatory pricing case.
- The Tribunal found that between 2004-2009 Media24 deliberately drove a competitor, Goldnet News, out of community newspaper market. Media24 did this by positioning a competing newspaper, Forum, as a fighting brand against Goldnet News.
- The Tribunal found that Media24 priced its Forum publication below its average total costs (“ATC”), and together with other evidence of direct and indirect intent to eliminate its competitor and its subsequent ability to recoup what it lost during the period, carried out an exclusionary act in contravention of section 8(c) of the Act.
- The Tribunal found that the use of the average total costs standard is appropriate, even where prices are above average variable costs, particularly in the context of the South African economy characterised by high barriers to entry in many markets and the unwillingness of capital markets to sponsor entry against dominant incumbent firms. In addition, The Tribunal was of the view that the ATC is more reliable when dealing with vertically integrated or multi product firms

# CC vs Media 24 (2)

- Media24 appealed the decision of the Tribunal on, *inter alia*, the basis that the Tribunal applied an incorrect cost measure and included a requirement of intent which is not in the Act.
- The CAC overturned the Tribunal decision and in summary, found that pricing below ATC together with evidence of intent does not constitute an exclusionary act under section 8(c) of the Act.
- The Commission applied for leave to appeal to the Constitutional Court against CAC judgement on, *inter alia*, the basis that in Europe, which does not have the same economic history as South Africa, the ATC standard has been accepted for years.

# CC vs Uniplate Group (Pty) Ltd

- On 27 November 2015, the Commission referred two abuse of dominance complaints against Uniplate to the Tribunal for adjudication.
- The Commission found that Uniplate has entered into long term exclusive agreements, of generally 10 years, with a significant number of embossers. In terms of these agreements, embossers are required to exclusively purchase their number plate blanks from Uniplate when acquiring a Uniplate embossing machine.
- The effect of Uniplate's conduct is that competing manufacturers of number plate blanks are prevented from gaining access to a significant number of embossers. This conduct also denies embossers the benefit of purchasing number plate blanks from other manufacturers at competitive prices. Based on these findings the Commission alleges that Uniplate has abused its dominance in contravention of section 8(d)(i)/8(c).
- The matter was heard on 1-17 November 2017 in the Tribunal; the decision on the matter is reserved.

# Cartels in numbers

CARTEL CASES RECEIVED, INVESTIGATED AND FINALISED	2017/18	2016/17
TOTAL CASES HANDLED IN THE YEAR	146	86
TOTAL INVESTIGATIONS CARRIED OVER FROM PREVIOUS YEAR	83	74
COMPLETED INVESTIGATIONS	63	33
REFERRALS TO THE TRIBUNAL	52	27
CASES CLOSED WITHOUT ADVERSE FINDINGS (NON-REFERRALS)	11	6
NEW CASES INITIATED BY THE COMMISSION	28	26
NEW CASES RECEIVED FROM THIRD PARTIES	35	17

# Dawn Raids

- CC v Feedlots Association of South Africa and its members – these are producers of meat that are alleged to have fixed purchase price of weaner calves and wholesale price of meat.
- CC v Association of Sprinkler Inspection Bureau and its members - these are installers of fire sprinkler systems that are alleged to have fixed trading conditions and allocated markets.
- CC v Arrow Altech and 12 Others – these firms that are alleged to have colluded when bidding for the tender to supply Set Top Boxes and Antennas.

# CC vs Bank of America Merrill Lynch International & 22 Others

- The case involves prosecution of 22 banks for colluding on Rand-Dollar currency pair. The Commission referred the case to the Tribunal in February 2017.
- All the 22 banks challenged the Commission referral of the case on the basis that:
  - the Commission and Tribunal do not have jurisdiction to prosecute
  - the Commission has not made out a case against them.
- These challenges were heard by the Tribunal end of July 2018 and judgment is pending.
- The Commission contends that it has jurisdiction to investigate and prosecute the banks (foreign and local) because they manipulated the South African Rand. Section 3 of the Act give the Commission jurisdiction over all activities that have effect in South Africa; currency (Rand) manipulation has an effect in the country.
- Some of the respondents have settled similar case and paid penalties in the USA, UK, Switzerland, Europe (DG Comp) and Brazil. However, in South Africa they are disputing the same offence for which they settled elsewhere.

# CC vs Standard Bank of South Africa (1)



- In addition to the above challenges, Standard Bank of South Africa (SBSA) filed further challenges.
  - An application to the Competition Tribunal to compel the Commission to provide record of investigation;
  - An application for the Competition Appeal Court (CAC) to review the Commission's decision to refer the case against it.
- SBSA lost the application to compel production of record at Tribunal in November 2017 and appealed to the CAC in March 2018. In June 2018 CAC ruled in favour of SBSA ordering the Commission to produce the record within 5 days, for the purposes of review.
- The Commission is appealing CAC judgment at Constitutional Court.
- The Con Court had already directed the parties (Commission and SBSA) to address it on the correctness or otherwise of CAC decision on rule 15 (production of record).
- The parties have made the submission as directed and are waiting further directives from the Con Court.

# CC vs Standard Bank of South Africa (2)



- The production of records held by public entities such as the Commission is regulated by Promotion of Access to Information Act (PAIA).
- PAIA state that once litigation commences, production of record will be in accordance with rules of discovery.
- The Commission's case against SBSA is that production of record of investigation can only be done at the discovery stage since litigation has commenced.
- The Con Court has already decided the same issue and confirmed that record by public entities should be produced at discovery stage.
- SBSA wants the Commission record as a litigant and wants it before it answers the charge against it first – this is against PAIA.

# CC vs Wilmar Continental Edible Oils & 4 Others (1)

- The case involves 5 edible oils and fats companies that are alleged of fixing price of edible oils and baking fats.
- The Commission obtained search warrant on 6 December 2017 and raided on 8 December 2017.
- On 13 December 2017, the Commission received an affidavit from Sea Lake - one of the respondent which was not searched.
- All the 5 producers of edible oils and baking fats challenged the search warrant. These firms relied, among others, on the affidavit from Sea Lake to challenge the search warrant.
- The case was heard by Honourable Deputy Judge President of High Court (KZN) on 1 March 2018 and deliver his judgment on 18 June 2018 - ruling against the Commission.
- The Commission applied for leave to appeal this judgment to the full bench or Supreme Court of Appeal.

# CC vs Wilmar Continental Edible Oils & 4 Others (2)

- The Deputy Judge President (DJP) of High Court (KZN) found that the Commission is guilty of serious breach of its duty of good faith to the court to disclose material facts.
- The DJP based his finding on the basis that the Commission failed to disclose to the court the Sea Lake affidavit when applying for the warrant.
- The court erred in making this finding. Sea Lake affidavit only emerged on 13 December 2017, 7 days after the warrant was obtained and 5 days after it was executed.
- There was no way the Commission could have placed this affidavit before court when it was applying for the warrant as it did not exist and only emerged days after the warrant was issued and executed.

# Mergers & Acquisitions in numbers

76,452

NET **SAVING  
OF JOBS**  
IN THE YEAR

32

**MERGERS** IN WHICH  
PUBLIC INTEREST  
CONDITIONS  
WERE IMPOSED

377

**MERGERS  
NOTIFIED**

338

**MERGERS  
FINALISED**

52

**MERGERS  
APPROVED  
WITH CONDITONS**

12

**MERGERS  
PROHIBITED**

# Mediclinic Southern Africa/ Matlosana Medical Health Services

The Commission recommended a prohibition on the following grounds:

- the merger would likely raise prices in the Klerksdorp and Potchefstroom areas, to both insured and uninsured patients.
- the merger would increase concentration in an already concentrated market.
- The case has now ran through the Tribunal.

# Bayer Aktiengesellschaft/ Monsanto Corporation

The Commission prohibited the merger on the following grounds:

- the merger affected several markets in the seeds and agro-chemicals industries and that it was a merger to monopoly in relation to the supply of GM cotton seeds which would result in the removal of an effective competitor and increase prices;
- Also, both Monsanto and Bayer were involved in the development and production of biotechnological traits for seeds the accompanying herbicides that are applied on those traited seeds; result would be removal of potential competitor;
- **Remedies** 1) divestiture of Bayer's cotton business in South Africa; 2) development and production of biotechnological traits and accompanying herbicides 3) obligation to commercialise in SA and if failure to do so, sublicense to a BEE market participant.
- Update: the divestitures have taken place; with regard to the Liberty Systems Remedy, the parties have divested to BASF SE Germany (BASF) and the same conditions have been imposed on BASF.

The Commission prohibited the mergers on the following grounds:

- the merger would likely result in the removal of an effective competitor to SA Airlink on the Johannesburg to Cape Town, Durban to Johannesburg and Durban to Cape Town routes, with SA Airlink being likely to increase prices on these routes post-merger;
- Safair's prices had been consistently lower than SA Airlink on the routes where it was operational and Safair had been growing in the domestic market and entering new routes thus;
- the merger would likely result in the loss of a potential competitor in the routes which Safair had not yet entered;
- the merger would likely result in coordinated effects in that Safair, had not been party to the agreements between SAA and Airlink which the Commission considered to be market allocation agreements, and as a result of the merger, SA Airlink would control Safair and thus Safair would become party to these agreements.

# Cases in the Higher Courts

- CAC confirmed that Commission's decision to initiate an investigation into the construction sector, in September 2009, was valid and that the Commission lawfully amended the scope of investigation to add **Power Construction** group to it.
- Tribunal confirmed validity of Commission's tacit initiation and referral against **Omnia Fertiliser Ltd.**
- Tribunal heard final argument in the complaint against **Computicket (Pty) Ltd** after a lengthy litigation process in the Tribunal, Competition Appeal Court and the Supreme Court of Appeal.
- Constitutional Court heard a case arguing for the Commission to be allowed to investigate a transaction between **SABC and MultiChoice.**
  - Constitutional Court granted the Commission the right to investigate
- Commission suspended its advisory opinion service pending the outcome of its application to appeal an earlier Competition Appeal Court judgment concerning the legal consequences of the Commission's advisory opinions;
- Commission turned to the Constitutional Court to uphold a predatory pricing precedent. Tribunal initially found in favour of the Commission stating that **Media24** was engaged in pricing below cost but the Competition Appeal Court overturned this.

# Market Inquiries

- Under the current market inquiry provisions, the Commission has initiated the following inquiries:
  1. Market Inquiry into the Private Healthcare Sector
    - Initiated in January 2014. Provisional report published
    - Expected completion date March 2019
  2. Market inquiry into the Liquefied Petroleum Gas (LPG) sector
    - Initiated in September 2014
    - Finalized and report published in April 2017
  3. Market inquiry into the Grocery Retail sector
    - Initiated in October 2015. Current gathering evidence.
    - Expected completion date March 2019
  4. Market inquiry into the Public Passenger Transport
    - Initiated in June 2017. Current gathering evidence.
    - Expected completion date June 2020
  5. Market inquiry into the market(s) for Data services
    - Initiated in August 2017. Current gathering evidence.
    - Expected completion date March 2019

# 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, some of which have been settled (confirmation hearing pending).

# Promoting competition in the Automotive Aftermarkets

- Advocacy begun in early 2017, following an increasing volume of complaints related to:
  - Access to repair work by independent service providers;
  - Process of approving dealer networks;
  - Excessive pricing and availability of spare parts;
  - 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.
- Following extensive consultation, the CC agreed with the industry to develop a Code of Conduct for Competition- in progress and awaiting stakeholder comments till 31 October 2018.

# Research Highlights: Sasol Impact Assessment

- In 2009, Sasol Nitro, a division of Sasol Chemical Industries Limited (SCI), reached a settlement with the Commission in terms of which Sasol was requested to divest its blending facilities located in Durban, Bellville, Potchefstroom, Endicott and Kimberley.
- The Tribunal confirmed the settlement as an order on 20 July 2010.
- The study found that since the settlement, there have been a number of positive outcomes in the fertiliser industry, including:
  - a break-down of artificial barriers to entry in the market which, in part, led to Omnia expanding its operations in the production of ammonium nitrate by investing in a nitric acid plant;
  - that the divestiture contributed to entry and expansion into the blending and distribution market;
  - the market has seen positive price benefits in the fertilizer industry and substantial customer savings as fertiliser retail prices have become more competitive in the post-intervention period;
  - The study estimates that South African consumers of granular fertilizer have saved approximately R1 billion between 2010 and June 2015.

# Research Highlights: BRICS Global Food Value Chains

- Participated in a BRICS global food value chains and competition law study. The study notes that global value chains (GVCs) are prevalent.
- The study provides in-depth analysis of the regulation, from a competition policy perspective, of the food industry by the BRICS countries, and selected developed countries.
- The study includes country reports from the BRICS jurisdictions on GVCs and delved into a number of case studies of specific food value chains.
- Six case studies are from South Africa (on seeds, fertilisers, animal feed to poultry, dairy, milling and retail).

# Research Highlights: Market Concentration

- A study conducted by the Commission in 2017 highlights the extent of market concentration
  - The study analysed about 2 150 merger reports to identify product markets with dominant firms from 2009 to 2016
  - The study finds that the average market share of the identified dominant firms in defined markets and across sectors is about 52.5%
  - If the sample is limited to markets with firms defined as presumptively dominant in the Competition Act the average market share, across sectors, is about 62%.

Priority Sectors	Average market shares (entire sample)	Average market shares (firms defined as presumptively dominant)
Information communication technologies	49.3%	55.2%
Energy	50.1%	60.8%
Financial services	62.2%	68.8%
Food and agro-processing	52.9%	60.5%
Infrastructure and construction	45.5%	52.6%
Intermediate industrial products	51.4%	63.3%
Mining	57.1%	62.0%
Other	51.8%	61.5%
Pharmaceuticals	52.4%	59.6%
Transport	57.1%	67.4%
<b>Total</b>	<b>52.5%</b>	<b>61.6%</b>

*Average market share estimates of dominant firms in defined markets identified across priority sectors*

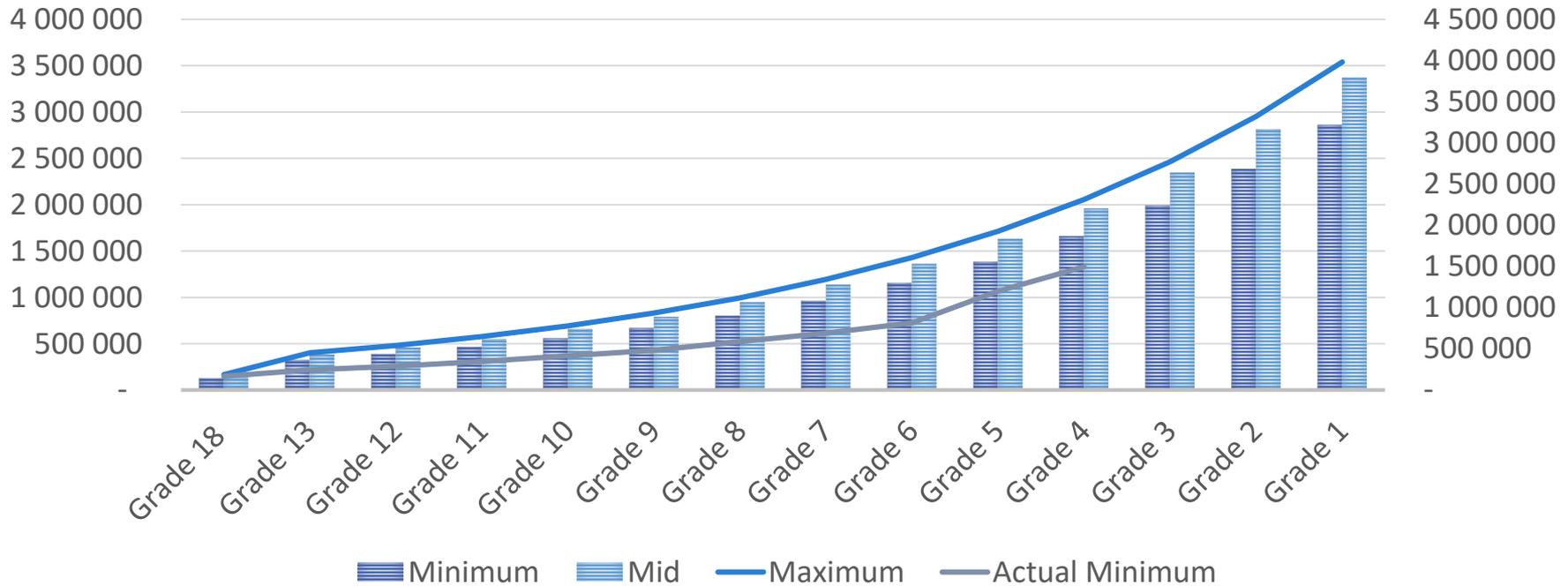
# V. Operations



# Organisational Structure

- Institutional redesign and re-organisation has largely been informed by:
  - The changing mandate of the Commission
  - Amendments to the Act
  - The need to retain highly skilled human capital
  - The rise of the digital economy
  - The increasing volume of complaints in recent years
- As a result, the Commission has embarked on the following:
  - Improving our value system & institutional culture
  - Improving our infrastructure – ICT, Knowledge Systems, security
  - Organisational restructuring
  - Increasing staff and staff capacity
  - A robust retention strategy

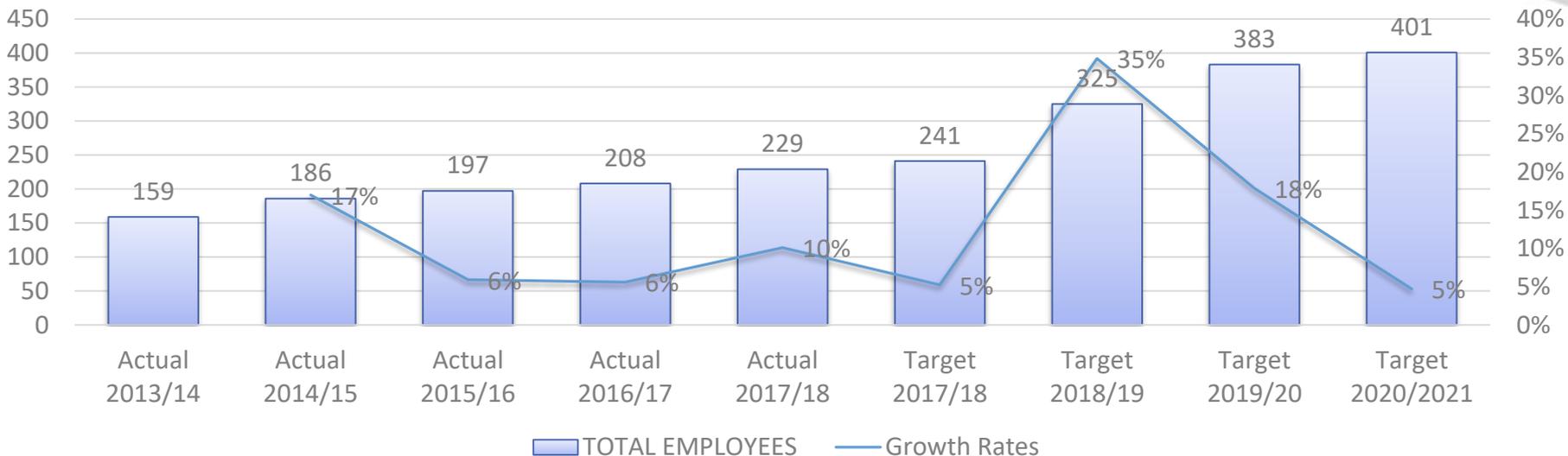
# Salary Benchmark



\* Grades are as per the Peronnnes Grading System

- The new structure is also accompanied by a Proposed new salary structure that is a product of a salary benchmarking process that was conducted in 2016.
- To ensure all our employees are inside the new bands and take employees to the new minimum would cost the Commission about R 34 million on 31 March 2018.
- Executive grades are also below market average.

# Staff Complement



- The Commission's work has grown in numbers of cases and complexity; this increase has been absorbed by putting more pressure on current staff and progressively higher levels of outsourcing.
- On the other hand, the Commission has grown from a baseline of 99 approved positions in 1999 to 159 employees in 2013/14 then reached 229 at the end of the previous financial year.
- A new Organisational Structure has been developed, with a staff complement of 401 employees by 2020/21.
- The new structure seeks to invest in seniority in case execution and management, and in investing in new skills in forensic investigation and financial analysis.

# Human Capital Development

Gender profile over five years



Race and gender profile as at 31 March 2018



- In the 2017/18 Financial year 32 Study Loans were awarded to staff.
- R 5 million was budgeted for investment in Human Capital Development in the 2017/18 financial year, up from R 4.1 million in the 2016/17 financial year.
- 20 graduates in 2017/18, of which 13 were carried over from previous financial year.

# VI. Finance



# Financial Overview (1)

- **Changes in revenue**
  - Total revenue increased by R63m (22%) from R289m to R353m.
  - Government allocation increased by 21% from R221 million to R268m.
  - Filing fee income increased by 10% from R57m to R63m.
  - Interest income increased by 66% due to more funds in the bank which included penalties.
  
- **Changes in total expenditure**
  - Expenditure increased by R54m, from R367m to R422m reflecting an increase of 15%.
  
- **Deficit**
  - The Commission incurred a deficit of R69m compared to last year's R78m.
  - The deficit was mainly due to high volumes of cases and complexity, and the Health Market Inquiry.

DESCRIPTION	2017/18 (R'000)	2016/17 (R'000)
Revenue	352 756	289 598
Expenditure	422 080	367 869
Operating Deficit	(69 324)	(78 271)

# Financial Overview (2)

- **Health Market Inquiry**

<b>2014/2015</b>	<b>2015/2016</b>	<b>2016/2017</b>	<b>2017/2018</b>	<b>Total</b>
<b>29,562,415</b>	<b>50,112,721</b>	<b>66,898,416</b>	<b>27,711,477</b>	<b>174,285,029</b>

- **Case Related costs**

	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
<b>Investigation and Litigation</b>	<b>37,534,337</b>	<b>46,374,894</b>	<b>84,909,886</b>

# Audit Outcomes (1)

- **Opinion:** Unqualified with findings
  
- **Material Finding:** Irregular Expenditure
  - a) **Non-compliance with Supply Chain Management (SCM) regulations**
    - The irregular expenditure covers two financial years: R40m in 2016/17 and R86.1m in 2017/18.
  
    - The 2016/17 audit did not have an irregular finding for the R40m. It was only raised in the 2017/18 FY, retrospectively.
  
    - As a norm, the Commission procures legal, economic and forensic experts from its database, through a deviation process. This was in line with advice received from the National Treasury.
  
    - The AG's finding is that the Commission did not follow a tender process in the appointment of experts. Any deviation from the tender process must obtain prior approval from National Treasury.
  
    - Management met with the Auditor General to resolve this finding; the AG recommended that under the circumstances, the Commission should follow a deviation process by appointing from its database. The meeting resolved that AG and the Commission meet with National Treasury in order to resolve the finding.

# Audit Outcomes (2)

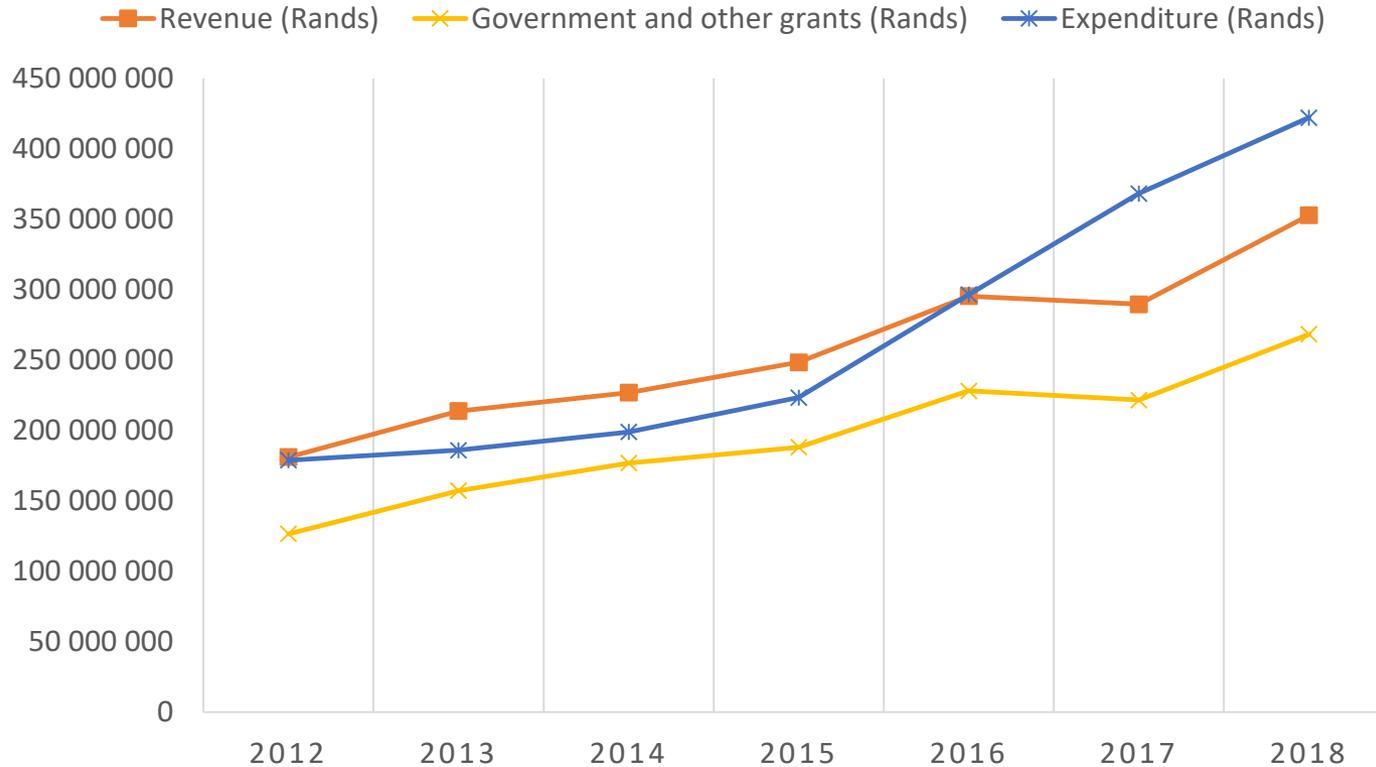
## b) Budget Overspending

- The Commission exceeded its allocated budget by R34.7m.
- The Commission has curtailed its work program in order to contain overspending in the current financial year.

## • Audit Action Plan

- An Audit Findings Action Plan is already developed to address the findings, monitored by management and the Audit & Risk Committee.

## REVENUE VS EXPENDITURE



### The graph above depicts the following:

- Expenditure has been above revenue since the 2015/16 financial year.
- Other income (including fee income) is not sufficient to cover the shortage between the grant allocation and the Commission's expenditure.

# Budget Comparison with other regulators

REGULATOR	YEAR ESTABLISHED	FY	BUDGET	Sector	FUNDING MODEL
<b>NERSA</b>	2005	2016/17	R286m	Energy	Fees & Levies
<b>FSB/FSCA</b>	1991	2017/18	R765m	Finance	Fees & Levies
<b>ICASA</b>	2000	2017/18	R490m	ICT	Grant
<b><i>Competition Commission</i></b>	<i>1999</i>	<i>2017/18</i>	<i>R282m</i>	<i>Economy-wide</i>	<i>Grant</i>

# New Dawn...



  
competition commission  
south africa

  
competition law  
economic policy  
centre

  
competition tribunal  
south africa

Gordon Institute  
of Business Science  
University of Pretoria

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