



*competition* **commission**  
*south africa*

# **ANNUAL PERFORMANCE PLAN 2024/25**

**BASED ON STRATEGIC PLAN 2020 – 2025**

Resubmitted to the Department of Trade, Industry and Competition on 28 March 2024

# MINISTER'S DRAFT FOREWORD

The Annual Performance Plan (APP) identifies the outputs, output indicators and targets that an entity aims to achieve in the new financial year. The Executive Authority is responsible for providing direction on the development and implementation of policies and strategic priorities of entities in line with their respective mandates, and to ensure the APP is aligned to government's priorities.

The Competition Commission (Commission) continues to make a significant contribution in the promotion of inclusive growth, having been more energised by the recent amendments to the Competition Act, including the use of public interest criteria in merger regulation, an important area of the recent amendments to the Competition Act that have been supported by Constitutional Court ruling in the Mediclinic matter that brings a bill of rights lens to Competition Policy. The Commission has also has a critical role to play in addressing the high levels of concentration in our economy.

The 2024/25 APP of the Commission is part of the collective efforts of the dtic group to drive a reimagined industrial strategy, within its defined mandate. The APP contains an ambitious set of targets aimed at realising the vision outlined in the Competition Act, more particularly the renewed commitment to transformation which is evident in the 2019 amendments to the Competition Act.

Using these provisions the Commission aims to empower a larger number of South Africans to contribute towards our shared prosperity. In the year ahead, the Commission will contribute to realisation of growth, transformation and job retention, competitive markets advancing our strategic objective of ensuring fair competition for all South Africans.

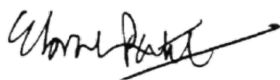
The responsiveness and agility displayed by the Commission during times of external shocks will be required as we navigate the challenging local and global economic environment, effective responses from the Commission will help create the conditions for sustained growth that are most needed when times are hardest.

The APP is drafted in line with the dtic's approach of adopting an output-driven planning system, grounded in the objective of combining the efforts of all entities within the dtic group to create a tangible impact on the reimagined industrial strategy for the benefit of all South

Africans. In the past year I have actively and regularly monitored the implementation of the dtic group of entities' performance plans, ensuring timely fulfilment of key performance indicators. The result has been better coordination of activities amongst dtic entities.

The 2024/25 APP comes amidst a challenging financial environment, not only for the dtic group of entities but for the government and the South African economy as a whole. Implementation of this plan must take account of our fiscal challenges and direct resources in the most efficient manner to achieve objectives. The Commission will be expected to maximise impact within the available resources.

The APP 2024/25 is hereby submitted in accordance with the Revised Framework on Strategic and Annual Performance Plans.

A handwritten signature in black ink, appearing to read 'Ebrahim Patel', with a long horizontal stroke extending to the right.

Ebrahim Patel

Minister of Trade, Industry and Competition

Date: 28 March 2024

## Annex

Output targets within the dtic-group of public entities.

### 2024/25 APP Functional focus of outputs

#### Section: 12.1 Functional focus of outputs

Additional outputs (programmatic, enabling or responsive to immediate needs) have been included in the APP. The following tables indicate the functional focus of these outputs. Output numbering refers to the classification in the consolidated table, found in the APP. Pillar numbering refers to the section in dealing with the aims of industrial policy. Outcome numbers refer to: Industrialisation (1), Transformation (2) and Capable State (3) though it should be seen as indicative, as one Output intended to cover a single Outcome can and does have positive spillover-effects on the other Outcomes.

Number	Output	Pillar	Outcome
Output 1	<b>R350 billion</b> in investment pledges secured across the state	4	1
Output 23	<b>100</b> Investor facilitation and unblocking interventions provided	4	1
Output 17	<b>1</b> new SEZs application considered for designation	4	1,2

#### 12.1.2 Industrial production

Number	Output	Pillar	Outcome
Output 2	<b>R60 Billion</b> in additional local output committed or achieved	2	1
Output 11	<b>R 200 Billion</b> in black industrialist output achieved	1	1,2

#### 12.1.3 Exports

Number	Output	Pillar	Outcome
Output 3	<b>R900 Billion</b> in manufacturing exports	3	1
Output 4	<b>R400 Billion</b> in manufacturing exports to other African countries	3	1,2
Output 5	<b>R9 Billion</b> in exports of Global Business Services (GBS)	3	1
Output 27	<b>20</b> Successful Export Interventions to support the implementation of the AfCFTA	3	1
Output 28	<b>10</b> High impact trade interventions completed	3	1,3
Output 41	<b>5</b> Finalisation of legal instruments under the AfCFTA (Tariff offers, Schedule of Commitments, Rules of Origin, Protocols and Annexes to protocols)	3	3

#### 12.1.4 Industrial support

Number	Output	Pillar	Outcome
Output 6	<b>R32 Billion</b> in support programmes administered by or in partnership with <b>the dtic</b> -group	1	1,2,3
Output 7	<b>R15 Billion</b> support programmes to enterprises in areas outside the 5* main metros	1	1,2
Output 8	<b>R8 Billion</b> in financial support programmes and procurement contracts approved to SMMES, women and youth-empowered businesses	1	1
Output 9	<b>R 8 Billion</b> in financial support programmes to enterprises in labour absorbing sectors	1, 6	1
Output 43	<b>1</b> Operationalization of an Adjudication process for incentive applications	1	1, 3

#### 12.1.5 Transformation

Number	Output	Pillar	Outcome
Output 10	<b>R 900 Million</b> in Equity Equivalent Investment Programme agreements	1	1,2
Output 15	<b>20 000</b> additional workers with shares in their companies	1	1
Output 16	<b>10</b> High-impact outcomes on addressing market concentration-through the implementation of market inquiry outcomes	1	1,2

#### 12.1.6 Jobs

Number	Output	Pillar	Outcome
Output 12	<b>1 Million</b> jobs supported or covered by <b>the dtic</b> group and/or master plans	6	2
Output 13	<b>100 000</b> jobs to be created (50 000 social economy fund part-time or temporary job opportunities and 50 000 full-time jobs)	6	1,2
Output 14	<b>160 000</b> jobs in Black Industrialists firms retained	1, 6	1,2

#### 12.1.7 Energy

Number	Output	Pillar	Outcome
Output 18	<b>R 1 Billion</b> Support to enterprises including SMMES to mitigate impact of load shedding by IDC and NEF	5	1,2
Output 19	<b>1500 Megawatts</b> of energy from projects facilitated	5	1,3
Output 20	<b>550 Megawatts</b> of energy available for the grid	5	1,3
Output 21	<b>3</b> Projects successfully managed through the Energy One-Stop Shop	5	3
Output 22	<b>2</b> Expedited regulatory amendments and flexibility, to promote energy efficiency	5	1,2,3

### 12.1.8 Green economy targets

Number	Output	Pillar	Outcome
Output 29	<b>4</b> Interventions to respond to green trade barriers	5	1
Output 30	<b>1 EV</b> white paper implementation	5	1
Output 31	<b>1</b> Green hydrogen commercialisation framework implementation	5	1

### 12.1.9 Stakeholder engagement and impacts

Number	Output	Pillar	Outcome
Output 25	<b>9</b> Business Forums hosted aimed at supporting increased FDI, exports and outward investment hosted	1	1,2,3
Output 32	<b>1000 Case studies</b> of firms, workers, entrepreneurs, professionals or communities' impacted by <b>the dtic</b> measures; including 12 local films/documentaries telling the SA story	1	1
Output 33	<b>Community outreach</b> programmes by <b>the dtic</b> group in <b>10</b> districts	1	1,2,3
Output 37	<b>2</b> Conferences, summits, and international forums hosted	1	1,2,3
Output 45	<b>10</b> Successful actions completed on price monitoring and excessive pricing or price gouging or price restraint	1	1,2,3

### 12.1.10 Addressing crime

Number	Output	Pillar	Outcome
Output 24	Grey-listing: <b>2</b> Implementation of remedial actions by CIPC of the Financial Action Task Force (FATF) requirements to meet immediate outcome 5 (IO5) in South Africa's Action Plan	1	3
Output 42	<b>1</b> Metal trading system implemented	1,5	1,2,3

### 12.1.11 Red tape and state capability targets

Number	Output	Pillar	Outcome
Output 39	<b>9</b> Impact evaluations of <b>dtic</b> programme or sub-programmes	All	3
Output 40	<b>5</b> High-impact measures to reduce red tape or improve turnaround times in administration of incentives and work of agencies		
Output 44	<b>6</b> Impact assessments or enhancements of trade instruments or measures	2,3	1,2,3

### 12.1.12 Improving the capacity and responsiveness of the state and social partnership

Number	Output	Pillar	Outcome
Output 26	<b>4</b> Pieces of priority legislation amended, tabled or submitted to Executive Authority, Cabinet or Parliament	All	1,2,3
Output 34	<b>8</b> Master Plans managed	All	1,2,3
Output 35	Oversight of IDC, NEF and ECIC to ensure that at least <b>96%</b> of planned KPIs are achieved	All	1,2,3
Output 36	<b>3</b> Projects to assist industrial innovation and support firms	All	1,2,3
Output 38	<b>50</b> Mergers and acquisitions where public interest conditions have been incorporated	All	1,2

# ACCOUNTING AUTHORITY'S DRAFT FOREWORD

The 2024/25 financial year marks the fifth and final year of the Competition Commission's 2020-2025 Strategic Plan. This presents a unique opportunity for the Commission to accelerate on the realisation of stated goals and strategic outcomes of the current strategy. It is also an opportunity to reflect on the outcomes of the implementation of the current strategy with a view of formulating a new Strategic Plan which will define the Commission's strategic goals in its next strategy cycle commencing on 1 April 2025 to 31 March 2030. The 2019 amendments to the Competition Act, which have expanded the mandate of the Commission will be a principal focus for the new 2025-2030 strategy.

The 2024/2025 financial year also marks the 25<sup>th</sup> anniversary of the competition authorities. In September 2024 the competition authorities will celebrate 25 years of competition regulation in South Africa. The Commission will use this momentous milestone to retrace the steps competition authorities have taken in shaping the country's economic landscape, safeguarding consumer interests, and fostering a culture of competition. The Commission's significant interventions in the past 25 years include prosecuting cartel conduct in key sectors of the economy including the bread and construction cartels and price-gouging during the Covid-19 pandemic.

The 2024/25 APP, which represents the last mile in the execution of the 2020-2025 strategy, identifies the key outputs, output indicators and targets that the Commission will achieve in the new financial year. The Commission's APP is guided by the three strategic pillars, namely, the transformative objectives of the Competition Act, the dtic's priorities and other priorities of government which have a strategic link to the Commission's mandate. This APP demonstrates the Commission's commitment to placing the implementation of the amendments to the Competition Act at the centre of its programme and a renewed focus on outcomes and impact of the Commission's work in contributing towards the achievement of inclusive economic growth, the reimagined industrial strategy and a deconcentrated economy.

In implementing this APP, the Commission will focus on markets impacting on low-income consumers and contribute to the creation of opportunities aimed at addressing the entry, participation and expansion of firms owned by historically disadvantaged persons (HDPs) and small and medium enterprises (SMEs) in the economy. This strategic focus has been enabled by the 2019 amendments to the Competition Act which have strengthened the Commission's ability to address concentration and foster greater participation in the economy. A more



competitive economy is critical in the promotion of growth, job creation and an expanded export base. One of the key instruments that will be deployed in driving these initiatives will be Market Inquiries.

During this financial year, the Commission will deepen its focus on food and agricultural market, including its price monitoring work. The Commission plans to shift its focus towards investigations and litigation that achieve greater outcomes in the South African economy. Market Inquiries continue to be an effective tool that the Commission will deploy in this financial year in a manner that is efficient whilst achieving significant outcomes. The Commission will deepen the use of its advocacy function for resolution of cases, promotion of awareness and deepening compliance with the Competition Act. The Commission will also adopt and deploy advanced technologies for the detection, investigation and other operations as part of its response to a more digitised operating environment and more effective enforcement in the digital markets.

On the international front, the Commission will have the privilege of hosting the BRICS International Competition Conference in 2025. This will be the first International Competition Conference after the expansion of BRICS, in 2023. Given the magnitude of the work, preparations for the conference will start in 2024. The Commission will also continue to leverage on its participation in various multilateral bodies to prioritise work on digital markets, food, cross border cartels and other key priorities. Furthermore, the Commission will continue to learn from other competition authorities in the world and contribute to the learnings of these authorities as we share our experiences in various areas of our work.

It must be pointed out that the 2024/2025 APP will be executed in a constrained fiscal environment which unavoidably requires a careful balancing of priorities.

I am grateful to the staff and the management team of the Commission who have tirelessly focused on the realisation of the mandate of the Commission. I would like to also express my appreciation to the Honourable Minister Ebrahim Patel, for his ongoing guidance and his continued confidence in me as I lead the Commission. Together with the Commission's management team and employees, I look forward to the challenges and opportunities that lie ahead as we pledge to protect and promote competition for the benefit of consumers and for a transformed and inclusive economy. All of these efforts are essential for achieving inclusive economic growth.

Doris Tshepe  
Commissioner

## Official Sign-Off

It is hereby certified that this Annual Performance Plan:

- Was developed by the management of the Competition Commission under the guidance of Minister of the Department of Trade, Industry and Competition.
- Considers all the relevant policies, legislation, and other mandates for which the Competition Commission is responsible.
- Accurately reflects the Programs, Key Performance Indicators and Targets which the Competition Commission will endeavour to achieve over the period 2024/25 financial year.

Signature: \_\_\_\_\_


**Mr Amos Moledi, Chief Financial Officer**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Ms Doris Tshepe, Commissioner**

Date: \_\_\_\_\_

Signature:  \_\_\_\_\_

**Minister Ebrahim Patel MP, Minister of Trade, Industry and Competition**

Date: 28 March 2024

## **Abbreviations**

<b>Abbreviation</b>	<b>Full title</b>
<b>ACF</b>	<b>African Competition Forum</b>
<b>ACFTA</b>	<b>African Continental Free Trade Area</b>
<b>BRICS</b>	<b>Brazil, Russia, India, China and South Africa</b>
<b>CAC</b>	<b>Competition Appeal Court</b>
<b>Commission</b>	<b>Competition Commission South Africa</b>
<b>CMS</b>	<b>Council for Medical Schemes</b>
<b>CSD</b>	<b>Corporate Services Division</b>
<b>dtic</b>	<b>Department of Trade, Industry and Competition</b>
<b>EXCO</b>	<b>Executive Committee</b>
<b>FDI</b>	<b>Foreign Direct Investment</b>
<b>GDP</b>	<b>Gross Domestic Product</b>
<b>HMI</b>	<b>Health Market Inquiry</b>
<b>ICASA</b>	<b>Independent Communications Authority of South Africa</b>
<b>ICN</b>	<b>International Competition Network</b>
<b>IPAP</b>	<b>Industrial Policy Action Plan</b>
<b>ICT</b>	<b>Information and Communication Technology</b>
<b>KMS</b>	<b>Knowledge Management System</b>
<b>MANCOM</b>	<b>Management Committee (Divisional Managers, Principals, Heads of Department)</b>
<b>MCD</b>	<b>Market Conduct Division</b>
<b>MOU</b>	<b>Memorandum of Understanding</b>
<b>MTBPS</b>	<b>Medium Term Budget Policy Statement</b>
<b>MTEF</b>	<b>Medium Term Expenditure Framework</b>
<b>M&amp;A</b>	<b>Mergers and Acquisitions</b>
<b>NDP</b>	<b>National Development Plan</b>
<b>NEDLAC</b>	<b>National Economic Development and Labour Council</b>
<b>NGP</b>	<b>New Growth Path</b>
<b>NHI</b>	<b>National Health Insurance</b>
<b>OECD</b>	<b>Organization for Economic Cooperation and Development</b>
<b>OIPMI</b>	<b>Online Intermediate Platforms Services Market Inquiry</b>
<b>OTC</b>	<b>Office of the Commissioner</b>
<b>SADC</b>	<b>Southern African Development Community</b>
<b>SMMEs</b>	<b>Small, Medium and Micro Enterprises</b>

<b>SOCs</b>	<b>State Owned Companies</b>
<b>Tribunal</b>	<b>Competition Tribunal South Africa</b>
<b>TFTA</b>	<b>Tripartite Free Trade Area</b>
<b>WTO</b>	<b>World Trade Organisation</b>

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# INTRODUCTION

The Competition Commission's (the Commission) has set forty two (42) targets in the 2024/25 Annual Performance Plan (APP), these targets are based on five-year Strategic Plan (2020/21 – 2024/25) of the Commission. In the 2024/25 financial year, the Commission will continue with its outcomes-based APP cognisant of the economic environment prevailing at the moment partly as a result of the effects of the energy crisis, challenges in logistics and other global issues including challenges in global supply chains. Through this APP, the Commission will support the government's response on some of these challenges including the economic recovery plan and other interventions. The Commission's three Strategic Outcome-Oriented Goals together with 12 Outcomes in its 2020-2025 Strategic Plan remain a relevant planning framework upon which annual Key Performance indicators and targets have been developed.

The Commission will focus on the implementation of the amendments to the Competition Act through enforcement, market inquiries, merger control and advocacy tools. The Commission will prioritise the implementation of provisions related to buyer power (balancing of bargaining dynamics between firms, setting of rules for fair and equitable access and improved competition outcomes in markets), price discrimination ("likely effect of impeding the ability" of SMEs/HPI's to "participate effectively") and continue to prioritise provisions with respect to effective participation or expansion by SMEs/HDPs in section 12A(3)(c); and greater spread of ownership in section 12A(3)(e). In addition to this, the Commission will also continue with work on priority sectors and prioritisation of various themes in its work.

The Commission is prioritising work that benefit low-income consumers, Historically Disadvantaged Persons and Small & Medium Enterprises. Over and above this, the Commission will prioritise work on Competition on food markets and is currently part of a project being coordinated with other Competition authorities under the auspices of the International Competition Network (ICN). The other work and instruments that are being pursued by the Commission in this area includes a research work with the Department of Agriculture, Land Reform and Rural Development (DALRD), the continuation of the Essential Food Pricing Monitoring Report and the completion of the Fresh Produce Market Inquiry. The recently initiated Poultry Inquiry will be part of the renewed focus on food.

The Commission has put a special focus on the digital markets. During the 2023/24 financial year, the Commission finalised the Online Intermediation Platform Market Inquiry (OIPMI), the



first inquiry to be conducted under the new amendments to the Competition Act. The Commission has prioritised work on digital markets and will this year focus on the finalisation of settlement agreement currently under negotiation with various parties; Oversee the implementation on the outcomes of the inquiry and Implement the Media and Digital Platforms Market Inquiry. In addition to this, the work currently underway on development of Artificial Intelligence based tools for detection of cartels on public procurement and tools for Cartels detection in other areas including on digital markets. The Commission will continue to build its capabilities for effective regulation of these markets and will also build on the work being done by authorities in the world to improve its capabilities.

The Commission has also identified the Township Economy as a priority area. This financial year, the Commission will conduct research to better understand the issues and sharpen its focus and required interventions. The Commission's research work includes collaborative research under the auspices of the International Competition Network (ICN) (including research on Food Markets and Agriculture), research work with other authorities in the continent under the auspices of the African Competition Forum (ACF) (with some of this work expected to contribute to regulations of the African Continental Free Trade Area (AfCFTA). Additionally, case related research work will be prioritised to ensure effectiveness of our enforcement activities.

The capacity, effectiveness and efficiency of the Commission will be prioritised this financial year. During this financial year, the Commission hopes to implement a revised organisational redesign for improved capacity and effectiveness of the Commission, in an efficient and prudent manner. The Commission will also look to invest on its efficiencies by improving its processes and systems so as to achieve agility and improved dynamism in our operations. The Commission will build on the implementation of the Enterprise Resource Planning (ERP) system implemented during 2023/24 and build a robust Management Information System (MIS) in its journey of digitisation of its detection (including detection of Cartels), investigation and litigation operations. In addition to these, the Commission with various partners, is already working on advanced technologies to aid detection of Cartels including on public procurement.

The Commission, will during this financial year begin a comprehensive process to review its current strategy and develop a new Strategic Plan in a process that will be encourage participation and contribution of key stakeholders. The review process will go beyond the current strategy cycle and look at the past 25 years of competition regulation to coincide with

our 25 Year Anniversary. The new strategy will seek to build building on the successes of the current and previous strategies and projecting a new strategic direction in an environment that is defined by high pace of change, increasingly unpredictable and is characterised by more frequent external shocks. The fiscal environment demands more innovation for the ability to do more with less resources. The Commission will integrate its reflections over the last 25 years and celebrations in its normal work in a resource efficient manner.

Below is an overview of the strategy of the Commission:

Our Vision, Mission and Strategic Goals are illustrated below:

**Figure 1: COMMISSION'S VISION & MISSION & GOALS**

	<h2 style="text-align: center;">VISION</h2>		<h2 style="text-align: center;">MISSION</h2>
<p style="text-align: center;"><b>A growing, deconcentrated, and inclusive economy</b></p>		<p style="text-align: center;"><b><i>To promote a regeneration of the economy and maintain competition whilst advancing public interest objectives to enhance economic participation for all South Africans.</i></b></p>	
<p>Our vision is for the realization of a growing and inclusive economy. Economic growth remains a particularly compelling vision to aspire towards in the context of the Covid-19 pandemic, where there are prospects of an economic downturn. The Commission will play its role to ensure that there is healthy competition between firms, new businesses can emerge, existing businesses can expand, concentration levels in markets are lowered and wherein all citizens are able to participate in the economy.</p>		<p>In a depressed economic environment, the Commission will support efforts by Government aimed at economic regeneration. The Commission will use its tools to ensure that viable, competitive businesses can remain in the market. The Commission will advance public interest objectives through its work, with a particular consideration for small and black-owned businesses. Our efforts will be aimed at fostering job-creation, industrialization and export promotion whilst expanding the opportunities for SMMES and the participation of blacks, youth, and women in the economy.</p>	
<div style="display: flex; align-items: center;">  <h2 style="margin: 0;">OUTCOMES BASED STRATEGIC GOALS</h2> </div>			
<ol style="list-style-type: none"> <li style="text-align: center;">1. Enforcing and regulating towards economic growth and enhanced economic participation.</li> <li style="text-align: center;">2. Advocating for improved compliance and pro-competitive public policy outcomes.</li> <li style="text-align: center;">3. A people-centric high-performance organisation.</li> </ol>			

Our Strategic Outcomes are illustrated below:



## STRATEGIC OUTCOMES

To achieve the above goals, the Commission will pursue the following outcomes:

- 1) Efficient and effective merger regulation & enforcement
- 2) Competitive, Contestable and Deconcentrated Markets
- 3) Improved public interest outcomes
- 4) Improved compliance & awareness
- 5) Existing competitive small and large businesses remain in the market
- 6) Improved understanding of market dynamics in priority sectors
- 7) Improved co-ordination on the application of economic policy and competition policy
- 8) Increased importance of developmental perspectives in domestic and international competition law discourse
- 9) Sound Corporate Governance
- 10) Secure, harmonious, and conducive working environment
- 11) Highly motivated, engaged, and productive workforce
- 12) Responsive corporate services systems to support employees.

In fulfilling its mandate and vision, the Commission has identified 44 performance indicators which it seeks to achieve in the MTEF. This Annual Performance Plan for 2024/5 comprises three sections: Part A: Our mandate, which deals with the mandate of the Commission as per terms of the Competition Act and all other applicable legislation and policies, Part B: Our strategic focus- this section provides an analysis of developments in the external and internal operating environment, providing context to the conditions in which the strategy has been developed; Part C: Measuring our performance - this section deals with the work program which the Commission has set for the next three years, along with the budget.

# Part A: OUR MANDATE

## 1. Updates to the Relevant Legislative and Policy Mandates

### 1.1 The Competition Act

The Commission is one of three institutions established in the Competition Act ( 89 of 1998 as amended (“Competition Act”) alongside the Competition Tribunal (“Tribunal”) and the Competition Appeal Court (“CAC”). The Commission is an investigative and prosecutorial authority, the Tribunal is an adjudicative authority, and the CAC is an appeal body over competition matters.

The Commission is empowered to investigate, control, and evaluate restrictive business practices, abuse of dominant positions, conduct market inquiries, conduct impact studies, and review mergers in order to achieve an efficient and competitive economic environment, balancing the interest of workers, owners, and consumers, and focused development for all South Africans. The stated purpose of the Competition Act is to:

- Provide all South Africans equal opportunity to participate fairly in the national economy;
- Achieve a more effective & efficient economy in South Africa;
- Provide for markets in which consumers have access to and can freely select quality & variety of goods & services;
- Create greater capacity & environment for South Africans to compete effectively in international markets;
- Restrain trade practices which undermine a competitive economy;
- Regulate the transfer of economic ownership in keeping with the public interest; and
- Establish independent institution to monitor economic competition.

Section 21(1) of the Competition Act provides more detail on the responsibilities and mandate of the Commission. The Commission’s responsibility is to amongst others:

- Implement measures to increase market transparency.
- Implement measures to develop public awareness of the provisions of the Competition Act.
- Investigate and evaluate alleged contraventions of Chapter 2.
- Grant or refuse applications for exemptions in terms of Chapter 2.
- Authorise, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3.
- Conduct impact studies in terms of section 21A.

- Negotiate and conclude consent orders in terms of section 63.
- Refer matters to the Competition Tribunal, and appear before the Tribunal, as required by the Competition Act.
- Negotiate agreements with any regulatory authority to co-ordinate and harmonise the exercise of jurisdiction over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of the Competition Act.
- Participate in the proceedings of any regulatory authority.
- Advise, and receive advice from, any regulatory authority.
- Over time, review legislation and public regulations, and report to the minister concerning any provision that permits uncompetitive behaviour. and
- Deal with any other matter referred to it by the Tribunal.

## **1.2 Updates to institutional policies and strategies**

### ***1.2.1 Implementing the amendments to the Competition Act***

The Competition Act was amended to, amongst other things, introduce provisions that clarify and improve the determination of prohibited practices relating to (1) restrictive horizontal and vertical practices, (2) abuse of dominance and price discrimination, (3) strengthening the penalty regime, (4) introducing greater flexibility in the granting of exemptions that promote transformation and growth, strengthening the role of market inquiries and merger processes in the promotion of competition and economic transformation – through addressing the structure of markets, (5) protecting and stimulating the growth of small and medium-sized businesses and firms owned and controlled by historically disadvantaged persons, persons, (6) and promoting a greater spread of ownership, in particular by historically disadvantaged persons and workers. The recent amendments to the Competition Act came into operation on 12 July 2019.

Following the amendments, the Commission has published and will continue to publish guidelines in respect of key amendments such as the Revised Public Interest Guidelines for merger control. The Guidelines will provide greater business certainty and aid compliance with the Competition Act along with its amendments. The Jurisprudence is being developed in various areas of the amendments, such as excessive pricing and merger control. The Commission continues to prioritise case referrals in areas of the amendments where no or limited jurisprudence exists to enable the development of that jurisprudence and greater legal certainty.

The Commission has begun the task of implementing the amendments to the Competition Act which has resulted in more complex assessment of merger transactions and an increased number of transactions approved with conditions as a result of section 12A (3)(e) of the amendments, including an increasing number of conditional approvals related to Employee Share Ownership Plan (ESOP) and HDP transactions. The Commission has made significant headway with the ongoing market inquiries. In the 2024/25 financial year, the Commission will be conducting four market inquiries with one due for completion in the 2024/25 financial year and the three in the subsequent financial years. The completion of these inquiries is anticipated to bring about significant changes in the applicable markets since the Commission can take remedial action where there are findings of adverse effects. Furthermore, the Commission will initiate two additional market inquiry in the 2024/25 financial year. The Commission is investing a substantial number of resources in market inquiries to ensure that they are conducted efficiently and completed timely.

In this regard, the Commission is establishing a Market Inquiry division tasked with giving effect to the market inquiry provisions in the Competition Act. This new division will also manage the implementation of recommendations from completed market inquiries. The establishment of the new division will deal with the current overreliance on secondments from other divisions to resource market inquiries and enable efficiencies in the management of inquiries. The Commission will also be undertaking more work in abuse of dominance cases. The Commission will initiate new complaints with a public interest focus in priority sectors in line with the new amendments. These will be first of many cases dealing with the new provisions for both investigation and litigation precedent. The Commission will build on the momentum that has become more apparent during the 2023/24 financial year as evidenced by initiations and referrals in critical areas of the amendment to the Competition Act.

The Commission will also conduct an impact study in the 2024/25 financial year under the new provisions of the Competition Act.

### ***1.2.2 Economic Reconstruction and Recovery Plan 2020***

The Commission will support the Economic Reconstruction and Recovery Plan, 2020, and the dtic's outputs that are relevant to the work of the Commission. The Commission's objectives are set out in the Competition Act. As an investigative body, the Commission can determine the outcomes of these objectives by aligning its work to meet the objectives of the National Development Plan (NDP) and the dtic.

### 1.2.3 Priority Sectors

The Commission’s priority sectors for the 2020 – 2025 Strategic Planning period are summarised in the table below. The priority sectors are identified for enforcement action or advocacy, or market inquires or for other tools such as impact assessments. A brief rationale on the identified sector is provided, with an indication of the potential sub-sectors which the Commission may focus on.

**TABLE 1: PRIORITY SECTORS**

Sector	Rationale	Sub-sectors
<b>1. Agriculture, Food &amp; Agro-processing</b>	<p>The sector continues to be a priority due to its significance on the lives of South Africans, particularly the impact of high prices on the poor. The sector has huge potential for job creation and SME participation but is characterized by developing and legacy competition concerns. The Commission intends to address issues of access (entry) and participation in the value chain, with a focus on fresh produce markets, retail, and processing levels. The issue of land (agriculture) and economic participation will also be a focus area, especially the role of financing as a constraint in facilitating increased participation. The Commission will also focus on merger public interest considerations as a tool through which it can contribute to new entry and inclusive participation. The Commission will continue to focus on food inflation (particularly in the grains, feed, proteins subsectors). The Commission’s work in this sector will be through enforcement and advocacy tools (including research and impact assessments) but considers the sector as suitable for market inquiries as well.</p>	<ul style="list-style-type: none"> <li>• Meat (red meat, poultry, fish)</li> <li>• Fresh Produce (Fruits &amp; vegetables)</li> <li>• Dairy value chain</li> <li>• Breads and cereals</li> <li>• Basic food products and/or other “essential” foods</li> </ul>
<b>2. ICT &amp; Digital Markets</b>	<p>Digital markets entail technology-driven businesses, including platform-based business models. These are typically multi-sided markets with high network effects and economies of scale of such size that it renders competition issues more complex. Digital markets are characterized by high rates of investment and innovation, which lead to rapid technological progress in the sector, and to increased disruptive innovation, in many other markets that adopt to technological changes. The increasing prominence of the digital economy requires competition authorities to devote more time in understanding the dynamics emerging, and to regulate in a manner that strikes a balance between supporting</p>	<ul style="list-style-type: none"> <li>• ICT infrastructure</li> <li>• Data</li> <li>• Broadcasting</li> <li>• Platforms, Big Tech, FinTech &amp; E-commerce</li> <li>• Infant industries</li> </ul>



Sector	Rationale	Sub-sectors
	<p>the efficiencies and consumer benefits often arising whilst addressing anti-competitive outcomes such as concentration and abuse of dominance. The competition issues arising in digital markets intersect with other regulations (e.g., privacy laws, intellectual property, financial regulation, tax, labour etc.) and thus require a coordinated approach among regulators. The Commission will be contributing to the policy discourse in regulating these markets whilst also monitoring for anti-competitive conduct. Further, global developments in respect of the role of online search and social media platforms on competition in related markets such as news publishers, AdTech, among others require closer scrutiny as they raise not only potential competition concerns in these markets but constitutional issues as well. Other areas of focus include data and fintech as well as collusive algorithms. A market inquiry may be an ideal tool to use to probe this sub-sector.</p> <p>South Africa's ICT market is highly concentrated, both at the wholesale and retail levels. The Commission has established that data (connectivity) prices are very high, particularly for mobile prepaid data. There is also lack of competition in subscription television broadcasting services, with one dominant player in the market. The market remains concentrated, even after issuing of various licenses by the sector regulator. As such, the Commission will continue its focus on the ICT sector.</p>	
<p><b>3. Energy</b></p>	<p>The South African energy sector is highly regulated and is currently the subject of policy reforms in most of its sub-sectors. The Commission will be monitoring the unbundling of Eskom and the effect of the restructuring on the market. Competition issues of focus will also include the ability of IPPs to access the grid and distribution channels, the relationships between Eskom, Independent Power Producers and municipalities. Further, pricing dynamics in the electricity market/value chain will be monitored. Given the energy crisis in the country and globally, the Commission will advocate for the development of a supportive and pro-competitive regulatory framework and competitive pricing of alternatives and upstream inputs; accelerate the investigation</p>	<ul style="list-style-type: none"> <li>• Renewables/ IPPs</li> <li>• Electricity IPPs</li> <li>• Gas (LPG, Natural Gas)</li> </ul>

Sector	Rationale	Sub-sectors
	<p>and/or prosecution of pricing or bottleneck cases; and engage in proactive research and intelligence gathering from cases to understand dynamics in the energy sector.</p> <p>Other areas within the energy sector the Commission is prioritizing is Gas, including ensuring implementation of LPG market inquiry recommendations.</p>	
<p><b>4. Transport &amp; Automotive</b></p>	<p>A well-integrated and efficiently functioning transport system is key to enabling and unlocking economic growth, and an important mechanism in fighting poverty, given its financial significance on poor households. The South African transport system (roads, railway and ports) is diverse and largely regulated by SOCs, national, provincial and local governments. The sector is characterized by inefficiencies due to apparent lack of coordination between different spheres of government. The recommendations arising from the market inquiry into Public Passenger Transport will be important in addressing some of the challenges in the transport network.</p> <p>Ongoing investigations into Ports and Rail will also continue, with the aim of addressing behavioural and legacy issues arising in these sub-sectors.</p> <p>The Commission will also continue its enforcement work in the automotive sector during the strategy period, with an emphasis on enforcement action in automotive aftermarkets. The work in automotive aftermarkets work is a result of more than a decade of complaints from the public regarding parts distribution, retail, and service/repairs of vehicles. Component manufacturing will also remain a focus area.</p>	<ul style="list-style-type: none"> <li>• Automotive Aftermarkets: services &amp; repairs, short-term insurance</li> <li>• Automotive Components</li> <li>• Ports &amp; Rail</li> <li>• Public Passenger Transport</li> </ul>
<p><b>5. Construction services, Property &amp; Infrastructure</b></p>	<p>In the recent past, the Commission undertook extensive work in the construction sector in relation to anti-competitive conduct that manifested prior to 2010 FIFA world cup construction projects. The Commission has succeeded in prosecuting firms for their anti-competitive conduct in this sector. The government also prioritised this sector and has successfully reached pro-transformation settlement agreements with various market participants. However, competition problems persist, with the Commission still receiving complaints relating to conduct in the various sub-sectors of</p>	<ul style="list-style-type: none"> <li>• Construction services</li> <li>• Residential estates</li> <li>• Property finance</li> <li>• Built Environment Professionals</li> </ul>

Sector	Rationale	Sub-sectors
	<p>construction services. The Commission also continues to investigate several bid-rigging complaints, and this continues to be a focus for advocacy and enforcement action.</p> <p>During this period, the Commission will also pay attention to Built Environment professionals: their role in construction projects and the role of the Councils with regards to promoting entry and participation.</p> <p>Another area of focus will be residential estates with regards to the rules and practices of role-players, which may have competition implications.</p>	<ul style="list-style-type: none"> <li>• Bid-rigging</li> </ul>
<p><b>6. Banking &amp; Financial Services</b></p>	<p>The banking and finance sector have the potential to contribute towards greater inclusion of historically marginalized groups – by extending access to banking and insurance services, by helping to promote and mobilize household savings, and by easing broader access to credit. The sector also has a crucial role as a provider of potentially dynamic intermediate services. The Commission will continue its enforcement focus in addressing contraventions of the Competition Act which arise, including the banking cartel relating to foreign exchange market.</p> <p>The Commission will also follow policy reforms in the national payments system to identify competition issues which can be advocated for. Equally, reforms that are underway in the Audit Profession which have a competition element will be monitored.</p>	<ul style="list-style-type: none"> <li>• Banking</li> <li>• Property finance</li> <li>• Insurance</li> <li>• Audit Profession</li> </ul>
<p><b>7. Manufacturing</b></p>	<p>The manufacturing sector is important for the South African economy given its contribution towards the GDP and the number of employees that the sector absorbs. Manufacturing includes Intermediate Industrial Inputs (IIP) used to manufacture different outputs in various sectors. The Commission's study into concentrated markets revealed that the sector is highly concentrated. During this strategy period, greater focus would be in the value chains of various industries in the broader manufacturing sector, particularly where there is high concentration. A market inquiry may be an ideal tool to use to probe into these value chains.</p>	<ul style="list-style-type: none"> <li>• Chemicals, pesticides and agrochemicals</li> <li>• Forestry/paper/pulp/corrugated packaging</li> <li>• Steel/fabricated metals</li> <li>• Plastic</li> </ul>

Sector	Rationale	Sub-sectors
<b>8. Healthcare</b>	<p>The healthcare sector is undergoing major policy reforms with the proposal of a National Health Insurance. Commission will be advocating for the recommendations arising in the Market Inquiry on Private Healthcare, which are crucial to the achievement of an efficient universal healthcare system as proposed in the NHI. Equally, mergers in this sector, will be monitored to prevent further concentration, particularly in relation to facilities.</p> <p>The investigation into various pharmaceutical drugs will continue in this period.</p> <p>Given the developments in respect of the NHI, the Commission will focus on developments in the primary healthcare sub-sector, which is likely to form a critical component of the NHI. This will be done through research to better understand the evolving structure and products/service offering and strategies within the retail pharmaceutical space, increased use of merger control to monitor developments in this market, particularly in respect of contractual arrangements (DSPs, exclusivity), and focus on conduct that leads to retail exclusion of independents. Further, the Commission will focus on the diagnostics level of the sector, with a particular focus on the cost drivers of pathology/radiology services pricing and market structure dynamics.</p>	<ul style="list-style-type: none"> <li>• Facilities</li> <li>• Pharmaceuticals</li> <li>• Medical Equipment</li> <li>• Medical and hygiene supplies at retail level</li> </ul>

### 1.3 Updates to relevant court rulings

The following court rulings are worth highlighting:

**TABLE 2: KEY COURT RULINGS 2019/20 - 2023/24**

Item	Case	Contribution to Jurisprudence
Abuse of dominance		
1.	Competition Commission v Media 24	Average total cost (ATC) plus intention has no place in the scheme of section 8(c) of the Competition Act.  Average Avoidable Cost (AAC) may be regarded as an appropriate cost benchmark for a predation case based on section 8(c) of the Competition Act.
2.	Competition	Likely foreclosure test, i.e. foreclosure may be actual or

	Commission v Computicket	potential.
3.	Sasol v Competition Commission	The test for excessive pricing involves, firstly, establishing the actual price, secondly, determining the economic value of the product (made up of capital and operational costs), evaluating whether the relationship between the actual price and economic value is reasonable, and assessing consumer detriment.
4.	Uniplate v Competition Commission	The test of likely foreclosure also requires factual evidence of that likely foreclosure.
5.	Competition Commission v Dis-Chelm	A pandemic may confer market power where there is no dominance in ordinary circumstances.
6.	Babelegi v Competition Commission	A pandemic may confer market power - "lucky monopolist theory". CAC set aside Tribunal's penalty by regarding Babelegi's size, the very few masks sold at an excessive price, and the harm Babelegi had suffered because of its own excessive pricing conduct
7.	Competition Commission v Tsutsumani Business Enterprises	Tribunal confirmed the principle of inferential market power in Babelegi, and held that context always matters, and in the context the pricing conduct can be used to infer such dominance. Owing to the pandemic, and the resultant supply shortage an SMME had the power to act independently of its competitors on the supply side and independently of the customer and therefore was dominant. It established that excessive pricing is possible within the context of a public procurement process.
8.	Competition Commission v Ampath, Lancet and Pathcare	Consent agreements in terms of which the 3 major pathology labs agreed to significantly reduce their prices for PCR and rapid antigen Covid-19 tests.
9.	Competition Commission v Coca-Beverages Africa	The CAC clarified the test for breach of merger conditions under section 39(2)(b) and endorsed the BB Investments test, that tests for the merger specificity of retrenchments.
10.	Emedia Investments (Pty) Ltd South Africa v Multichoice (Pty) Ltd and Another	The CAC, within the context of interim relief proceedings and within the broader context of the Act, endorsed a context based and transformative constitutional approach.
Cartel		
11.	Bank of America Merrill Lynch & Others v	South African competition authorities have jurisdiction to prosecute international cartels which have an effect within South

	Competition Commission	Africa – qualified effects test (foreseeable, direct or immediate, and substantial effect in the Republic) and sufficient connecting factors to establish subject-matter jurisdiction and personal jurisdiction.
12.	Competition Commission v Omnico (Pty) Ltd & Coolheat Cycles Agencies	Passive participation in cartel conduct / publicly distancing oneself from conduct.
13.	Competition Commission v Standard Bank;  Competition Commission v Waco Africa Pty Ltd & others	A ruling on jurisdiction must precede other orders, including an order to disclose a record of investigation in a review.
14.	Competition Commission v Pickfords Removals SA (Pty) Ltd	Section 67(1) is a procedural time bar, capable of condonation. Section 85(1)(c)(ii) includes the power of the Tribunal to condone non-compliance with section 67(1) on good cause shown.
15.	Competition Commission v Stuttafords Van Lines Gauteng Hub (Pty) Ltd and others	A “uniform approach” or uniform pricing among cartel members is required to establish consensus. The evidence must match the pleaded case in the referral and the Competition Tribunal cannot have regard to evidence outside of this.
16.	Competition Commission v Irwin & Johnson and Another	The CAC reiterated that characterization is an inherent part of the interpretation of section 4(1)(b) of the Act, and that agreements sought to be impugned need to be interpreted in a business-like manner.
17.	Tourvest Holdings (Pty) Ltd v Competition Commission and Another (195/CAC/Oct21) [2022]	The CAC reiterated that Section 4(1)(b) properly construed, requires the parties to be in an actual or potential horizontal relationship at the time that they commit the offence in issue/ Misdirection to conduct inquiry on the basis that the horizontal relationship can be located in the impugned conduct itself. The concept of characterization was reaffirmed
<b>Cartel – Initiation</b>		
18.	Omnia Fertiliser Ltd v Competition Commission	Restatement of Yara principles - valid referral of complaint on the basis of a tacit initiation.
19.	Power Construction	Validity of industry wide initiation. Re-affirm the principles in

		Woodlands that it is permissible to add a firm to an existing complaint, and Yara/Omnia principles that an initiation does not require any formality.
20.	Mondi Ltd & Another v Competition Commission	Access to the record of the decision to initiate pending review.
21.	Competition Commission v Beefcor (Pty) Ltd and another	CT8 withdrawal of a complaint initiated in terms of s49B (1) brings proceedings to an end and that complaint referral cannot be reinstated.
Leniency		
22.	Blinkwater Mill (Pty) Ltd v Competition Commission	Confirmation of Commission's discretion in applying its Corporate Leniency Policy.
23.	Competition Commission v Allens Meshco	A marker and leniency applications are separate and distinct from one another.
Single Economic Entity		
24.	Delatoy Investment v Competition Commission	A "group of firms" may constitute a "firm".
25.	Shoprite Checkers and Computicket v Competition Commission	The question whether the doctrine of a "single economic entity" applies to section 8 of the Act must be determined at trial stage not at exception stage. CAC set aside findings made by the Tribunal that the Commission could not prosecute both the parent company and its wholly owned subsidiary (i.e., a single economic entity) for abuse of dominance under section 8 of the Competition Act. Section 8 prohibits a dominant firm in the market from abusing its dominance by, among other things, engaging in conduct which has the effect of excluding its competitors from the market.
26.	Competition Commission v Blue Collar Occupational Health	Two firms prosecuted on unilateral conduct on the basis that there in a partnership for the purposes of Competition Law. The partnership need not be in existence at the beginning of the conduct as one needs to consider conduct as a whole.
Characterization		
27.	Dawn Consolidated Holdings (Pty) Ltd and Others v Competition Commission	Development of the principle of characterization.

28.	Africa Pest Prevention CC v the Competition Commission	Characterization on the basis that an individual representing two different firms cannot collude with herself.
29.	Competition Commission v I & J	Characterization of restraints in a manufacturing agreement as vertical and not horizontal.
30.	Aranda Textile Mills v Competition Commission	Constitutional compliance requires a characterisation enquiry. The absence of a characterisation enquiry could produce a false positive. The conduct must be found to fall within the object of section 4(1)(a) or (b) of the Competition Act.
<b>Administrative Penalty/Settlement</b>		
31.	Competition Commission and ArcelorMittal South Africa Ltd	Highest penalty imposed on a single firm in a settlement agreement.
32.	Competition Commission v Life Healthcare Group & Joint Medical Holdings Ltd	Highest penalty imposed for failure to notify and prior implementation of a merger.
33.	School Uniforms	The Commission entered into settlement agreements with major school groups which undertook to conduct their school uniform procurement processes in a fair and competitive manner.
34.	Competition Commission v Law Society of the Northern Provinces	Consent Agreement in terms of which the law society agreed to repeal its anti-competitive rules and guidelines.
35.	Data Market Inquiry Consent Agreements	Consent Agreements in terms of which Vodacom and MTN agreed to reduce its retail data prices, zero-rating public sites, provide access to free basic data and enhance data pricing transparency to its customers.
36.	Competition Commission v Wesgrow Potatoes (Pty) Ltd and HZPC Holland B. V	Settlement Agreement provided a remedy in terms of which seed growers will be able to access the Mondial seed potato variety.
37.	Competition Commission v Foskor (Pty) Ltd	Tribunal confirmed that a consent agreement may be amended by the Commission and a respondent due to changed market circumstances. However, such an amendment requires confirmation by the Tribunal.
38.	Life Wise (Pty) Ltd t/a Eldan Auto Body v	The CAC and the Tribunal asserted the principle of finality of court orders, including consent agreements, within the context



	Competition Commission of South Africa	of a variation application.
Merger Notification		
39.	Competition Commission v Hosken Consolidated Ltd and Tsogo Sun Holdings Ltd	Once a firm has acquired control over another firm in any of the instances contemplated by section 12(2)(a) – (g), the crossing of a further “bright line” does not result in the acquisition of control it did not have before.
40.	SOS SABC & Multichoice v Competition Commission	Confirmation of Commission’s powers to investigate the notifiability of mergers.
41.	MIH eCommerce Holdings (Pty) Ltd & We Buy Cars (Pty) Ltd v Competition Commission	The theory of harm related to potential entry is an historic exercise, not a counterfactual of likely entry if the merger is prohibited.
42.	Shoprite Checkers	Tribunal confirmed that we can conclude different consent agreements with competitors following a market inquiry.
43.	Akzo Nobel N.V. acquisition of Kansai Plascon Africa Ltd and Kansai Plascon East Africa (Pty) Ltd	The Tribunal confirmed the Commission’s decision to prohibit this transaction. The Commission found that the merger combines two major brands in decorative , namely Dulux and Plascon which are the closest and effective competitors of each other. Full reasons of Tribunal are pending.
44.	Corruseal	Confirmed that behavioural conditions are insufficient to address permanent structural change in a market which poses an anti-competitive threat of indefinite duration
Merger control – conditions		
45.	Joyson/Takata merger	Merger control cannot be used to preserve the Commission’s ability to enforce its cartel prosecutorial functions, in unique circumstances such as when the target firm is likely to exit the market absent the merger.
46.	Distell v Ab InBev	Approach to the interpretation of merger conditions – merger conditions must be interpreted consistently with the Tribunal’s reasons for its decision.
Mergers – Public interest		
47.	Sibanye / Lonmin merger	Assessment of merger specific retrenchments – confirmation of Momentum principles, in that a rational process has to be

		followed in order to determine the number of potential job losses.
48.	Burger King	The merger would have resulted in a dilution of BEE shareholding from ca.68% to 0% in Burger King SA. Merger conditions agreed after the Commission prohibited merger, signalling the importance of employment, investment and the greater spread of ownership when assessing public interest.
Mergers – Analysis		
49.	Imerys SA (Pty) Ltd and Andalusite Resources (Pty) Ltd v Competition Commission	If a merger raises a substantial prevention or lessening of competition, the choice whether to prohibit or approve the merger with conditions is an exercise of true discretion by the tribunal.
50.	MIH eCommerce Holdings (Pty) Ltd & We Buy Cars (Pty) Ltd v Competition Commission	The theory of harm related to potential entry is an historic exercise, not a counterfactual of likely entry if the merger is prohibited.
51.	Mediclinic v Competition Commission	The Constitutional Court in its judgment reasserted the centrality of the Constitutional, in particular section 27 of the Bill of Rights in interpreting the Competition Act.
Access to information		
52.	Group 5 v the Competition Commission	The term “any person” in Commission’s Rule 15 includes a litigant, and a litigant is entitled to access the Commission’s record, save for any documents that are restricted <sup>1</sup> .
53.	Competition Commission of South Africa v Group Five Construction Ltd	The Constitutional Court found that the High Court and the CAC does have jurisdiction to hear the review, however, went further and ultimately held that the Tribunal did not have jurisdiction to adjudicate a Promotion of Administration of Justice Act (PAJA) or legality review even in the event that it relates to the interpretation and application of the Tribunal's exclusive jurisdiction pertaining to chapters 2, 3 and 5
54.	Competition Commission v Standard Bank (ZACC)	Commission Rule 15 which is a public access right does not apply to requests for documents in Tribunal proceedings, as such requests must be dealt with using Tribunal rules.
Tribunal Rules		

<sup>1</sup> This has now changed, as Commission’s Rule 15 was amended on 25 January 2019.

55.	Goodyear v the Competition Commission	The Tribunal's rules do not alter substantive law. They remain subordinate to the Competition Act. Tribunal's rules do not have the legislative standing to negate an agreement reached between the Commission and the complainant to extend the period of investigation in terms of the Competition Act.
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## PART B: OUR STRATEGIC FOCUS

### 2. Updated situational analysis

#### 2.1 External environment analysis

##### 2.1.1 Economic outlook

As per National Treasury, longstanding structural constraints continue to limit economic performance. In recent years, freight rail capacity and throughput have declined, constraining growth exports, while large scale and prolonged power cuts have plagued mines, factories, farms and households. Despite a recent improvement, private investment growth has declined over the past decade. GDP growth is expected to average only 1.4% between 2024-2026. The rand has weakened sharply relative to other emerging market currencies, contributing to inflationary pressures that disproportionately affect poor households.

In many emerging markets like South Africa, fiscal space is expected to be constrained in 2024 due to weak revenues and rising debt-servicing costs. Elevated debt, tight financial conditions and tepid economic growth is putting pressure on fiscal sustainability while increasing vulnerability to external financial shocks. The fiscal situation is also detracting from other government work as policymakers across many countries face trade-offs between maintaining fiscal stability and other priorities. These include investment in reaching Sustainable Development Goals (SDGs).

Despite this, South Africa is showing strong growth in a number of sectors: Fintech/Insurtech driving financial services; Agricultural output expansion and export growth (incl. agritech); Private renewable energy unlocked with reforms; Logistics and delivery on the back of the online economy; Data access products (fibre, FWA) along with cloud computing; Entertainment content production on back of streaming wars; Tourism recovery from Covid and Mining has prospects on back of information age/renewable minerals. On the other hand, national infrastructure failures have challenged some of the traditional sectors.

Changes in sectoral structure and focus:

- Economic environment may drive consolidation in some sectors and/or a shift in focus

to low-income markets to drive growth: fibre markets seeing both consolidation and a shift to low income areas; primary healthcare and pharmacy seeing merger creep and adjacent acquisitions to position for NHI; automotive retail consolidating around a few big corporates; grocery retail push is mostly in the low-income areas; fintech push for solutions for unbanked and SME/township economy.

On top of this, expansion of online economy and AI is expected to change markets in terms of greater data analytics and personalised offerings.

Globally, there is continued shocks affecting oil price and trading impacting on inflationary trends in the country. China seems to be growing slow in contrast to US with respect to technology and renewable energy boom. There is also a major shift from globalisation to localisation for country specific reasons and customisation. Climate change has been in the fore with more emphasis on green outcomes. There is a shift in attitudes to emphasising sustainability alongside consumer welfare. Further, competition agencies across have embraced an increased use of technology in enforcement. Continentally, AfCFTA is set to accelerate with first steps in commitments to reduce tariffs and establishing implementing institutions. AfCFTA Competition Protocol will start to be operationalised through regulations and establishing the Authority.

### ***2.1.2 Prioritising economic recovery***

The Economic Recovery and Reconstruction Plan expressly recognizes the pivotal role of competition and the reduction of barriers to entry in fostering more inclusive growth. By fostering a competitive business environment, the plan aims to stimulate innovation, drive efficiency, and create opportunities for a diverse range of participants. Removing barriers to entry ensures that new and smaller enterprises can enter the market, fostering economic inclusivity and contributing to overall growth. Through these measures, the recovery plan seeks to build a resilient and dynamic economy that benefits a broader spectrum of stakeholders, ultimately leading to a more inclusive and sustainable economic recovery.

The Commission remains steadfast in its commitment to the recovery plan. While the overarching mandate aligns with the key structural reforms outlined in the recovery plan, the Commission recognises the need for strategic prioritisation in its mandated activities. The Commission is dedicated to identifying and addressing key themes that not only contribute to its broader mission but also align with the goals of the recovery plan. In the prioritisation

process, the focus is on key themes that have a substantial impact on low-income consumers, promote greater inclusion in the economy, and support broader government programs.

Following the recent amendments to the Competition Act, the prioritisation emphasizes specific objectives, notably the reduction in concentration and the facilitation of increased participation by Small, Medium, and Micro Enterprises (SMMEs) as well as firms owned by historically disadvantaged persons (HDPs). This strategic emphasis is in direct harmony with the objectives of the recovery plan, highlighting the Commission's dedication to structural reform and fostering inclusive growth. By proactively addressing concentration issues and enhancing the involvement of SMMEs and HDPs, the Commission aims to contribute significantly to the overarching goals of the recovery plan.

For the upcoming financial year, the Commission will prioritise actions that will support the next phase of economic recovery. Such priorities are reflected in the budget allocation and APP targets set for the year. These include:

- Fast track exemption processes where cooperation amongst firms is required to support localisation and export promotion, small businesses, or firms controlled or owned by historically disadvantaged persons whilst providing sufficient safeguards against harmful collusive conduct;
- A strong emphasis on implementing key amendments to the Competition Act which promote inclusion and the reduction in concentration levels. This includes the issuing of guidelines setting out what conduct is seen to contravene the amended Competition Act to and ensuring compliance across the business community. It also includes prioritizing market conduct enforcement generally, and more specifically of the new provisions in the Competition Act;
- Greater use of market inquiries to promote more competitive and inclusive markets in key sectors that may support economic recovery. Inquiries will seek to unlock barriers to greater participation and the competitive expansion of these markets;
- General prioritisation of digital markets and communications infrastructure as the pandemic accelerated the shift to online markets where lower data costs and fair access to online trading platforms is essential for South African businesses generally, and SMMEs and HDPs owned firms more specifically, to benefit from the fourth industrial revolution; Some of the sub-sectors with competition concerns in focus include data and fintech, collusive algorithms, and AdTech; and
- Focus on priority sectors, aligned with Re-imagined Industrial Policy and the recovery plan. The Commission will focus on sub-sectors that are important for the economic recovery

process and this will include research initiatives that will contribute to a better understanding of the competition dynamic in the energy sector (particularly, alternative energy, electricity reform, energy inputs), combating food inflation (grains, feed, proteins), unlocking infrastructure bottlenecks (rail and port), and realising industrialisation and growth (agro-processing, steel, petrochemicals - dtic).

### **2.1.3 Localisation**

As part of the Commission's commitment to supporting the recovery plan and fostering economic growth, the Commission issued final guidelines on collaboration between competitors on localisation initiatives on 18 March 2022. These guidelines, as outlined in section 79(1) of the Competition Act, were developed to articulate the Commission's policy approach on matters within its jurisdiction.

A "Localisation Initiative" is defined as any project or effort aimed at achieving greater levels of localisation by increasing the share of total procurement of an identified input from local manufacturers. The guidelines apply to firms, trade unions, or NGOs that voluntarily choose to participate in a localisation initiative. Localisation initiatives can be initiated by any government department, industry, trade union, or Non-Governmental Organization (NGO).

Collaboration between government-initiated localization initiatives (e.g., dtic Localization initiative) and those arising from industry processes is acknowledged. Given the potential for collaboration between competitors to amount to prohibited conduct, the guidelines aim to provide clear guidance on how localization initiatives can be appropriately identified and implemented without raising competition concerns.

Since the issuance of the guidelines, the Commission has noticed changes towards awareness and engagement from various stakeholders, including government entities, industries, trade unions, and NGOs. The guidelines have provided a framework for collaboration that ensures adherence to competition principles while advancing the goals of the recovery plan.

### **2.1.4 Global and regional competition policy developments**

#### **BRICS**

At both a global and regional level, there is an impetus towards harmonization of competition policy and greater cooperation between competition authorities with regards to cross-border mergers and cartel investigations. A memorandum of understanding (MOU) signed in May

2016, between the competition authorities of all BRICS member states, has paved the way for deepened cooperation and coordination and has contributed to a diversification of perspectives and voices on competition policy, given the increasing importance of these emerging economies to the global economy.

The Commission is a member of BRICS Competition Law and Policy Center, and actively participates in the BRICS Working Groups on pharmaceuticals, food value chains, automotive and digital markets, where research is undertaken collaboratively from a developing economy perspective. The digital markets working group, provides an opportunity for authorities to strengthen their understanding of these new markets, which are poised as the markets of the future. It is evident that regulators need to adapt their capacity and tools in order to better respond to merger and enforcement cases which arise in these markets.

The BRICS Competition Law and Policy Centre (BRICS Competition Centre) project was initiated and is coordinated by the Skolkovo – Higher School of Economics Institute for Law and Development, a Moscow-based international think tank. The aim of the BRICS Competition Centre is to provide the meeting point for BRICS competition law research, ensure the scientific support for the work of BRICS competition authorities and to promote a distinct BRICS competition law agenda for the global economy. The BRICS Competition Centre collaborates with a number of partner institutions worldwide and relies on a group of internationally known competition law and policy experts, public intellectuals, industry and technology leaders.

The work of the BRICS Competition Centre will allow to increase the interaction in the work of the competition authorities of the BRICS countries, thus enhancing their cooperation, and to bring together policy makers from all BRICS countries when deciding the agenda for future enforcement action. It will also aim to improve the qualified expertise in BRICS competition law systems on key issues of global economy, especially in the face of growing technological and information inequality.

### **The Tripartite Free Trade Area (TFTA)**

Three African regional economic communities (RECs) have taken a bold step towards advancing intra-Africa trade, consistent with the African Union's action plan for boosting such trade. The TFTA comprises of three regional economic blocks, Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC). South Africa signed the agreement in July 2017 after

conclusion of the negotiations for the legal text in May 2017; ratification took place in October of the same year. The TFTA agreement, bringing together twenty-six member and partner states of COMESA, EAC and SADC was signed by the third tripartite summit in the resort town of Sharm El Sheikh, Egypt. Five days after the TFTA signing, the African Union (AU) summit of heads of state and government launched negotiations for the Continental Free Trade Area (CFTA), subsequently renamed African Continental Free Trade Area, (AfCFTA).

Based on the frameworks and experience of the respective RECs as well as Member/Partner States interests, the parties agreed that the TFTA Protocol should be established as a nonbinding cooperation framework with no supranational authority to replace or intrude on the work of national competition authorities.

The objectives of the Protocol are to:

- enhance the welfare of the people in the TFTA by: (i) protecting all market participants' freedom to compete fairly by prohibiting anti-competitive practices; (ii) protecting the opening of Member/Partner States' markets against the creation of barriers to interstate trade and economic transactions by market participants; Confidential (iii) protecting consumers in the TFTA against unfair trade practices; (iv) promoting economic integration and sustainable development in the TFTA;
- enhance the competitiveness of TFTA undertakings in global markets by exposing them to competition within the TFTA; and
- bring the TFTA's competition and consumer protection policy and practice in line with international best practices. The Protocol provides for the ongoing development of procedures and criteria that could enhance cooperation amongst established competition authorities to address anti-competitive business practices in the TFTA region.

#### **The African Continental Free Trade Area (AfCFTA)- Committee on Competition Policy**

The AfCFTA Protocol on Competition Policy is an agreement by State Parties to ensure that competition contributes to trade, inclusive growth, industrialisation, innovation and sustainable economic development in Africa. The Protocol will help to create a fair and competitive business environment in Africa by promoting competition and addressing restrictive business practices. MSMEs, in particular, will benefit from a fair and competitive business environment. Consumers will benefit lower prices and more choices.

The Commission has played an important role in the development of the Protocol and continues to contribute to the development of regulations in the following areas:



- Merger threshold;
- Market dominance threshold;
- Procedures of the AfCFTA Competition Authority ;
- Cooperation mechanism (AfCFTA competition authority and national competition authorities); and
- AfCFTA Competition Tribunal/Appellant Body.

Under the auspices of the ACF, the Commission continues to provide support to the process, including through various research projects aimed at supporting the regulations.

### ***2.1.5 Digitisation and implementation of the Competition Act***

The Commission has been grappling with regulation of competition in an increasingly digitised world, a challenge that is confronting authorities and governments across the world. The dynamics of digital markets bring a threat of more complex potential anticompetitive conduct and outcomes, including:

- a) Merger control – challenges include possible under-enforcement, jurisdiction over international platforms, notification of mergers involving international platforms, mandatory notification of mergers of certain high impact digital firms irrespective of traditional assets-turnover thresholds, notification of mergers involving international platforms without assets and turnover in South Africa and establishing appropriate theories of harm.
- b) Cartel Conduct - digital markets present new forms of collusion and new challenges for the Commission to detect and investigate co-ordinated conduct.
- c) Abuse of dominance and vertical restraints – increased dominance and unilateral conduct; the global reach of digital markets means that conduct found to be anticompetitive in one jurisdiction could be considered anticompetitive in other jurisdictions.

The Commission has published a strategy paper titled Competition in Digital Economy which outlines how it intends to apply competition law to achieve equitable outcomes in the digital economy in South Africa. It explains the ways in which South Africa's competition laws can be implemented to achieve equitable outcomes in the digital economy and the Commission's intentions in regard to enforcement actions. It also covers the features of the regulatory environment required to extract the maximum benefit for consumers in the digital economy.

The paper also aims to inform government and corporate stakeholders of its approach to regulating competition in the digital economy and to facilitate coordinated regulatory and advocacy efforts in this area. Specifically, the Commission will focus its programs and resources to strengthen its regulation within this rapidly evolving landscape. Some of these interventions, including undertaking a market inquiry and strengthening cartel enforcement and merger investigations, are noted in the sections below pertaining to the internal environment.

The Commission has also issued Revised Small Merger Guidelines to address potentially anti-competitive acquisitions in digital or technology markets which are escaping regulatory scrutiny due to the acquisitions taking place at an early stage in the life of the target. The guidelines will assist both the Commission and the stakeholders when dealing with mergers in technology markets.

Given the interface between competition and privacy laws, the Commission has explored working arrangements with the Information Regulator of South Africa. The Commission is seeking to engage with the Information Regulator around specific enforcement in the digital market space, determining where each regulator can best be effective.

In addition, the Commission forms part of the Open Finance Inter-governmental Fintech Working Group (IFWG) comprising of other regulators such as South African Reserve Bank, Financial Sector Conduct Authority, National Credit Regulator, National Treasury, South African Revenue Services and Prudential Authority. IFWG was established in 2016 to understand the growing role of fintechs and innovation in the South African financial sector and explore how regulators can more proactively assess emerging risks and opportunities in the market.

The Commission is also active in intra-governmental initiatives on digital markets such as the Presidential 4IR Initiative and the providing input into legislative initiatives such as the Department of Communications and Digital Technologies (DCDT) Big Data policy.

The Commission has continued its engagement with the European Union (EU) to provide an opportunity for mutual learning using the SA/EU Dialogue Facility to host a series of workshops in partnership with the Directorate-General of Competition in the European Commission (DG Comp). The Commission and Competition Commission of Singapore (CCS) have signed an MOU to work closely on detecting cartels in public tenders.

The Commission is also considering making use of the memorandum of Understanding (MOU) between competition agencies on the continent. The region also has a number of co-operation blocs, such as, SADC, COMESA and ECOWAS. These regional bodies and their associated competition enforcement committees can be leveraged as a platform to collaborate in the digital platform space.

The Commission continues to play its role on the work that was started by heads of the competition authorities of Egypt, Kenya, Mauritius, Nigeria and South Africa (the “Authorities”) on digital markets workshop, that has since been expanded to include other authorities. A research project is currently being undertaken in this area to strengthen interventions by authorities in digital markets. In addition to this, the implementation of the Online Intermediation Platforms Market Inquiry recommendations and completion of the Media and Digital Platforms Market Inquiry.

### ***2.1.6 Integrating the dtic’s 45 outputs***

The dtic has in 2023/24 financial year developed a total of 45 Outputs to guide the work of the dtic-group in the financial year. This new approach is a step on a path to evolving performance planning and measurement to transparently account for the ways in which public resources are deployed by the dtic Group in support of the overarching economic policy goals of government. The dtic’s impact-focused planning will in future evolve in ways that are tightly connected with the economic goals of government, and ensure that the dtic plans, functions and accounts for the economic returns against public resources invested in pursuit of those goals.

These targets are divided into four types:

- **10 Core targets** measure the performance and transformation of the economy and reflect some of the ultimate objectives we are trying to achieve. Outputs: 1 (investment), 2 and 11 (local output), 3, 4, and 5 (exports), 12, 13 and 14 (jobs) and 15 (ownership)
- **13 Programmatic targets** help us achieve the aims of our Core targets, but directly measure the impact of specific activities, such as providing industrial finance. Outputs: 6, 7, 8, and 9 (incentives and support), 10 (partner funds), 16 (market concentration), 17 (SEZ), 23 (facilitation), 27, 28 and 41 (trade), 34 (masterplans), 38 (mergers public interest conditions).
- **15 Enabling targets** make our Programmatic targets achievable, by creating the systems and environment that make our activities work. Outputs: 25, 32, 33, and 37 (events and outreach), 35 and 36 (entity oversight), 26 (legislation), 29, 30 and 31

(green economy), 39, 40, 43, and 44 (impact assessment and capacity development), and 45 (price gouging).

- **7 Contextual responsive targets** often involve work outside of our core programmes and are designed to respond to pressing needs in the economy, and to encourage the dtic to be flexible and agile in our work. Outputs: 18, 19, 20, 21, 22 (energy), 24 (grey-listing) and 42 (metal trading system)

A list of some of the output targets that the Commission is contributing to (within its legislated mandate) is set out and summarized in the table below.

**Table 3: Commission's contribution to the dtic's output target**

<b>Output Number</b>	<b>Outputs</b>	<b>Commission's Intervention/Response</b>
<b>Output 1</b>	R200 billion in investment pledges secured across the state	Through settlement agreements or conditions in Mergers and Acquisitions (M&A) or other competition areas.
<b>Output 2</b>	R40 billion in additional local output committed or achieved	Through settlement agreements or conditions in M&A or other competition areas.
<b>Output 6</b>	R30 billion in support programmes administered by or in partnership with the dtic-group	Financial disbursements from funds resulting from settlement agreements and conditions in M&A.
<b>Output 8</b>	R8 billion in financial support programmes to SMMEs, and women and youth-empowered businesses	Financial disbursements from funds resulting from settlement agreements and conditions in M&A.
<b>Output 9</b>	R7.5 billion in financial support programmes to enterprises in labour absorbing sectors	Financial disbursements from funds resulting from settlement agreements and conditions in M&A.
<b>Output 13</b>	100 000 jobs to be created (50 000 social economy fund part-time or temporary job opportunities and 50 000 full-time jobs)	Commitments from settlement agreements and conditions in M&A.
<b>Output 14</b>	23 000 jobs in Black Industrialists firms	Commitments from settlement agreements and conditions in M&A.
<b>Output 15</b>	20 000 additional workers with shares in their companies	Merger conditions

<b>Output 16</b>	10 high-impact outcomes on addressing market concentration, at sector or firm level.	Implementation of Commission Market Inquiries recommendations (KPI 12: No. of monitoring reports on implementation of Market Inquiry Recommendations)
<b>Output 32</b>	1000 Case studies of firms, workers, entrepreneurs, professionals or communities impacted by the dtic measures: including 12 local films/documentaries telling the SA story	50 case studies.
<b>Output 37</b>	5 Conferences, summits, and international forums hosted	Annual Conference (KPI 31).
<b>Output 38</b>	50 Mergers and acquisitions where public interest conditions have been incorporated	Merger and acquisition enforcement (decisions)
<b>Output 41</b>	4 Protocols finalised under the AfCFTA	KPI 37 No. of projects/contributions focused on influencing international competition regulation with a developmental perspective.
<b>Output 45</b>	10 Successful actions completed on price monitoring and excessive pricing or price gouging	Essential food report, litigation and market inquiries outcomes.

## 2.2 Internal Environmental Analysis

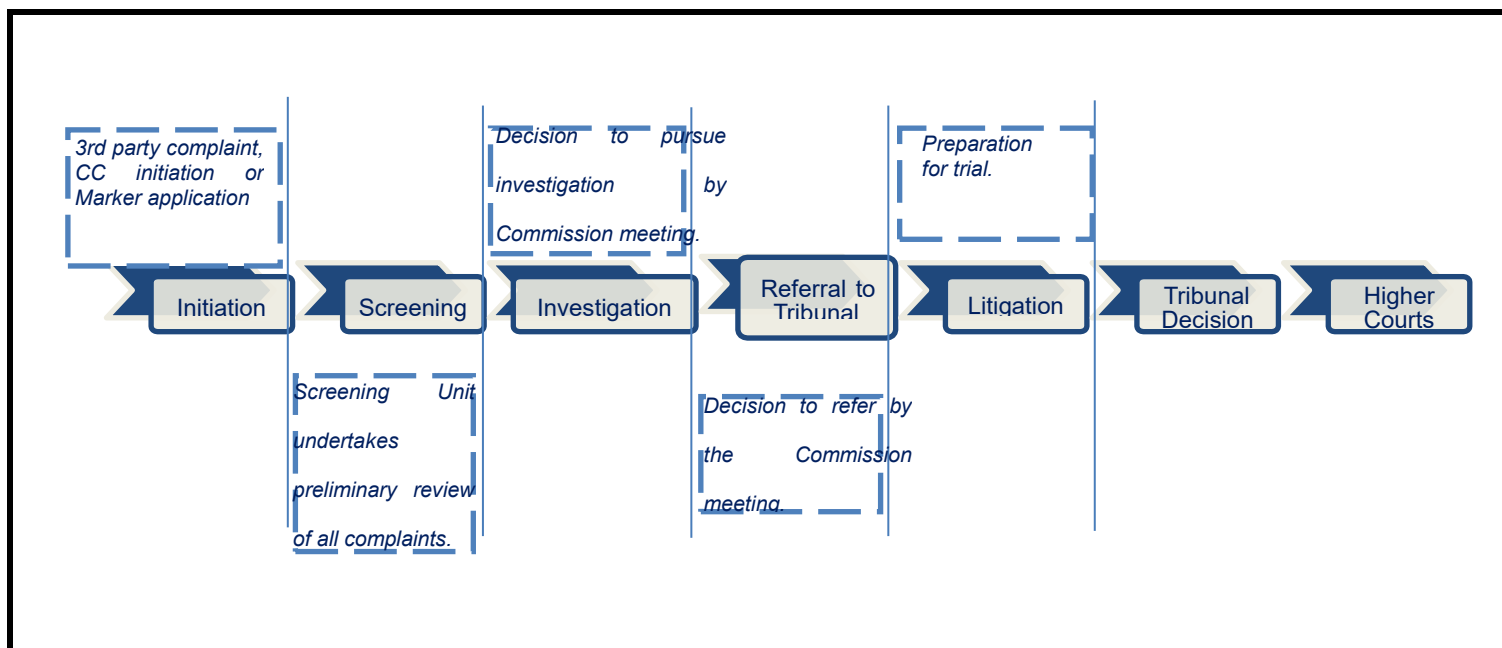
An assessment of the key internal factors in the organisational environment which contribute to the Commission's performance is articulated below. The section outlines interventions aimed at developing an enabling environment that effectively supports the performance of the Commission.

### 2.2.1 Case pipeline management

The case pipeline of the Commission can be illustrated as follows:

**Figure 2: CASE PIPELINE PROCESS- ENFORCEMENT**





The process illustrated above, supports the following key processes at the Commission:

### **Complaints-Handling: Enforcement**

Further to managing case load arising from complaints, the Commission intends to initiate multiple abuse of dominance investigations in the upcoming year, enabled by the recent amendments in the Competition Act.

### **Cartel Enforcement**

The Commission has been monitoring anti-competitive conduct in government procurement, particularly tracking any potential cartel activity. Most industries and companies are now adopting different levels of digitisation that are changing the way they operate, this new model of working demands urgent change in our enforcement tools including at Cartels. Cartel detection in a digitised world requires an investment in appropriate and relevant detection tools and mechanisms. These include preparing appropriate spaces for conducting interrogations (interviews), establishing efficient systems for whistleblowing, building relevant ICT tools, and developing internal capabilities for digital and forensic analysis. The Commission has begun this journey with forensic tools and AI based detection/investigation tools.

### **Market Inquiries**

There are currently two (2) market inquiries underway at the Commission. The Commission initiates market inquiries under powers granted to it in the Competition Act 2009, which provides for the Commission to undertake a “formal Inquiry in respect of the general state of competition in a market for particular goods or services, without necessarily referring to the

conduct or activities of any particular named firm". The Commission is also undertaking the implementation of recommendations for four (4) completed market inquiries.

The Commission launched a market inquiry into the South African Fresh Produce Market (the FPMI) in terms of section 43B(1)(a) of the Competition Act, on 31 March 2023. The Commission had reasons to believe that there may exist market features which impede, distort, or restrict competition in the South African fresh produce markets. The FPMI is focussing on particular issues at each layer of the value chain. Specifically, the scope of the FPMI covers aspects from the sale of fresh produce by the farmer to the customer. In line with this, the FPMI's scope is divided into three themes, namely:

- i. Efficiency of the value chain, with an emphasis on the dynamics around fresh produce market facilities;
- ii. Market dynamics of key inputs and its impact on producers; and
- iii. Barriers to entry, expansion and participation.

The FPMI commenced in the 3<sup>rd</sup> quarter of the previous financial year with its first round of public hearings in October 2023. From the public hearing, stakeholders provided informative and valuable information for consideration by the FPMI. For the remainder of quarter 3 the technical team continued its engagement with stakeholders to refine its understanding of the issues under consideration. The FPMI is preparing the provisional report, which it aims to publish during the financial year.

### **Litigation**

The Commission's litigation is undertaken by the Legal Services as well as the Cartels Division. The Commission has observed that the cases are becoming more complex with respondents contesting the Tribunal judgments and the application of the Competition Act in various proceedings. The Commission also remains with high volume of litigation matters going into the 2024/25 financial year.

Various hearings were held at the Tribunal in 2023/24, the Commission will continue to refer matters to the Tribunal expeditiously in the 2024/25 financial year. However, one of the major challenges and risk arising is the postponement of trials by the Tribunal which affect the Commission's litigation list. It is unclear what the implications of the growing backlog will be on the resources of the Commission, the Tribunal, and the CAC in the latter years of the MTEF.

## **2.2.2 Support Services**

### **Human Capital**

The effectiveness of support services is key to the successful execution of the mandate of the Commission. In building and managing human capital, the Commission has invested in the implementation of our talent management framework in the full Human Resource (HR) value chain. The focus in the 2023/24 financial year was on reviewing of key elements of human capital management (including the Human Capital policies, review of organisational design, review of business processes on key areas of implementation, redesign of the performance management system of the Commission, implementation of a new Learning Management System (LMS) which has revolutionised our learning and development initiatives and has brought more excitement to learning and implementation of new systems for better agility and effectiveness). At an operational level, the Commission also sought to improve: employee wellness, talent retention, building a diverse, inclusive and productive workplace. The Commission is committed to a conducive climate for healthy employer-employee relations.

During this financial year, we plan to implement the revised policies, procedures and systems to improve the quality of services provided by the Commission to its employees. The Commission will also be focusing on the implementation a new organisational structure, paying particular attention to ensuring lower vacancy rate (building on our achievements in improving our talent acquisition and onboarding processes which have resulted in a more efficient and effective hiring processes), achieving our employment equity targets at all levels and developing innovative tools to enhance our Employee Value Proposition (including more efficient employee development by facilitating training and development programmes to enhance skills, improve motivation and boost productivity as can be seen in our organisational performance results). The Commission will continue to improve its diversity and inclusion initiatives including initiatives around the LGBTQI+ community in the workplace.

### **Information Communication Technology (ICT) Environment**

In a digital world, the Information & Communication Technology (ICT) function and capabilities are a key determinant of the capacity, effectiveness and efficiency of the Commission. Following a recent comprehensive review of the ICT function and ICT capabilities, the Commission is in the final stages of developing a new Five-Year ICT Strategy. The new strategy will build on the current successes related to the finalisation of a new Enterprise Resource Planning (ERP) System that will be completed by the end of 2023/24 financial year, modernising and integrating Human Capital Management, Financial Management and Supply Chain Management at Commission. In addition to this, the Commission has also developed



more agile processes for the acquisition of ICT tools to support the operations of the Commission.

The focus of the Commission in the 2024/25 Financial Year will be on the implementation of the ICT Strategy focusing on the following:

- (a) Improved efficiency of ICT Operations at the Commission: The Commission will be tweaking its operating model in ICT to be more responsive, efficient and embedded in the operations of the Commission.
- (b) Digitisation of the key operations of the Commission: The Commission will continue with the digitisation process currently underway and implement a new Management Information System that will modernise the management of key operations of the Commission whilst interfacing with the ERP System. In addition to this, the Commission will invest in tools for effective detection of conduct prohibited in the Act (including on Cartels). The Commission also plans to introduce more efficient tools for filing complaints and will also begin processes towards e-filing of mergers and acquisitions in South Africa.
- (c) Strengthening of Cyber Security: The Commission is adopting a more robust risk management approach in ICT security and will be investing in improved preventative measures, improved measures to detect security breaches and more effective disaster recovery capabilities.
- (d) Ongoing investment on tools for effective and efficient operations of the Commission: The Commission is also refining its standards for tools of trade and other tools to ensure efficient operations of the Commission.

### **Organisational Structure**

The Commission has had to review its Organisational Design and the Organisational Structure to respond to increased volume and complexity of cases before the Commission as a result of the amendments to the Competition Act that expanded the scope and reach of the competition authorities by introducing new provisions and granting powers which the Commission did not previously have. The Commission also needed to review its organisational structure to align with its 2015-2020 five-year strategy. The review that focused internal consultations, external benchmarking was further augmented by another independent review of the needs of the Commission. The expanded mandate of the Commission has had more significant implications for divisions like Market Conduct and Mergers and Acquisitions as they are expected to carry the bigger burden of work because of the amendments to the legislation.

The Commission would like to invest in improved capabilities in the areas of Market Inquiries, a critical tool for the Commission because they focus on how competition may be improved by addressing market features that adversely affect competition, including the structure of the market itself, can also more effectively address competition issues in an industry holistically and not just single firm conduct. The Commission will also invest in improved merger control in the wake of provisions that have introduced a new public interest assessment. The Divisions of Legal Services and the Economic Research Bureau will also be receive additional resources to ensure they have the right capacity to support the additional investigation and litigation work.

## **PART C: MEASURING OUR PERFORMANCE**

### **3. Institutional programme performance information**

The Commission undertakes its work through the following programs or divisions:

#### **3.1 Mergers & Acquisitions Division**

The M&A division is tasked with ensuring that merger transactions do not lead to a substantial prevention or lessening of competition or to significant public interest concerns in terms of Chapter 3 of the Competition Act. The Commission has the authority to approve, conditionally approve, or prohibit intermediate mergers, while recommendations are made to the Tribunal in respect of large mergers. Small mergers may be notified to the Commission on a voluntary basis although the Commission may in certain circumstances require that the small merger be notified.

It is difficult to predict merger activity with certainty since merger activity is an outcome of market conditions and firm activity. The Commission has over the years set targets with regards to the key outputs of mergers approved, mergers approved with conditions and mergers prohibited against the total number of mergers notified based on observed trends. These assumptions have sometimes been incorrect, as they are largely outside of the control of the Commission. The Commission has thus developed performance indicators that are within its control, and thus has set merger targets in relation to turnaround times.

Merger regulation plays an important role in preventing anti-competitive structures in the economy. The Commission will continue to monitor the compliance of firms against merger remedies and conditions imposed, during this period. Compliance monitoring is an important step in ensuring that public interest and competition outcomes are realised in the economy. The M&A program also analyses mergers in priority sectors as an input into the enforcement

work of the Commission. Further, with the support of Legal Services, the program also supports the Commission's litigation on mergers that are challenged at the Tribunal and the courts. The Commission will continue to meet service standards in assessing merger applications, with due considerations in assessing mergers involving distressed firms. The monitoring of conditions that have been previously imposed will also continue in the strategy cycle.

The M&A division has already started implementing the amendments of the Competition Act, which has resulted in more complex assessment of merger transactions and an increased number of transactions approved with conditions because of section 12A(3)(e) and (c) of the amendments to the Competition Act, including an increasing number of conditional approvals related to promoting a greater spread of ownership by workers and historically disadvantaged persons acquiring ownership.

### **3.2 Cartels Division**

The Cartels Division focuses on investigating and prosecuting cartel activities in terms of section 4 (1)(a) and 4(1)(b) of the Competition Act. Cartel conduct includes price fixing, market allocation and collusive tendering or bid rigging.

In anticipation of higher prevalence of anti-competitive conduct due to the constrained economic environment, the Commission will continue its efforts on cartel detection. The Commission will complete twenty-two cartel investigations in the 2024/25 financial year, including high impact cartel investigations.

The Cartels and Legal Services programs are responsible for prosecution activities in the Tribunal and the courts; a performance target of achieving a minimum 85% success rate has been set in this regard. The Commission also set a target of achieving a minimum of 70% success rate with respect to interlocutories both at the Tribunal and higher courts.

Characterization of certain cartel conduct has been topical in various competition platforms. The Commission is looking at best practices, while continuing to investigate and prosecute cartel cases.

### **3.3 Market Inquiry Division**

In line with the strategic priorities identified in the APP, the Commission started the process of establishing a new division – the Market Inquiry (MI) division. The MI division will be tasked

with giving effect to the market inquiry provisions in the Competition Act. This new division will also manage the implementation of recommendations from completed market inquiries.

Prior to 2013, the Competition Act did not encompass specific market inquiry provisions. However, Section 21 of the Competition Act, included a provision which includes the responsibility to “implement measures to increase market transparency.” This provision enabled the Commission to undertake its first market inquiry in 2006 into the banking sector. It is the amendments to the Competition Act in 2013 that first introduced specific provisions for market inquiries. Further amendments to the Competition Act in 2019 included amendments to the market inquiry provisions.

Thus, since 2013 the Competition Act has empowered the Commission to conduct market inquiries into the general state of competition in any industry or market. Market inquiries are different from investigations in that, while investigations target specified firms engaged in defined anti-competitive conduct, market inquiries investigate any feature or combination of features in a market which may have the effect of impeding, distorting or restricting competition – without targeting any single firm. Market inquiries are initiated with the aim of uncovering competition concerns in those markets and developing appropriate remedies and recommendations for policy reforms to achieve the objectives of the inquiry. Market inquiries therefore form part of the enforcement tools available to the Commission in carrying out its mandate.

The determination of which enforcement tool is appropriate for the Commission to use in intervening in markets depends upon multiple factors. In terms of the Competition Act, the Commission may receive complaints alleging cartel conduct, abuse of dominance and/or restrictive vertical practices which it must investigate. It may receive a merger transaction which it must investigate. Concerns of anticompetitive conduct in specific sectors may be indicative of broader issues within the sector that may warrant wider inquisitorial processes under the market inquiry provisions, contrasted with looking at firm-specific conduct. All these factors therefore determine which tools become appropriate for intervention. Further, where a market inquiry is informed by multiple complaints within a specific sector, this process can run in conjunction with other enforcement actions against named firms.

To date, the Commission has run several market inquiries utilising different models of implementation. The Commission’s first inquiry in 2006 for instance, the Banking Inquiry, was staffed mainly by external consultants supported by a few staff within the Commission. Different models have been applied over time with varying degrees of success. Given the

strategic objectives the Commission aims to achieve in the next planning cycle, it now intends to establish a formal division – the MI division – which will in the MTEF be appropriately resourced and capacitated to conduct market inquiries exclusively.

The establishment of a MI division takes account of the following considerations:

- I. The need to develop a Commission which is fit-for-purpose. Our organisational structure thus needs to take into account the volume and complexity of work and insights into levels of utilisation of existing resources;
- II. The need to maintain adequate resources in the core divisions in order for these divisions to focus on institutional priorities;
- III. Both the 2013 and 2019 amendments which provide the additional tool of market inquiries as a means to achieve the objectives in the Competition Act; and
- IV. The need to be responsive to the current economic realities facing the country.

The MI division will complete one market inquiry in the financial year. The conducting of market inquiries will be a strategic tool to enable the division to probe and gain insights into complex markets which have a high impact on the economy and consumers at large.

### **3.4 Market Conduct Division**

The MCD focuses on restrictive vertical practices and the abuse of dominant cases. Abuse of dominance includes excessive pricing, price discrimination, refusal to deal with competitors and predatory pricing. The MCD will prioritise implementation of the amendments to the Competition Act especially with respect to buyer power (balancing of bargaining dynamics between firms, setting of rules for fair and equitable access and improved competition outcomes in markets) and price discrimination - “likely effect of impeding the ability” of SMEs/HDI’s to “participate effectively”.

During 2024/25, MCD will continue its focus on establishing a more proactive approach to investigating abuse of dominance cases in terms of section 8 and 9 of the Competition Act, this include initiating several complaints guided by the amendments of the Competition Act. The division will initiate 5 cases in the priority sectors including one initiation in relation to Buyer Power/Price Discrimination to focus on public interest initiations. Efficiency targets pertaining to the completion of cases have also been set, with the intention to complete a minimum of **70% of investigations** within 18 months. The division also intends to complete all exemption applications within 12 months.

### **3.5 Legal Services Division**

The Legal Services Division (LSD) is responsible for managing all the Commission's litigation before the Tribunal, CAC, High Court, Supreme Court of Appeal (SCA) and the Constitutional Court. The division represents the Commission in courts, in briefing attorneys and counsel, and directing and managing the Commission's strategy in respect of litigation. Legal support is also provided to analysing merger applications. The division defends the Commission's recommendation of large mergers to the Tribunal and merger decisions which are appealed. The division is also responsible for negotiating and concluding settlement agreements, with the input of other divisions. The settlement process enables the Commission to conclude cases speedily and in the least costly manner.

In 2024/25, LSD will continue its focus on improving its level of success in the courts. Successful prosecution or settlement of cases is an important indicator of success for the Commission, and minimum targets have been set in this regard.

Performance target of achieving a minimum 85% success rate cartel cases at the Tribunal and other courts has been set, and 80% with respect to mergers. The Commission also has a target of achieving a minimum of 70% success rate with respect to interlocutories both at the Tribunal and higher courts.

### **3.6 Economic Research Division**

The ERB division provides economics support for complex cases and policy issues. The division helps the Commission evaluate the economic impact of the Commission's actions by undertaking 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; perform sound economic analysis for enforcement cases, merger cases and market inquiries.

The Commission will undertake one impact assessment study and two market studies conducted in prioritised sectors in the 2024/25 financial year, led by ERB. The Commission also wants to be a thought leader in competition matters hence the target to provide research and thought leadership insights. ERB will continue to monitor prices of essential food. Together with Legal Service division will issue two guidelines on the application of the Competition Act. ERB will continue to support investigations with expert economic advice and testimonies as well as research focused in line with the amendments of the Competition Act.

### **3.7 Advocacy Division**

The Advocacy division is responsible for conducting initial investigations into complaints received from the public. Additionally, the division pursues strategic cases that cannot be resolved through enforcement alone, relying on advocacy initiatives for resolution. Another significant role of the Advocacy division involves policy analysis, contributing insights to government policies and regulations that aim to foster competitive outcomes. Furthermore, the division engages in sector-based research on competition issues to analyse trends, providing valuable information to shape the Commission's approach. Stakeholder relations form a crucial aspect of the division's functions in supporting the Office of the Commissioner that is the primary custodian of this function. The Commission is committed to maintaining and strengthening these relationships in the 2024/25 financial year, with special attention directed towards key constituencies such as Youth, Women, Black Business associations and Small and Medium business.

In the 2024/25 financial year, the Commission plans to deepen its Advocacy work, particularly in prioritised sectors, focusing on education and outreach initiatives with consumers, as well as both large and small businesses to improve compliance with the Competition Act. , will continue to be central to the Commission's activities. The Advocacy division has outlined several planned activities for the upcoming financial year to support these efforts. In addition to priority sectors, the Commission will also focus on the themes of implementation of buyer power provision of the Act, participation of HDPs in the economy (more especially women and youth) and participation of SMEs in the economy. The Division has identified a number of KPIs to advance this work during the 2024/25 financial year.

### **3.8 Corporate Services Division**

The Corporate Services Division is responsible for a number of support services at the Commission including Human Capital Management, Information and Communications Technology (ICT), Information and Knowledge Management and Security and Facilities Management. Registry, the Information Resource Centre, and Security and Facilities. The division provides the key capabilities required to execute the work of the Commission and enables the operations of the Commission.

The Division will prioritise interventions in the following areas during the 2024/25 financial year: Ensuring that the Commission has fit-for-purpose space to conduct its work; Implementation of the new ICT Strategy including the proposed projects to improve the ICT capabilities of the Commission; The Division will also continue to comply with the Occupational Health and Safety requirements; Improve the Commission's Employee Value Proposition through the

implementation of the Talent Management Framework of the Commission, investing in the human capital requirements of the Commission and Improve management of information and knowledge at the Commission complying with all the relevant pieces of legislation.

### **3.9 Finance**

The Finance division provides financial management, supply chain management and asset management support services. The key financial management services include budget development, implementation and monitoring, effective financial management, procurement, management of resources, financial reporting, and performance management.

Emphasis is placed on continuously improving the budgeting process in a manner that reflects to the strategic priorities of the Commission, cash flow management, timeous financial reporting and ensuring that policies and activities comply with regulatory frameworks and guidelines. Compliance with statutory and regulatory frameworks remains an important focus as well as improving the data analysis and reporting functions. In its continuous pursuit to maintain a clean audit, the Finance division has set a target for a clean audit for the entire strategic period. Also, the division has set a target to pay supplier invoices within 30 days as per Treasury Regulation 8.2.3.

### **3.10 Office of the Commissioner**

The Office of the Commissioner (OTC) is responsible for the strategic direction of the Commission (through the facilitation of the strategy development process, monitoring of the execution of the strategy and evaluation of the impact the Commission is making) oversight on the implementation of the Commission's strategic goals and objectives so as to achieve improved effectiveness, efficiency and engagement.

The OTC is also responsible for the positioning of the Commission as an effective and impactful Regulator of competition in South Africa (through effective management of stakeholder relations, effective communications and the management of the image of the Commission). In supporting the realisation of the strategy, the OTC oversees Corporate Governance, the promotion of the culture of the organisation and the development of the critical skills for operations of the Commission.

The OTC is currently focusing on the implementation of the Competition Act and ensuring efficient decision-making within the organisation to realise the mandate of the Commission. In addition to crafting and setting the strategic direction of the Commission and providing



necessary insight and guidance, the OTC will ensure that appropriate processes, procedures, and structures are in place to enable all programs to achieve against its stated objectives. The primary mechanism to achieve this is the continued operation of the corporate governance program, which enables and supports sound corporate governance within the institution.

The OTC oversees the planning, monitoring, and reporting of programme performance information, aiming to establish a robust performance management and monitoring framework. The primary goal is to enable the Commission to furnish accurate, reliable, and comprehensive progress reports on program performance against predetermined objectives outlined in its strategic and annual performance plans. Additionally, this initiative seeks to minimise unfavorable external audit findings related to non-financial performance information. The Commission has introduced tools for performance planning, monitoring, and reporting to enhance the efficiency of its programme performance information process.

#### 4. Outcomes, outputs, performance indicators and targets

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
<b>STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND ENHANCED ECONOMIC PARTICIPATION</b>											
1. Efficient and effective merger regulation & enforcement	a) Mergers and Acquisitions decisions.	M&A	1.	Average turnaround time for Phase 1 merger investigations.	18 days	17 days	16 days	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days
		M&A	2.	Average turnaround time for Phase 2 merger	37 days	40 days	41 days	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				investigations.							
		M&A	3.	Average turnaround time for Phase 3 intermediate and small merger investigations.	55 days	57 days	58 days	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days
		M&A	4.	Average turnaround time for 90%	93 days	137 days	90 days	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				of Phase 3 large merger investigations.							
	b) Compliance monitoring for merger conditions.	M&A	5.	No. of quarterly compliance monitoring reports on competition and public interest conditions	100%	100%	100%	4	4	4	4

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				imposed by the Commission							
<b>2. Competitive, Contestable and Deconcentrated Markets +</b>	a) Investigation of abuse of dominance and restrictive vertical practices.	MCD	6.	No. of abuse of dominance and restrictive vertical practices cases initiated in prioritised	36	3	17	5	3	5	6

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
3. Improved public interest outcomes				sectors in line with amendments of the Competition Act.							
	MCD & Advocacy	7.	% of market conduct investigations completed within 18 months.	94%	98%	97.4%	≥75%	≥70%	≥75%	≥80%	

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	b) Exemption on application decisions	MCD	8.	% of exemption applications completed within 12 months.	100%	75%	N/A	100%	100%	100%	100%
	c) Market Inquiries	MID	9.	No. of market inquiries initiated.	1	1	2	2	2	2	3
			10.	No. of market	1	N/A	0	1	1	2	3

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				inquiries completed.							
	d) Advocacy work of the implementation on market inquiries recommendations	MID	11.	No. of monitoring reports on implementation of Market Inquiry Recommendations.	N/A	N/A	N/A	2	2	2	2



Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	tions										
	e) Cartel Investigations	Cartels	12.	No. of cartel investigations completed including high impact cartel investigations.	28	35	28	16	22	22	24

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	f) Cartel prosecutions	Cartels & Legal Services	13.	% of cartel cases won at the Tribunal.	86%	100%	100%	≥80%	≥80%	≥85%	≥85%
		Cartels & Legal Services	14.	% of cartel cases won at the courts.	N/A	40%	0%	≥80%	≥80%	≥85%	≥85%
	g) Prosecution of Abuse of dominance and restrictiv	Legal Services	15.	% of market conduct cases won at the Tribunal in relation to	100%	100%	100%	≥75%	N/A	≥75%	≥75%

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	Legal Services		16.	abuse of dominance, restrictive vertical practices and exemption litigation. % of market conduct cases won at the courts in relation to abuse of	N/A	N/A	70%	≥75%	N/A	≥75%	≥75%

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				dominance, restrictive vertical practices and exemption litigation.							
	h) Merger litigation	Legal Services	17.	% of merger decisions upheld by the Tribunal.	100%	100%	100%	≥80%	≥80%	≥80%	≥80%
			18.	% of merger decisions	N/A	100%	100%	≥80%	≥80%	≥80%	≥80%

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				upheld by the courts.							
	i) Interlocutory litigation	Legal Services & Cartels	19.	% of interlocutory decisions upheld by the Tribunal.	N/A	N/A	100%	≥65%	≥70%	≥70%	≥70%
			20.	% of interlocutory decisions upheld by the courts.	N/A	N/A	50%	≥65%	≥70%	≥70%	≥70%

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
<b>STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES</b>											
<b>4. Improved compliance &amp; awareness</b>	a) Domestic outreach initiatives	Advocacy & OTC	21.	No. of outreach, awareness, public education and training initiatives conducted to improve compliance with the Competition	3	8	13	14	16	18	20

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				Act, the quality and quantity of complains of the Commission .							
	b) External Guidelines on the application of the Act	Legal Services and ERB	22.	No. of Guidelines on the application of the Competition Act issued to	2	2	2	3	2	2	2

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				stakeholders							
	c) Advisory Opinions	Legal Services	23.	% of advisory opinions issued within 60 days.	N/A	N/A	N/A	≥90%	≥90%	≥90%	≥90%
<b>25. Improved understanding of market dynamics in</b>	a) Industry Scoping Studies	ERB	24.	No. of market studies conducted	N/A	1	1	2	2	2	2



Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
priority sectors				in prioritised sectors.							
	b) Impact assessments on Commission decisions or competition policy	ERB	25.	No. of Impact assessment studies completed.	1	1	1	1	1	2	2

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	c) Enforcement research on priority industrial sectors and support infrastructure	ERB	26.	No. of reports on enforcement research on priority areas.	N/A	N/A	N/A	2	2	2	2
	(d) Advocacy in	Advocacy	27.	No. of advocacy cases	4	3	4	4	4	4	4

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	priority sectors			completed in priority sectors.							
	Advocacy		28.	No. of advocacy studies evaluating the Commission's interventions in priority sectors.	N/A	N/A	N/A	2	2	2	2

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
6. Improved co-ordination on the application of economic and competition policy	a) Strategic Partnerships with relevant stakeholders	Advocacy	29.	No. of initiatives to promote entry & participation of HDPs.	N/A	1	2	3	4	4	5
		OTC & ERB	30.	No. of international conferences and forums hosted.	1	1	1	N/A	1	2	1
	Policy Responses	Advocacy	31.	No. of submissions or responses	11	4	5	4	4	4	4

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
				to policy or regulation.							
	a) Partnerships with government, labour, business and sector regulators regarding the	Advocacy	32.	No of reports on collaboration projects with stakeholders including regulators on objectives of the	N/A	N/A	N/A	2	2	2	3

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets							
					Audited/ Actual performance			Estimated performance	MTEF Period			
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	
	objectives of the Act.			Competition Act.								
	Research & Thought Leadership	ERB	33.	Research and thought leadership insights published.	3	7	5	4	4	4	4	
		ERB	34.	Report on essential food products.	4	2	2	2	2	2	2	

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
7. Increased importance of developmental perspectives in domestic and international competition law discourse	a) Collaboration with regional and international partners	ERB	35.	No. of collaborative research on cross-country competition issues.	N/A	13	8	4	1	2	2
	b) Strengthened strategic bilateral and	OTC	36.	No. of projects/contributions focused on influencing	N/A	13	21	4	6	6	6

Outcome	Outputs	Accountable Program	No.	Annual Targets								
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance	MTEF Period			
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	
	multilateral relations focused on influencing with a developmental perspective			international competition regulation.								



Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
<b>STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION</b>											
8. <b>Sound Corporate Governance</b>	a) Level of adherence to sound corporate governance and accountable management of resource	Finance and OTC	37.	Audit Outcome	Clean Audit	Clean Audit	Clean Audit	Clean Audit	Clean Audit	Clean Audit	Clean Audit

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
<b>9. Secure, harmonious, and conducive working environment</b>	a) Conducive Facilities & Efficient Security	CSD	38.	No of quarterly reports on implementation of the OHS compliance plan.	100%	4	4	4	4	4	4
<b>10. Highly engaged, motivated and</b>	a) Talent Management	CSD	39.	% of HR spend in learning and development.	1%	1%	2.16%	1%	1%	1%	1%

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
productive workforce		CSD	40.	% retention rate of staff complement	≥98.5%	99%	98.46%	≥90%	≥90%	≥90%	≥90%
		CSD	41.	% of staff reached through training initiatives.	61%	60%	68.6%	≥65%	≥65%	≥70%	≥70%
11. Business Process Improvement	a) Review and redesign	Legal Services	42.	No. of reviews of complaints, exemptions, market	N/A	N/A	2	2	2	2	2

Outcome	Outputs	Accountable Program	No.	Annual Targets								
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance	MTEF Period			
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	
	of business processes to improve efficiency and organisational			inquiries, merger process and rules made under the Competition Act								

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	agility										
	b) Development of an integrated Management Information	CSD	43.	Progress report on the development of the Management Information System (MIS) integrated to Enterprise Resource	N/A	N/A	N/A	N/A	Progress Report on the development of the MIS integrated to Enterprise Resource Planning (ERP)	Implementation of the integrate MIS to ERP	Evaluation of the Management Information System

Outcome	Outputs	Accountable Program	No.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
	System (MIS) to ERP			Planning (ERP) System.							
<b>12. Sound financial controls and management of</b>	c)Payment of supplier invoices report	Finance	44.	% of supplier invoices paid within 30 days.	N/A	N/A	82.19%	100%	100%	100%	100%

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance	MTEF Period		
					2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
public finances											

## 5. Output indicators: annual and quarterly targets

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
<b>STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND ENHANCED ECONOMIC PARTICIPATION</b>									
<b>1.Efficient and effective merger regulation &amp; enforcement</b>	a) Merger s and Acquisitions decisions.	M&A	1.	Average turnaround time for Phase 1 merger investigations.	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days
		M&A	2.	Average turnaround time for Phase 2 merger investigations.	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days
		M&A	3.	Average turnaround time for Phase 3 intermediate and small merger investigations.	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days



Outcome	Outputs	Account able Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
		M&A	4.	Average turnaround time for 90% of Phase 3 large merger investigations.	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days
	a) Compliance monitoring for merger conditions .	M&A	5.	No. of quarterly compliance monitoring reports on competition and public interest conditions imposed by the Commission.	4	1	1	1	1
<b>2. Competitive , Contestable and Deconcentrated Markets</b>	b) Investigation of abuse of dominance and restrictive vertical	MCD	6.	No. of abuse of dominance and restrictive vertical practices cases initiated in prioritised sectors in line with	3	N/A	1	1	1

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
+ 3. Improved public interest outcomes	practices			amendments of the Competition Act.					
		MCD & Advocacy	7.	% of market conduct investigations completed within 18 months.	≥70%	≥70%	≥70%	≥70%	≥70%
	c) Exemption application decisions	MCD	8.	% of exemption applications completed within 12 months.	100%	100%	100%	100%	100%
	d) Market Inquiries	MID	9.	No. of market inquiries initiated.	2	N/A	N/A	N/A	2
			10.	No. of market inquiries completed.	1	N/A	N/A	N/A	1
	e) Advocacy work of	MID	11.	No. of monitoring reports on	2	N/A	1	N/A	1

Outcome	Outputs	Account able Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	the implementation on market inquiries recommendations.			implementation of Market Inquiry Recommendations.					
	f) Cartel investigations.	Cartels	12.	No. of cartel investigations completed including high impact cartel investigations.	22	5	6	5	6
	g) Cartel prosecutions.	Cartels & Legal Services	13.	% of cartel cases won at the Tribunal.	≥80%	≥80%	≥80%	≥80%	≥80%
		Cartels & Legal Services	14.	% of cartel cases won at the courts.	≥80%	≥80%	≥80%	≥80%	≥80%

Outcome	Outputs	Account able Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	h) Merger litigation.	Legal Services	15.	% of merger decisions upheld by the Tribunal.	≥80%	≥80%	≥80%	≥80%	≥80%
		Legal Services	16.	% of merger decisions upheld by the courts.	≥75%	≥80%	≥80%	≥80%	≥80%
	i) Interlocutory litigation.	Legal Services & Cartels	17.	% of interlocutory decisions upheld by the Tribunal.	≥70%	≥70%	≥70%	≥70%	≥70%
			18.	% of interlocutory decisions upheld by the courts.	≥70%	≥70%	≥70%	≥70%	≥70%
<b>STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES</b>									
<b>4. Improved compliance &amp; awareness</b>	a) Domestic outreach initiatives.	OTC & Advocacy	19.	No. of outreach, awareness, public education and training initiatives conducted to improve	16	4	4	4	4

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
				compliance with the Competition Act, the quality and quantity of complains and initiations of the Commission.					
	b) External Guidelines on the application of the Competition Act.	LSD & ERB	20.	No. of Guidelines on the application of the Competition Act issued to stakeholders.	2	N/A	1	N/A	1
	c) Advisory Opinions.	Legal Services	21.	% of advisory opinions issued within 60 days.	≥90%	≥90%	≥90%	≥90%	≥90%
<b>5. Improved understanding of market</b>	a) Industry Scoping Studies	ERB	22.	No. of market studies conducted in	2	N/A	N/A	2	N/A

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
dynamics in priority sectors				prioritised sectors.					
	b) Impact assessments on Commission decisions or competition policy.	ERB	23.	No. of impact assessment studies completed.	1	N/A	N/A	N/A	1
	c) Enforcement research on priority industrial sectors and support infrastructure.		24.	No. of research reports on enforcement research on priority areas.	2	N/A	1	N/A	1

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	d) Advocacy in priority sectors.	Advocacy	25.	No. of high impact advocacy cases completed in priority sectors.	4	1	1	1	1
		Advocacy	26.	No. of advocacy studies evaluating the Commission's interventions in priority sectors.	2	N/A	1	N/A	1
<b>6. Improved co-ordination on the application of economic policy and competition policy</b>	a) Strategic Partnerships with relevant stakeholders	Advocacy	27.	No. of initiatives to promote entry & participation of HDPs.	4	1	1	1	1
		OTC & ERB	28.	No. of international conferences and forums hosted	1	N/A	1	N/A	N/A
	b) Policy Responses.	Advocacy	29.	No. of submissions or responses to	4	1	1	1	1

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
				policy or regulation.					
	c) Partnerships with government, labour, business and sector regulators regarding the objectives of the Competition Act.	Advocacy	30.	No of reports on collaboration projects with stakeholders including regulators on objectives of the Competition Act.	2	N/A	1	N/A	1
	a) Research & Thought Leadership	ERB	31.	No. of research and thought leadership insights published.	4	1	1	1	1



Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
			32.	Reports on essential food products.	2	N/A	1	N/A	1
<b>7. Increased importance of developmental perspectives in domestic and international competition law discourse</b>	b) Collaboration with Regional & international partners.	ERB	33.	No. of collaborative research on cross-country competition issues.	1	N/A	N/A	N/A	1
	c) Strengthened strategic bilateral and	OTC	34.	No. of projects/contributions focused on influencing international	6	1	1	2	2

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	multilateral relations focused on influencing with a developmental perspective.			competition regulation.					
<b>STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION</b>									
<b>8. Sound Corporate Governance</b>	a) level of adherence to sound corporate governance and accountable management or	Finance & OTC	35.	Audit Outcome.	Clean Audit	N/A	Clean Audit	N/A	N/A

Outcome	Outputs	Account able Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	resources								
<b>9. Secure, harmonious, and conducive working environment</b>	a) Conducive Facilities & Efficient Security.	CSD	36.	No of quarterly reports on implementation of the OHS compliance plan.	4	1	1	1	1
<b>10.Highly engaged, motivated and productive workforce</b>	a) Talent Management.	CSD	37.	% of HR spend in learning and development.	1%	N/A	N/A	N/A	1%
		CSD	38.	% retention rate of staff complement.	≥90%	≥90%	≥90%	≥90%	≥90%
		OTC	39.	% of staff reached through training initiatives.	≥65%	N/A	N/A	N/A	≥65%

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
11. Business Processes Improvement	a) Review and redesign of business processes to improve efficiency and organizational agility.	Legal Services	40.	No. of reviews of complaints, exemptions, market inquiries, merger process and rules made under the Competition Act.	2	N/A	1	N/A	1
	b) Development of an integrated Management Information System (MIS) integrated to Enterprise	CSD	41.	Progress report on the development of the Management Information System (MIS) integrated to Enterprise	Progress Report on the development of the MIS integrated to Enterprise Resource	Appointment of the service provider for the development of the MIS	Progress Report on initiation and planning	Progress Report on the development of the MIS	Final progress Report on the development of the MIS

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	tion System (MIS) to ERP			Resource Planning (ERP)	Planning (ERP)				
<b>12. Sound financial controls and management of public finances</b>	c) Payment of supplier invoices report	Finance	42.	% of suppliers paid within 30 days.	100%	100%	100%	100%	100%

## 6. MTEF Performance plan: Finance

Below are the Commission’s budgetary estimates (MTEF) for the next three-year period of its Strategic Plan. These estimates are drawn from the intended work programs of the Commission for the period, as per the 2020-2025 Strategic Plan and 2024/25 Annual Performance Plan.

### 6.1 Revenue Analysis

The projected revenue of the Commission in the MTEF is illustrated in the table below:

**Table 4: REVENUE**

REVENUE	2024/25 ANNUAL BUDGET	2025/26 ANNUAL BUDGET	2026/27 ANNUAL BUDGET
Mergers and Acquisitions	68,317,000	71,830,000	75,500,000
Government Grant	426,193,000	440,339,000	455,338,000
Interest Received	18,281,000	18,653,000	19,239,000
<b>TOTAL</b>	<b>512,791,000</b>	<b>530,822,000</b>	<b>550,077,000</b>

The main contributor to the revenue of the Commission is government grants, followed by fees for Mergers and Acquisitions and Interest Received. The sustainability of the Commission is intertwined with increased predictability of its revenue. This is likely to remain a challenge in the current fiscal environment and the low levels of predictability we are seeing on the other revenue lines.

### 6.2 Expenditure Analysis

The operations of the Commission, akin to a professional services organisation, are human capital intensive as evident from the high financial requirements for human resources. The next driver of expenditure is case related costs mainly for outsourcing of services that support investigation and litigation of cases of the Commission. The implementation of the amendments to the Act through the Strategic Plan of the Commission continues to be the main focus of investments at the Commission. The following table summarizes the projected estimates by strategic objectives:

**Table 5: EXPENDITURE PER STRATEGIC OBJECTIVE**

<b>EXPENDITURE PER STRATEGIC OBJECTIVE</b>	<b>2024/25 ANNUAL BUDGET</b>	<b>2025/26 ANNUAL BUDGET</b>	<b>2026/27 ANNUAL BUDGET</b>
Goal 1: Enforcing and Regulating towards economic growth and enhanced economic participation	402,625,389	417,229,914	432,377,720
Goal 2: Advocating for improved compliance and pro-competitive public policy outcomes	20,349,296	20,982,218	21,740,881
Goal 3: A people-centric and high-performance organization	89,816,315	92,609,868	95,958,399
<b>TOTAL</b>	<b>512,791,000</b>	<b>530,822,000</b>	<b>550,077,000</b>

Most of our expenditure aligns with the first goal of our strategic objectives. The core program of the Commission is delivered through Mergers & Acquisitions Division (M&A), Market Conduct Division (MCD), Cartels Division, Legal Services Division, Economic Research Bureau (ERB) and the Advocacy Division. Support Services spend on activities such as Administration, with 80% of the resources spent in the support services directed at supporting core activities.

The financial resources have been allocated to ensure that the Commission focuses on the identified strategic areas. As customary, financial revisions are done during the financial year, and any adjustments are effected accordingly.

**Table 6: TOTAL EXPENDITURE PER MAIN ITEM**

<b>TOTAL EXPENDITURE PER MAIN ITEM</b>	<b>2024/25 ANNUAL BUDGET</b>	<b>2025/26 ANNUAL BUDGET</b>	<b>2026/27 ANNUAL BUDGET</b>
Human Resources	326,468,768	352,470,354	368,683,990
Premises & Equipment	30,514,395	32,323,408	33,492,138
Other Operational	10,472,623	11,093,482	11,494,593
Research & Information	2,370,282	2,510,802	2,601,586
IT and system Development	5,317,704	5,632,959	5,836,632
Educational Awareness	4,239,506	4,490,840	4,653,217
Case Related Costs	101,618,767	88,626,627	88,423,769

Capital Expenditure	18,039,870	19,109,344	19,800,288
Depreciation	4,336,687	4,593,783	4,759,882
Other Programme Costs	9,412,398	9,970,401	10,330,905
<b>TOTAL</b>	<b>512,791,000</b>	<b>530,822,000</b>	<b>550,077,000</b>

### 6.3 Materiality Framework

Due to the nature of the business of the Commission (it is not a capital-intensive business) the best indicator regarding business activity is expenditure. There is lower risk on revenue as 80% of the revenue is made up of voted funds. For this reason, we have selected 0.50% of expenditure regarding this framework. The implications, based on the estimated expenditure, are summarized as follows:

**Table 7: MATERIALITY**

MATERIALITY	%	2024/25	2025/26	2026/27
Expenditure		512,791,401	530,822,000	550,077,000
Materiality	0.5 0%	2,563,955	2,654,110	2,750,385

## 7. Updated key risks and mitigations from the Strategic Plan

Below is the updated Strategic Risks of the Commission with identified interventions for risk mitigation:

**Table 8: STRATEGIC RISKS**

Risk	Risk Mitigation
1. High rate of Losses or Collapse cases in litigation	<ul style="list-style-type: none"> <li>Vetting of cases by the Commission meeting</li> <li>Usage of KMS</li> </ul>
2. Protracted Litigation	<ul style="list-style-type: none"> <li>Management of Case Pipeline</li> </ul>
3. Inability to finalise cases within the planned turnaround times	<ul style="list-style-type: none"> <li>Management of Case Pipeline</li> <li>Revised Small Merger Guidelines</li> </ul>
4. Insufficient Evidence in Investigation Reports	<ul style="list-style-type: none"> <li>Vetting of cases by the Commission meeting</li> </ul>



Risk	Risk Mitigation
5. Over/underspending of allocated resources to the Commission	<ul style="list-style-type: none"> <li>• Alignment of budgets with business plans and project plans</li> <li>• Finance Committee (used as a line of defence for oversight)</li> </ul>
6. Poor Supply Chain Management	<ul style="list-style-type: none"> <li>• Finance Policies</li> <li>• Procurement Planning</li> </ul>
7. Low reliability of ICT Systems of the Commission	<ul style="list-style-type: none"> <li>• Investments in various systems, tools and expertise</li> </ul>
8. Inadequate cybersecurity	<ul style="list-style-type: none"> <li>• Mirroring of all documents/files in the document management system</li> <li>• Encryption of data on laptops</li> <li>• Intrusion, detection and prevention systems (Firewalls)</li> <li>• Regular backups including off-site back-ups and information storage</li> <li>• Penetration tests and cybersecurity reviews through Internal Audit and executing action plan from recommendations of audits conducted</li> <li>• IT Committee, Risk and Governance and EXCO receive regular updates on cybersecurity matters</li> <li>• IT monitors staff behaviour that makes systems vulnerable and actions are taken to address issues and to communicate a need for appropriate behaviours to strengthen security.</li> </ul>
9. Negative Occupational Health and Safety Incidents	<ul style="list-style-type: none"> <li>• C Block and Hybrid Working Model</li> </ul>
10. High Staff Turnover	<ul style="list-style-type: none"> <li>• Human Capital Policies</li> <li>• Employee Value Proposition</li> </ul>
11. Fraud and Corruption	<ul style="list-style-type: none"> <li>• Financial Controls and Combined Assurance</li> <li>• Fraud Prevention Policy</li> <li>• Conflict of Interest Policy</li> <li>• Compliance Management Framework</li> <li>• Awareness Campaigns</li> </ul>
12. Lack of impartiality and independence	<ul style="list-style-type: none"> <li>• Declaration of Interests</li> </ul>

## PART D: TECHNICAL INDICATOR DESCRIPTIONS (TIDS)

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
<b>STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND GREATER ECONOMIC PARTICIPATION</b>					
<b>1. Efficient and effective merger regulation &amp; enforcement</b>	a) Merger & acquisition decisions	1.	Average turnaround time for Phase 1 merger investigations.	<b>Definition:</b> <ul style="list-style-type: none"> <li>The Commission classifies merger notifications into phases, according to the complexity of the cases. Phase 1 investigations are non-complex, Phase 2 investigations are moderately complicated, require slightly more complex analysis and are unlikely to raise significant competition concerns while Phase 3 investigations are highly complex, require complex analysis, either because of the complex nature of the products and markets, the structure of the relevant markets or the public interest issues the transaction gives rise to.</li> <li>Indicators 1-3 refer to the amount of time the Commission takes to make a decision in a merger review process.</li> <li>Indicator 4 refers to the amount of time the Commission takes to make a decision in 90% of Phase 3 (L) merger cases.</li> <li>Indicator 3 includes both small and intermediate mergers.</li> <li>The Average Turnaround time for indicators 1- 3 is calculated by adding the time taken for decisions on all cases and dividing the total by the total number of cases decided.</li> </ul>	M&A
		2.	Average turnaround time for Phase 2 merger investigations.		M&A
		3.	Average turnaround time for Phase 3 intermediate merger investigations.		M&A
		4.	Average turnaround time for 90% of Phase 3 large merger investigations.		M&A

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>• To calculate the Average Turnaround time for indicator 4, Phase 3 (L) merger cases must be sorted by turnaround time, the top 10% of cases must be excluded and the Average calculated for the remaining 90% of cases.</li> <li>• The annual target is calculated as the average of all quarters.</li> <li>• The target is met if the outcome is less than or equal to the service standard.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>• The indicator is a measure of process efficiency. Efficient merger review is important for service-delivery, particularly given the financial and economic implications of mergers.</li> </ul> <p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• Turnaround times are determined by calculating the number of business days following the day of notification until the decision date. The average is calculated by the total number of days divided by the number of transactions.</li> <li>• The Mergers Division has a database of cases generated as and when filed with the Commission.</li> <li>• If a Notice of Incomplete merger filing (Form CC13(2)) is issued the turnaround times are calculated from the</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				business day following the receipt of a Complete Filing.	
	b. Compliance monitoring for merger conditions	5.	No. of quarterly compliance monitoring reports on competition and public interest conditions imposed by the Commission.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The Commission can approve mergers subject to certain conditions being met by the merging parties; or can impose remedies which the merging parties must fulfil. The indicator refers to the monitoring of the implementation of such conditions or remedies.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The effectiveness of merger remedies imposed is only evident in their application. Remedies are also legally binding to the parties. It is thus important that the Commission monitors the compliance of the parties thereto.</li> </ul> <p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>All cases approved with conditions or remedies are collected on a divisional database.</li> <li>Reports are received when due from the merging parties.</li> <li>Achievement of this target is denoted by a report to the Commission Meeting/EXCO reporting on conditions compliance monitoring as regards the immediately preceding quarter.</li> </ul>	M&A

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
<p><b>2. Competitive, Contestable and Deconcentrated Markets + 3. Improved public interest outcomes.</b></p>	<p>a) Investigation of Abuse of dominance and restrictive practices</p>	6.	<p>No. of abuse of dominance and restrictive vertical practices cases initiated in prioritised sectors in line with amendments of the Competition Act.</p>	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI refers to the number of Market Conduct investigations initiated, which fall within the Commission's pre-determined priority sectors (see section on Prioritisation within the APP).</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>Abuse of dominance and restrictive vertical practices have a stifling effect on the economy, particularly in critical sectors. The initiation of a case is the first step towards the prosecution of the conduct.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The Commission initiates investigation based on its own research and intelligence or based on complaints received from members of the public.</li> <li>The initiation of a case is evidenced minutes of the CC meeting's decision to initiate.</li> <li>A list of initiated cases is kept in the Data Compilation Template (DCT) of the division.</li> </ul>	MCD
		7.	<p>% of market conduct investigations completed</p>	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The 'completion' of a case refers to Commission's decision</li> </ul>	MCD & Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
			within 18 months.	<p>to refer the case to the Tribunal for prosecution or the decision to non-refer the case (i.e., not to pursue the case further).</p> <ul style="list-style-type: none"> <li>• ‘Completed’ cases include cases concluded at the ‘screening’ stage.</li> <li>• Market conduct investigations include section 5, 8 and 9 cases, and exclude cartel cases.</li> <li>• The indicator excludes cases that are placed on hold.</li> <li>• The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>• The Competition Act stipulates a time frame of 12 months within which the investigation of a complaint from members of the public must be finalised. However, it does not stipulate time limits within which to complete investigations initiated by the Commission. Due to the complex nature of investigations, certain matters may take longer than 12 months to finalise.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The target is calculated as follows: “Of the cases completed in the quarter/year, what percentage was completed within</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>18 months?"</p> <ul style="list-style-type: none"> <li>The 18 months include the time taken by the screening unit to screen the case.</li> <li>Minutes of the CC meeting will denote the decision for referral or non-referral of the investigations.</li> <li>The baseline for the calculation of third-party complaints is the date following the actual date of receipt of the complaint by the Commission's Registry.</li> <li>For Commission's own initiation, the baseline for calculation is the completed and signed CC1 form.</li> </ul>	
	b) Exemption applications decisions	8.	% of exemption applications completed within 12 months.	<p><b>Definition</b></p> <ul style="list-style-type: none"> <li>An exemption application is 'completed' once the Commission Meeting has taken a decision to grant or not to grant an exemption to the applicant/s. The Commission Meeting's decision is then published in the Government Gazette.</li> <li>The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/ Importance</b></p> <ul style="list-style-type: none"> <li>The Competition Act provides for firms to apply to the Commission for exemption of compliance to the Competition</li> </ul>	MCD

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>Act, under specific circumstances.</p> <ul style="list-style-type: none"> <li>The granting of exemptions can facilitate promotion of small businesses, economic stability of designated industries, maintenance, or promotion of exports).</li> <li>It is important that decisions on applications are taken judiciously.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The 12 months is calculated from day following the date in which the application is received by the Commission's Registry department, to the date of the CC meeting decision.</li> <li>The achievement of the target is evidenced by minutes of the CC meeting, which indicate the CC's decision to either grant or refuse to grant an exemption.</li> <li>The Commission reports on the time it has taken to process exemption applications which it has taken a decision on.</li> <li>This number may differ from the pool of applications received in the quarter, some of which may not be decided upon at quarter-end.</li> </ul>	
	c) Market Inquiries	9.	No. of market inquiries initiated.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Market Inquiries are a general inquiry into the state of competition in a market, the levels of concentration in and</li> </ul>	MID



STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>structure of a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm which the Commission undertakes under provisions in the Competition Act.</p> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>• A Market Inquiry allows the Commission to undertake an in-depth probe of a market to understand competition dynamics, without initiating an investigation into particular conduct.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The achievement of the indicator is determined by the decision of the Commission Meeting to initiate a Market Inquiry.</li> </ul>	
		10.	No. of market inquiries completed.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>• The 'completion' of a Market Inquiry refers to the submission of a Final Report on the inquiry to the Commission Meeting.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>• The Final Report of a Market Inquiry can have actionable recommendations, which have an impact on the public, on Government or on the market.</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the indicator is denoted by the approval of the final market inquiry report approved by the CC or EXCO meeting.</li> </ul>	
		11.	No. of monitoring reports on implementation of market inquiry recommendations.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>This refers to a report on progress in implementing market inquiry recommendations arising from the completed inquiries. This is a single report covering all relevant completed market inquiries and/or a more in-depth look at one inquiry.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission monitors implementation of recommendations from completed market inquiries. The indicator will enable the Commission to track progress in implementation.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a report noted/approved at the CC or Exco Meeting.</li> </ul>	MID
	d) Cartel	12.	No. of cartel investigations	<b>Definition:</b>	Cartels

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	Investigations		completed including high impact cartel investigations.	<ul style="list-style-type: none"> <li>The target refers to cartel cases which the Commission has decided to refer to the Tribunal for prosecution, and cases which the Commission has decided to non-refer.</li> <li>For high impact investigation it refers to cartel cases that have significant outcomes on markets, other firms and consumers.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>Completing the investigation of cases ensures that those parties whom the Commissions alleges to be engaged in cartel activities can respond to the charges before the Tribunal, in fulfilment of the mandate of the Competition Act.</li> </ul> <p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the target is evidenced by minutes of the CC meeting to refer or non-refer cartel cases to the Tribunal.</li> </ul>	
	e) Cartel Prosecutions	13.	% of cartel cases won at the Tribunal.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Winning means, the relief sought by the Commission is upheld partially or in full or variation thereof by the Tribunal or the courts.</li> <li>The percentage of cartel cases, where a final decision of the</li> </ul>	Legal Services & Cartels
		14.	% of cartel cases won at the courts.		

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>Tribunal and or the courts has been attained, which the Commission wins within the reporting period.</p> <ul style="list-style-type: none"> <li>• The target is not met if the Commission’s case is dismissed by the Tribunal or the courts in its entirety.</li> <li>• Where the Commission case is partially upheld by the Tribunal or other courts this target is met.</li> <li>• This definition excludes cases which are under appeal or review at the courts at the time of reporting, or within a reasonable time after issuing of the judgment.</li> <li>• The indicator includes cartel cases completed through settlement agreements, pre and post referral.</li> <li>• The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>• It is the Commission’s goal to successfully prosecute cartelists. Success at the Tribunal and courts confirms the rigor applied by the Commission and the correctness of its decisions.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The indicator is determined from orders of the Tribunal</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>and/or the Courts where cartel cases are under litigation.</p> <ul style="list-style-type: none"> <li>• Orders of the Tribunal/courts are accessible to the general public and the Commission keeps records thereof.</li> <li>• Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage.</li> <li>• The annual result must denote actual wins/losses as at year- end for the FY, and not as a cumulative result of the quarterly performance.</li> <li>• The data is captured on the divisional DCT, which indicates the date of the judgment and whether the judgment is in favour of not in favour of the Commission.</li> <li>• Orders/ decisions of the Tribunal and/or the courts are accessible to the general public and the Commission keeps records thereof.</li> </ul>	
				<ul style="list-style-type: none"> <li>•</li> </ul>	
	f) Merger Litigation	15.	% of merger decisions upheld by Tribunal.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>• The percentage of the Commission's decisions on contested Large Mergers, reconsideration applications, prior implementation cases and merger reviews which are upheld at the Tribunal and at the courts.</li> <li>• This definition excludes cases which are under appeal or</li> </ul>	Legal Services
		16.	% of merger decisions upheld by the courts.		

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>review in the courts at the end of the reporting period. i.e., a Tribunal or CAC decision in favour or against the Commission cannot be counted if it is under appeal or review at the time of reporting or within a reasonable time after issuing of the judgment.</p> <ul style="list-style-type: none"> <li>• This definition includes cases where the Commission recommendation/decision is subsequently amended through (a) negotiations between the Commission and parties and ultimately approved by the Tribunal, and (b) amended through a decision by the Tribunal or the courts.</li> <li>• The indicator includes cases completed through settlement agreements, pre and post referral.</li> <li>• Where the Commission case is partially upheld by the Tribunal or other courts this target is met.</li> <li>• The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>• The rationality of Commission's decisions is best tested by the Tribunal and the Courts. Decisions upheld by the Tribunal and the Courts confirm the rigour applied by the Commission and the correctness of its decisions.</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The achievement of the indicator is evidenced by the decision of the Tribunal and/or the courts which pertain to mergers taken within the reporting period.</li> <li>• Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage.</li> <li>• The annual result must denote actual wins/losses as at year-end for the FY, and not as a cumulative result of the quarterly performance.</li> <li>• Orders/ decisions of the Tribunal and/or the Courts are accessible to the public and the Commission keeps records thereof.</li> </ul>	
	g) Interlocutory litigation	17.	% of interlocutory decisions upheld by the Tribunal.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>• The percentage of the Commission's decisions on interlocutory applications upheld at the Tribunal and at the courts.</li> <li>• This definition is limited to interlocutory applications that may have a strategic impact on a case such as exception applications, jurisdictional challenges, dismissal applications, and reviews excludes process applications/considerations such as discovery, extensions,</li> </ul>	Legal Services
		18.	% of interlocutory decisions upheld by the courts.		

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>• Excludes cases which are under appeal or review in the courts at the end of the reporting period. i.e., a Tribunal or CAC decision in favour or against the Commission cannot be counted if it is under appeal or review at the time of reporting or within a reasonable time after issuing of the judgment.</li> <li>• This definition includes cases where the Commission recommendation/decision is subsequently amended through (a) negotiations between the Commission and parties and ultimately approved by the Tribunal, and (b) amended through a decision by the Tribunal or the courts.</li> <li>• Matters completed through settlement agreements are also included.</li> <li>• Where the Commission case is partially upheld by the Tribunal or other courts this target is met.</li> <li>• The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>• The rationality of Commission's decisions is best tested by the Tribunal and the courts. Decisions upheld by the Tribunal and the courts confirm the rigor applied by the Commission</li> </ul>	



STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>and the correctness of its decisions.</p> <p><b>Collection of Data/Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The achievement of the indicator is evidenced by the decision of the Tribunal and/or the courts which pertain to interlocutory applications taken within the reporting period.</li> <li>• Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage.</li> <li>• The annual result must denote actual wins/losses as at year-end for the FY, and not as a cumulative result of the quarterly performance.</li> <li>• Orders/ decisions of the Tribunal and/or the courts are accessible to the public and the Commission keeps records thereof.</li> </ul>	
<b>STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES</b>					
<b>4. Improved compliance &amp; awareness</b>	a) Domestic outreach initiatives	19.	No. of outreach, awareness, public education and training initiatives conducted to improve compliance with the Competition Act, the quality and quantity of complains and initiations of the	<b>Definition:</b> <ul style="list-style-type: none"> <li>• Education, training, and outreach programs refers to activities which aim to improve stakeholder understanding of the Competition Act, and therefore promoting compliance.</li> <li>• Workshops or outreach programs conducted refer to those initiated by the Commission and responses by the Commission to stakeholder requests for training.</li> </ul>	OTC & Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
			Commission.	<ul style="list-style-type: none"> <li>Stakeholders refers to government officials, regulators, trade unions/ federations, organisations representing business and consumers and the general public.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>Stakeholder education and awareness on competition law and policy is an advocacy mandate of the Commission. Stakeholders are taught about how to effectively participate in the Commission's processes.</li> <li>The Commission engages in outreach programmes as part of reaching members of the public and publicising its work and to promote compliance.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a post-event report noted at the CC or EXCO Meeting.</li> </ul>	
	b) External Guidelines on the application of the	20.	No. of Guidelines on the application of the Competition Act issued to stakeholders.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Guidelines are detailed explanatory directives on the Commission's enforcement approach to any aspect of the Competition Act. This includes revisions to existing Guidelines along with new Guidelines.</li> </ul>	Legal Services & ERB

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	Act			<p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>As the custodian of the Competition Act, the Commission issues Guidelines to stakeholders to guide them on the application of the Competition Act in particular circumstances.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The attainment of the target is denoted by approval of the Guidelines at the Commission Meeting or EXCO.</li> <li>Details of timelines will be on divisional DCT.</li> </ul>	
	c) Training	21.	% of advisory opinions issued within 60 days.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Non-binding advisory opinion is a written guidance issued by the Commission.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The purpose of the advisory opinion is to assist the requestor to comply with the provisions of the Competition Act.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The number of advisory opinions issued by the Commission in the relevant reporting period within the service standard.</li> <li>The turnaround time for issuing the advisory opinion will only</li> </ul>	Legal Services

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>begin to run from the date that all the relevant information required by the Commission has been submitted.</p> <ul style="list-style-type: none"> <li>If all the relevant information required by the Commission has not been submitted, the turnaround time will not commence.</li> <li>The achievement of this indicator is evidenced by an advisory opinion noted at the CC or EXCO Meeting.</li> </ul>	
<p><b>5. Improved understanding of market dynamics in priority sectors.</b></p>	<p>a) Industry scoping studies</p>	<p>22.</p>	<p>No. of market studies conducted in prioritised sectors.</p>	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>A market study is a report which comprises an economic study of a market or industry, largely to identify potential competition issues which the Commission can further probe through a market inquiry.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission undertakes market studies to assess markets for potential anti-competitive conduct but also features which likely have an adverse effect on competition. This work assists the Commission in informing potential market inquiries to be initiated along with their terms of reference, or alternatively cases to be initiated.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p>	<p>ERB</p>

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a market study report noted at the CC or EXCO Meeting.</li> </ul>	
	b) Impact assessments on Commission decisions or competition policy.	23.	No. of impact assessment studies completed.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>'Impact Assessment Studies are economic studies which have been undertaken by the Commission to measure the impact of its work on markets or regulation in terms of section 21A of the Competition Act.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission seeks to measure the impact of its decisions in particular sectors qualitatively and quantitatively on consumers and the economy, to ensure its effectiveness, and to assess the quality of its decision-making.</li> </ul>	ERB

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the indicator is denoted by an impact assessment report which has been approved/ noted at the CC or EXCO meeting.</li> </ul>	
	c)	24.	No. of reports on enforcement research on priority areas.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>A report on research conducted on priority areas with the aim of identifying potential conduct initiations.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission undertakes enforcement research to assess markets for potential anti-competitive conduct. This work assists the Commission in identifying cases to be initiated.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a report noted/approved at the CC or Exco Meeting.</li> </ul>	ERB
	d) Advocacy in priority sectors	25.	No. of advocacy cases completed in priority sectors.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI refers to the number of advocacy case undertaken which fall within the Commission's pre-determined priority sectors.</li> <li>Advocacy cases refers to those cases or projects which the</li> </ul>	Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>Commission seeks to address competition issues through non-enforcement means. The advocacy cases are developed by the Advocacy division through the business plan informed largely by matters arising from complaints, regulatory issues, or stakeholder relation.</p> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>• Anti-competitive conduct has a stifling effect on the economy, particularly in critical sectors. The completion of an advocacy case seeks to address competition concerns even where the Commission does not seek the prosecution of the conduct.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The completion of an advocacy case is evidenced by minutes of a Commission Meeting noting the concluded advocacy case.</li> <li>• The case is regarded as completed if a phase/part of it if concluded, even if new work is still to be done on the same broader case in future financial years.</li> <li>• Records relating to completed advocacy cases are kept in the Data Compilation Template (DCT) of the division.</li> </ul>	
		26.	No. of advocacy studies	<b>Definition:</b>	Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
			evaluating the Commission's interventions in priority sectors.	<ul style="list-style-type: none"> <li>The KPI refers to studies which measure the effectiveness of the Commission's case and advocacy interventions in priority sectors. These can include the impact of merger conditions or remedies imposed by the Tribunal, policy responses made, or advocacy projects previously completed, among others. The completion of a study is evidenced by minutes of a Commission Meeting noting the study.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission seeks to measure the outcome of its merger and advocacy work in particular sectors qualitatively and quantitatively, to ensure its effectiveness.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the indicator is denoted by a study/ report which has been approved/ noted at the CC meeting</li> </ul>	
		27.	No. of initiatives to promote entry & participation of HDPs.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI relates to the Commission's initiated outreach activities/projects focused on Historically Disadvantaged Individuals (HDPs). HDPs, include business owned by women, youth, and people with living disabilities, among others. These can include undertaking research projects,</li> </ul>	Advocacy



STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>workshops, seminars or awareness material on the Competition Act with and/or for HDPs associations/groups or regulatory/government bodies.</p> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The projects to be undertaken relating to the KPI are in the business plan of the Advocacy division; notwithstanding, projects undertaken by other divisions pertaining to the definition of the KPI shall be included in the collection of data/ calculation.</li> <li>• The achievement of the target is evidenced by minutes of the CC meeting, noting a report which reflects joint activities undertaken pertaining to HDPs.</li> <li>• The initiative with HDPs must have transpired within the reporting period, even if it is noted by the CC meeting in a subsequent reporting period.</li> </ul>	
	a)	28.	No. of international conferences and international forums hosted.	<p><b>Definition</b></p> <ul style="list-style-type: none"> <li>• Conference is an event/ meeting of international stakeholders, where stakeholders share their research and experiences on common subjects.</li> </ul> <p><b>Collection of Data/Method of Calculation</b></p>	OTC & ERB

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a post-Conference memorandum noted at the CC meeting.</li> <li>The workshop/ seminar must have transpired within the reporting period, even if it is noted by the CC meeting in a subsequent reporting period.</li> </ul>	
	b) Policy Responses	29.	No. of submissions or responses to policy or regulation.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI relates to written input which reflects the views of the Commission on a particular policy or regulatory matter.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission undertakes competition assessment of policy and regulation, according to s.21 of the Competition Act. In addition to informing the Minister of anti-competitive legislation, the Commission submits written responses to the relevant policymakers Government bodies and regulators.</li> <li>Responding to policy or regulatory matters can lead to the promotion of competition which is a core mandate of the Commission.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by an approval of a written submissions or policy responses by the CC</li> </ul>	Advocacy

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				meeting, within the reporting period.	
	a) Partnerships with government, labour, business and sector regulators regarding the objectives of the Competition Act.	30.	No of reports on collaboration projects with stakeholders on objectives of the Competition Act.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The indicator refers to the Commission undertaking collaborative work with stakeholders on the objectives of the Competition Act.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>The Commission has built relations with several stakeholders including government, business, and labour. The purpose of this indicator is to report on initiatives with stakeholders to achieve the objectives of the Competition Act.</li> </ul> <p><b>Method of Calculation &amp; Collection of Data/Evidence</b></p> <ul style="list-style-type: none"> <li>The indicator will be reported to EXCO on a quarterly basis.</li> <li>Achievement of this target is denoted by the report submitted to the Commission/EXCO meeting.</li> </ul>	Advocacy
	a) Research & Thought	31.	No. of research and thought leadership insights published.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Research and thought leadership insights are economic</li> </ul>	ERB

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	Leadership			<p>studies undertaken by the Commission on current and emerging issues related to competition policy (incl. the state and role of competition) and competition law enforcement (incl. toolkits and techniques).</p> <ul style="list-style-type: none"> <li>• 'Published' refers to research and thought leadership studies which have been published by the Commission (including platforms such as Commission books and working papers published on the Commission's website), published by an international organization or university, published by leading industry online publications (CLI, GCR, CPI), conference papers, book chapters and academic journal articles.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>• The Commission undertakes research into competition policy and law enforcement issues in order to develop a deeper, evidence-based understanding of current / emerging debates in these fields in order to develop informed positions on these issues.</li> <li>• The Commission also aspires to take a thought leadership role in shaping some of the debates in these fields, both locally and internationally. This includes bringing a development perspective to the competition policy field.</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of the indicator is evidenced by the publishing of the research or thought leadership insight as defined within the reporting period, or by a research report noted/approved at the CC or EXCO meeting.</li> </ul>	
		32.	Report on essential food products.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>A report on essential food products is a report which comprises economic study/research on various food products during the pandemic.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission undertakes food price studies to assess markets for potential anti-competitive conduct including price gauging. This work assists the Commission in identifying cases to be initiated.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by a report on essential food products noted/approved at the CC or EXCO Meeting.</li> </ul>	ERB
<b>6.Increased</b>	a)	33.	No. of research on	<b>Definition:</b>	ERB

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
<b>importance of developmental perspective in domestic and international competition law discourse.</b>	Collaborations with regional and international partners.		collaborative research on cross-country competition issues.	<ul style="list-style-type: none"> <li>The indicator refers to the Commission undertaking collaborative work with stakeholders regionally and continentally regarding cross country competition issues.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>The Commission has built relations with stakeholders within the continent. The purpose of this indicator is to report on collaborative work done on cross-country matters.</li> </ul> <p><b>Method of Calculation &amp; Collection of Data/Evidence</b></p> <ul style="list-style-type: none"> <li>Achievement of this target is denoted by the report submitted to the Commission/EXCO meeting for noting.</li> </ul>	
	c) Strengthened strategic bilateral and multilateral relations focused on influencing	34.	No. of projects/contributions focused on influencing international competition regulation with a developmental perspective	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The indicator refers to the Commission undertaking collaborative research projects or other forms of collaboration with African, BRICS and international partners.</li> <li>Research and Projects refers to joint research on competition issues; capacity building workshops; joint publication of papers and newsletters.</li> <li>African partners pertain to bilateral partnerships and multilateral/regional bodies such as the African Competition Forum, COMESA and AfCFTA.</li> </ul>	OTC

STRATEGIC OUTCOMES	OUTPUTS	No.	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	with a developmental perspective			<ul style="list-style-type: none"> <li>BRICS partners pertain to the BRICS member states.</li> <li>International partners pertain organizations such as OECD, UNCTAD, ICN.</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>Through practical collaboration with its African, BRICS and international counterparts, cooperation is deepened, and advances made in increasing developmental perspectives in domestic and international competition law discourse.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is evidenced by quarterly reports detailing the Commission’s collaborative work, research papers, joint publications noted at EXCO/ CC meeting.</li> </ul>	
<b>STRATEGIC GOAL 3: A PEOPLE-CENTRIC HIGH-PERFORMANCE ORGANIZATION</b>					
7.Sound Corporate Governance	a) Audit Outcome	35.	Audit opinion.	<p><b>Definition:</b></p> <p>The target refers to audit outcomes where all areas are unqualified, with no material reportable matters.</p> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission seeks to achieve a clean audit in the</li> </ul>	Finance & OTC

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>financial year, as a demonstration of effective resource management.</p> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The achievement of this indicator is denoted by a clean audit opinion from the Auditor General Report regarding the financial period under review.</li> <li>The target is measured annually.</li> </ul>	
		36.	No. of reports on implementation of the OHS compliance plan.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>Anticipation, recognition, evaluation, and control of hazards arising in the Commission offices that could impair the health and wellbeing of our employees and visitors. The Commission has an annual OHS compliance plan which denotes quarterly compliance plan (internal &amp; legislated).</li> </ul> <p><b>Purpose/ Importance:</b></p> <ul style="list-style-type: none"> <li>The purpose of the indicator is to ensure that the Commission offices comply with the occupational health and safety laws.</li> </ul> <p><b>Collection of Data/ Method of Calculation</b></p> <ul style="list-style-type: none"> <li>The indicator will be reported to EXCO on a quarterly basis and the cumulative total will be reported at the end of the financial year.</li> </ul>	CSD



STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>• A quarterly report is issued to report on progress against legislation and/or the OHS Compliance Plan.</li> <li>• Achievement of this target is denoted by the report on instances of compliance with the OHS Act and the internal OHS compliance plan for the Commission/EXCO.</li> </ul>	
<b>8. Highly engaged, motivated and productive workforce</b>	a) Talent management	37.	% of HR spend on Learning and Development.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>• The Commission aims to spend overall 1% of its salary's costs on learning and development initiatives per annum.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>• The purpose of the indicator is to ensure that the Commission supports the development of its employees and can build an internal talent pipeline.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>• The indicator will be reported to EXCO on a quarterly basis and the cumulative total will be reported at the end of the financial year. The reason for not setting a quarterly target is because learning and development is cyclical.</li> </ul>	CSD
		38.	% retention rate of staff complement.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>• The Commission is instituting programs to maintain high staff-retention levels.</li> </ul>	CSD

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<ul style="list-style-type: none"> <li>The indicator denotes percentage of achievement greater than, or equal to the target.</li> </ul> <p><b>Purpose/Importance:</b></p> <ul style="list-style-type: none"> <li>The Commission seeks to ensure sustainable delivery and impact by retaining its employees.</li> </ul> <p><b>Collection of Data/ Method of Calculation:</b></p> <ul style="list-style-type: none"> <li>The baseline from which this indicator is measured is the Total Staff Complement at the beginning of the Quarter. The indicator excludes graduate trainees.</li> <li>The indicator will be reported to EXCO on a quarterly basis and the cumulative total will be reported at the end of the financial year.</li> </ul> <p><b>Quarterly performance</b></p> <ul style="list-style-type: none"> <li>Is measured as follows: Baseline (i.e., staff complement as beginning of Quarter) minus number of staff who have left in the Quarter divided by Baseline multiply by 100.</li> </ul> <p><b>Annual performance</b></p> <ul style="list-style-type: none"> <li>Is measured as the average of the four quarters (i.e. <math>(Q1+Q2+Q3+Q4) / 400 \times 100</math>).</li> </ul>	

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
		39.	% of staff reached through training initiatives.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The KPI measures the percentage of staff, out of the total staff complement, that trained through the over the year.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>The purpose of the indicator is to ensure that the Commission supports the development of its employees and can build internal talent.</li> </ul> <p><b>Method of Calculation</b></p> <ul style="list-style-type: none"> <li>The indicator is calculated as a total number of employees who have attended training offered through or in collaboration with the OTC. The achievement of the target is measured as follows: total staff trained / total staff complement as at end of Q4 x 100.</li> </ul> <p><b>Collection of Data/Evidence</b></p> <ul style="list-style-type: none"> <li>The achievement of the target is denoted by a final report at EXCO in Q4 reporting on training attendance over the year, in relation to the target set.</li> <li>Evidence includes attendance registers signed by each employee who attended the training or electronic evidence of</li> </ul>	OTC

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				attendance in case of virtual training.	
<b>Business Process Improvement</b>	Review and redesign of business processes to improve turnaround times and organisational agility	40.	No. of reviews of complaints, exemptions, market inquiries, merger process and rules made under the Competition Act.	<p><b>Definition:</b></p> <ul style="list-style-type: none"> <li>The Commission receives complains and mergers through CC Forms which require the parties to follow a specified process and submit specific information.</li> <li>Reviewing the complaint and merger processes entail a detailed review of each requirement merger and complaint processes and where applicable recommend the changes.</li> </ul> <p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>A review of the Commission processes is required to ensure a more efficient and practical process for both the Commission and the stakeholders.</li> </ul> <p><b>Method of Calculation &amp; Collection of Data/Evidence:</b></p> <ul style="list-style-type: none"> <li>A report on review of the processes, areas reviewed, and recommendations.</li> <li>Report submitted and approved/noted by EXCO of the CC meeting.</li> </ul>	Legal Services
	Development of an integrated	41.	Progress report on the development of the Management Information	<p><b>Definition</b></p> <ul style="list-style-type: none"> <li>The KPI entails the development of the MIS with progress reports presented quarterly.</li> </ul>	CSD

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
	Management Information System (MIS) to ERP		System (MIS) integrated to Enterprise Resource Planning (ERP)	<p><b>Purpose</b></p> <ul style="list-style-type: none"> <li>The purpose of the indicator is to ensure that there is a development of a management information system that will ensure effective case management, planning and reporting system that is integrated to the ERP.</li> </ul> <p><b>Method of Calculation &amp; Collection of Data/Evidence</b></p> <p>The achievement of the indicator will be measured through the submission of quarterly progress reports to EXCO.</p>	
<b>Sound financial controls and management of public finances.</b>	Payment of supplier invoices report	42.	% of suppliers' invoices paid within 30 days.	<p><b>Definition</b></p> <ul style="list-style-type: none"> <li>The KPI includes payment of suppliers of the Competition Commission, as guided by National Treasury.</li> </ul> <p><b>Purpose</b></p> <ul style="list-style-type: none"> <li>The purpose of the indicator is to ensure an efficient supply chain services which does not disadvantage the service providers, most importantly the SMEs and HDPs.</li> </ul> <p><b>Method of Calculation &amp; Collection of Data/Evidence</b></p> <ul style="list-style-type: none"> <li>The indicator will be calculated as a percentage of payments</li> </ul>	Finance

STRATEGIC OUTCOMES	OUTPUTS	No	KEY PERFORMANCE INDICATORS	TECHNICAL INDICATOR DEFINITION	ACCOUNTABLE PROGRAM
				<p>paid to service providers.</p> <ul style="list-style-type: none"> <li>• Of the payments made in the quarter/year, what percentage was paid within 30 days?".</li> <li>• The turnaround time only start when all the relevant information required by the Commission has been submitted.</li> <li>• Achievement of this target is denoted by the report (Finance Report) submitted to the Commission/EXCO.</li> </ul>	

