



ANNUAL REPORT 2017-18

competition regulation for a growing and inclusive economy

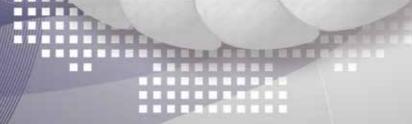




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# LIST OF ACRONYMS/ ABBREVIATIONS

AVE	Advertising Value Equivalent	Fly Blue Crane	Fly Blue Crane (Pty) Ltd	OEM's	Original Equipment Manufacturers
ACF	African Competition Forum	FPMAS	Fresh Produce Market Agents	Pannar	Pannar Seed Limited
Akeso	Akeso Group	GIBS	Gordon Institute of Business Science	Pioneer	Pioneer Hi-Bred International
AG	Auditor General	GDP	Gross domestic product	P&R	Policy and Research Division
CD	Cartels Division	Haw and Inglis	Haw And Inglis (Pty) Ltd	Power WC	Power Construction (West Cape) (P
CIL	Ceramic Industries (Pty) Ltd	НМІ	Health care market inquiry	PFMA	Public Finance Management Act No
CRESSE	The Competition and Regulation Summer	HCI	Hosken Consolidated Investments Limited	_	as amended
	School and Conference	HR	Human resources	Puregas	Puregas (Pty) Ltd
The Act	Competition Act No. 89 of 1998, as amended	IRC	Information Resource Centre	RIM	Robben Island Museum
Competition Bill	Competition Amendment Bill 2017	ІТ	Information technology	SA Airlink	SA Airlink (Pty) Ltd
CAC	Competition Appeal Court	IMASA	Institute of Market Agents South Africa	SCI	Sasol Chemical Industries Limited
Commission	Competition Commission Of South Africa	ICN	5	Silverbuckle	Silverbuckle Trade 21 CC T/A Yaco
Tribunal	Competition Tribunal		International Competition Network	SME's	Small and Medium Sized Enterprise
CLP	Corporate Leniency Policy	Italtile	Italtile Limited	SAA	South African Airways SOC Ltd
CSD	Corporate Services Division	LSD	Legal Services Division	SAAND	South African Association of Numisr
DAFF	Department of Agriculture Forestry And	MMHS	Matlosana Medical Health Services (Pty) Ltd	SA Express	South African Express Airways SOC
	Fisheries	MCC	Media Credit Co-Ordinators		Express
EDD	Economic Development Department	Media24	Media24 (Pty) Ltd	SARS	South African Revenue Service
EAP	Economically active population	M&A	Mergers and Acquisitions Division	SADC	Southern African Development Con
EEA	Employment Equity Act	NDP	National Development Plan	SCA	Supreme Court of Appeal
E&E	Enforcement and Exemptions Division	Nauticat Charters	Nauticat Charters (Pty) Ltd	ToR's	Terms of Reference
Eskom	Eskom Holdings Soc Limited	Netcare Hospitals	Netcare Hospitals (Pty) Ltd	Thembekile	Thembekile Maritime Services (Pty)
Ezee Tile	Ezee Tile Adhesive Manufacturers (Pty) Ltd	отс	Office of the Commissioner	Tigger 2 Charters	Tigger 2 Charters (Pty) Ltd
Ferry Charters	Ferry Charters (Pty) Ltd	OR Chamber	OR Tambo District Chamber of Business	Tsogo	Tsogo Sun Holdings Limited



# GLOSSARY OF

terminology is explained below:

For the purposes of this report, the meaning of the following

	"Abuse of dominance" means engaging in prohibited practices as provided in sections 8 and 9 of the Act.
be) (Pty) Ltd .ct No. 1 Of 1999,	"Advisory opinion" refers to a written opinion provided by the Commission to a requester, who may be an individual or a firm, setting out the Commission's likely view on the subject matter of the opinion.
	" <b>Advocacy</b> " refers to activities aimed at the promotion of voluntary compliance to the Act, through non-enforcement mechanisms.
ited Yacoob Yatch rprises	"Consent agreement" refers to an agreement concluded between the Commission and a respondent, and which is confirmed as an order of the Tribunal in terms of section 49D of the Act, setting out: (i) the alleged contravention, (ii) where appropriate, an admission by the respondent, (iii) a penalty where applicable and (iv) where applicable, a remedy addressing the harm occasioned by the alleged contravention of the Act.
d umismatic Dealers	"Enforcement" refers to the investigation and/or prosecution of anti- competitive conduct.
SOC Ltd t/a SA	"Exemptions" refers to the granting of exemption from prosecution to firms for engaging in anti-competitive conduct for a specific period of time, through the process and criteria prescribed in Section 10 of the Act.
Community	" <b>Non-referral</b> " means that, after conducting an investigation, the Commission has decided not to refer a particular case to the Tribunal

for prosecution.

"**Public interest**" refers to the consideration of socio-political and economic issues, as prescribed in Section 12A of the Act, in the evaluation of mergers and acquisition applications.

"**Referra**l" refers to the filing, by the Commission, of a complaint to the Tribunal for prosecution, upon completion of its investigation.

Pty) Ltd

# 2017/18 **HIGHLIGHTS**

#### **STRATEGIC GOAL 1:**

Effective competition enforcement and merger regulation

- 313 enforcement cases received from the public
- 193 enforcement cases finalised after screening •
- 4 enforcement cases referred to the Tribunal for prosecution and adjudication
- 146 cartel cases investigated in the year
- 10 leniency applications assessed in the year
- Dawn raids conducted in three cases this year
- Net saving of 76 452 jobs in the year
- Public interest conditions imposed on 32 mergers •
- 377 mergers notified, 388 mergers finalised, 52 mergers approved with conditions, 12 mergers prohibited
- 61 cases in litigation at year end
- R354 million in administrative penalties levied

#### **STRATEGIC GOAL 2:**

#### Strategic collaboration and advocacy

- At least 19 stakeholder engagement sessions conducted
- 82% increase in print media coverage .
- 29% increase in broadcast media coverage
- 228% increase in online media coverage •
- 4649% increase in social stream •
- 2 cases of collusive tendering received from Government agencies

#### **STRATEGIC GOAL 3:**

#### A high-performance agency

- R3.3 million spent on learning and development
- 55.8% / 44.2% ratio of female to male employees
- 6% decrease in staff resignations this year
- 32 study loans issued to staff this year

### STRATEGIC **GOAL 1** EFFECTIVE COMPETITION ENFORCEMENT AND MERGER REGULATION



# STRATEGIC GOAL 2

STRATEGIC COLLABORATION AND ADVOCACY



19 **STAKEHOLDER** ENGAGEMENT SESSIONS CONDUCTED



COMMENTS ON BILLS AND POLICIES



[5] ADVOCACY CASES



[82%] INCREASE IN **PRINT** MEDIA COVERAGE



**DEO** [118%] INCREASE IN **BROADCAST** MEDIA COVERAGE



[228%] INCREASE IN ONLINE MEDIA COVERAGE



[4649%] INCREASE IN SOCIAL STREAMING

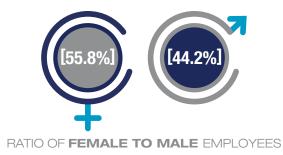


CASES OF COLLUSIVE TENDERING RECEIVED FROM



### STRATEGIC GOAL 3 A HIGH-PERFORMANCE AGENCY









**DECREASE IN STAFF** RESIGNATIONS

> **STUDY LOANS** ISSUED TO STAFF



# ABOUT THE ANNUAL REPORT

his document constitutes the annual report of the Competition Commission of South Africa (Commission) for the 2017/18 financial year. It is premised on the Commission's strategic plan for 2015 – 2020 and on the annual financial statements which have been approved by the Minister of the Economic Development Department (EDD).

According to the Public Finance Management Act No. 1 of 1999, as amended, (PFMA) it is a statutory requirement that the Commission produce an annual report. In line with the PFMA, section 41 of the Competition Act No. 89 of 1998, as amended, (the Act) requires the Commissioner to prepare and submit an annual report to the Minister, in the prescribed form, who will then table it to the National Assembly. This annual report has been prepared in line with the annual report guide for Schedule 3A and 3C Public Entities which is published by the National Treasury. It captures the key performance outputs, outcomes and impact of the Commission during the reporting period. It also articulates how the Commission fared in the management of its resources and in complying with corporate governance principles, as captured in parts D and E of this report.

This report is organised as follows:

- Part A: General overview;
- Part B: Economic impact;
- Part C: Performance information;
- Part D: Corporate governance; and
- Part E: Annual financial statements

# OUR **FUNCTIONS**

THE EXECUTIVE 

he Commission is a statutory body constituted in terms of the Act. It is one of three independent competition regulatory authorities, the other two being the Competition Tribunal (Tribunal) and the Competition Appeal Court (CAC).

While the Commission is the investigative and prosecutorial agency, the Tribunal is the adjudicative body and the CAC considers appeals against decisions of the Tribunal. The three bodies are functionally independent institutions and together make up South Africa's competition authority. The Commission and the Tribunal are administratively accountable to the EDD.

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

- promote the efficiency, adaptability and development of the economy:
- provide consumers with competitive prices and product choices;
- promote employment and advance the social and economic • welfare of South Africans;
- expand opportunities for South African participation in world markets and recognise the role of foreign competition in the country;
- ensure that small and medium-sized enterprises have an equal opportunity to participate in the economy; and
- promote a greater spread of ownership, specifically increasing • the ownership stakes of historically disadvantaged persons.

To achieve its purpose, the Commission's core functions, as set out in Section 21 of the Act. are to:

- investigate and prosecute restrictive horizontal and vertical practices;
- investigate and prosecute the abuse of dominant positions;
- decide on merger and acquisition applications;
- conduct formal inquiries in respect of the general state of competition in a particular market;
- grant or refuse applications for exemption from the application ٠ of the Act;
- conduct legislative reviews; and
- develop and communicate advocacy positions on specific competition issues.

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





Tembinkosi Bonakele Commissioner

Hardin Ratshisusu Deputy Commissioner





Mduduzi Msibi Company Secretary Lebo Mabidikane Acquisitions Division

Manager:

Mergers and



Makgale Mohlala Manager: Cartels Division



Nompucuko Nontombana

Manager: Enforcement and Exemptions Division



Molatlhegi Kgauwe Chief Financial Officer



**Bukhosibakhe** Majenge

Chief Legal Counsel and Manager: Legal Services Division



Liberty Mncube Chief Economist and Manager: Policy and **Research Division** 



Khanyisa Qobo Manager: Advocacy Division



Andile Gwabeni Manager: **Corporate Services** Division







Communication | Ownership | Making a Difference Professionalism | Employee Welfare | Teamwork | Efficiency



# OUR VALUES... OUR COMPASS

### C.O.M.P.E.T.E

# MINISTER'S Foreword

Wenty years ago President Nelson Mandela promulgated the Competition Act, giving life to the legislation that had been passed by lawmakers in the first democratic Parliament. The new competition law drew strongly on international practice – on abuse of dominance and merger administration – and introduced an innovation with the concept of "public interest" as a criterion to be considered by the authorities during merger transactions.

The Competition Commission (and the Tribunal) were new institutions established in law. Over the past 20 years, they showed their value particularly through their work on merger approvals, and action against cartels; where firms collude on price-fixing or abusive tendering. It is, therefore, my pleasure to table this Annual Report of the Competition Commission, in Parliament.

The report highlights several successful investigations of cartels, abuse of dominance, and consideration of proposed mergers and acquisitions. With respect to cartels, during the reporting period the Commission completed 63 investigations across sectors, from banking, to furniture removals, auto components, fresh fruit and media industries. Of the cases investigated, 52 were referred to the Tribunal for prosecution. An investigation into alleged collusion in foreign exchange markets was completed, and is currently the subject of litigation between the Commission, and some of the affected firms.



While a large number of complaints of abuse of dominance were received during the year, based on the existing provisions of the Competition Act, the Commission identified five cases with significant merit, to pursue. Of these, one has been settled with the firm concerned agreeing to behavioural remedies. Four cases have been referred to the Tribunal for prosecution, and are being considered.

With reference to mergers, the Commission was notified of 377 mergers, which they were required to consider. While most of the mergers were approved without conditions, 12 were prohibited and 52 were approved with competition or public interest conditions. Three of the more significant mergers considered by the Commission were Coca-Cola's buyback of its shares from ABInBev (a new transaction); Chevron's sale of its South African assets (involving Sinopec), and Old Mutual's corporate restructuring, which saw the company returning home to South Africa, from London, and place its primary stock listing on the Johannesburg Stock Exchange. In each of these large transactions, the competition authorities placed significant public interest conditions on the transactions, that builds on a trend over the past few years. These are groundbreaking developments in competition policy, not only in SA, but also internationally. Taken as a whole, the conditions address one key concern that citizens raise in many countries: how to balance corporate and public interests fairly and effectively. The conditions were agreed between the merger parties and Government, showing the value of social dialogue in shaping that balance and ensuring acceptable outcomes to large merger processes.

As our competition processes develop and mature, market players have greater certainty about the expectations of the public authorities and are able to work cooperatively with government and the regulators to achieve key aims of the Competition Act. For example, the Old Mutual transaction, though very complex, was approved within a short period of time.

The experience of 20 years of the Competition Act provided the basis for a review of current provisions in the law, dealing with prohibited practices, mergers, market inquiries and institutional arrangements. Looking ahead, government identified the high levels of economic (or product market) concentration as a constraint on economic growth and economic inclusion. Following extensive consultation with stakeholders, Cabinet approved a draft Competition Amendment Bill that builds on the strengths of the existing law while introducing changes warranted by our experience and by developments globally in competition and related areas. These include new provisions to address high levels of economic concentration where such market structure impacts negatively on economic inclusion; and national security considerations during mergers involving foreign acquiring firms. The Bill also proposes changes to a range of provisions on prohibited practices, and on excessive, predatory and discriminatory pricing policies by dominant firms, where these impede the ability of SMEs to participate in markets.

The Bill was introduced in Parliament during July 2018, and is currently being considered by lawmakers. The changes in the law proposed in the Bill will, if passed by Parliament, have a significant impact on the Commission. The Bill introduces new mandates and powers for the Commission, particularly in market inquiries into the structure and concentration levels in markets, and their impact on the ability of SMEs, and of black South Africans to enter and participate in the economy. It will require that the Commission retools itself for the new challenges, and builds strong capacity in areas of economic analysis and law.

I wish to thank the Commissioner, Tembinkosi Bonakele, for his leadership of the Commission, ably supported by Deputy Commissioner Hardin Ratsisusu and the staff of dedicated public officials. We look forward to supporting the efforts of the Commission to build an inclusive, high-growth economy and a strong institution that can serve all South Africans in an ethical and professional manner.

Mont Hat

Ebrahim Patel Minister: Economic Development Department

# THE COMPETITION ACT, **20 YEARS ON**

#### THE YEAR IN REVIEW

t is my pleasure to present to you the Competition Commission's (Commission) 19th annual report. While the agency first opened its doors 19 years ago, the law that created it – the Competition Act 89 of 1998 – was promulgated 20 years ago.

At 20 years of age, South Africa's modern competition regime is already displaying the signs of a mature dispensation. It has established sound jurisprudence in merger regulation and anticompetitive conduct; it has emerged as a thought leader among developing economies; and its impact is felt at all levels of South Africa's economic value chain, from the board room to the dinner table. Over the years the Commission has played a major part in developing South Africa's competition regime to this point and our 19th annual report elaborates on the more significant ways in which we helped to achieve these outcomes in the past year.

The current reporting period saw the courts endorsing the Commission's approach to competition law and procedure in several matters before them. For example, in May 2017 the CAC handed down its decision in an appeal brought to it by firms in the Power Construction group of companies, finding that the Commission's decision to initiate an investigation into the construction sector, in September 2009, was valid and that the Commission lawfully amended the scope of the investigation to add Power Construction (West Cape) (Pty) Ltd (Power WC) and Power Construction (Pty) Ltd (Power Construction) to it. The CAC effectively endorsed the Commission's tacit initiation of a complaint in circumstances where the details of a complaint were discovered later in the investigation.



In a separate finding concerning the same legal principle the Tribunal, in February 2018, found that the Commission had properly and tacitly initiated its complaint against Omnia Fertiliser Limited (Omnia) when it investigated and referred to the Tribunal an earlier case against Yara South Africa (Pty) Ltd (Yara).

Still in pursuit of establishing sound legal jurisprudence the Commission is currently appealing several decisions by the courts which, in the Commission's view, do not advance the proper cause of competition law. One such case concerns the first decision on predatory pricing ever handed down in our law. The Tribunal initially found in the Commission's favour, stating that Media24 had indeed priced its rival out of the market using predatory strategies. However this decision was overturned, on appeal, by the CAC. We have taken the CAC decision on appeal to the Constitutional Court as we believe this case concerns important questions about the appropriate legal and economic approach to be taken when considering allegations of predatory pricing. We expect the Constitutional Courts finding to be handed down in the 2018/19 financial year.

Another court decision we seek to challenge is the CAC's finding that Hosken Consolidated Investments Limited (HCI) was not required to notify the Commission of an earlier transaction between HCI and Tsogo Sun Holdings Limited (Tsogo). In this judgment the CAC held that the Tribunal erred in concluding that it did not have the required jurisdiction to adjudicate this matter given that the dispute between the Commission and HCI arose from a request for an advisory opinion rather than a merger filing on record. The CAC's finding in this case has major implications for the status of advisory opinions issued by the Commission. However this is not the only reason the Commission has applied for leave to appeal the CAC decision. Ultimately the Commission's application for leave to appeal seeks to safeguard the interests of employees who may possibly be retrenched as a result of the transaction that took place between HCI and Tsogo without the Commission's knowledge or intervention.

#### FRAMING THE COMPETITION CONVERSATION AMONG NATIONS

As one of the oldest competition regimes – in its modern form – in Africa, I believe the Commission has a responsibility to (1) promote and support the development of competition law throughout the continent; and (2) steer the global competition discourse in a direction that takes account of the developmental outcomes competition law can deliver to markets in emerging economies. Not for the benefit of the law itself but for the growth of Africa's economies, including South African firms that seek to invest and grow in the region.

We are making sure and steady progress in this area.

This year we continued to contribute to the various meetings and capacity building initiatives of the African Competition Forum (ACF), a community of African competition agencies which was established for the joint promotion and development of competition law in Africa, SADC – the Southern African Development Community, and UNCTAD – the United Nations Conference on Trade and Development. However our efforts at development extend beyond meetings and conferences. One of the activities I wish to highlight, in pursuit of these goals, was the Commission's assistance in organising a training course for judges and commissioners in March 2018 in Johannesburg, under the auspices of SADC and UNCTAD. The training course was attended by 12 sitting commissioners from three jurisdictions, namely Tanzania, Botswana and Swaziland.

In this workshop the judges were appraised on the economic principles underpinning national competition laws and the workshop discussed the legal approaches to enforcing competition policy thus empowering the commissioners with adjudicative skills specifically geared for competition cases.

Our involvement in the BRICS network of competition agencies is particularly important for achieving the second goal I mentioned above, that of steering the global competition discourse in favour of developmental outcomes. The countries that form part of BRICS: Brazil, Russia, India, China and South Africa, are all central economic players in their respective regions and all have developmental features in their economies. This reality positions us to drive the development agenda in the competition world. In this year we continued to participate in the ongoing meetings and discussions of the BRICS competition network. One significant event in this regard was the 5th BRICS International Competition Conference that took place in Brasilia, Brazil, in November 2017. The conference brought together more than 250 competition experts from 20 countries for two days of robust discussion. The event was a major success and culminated in the signing of the Brasilia Joint Statement in which BRICS competition agency heads reaffirmed their commitment to work together to "address the challenges of global economic development including growing inequality and technological transformation through the strengthening of cooperation in the analysis of global markets and innovation landscape for improving merger review and antitrust enforcement".

The contribution that international meetings make to the daily work of BRICS agencies is immeasurable. But one area where we can count interactions and measure the output of our networks is in the establishment of bilateral partnerships aimed at achieving a specific outcome. One such example was the collaboration between South Africa and Russia in addressing competition concerns arising in South Africa's automotive industry. South Africa benefited from Russia's past experience in this industry coupled with the similarities in our economies. This partnership will continue as we finalise the code of conduct for the South African automotive market and will undoubtedly place South Africa in a good position to assist other countries yet to address competition concerns in this sector. Further details of our efforts in this industry are set out on page 84.

#### **IMPACTING OUR WORLD**

In recent years we added an impact assessment function to the work of the Commission. We did this in order to measure the direct impact of our work on the lives of ordinary South African's and on the broader economy. Understanding our impact establishes our continued relevance in the public mind and helps us to direct our future efforts.

This year we continued to evaluate the impact of specific decisions of the Commission's investigations as well as the findings of the Competition Tribunal (Tribunal) and the Competition Appeal Court (CAC). In deciding which cases to focus on, from the many noteworthy investigations and merger assessments the Commission has conducted over the years, we selected two cases located in one of the Commission's priority sectors: food and agro-processing. We elaborate on our findings in Part B of this report.

Rather than limiting ourselves to a linear case-by-case approach, for the first time this year we chose to evaluate the often forgotten impact of our work - the deterrent factor. We sought to measure the unnoticed effect of competition law enforcement on the decisions of company executives and other stakeholders in the competition value chain. These are the indirect, unquantified effects of the Commission's enforcement activities and in themselves carry a benefit to competition and the broader economy.

In some ways the research results confirmed what we as Commission employees and competition practitioners instinctively knew but had not, to date, scientifically proven. The majority of respondents to the study believed that the Commission is effective at deterring anti-competitive conduct and that the Commission's corporate leniency policy (CLP) has played a major role in this regard. It would appear that awareness of high profile cases boosts behavioural change amongst businesses, particularly in the sectors where the Commission has intervened. The study also revealed a need to expand our awareness efforts beyond the legal and business fields we mostly interact with.

The final focus area of our impact assessments this year was the area of government procurement. This in light of the fact that government contracts and government spending are typically of considerable value and importance to any State, often accounting for 10 to 20 per cent of a country's gross domestic product

(GDP). In fact, in South Africa, government spending accounted for an average of 16.61% of GDP between 1960 and 2016 whilst specifically in 2016, government spending accounted for at least 20.27% of GDP. As such, public procurement can impact the structure and functioning of competition in a market. The Commission has observed however - through past investigations such as the construction cartel - that public procurement is vulnerable to anti-competitive conduct, particularly collusive tendering. The impact study revealed that the Commission's efforts have already yielded increased awareness of collusive tendering amongst procurement officials and tangible effects, such as policy changes, within State organs. However the results of the survey also suggested that there may be greater scope for the Commission to engage in further training and advocacy for the municipal sphere of government. Such engagements would include training workshops with municipal departments and an awareness campaign directed at public sector officials.

#### ENFORCEMENT AND MERGER HIGHLIGHTS FOR THE YEAR

Our core work comprises the investigation and prosecution of anticompetitive behaviour, the evaluation of merger activity and the assessment of exemption applications thus the bulk of the annual report is dedicated to these functions. Some of the Commissions highlights in these areas included:

- our June 2017 referral of Rooibos Ltd to the Tribunal for prosecution and adjudication. We alleged that Rooibos Ltd. South Africa's largest processor of rooibos tea, had secured for itself significant volumes of the tea farmed out of South Africa's Cederberg region through anti-competitive means, leaving the industry severely constrained;
- our February 2018 referral of SA Airlink (Pty) Ltd (SA Airlink) • to the Tribunal for prosecution and adjudication on charges of excessive pricing and predatory pricing. We alleged that SA Airlink, a privately controlled regional feeder airline, engaged in anti-competitive conduct which led to the exit of one of its rivals from the Johannesburg - Mthatha route;
- the conclusion of several cartel investigations across various industries including the banking sector, the fresh fruit industry, the furniture removal industry and the market for fire sprinkler

systems. These cartel matters are at varying stages of referral, prosecution or settlement and we elaborate on them in Part C of this report;

- our continued imposition of public interest conditions in mergers where conditions are justified in terms of the Competition Act 89 of 1998 (the Act). The Commission imposed public interest conditions on 32 mergers, 27 of these mergers had public interest conditions only and 5 cases had a combination of both public interest conditions and competition based conditions. Of these 32 cases, 30 cases involved conditions related to employment, four related to the impact of the merger on a particular sector or industry, five related to the impact on SMMEs and entities owned by HDP's, five of these had a combination of different public interest conditions. The Commission's intervention in mergers resulted in a net saving of 76 452 jobs;
- launching two market inquiries, namely (1) an inquiry into public passenger transport and (2) an inquiry into data service costs.

The summary of our performance against the targets set reflects that, on average, the Commission scored 72.25% on its report card for this financial year. This is a decline of 12.75% on last year's performance and a slight increase of 1.25% from the 2015/16 financial year. The reasons for the fluctuations in performance vary greatly from one quarter to the next and are specific to each target set. These are detailed in Part C of the annual report. specifically page 96.

#### IN CONCLUSION

The Commission is not immune to the financial constraints that plague all spheres of government and this financial year was no exception. Despite the resource constraints we continued to make every effort to deliver on the mandate given to us by the South African public. There are areas in which we aim to improve our performance in the coming financial year and this continued improvement on performance is a subject that dominates the Commission's executive meetings throughout the year. I am confident that we will continue to seek ways to achieve our mandate as required by law.

Finally I would like to thank the staff and management team of the Commission for their invaluable contribution towards achieving our goals this year and I trust we will continue to do so in the years to come.

Tembinkosi Femkele

Tembinkosi Bonakele Commissioner



# **OUR STRATEGIC APPROACH**

#### **OUR VISION**

The Commission's "Vision 2030" is to attain a growing and inclusive economy that serves all South Africans, which includes the eradication of poverty and unemployment by 2030, in line with the National Development Plan (NDP). This vision emphasises the transformational role played by the Commission in the economy. Attaining this vision entails, amongst other things, balancing the efficiency objectives of the Competition Act with its public interest objectives.

#### **OUR VALUES**

The Commission's ongoing management of its operations is guided by a set of core values that define the organisational culture. These are:



#### Communication

To effectively convey information and express thoughts and facts. This value demonstrates effective use of listening skills and displays an openness to other people's ideas and thoughts.

#### Ownership

To commit one's self to the task at hand. The Commission encourages staff to accept responsibility for their actions and decisions and to accomplishing their work in an ethical and costeffective manner.

#### Making a difference

To consistently deliver the required business results, to set and achieve aggressive yet realistic goals, to consistently comply with quality, service and productivity standards, to meet deadlines and to maintain a clear focus on the Commission's goals.

#### Professionalism

To demonstrate a good work ethic. To show respect, display integrity and to have empathy with other stakeholder's needs.

#### Employee welfare

For employees to achieve their full potential while maintaining a healthy work-life balance.

#### Team work

To work cooperatively and effectively with others in order to achieve common goals. The ability to participate in building a group identity characterised by pride, trust and commitment.

#### Efficiency

To measure how well resources are utilised in pursuit of quality results.

### OUR STRATEGIC GOALS

The Commission has identified three strategic goals, namely:



STRATEGIC GOAL 1: Effective competition enforcement and merger regulation

In pursuing this goal the Commission effectively uses the instruments available to it in the Act. This includes the regulation of mergers and acquisitions, the investigation and prosecution of instances of abuse of dominance and restrictive conduct as well as the unmasking and dismantling of cartels. The primary tools utilised here are investigation. prosecution and remedies. Within the South African context, effective competition regulation also entails balancing market efficiencies with the public interest leading directly into the Commission's overall objective to attain a growing yet inclusive economy.



- competitive markets;

strategic goal are:

improved public interest outcomes in markets;

efficient and effective merger regulation;

- increased competition compliance; and
- improved understanding of market dynamics in priority sectors. •

The specific outcomes intended to lead to the achievement of this



#### STRATEGIC GOAL 2: Strategic collaboration and advocacy

The Commission develops strategic partnerships with complementary stakeholders to attain inclusive growth. This goal entails promoting the Commission's work and activities to the public; conducting market inquires; building strategic partnerships with government, business and labour; and promoting competitive markets. The primary tools used are market inquiries, advocacy programmes and relationships with stakeholders.

The outcomes pertaining to the achievement of this goal are:

- improved co-ordination in the application of economic policy and • competition policy;
- increased importance of developmental perspectives in domestic and international competition law discourse; and
- improved compliance and awareness.





#### **STRATEGIC GOAL 3:** A high-performance agency

The Commission successfully delivers on its objectives through a cohesive and well-structured organisation in which people, processes and systems perform optimally. In achieving this goal, the Commission optimises its human capital, resources, systems and processes to become an effective agency. The Commission aims to become a knowledge-intensive organisation with strong, reliable and integrated information management systems, underpinned by the best-in-range information technology (IT) platform.

The outcomes pertaining to the achievement of this goal are:

- improved organisational efficiency;
- accountably managed resources; and
- highly motivated and productive people.





### **ASSESSING THE COMMISSION'S IMPACT**

mpact assessments are the economic studies the Commission undertakes in order to evaluate its work in specific markets. The purpose is to demonstrate to stakeholders the harm of anti-competitive conduct and the public benefit of the Commission's interventions.

Impact assessment studies are carried out under three main categories:

- evaluating the impact of anti-competitive conduct;
- ex-post evaluation of specific enforcement interventions; and •
- evaluation of the broader impact.

In the period under review, the Commission sought to enhance its knowledge of the effects of its competition enforcement interventions by undertaking several ex-post evaluations of specific enforcement interventions and assessing their impact on affected markets. The outcomes of three of these studies are discussed below.

#### CONSIDERING THE INDIRECT EFFECTS OF **COMPETITION ENFORCEMENT**

In this reporting period the Commission decided to consider the deterrence effects of competition enforcement, a first in the Commission's 19 year history. While the Commission's enforcement activity has a direct effect on the specific firms and markets involved in a particular instance, it also has an indirect effect in that firms in the market may decide to, for instance, not engage in a particular practice that would be considered prohibited or not pursue a particular merger transaction even though the Commission is unaware of the potential conduct or merger. These are the indirect, unquantified deterrence effects of the Commission's enforcement activities and in themselves carry a benefit to competition and the broader economy.

The Commission relied on three categories of information, covering the period 2006 to 2016, to conduct its study: a) a business survey, b) legal survey and c) various internal sources of information within the Commission. Despite a low response rate, the study pointed to a number of interesting observations.

The key finding of the study was that, in line with international studies, the indirect deterrence effect of the Commission's enforcement activities clearly outweighs the direct effect thereof. For the period 2006 to 2016, the study estimated that for every cartel investigation undertaken by the Commission, there were five changes in behaviour by large firms due to the risk of a cartel investigation by the Commission. For every investigation of other commercial agreements, there were eleven changes in behaviour by large firms. For every abuse of dominance investigation, there were two changes in behaviour by large firms. For mergers, the study suggests that, for every finding of a substantial lessening or prevention of competition by the Commission, six mergers are abandoned or modified before reaching the Commission.

The results of this study suggest that, given the relative size of the indirect effects, there may be important implications for both competition policies and legislation as well as the broader activities of the Commission and other authorities. Competition policies and legislation should not focus only on direct effects but also the indirect.

More specifically, given the extent of the deterrence effect of the Commission's enforcement activities, the findings of this research suggest that strategies to increase public awareness and education of competition law, and to increase awareness and publicity with respect to the enforcement activities of the Commission, are crucial.

Some of the more noteworthy observations arising from the study are highlighted below.

- 67% of the respondents agree that the Commission is effective in deterring cartels, 72% agree that the Commission is effective in deterring other forms of anticompetitive agreements and 68% of the respondents agree that the Commission is effective in deterring abuses by dominant companies. While the Commission appears to have had a relatively weaker influence on firms' merger activities, the majority of respondents (51%) still stated that they mostly or strongly agree that the Commission affects their merger activities. Notably, both firms and legal respondents believed that the Commission does not deter mergers that would not be seen as anticompetitive.
- In terms of cartel behaviour specifically, businesses consider the most important factors driving deterrence of anti-competitive behaviour to be criminal sanctions (71% of the respondents view it as 'very important'), disgualification of directors (68% of the respondents view it as 'very important'), financial penalties (66% of the respondents view it as 'very important'), and negative publicity (64% of the respondents view it as 'very important').
- With respect to cartel behaviour, legal practitioners viewed the level of media coverage received by the Commission as the most important factor driving deterrence, with the CLP being the second most important.
- In terms of compliance measures, which also deter anticompetitive conduct, the results of the business survey suggest that not many firms have adopted compliance measures. However, 80% of legal advisors have purported that at least one of their clients have hired a dedicated compliance officer. Firms are naturally more likely to adopt competition compliance measures when they are more aware or knowledgeable of competition law or where they have a need to deal with a competition lawyer.
- A frequently cited suggestion by both businesses and legal practitioners for improving deterrence effects was greater advocacy and education in the public domain regarding the conduct. Other suggestions cited were greater certainty and improved guidelines.
- High profile cases such as the Sasol polymers case, the Commission's interventions in the cement industry and the Commission's investigation into Multichoice were highlighted by respondents as having a significant effect on their company's commercial behaviour.

#### FOCUS ON GOVERNMENT PURCHASING BEHAVIOUR

Determining the impact of competition enforcement on public procurement was amongst the Commission's focus areas in the 2017/18 financial year because government contracts and government spending are typically of considerable value and importance to any State, often accounting for 10 to 20 per cent of a country's gross domestic product (GDP).

In fact, in South Africa, government spending accounted for an average of 16.61% of GDP between 1960 and 2016 whilst specifically, in 2016, government spending accounted for at least 20.27% of GDP. As such, public procurement can impact the structure and functioning of competition in a market therefore the process should be transparent and pro-competitive. The Commission has observed however - through past investigations such as the construction cartel - that public procurement is vulnerable to anticompetitive conduct, particularly bid rigging.

Through this study the Commission sought to evaluate the extent to which competition authorities' investigative and advocacy efforts in this area have had an impact on public procurement practices. This was done by considering the views of public sector procurement officials on whether public sector officials have changed their tender process or internal procedures after discovering bid rigging. A questionnaire was compiled and sent to all municipal procurement officers. The survey was divided into two sections: the first concerning the impact of authorities' interventions for municipalities directly affected by cartel conduct, while the latter part inquired about reformations related to public sector bid rigging more generally.

The survey results revealed a need to improve (1) the levels of awareness about cartels to the municipalities contacted; (2) the ability of municipalities to detect bid-rigging; (3) the rate of referrals of suspicious bids to the Commission; and (4) the level of compliance with Treasury rules about public procurement tenders.

The results from this survey suggested that there may be greater scope for the Commission to engage in further training and advocacy to this sphere of government. Such engagements would include training workshops with municipal departments and an awareness campaign directed at public sector officials.

#### SASOL DIVESTITURE YIELDS FERTILE RESULTS

In 2009, Sasol Nitro, a division of Sasol Chemical Industries Limited (SCI), reached a settlement with the Commission in terms of which Sasol was requested to divest its blending facilities located in Durban, Bellville, Potchefstroom, Endicott and Kimberley. The settlement came after separate complaints by Nutri-Flo and Profert, in 2004 and 2005, alleging excessive pricing, exclusionary conduct and price discrimination on the part of Sasol Nitro and alleging collusive conduct with two companies, namely Omnia and Kynoch (Yara). The Tribunal confirmed the settlement as an order on 20 July 2010.

In this financial year the Commission assessed the impact of the settlement agreement it concluded with Sasol Nitro in 2009. The purpose of the impact assessment study was to determine whether the Commission achieved its objective of bringing about more competitive outcomes to the fertiliser market through its interventions. The study was conducted using both quantitative and qualitative analysis.

The fertiliser industry was selected because of its importance to the food and agro-processing sector, a priority sector for the Commission. Fertiliser consumption is estimated to be in the region of 2.2 million tons per annum with nitrogenous fertiliser accounting for approximately 60% of this. Fertiliser constitutes a large portion of grain and oilseed producers' variable costs and accounts for approximately 30% to 50% of total variable costs incurred by grain and oilseed producers. Therefore any anti-competitive conduct in the fertiliser market could result in a significant increase of input costs to farmers and ultimately to the food prices that are paid by end-consumers.

The study found that since the settlement, there have been a number of positive outcomes in the fertiliser industry. One such outcome was the break-down of artificial barriers to entry in the market which, in part, led to Omnia expanding its operations in the production of ammonium nitrate by investing in a nitric acid plant. The facility cost R1.4 billion, comprising of a nitric acid plant, an ammonium nitrate plant, a porous ammonium nitrate plant and a fleet of 145 specialised ammonia rail tankers. Omnia's expanded nitric acid plant in Sasolburg has the capacity to produce 40% more nitric acid per annum compared to the nitric acid plant's previous capacity of 73 000 tons. Prior to the Commission's intervention there was little incentive for such investment due to the cartel, for both fertiliser production and imports of ammonia.



The impact assessment study also found that the divestiture contributed to entry and expansion into the blending and distribution market. Profert, which operates in the food and agro-processing sector, acquired Sasol's Potchefstroom and Bellville plants in Cape Town in March and August 2011 respectively. GWK, an agricultural cooperative which is also involved in the blending and distribution of granular and liquid fertiliser products, acquired Sasol's Durban plant in June 2011. Farmisco (Pty) Ltd t/a Kynoch acquired the Kimberley plant and the Sasol plant in Endicott.

The Commission's assessment also shows significant entry by several new smaller players at the blending level of the market. The smaller entrants, who went from 15 before the settlement to approximately 65 after the settlement, complement fertiliser supply by larger players, because they supply small quantities of specialised fertilisers which would ordinarily not be supplied by larger players. This was an indication that the Commission's intervention, at least in part, created opportunities for smaller firms to acquire the divested plants which would not have been the case absent the intervention. Further, the Commission's intervention also assisted to break artificial barriers to entry in the market, especially for smaller blenders and traders.

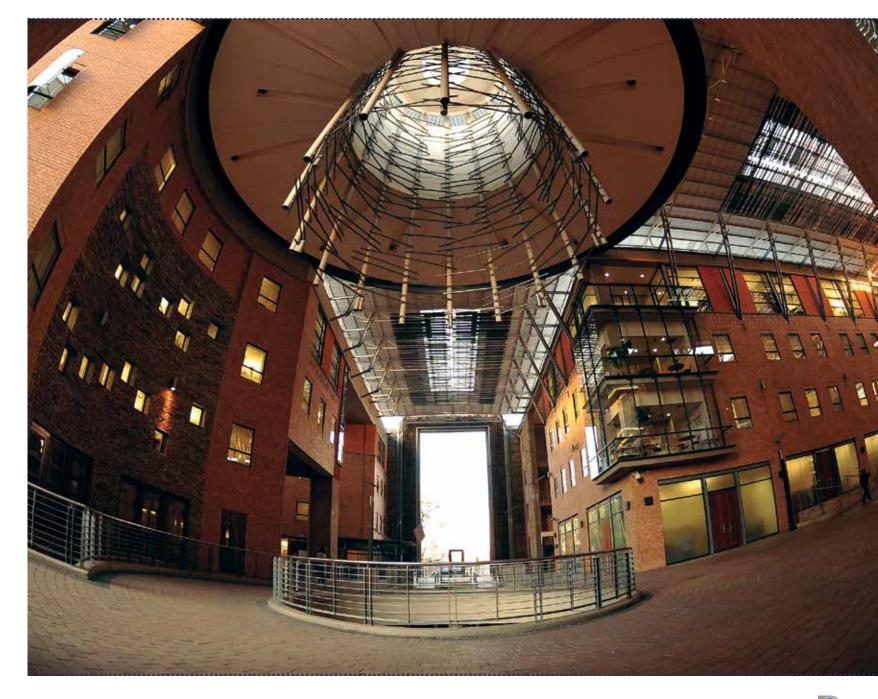
Other outcomes that can be attributed to the Commission's settlement with Sasol include those listed below.

- The market has seen positive price benefits in the fertiliser industry and substantial customer savings as fertiliser retail prices have become more competitive in the post-intervention period. Between 2010 and June 2015, we estimate customer savings at approximately R955 million in the inland region and approximately R46.5 million in the coastal region.
- We estimate that South African consumers of granular fertiliser have saved approximately R1 billion between 2010 and June 2015. This estimate does not take into account indirect benefits of the intervention.
- Further, the divestiture of the blending facilities has broken down Sasol's dominance in fertiliser blending and trading and its ability to price discriminate across customers and between inland and coastal regions.

- The increase in the number of players across the fertiliser value chain is likely to have contributed positively to employment.
   Further, Omnia's investment expansion in the nitric acid plant is expected to have had a positive effect on employment.
- An important positive market development which we observe in our study is the increase in urea imports into South Africa in the post-intervention period when compared with the preintervention period. This has provided farmers with more choice.

There were some negative market developments the Commission observed in its study. These include increased importation of cheaper low quality fertiliser and the depressed margins in the industry. Further, the exit of Sasol from the blending and trading level of the value chain raises potential future competition concerns in the fertiliser industry. Sasol's Secunda blending plant was closed down in May 2015. The exit of Sasol from blending and trading may potentially reduce the pro-competitive benefits that arose from the increased competition at the upstream level with the investments made by Omnia. There is also concern regarding the lack of growth of the smaller blenders and traders after significant market entries postintervention. Despite numerous smaller firms entering fertiliser trading and blending post-intervention, some of the smaller entrants have failed to stabilise and register growth in the market.

Overall the Commission believes its interventions in the nitrogenous fertiliser industry have led to significant pro-competitive outcomes in the market such as new entry, increased customer choice and price competition, as well as estimated customer savings of close to R1 billion during the first five years following the settlement.





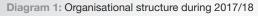


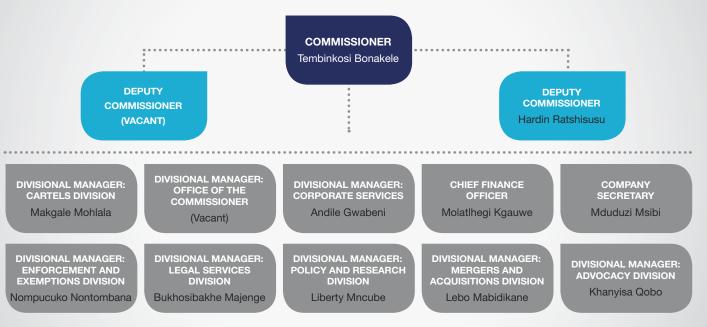


### ORGANISATIONAL STRUCTURE

he Commission has four main functions underpinning its mandate, namely enforcement, advocacy, market inquiries and the regulation of mergers and acquisitions.

The Commission's enforcement function can be defined as the investigation of vertical restrictive practices, horizontal restrictive practices - including cartels - and the investigation of abuse of





dominance by firms. Advocacy refers to the Commission's authority to promote voluntary compliance with the Act. A market inquiry is a broad investigation into the cause of market failure in an identified market without focusing on the conduct of any particular firm in that market. Finally, the regulation of mergers and acquisitions entails the assessment of corporate consolidations in order to determine their likely impact on competition. The Commission's organisational structure, depicted below, enables the Commission to carry out these core functions, and ancillary functions, efficiently.

# DIVISIONAL REPORTS

his section sets out the performance results achieved by the various divisions in pursuit of the Commission's strategic goals for the year.

The five core divisions that carried out the Commission's main functions during the reporting period were:

- Enforcement and Exemptions Division (E&E): investigating abuse of dominance, vertical restrictive practices and assessing exemption applications;
- Cartels Division (CD): investigating collusive practices;
- Mergers and Acquisitions Division (M&A): analysing and • evaluating corporate consolidations:
- Legal Services Division (LSD): providing litigation services and legal expertise to the Commission and advisory opinions to the public: and
- Policy and Research Division (P&R): providing economic expertise to the organisation and enhancing the Commission's knowledge and understanding of market dynamics.

All support services are the responsibility of the Corporate Services Division (CSD). These comprise human resource management, finance management, security and facilities management as well as the management of information technology. The Office of the Commissioner (OTC) comprises three main functions: (1) international relations; (2) strategy and planning; and (3) corporate governance. Finally, the Advocacy Division carries out communication, advocacy and stakeholder relations functions.

Table 1 shows each of the Commission's strategic goals and the Commission division's responsible for achieving them.

Table 1: Strategic goals, outcomes and responsible divisions

STRATEGIC GOAL	INTENDED OUTCOMES	RESPONSIBLE DIVISIONS
Effective competition enforcement and merger regulation	<ul> <li>Efficient and effective merger regulation</li> <li>Competitive markets;</li> <li>Improved public interest outcomes in markets;</li> <li>Increased competition compliance; and</li> <li>Improved understanding of market dynamics in priority sectors.</li> </ul>	<ul> <li>E&amp;E Division</li> <li>CD Division</li> <li>M&amp;A Division</li> <li>LSD</li> <li>P&amp;R Division</li> <li>Market inquiries function</li> </ul>
Strategic collaboration and advocacy	<ul> <li>Improved co-ordination in the application of economic policy and competition policy;</li> <li>Increased importance of developmental perspectives in domestic and international competition law discourse; and</li> <li>Improved compliance and awareness.</li> </ul>	OTC     Advocacy Division
A high performance agency	<ul> <li>Improved organisational efficiency;</li> <li>Accountably managed resources; and</li> <li>Highly motivated and productive people.</li> </ul>	<ul><li>CSD</li><li>All other divisions</li></ul>



#### PERFORMANCE HIGHLIGHTS

The Enforcement and Exemptions (E&E) Division investigates and, together with LSD, prosecutes restrictive vertical practices and abuse of dominance. E&E also evaluates exemption applications when these are brought to the Commission. The work of the E&E Division comes from two main sources – complaints and exemption applications lodged by the public and investigations that are proactively initiated by the Commission.

Restrictive vertical practices are agreements between firms in a customer/supplier relationship which substantially lessen competition and cannot be justified in terms of the Act. Abuse of dominance takes place when a firm uses its dominant market position to exploit customers or exclude rivals in the market, with no feasible justification for doing so. Exemption applications are granted to firms that wish to engage in anti-competitive conduct if the conduct and their motivation meet the requirements set out in the Act.

In this financial year the E&E Division received a total of 313 complaints from the public and initiated five complaints as a result of internal research and market intelligence. Diagram 2 sets out the number of cases initiated by the Commission this year, the number of cases received from the public, investigated and finalised in the year.

During this period the Commission received two exemption applications and finalised one application. The number of exemption applications received and assessed is set out in Table 2 and 3.

The more significant cases finalised by the Commission in this financial year are discussed below, including cases finalised at the screening process. Most of these cases fall within the Commission's priority sectors, particularly: the transport sector and the food and agro-processing sector.

#### Squeezing every drop out of rooibos farmers

On 14 June 2017, the Commission referred a case against Rooibos Ltd to the Tribunal for prosecution. The Commission alleged that Rooibos Ltd, South Africa's largest processor of rooibos tea, had secured



for itself significant volumes of the tea farmed out of South Africa's Cederberg region which is known worldwide for its production of the unique caffeine-free tea containing high levels of anti-oxidants. Rooibos Ltd did this by introducing, in 2014, two exclusionary contracting strategies in its dealings with rooibos farmers.

Firstly, Rooibos Ltd entered into long-term supply agreements with farmers for the period 2014-2018. In terms of the agreements, farmers were required to supply stipulated volumes of rooibos tea to Rooibos Ltd.

Secondly, Rooibos Ltd introduced a supply commitment in exchange for farmers gaining access to its production research output. Specifically, farmers were required to supply up to half of their production to Rooibos Ltd. Rooibos Ltd exploited its research output to lock-in the supply of rooibos tea from farmers after the collapse the research function undertaken by the South African Research Agricultural Council in 2014.

In the Commission's view Rooibos Ltd's conduct had two significant anti-competitive effects. It forcibly locked farmers into supplying

Rooibos Ltd and it prevented Rooibos Ltd's rivals from accessing supplies of rooibos tea for processing. Indeed the Commission observed that since the introduction of the exclusionary agreements Rooibos Ltd's volumes of rooibos tea purchased from farmers, which were in serious decline at the time, significantly escalated and its main rival's purchases of rooibos tea either declined or stagnated, thus threatening the competitive process in this market.

This matter is currently being prosecuted in the Tribunal. The Commission is seeking an order from the Tribunal declaring that Rooibos Limited has contravened the Act and that the company is liable to pay an administrative penalty equal to 10% of its annual turnover. The Tribunal will hear both sides and determine the appropriate outcome as mandated by the Act.

#### Rival's exit linked to abuse

In February 2018 the Commission referred SA Airlink (Pty) Ltd (SA Airlink), a privately controlled regional feeder airline, to the Tribunal for prosecution on charges of excessive and predatory pricing. The complaints were lodged by Mr Khwezi Tiya, Fly Blue Crane (Pty) Ltd (Fly Blue Crane) and the OR Tambo District Chamber of Business (OR Chamber) between 2015 and 2017.

All the complaints were about the Johannesburg-Mthatha airline route.

The complainants alleged that SA Airlink charged excessive prices to fly between Johannesburg and Mthatha before Fly Blue Crane entered the route and then lowered its prices below its costs when Fly Blue Crane entered the route. It was also alleged that SA Airlink went back to their exorbitant prices after Fly Blue Crane exited the route in January 2017.

The Commission's investigation subsequently found that SA Airlink contravened the Act by abusing its dominance from September 2012 to August 2016 in that it charged excessive prices on the Johannesburg-Mthatha route to the detriment of consumers. The Commission concluded that consumers would have saved between R89 million and R108 million had SA Airlink not priced excessively on this route. The Commission believes that lower prices would also have resulted in more passengers travelling by air on the route, possibly contributing to the local economy of Mthatha.

Our investigation also found that the airline engaged in predatory pricing by pricing below its average variable costs and average

avoidable costs for some of its flights on the route. Variable costs are those costs which vary with the output. Avoidable costs are those costs that can be avoided if a decision is made to alter the course of a business or project. In the Commission's view the predatory pricing conduct of SA Airlink contributed to the exit of Fly Blue Crane, their only competitor at the time on the Johannesburg-Mthatha route. The effect of the predation is also likely to deter future competition from other airlines on this route.

The Commission referred this matter to the Tribunal for adjudication and sought an administrative penalty of up to 10% of SA Airlink's annual turnover for both the conduct of excessive pricing and predatory pricing. In addition, the Commission has asked the Tribunal to determine other appropriate remedies in order to correct the conduct.

#### Kruger rand dealer gains market entry

On 30 August 2017 the Commission and Rand Refinery (Pty) Ltd (Rand Refinery) reached a settlement agreement that cancelled the requirement for dealers of Kruger rands, existing or prospective, to be members of the South African Association of Numismatic Dealers (SAAND).

The settlement agreement followed an investigation by the Commission into allegations that Rand Refinery made it a condition for anyone who wished to be appointed as a dealer of bullion Kruger rands to be a member of SAAND, a voluntary association in the South African numismatic industry. In order to be appointed as a member, the incumbent had to be seconded by their competitor who did not need to give reasons for their decision on membership. The Commission found that these requirements by Rand Refinery were exclusionary and raised barriers to entry as it made entry in a market conditional on the approval of the incumbent's competitors. Rand Refinery agreed with the Commission and undertook to remove the exclusionary clauses and to make it easier for Kruger rand bullion dealers to enter the market. The beneficial outcome of the agreement was evident in the subsequent licensing of the complainant, Mr Edward Mokhoanatse, as a bullion dealer.

#### Quarry settlement set to improve market conditions

On 23 March 2018, the Tribunal confirmed as an order, a consent agreement concluded between the Commission, Blurock Quarries (Pty) Ltd (Blurock Quarries) and Procon Precast CC (Procon). The

Commission had investigated allegations of excessive margin squeeze and price discrimination and found th Quarries engaged in conduct amounting to margin squ discrimination in contravention of sections 8(c) and 9( Blurock Quarries is a supplier of crusher dust and is ve integrated into block manufacturing through its subsid Procon is active in the manufacture and supply of, inte

#### **E&E'S YEAR IN NUMBERS:**

Diagram 2: E&E cases received and finalised over two years

#### E&E CASES

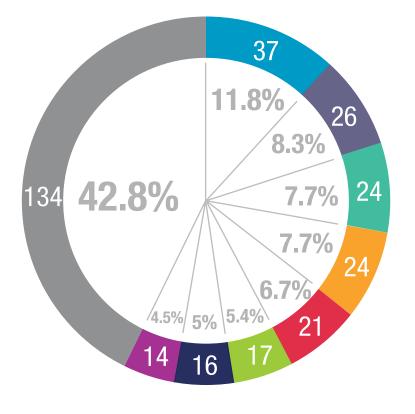
COMPLAINTS RECEIVED FROM THE <b>PUBLIC</b>		313	205
COMPLAINTS INITIATED BY THE <b>COMMISSION</b>		5	4
SCREENING CASES CARRIED OVER FROM LAST YEAR		53	39
COMPLAINTS WITHDRAWN		8	3
COMPLAINTS <b>CLOSED</b> (NON-REFERRED) AT SCREENING STAGE		193	144
COMPLAINTS THAT BECAME <b>FULL INVESTIGATIONS</b> (excluding those referred to CD for full investigation)		31	22
COMPLAINTS <b>CLOSED</b> (NON-REFERRED) AFTER FULL INVESTIGATIONS		23	11
COMPLAINTS REFERRED TO THE <b>TRIBUNAL</b> FOR ADJUDIC AFTER FULL INVESTIGATION	ATION	4	3
SCREENING CASES CARRIED OVER TO THE NEXT FINA Year	NCIAL	36	43
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e pricing,	concrete bricks, building bricks and retaining blocks in Estcourt and
nat Blurock	surrounding areas.
ueeze and price	
(1) of the Act.	The Respondents agreed to a pricing remedy to address the
vertically	Commission's concerns. The pricing remedy will result in capped
diary Procon.	margins for crusher dust for a period of five years as well as the sale
er alia,	of crusher dust on terms and conditions that are non-discriminatory.

.....

	2017/18	2016/17
>	313	205
ON	5	4
/I LAST YEAR	53	39
	8	3
	193	144
<b>IGATIONS</b>	31	22
NS	23	11
L FOR ADJUDICATION	4	3
HE NEXT FINANCIAL	36	43

#### Diagram 3: Sectors with the most complaints: E&E





# TOTAL **COMPLAINTS: 313**



TOTAL **PERCENTAGE: 100%** 

















**FRANSPORT** COMPLAINTS: 37

**TELECOMS** 

COMPLAINTS: 26

COMPLAINTS: 24

COMPLAINTS: 24 PERCENTAGE: 7.7%

RETAIL

PERCENTAGE: 7.7%

PERCENTAGE: 8.3%

**FINANCE & INSURANCE** 

PERCENTAGE: 11.8%

# PERCENTAGE: 5.4%



COMPLAINTS: 16 PERCENTAGE: 5%



EDUCATION COMPLAINTS: 14 PERCENTAGE: 4.5%



OTHER COMPLAINTS: 134 PERCENTAGE: 42.8%

#### Diagram 4: Noteworthy E&E investigations in priority sectors





### INFORMATION AND COMMUNICATION TECHNOLOGY

#### Competition Commissioner v Vodacom Group (Pty) Ltd

It is alleged that the agreement between Vodacom and Treasury, for Vodacom to supply mobile communication services to the government, is likely to distort competition and is likely to result in exclusionary conduct in contravention of the Act.

### CONSTRUCTION AND INFRASTRUCTURE

#### Competition Commissioner v Transnet SOC Ltd (ports and rail)

The Commissioner initiated two separate complaints Transnet SOC Ltd during 2016. The first complaint is against Transnet and its two divisions, namely, Transnet National Ports Authority ("TNPA") and Transnet Port Terminals ("TPT") - and alleges that TNPA and TPT have engaged in excessive pricing in the provision of port services and exclusionary practices in the prioritisation of cargo and berthing at port terminals, respectively.

### TRANSPORT

#### Competition Commissioner v SA Taxi Finance Holdings (Pty) Ltd

It is alleged that the respondent may have abused its dominant position and engaged in excessive pricing in the market for the provision of credit to finance minibus taxis to the detriment of consumers.

Table 2: Exemption applications received in 2017/18

APPLICANT	CONDUCT SOUGHT TO BE EXEMPTED	STATUS OF THE APPLICATION AT YEAR END
National Health Network	Collective bargaining	Under investigation
Intercape Mainliner (Pty) Ltd	Price fixing	Under investigation

Table 3: Exemption applications finalised in 2017/18

APPLICANT	CONDUCT SOUGHT TO BE EXEMPTED	STATUS OF THE APPLICATION AT YEAR END
Western Cape Citrus Producers Forum	Export cartel	Rejected



#### PERFORMANCE HIGHLIGHTS

The Cartels Division (CD) is responsible for investigating and prosecuting cartel conduct. Cartel conduct comprises price fixing, market division and collusive tendering, all of which are prohibited by section 4(1)(b) of the Act. The CD is also responsible for administering the Commission's CLP, through which a self-confessing cartel member may report a cartel in exchange for immunity from prosecution.

One of the investigation tools available to the Commission is the use of dawn raids. A dawn raid, which the Act refers to as a "search and seizure" operation, takes place when the Commission suspects that information that may be useful for its investigation is in the possession of a party on the premises it seeks to raid. The Act authorises the Commission to enter and search with or without a warrant under specified circumstances.

During the 2017/18 financial year, the Commission initiated 28 cartel investigations and received 35 from members of the public. The

Commission carried over 83 cartel cases under investigation from the previous financial year. This resulted in the Commission handling a total number of 146 cartel cases during 2017/18 financial year.

Out of 146 cartel cases handled during 2017/18 financial year, the Commission completed a total of 63 cartel investigations. Of these, 52 were referred to the Tribunal for prosecution, while 11 were closed without being prosecuted.

In respect of CLP applications, the Commission carried over eight (8) from the previous financial year and it received two CLP applications. This resulted in the Commission handling ten CLP applications during 2017/18 financial year. Out of these, four were granted while the balance of six were not processed by the end of year end.

The CD conducted three dawn raids in the reporting period as part of its investigations into alleged cartel conduct.

Diagrams 5 and 6 summarise the performance of the CD, in numbers, during the reporting period.

The more significant cartel cases finalised by the Commission in this financial year are discussed below.

#### Government partnerships help to uncover collusion

One of the Commission's strategic outputs for this and prior years was to establish working partnerships with relevant economic stakeholders. Pursuant to this goal the Commission has worked to promote awareness amongst Government agencies about collusive tendering and its detrimental effects on consumer welfare. The Commission's work in this area empowered stakeholders to identify collusive tendering and to refer suspicious cases to the Commission for investigation. As a result of these efforts the Commission has received more and more complaints, from Government agencies, alleging that they may have been victims of collusive tendering after following a tender process. Two such cases in the reporting period were lodged by Robben Island Museum (RIM) and Eskom Holdings SOC Limited (Eskom) respectively.

On 31 May 2017 the Commission referred five boat operators, who ferry passengers between RIM and the V&A Waterfront in Cape Town, to the Tribunal on charges of price fixing and collusive tendering. The referral followed a complaint lodged by RIM alleging that Thembekile Maritime Services (Pty) Ltd (Thembekile); Silverbuckle Trade 21 CC

t/a Yacoob Yatch (Silverbuckle); Nauticat Charters (Pty) Ltd (Nauticat Charters); Ferry Charters (Pty) Ltd (Ferry Charters); and Tigger 2 Charters (Pty) Ltd (Tigger 2 Charters) had possibly colluded on a tender issued by RIM. The Commission's investigation revealed that the respondents did indeed meet and agree to increase the prices they would charge the museum when responding to its tender. The Commission referred the case to the Tribunal and sought an administrative penalty equal to 10% of their annual turnover.

On 6 February 2018 the Commission referred four companies to the Tribunal for prosecution after finding that they had tendered collusively for a R4.5 billion tender to supply scaffolding and thermal insulation for all of the 15 Eskom coal-fired power stations. The Commission's investigation found evidence of price fixing and collusive tendering on the part of Waco Africa (Ptv) Ltd. acting through its division, SGB Cape, Tedoc Industries (Pty) Ltd, Mtsweni Corrosion Control (Pty) Ltd and Superfecta Trading 159 CC and three joint ventures which SGB Cape formed with each of the aforementioned companies through bilateral agreements. Eskom lodged the complaint about possible collusive tendering after observing similar trends and information in the tender responses of the respondents.

#### Cross country dawn raids yield fruitful results

On 11 October 2017 the Commission referred fresh produce market agents (FPMA's), who acted as intermediaries between farmers and buyers of fresh produce, to the Tribunal alleging that they had engaged in collusion. The complaint against the fresh produce agents was brought to the Commission by the Department of Agriculture Forestry and Fisheries (DAFF) in July 2015.

As part of its investigation, on 23 and 24 March 2017, the Commission conducted a search and seizure operation, or dawn raid, at various premises of the respondents in Johannesburg, Pretoria, Durban and Cape Town markets.

Following an investigation into the national fresh produce market, the Commission found evidence that the FPMAs also agreed and/ or engaged in a concerted practice to fix the commission charged to farmers. The Commission found that the FPMAs charge farmers the same commission of 5% to 6% for potatoes and onions, 7.5% commission on all fruits and vegetables and up to 9.5% for fruits and vegetables without pallets. This conduct amounts to a contravention of the Act.

The Commission therefore decided to initiate another complaint incorporating the new evidence on the fixing of prices and/or trading conditions. This conduct was not alleged by DAFF in its complaint.

The Commission also found that an estimated 80% of FPMAs in South Africa were members of an association known as the Institute of Market Agents South Africa (IMASA) and that the association was used as a platform to discuss the commission charged and other strategic issues pertaining to the functioning of the fresh produce markets.



#### Furniture removal companies in collusion spotlight again

On 12 September 2017 eleven furniture removal companies and the movers' association to which they belong were referred to the Tribunal for prosecution for price fixing, involving the e-tolls levy they charge customers who transport belongings on Gauteng highways.

The accused were: Northern Provinces Professional Movers Association of South Africa (NPPMA); Stuttaford Van Lines Gauteng Hub (Pty) Ltd; Pickfords Removals SA (Pty) Ltd; A & B Movers (Pty) Ltd; Brytons Removals (Pty) Ltd; Amazing Transport (Pty) Ltd; Key Moves CC; Bayley Worldwide CC; Selection Cartage (Pty) Ltd; Elliot Mobility (Pty) Ltd; Crown Relocations (Pty) Ltd; and Magna Thomson (Pty) Ltd.

The Commission's investigation revealed that:

- the abovementioned furniture removal companies agreed under the auspices of the NPPMA to add a levy of R350 to the amount they charged to their customers transporting furniture on Gauteng highways that had e-tolls;
- the purpose of the agreement was to pass on to consumers the added costs incurred when transporting furniture using highways in Gauteng because of e-tolls; and
- the agreement has been in existence since 22 January 2014 and, at the time of the referral, was on-going.

The Commission was of the view that the respondents conduct constituted a contravention of the Act and thus referred it to the Tribunal for prosecution and adjudication. The Commission sought an order that the companies and the NPPMA had contravened the Competition Act. In addition, the Commission sought an order that they all be held liable to pay an administrative penalty equivalent to 10% of their respective annual turnovers.

#### Several media sales companies settle collusion matters

On 1 March, confirmed a consent agreement in terms of which Independent Media would pay an administrative penalty of R2 220 603 and Caxton: R5 806 890.

The two media companies also agreed to a total annual cap with regard to advertising space discounts of R5 m for Independent and R15 m for Caxton, as well as contributions to an economic development fund over a period of three years, with Independent paying R799 417 and Caxton R2m.

Independent Media (Independent) agreed to pay R8 020 020 and Caxton & CTP Publishers and Printers Limited (Caxton) agreed to pay R22 897 370 with remedies.

On 20 March 2018 the Tribunal confirmed a consent agreement in which out-of-home firm Provantage Media would pay R4,2m as part of a package of remedies for price fixing and fixing of trading conditions. Provantage would also, amongst other things, contribute R393 920 to an economic development fund established by the Minister of EDD.

In July 2017 the Tribunal confirmed an agreement in terms of which DSTV Media Sales (Pty) Ltd admitted to price fixing and the fixing of trading conditions in the same complaint. The company agreed to pay an administrative penalty amounting to R22 262 599, contribute R8 m to an economic development fund over three years and to provide 25% in bonus airtime for every Rand of airtime bought by qualifying small agencies for three years, subject to a total annual airtime maximum of R50 m.

These matters relate to an investigation that was initiated in 2011 which found that, through the Media Credit Co-Ordinators (MCC), various media companies agreed to offer similar discounts and payment terms to advertising agencies that placed advertisements with MCC members. MCC accredited agencies were offered a 16.5% discount, while non-members were offered 15% discount on payments made within 45 days of the date of the statement. The respondents also agreed to charge a 50% cancellation fee in respect of all adverts that advertising agencies withdrew 24 hours before publication.

In February 2018, the Commission referred 30 media organisations to the Tribunal for prosecutions following this investigation.

Most of these subsequently settled their respective matters with the Commission.

#### First settlement in the foreign exchange cartel case

On 26 April 2017 the Tribunal confirmed a settlement agreement between Citibank N.A. and the Commission. In the settlement agreement Citibank N.A. agreed to pay a penalty of R69 500 860 for its role in the foreign exchange cartel. Citibank N.A. was the first of the banks to reach a settlement agreement with the Commission in the collusion complaint which the Commission brought against Bank of America Merrill Lynch and seventeen others. In the settlement agreement Citibank also admitted that between September 2007 and October 2013, Citibank N.A. and its competitors manipulated the price of bids and the trading of bids. Citibank N.A. additionally admitted to fixing bids, offers and bid-offer spreads in relation to spot trades on ZAR currency pairs through co-ordination/ alignment of the bids, offers, and bid-offer spreads quoted to customers.

#### CD'S YEAR IN NUMBERS:

Diagram 5: Cartel cases received, investigated and finalised over two years

#### CARTEL CASES RECEIVED, INVESTIGA

TOTAL CASES HANDLED IN THE YEAR
TOTAL INVESTIGATIONS CARRIED OVER FRO
COMPLETED INVESTIGATIONS
REFERRALS TO THE <b>TRIBUNAL</b>
CASES CLOSED WITHOUT ADVERSE FINDI
NEW CASES INITIATED BY THE COMMISSIC
NEW CASES RECEIVED FROM THIRD PART
•••••••••••••••••••••••••••••••••••••••

In terms of the settlement agreement Citibank N.A. would assist the commission in the prosecution of the other 18 banks that did not settle. Citibank N.A additionally undertook to not engage in any future conduct in contravention of the Act.

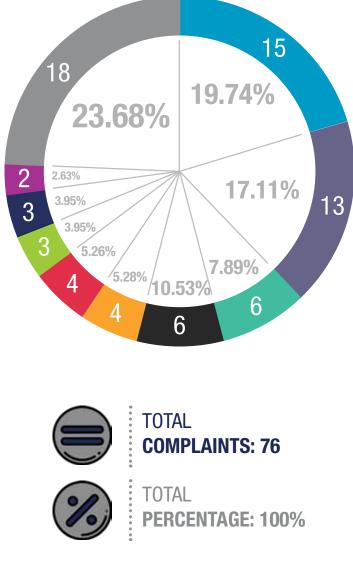
ATED AND FINALISED	2017/18	2016/17
	146	86
OM PREVIOUS YEAR	83	74
	63	33
	52	27
DINGS (NON-REFERRALS)	11	6
ON	28	26
TIES	35	17

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#### Diagram 6: Leniency applications processed over two year

LENIENCY APPLICATIONS PROCESSED	2017/18	2016/17
CLP <b>APPLICATIONS CARRIED OVER</b> FROM THE PREVIOUS YEAR	8	9
CLP APPLICATIONS RECEIVED DURING THE YEAR	2	6
TOTAL NUMBER OF CLP'S HANDLED	10	0
CLP APPLICATIONS DECIDED DURING THE YEAR	4	5
CLP APPLICATIONS NOT PROCESSED	6	4
CLP APPLICATIONS REJECTED	0	0







**Diagram 7:** Cartel investigations by sector, for the year ended 31 March 2018





FOOD COMPLAINTS: 15 PERCENTAGE: 19.74%

PERCENTAGE: 17.11%

COMPLAINTS: 13

COMPLAINTS: 6

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PAPER COMPLAINTS: 8 PERCENTAGE: 10.53%

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**CLOTHING AND TEXTILES** COMPLAINTS: 4 PERCENTAGE: 5.26%



**COMMUNICATION & INFORMATION** COMPLAINTS: 4 PERCENTAGE: 5.26%

**CONSTRUCTION & INFRASTRUCTURE** 

AUTOMOTIVE (INCL. TRANSPORT)



PET FOOD COMPLAINTS: 3 PERCENTAGE: 3.95%



**AIRLINES & TRAVEL SERVICES** COMPLAINTS: 3 PERCENTAGE: 3.95%





INTERMEDIATE INDUSTRIAL INPUTS COMPLAINTS: 2

PERCENTAGE: 2.63%

OTHER COMPLAINTS: 18 PERCENTAGE: 23.68%



#### Table 4: Cartel investigations in priority sectors during 2017/18

PRIORITY SECTOR	CASE NAME AND SUMMARY	STATUS AT 31 MARCH 2018
Food	<ol> <li>Commission v Wilmar Continental (Pty) Ltd and six others         The allegations are that the respondents entered into an agreement to fix prices of edible         oils, including baking fats and margarine.     </li> <li>Commission v various feedlots         The allegations are that the respondents, who are members of South African Feedlots         Association, agreed to fix the price they pay when purchasing weaner calves which are     </li> </ol>	Under investigation
	<ul> <li>ultimately inputs in the production of beef.</li> <li>Commission v Karan Beef and I&amp;J The allegations are that the respondents agreed to divide the market by allocating specific type of products and customers of processed beef products. </li> </ul>	Investigation completed
Intermediate industrial inputs	1. Commission v PG Bison (Pty) Ltd and Sonae Novoboard (Pty) Ltd The allegations are that the respondents agreed to fix the price of wood-based panel products including particle board and medium-density fibre board.	Under investigation
	2. Commission v Scott Bader and NCS Resins The allegations are that the respondents agreed to fix the price and divide the market by allocating customers of resin, ancillaries (gel coats, pool coats, flow coats, pigments, bonding pastes) and accessories.	Investigation completed
	<ul> <li>Commission v Totalgaz and five others         The allegations are that the respondents agreed to fix the price of liquefied petroleum gas             cylinders.     </li> </ul>	Investigation completed
	4. Commission v Afrox and Easigas	Under investigation
	<ul> <li>The allegations are that the respondents agreed to fix the price of liquefied petroleum gas.</li> <li>Commission v Mpact, Corruseal, Nampak and New Era The allegations are that the respondents agreed to fix price and divide market by allocating customers of packaging paper.</li> </ul>	Under investigation

Table 4: Cartel investigations in priority sectors during 2017/18 continued

PRIORITY SECTOR		CASE NAME AND SUMMARY	STATUS AT 31 MARCH 2018
Transport	1.	Commission v British Airways and others	Under investigation
		The allegations are that the respondents agreed, as members of Oneworld Airline Alliance,	
		to fix the price of airfares and divide the market by allocating routes.	
	2.	Commission v Maersk and four others	Under investigation
		The allegations are that the respondents agreed to fix price of shipping of cargo travelling	
		between South Africa and Asia.	
	3.	Commission v Professional Movers Association and others	Investigation completed
		The allegations are that the respondents agreed to fix the price paid as an e-toll levy to	
		customers transporting furniture using the tolled Gauteng highways.	
	4.	Commission v Stuttaford Van Lines and others	Under investigation
		The allegations are that the respondents agreed as members of Professional Movers	
		Association to fix the rate of insurance premium paid by customers for the risk of	
		transporting furniture.	
	5.	Commission v SA Airlink and others	Under investigation
		The allegations are that the respondents agreed to fix prices of air fares and divide the	
		market by allocating routes for domestic and regional passenger air services.	
Construction and	1.	Commission v Automatic Sprinkler Inspection Bureau (ASIB) and its members	Under investigation
infrastructure		The allegations are that the respondents agreed, under the auspices of ASIB, to divide the	
		market by allocating services and territories.	

Table 5: Dawn raids conducted in the 2017/18 financial year

FIRMS RAIDED	INDUSTRY	ALLEGATIONS UNDER INVESTIGATION
Seven beef producers were raided	Producers of meat	Price fixing and market allocation
17 automatic fire sprinklers installers raided	Installers of automatic fire sprinklers systems	Fixing of trading conditions
13 firms raided	Suppliers of set top boxes and accessories	Price fixing and collusive tendering

#### Table 7: Time frames set for assessing mergers of varying complexities



#### PERFORMANCE HIGHLIGHTS

The Mergers and Acquisitions (M&A) Division assesses mergers filed with the Commission to determine whether the merger is likely to substantially prevent or lessen competition in a market, and whether the merger can or cannot be justified on public interest grounds. Not all mergers that have an effect within South Africa have to be notified to the Commission, only those that meet the thresholds set out in the Act. The merger thresholds were revised in October 2017 and are set out in Table 6.

#### Table 6: Mergers and acquisitions thresholds applicable in the 2017/18 financial year

THRESHOLD	COMBINED TURNOVER OR ASSET VALUE	TARGET TURNOVER OR ASSET VALUE	SIZE OF THE MERGER	FILING FEE
Lower threshold	R 600 000 000	R 100 000 000	Intermediate	R 150 000
Higher threshold	R 6 600 000 000	R 190 000 000	Large	R 500 000

Mergers are classified as either small, intermediate or large, depending on the turnover or asset values of the merging firms. As depicted in Table 6, the Commission receives a filing fee for every intermediate or large merger filed. According to the Act, it is not compulsory for small mergers to be notified and no filing fee is prescribed. However, the Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds. In terms of the guidelines on small merger notifications, which it issued in April 2009, the Commission requires any party to a small merger to inform it of that merger if either party is under investigation by the Commission for a contravention of the Act, or if there is an ongoing investigation in the relevant market.

For operational efficiency, the Commission classifies notified mergers as either phase 1 (non-complex), phase 2 (complex) or phase 3 (very complex) mergers, depending on the complexity of the competition or public interest issues it raises. The Commission has published service standards for merger investigations, particularly the time periods it takes to complete an investigation. These service standards are necessary as the Act has set out timeframes for merger investigations, regardless of their level of complexity. Therefore, the service standards assist in managing internal deadlines and stakeholders' expectations when notifying mergers with varying levels of complexity. Table 7 gives a complete picture of the time frames set out in the Commission's service standards and the maximum allowable timeframes set for merger assessments in the Act.

	SMALL		INTERMEDIATE		LARGE	
	Service standard	Competition Act	Service standard	Competition Act	Service standard	Competition Act
PHASE 1 (non-complex)	20 days	60 days	20 days	60 days	20 days	40 days with ability to extend period by 15 days at a time
PHASE 2 (complex)	45 days	60 days	45 days	60 days	45 days	40 days with ability to extend period by 15 days at a time
PHASE 3 (very complex)	60 days	60 days	60 days	60 days	120	40 days with ability to extend period by 15 days at a time

#### Working in the public interest

When assessing a merger, the Act requires the Commission to consider both the impact that the merger will have on competition and whether the merger can or cannot be justified on public interest grounds. What this means is that a pro-competitive merger can be prohibited by the Commission solely on the basis of its negative effect on the public interest.

Similarly, an anti-competitive merger can be approved if it is in the public interest to do so.

As such, the public interest provisions in the Act have far reaching implications. However, the concept is limited to the four public interest grounds set out in the Act, namely employment; impact on a particular sector or region; the ability of small businesses, or firms controlled by historically disadvantaged persons (HDP's) to become competitive; and the ability of national industries to compete in international markets.

The Commission has the authority to approve or prohibit a merger solely on the basis of its effect on public interest. This has only happened once, since the Commission's inception, where a merger was approved on the basis of significant public interest it generated. Instead, where public interest concerns have been raised, the Commission and/or Tribunal have imposed conditions on the merger, which aim to mitigate or eliminate the public interest concern, thus allowing the merger, but minimising its negative effect on public interest.

This trend continued in 2017/18. The Commission imposed public interest conditions on 32 mergers, 27 of these mergers had public interest conditions only and five cases had a combination of both public interest conditions and competition based conditions. Of these 32 cases, 30 cases involved conditions related to employment, four related to the impact of the merger on a particular sector or industry, five related to the impact on SMMEs and entities owned by HDP's, five of these had a combination of different public interest conditions. The Commission's intervention in mergers resulted in a net saving of 76 452 jobs.

Pages 51 to 62 set out the Commission's merger statistics for the year. The more significant M&A matters finalised by the Commission in this financial year are discussed below.

#### Promoting healthy competition through merger regulation

The Commission prohibited, or recommended prohibition, in 3% of the mergers it finalised in the reporting period. Three of these were mergers in the private health care industry.

On 6 July 2017 the Commission recommended that the proposed large merger between Mediclinic Southern Africa (Pty) Ltd (Mediclinic) and Matlosana Medical Health Services (Pty) Ltd (MMHS) be prohibited. Both health care groups had competing hospitals in and around the Klerksdorp area therefore consolidating the two groups in this area would have reduced competition for patients in and around Klerksdorp. Another worrying outcome of the anticipated merger was that MMHS prices would immediately increase to the Mediclinic fee structure, which would negatively



impact both private and insured patients. The Commission and the merging parties could find no suitable remedies to address these concerns therefore the Commission recommended to the Tribunal that the deal be prohibited.

On 29 September 2017 the Commission prohibited a merger that had already taken place between Netcare Hospitals (Pty) Ltd (Netcare Hospitals) and Lakeview Hospital, requiring the merging firms to unbundle their December 2016 consolidation. The Commission uncovered this merger during its assessment of a separate transaction involving Netcare Hospitals. This led the Commission to request the parties to file the Lakeview Hospital transaction for consideration. Upon investigation the Commission found that the deal had a negative impact on competition. Netcare Hospitals and Lakeview Hospital operated as competitors in and around the Benoni area, before the merger, therefore the transaction led to a reduction in competition. As with the Mediclinic / MMHS merger discussed above, the merger between Netcare Hospitals and Lakeview Hospitals resulted in higher prices for both insured and private patients. Given the removal of Lakeview Hospital as an effective competitor, the higher tariff scale that Lakeview Hospital adopted after the merger and the high barriers to enter the private health care industry, the Commission decided to prohibit the merger.

On 25 October 2017 the Commission recommended that the Tribunal prohibit a large merger between the Netcare Hospital Group (Netcare) and mental health care provider Akeso Group (Akeso). Both Netcare and Akeso were active in the provision of private healthcare in South Africa. The Commission initially recommended a prohibition because it was concerned that Netcare would increase Akeso's existing lower tariffs for mental healthcare to Netcare's higher general healthcare tariffs. It was concerned the merged entity would acquire market power in a local market in Gauteng, giving it the unfettered ability to leverage its position during the annual tariff negotiations with medical schemes. The transaction was eventually approved at the Tribunal stage when Netcare agreed to sell off two of its hospitals in Gauteng as a way to dilute its bargaining position in the Gauteng area.

#### Commission grounds airline merger over competition concerns

SA Airlink featured prominently as a respondent in the Commission's activities during 2017/18. As mentioned previously, in February 2018 the Commission referred SA Airlink to the Tribunal for prosecution on charges of excessive pricing and pricing below cost. Together with South African Express Airways SOC Ltd t/a SA Express (SA Express) and South African Airways SOC Ltd (SAA), SA Airlink was alleged to be engaged in cartel conduct in that the respondents agreed to allocate flight routes between them. The Commission referred this matter to the Tribunal for adjudication. Finally, on 23 February 2018, the Commission prohibited a proposed merger between SA Airlink and Safair Operations (Pty) Ltd (Safair) as the transaction was likely to result in the removal of an effective competitor from the market.

SA Airlink provided cargo and scheduled passenger services on feeder routes to major hubs in South Africa and destinations across Southern Africa as well as belly cargo services and maintenance services. Safair provided scheduled passenger services to and from major airport hubs in South Africa and provided non-scheduled or chartered humanitarian aid and relief services to and from African

countries as well as outside of Africa, with a principal focus on remote regions like Antarctica.

Safair was a growing airline in the aviation industry and a potential competitor to SA Express on the routes it had not yet entered. As such it was likely to pose a competitive constraint on SA Airlink bearing in mind its competitive pricing on competing and noncompeting routes before the proposed merger. The Commission found that there were significant price differences between Safair and SA Airlink and that, if the merger were to be approved, there was a likelihood of significant price increases. Moreover, since SAA had a shareholding in SA Airlink, the Commission was concerned that SAA and Safair might exchange competitively sensitive information leading to more coordinated, rather than competitive, conduct between the airlines.

The Commission could find no suitable remedies to address these concerns and therefore prohibited the merger from taking place.

#### Food processing merger raises collusion concerns

On 3 October 2017 the Commission prohibited an intermediate merger in the milling and sunflower seed markets. Subsequently, on 25 October 2017, the Commission recommended that the Tribunal prohibit two mergers also involving firms in the milling and sunflower seed markets. In the Commission's view these markets displayed characteristics that made them conducive for collusion and, in fact, some parties involved or affected by these mergers - Progress Milling and Willowton – were the subject of past or existing cartel cases investigated by the Commission.

Through these three mergers the holding company K2014202010 (Pty) Ltd ("Holdco") intended to purchase Progress Milling (Pty) Ltd ("Progress Milling"), Noordfed (Pty) Ltd ("Noordfed") and African Star Grain Milling (Pty) Ltd ("African Star").

Holdco was a joint venture between Louis Drevfus Company Africa (Pty) Ltd ("LDCA") and DH Brothers industries (Pty) Ltd t/a Willowton ("Willowton"). LDCA was a global trader of commodities and a processor of agricultural goods. The key commodities traded by LDCA were white maize, wheat, beans, rice, edible oils, oilseeds (sunflower and soya) and sugar. Willowton, on the other hand, was a black owned South African sunflower seed crusher and refinery company. It sold a wide range of fast moving consumer

goods including edible oils, products derived from edible oils, soaps, candles, beauty products and toiletries. Progress Milling was involved in white maize milling and the sale of maize meal. It operated a maize mill outside of Polokwane with 25 depots throughout the Limpopo province. Noordfed was involved in the milling of maize and the sale of white maize products. It operated a mill in North West Province and distributed products to primarily North West and KwaZulu-Natal provinces. African Star was involved in the milling and packaging of wheat. It also produced wheat bran as a by-product of wheat milling. African Star owned four silos with a total capacity of 10 000 MT located at its mill in Industria, Gautena.

The Commission was concerned about the potential harm to competition that the three mergers would create. In this regard the mergers gave rise to possible coordination between competitors in the white maize milling market in Limpopo and in the wheat milling



market in Gauteng. The Commission was also concerned about the mergers impact on the market for sunflower seed crushing, such as the likelihood that the merger could create a platform to enhance or further entrench coordination in the adjacent market of seed crushing where the consortium members were competitors.

The Commission found no remedies to alleviate these concerns and therefore prohibited the intermediate merger and recommended that the Tribunal prohibit the two large mergers.

#### Bayer Aktiengesellschaft and Monsanto Corporation merger

In May 2017, the Commission approved, with conditions, the merger whereby Bayer Aktiengesellschaft (Bayer) intended to acquire Monsanto Corporation (Monsanto). As a result of the proposed transaction, Monsanto would be a 100% owned indirect subsidiary of Baver.

The tranction was a global and had also been notified in several other jurisdictions including the United States, European Union, Brazil, Russia, China and India among other jurisdictions.

Bayer is active in the crop protection business in South Africa, wherein it sells fungicides, insecticides, herbicides and seed treatment products among other related products. Monsanto is active in the supply of seeds, bio-technology traits and herbicides crop protection products in South Africa. Both Bayer and Monsanto are also involved in research and development (R&D) for biotechnology traits and the discovery and development of active ingredients globally, which are critical inputs in the development of genetically modified (GM) seeds and agro-chemicals respectively. There are several markets in the seeds and agro-chemicals industries that were impacted by the proposed merger. Some of the markets raised significant competition concerns. The Commission also received concerns from several stakeholders that were engaged during the investigation.

In relation to cotton seeds, the proposed merger was virtually a merger to monopoly in the supply of GM cotton seeds post-merger in South Africa. Therefore, the proposed transaction resulted in a substantial lessening of competition in the supply of GM cotton seeds in South Africa.

Both Monsanto and Bayer had bio-technological systems, that is, the development and production of biotechnological traits for



seeds and the accompanying herbicides that are applied on those traited seeds. Monsanto has the Roundup Ready system which is comprised of its glyphosate herbicides (RoundUp) and RoundUp traited seeds. On the other hand, Bayer had the Liberty Link system which is comprised of the glufosinate ammonium active ingredient (Liberty) and Liberty Link technology. The proposed merger resulted in the removal of competition as it removed the opportunity for Bayer to independently enter into South Africa and compete against Monsanto.

The proposed merger also raised exclusionary portfolio effects that arise from the combination of the complementary businesses of Monsanto and Bayer. There were numerous factors that would likely enhance and facilitate the exclusion of rivals at several layers of the seed and agrochemicals value chains. There were also several structural factors in this seed industry which are conducive for

coordinated conduct. Some of these structural factors and industry practices indicated that firms in these industries may be able to allocate smaller regional markets to competitors through prevalent cross licensing agreements.

The proposed merger also raised some public interest concerns. The Commission found that the merger was likely to result in the retrenchment of 20 employees as a result of duplications of roles between Bayer and Monsanto. Further, Monsanto was involved in a number of corporate and social responsibilities relating to agricultural incentives and projects. The Commission was of the view that Bayer may have different incentives and might have a different approach towards such projects.

In light of the several competition and public interest concerns arising from the merger, the Commission imposed a set of remedies that allayed the concerns arising from the merger. The following were remedies that were imposed.

#### GM cotton seed remedies

The merging parties will divest the Bayer cotton business in South Africa. Bayer effectively operates through an exclusive license from an Australian company, and a result of this divestiture, the license and business will be transferred and sold to another independent South African third party. The sale of the Bayer cotton business will enable an entity other than the merging parties to supply GM cotton seed in South Africa.

#### Liberty and Liberty Link technology remedies

In order to remedy all the inter-linked concerns involving traits and systems, the merging parties were required to divest and sell the entire global Liberty Link technology and the associated Liberty branded agro-chemicals business. The Commission also imposed a condition that the potential purchaser of the Liberty Link technology and Liberty business will be obliged to commercialise the Liberty Link technology and Liberty products in South Africa, or alternatively, oblige the potential purchaser to license the Liberty Link technology and associated Liberty chemicals to a third party to commercialise should the purchaser be unable to do so. This provision was to ensure that South Africa will directly benefit from the divestiture of these global businesses of Bayer.

#### Public interest remedies

On employment concerns, the Commission imposed a moratorium on merger specific retrenchments such that they are limited to 20 employees. In this regard, the merging parties are still obliged to follow the Labour Relations Act provisions should they proceed with the retrenchments. Further, the merged entity was required to maintain the existing employment levels of the combined entity over a period of 3 (three) years. In other words, should the merging proceed to retrench the 20 employees they are obliged to create at least 20 other opportunities with a view to maintain existing employment levels.

On corporate projects, the merged entity was required to continue with these projects over periods ranging between 3 (three) years and 5 (five) years. Lastly, the merged entity has committed to offer a 25% discount to small emerging farmers relating to Seeds and Poncho® value offering for a period of 3 (three) years.

#### DowDuPont v The Dow Chemical Company and El du Pont de Nemours and Company

The Commission recommended to the Tribunal that the proposed large merger be approved, with conditions whereby DowDuPont Inc. (DowDuPont) was acquiring Dow Chemical Company (Dow) and E.I. du Pont de Nemours and Company (DuPont). This was a global transaction which was notified in several other jurisdictions.

Both Dow and DuPont are companies incorporated in accordance with the company laws of the USA. DowDuPont was a newly incorporated holding company for the purposes of the proposed transaction. DowDuPont was controlled by Dow and DuPont, both companies listed on the New York Stock exchange. Dow and DuPont are not controlled by any firm.

Dow is a global diversified chemicals company headquartered in the USA. It is the ultimate parent company of the Dow Group, which is broadly active in the research, development, production and distribution of plastics and chemicals, agricultural sciences including seeds, hydrocarbon and energy products and services.

In South Africa, Dow's activities included the distribution of sunflower seeds, agrochemicals, material science products and food texturisers. Dow does not manufacture any of these products locally but imports them into South Africa from it is manufacturing operations in different parts of the world.

The DuPont Group researches, develops, produces, distributes and sells a variety of chemical products, polymers, agrochemicals, seeds, food ingredients and other materials. In South Africa, DuPont is involved in the distribution of various seeds including maize and sunflower seeds. DuPont is also involved in the distribution of agrochemicals.

Although there was no direct overlap arising in respect of the commercialisation of hybrid and genetically modified (GM) hybrid maize seed in South Africa since Dow does not have maize seed commercial operations in the country, the Commission found that the proposed was likely to result in the removal of potential competition. This was so because Dow had plans and a strategy to enter the South African commercial maize seed market in a significant way. The transaction therefore removed the potential constraining influence that would have been exerted on DuPont and Monsanto had Dow proceeded with its plans to enter the South Africa market absent the merger. There were no other potential entrants who were likely to significantly constrain the incumbents, DuPont and Monsanto, in this instance.

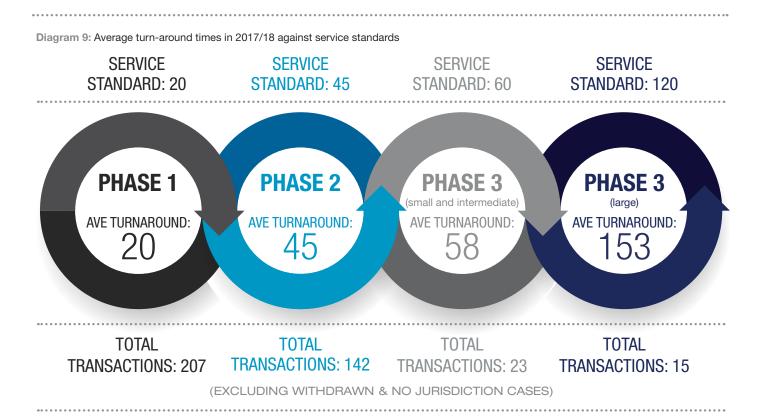
The Commission also found that the proposed transaction was likely to lead to a substantial prevention or lessening of competition postmerger in the market for development and supply of insecticides for chewing insects for citrus (in Limpopo, Western Cape, Mpumalanga, Eastern Cape, KwaZulu-Natal and the Northern Cape), deciduous fruits (Western Cape, Northern Cape, North West and Limpopo), vegetables (nationally) and tomatoes (in Limpopo, Mpumalanga and the Eastern Cape).

In order to address the concerns relating to maize seed, Dow was obliged to make available 81 of its maize hybrids and 7 maize inbred lines to other third parties for licensing of these hybrids and in-breds in South Africa. Secondly, Dow was required to license its PowerCore and Enlist traits in South Africa within 2 years of approval of the merger. These conditions ensured that other smaller maize seed producers would be able to license and introduce new and different hybrids into South Africa from this access to the germplasm materials of Dow which is situated in other regions such as Argentina. This will likely improve maize seed varieties available to South Africa farmers, other than from the current two main suppliers DuPont and Monsanto.

In relation to insecticides, the merging parties were required to divest DuPont's entire insecticide business, including the R&D associated with developing such products, globally. The divestment will include the insecticides supplied into South Africa, which implies that the production and supply of these insecticide products would be taken over by a different third party. Since Dow and DuPont are large global crop protection manufacturers, the divestiture ensures that the manufacturer will be a separate entity, and more importantly for South Africa, the condition requires that the purchaser of this divested business is specifically required to continue to supply the insecticides in South Africa. Farmers will continue to benefit from the availability of these insecticides in South Africa at competitive prices from a different supplier who is not either Dow or DuPont.







#### Table 8: Mergers approved with behavioural and structural conditions

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2016Nov0647	Goldrush Group (Proprietary) Limited	Boss Group and Entertainment (Proprietary) Limited and other firms in the Boss Group	Gambling and betting activities	<b>Structural – Divestiture:</b> Obligation to divest within a certain period.
2016May0027	Dow Chemical Company Incorporated	E.I. du Pont de Nemours and Company	Manufacture of other chemicals and products	<ul> <li>Structural – Divestiture: Obligation to divest within a certain period.</li> <li>Behavioural: Supply – Obligation to make available and license certain plant materials to third parties.</li> </ul>

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2017May0014	TerraSan Beleggings (Pty) Ltd	Westgro Holdings (Pty) Ltd	Supply and processing of fish	<b>Structural – Divestiture:</b> Obligation to divest to a BEE Shareholder within a certain period.
				Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors.
2017Jan0039	Deere and Company and Wirtgen Group Holding GmbH	Wirtgen Group Holding GmbH	Manufacturing of engines and other automotive components	Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information.
2017Aug0011	Firefly Investments 326 Proprietary Limited	Bayport Financial Services 2010 Proprietary Limited	Financial Services	Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors.
2017Mar0010	Maersk Line A/S	Hamburg Sudamerikanische Dampfschifffahrts- Gesellschaft	Sea and coastal water transport	Behavioural – cross shareholding/ information exchange: Maersk Line to ensure that the target firm exits certain vessel sharing agreements within a specific period.
2016Feb0055	Media24 (Pty) Ltd	Novus Holdings Limited	Media	<b>Structural – Divestiture:</b> Obligation to divest within a certain period.
2017Jun0003	Enx Group Limited	Extract Group Limited	Financial Services	<b>Structural – Divestiture:</b> Obligation to divest within a certain period.
2017Aug0011	Firefly Investments 326 (Pty) Ltd	Bayport Financial Services 2010 (Pty) Ltd	Financial Services	Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors.
2017Jul0052	Libstar Operations (Pty) Ltd	Sonnendal Dairies (Pty) Ltd	Fast Movable consumer goods and the manufacture of dairy products	<b>Behavioural:</b> Obligation to amend a restraint of trade clause
2017Sep0007	Gutsche Family Investment Proprietary Ltd	Fairfield Dairy (Pty) Ltd	Movable consumer goods and the manufacture of dairy products	<b>Behavioural: Self-monitoring – additional</b> <b>acquisitions:</b> Obligation to notify additional acquisitions.

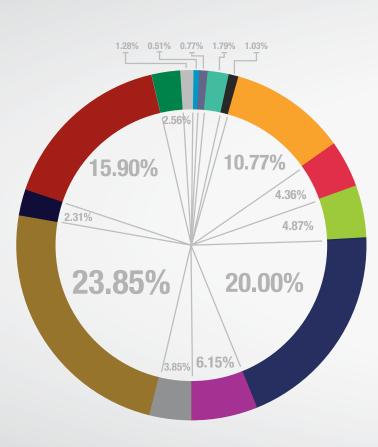
Table 8: Mergers approved with behavioural and structural conditions continued

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2017Sep0065	KAP Bedding (Pty) Ltd	Support a Paedic CC and RME Components CC	Manufacture of mattresses fitted with springs	<b>Behavioural:</b> Obligation to amend a restraint of trade clause.
2017Sep0021	CTP Limited	Private Property South Africa Proprietary Limited	Online property portals	Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors.
2017Mar0146	Stefanutti Stock (Pty) Ltd ("Stefanutti")	TN Molefe Construction proprietary Limited and Axsys Projects (Pty) Ltd	Construction	Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors. Obligation to develop and implement a Competition Compliance Policy.
2017Mar0147	WBHO Construction Proprietary	Fikile Construction Proprietary Limited	Construction	Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors.         Obligation to develop and implement a Competition Compliance Policy.
2017Mar0148	Raubex Proprietary Limited	Umso Construction Proprietry Limited	Construction	Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors. Obligation to develop and implement a Competition Compliance Policy.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2017Dec0012	DRDGOLD Limited	Sibanye Gold Limited, trading as Sibanye- Stillwater in respect of certain assets of the tailing retreatment business under the West Rand Tailing Retreatment Project (Selected Assets)	Mining of metal ores	<b>Behavioural – additional acquisition:</b> Obligation to notify additional acquisitions.
2017Dec0030	Joy son KSS Holdings No.2 S.a.r.I and Joyson KSS Auto Safety S.A	Takata Corporation	Manufacture of parts and accessories for motor vehicles	<b>Behavioural</b> – Obligation to set up an escrow fund in order to cover any potential administrative penalty which may be imposed by the Tribunal
2017Dec0036	SEMA Holdings Limited	CWT-Aquarius International Limited	Transportation services	Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors. Obligation to develop and implement a Competition Compliance Policy.
2017Oct0043	Beljer Ref South Africa Proprietary Limited	The TecsaReco Business	Supply of refrigerators	<b>Behavioural – Structural:</b> Obligation to divest within a certain period.



Diagram 10: Merger decisions by sector









**ADMINISTRATION** PERCENTAGE: 0.77%



AGRICULTURE PERCENTAGE: 1.79%







**FINANCE** PERCENTAGE: 10.77%







INFORMATION COMMUNICATION PERCENTAGE: 4.87%



MANUFACTURING PERCENTAGE: 20.00%



MINING PERCENTAGE: 6.15%



·····

OTHER PERCENTAGE: 3.85%



PROPERTY PERCENTAGE: 23.85%





**TRANSPORTATION & STORAGE** PERCENTAGE: 2.31%



WHOLESALE PERCENTAGE: 15.90%



CONSTRUCTION PERCENTAGE: 2.56%



**PROFESSIONAL & TECHNICAL** ACTIVITIES PERCENTAGE: 1.28%

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#### Table 9: Mergers approved with public interest conditions

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2017Feb0054	Kaltire Mining Tyres South Africa (Proprietary) Limited	Tyre Corporation Holdings Proprietary Limited and Tyre Corporation Midrand Office (Proprietary) Limited	Manufacture of parts and accessories for motor vehicles	<b>Public Interest – Employment:</b> Moratorium on retrenchments for a period of 3 years.
2016Dec0007	Dimension Data (Proprietary) Limited	The consumer facing internet access and ancillary services business of MWEB Connect Proprietary Limited	access and ancillary services activities M pusiness of MWEB Connect p	
2017Feb0002	Denel SOC Limited	Turbomeca Africa (Proprietary) Limited	Manufacture of helicopters	Public Interest – Employment: Moratorium on retrenchments for a period of 2 years.
2017Jun0002	Cashbuild South Africa (Pty) Ltd	outh Africa Buffalo Building (Pty) Ltd and Matson Sales (Pty) Ltd material		Public Interest – Employment:         Moratorium on retrenchments         for a period of 2 years from         implementation date.         Public Interest: Effect on Industrial         Sector or Region – Obligation to         maintain procurement from local         suppliers.
2017Apr0044	New Shelf Thirty One (RF) (Pty) Ltd	Chubb Fire and Security SA (Pty) Ltd	Security services	Public Interest – Employment: Moratorium on retrenchments for a period of 2 years.
2017Apr0028	Imerys S.A	Kern Tech 1	Information Technology services	Public Interest – Employment: Moratorium on retrenchments for a period of 3 years.
2017May0009	Peugeot SA	General Motors LLC in respect of the Opel Business	Manufacturing of Automobiles	Public Interest – Employment: Moratorium on retrenchments.
2017May0016	Like Wise Trading (Pty) Ltd CC	Selborne Carpet Wholesalers	Insurance services	Public Interest – Employment: Moratorium on retrenchments for a period of 3 years.
2017Jun0058	Lambda Corporation	C.R Bard Inc	Medical/healthcare technology	Public Interest – Employment: Moratorium on retrenchments for a period of 2 years.
2017Jul0016	Schmitz Cargobull AG	GRW Holdings Proprietary Limited and GRW Sales Proprietary Limited	Supply and manufacturing of trailers	Public Interest: Impact on SMMEs – Obligation to continue procuring from small suppliers.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2017Mar0122	Steinhoff Doors and Building Materials (Pty) Ltd	Building Supply Group (Pty) Ltd	Wholesale of building material	Public Interest: Employment –Moratorium on retrenchment of unskilled and semi-skilled employees for a period of 3 years from implementation date.Restriction on the number of retrenchments of skilled employees.
2017Apr0003	The Coca-Cola Company	Coca-Cola Beverages Africa (Pty) Ltd	Supply of beverage products	Public Interest: SMMEs or BEE – Obligation to conclude a BB-BEE transaction within a certain period.
2017Jul0035	South African Distilleries & Wine (SA) Limited	Lusan Holdings (Pty) Ltd	Manufactures of wines	Public Interest – Employment:Moratorium on retrenchments for aperiod of 3 yearsObligation to provide re-skillingallowance for unskilled workers.
2017Aug0029	Deneb Investments Ltd	New Just Fun Group (Pty) Ltd	The Import and distribution of traditional toys and retail traditional toys	Public Interest – Employment: Acquiring firm and/or the acquiring firm's subcontractor to offer employment to employees employed by the current subcontractor for the acquiring firm.
2017Sep0003	Sylvania Metals (Pty) Ltd	Phoenix Platinum (Pty) Ltd	Production and Supply of PGMs	Public Interest – Employment: Moratorium on retrenchments for a period of 2 years.
2017Aug0073	Opel Automobile GmbH and the Opel Distribution Network	Chevrolet After Sales Distribution Network of General Motors South Africa (Pty) Ltd	Wholesale of vehicles by commission agents	<b>Public Interest – Employment:</b> Obligation to transfer employees to the acquiring firm.
2017Aug0052	Isuzu Motors South Africa Proprietary Limited	General Motors South Africa Proprietary Limited	Wholesale of vehicles by commission agents	<b>Public Interest – Employment:</b> Obligation to transfer employees to the acquiring firm.
2017Aug0062	Gallus Holdings td	Sovereign Foods Investment Ltd	Movable consumer goods	Public Interest – Employment: Moratorium on retrenchments for a period of 2 years.



#### Table 9: Mergers approved with public interest conditions continued

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2017Apr0046	SOIHL Hong Kong Holding Limited	Chevron South Africa Proprietary Limited	Petrol, fuel oils, lubricating oils and greases	Public Interest - Employment: Moratorium on retrenchments. Obligation to maintain headcount for a period of 5 years.
				Public Interest: Industrial sector or region: Obligation to invest.
				Obligation to maintain or increase the current level of local procurement of goods and services.
				Obligation to use reasonable endeavours to promote the export and sale of manufactured products for sale in China.
				Public Interest – SMMEs or BEE: Obligation to give preference to black owned businesses and small businesses for independently owned service stations.
				Obligation to set up a development fund to develop small businesses and black owned businesses.
2017Sep0008	K2017235138	Old Mutual plc.	Insurance	Public Interest – Employment: Moratorium on retrenchments.
				Obligation to increase the number of full time employees.
				Public Interest – SMMEs or BEE Obligation on OML to increase its BEE shareholding within a certain period.
				Obligation to set up a development fund to develop black enterprises.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2017Oct0042	Lewis Stores Proprietary Limited	United Furniture Outlets Proprietary Limited	Wholesale of building material	Public Interest – Employment: Moratorium on retrenchment of employees for a period of 2 years.
2017Oct0027	Royal Bafokeng Platinum Limited	Maseve Investments 11 (Pty) Ltd	Mining of PGM's and PGM bi-products	Public Interest – Employment: Obligation to employ a certain number of employees within 6 months of the approval date.
2017Oct0038	Colefax Trading (Pty) Ltd	KFC (Pty) Ltd	Fast Food chains	Public Interest – Employment: Moratorium on retrenchment of employees for a period of 2 years.
2017Aug0075	Dimension Data Protocol BV	Hatch Investments (Mauritius) Limited	Information and Technology	Public Interest – Employment:Moratorium on retrenchment of all Dimension Data South African employees for a period of 2 years.Public Interest – Industrial Sector or region: Obligation to continue with internship programs offered by the target firm in South Africa.
2018Jan0038	Amsted Rail Company Inc.	The Cast Products Division of Scaw South Africa (Pty) Ltd	Manufacturing and supply of steel	<b>Public Interest – Employment:</b> Moratorium on retrenchments for a period of 18 months.
2017Oct0045	Sanlam Life Insurance (Pty) Ltd	Absa Consultants and Actuaries (Pty) Ltd	Financial Services: Insurance	Public Interest – Employment: Moratorium on retrenchments for a period of 2 years.
2017Nov0003	FLSmidth Proprietary Limited	Sandvik Mining RSA Proprietary Limited in respect of certain assets of its mining systems business	Supply of machinery	<b>Public Interest – Employment:</b> an obligation to offer employment and inform retrenched employees of any job opportunities for a period of 2 years.

Table 10: Mergers approved with a combination of public interest conditions and behavioural and structural conditions

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	MARKET	CONDITION
2017Feb0004	Bayer Aktiengesellschaft	Monsanto Corporation	Growing of other perennial crops	<b>Structural – Divestiture:</b> Obligation to divest within a certain period.
				<b>Public Interest – Employment:</b> Obligation to maintain the aggregate employment levels of the business in South Africa for a period of 3 years.
				<b>Public Interest – SMMEs or BEE:</b> Obligation to offer small emerging farmers discounts.
				Public Interest – Industrial sector or region: Obligation to continue with various social initiatives.
2017May0004	Atlantis Foods Holdings (Proprietary)	Cerion Holdings (Proprietary) Limited	Wholesale of fishery products	Public Interest – Employment: Moratorium on retrenchments for a period of 3 years.
	Limited			Behavioural – Restraint of trade: Obligation to amend a restraint of trade clause.
2017Mar0030	VKB Milling (Pty) Ltd	The Maize Milling Business of Progress Milling (Lydenburg) (Pty) Ltd	Supply of Maize products	<b>Behavioural – cross shareholding/information</b> <b>exchange:</b> Obligation not to exchange competitively sensitive information and limitation on appointment of common directors.
				Public Interest – Employment: Moratorium on retrenchments for a period of 2 years.
2017Jul0026	Vitas South Africa (Pty) Ltd	Certain Operations and Certain Assets of a Group of Companies	Media	<b>Structural – Divestiture:</b> Obligation to divest within a certain period.
		and Subsidiaries within the Profert Holdings (Pty) Ltd		<b>Public Interest – Employment:</b> Moratorium on retrenchments for a period of 2 years.
2017Jul0043	Barnes Southern Palace Holdings Proprietary Limited	Scaw South Africa Proprietary Limited	Production of steel products	Behavioural – cross shareholding/information exchange: Obligation not to exchange competitively sensitive information and limitation on appointment of common directors.
				Behavioural – Supply: Obligation to continue supply.
				Public Interest – Employment: Moratorium on retrenchments.



#### PERFORMANCE HIGHLIGHTS

The Legal Services Division (LSD) is a specialist litigation division responsible for managing litigation, but it is not the sole litigator, for the Commission before the Tribunal, CAC, High Court, Supreme Court of Appeal (SCA) and Constitutional Court. The litigation function may, at times, be carried out by other divisions within the Commission, as the need arises. The Commission appears before the Tribunal, and in other courts, instructs attorneys and briefs counsel. LSD directs and manages the Commission's strategy in litigation. Legal support is also provided to cartel, abuse of dominance, exemptions and merger investigations. LSD is also responsible for the prosecution of firms who fail to notify mergers and implement them without approval of the Commission and Tribunal, as the case may be.

Furthermore, LSD negotiates and concludes settlement agreements, with the input of other divisions. The settlement process enables the Commission to conclude cases speedily and cost-effectively. Finally LSD provides a non-binding advisory service to members of the public in compliance with the Act.

During this financial year the Commission imposed R354 495 349.80 in administrative penalties, concluded 29 settlement agreements (three without administrative penalties) and issued 15 advisory opinions. The statistics concerning LSD matters are contained from page 67 to 69. Below we discuss the more significant legal and LSD developments in the year.

#### CAC judgment validates the Commission's investigation into the construction sector

The Tribunal dismissed these arguments and Power appealed the Tribunal's decision on these points to the CAC. In its judgment, the CAC dismissed the appeal and confirmed that Power was On 2 May 2017 the CAC confirmed the Tribunal's August 2016 contemplated in the Commission's complaint as the complaint decision finding that the Commission's decision to initiate an indicated the possibility that other firms may also be involved in the investigation into the construction sector, in September 2009, was alleged prohibited practice. The CAC went further to confirm that valid and that the Commission lawfully amended the scope of the it is possible for the details of Power's involvement in the alleged investigation to add Power Construction (West Cape) (Pty) Ltd (Power prohibited practice to be tacitly added to the complaint where such WC) and Power Construction (Pty) Ltd (Power Construction) to it. details were discovered later in the investigation.

The CAC stated that it was possible for the details of an alleged contravention to be tacitly added to the complaint where such details were discovered later in the investigation.

The CAC decision came after the Commission had referred a case of bid rigging and collusive tendering against Power WC, Power Construction and Haw and Inglis (Pty) Ltd (Haw and Inglis) to the Tribunal in December 2014. In the referral the Commission alleged that Power WC had agreed to submit a higher price than the price submitted by Haw and Inglis for a tender relating to the maintenance of the N1 from Touws River to Laingsburg. This practice is referred to as cover pricing.

Haw and Inglis, who had been awarded the contract after colluding with Power WC, participated in the construction fast track settlement process and admitted liability for this conduct.

However Power WC raised certain legal defences before the Tribunal, including the allegation that the Commission's complaint was not validly initiated against Power WC's conduct and, even where a later complaint had been initiated against Power WC, the collusive conduct had prescribed. These arguments were primarily based on the allegation that Power WC and Power Construction (both referred to here as Power) were not expressly contemplated in the Commission's complaint and the details of the collusive conduct were only presented to the Commission later.

Following from this finding the CAC also held that Power's collusive conduct had not prescribed and was properly before the Tribunal for adjudication. In analysing this point, the CAC held that collusive conduct only ceased when the effects of that conduct ended. The Commission's case against Power is now before the Tribunal for adjudication.

#### Tribunal confirms validity of Commission's tacit initiation and referral against Omnia

On 14 February 2018, the Tribunal dismissed Omnia Fertiliser Limited's (Omnia) review of the Commission's referral against it. On 4 May 2005, the Commission referred its findings of collusion involving Omnia to the Tribunal for adjudication. Certain allegations against Omnia were premised on a complaint initiated by the Commission. This referral included allegations of price fixing and market allocation in the market for nitrogen derivative products used in the manufacture of fertiliser. In its review, Omnia sought the dismissal of the Commission's referral against it on a number of legal grounds.

In terms of the review, Omnia argued that the Commission had not properly initiated the complaint against it and that the decision to refer the matter to the Tribunal was irrational. In addition, Omnia argued that it would be unfair to proceed to the merits of the case owing to the delay in bringing the matter to trial.

After hearing arguments from the parties, the Tribunal held that the Commission had properly and tacitly initiated its complaint against Omnia, where this complaint underlies certain allegations in the referral. In its finding, the Tribunal referred to the SCA decision in Competition Commission vs Yara (South Africa) (Pty) Ltd (CC/Yara) which also concluded that the Commission had validly referred a complaint against Omnia on the basis of a tacit initiation. Following from this initiation, the Tribunal also found that the Commissioner, at the relevant time, had properly appointed an investigator to investigate the allegations against Omnia. This investigation formed the basis of the allegations against Omnia in the Commission's referral.

The Tribunal also found that the Commission had a reasonable suspicion to investigate the allegations against Omnia, based on the information before it. Accordingly, the Tribunal found that based on the information the Commission gathered from its investigation, the Commission properly referred its findings to the Tribunal for



adjudication. In coming to this decision, the Tribunal referred to the SCA's finding in Commission/Yara which also concluded that the Commission had validly initiated a complaint against Omnia.

Finally, the Tribunal considered the delay in bringing the matter before it and whether such a delay impugns the fairness of the trial. In considering the matter, the Tribunal noted that ordering a permanent bar against the Commission from proceeding in this matter would be an extreme remedy. In addition, the Tribunal found that possible prejudice, flowing from the delay, would affect both sides but is more speculative than real. The Tribunal also noted that it would be in the public interest to bring litigation to finality as soon as possible. Based on these findings, the Tribunal dismissed Omnia's review application.

#### Computicket finally deals with the Commission's allegations of abuse of dominance on the merits

The final argument in the hearing on the merits of the complaint against Computicket (Pty) Ltd (Computicket) took place at the Tribunal from 22-23 February 2018 after the matter had been through a lengthy and drawn out litigation process in the Tribunal, Competition Appeal Court and the Supreme Court of Appeal in an effort by Computicket to challenge the legality of the Commission's complaint referral and after, more recently, the Tribunal finally dismissed Computicket's application to set aside the Commission's complaint referral. This case concerns the lawfulness of exclusive contracts imposed by Computicket, the incumbent and overwhelmingly dominant provider of outsourced ticketing services to inventory providers of entertainment events in South Africa during the period 1999 to 2012.

The exclusive contracts covered all of the inventory sold by all of Computicket's inventory provider clients. Computicket had an all-ornothing policy with inventory providers in terms of which inventory providers either had to use Computicket exclusively during the term of the contract or not use Computicket at all. The coverage of Computicket's exclusivity regime was effectively complete in the market given its incumbency advantage and near-monopoly position in the market over the relevant period.

Computicket's insistence on exclusivity placed a lot of inventoryproviders in a very invidious position. Given Computicket's incumbency in the market and its long track record, inventoryproviders in many cases couldn't afford to do without Computicket and so would rather contract with Computicket than with any new entrants. The Commission sought to establish that new entrants were not able to gain effective entry into the market on any kind of scale that would impose a competitive constraint on Computicket during the relevant period. The Commission argued that there were no evidence that the exclusive agreements were introduced for efficiency benefits, nor are they justifiable.

The Tribunal had not yet handed down judgement in this matter as at year end.

#### The Constitutional Court considers whether the Commission is empowered to exercise investigative powers under the Act on whether or not the agreement constitutes a notifiable intermediate merger

On 23 November 2017 the Constitutional Court heard the appeal of the decision of the Competition Appeal Court (CAC), wherein the CAC had dismissed an application that was brought by SOS Support Public Broadcasting Coalition & 2 others against the South African Broadcasting Corporation (SOC) Limited (SABC) and Multichoice (Pty) Ltd (Multichoice) in 28 April 2017. The CAC application, which was supported by the Commission, was brought to seek clarity from the CAC whether its order which was handed down on 24 June 2016, allowed the Commission to invoke its investigative powers, such as interrogating witnesses. Alternatively, the CAC was asked to vary its order by making an additional order permitting the Commission to exercise those powers.

This matter arises from a commercial agreement entitled the "Commercial and Master Channel Distribution Agreement" concluded between the SABC and Multichoice on 3 July 2013. The Tribunal dismissed an application brought before it to compel the SABC and Multichoice to notify the agreement as a merger. On 24 June 2016, the CAC concluded that based on the information before it, it could not find that a merger was concluded in relation to SABC Archives and the policy of the SABC regarding encryption of signals. The CAC then concluded that since this case concerns a public broadcaster and is a matter of public interest, a less formalistic and more substantive approach to the case was required. As a result, the CAC ordered the SABC and Multichoice to furnish "all documentation ... relating to the negotiation, conclusion and implementation of the agreement" to the Commission. The Commission directed to file a report to the Tribunal recommending whether or not the agreement gives rise to a notifiable change of control. The SABC and Multichoice did not furnish "all documentation". The Commission wrote to Multichoice and the SABC requesting further documents. Multichoice stated that some of the key documents that the Commission required do not exist, and the SABC could not trace some of the key documents. As a result, the Commission could not file the report at the Tribunal

In its decision of 28 April, the CAC held that its order is clear and does not envisage the use of the Commission's investigative powers. The S.O.S Broadcasting Coalition and two others appealed

the matter to the Constitutional Court. The Commission filed papers supporting the appeal. The issue in the appeal is that the Commission ought to be allowed to use its investigation powers especially in circumstances where it has not been furnished with "all documentation" as envisaged by the CAC.

The S.O.S Broadcasting Coalition and the other applicants then decided not to proceed with the appeal to the Constitutional Court after the record and the heads had been filed, and they then informed the Constitutional Court that they no longer intend to proceed with the appeal. The Commission refused to give them consent and as a result the matter was heard on 23 November 2017. The decision of the Constitutional Court is pending.

#### Advisory opinions hang in the balance

On 23 January 2018 the Commission suspended its advisory opinion service pending the outcome of its application to appeal an earlier CAC judgment concerning the legal consequences of the Commission's advisory opinions. As things stand, the CAC decision creates a precedent which can be used by parties to challenge a non-binding advisory opinion issued by the Commission if they do not agree with it. The Commission believes, however, that nonbinding advisory opinions should not be the subject of litigation and cannot be used to side-step investigative processes set out in the Competition Act.

What led to the current series of court proceedings was a request, by Hosken Consolidated Investments Limited (HCI), for an advisory opinion on whether a transaction between HCI and Tsogo Sun Holdings Limited (Tsogo) constituted a notifiable merger. The Commission concluded that it did and advised HCI to file the merger notification.

HCI did not agree with the Commission's non-binding advisory opinion and approached the Tribunal for a declaratory order that it should not file its proposed transaction with the Commission. The Tribunal dismissed HCI and Tsogo's application and found, among others, that it did not have jurisdiction to hear the matter because there was no "live dispute" between the parties and that if HCI wished to challenge the Commission's views about whether or not the transaction must be filed with the Commission, HCI should have used the dispute resolution procedures set out in the Competition Act for resolving disputes relating to the notification of mergers.

HCI and Tsogo then filed an appeal with the CAC against the Tribunal's decision. The CAC set aside the Tribunal decision and found, among others, that the Tribunal had jurisdiction to hear the matter and that there was a "live dispute" between the parties. In addition, the CAC found that the proposed 2017 transaction did not require notification to the competition authorities for reasons set out in the judgment.

The Commission subsequently applied for leave to appeal to the Constitutional Court against the CAC's decision. The Commission's application for leave to appeal seeks to safeguard the interests of employees who may possibly be retrenched as a result of the integration of the businesses of Niveus and Tsogo.

#### Commission seeks to uphold predatory pricing precedent

The case relates to the alleged predatory pricing conduct of Media 24 in contravention of section 8(d)(iv) of the Act. The Tribunal made a finding in favour of the Commission, but the decision was overturned by the CAC. The Commission is appealing the decision by the Competition Appeal Court to the Constitutional Court.

Until the launch of Netnuus Welkom in 1999, there were two community newspapers operating in the Goldfields region in South Africa. Vista and Goudveld Forum ("Forum"), both owned by Media 24.

Ms Leda Joubert set about establishing a stable of "Netnuus" community newspapers across the Free State, including Netnuus Welkom. Netnuus Welkom had enjoyed success in the time in which it had been operated under Mr Steyl. Mr Steyl and the remaining employees of Netnuus Welkom therefore resolved to continue to publish the newspaper but under a new name, Gold-Net News ("GNN"), and in a new company structure. The employees all received shares in the new business, which commenced operations in November 2000.

The Commission established in the hearing before the Tribunal that Media 24 resolved to use Forum, as a "stopper in die mark" to prevent GNN from expanding within the market and ultimately to ensure its elimination from the market. In particular, Media 24 decided to use Forum in a profit-sacrificing manner to sell advertising at rates substantially lower than GNN's advertising rates. The purpose of this conduct was to draw advertisers away from GNN and thereby to ensure (i) that Vista's advertising rates would not have to decrease

to compete with GNN's rates; (ii) that Vista's market share would remain unaffected by GNN's presence in the market; and (iii) that GNN would be ultimately be driven out of from the market.

The Commission contended that were it not for the presence of GNN in the market, Forum would have been changed to a "shopper" in the early 2000s. In that form it would have posed no competitive constraint on GNN. The only reason it was not changed, or even

#### LSD'S YEAR IN NUMBERS:

Diagram 11: Commission's litigation load over two years

#### **COMMISSION'S LITIGATION**

CARTEL CASES IN LITIGATION, UNDER THE MANAGEMENT OF LSD
ABUSE OF DOMINANCE CASES IN LITIGA
MINIMUM RESALE PRICE MAINTENANCE
CONTESTED LARGE MERGERS IN THE TRI
MERGER RECONSIDERATIONS IN LITIGA
APPEALS AND REVIEWS IN LITIGATION
PRIOR IMPLEMENTATION CASES IN LITIC

removed from the market entirely, was so that it could be used as a vehicle to exclude GNN from the market.

The Commission established in the Tribunal that "stopper" strategy was maintained by Media 24 over several years. For the duration of that period, Forum incurred substantial losses. The sacrifice was made, deliberately, to exclude GNN from the market. That objective was eventually achieved when GNN exited the market in April 2009.

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ON LOAD	2017/18	2016/17
	16	85
ATION	10	5
E CASES IN LITIGATION	1	1
IBUNAL	9	1
ATION	16	3
	5	1
GATION	4	2



 Table 11: Settlement and consent agreements confirmed in 2017/18

PARTY	CONTRAVENTION	PENALTY AMOUNT
Citibank N.A	Price fixing and dividing markets	R 69 500 860,00
Giuricich Coastal Projects (Pty) Ltd	Price fixing and dividing markets	R 900 000,00
South Ocean Electric Wire Company (Pty) Ltd	Price fixing and dividing markets	R 13 362 855,00
Core Relocations (Pty) Ltd	Price fixing, dividing markets and collusive tendering	R 211 750,56
Bothaville Milling (Pty) Ltd	Price fixing	R 4 211 385,90
Afrion Property Service CC	Price fixing, dividing markets and collusive tendering	R 327 201,85
Fireco Gauteng (Pty) Ltd (Now KRS Fire (Pty) Ltd)	Price fixing, dividing markets and collusive tendering	R 909 376,29
Fermel (Pty) Ltd	Dividing markets	R 104 010,00
DSTV Media Sales (Pty) Ltd	Price fixing	R 22 262 599,00
Brenner Mills (Pty) Ltd	Price fixing	R 12 000 872,00
Cape Brick (Pty) Ltd	Price fixing and dividing markets	R 300 000,00
Pride Milling (Pty) Ltd	Price fixing	R 10 624 959,60
Akulu-Marchon South Africa (Pty) Ltd	Price fixing and dividing markets	R 13 905 600,40
Investchem (Pty) Ltd	Price fixing and dividing markets	R 23 423 155,00
SBS Household Appliances t/a SMEG (Pty) Ltd	Resale price maintenance	R 100 000,00
Godrich Flour Mills (Pty) Ltd	Price fixing and dividing markets	R 4 354 467,00

PARTY
Alvern Cables (Pty) Ltd
Autoliv Inc
Evraz Highveld Steel and Vanadium Ltd
Plasser South Africa (Pty) Ltd
ndependent Media (Pty) Ltd
Provantage (Pty) Ltd
Secret River Trading CC t/a Caffefluxe

Table 12: Penalties imposed for the prior implementation of mergers

RESPONDENT	PENALTY AMOUNT
BB Investment Company (Pty) Ltd	R 2 000 000,00
The Natal Witness Printing and Publishing Company (Pty) Ltd	R 1 000 000,00
Macsteel services Centre SA (Pty) Ltd	R 1 000 000,00

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#### PERFORMANCE HIGHLIGHTS

The Policy and Research Division (P&R) headed by the chief economist, is the economic think tank within the Commission. P&R is largely composed of economists and is closely involved with the day-to-day work of case teams, providing economic guidance and methodological assistance in complex cases and competition policy issues. It provides expert input into complex cases, and is also tasked with leading the Commission's work on impact assessments and research. P&R's work also dovetails with the Commission's advocacy function.

CONTRAVENTION	PENALTY AMOUNT
Price fixing and dividing markets	R 4 736 375,61
Price fixing, dividing markets and collusive tendering	R 149 960 450,00
Price fixing, dividing markets and collusive tendering	R 1 000 000,00
Dividing markets and collusive tendering	R 8 427 625,92
Price fixing	R 8 027 493,14
Price fixing	R 1 094 222,56
Price fixing	R 750 000,00

During the period under review, the key outputs of P&R included:

- working on nine complex mergers, 22% of which were approved with conditions addressing competition concerns or prohibited by the Commission;
- contributing to four complex E&E cases;
- providing economic or expert reports input into five complex • cartel cases;
- conducting two market inquiries; •
- providing input into one policy; •
- completing four scoping studies; and •
- undertaking three impact assessments. •

The numbers and statistics detailing P&R's output throughout the year are set out in Table 13. Below we discuss some of the highlights from the 2017/18 financial year.

# COMMISSION WORKSHOPS











### Providing expert testimony in Tribunal hearings

The Commission is committed to developing economic expertise from within the organisation and relying less on external service providers to achieve this. As part of its functions P&R provides expert economic testimony in support of the Commission's findings in hearings before the Tribunal. One highlight was in the proposed acquisition of Ceramic Industries (Pty) Ltd (CIL) and Ezee Tile Adhesive Manufacturers (Pty) Ltd (Ezee Tile) by Italtile Limited (Italtile). Economic expert testimony was also provided in the two abuse of dominance cases, relating to anticompetitive exclusive contracts. The Tribunal decision on these cases is pending.

### Workshops and seminars

The Commission was fortunate, in this financial year, to once again interact with international thought leaders in the practice of competition law. P&R facilitated these workshops in pursuit of its goal to build the capacity of Commission staff.

Professor Motta, former chief economist of the Directorate General for Competition in the European Commission, visited the Commission for three days, from 17 to 19 May 2017. During his stay he facilitated

training workshops for Commission staff members on market definition, unilateral effects in mergers, and coordinated effects in mergers. Two eminent US academics presented seminars at the Commission. Professor Eleanor Fox, the Walter J. Derenberg Professor of Trade Regulation at New York University School of Law and an expert in antitrust and competition law, visited the Commission on 20 July 2017. She provided two seminar lectures to approximately 60 Commission staff on the following topics:

- abuse of dominance as a competition law violation: Is the law a paper tiger? What work does it do to help the people?
- law, economics and gender in a man's world.
- Professor William Kovacic is the Global Competition Professor of Law and Policy and the Director of the Competition Law Center at the George Washington University Law School. Prof Kovacic facilitated a seminar lecture to Commission staff on 27 September 2017. The topics discussed were:
- lifecycles of competition systems: explaining variation in the implementation of new regimes: and
- identifying anti-competitive agreements in the United States and the European Union: developing a coherent antitrust analytical framework.

### THE P&R YEAR IN NUMBERS :

Table 13: Journals and other publications compiled in 2017/18

CONTRIBUTORS	SYNOPSIS
Tembinkosi Bonakele, Eleanor Fox and Liberty Mncube	Edited BOOK: Competition Policy for the New Era: Insights from the BRICS Countries. Oxford University Press. November 2017
Tembinkosi Bonakele, Eleanor Fox and Liberty Mncube	Introduction of competition enforcement in BRICS countries
Tembinkosi Bonakele	Book chapter: The Case for a BRICS Competition Agenda
Liberty Mncube, Thulani Mandiriza, Michelle Viljoen	Book chapter: Crafting Creative Competition Remedies in South Africa
Hardin Ratshisusu; Yongama Njisane	Book chapter: Public Interest Issues in Cross-Border Mergers: Is There a Role for Competition Authorities?
Itumeleng Lesofe	Journal article: Forum Shopping: Finding the right balance between the enforcement of competition law and the protection of intellectual property rights. SA Mercantile Law Journal

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services; benchmark South African data services pricing against those of other countries: and establish whether data supply quality and cover is adequate by international standards. The inquiry will assess the market structure; the general adequacy and impact of the current regulatory regime; strategic behaviour by large fixed and mobile incumbents; costs faced and profits earned by fixed and mobile network operators; current arrangements for sharing of network infrastructure; investment in infrastructure by operators and access to or allocation of spectrum as this relates to data services price and competition concerns; and the adequacy of regulation to promote new South African entrants. The data services inquiry is ongoing and, to date, has had several stakeholder engagements. The retail sector inquiry price setting mechanisms; price regulation; The Commission initiated an inquiry into the grocery retail sector in 2016. route allocation, licensing and entry regulations; allocation of operational subsidies; The purpose of the market inquiry is to examine whether there transport planning; and are features in the grocery retail sector which prevent, distort or transformation in the land based public passenger transport restrict competition. In seeking to understand the general state of industry. competition in the sector, the inquiry is probing six major areas: 1. the impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers; 2. the impact of long term exclusive leases on competition in the sector; the dynamics of competition between local and foreign owned 3. small and independent retailers; 4. the impact of regulations, including municipal town planning and by-laws, on small and independent retailers; 5. the impact of buyer groups on small and independent retailers; and 6. the impact of certain identified value chains on the operations of small and independent retailers. The grocery retail inquiry team has successfully completed a substantial portion of the required evidence and information gathering that will enable the team to answer the research guestions contained in the inquiry's statement of issues. The inquiry team has commenced with drafting a report based on its findings.

In April 2013 the Act was amended to give the Commission powers to conduct market inquiries into the general state of competition in any industry. Market inquiries are different from investigations in that, while investigations target specified firms engaged in specified anti-competitive conduct, market inquiries look into any feature or combination of features in a market which may have the effect of distorting or restricting competition without targeting any one firm. During this financial year the Commission launched two market inquiries; (1) an inquiry into public passenger transport; and (2) an inquiry into data service costs. Launching the public passenger transport inquiry The Public Passenger Transport Market Inquiry (PPMTI) officially commenced on 7 June 2017 and the terms of reference cover broadly the following issues: As at year end, the inquiry has conducted public hearings in Gauteng, the Western Cape and KwaZulu-Natal and has had several stakeholder engagements. On completion the PPMTI will issue a final report which may include recommendations on the industry. Minister requests a data services inquiry In this financial year the Commission initiated an inquiry into data services as it believes there are features in the market that prevent, distort or restrict competition within the sector. The inquiry was requested by EDD Minister, Ebrahim Patel. The main objectives of the inquiry are to obtain a clear understanding of the data services value chain; assess the state of competition in the market at every stage of the value chain for the provision of data

In March 2018 the completion of the inquiry was extended to 28 September 2018 in order to allow for further consultations with key stakeholders in the South African grocery retail sector.

### Market inquiry into private health care

In December 2017 the health care market inquiry (HMI) released a series of expenditure analysis reports, based on the data and information collected through the inquiry process. These reports are listed hereunder:

- 1. Descriptive statistics (updated version including stakeholder input)
- 2. Attribution analysis (updated version including stakeholder input)
- 3. Report on responses to issues raised in the data access room
- Technical report on data analysis methodology and approach 4.
- 5. Prescribed minimum benefits
- Funders analysis 6
- 7. Facilities analysis
- 8. Practitioners analysis

Subsequent to publication of the above expenditure analyses reports, the HMI received formal applications for access to review its underlying data, used in the compilation of these reports, from three hospital groups. These requests were granted. Response received from stakeholders will be considered for purposes of the provisional findings report and the recommendations report.

The HMI is at an advanced stage and expects to complete the inquiry during the 2018/19 financial year.



### PERFORMANCE HIGHLIGHTS

The Advocacy Division comprises three functions, namely (1) stakeholder relations; (2) communications; and (3) policy. Through the advocacy function the Commission engages with key stakeholders in order to promote voluntary compliance with the Act, both in the public and the private sector. It is a responsive function which determines its strategy on the basis of the Commission's priorities in a given period. Activities worth mentioning in the reporting period included those listed below.

- The Commission also hosted a consumer interest seminar in the year, bringing together stakeholders including NGO's and the National Consumer Commission to highlight the objectives and the impact of competition policy and the competition authorities' interventions on consumer welfare.
- Policy responses to respective stakeholders during the ٠ 2017/2018 year included submissions to the Department of Telecommunications and Postal Services on the Electronic Communications Amendment Bill (ECAB), the ICT Sector Commission & Tribunal (ICTS) Bill and a submission to the communications authority: ICASA, on the inquiry into subscription television broadcasting services. The Commission acknowledged the intentions of the ECAB to introduce several amendments aimed at facilitating easier access to licencing and infrastructure to promote competition, entry and participation in the Information and Communications Technology (ICT) sector by previously disadvantaged individuals, the youth and SMMEs, amongst other things. The ICTS Bill which is an extension of the National Integrated ICT Policy White Paper (White Paper), provides for the creation of regulatory authorities (the ICT Sector Commission and Tribunal, together referred to as 'the Economic Regulator') to regulate the ICT sector, including the electronic communications sector, internet governance, licensing and regulations of electronic communications networks and services, the licensing and regulations of spectrum and use of other scarce resources, the protection of consumers, the allocation and management of domain names, and the establishment and operation of a Tribunal to deal with appeals and disputes.
- Competition perspectives were shared with the International Trade Administration Commission (ITAC) on applications made for customs duties and rebates.
- With the conclusion of the LPG market inquiry in 2017, the Commission has been following up with market participants regarding the implementation of the proposed recommendations. The inquiry recommendations were targeted at wholesalers, refineries and regulators, with specific proposed actions and timelines. Overall, there has been co-operation from the industry regarding the recommendations, with most firms having implemented measures to comply. The resolution of a complaint between Easigas and Shell, which is discussed in more detail below, is an example of such progress. The Commission will continue the monitoring work, with engagements due with Government and regulators in the next financial year.

This year bid rigging in public procurement continued to feature prominently in the cases investigated by the Commission. Hence the Commission hosted several meetings to raise awareness about bid rigging and to impart the tools needed for procurement officials to identify and report the conduct. The ongoing school uniform investigation called for a dual advocacy and investigation approach prompting the Commission to engage stakeholders in this industry in order to influence the industry's tendency to conclude exclusive agreements for the supply of school uniforms. A third priority for the Commission is the successful implementation of the criminal provisions stipulated in the amended Act. For this reason the Commission, engaged various stakeholders in the criminal justice system with a view to understanding the implications of individual criminal liability in competition law and to reach agreement on the roles of each institution going forward in the new dispensation.

Throughout the year the Commission gave input on policy, participated in awareness-raising events and communicated the Commission's key messages through broadcast, print and social media. These initiatives are reflected from page 79 to 82. Below we discuss some of the highlights from the financial year in more detail.

### Commission's LPG market inquiry recommendation yields positive outcomes

The Commission accepted the withdrawal of a complaint by Puregas (Pty) Ltd (Puregas) against Shell Downstream (Pty) Ltd (Shell) for unfair business practices, after Puregas was able to secure a supply agreement on favorable terms.

Puregas, a supplier of propellants, lodged a complaint with the Commission against Shell, a manufacturer and supplier of liquefied petroleum gas (LPG) in February this year. In the complaint, Puregas alleges that Shell cancelled its supply contract for propane and butane and that this amounted to an exclusionary act in contravention of the Competition Act.

During its investigation, the Commission found that Shell divested its LPG business to Easigas a few years ago, in terms of which Shell was to exclusively supply LPG to Easigas.

However, in an effort to comply with the Commission's recommendation in the LPG market inquiry, Shell decided to renegotiate its supply contract with Easigas. In terms of the new contract, effective from February 2018, Shell will exclusively supply

90% of its LPG total production to Easigas and allocate the remainder to small wholesalers in line with the Commission's recommendations in the LPG market inquiry.

The new supply contract means that Puregas would no longer be able to purchase its product requirements directly from Shell as it does not fall within the definition of a small wholesaler as per the LPG market inquiry. Puregas was therefore required to purchase its product requirements from Easigas and was concerned that the price it would pay for propane and butane is likely to be higher.

However, Puregas has since submitted that it has managed to secure a supply agreement with Easigas on favourable terms. As such, Puregas has taken a decision to withdraw its complaint against Shell. In light of this, the Commission has accepted the withdrawal and considers the matter finalised.

### Raising awareness about collusive tendering

The Commission provided training on how to identify and detect bid-rigging to 50 senior provincial auditors of the Office of the Auditor-General (AG) in Pretoria in April 2017. The training covered prohibited practices in the Act, guidelines for fighting bid rigging in public procurement, designing tenders to reduce bid rigging, detecting bid rigging in public procurement, bid rigging patterns and the role of the certificate of independent bid determination in mitigating bid rigging.

The outcome of the Commission's training was that the Office of the AG amended its audit procedures to include bid-rigging detection. The collaboration with the Office of the AG demonstrates the importance of partnerships in addressing anti-competitive conduct in the economy.

From 24 to 27 July 2017 the Commission provided bid-rigging training to the procurement staff of the City of Cape Town. The audience comprised staff from supply chain and procurement, internal audit, contracts, finance as well as members of the bid evaluation and bid adjudication committees. In this interaction the Commission reached a target of 330.

On 26 September 2017, the Commission provided similar training to the procurement staff of the Nelson Mandela Bay Metropolitan Municipality. The audience was staff from finance, procurement, supply chain, internal audit and members of bid evaluation and bid adjudication committees. The training workshop was attended by 50 delegates.

### School uniforms in the spotlight

The Commission drafted a circular to assist the National Department of Education in promoting competitive bidding for the procurement of school uniform by schools in South Africa. The purpose was to encourage a move away from the common practice of exclusive agreements between schools and school uniform suppliers. The department then issued the circular to all provinces on 15 May 2015.

Thereafter the Commission undertook a survey to test the extent to which schools have complied with the department's circular. The preliminary report indicated that some schools have taken measures to implement competitive bidding in the procurement of school uniform.

In November 2017, a Commission team presented to the senior management of the National Department of Basic Education, focusing on the results of the school uniform survey.

In the last guarter of the 2017/18 financial year, the Commission engaged with the National Education Collaboration Trust on school uniform procurement. The engagement was attended by various delegates including by the Minister of Basic Education, Honourable Angie Motshekga and the Deputy Minister, Enver Surty. The engagement highlighted various concerns and areas of consensus from many stakeholders in the sector.

### Commission helps to prepare the criminal enforcement landscape

On 27 June 2017 a workshop on the practical implementation of the section 73A amendment of the Act was held. Section 73A criminalises cartel conduct. Representatives from the Department of Justice and Constitutional Development and the Commission attended the workshop. Recommendations were made by the participants concerning the best possible approach in implementing section 73A of the Act.

In addition, the Commission hosted a workshop on 22 November 2017 between Commission representatives and senior representatives from the Directorate for Priority Crime Investigations. The aim of the workshop was to create platforms for future collaboration on the criminal enforcement of competition law.



### Driving change in the automotive industry

The Commission published a draft code of conduct for competition in the automotive industry on 22 September 2017. The code of conduct is aimed at resolving the competition problems in the automotive aftermarket sector, following multiple complaints received.

The Commission is concerned about the exclusive arrangements between original equipment manufacturers (OEM's) and approved dealers, repairers and parts suppliers in carrying out in-warranty service and repair work. These exclusive arrangements have the effect of limiting the participation of some players in the market, especially small and medium sized enterprises (SME's). The arrangements concerning the sales, distribution and use of spare parts also limit competitiveness in this market. The Commission is also pursuing broader reforms in the sector, including promoting the increased ownership of dealerships by historically disadvantaged persons. The Commission is also advocating for transparency in the pricing of vehicles, including the unbundling of vehicle costs from the costs of a maintenance and service plan.

The Commission has been engaging stakeholders on their comments on the first draft, and will publish a final draft for signatory in the course of the 2018/19 financial year.

### Eleventh annual conference rolls out the red carpet

The Commission and the Tribunal hosted the 11th annual conference on competition law, economics and policy at the Gordon Institute of Business Science (GIBS) between 31 August and 1 September 2017. The objective of the conference was to bring together renowned specialists in competition law and economics to debate topical issues, inform competition policy developments in South Africa and to create optimal conditions for a stimulating exchange. The conference was targeted at academics, practitioners and other stakeholders with an interest in the competition enforcement. The annual conference was preceded by a joint workshop hosted by the Commission and the Competition and Regulation Summer School and Conference (CRESSE) on 30 August 2017 as well as a workshop with the National Treasury on market concentration on 29 August 2017.



The annual conference was opened by the Minister of Economic Development, Ebrahim Patel, Session topics included 'big data'. 'algorithms and collusion'; 'international cartels and enforcement'; as well as 'concentration and what competition law can do about it'. A highlight of the conference was the key note speech by then Deputy President Cyril Ramaphosa on 1 September 2017. The conference was also addressed by, among others, Judge Dennis Davis of the CAC; Andrey Tenishev of the Federal Antimonopoly

Service of the Russian Federation; Ania Thiemann of the OECD; Enoch Godongwana, Chairperson of the Economic Transformation Committee of the ANC and the Economic Freedom Fighters (EFF) as well as global experts. The Competition Committee of the Law Society of the Northern Provinces hosted a gala dinner for selected delegates and speakers on 31 August.

The joint workshop with CRESSE on 30 August 2017 included addresses by Prof John O'Connor of Purdue University who spoke on "Forensic economics: calculation of cartel damages and presenting them to the judiciary", Prof Kai Uwe-Kuhn of the University of East Anglia who presented on information exchange, Prof Marc Ivaldi of the Toulouse School of Economics who spoke on competition in the long distance passenger rail market as well as economic efficiency and political capture in public service contracts.

A total of 378 guests attended the conference over the three days.

### Collaborating with sector regulators

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

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

- Broad Based Black Economic Empowerment Commission • (BBBEE Commission), 6 June 2017.
- South African Bureau of Standards (SABS), 8 August 2017.

### Communicating the work of the Commission

The Commission communicates with the public mainly through the website, traditional forms of media and on social media. The Commission's website remains the gateway to knowledge about the Commission's work and a repository of information for use by all, both within our borders and beyond.

The media community remains one of the Commission's key stakeholders as they are the most effective means of informing the public about the Commission's activities. During the period under review, the Commission issued 105 media statements. This resulted

in numerous regular interviews across print, broadcast and online platforms as well as general news coverage valued at an advertising value equivalent (AVE) amount of R810 406 745, up from R392 479 087 last year. This coverage comprises an AVE value of R216 590 874 (up 82%) for print media coverage; an AVE value of R197 606 333 (up 29%) for broadcast coverage; and R392 672 343 (up 228%) for online

media coverage. The resulting number is the equivalent of what an advertiser would have paid if it placed an advertisement of that size or for that time period. By assessing media coverage in this way and aggregating all such calculations, a value can be assigned to the coverage received within a specified time period.

Diagram 13: The Commission's social media footprint

2016/17: 14 814 FRIENDS 0·····I



2016/17: 5 485 CONNECTIONS 2017/18: 5 556 CONNECTIONS O·····I

2016/17: 116 SUBSCRIBERS 2017/18: 197 SUBSCRIBERS

### THE ADVOCACY DIVISION'S YEAR IN NUMBERS :

Table 14: Stakeholder engagement sessions

TYPE OF SESSION	PURPOSE OF ENGAGEMENT	STAKEHOLDERS TARGETED	
	WORKSHOPS AND SEMINARS		
The Department of Trade and Industry (DTI), 23 Au-gust 2017.	To raise awareness about the competition risk of information exchange.	Export councils	
National Department of Basic Education, 12 Febru-ary 2018.	To brief the HODs on the results of the School Uniform Survey.	Heads of departments of the National Department of Basic Education	
	To raise awareness about the an-ti- competitive effect of long-term exclusive agreements in the pro-curement of school uniform.		

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### THE COMMISSION'S ADVERTISING VALUE EQUIVALENT SPEND



Social media is one of the fastest growing industries worldwide. The advent of social media is one of the most significant game changers in the realm of communications since the invention of the mobile phone. When it comes to immediacy, news reporting, marketing, public relations and the art of doing business, social media is king. In the world as we know it, social media has rapidly evolved from a nicety into a necessity. For this reason the Commission is constantly developing its social media platforms in order to: raise awareness about its activities among all stakeholders including the media; to educate, inform and engage with the public; and to inspire dialogue around competition issues in South Africa and beyond.

The Commission, for example, regularly makes use of live streaming for major events, conferences and announcements. This has contributed significantly towards the Commission broadening its audience reach. The Commission's social stream increased exponentially by R3 462 707 (4649%) to R3 537 196 this year, calculated in terms of its AVE.

Below, is a list of the Commission's social media platforms and the number of followers or subscribers as at 31 March 2018. Nonsubscribers frequently view and participate in the Commission's online events as well.

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### Table 14: Stakeholder engagement sessions continued

TYPE OF SESSION	PURPOSE OF ENGAGEMENT	STAKEHOLDERS TARGETED		
National Department of Basic Education, 7 March 2018	To brief the School Governing Body Associations on the results of the school uniform survey.	School governing body associ-ations		
	To raise awareness about the anti-competitive effect of long-term exclusive agreements in the pro-curement of school uniform.			
SMME Opportunity Road-show. Port Elizabeth 19 May 2017.	To enable Small Business to iden-tify market abuse and report it to the Commission.	Small business		
SMME Opportunity Road-show, 6 September 2017, Cape Town.	To enable Small Business to iden-tify market abuse and report it to the Commission.	Small business		
SMME Opportunity Road-show, 15 November 2017, Durban	To enable Small Business to iden-tify market abuse and report it to the Commission.	Small business		
Permark Pty Ltd, 14 August 2017, Johannesburg.	To promote compliance with the Competition Act.	Sales staff of the company		
Potato Association, 22 May 2017, Pretoria.	To raise awareness about the competition risk of information exchange.	Members of the potato asso-ciation		
National African Federa-tion for the Building Indus-try (NAFBI), 9 February 2018, Durban.	To brief NAFBI on the outcome of the Commission's investigation into construction.	Members of the National Afri-can Federation for the Build-ing Industry		
South African Iron and Steel Institute (SAISI), 2 March 2018, Pretoria.	To raise awareness about the competition risk of information exchange.	Members of the South African Iron and Steel Institute		
ICASA Colloquium, 15 De-cember 2017	Engagement with ICASA on amendments to respective legis-lation and an update to the exist-ing MOU	ICASA		
Consumer Interest Semi-nar, 15 March 2018	To create awareness about the role of consumer interests in competition policy and practice, and to draw lessons from stake- holder experiences for future interventions	National Consumer Commis-sion, consumer interest groups and competition prac-titioners		
African Farmers Associa-tion of South Africa, 29 March 2018	The purpose of the engagement was to understand the key fac-tors that are affecting black emerging farmers in South Africa, in relation to the barriers to entry and expansion into the market, and also any factors that affect routes to market.	AFASA		
TRAINING SESSIONS				
Bid Rigging Training, 25 April 2017, Pretoria.	To train auditors to identify rigged bids in the auditing process.	Senior provincial auditors of the Office of the Auditor General.		

TYPE OF SESSION	PURPOSE OF ENGAGEMENT	STAKEHOLDERS TARGETED			
Bid Rigging Training, 24 – 27 July 2017.	To train procurement officials of the City of Cape Town to identify; detect and report bid rigging.	Procurement officials of the City of Cape Town.			
Bid Rigging Training, 26 September 2017.	To train procurement officials of the Nelson Mandela Metropoli-tan Municipality to identify; de-tect and report bid rigging.	Procurement officials of the Nelson Mandela Metropolitan Municipality.			
Standard Setting, 19 De-cember 2017	d Setting, 19 De-cember 2017 To train the association about standard setting and its effect on competition				
	CONFERENCES				
11th annual conference on competition law, econom-ics and policy, 31 August – 1 September 2017	To bring together renowned spe-cialists in competition law and economics to debate topical is-sues, inform competition policy developments in South Africa and to create optimal conditions for the exchange of ideas.Academics, practitioners and othe stakeholders with an interest in the competition enforcement.				
FORUMS					
National Education Trust Dialogue on Exclusive Agreements in the pro-curement of School Uni-form, 5 February 2018, Pretoria.	To raise awareness on the com-petition risk of exclusive agree-ments in the procurement of school uniform.	School principals; school gov-erning body associations; Na-tional Department of Basic Education officials; trade un-ions and non- governmental organisations			

Table 15: Journals and other publications compiled in 2017/18

### DATE AND TYPE OF PUBLICATION

Competition News, three issues published.

Reflections of the 4th BRICS International Com-petiti



N	SYNOPSIS
	The Commission's printed newsletter which updates stakeholders on the Commission's activities, events and developments in compe- tition law.
ition Conference	The Commission published a coffee table book on the proceedings of the 4th Brics Conference held on 12 -13 November 2015 at Inkosi Albert Luthuli ICC, Durban. The coffee table book was distributed at the 5th BRICS International Con-ference held on 08 – 10 November, 2017 at Royal Tulip Hotel, Brasilia, in Brazil.

### **Diagram 14:** Commission clip count in print, broadcast and online media over three years

### PRINT

BROADCAST

### SOCIAL STREAM

TOTAL







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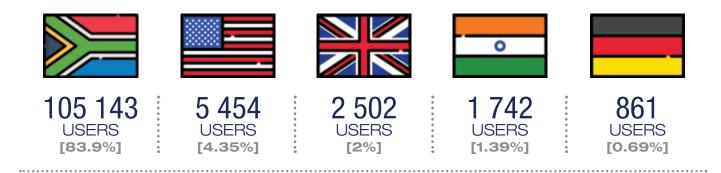




2015/16: <b>2 068</b>	2015/16: <b>2 992</b>	2016/17: <b>2 521</b>	2015/16: <b>7</b>	8 081
2016/17: <b>2 398</b>	2016/17: <b>2 537</b>		2016/17: <b>5 417</b>	12 873
2017/18: <b>5 526</b>	2017/18: <b>5 524</b>	2017/18: <b>5 880</b>	2017/18: <b>11 030</b>	25 960
% INCREASE	% INCREASE	% INCREASE	% INCREASE	
THIS YEAR:	THIS YEAR:	THIS YEAR:	THIS YEAR:	
<b>130%</b>	<b>118%</b>	<b>133%</b>	<b>104%</b>	

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### Diagram 15: Geographic origin of the top five Commission website visits





### PERFORMANCE HIGHLIGHTS

The Office of the Commissioner (OTC) comprises three functions, namely (1) international relations; (2) corporate governance; and (3) strategy and planning. Corporate governance, strategy and planning are discussed in Part D. Below we highlight significant developments in the Commission's international relations this year.

### Competition development remains on the SADC agenda

During 2017/18 the Southern African Development Community (SADC) continued to dedicate resources to the promotion of competition law within its member states. SADC's Committee on Competition and Consumer Policy and Law, which South Africa is a member of, met in Botswana on 24 and 25 May 2017 to discuss work related to competition and consumer protection matters within SADC. Reports from each member state and the working groups on cartels, mergers and research were presented.

For the first time, the SADC secretariat invited written contributions which formed the basis for detailed discussion. The Commission submitted papers on mergers and cartels.

At this meeting it was agreed that the SADC cartels working group would hold its training in conjunction with the African Competition Forum (ACF), hosted by Zambia, in August 2017.

As planned, the SADC cartels working group held its second annual meeting in Lusaka, Zambia in August 2017. The meeting was attended by 11 competition authorities. The meeting discussed recent developments on cartel enforcement in SADC member states; progress reports from the SADC cartels legal framework sub-group and the SADC cartels investigative techniques sub-group as well as enhancing cooperation on cross-border cartel enforcement activities.

Following the working group meeting, a joint capacity building workshop with the ACF was held on 9 and 10 August 2017. The training was delivered by trainers from South Africa, Mauritius, Zambia, Namibia and Botswana. The capacity building focused on investigative skills and preparation and execution of dawn raids. It included a mock dawn raid exercise designed and led by the Commission. The capacity building workshop was attended by more than 20 participants.

As part of its effort to promote competition law and to build the capacity of competition practitioners in the region, SADC conducted a training course for judges and commissioners on 15 and 16 March 2018 in Johannesburg. The training was attended by 12 sitting commissioners from three jurisdictions, namely Tanzania, Botswana and Swaziland. The principal objective of the training workshop was to familiarise judges with the economic principles underpinning national competition laws and to discuss the legal approach to enforcing competition policy in order to promote effective enforcement of competition legislation in SADC member states. The training programme was hosted jointly with UNCTAD's competition and consumer programme.

### African Competition Forum enhances cooperation amongst member agencies

The ACF was established in Nairobi, Kenya, in March 2011. It is a network of African national and multinational competition authorities whose main objective is to promote the adoption of competition principles in the implementation of national and regional economic policies of African countries. The Commission is an active member of the ACF and this year continued to participate in the ACF agenda.

The Commission attended the 16th session of UNCTAD's Intergovernmental Group of Experts meeting on competition law and policy which took place from 5 to 7 July 2017 in Geneva. Two meetings took place on the margins of this conference: the ACF steering committee meeting and the meeting of Brazil, Russia, India, China and South Africa (BRICS) competition authorities.

The ACF meeting, in particular, was held on 6 July 2017 and attended by authorities from Botswana, Burkina Faso, Cameroon, CEMAC, COMESA, Egypt, ECOWAS, Kenya, Malawi, Mauritius and South Africa. UNCTAD's Competition Branch attended the meeting, and a commitment was made to strengthening collaboration between the ACF and UNCTAD.

A further ACF capacity building workshop and steering committee meeting was held on the side-lines of the OECD Global Forum on Competition in Paris on 6 December 2017. Fifteen national and regional authorities attended the meeting. These were Algeria, Botswana, COMESA, Cote d'Ivoire, ECOWAS, Kenya, Mauritius,

Namibia, Morocco, SADC, Senegal, South Africa Tunisia, Zambia, and Zimbabwe. The capacity building workshop explored the future of competition policy in Africa with some of the speakers including Eleanor Fox, Hassan Qaqaya, David Lewis, and Francis Kariuki. The workshop also discussed ways of strengthening cooperation among African national and regional competition authorities as well as with the OECD and International Competition Network (ICN).

### BRICS global partnership celebrates ten years of cooperation

The Commission attended the 5th International BRICS competition conference from 9 - 10 November 2017 in Brasilia, Brazil. The conference theme, Towards a Successful Second Decade of

Cooperation, celebrated the success of the first decade of BRICS cooperation and set the scene for the next decade of partnership. The event was attended by approximately 340 participants from BRICS and other competition agencies, lawyers, economists and academics. The Commission also attended the pre-BRICS workshop on Advances in Competition Analysis, the Lectures on Competition Analysis and the Post-BRICS Conference on General Purpose and Competition Law. The Commission participated in all the sessions of the conference, either as presenter, panellist or facilitator.

The Commission has allocated participants to each of the BRICS working groups on competition matters.

### Table 16: Engagements with international and foreign competition bodies in 2017/18

COMPETITION BODY	NATURE OF ENGAGEMENTS IN THE YEAR
ICN	Two INC conferences have taken place;
	<ol> <li>ICN conference in Porto, Portugal which was held 9 – 12 May 2017.</li> <li>ICN conference which took place in New Delhi 20 – 23 March 2018.</li> <li>There has also been ongoing ICN Working group's participation in teleconferences and webinars as and when the need arises.</li> </ol>
SADC	One SADC competition committee meeting took place in the reporting peri-od:
	1. SADC Competition Committee meeting which was held in Gaboro-ne, Botswana on 25 – 28 May 2017.
ACF	<ol> <li>Three ACF steering committee meetings and three ACF capacity building trainings took place under period review:</li> <li>ACF SC meeting which took place in Nairobi, Kenya on 2 – 3 March 2017.</li> <li>ACF SC meeting which took place in Switzerland, Geneva on 5 - 7 July 2017.</li> <li>ACF SC meeting which took place in Paris, France on 06 December 2017.</li> <li>ACF agency effectiveness capacity building training which took place in Paris, France on 6 December 2017.</li> <li>ACF cartel workshop took place in August 2017 in Zambia.</li> <li>ACF merger workshop took place in Lilongwe, Malawi on 19 – 21 September 2017.</li> </ol>
OECD	<ol> <li>In the period under review, we have had one OECD workshop and two Competition Committee meetings:</li> <li>OECD workshop on priority sectors which took place on the 09 March 2017.</li> <li>OECD competition committee meeting which took place 5 – 9 June 2017 in Paris, France.</li> <li>OECD competition committee meeting which took place 4 – 8 De-cember 2017 in Paris, France.</li> </ol>
UNCTAD	CCSA participated in one UNCTAD competition committee meeting which took place in Geneva on 5 – 7 July 2017.

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COMPETITION BODY	
BRICS	Three BRICS engage
	1. BRICS working on 18 -21 Septe
	2. I5th Internationa
	3. Post BRICS wor social justice too
Zimbabwe competition agency	Information exchange regarding their compe
Kenya competition agency	Competition Authority for a period of two me
Russia (FAS) competition	1. The Commission
agency	agency counterp 2. FAS study tour of
	speak on its exp
	3. BRICS heads of
	Petersburg Inter
	4. Annual Conferen
	5. Russian Compet
	Value Chains and
	6. 5th International
	Brasilia, Brazil I

### NATURE OF ENGAGEMENTS IN THE YEAR

gements took place in the period under review:

- g group meeting on food value chains and pharmaceuticals which took place in Russia stember 2017.
- nal BRICS competition conference which took place 8 10 November 2017.
- orkshop on general purpose technology and competition law, consumer welfare and cook place on 11 November 2017.
- ge took place between the Commission and the Compe-tition Authority of Zimbabwe apetition bill.
- rity of Kenya sent through two staff members for train-ing exchange at the Commission months.
- ion has been giving inputs into the toolkit framework proposed by our FAS Competition erparts. This process is ongoing.
- r on cartels in retail which took place from 25 27 April in Kazan, Russia. CCSA asked to xperience.
- of authorities meeting in St Petersburg which took place 16 20 May 2017 at the St ernational Legal Forum.
- rence BRICS meeting in Johannesburg, South Africa on 29 August 2017. Bilateral with ICS counterparts (Russia).
- betition Week which took place 18 21 Septermber 2017. BRICS Working Group on Food and Pharmaceuticals.
- al BRICS Competition Conference which was held from 8 10 November 2017 in .. BRICS Working Group on Food Value Chains and Pharmaceuticals.

## **DECISION MAKING** STRUCTURES

uilding a high performance agency requires the Commission to adhere to current standards of corporate governance. The OTC oversees this function in the Commission and it has established the systems and practices described below to ensure transparency and accountability throughout the organisation.

The Commissioner is the accounting authority of the Commission and is appointed by the minister of the Economic Development Department (EDD). The Commissioner is responsible for general administration, managing and directing the activities of the Commission, supervising staff and for performing any functions assigned to him in terms of the Competition Act and the Public Finance Management Act (No. 1 of 1999) (PFMA). Mr Tembinkosi Bonakele, after serving as the Acting Commissioner between October 2013 and 19 April 2014, was appointed as the Commissioner on 20 April 2014 for a five-year period. He performed the duties of Commissioner for the period under review.

### THE COMMISSION MEETING

The Commission Meeting is the highest decision-making structure in relation to case-related work of the Commission. The Commission meeting is chaired by the Commissioner, who is assisted by the Deputy Commissioner(s) to carry out the functions of the Commission. The Commission meeting ordinarily meets on a weekly basis with the Chief Legal Counsel, Chief Economist and Divisional Managers responsible for dealing with the statutory, case-related work. They also perform an advisory role to the Commissioner.

The Commission meeting held 38 meetings during the period under

review. Its core functions are to receive recommendations and to make decisions on cases, as well as provide guidance and direction in the conduct of investigations. The Commissioners receive updates on important cases, adopt policies and procedures regarding the conduct of cases, receive reports and give direction on advocacy and communication relating to the work of the Commission, as prescribed by the Act. During the reporting period, the Commissioners consisted of the Commissioner and one Deputy Commissioner.

### THE EXECUTIVE COMMITTEE AND SUB-COMMITTEES

The Commission's executive committee (EXCO) is chaired by the Commissioner and comprises the Deputy Commissioner and the Divisional Managers, including the Chief Financial Officer. The heads of departments (Strategy and Planning, Human Resources, Information Technology, Stakeholder Relations, Communications, International Relations and Registry) form part of the extended EXCO and participate in EXCO meetings when invited by the Commissioner. EXCO advises the Commissioners in decision-making on the administrative and operational aspect of their functions.

EXCO held 6 ordinary meetings and 10 special meetings during the period under review.

The key functions of EXCO are to undertake strategic and business planning, monitor the implementation of strategic and business plans, and to mobilise and allocate financial and human resources. EXCO also plays an oversight role over the management of human resources, information technology, security and facilities management, and risk management. It is responsible for approving policies relating to operations, provides leadership and sets the tone for the overall operations of the Commission. The company secretary advises EXCO on compliance with relevant legislation and regulations.

Performance against targets is discussed on a guarterly basis at the EXCO meetings in order to monitor expenditure, activities and progress. The Commission submits guarterly reports to the EDD in terms of the PFMA. EXCO has established five committees to assist it in performing its oversight function and to provide it with guidance on matters falling within the terms of reference for the committees, as described below.

### THE MANAGEMENT COMMITTEE

EXCO is assisted by the management committee which is chaired by the Deputy Commissioner and meets on a biannual basis. The management committee comprises all management of the Commission including members of EXCO and a layer of management below EXCO, which is representative of all functions including Heads of Departments. The management committee held 8 meetings during the financial vear.

The role of the management committee is to review and confirm the annual performance plan of the Commission, to approve business plans for respective functions, and to review organisational and functional performance. It provides strategic and operational oversight over investigations to assess progress, review investigative strategies and to complement existing functional and inter-divisional structures.

### IT COMMITTEE

The IT committee comprises select EXCO members and is tasked with overseeing the delivery of strategic IT projects that support the business. It is also responsible for developing and reviewing IT policies and ensuring that these are effectively implemented. The Committee held 02 meetings during the financial year.

### FINANCE COMMITTEE

The finance committee comprises the Commissioners and select EXCO members. It is tasked with the following responsibilities:

- recommending the annual organisational budget to EXCO for adoption;
- ensuring the organisational budget is aligned with the Commission's strategic plan and government priorities;
- monitoring and reporting on the Commission's financial performance against organisational and divisional priorities and approved budgets;

- formulating strategies for improving the Commission's financial position, including the approval and monitoring of organisational budget processes:
- review the interim and annual financial statements for recommendation to the audit and risk committee: and
- monitoring and reviewing under-expenditure and overexpenditure.

The finance committee held 06 meetings during the period under review.

### HUMAN RESOURCES COMMITTEE

The Human Resources (HR) Committee comprises select EXCO members and is tasked with oversight over the implementation of the HR strategy and ensuring that polices are developed, implemented and reviewed. The HR committee met 05 times during the period under review.

### **RISK AND GOVERNANCE COMMITTEE**

The Risk and Governance Committee comprises select EXCO members and representatives from respective functions. It is tasked with oversight over governance and risk management and was chaired by the Deputy Commissioner. The Committee met 04 times during the period under review.

### **EMPLOYMENT EQUITY COMMITTEE**

The Employment Equity Committee comprises of Commission employees who represent all levels in the organisation, who are selected in line with the provisions of the Employment Equity Act. The Committee oversees the transformational agenda of the Commission. Its objectives are to do an analysis of the employee profile, play a consultative role in setting targets for transformation, identify and resolve barriers to transformation.



### AUDIT AND RISK COMMITTEE

(More details under the Annual Financial Statements section)

### **REMUNERATION COMMITTEE**

The Committee comprises three (3) members who are independent, non-executive individuals. The REMCO plays an independent role, operating as an overseer and a maker of recommendations to the Commissioner in his capacity as Accounting Authority on matters relating to just and fair remuneration of employees at all employee levels. The REMCO held a total of 5 meetings (2 regular and 3 special meetings).

## COMPLIANCE WITH LEGISLATION

## PUBLIC FINANCE MANAGEMENT ACT, 1999 AND NATIONAL TREASURY REGULATIONS

In accordance with the PFMA and National Treasury Regulations, the Commission submitted the following documents to the EDD for approval during the period under review:

- request to retain surpluses generated as at 31 March 2017;
- quarterly reports on the Commission's expenditure, budget variance, activities and performance against set targets;
- monthly expenditure reports;
- annual performance plan for the period 2016/17; and
- annual report

### SKILLS DEVELOPMENT ACT, 1998

The Commission submitted the annual training report and the annual workplace skills plan.

### **SKILLS DEVELOPMENT LEVIES ACT, 1999**

A skills development levy equal to 1% of the total payroll is paid to the South African Revenue Service (SARS) monthly. This is distributed to the relevant sector education and training authorities (SETA's), which promote training in various disciplines. Employers are able to claim back part of the skills levies paid as a skills grant.

### **EMPLOYMENT EQUITY ACT, 1998**

The Commission submitted its employment equity report.

### **UNEMPLOYMENT INSURANCE ACT, 2001**

For the period under review, all contributions to the Unemployment Insurance Fund were paid on a monthly basis. These contributions consist of an employee contribution of 1% and an employer contribution of 1%.

### **OCCUPATIONAL HEALTH AND SAFETY ACT, 1993**

During the year under review, the Commission took al precautions to ensure a safe working environment and business with due regard for environmental issues.

### INCOME TAX ACT, 1962

SARS exempted the Commission in terms of section Income Tax Act, 1962.

### LEVIES AND TAXES

The Commission has registered for and met its obligato to the following levies and taxes:

- Skills Development Levy;
- Workmen's Compensation;
- Unemployment Insurance Fund; and
- Pay-As-You-Earn (PAYE).



### PERFORMANCE HIGHLIGHTS

The following support services are the responsibility of Services Division (CSD): human capital management, and communications technology (ICT), security and fa management, records management, knowledge mana Information Resources Centre (IRC).

### Supporting our human resources

The Commission is a fast-paced environment that requires in the areas of law and economics. The human capital at the Commission is increasingly realising the benefits business partnership model through which CSD provides and administrative support to line managers, in the area management. Through the business partner model, the



	has been able to deliver on both functional and organisation-wide initiatives to harness and optimise individual performance.
Il reasonable d conducted its	During the reporting period the HC function focused on driving the following initiatives:
10(1)(A)(i) of the	<ul> <li>improving the process and capacity through which the Commission acquires talent;</li> <li>the implementation of the new performance management system process and system;</li> <li>the institutionalisation of the employment equity committee with particular fears an acting achievable employment equity to protect the system.</li> </ul>
tions in relation	<ul> <li>particular focus on setting achievable employment equity targets for the Commission; and</li> <li>finalising the new organisational structure and implementation of some elements of the new structure.</li> </ul>
	Performance management
	The Commission is committed to effective management of performance for the realisation of a high performance culture to position the Commission as a high performance agency. During the year under review, the Commission has paid attention to the performance management system, to providing the right environment for high performance and provision of resources for all employees to perform to their full potential for the realisation of strategic goals. Performance management is a continuous process, monitored throughout the year, evaluated every quarter to ensure achievement of strategic and operational targets that are aligned organisational targets whilst also tracking the extent to which we live the values of the Commission.
of the Corporate , information acilities agement and the	Performance management is a foundation for organisational success as it impacts on areas such as rewards and recognition, learning and development, succession management and career management. In this reporting period the Commission implemented a new performance management system and focussed on its successful implementation throughout the year.
uires expertise I (HC) function ts of the ides strategic rea of people ne HC function	The graduate development programme Over the years the Commission has implemented a successful graduate development program thus contributing to transformation and creating opportunities for previously disadvantaged individuals to gain exposure to the competition field. These imperatives are deeply

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entrenched in the manner in which the Commission approaches the graduate development programme. In 2017/18, the Commission enrolled seven new graduates in addition to 13 from the previous financial year, the majority being from historically disadvantaged institutions, as illustrated in Table 17. The Commission is planning to implement an improved program in the next financial year that has been renamed the 'Competition Cadets Program'.

### Employment equity

The Commission has made a deliberate effort to comply with the Employment Equity Act (EEA) (No. 55 of 1998) as amended. In terms of the applicable provisions of the EEA, the Commission's 2017/18 employment equity report was submitted to the Department of Labour. Diagram 18 shows the equity breakdown for the past five years, including the year under review. From a gender and national

economically active population (EAP) perspective, the Commission is doing very well. The EAP includes people between the ages of 15 and 64 who are either employed or unemployed and who are seeking employment. In 2017/18 the equity ratio for female and male representation was 55.8% and 44.2%, respectively. People with disabilities represented 2% of Commission staff, in line with the target set by the government.

### Staff turnover

As at end of the financial year, the Commission's staff complement stood at 229 employees. 21 resignations were recorded for the period. The Commission's effort towards a healthy staff retention rate is yielding positive results in that there has been a marked reduction in staff turnover in the year under review, as depicted in Diagram 16.



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### **Employee relations**

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

No employees were dismissed during the reporting period.

### Learning and development

The Commission places great emphasis on the development of staff as a key strategy to the realisation of the high performance goal. R3 329 335,05 was spent on learning and development initiatives during the reporting period. The learning and development budget includes local training, overseas training and conferences. In addition to these, the Commission also runs a Study Loan/Bursary Program that has benefited different employees during the period under review.

The Commission also spent a significant amount of time developing internal training material to ensure consistent and sustainable training of employees. This helps ensure that the quality of its outputs is consistent and not compromised. Such training material is shared with international authorities for training of their staff.

### The information hub

Part of CSD's function is to oversee the Information Resource Centre (IRC) of the Commission. The information and knowledge-intensive nature of the Commission's business requires access to an extensive repository of information sources, both in the legal field and market research. The Commission conducts its investigations within the South African legal framework, but due to the convergence of competition law world-wide, the Commission must also research overseas jurisprudence. The IRC therefore allows the Commission access to international and local legal databases, as well as various business and marketing resources.

The IRC actively built its print book collection with the addition of 527 books during the past year. A total of 579 publications were issued during the year. Although the IRC aims to bring information sources to the laptops of staff, it also assisted with 201 requests for information.

During the year 87 staff members received either an orientation or reorientation of the IRC's fairly substantial online collection of approximately 20 databases.

### Diagram 16: Staff turnover in the 2017/18 financial year

### **Facilities management**

The security and facilities section of the CSD is responsible for creating conditions that are conducive for high performance by ensuring that adequate, healthy, safe and secure workspaces and environment for all staff and visitors to the Commission. This section is responsible for the provision and management of space, furniture, physical security and compliance with relevant regulations and laws. The section is also responsible for security of assets and information of the Commission.

The Commission has been struggling to provide adequate space in line with its growth over the years and is now putting in place plans to support its growth plans for the next ten years whilst responding to the creation of an environment that is conducive for high performance.

### Information technology

The information technology (IT) section of the CSD is responsible for the provision of technology that enables, supports and optimises operations of the Commission focusing on the infrastructure underpinning operations, solutions for effectiveness and efficiency and security of information. The Commission's infrastructure has straddled between infrastructure hosted and managed by the Department of Trade and Industry (DTI), as the Commission is located on the DTI campus, and some elements that are managed in-house. The management of our IT environment continues to be a complex one given the size and sophistication of our infrastructure compared with the speed of evolution in the technology environment and the new risks emerging from the environment.

Improvements in IT governance, research and communication technology was the main focus for the year with a number of IT policies being reviewed. These include the Identity and Access Management Policy and the Disaster Recovery Policy. The role and functions of the IT committee are under review so as to improve its effectiveness

Below are the main areas on which the IT function delivered.

Separation of connectivity from the dti network: The Commission's email and internet connectivity was separated from the DTI backbone to allow for faster, more cost-effective internet access.

Virtual private network services: The IT section rolled out a virtual private network to users. This enables them to remotely connect to all Commission resources and work using a secure connection. Upgrade of the email infrastructure: The Commission upgraded its email infrastructure to provide more data storage and security on its email system.

Wi-Fi services: The Commission has now enabled Wi-Fi services to employees and visitors. The Wi-Fi service allows employees to work anywhere in the office, which is especially helpful in meetings. The service also provides visitors with internet access while at the Commission. Connectivity is managed through various security measures.

Forensic laboratory: The Commission acquired forensic tools to aid its search and seizure operations. The CD and IT staff were trained to use

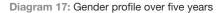
the resources and the Commission is now capable of handling forensic investigation of data acquired from search and seizure operations.

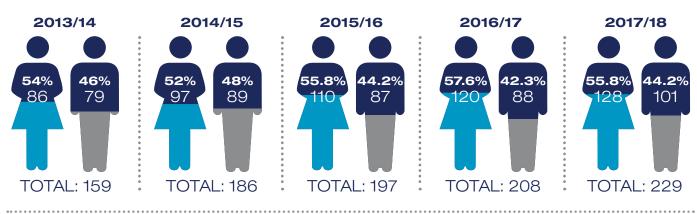
In order to meet the increased demand of managing data, a storage area network was implemented to accommodate data from the search and seizure operations and other operational records. Hardware: Upgrades of servers and users' machines were undertaken during the period and the Commission is moving towards a virtual server environment to replace old servers. This will improve efficiency, reduce cost and contribute towards energy efficiency.

Table 17: Our recruitment footprint for graduate trainees, over four years

INSTITUTION	2014/15	2015/16	2016/17	2017/18
Cape Peninsula Univer-sity of Technology	1	0	0	0
Midrand Graduate In-stitute	1	0	0	0
Nelson Mandela Met-ropolitan University	1	0	0	0
North West University	3	1	2	0
Rhodes University	1	0	1	1
University of South Af-rica	1	0	0	0
University of Fort Hare	2	1	1	0
University of Free State	1	1	0	1
University of Johan-nesburg	1	2	1	1
University of KwaZulu Natal	4	0	3	0
University of Limpopo	4	0	2	1
University of Pretoria	2	1	2	0
University of the Western Cape	1	0	0	0
University of the Wit-watersrand	3	1	1	1
University of Venda	2	1	2	1
University of Cape Town	0	2	0	0
Rosebank College	0	0	2	0
University of Zululand	0	0	1	0
Total	28	10	18	6*

* 17/18 had a total number of 20 graduates, 13 of which were carried forward from the previous year





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Diagram 18: Race and gender profile as at 31 March 2018

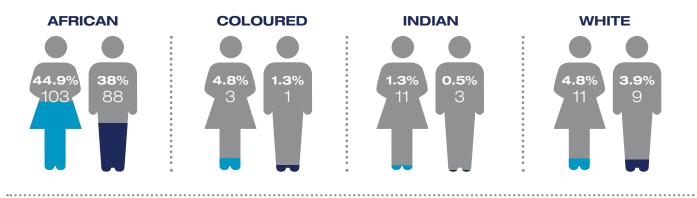


Diagram 19: Staff turnover figures over five years

2013/14 **RESIGNATIONS:** 22.579





### Table 18: Study loans registered for 2017/18

QUALIFICATIONS	CANDIDATES	QUALIFICATIONS	BENEFICIARIES
BA Health Science and Social Services	1	LLM - Corporate Law	1
BCom Honours	1	MBA	3
BCom Public Administration	1	MBA: Media Leadership	1
BCompt Accounting Sciences	1	MCom Competition and Regulation	2
Business Leadership Course	1	MCom Development Economy	1
Higher Certificate - Counselling and Communication	1	MCom	1
BCom Hons Industrial	1	Mercantile Law Masters	1
LLB	2	MSc Agricultural Economy	2
LLD	1	MSc Health Economics	1
LLM	7	MTech Forensic	1
National Certificate in Human Resource	1	Total	32

### Table 19: Training report 2017/18

STUDY LOAN	COST	STUDY LOAN	COST
Bcom Honours	3,225.00	Study	9,340.00
MBA	6,426.00	Study fee	22,980.00
BA Health Science and Social Services	4,350.00	B Makgabo - Training	3,870.00
Unisa Study fees	7,200.00	B Ntshingila	8,680.00
Bcompt Accounting Sciencies	9,200.00	MSc Agric Econo	6,705.00
Masters	27,020.00	R Maphwanay - Study	17,900.00
Hons Industrial	18,470.00	Higher Certificate - Counselling and Communication	48,852.00
A Ellary - Books	3,420.99	Study fee	34,860.00
LLM	3,000.00	Mtech Forensic	7,760.00
LLM	1,707.00	Masters in Merc Law	8,818.00
National Cert HR	11,559.31	GIBS- MBA	57,573.00
B Com Public	10,255.00	BCOM	15,039.00
Books	1,100.00	LLB	7,290.00
MSc Agric	4,745.00	MBA	137,780.52
LLM	17,850.00	LLM	139,907.00
Study Books	1,980.50	Higher Certificate in Economics & Management Sciences	2,574.50
L Mantshidi - Study Ioan	7,940.00	2018/08/31	10,774.00
Study loan	1,559.90	Management Programme	17,000.00
Management programme	17,900.00	Bcom HR	8870.95

### Table 20: Overseas training 2017/18

PROGRAMME	COST	PROGRAMME	COST
PD London	16,140.68	Conference	191,718.00
Essa Confrence	2,100.00	Total	209,958.68

### Table 21: Local training 2017/18

TRAINING
One on One Coaching
One on One Coaching
Competition Law Workshop
Law Masterclass
GIBS Short Programme
Coaching
2nd Annual Court and Case
One on One Food Preparation
One on One Coaching
Programme in Competition Law
Managing for Results
One on One Coaching
One on One Coaching
Labour Relations
Public Speaking
Competition Law Workshop
Competition Law Workshop
Presentation skill training
Effective PA
Presentation Skill Training

### Table 22: Performance reward

	AMOUN
Total bonus payout from grade 5 - 18	14,327,1
Exco	1,355,4
Total	15,682,5

### Table 24: Employment equity status

CURRENT ACTUAL STAFF	MALES			FEMALES				FOREIGN NATIONALS		TOTAL	
	Α	С	I	W	Α	С	I	W	М	F	
EAP	42,80%	5,30%	1,80%	5,30%	35,10%	4,50%	1,00%	4,20%			
EAP (ACTUAL)	98	12	4	12	80	10	2	10			
ACTUAL	88	1	3	9	103	3	11	11	9	4	229
ACTUAL in % points	38,43%	0,44%	1,31%	3,93%	44,98%	1,31%	4,80%	4,80%			
Difference in % points	4,37%	4,86%	0,49%	1,37%	9,88%	3,19%	3,80%	0,60%			
Difference in persons	10	11	1	3	23	7	9	1			

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COST	TRAINING	COST
9,405.00	SALDRU training	2,479.00
6,270.00	Training	2,550.00
5,497.50	Training	1,850.00
32,985.00	One on One Coaching	6,270.00
4,080.00	One on One Coaching	6,270.00
24,880.50	One on one Coaching	6,270.00
20,517.76	One on One Coaching	1,368.00
26,180.00	Business Risk Management	13,900.00
2,736.00	Power Speaking	12,538.86
33,300.00	Power Speaking	12,538.86
81,000.00	Financial Analysis for Economics Regulation	81,000.00
18,610.50	Programme in Competiton Law	59,940.00
12,540.00	Report Writing	7,951.50
14,802.90	Report Writing	26,505.00
12,538.86	Report Writing	26,180.00
5,497.50	PGDIP	29,000.00
5,497.50	Advanced Accuracy and Attention to Detail	23,936.58
4,575.16	Report Writing	2,500.00
10,950.00	Essa Conference	2,100.00
2,286.84	Total	659,298.82

### Table 23: Staff movements

T
151.65
139.63
591.28

	MALES	FEMAILES
New Employees	21	27
Graduates	5	9
Promotions	10	12
Terminations	2	21

The majority of the employees (over 95%) cited career prospects as a reason for terminations



### Diagram 20: 2017/18 performance against targets set

PERI	FORMA	NCE MEASURE		ANNUAL		
OUTPUT	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ACCOUNTABLE PROGRAMME	TARGET 2017/18	ANNUAL RESULTS	REASON FOR VARIANCE
	1	Average turnaround time for Phase 1 merger investigations	M&A	≤ 20 days	20	Target met
	2	Average turnaround time for Phase 2 merger investigations	M&A	≤ 45 days	45	Target met
a) Merger & acquisition decisions.	3	Average turnaround time for Phase 3 intermediate and small merger investigations	M&A	≤ 60 days	58	Target met
	4	Average turnaround time for Phase 3 large merger investigations	M&A	≤ 120 days	153	Target not met Large mergers notified and considered for the year were complex cases and they were either prohibited or approved with conditions
b) Merger litigation.	5	% of merger decisions upheld by Tribunal and/or courts	LSD	≥75%	92%	Target met
c) Compliance - monitoring for merger conditions.	6	% of imposed merger remedies and conditions monitored	M&A	100%	100%	Target met

PER	FORMA	NCE MEASURE		ANNUAL		
OUTPUT	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ACCOUNTABLE PROGRAMME	TARGET 2017/18	ANNUAL RESULTS	REASON FOR VARIANCE
a) Cartel	7	Number of cartel cases initiated	Cartels	14	28	<b>Target exceeded</b> The division received more cases from the public. The division also found new evidence in existing cases which required to be initiated.
investigations.	8	% of cartel investigations completed within 12 months	Cartels	≥80%	26%	<b>Target not met</b> 17 cases out of 64 cases were finalised within 12 months. The division finalised the majority of old cases.
b) Cartel prosecutions.	9	% of cartel cases won at the Tribunal and the courts	LSD & Cartels	≥80%	85%	Target met
a) Investigations	10	% of abuse of dominance investigations completed within 24 months	E&E	≥70%	93%	Target met
of abuse of dominance and restrictive cases.	11	Number of abuse of dominance conduct cases initiated in prioritised sectors	E&E	3	5	Target exceeded Sufficient basis for initiation from information received through advisory opinion and market inquiry
b) Prosecution of abuse of dominance and restrictive cases.	12	% of abuse of dominance cases won at the Tribunal and the courts	LSD	≥50%	100%	Target met
c) Decisions on exemptions applications.	13	% of exemption applications completed within 12 months	E&E	≥75%	0%	<b>Target not met</b> Negotiations on conditions took long, exemption ultimately abandoned.
a) External guidelines on the application of the Act.	14	Number of guidelines on the application of the Act issued to stakeholders	LSD	1	0	Target not met Guideline still to be finalised
b) Advisory opinions.	15	% of advisory opinions issued within 3 months	LSD	≥70%	87%	Target met
a) Industry scoping studies.	16	No. of industry scoping studies conducted in prioritised sectors	P&R	6	4	<b>Target not met</b> Due to prioritisation of Market inquiries and cases before the tribunal.



### Diagram 20: 2017/18 performance against targets set continued

PERI	ORMA	NCE MEASURE		ANNUAL			
OUTPUT	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	- ACCOUNTABLE . PROGRAMME	TARGET 2017/18	ANNUAL RESULTS	REASON FOR VARIANCE	
b) Market inquiries	17	No. of market inquiries initiated	E&E	2	2	Target met	
	18	No. of market inquiries completed within 24 months	E&E	1	0	Target not met Timetable for completion amended to give more time required to interrogate submissions owing to the complexity of issues under investigation.	
c) Impact assessments on Commission decisions or competition policy.	19	No. of impact assessment studies completed	P&R	6	4	<b>Target not met</b> Due to prioritisation of Market inquiries and investigations before the tribunal.	
a) Working partnerships with relevant economic	20	Number of workshops or seminars on competition, trade/industrial policy and regulatory matters hosted	P&R and Advocacy	5	6	<b>Target exceeded</b> Hosted one additional workshop for African Farmers Association of South Africa (AFASA) on agricultural matters in March 2018.	
stakeholders.	21	Number of submissions or responses to policy or regulation	P&R and Advocacy	6	6	Target met	
b) Working relationship with Criminal Justice (CJ) system counterparts on anti-cartel activities.	22	No. of training & capacity- building initiatives with criminal justice system counterparts hosted	LSD	1	2	<b>Target exceeded</b> There was a business need for an additional workshop.	
Relationship- building engagements with BRICS and African competition agencies	23	No. of competition conferences and workshops with African and BRICS partners hosted or participated in	отс	8	8	Target met	

PER	PERFORMANCE MEASURE			ANNUAL	ANNUAL	
OUTPUT	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ACCOUNTABLE PROGRAMME	TARGET 2017/18	RESULTS	REASON FOR VARIANCE
c ) Thought leadership on competition and	24	Number of Commission- initiated media engagements	Advocacy	12	100	<b>Target exceeded</b> Multiple articles and interview per subject.
development issues.	25	Number of issues of the Commission's newsletter published	Advocacy	4	4	Target met
	26	Annual competition conferences hosted	Advocacy	1	1	Target met
	27	Established university programs on competition law & economics	P&R	Imple- mentation report of funded programs	1	Target met
d) Domestic outreach initiatives.	28	Number of Commission- initiated stakeholder training and education workshops conducted	Advocacy	3	5	Target exceeded Special requests from the private sector.
	29	Number of forums with Business, Labour and Government hosted	Advocacy	4	2	<b>Target not met</b> Forums moved to the 2018/2019 financial year due to financial constraints
	30	Number of Commission- initiated outreach programmes	Advocacy	4	4	Target met
a) Integrated IT and Knowledge Management System (IMS)	31	Implemented IT and Knowledge Management System (IMS)	CSD	Approved imple- mentation report of the IMS	0	<b>Target not met</b> Commission cancelled the project due to financial constraints.



PERI	PERFORMANCE MEASURE				ANNUAL		
OUTPUT	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ACCOUNTABLE PROGRAMME	TARGET 2017/18	RESULTS	REASON FOR VARIANCE	
a) Human Capital	32	A clean audit	Finance	Clean audit	Clean audit	Target met	
Management systems which align individual, divisional and organisational	33	Completed re-design of the Performance Management Systems (PMS)	CSD	Approved imple- mentation report of the PMS	Approved imple- mentation report of the PMS	Target met	
performance.	34	% retention rate of staff complement	CSD	≥85%	98%	Target met	
b) A strategy- relevant Organisational Structure (OS)	35	Organisational structure	CSD	Approved implem- entation report of the OS	0	<b>Target not met</b> Commission's EXCO approved the structure and Ministerial approval required.	



COMPETITION COMMISSION

100





## ACCOUNTING AUTHORITY'S RESPONSIBILITY AND APPROVAL

he Accounting Authority is required by the Public Finance Management Act (Act 1 of 1999), to maintain adequate accounting records and is responsible for the content and integrity of the annual financial statements and related financial information included in this report.

It is the responsibility of the Accounting Authority to ensure that the Annual Financial Statements fairly present the state of affairs of the Commission as at the end of the financial year and the results of its operations and cash flows for the period then ended. The external auditors are engaged to express an independent opinion on the financial statements and were given unrestricted access to all financial records and related data.

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

The Annual Financial Statements are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The Accounting Authority acknowledges that he is ultimately responsible for the system of internal financial control established by the Commission and places considerable importance on maintaining a strong control environment. To enable the Accounting Authority to meet these responsibilities, the Accounting Authority sets standards for internal control aimed at reducing the risk of error or deficit in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the Commission and all employees are required to maintain the highest ethical standards in ensuring the Commission's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the Commission is on identifying, assessing, managing and monitoring all known forms of risk across the Commission. While operating risk cannot be fully eliminated, the Commission endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The Accounting Authority is of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the Annual Financial Statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement.

The Annual Financial Statements set out on pages 104 to 144, which have been prepared on the going concern basis, were approved by the Accounting Authority on 31 May 2018 and were signed on its behalf by:

Tembinkosi Fornkele

Mr. T Bonakele Commissioner



## **REPORT OF THE** AUDITOR GENERAL TO PARLIAMENT ON COMPETITION COMMISSION

### **REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS**

### Opinion

- 1. I have audited the financial statements of the Competition Commission set out on pages 104 to 144, which comprise statement of financial position as at 31 March 2018, the statement of financial performance, statement of changes in net assets, and cash flow statement and the statement of comparison of budget and actual amounts for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
- 2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission as at 31 March 2018, and financial performance and cash flows for the year then ended in accordance with Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA),

### Basis for opinion

- 3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
- 4. I am independent of the public entity in accordance with the International Ethics Standards Board for Accountants' Code of ethics for professional accountants (IESBA code) and the ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
- 5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Material uncertainty relating to financial sustainability

- 6. I draw attention to the matter below. My opinion is not modified in respect of this matter.
- 7. I draw attention to note 21 to the financial statements, which indicates that there is material uncertainty on whether the public entity will be able to investigate and prosecute all cases that require its attention.

### Emphasis of matters

8. I draw attention to the matters below. My opinion is not modified in respect of these matters.

### Irregular expenditure

9. As disclosed in note 26 to the financial statements, the public entity incurred irregular expenditure of R128 590 000, as it did not follow a proper tender process and the public entity exceeded its expenditure in terms of its approved budget.

### Restatement of corresponding figures

10. As disclosed in note 33 to the financial statements, the corresponding figures for 31 March 2017 were restated as a result of an error in the financial statements of the public entity at, and for the year ended, 31 March 2018.

### Responsibilities of the accounting authority for the financial statements

11. The accounting authority is responsible for the preparation and fair presentation of the financial statements in accordance with Standards of GRAP and the requirements of the PFMA, and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error. 12. In preparing the financial statements, the accounting authority is responsible for assessing the Competition Commission's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the accounting authority either intends to liquidate the public entity or to cease operations, or has no realistic alternative but to do so.

### Auditor-general's responsibilities for the audit of the financial statements

- 13. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.
- 14. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

### **REPORT ON THE AUDIT OF THE ANNUAL** PERFORMANCE REPORT

### Introduction and scope

- 15. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report material findings on the reported performance information against predetermined objectives for selected programmes presented in the annual performance report. I performed procedures to identify findings but not to gather evidence to express assurance.
- 16. My procedures address the reported performance information, which must be based on the approved performance planning documents of the public entity. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures also did not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported

performance information. Accordingly, my findings do not extend to these matters.

17. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected programmes presented in the annual performance report of the public entity for the year ended 31 March 2018:

Programmes	Pages in the annual performance report
Programme 1 - Mergers and Acquisitions	96
Programme 2 - Legal Services	96 - 98
Programme 3 - Enforcements and Exemptions	97 - 98
Programme 4 - Cartels	97

- 18. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
- 19. I did not raise any material findings on the usefulness and reliability of the reported performance information for the following programmes:
  - Programme 1 Mergers and Acquisitions
  - Programme 2 Legal Services
  - Programme 3 Enforcements and Exemptions
  - Programme 4 Cartels

### Other matter

20. I draw attention to the matter below.

Achievement of planned targets

21. Refer to the annual performance report on pages 96 to 100 for information on the achievement of planned targets for the year



and explanations provided for the under/over achievement of a significant number of targets.

### **REPORT ON THE AUDIT OF COMPLIANCE WITH** LEGISLATION

### Introduction and scope

- 22. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the compliance of the public entity with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.
- 23. The material findings on compliance with specific matters in key legislations are as follows:

Annual financial statements, performance and the annual report

24. The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework, as required by section 55(1)(b) of the PFMA. Material misstatements for current liabilities, revenue, expenditure and disclosure items identified by the auditors in the submitted financial statement were corrected, resulting in the financial statements receiving an ungualified audit opinion.

### **OTHER INFORMATION**

- 25. The accounting authority is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report and those selected programmes presented in the annual performance report that have been specifically reported in this auditor's report.
- 26. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
- 27. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected programmes presented in the

annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

28. If, based on the work I have performed, I conclude that there is a material misstatement in this other information, I am required to report that fact. I have nothing to report in this regard.

### **INTERNAL CONTROL DEFICIENCIES**

29. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the findings on compliance with legislation included in this report.

### Leadership

- 30. Enhancement relating to financial reporting processes is required to ensure that all errors are prevented and/or detected thereby ensuring that no material misstatements are identified in financial statements submitted for audit.
- 31. The action plans formulated to address audit findings should be improved to ensure that these are appropriately resolved. In the current year, most of the prior year findings were not resolved resulting in repeat findings.
- 32. The policies and procedures of the Commission should be reviewed on a regular basis and approved to ensure that they reflect the current business practices that are followed by the entity. The policies and procedures should be enforced within the Commission to ensure non- compliance is avoided.

### Financial and performance management

- 33. In certain instances, the financial statements of the current year were not supported and evidenced by accurate and complete source information resulting in material adjustments effected to some of the balances and disclosures in the financial statements.
- 34. Sufficient guidance was not obtained from National Treasury for the procurement processes to be followed for the site visits (dawn raids) and utilisation of the expertise of legal counsel for

prosecution of cases as part of their normal business operations conducted by the Commission. This resulted in numerous supply chain management irregularities in the current year.



Auditor-General Pretoria 31 July 2018



Auditing to build public confidence

## ANNEXURE AUDITOR-GENERAL'S RESPONSIBILITY FOR THE AUDIT



1. As part of an audit in accordance with the ISAs. I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements, and the procedures performed on reported performance information for selected programmes and on the public entity's compliance with respect to the selected subject matters.

### Financial statements

- 2. In addition to my responsibility for the audit of the financial statements as described in this auditor's report, I also:
  - identify and assess the risks of material misstatement of the financial statements whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than



for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control

- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the public entity's internal control
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority
- conclude on the appropriateness of the accounting authority's use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Competition Commission ability to continue as a going concern. If I conclude that a material uncertainty exists. I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify the opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor's report. However, future events or conditions may cause a public entity to cease continuing as a going concern
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation

### Communication with those charged with governance

- 3. I communicate with the accounting authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
- I also confirm to the accounting authority that I have complied 4. with relevant ethical requirements regarding independence, and communicate all relationships and other matters that may reasonably be thought to have a bearing on my independence and, where applicable, related safeguards.

## AUDIT COMMITTEE REPORT

e are pleased to present our report for the financial year ended March 31,

### AUDIT COMMITTEE MEMBERS AND ATTENDANCE

The Audit and Risk Committee of the Competition Commission (the "Committee") consists of the members listed hereunder. During the current year 6 meetings were held.

Name of member	Number of meetings attended	Number of meetings held
Mr V Nondabula	6	6
Ms M Ramataboe	5;	6
Mr S Gounden	6	6
Mr N Mhlongo	6	6

### AUDIT AND RISK COMMITTEE RESPONSIBILITY

The Audit and Risk Committee reports that it has complied with its responsibilities arising from section 51(1)(a)(ii) of the PFMA and Treasury Regulation 27.1. The Committee also reports that it has adopted appropriate formal terms of reference as its Charter, has regulated its affairs in compliance with this Charter and has discharged all its responsibilities as contained therein.

### THE EFFECTIVENESS OF INTERNAL CONTROL

The system of internal control is designed to provide cost-effective assurance that assets are safe-guided and that liabilities and working capital are effectively managed. In line with the PFMA requirements, Internal Audit and the Auditor-General of South Africa (AGSA) provide the Audit and Risk Committee as well as management with assurance that internal controls are adequate and effective. This is achieved by means of evaluating the effectiveness of the management strategies of identified risks, as well as the identification of corrective actions and suggested enhancements to the controls and processes.

Our analysis and review of audit reports from internal audit and Auditor-General of South Africa revealed certain control weaknesses and non compliance with regulations, which were raised with management. We can conclude that the system of internal control for the period under review was adequate but partially effective. Management has committed to put a comprehensive plan in place to rectify the control deficiencies and to address non compliance with regulations. The Committee will be closely monitoring management's efforts and commitments to address these control gaps and non compliance issues on an on-going basis.

### IN YEAR MANAGEMENT AND MONTHLY/ QUARTERLY REPORTS

Committee is satisfied with the content and quality of management and monthly/quarterly reports prepared and issued in terms of the PFMA during the year under review.

### **EVALUATION OF ANNUAL FINANCIAL STATEMENTS**

The audit committee has:

- reviewed and discussed the audited annual financial statements included in the annual report, with the Auditor
- General of South Africa and the Accounting Authority; .
- reviewed the entity's performance information;
- reviewed the Auditor-General of South Africa's management letter and management's responses thereto;
- reviewed the entity's compliance with legal and regulatory provisions;
- reviewed the significant adjustments resulting from the audit.

The audit committee concur with and accept the Auditor-General of South Africa's report the annual financial statements, and are of the opinion that the audited annual financial statements should be accepted and read together with the report of the Auditor-General of South Africa.

### **INTERNAL AUDIT**

The Internal Audit function was outsourced to an independent service provider, SizweNtsalubaGobodo, who operated in terms of the approved Terms of Reference and associated service level agreement. We are satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the public entity in its audits.

### AUDITOR-GENERAL OF SOUTH AFRICA

The Committee has met with the Auditor-General of South Africa to ensure that there are no unresolved issues. The Committee concurs and accepts the Auditor-General of South Africa's report on the annual financial statements, and is of the opinion that the audited financial statements should be accepted and read together with the report of the Auditor-General of South Africa.



V Nondabula Chairperson of the Audit Committee Date: 15 August 2018

## ACCOUTING **AUTHORITY** REPORT

The Accounting Authority submits his report for the year ended March 31, 2018.

### **1. NATURE OF BUSINESS**

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

- Promote efficiency, adaptability and development of the economy;
- Provide consumers with competitive prices and product choices; .
- To promote employment, and advance social and economic • welfare of South Africans:
- To expand opportunities for South African participation in world markets and recognize the role of foreign competition in the Republic;
- To ensure that small and medium sized entriprises have an equitable oppoturnity to participate in the economy; and
- To ensure the greater spread of ownership, in particular the increase in the ownership stakes of historical disadvantaged persons.

### 2. GOING CONCERN

We draw attention to the fact that as at March 31, 2018, the Commission had an accumulated loss of R34,733 million and that the entity's total liabilities exceed its assets by R34,733 million.

The Commission's workload has expanded significantly in the past few years consistent with the government's priority of addressing problems of concentration, monopolisation and cartels, as well as, negative impact of mergers on public interest. This has led to growing public awareness about the work and profile of the Commission and consequently; an increase in the number of complaints received from the public.



Furthermore, since 2013, the Commission's mandate has been expanded through amendments to the Competition Act to include Market Inquiries. The Commission has implemented this new mandate and has completed a market inquiry in the Liquefied Petroleum Gas (LPG) market whose recommendations were tabled by the Minister of Economic Development in Parliament earlier in the financial year. Market inquiries in the private health, public transport, grocery retail and data costs are underway. This has placed immense pressure on the finances of the Commission, at least over the past three years. For a while, the Commission managed to tap into its accumulated surplus in order to keep up with the pressures of expanded mandate and workload, however, the surplus is now depleted.

In the current financial year, the increase in case workload had a material impact which resulted in the Commission exceeding its budget and thus incurring the deficit. This was worsened mainly by a high number of on-going cases in litigation which are unpredictable, difficult to estimate their costs implication and budget and almost impossible to stop after they commenced. Furthermore, the revenue on filing fees were lower than projected due to lower merger applications from industry which can be attributed to the past economic downturn. In addition the merger application fee increase which was anticipated in the beginning of the financial year, could only be effected mid-year.

Management took extraordinary measures to limit the deficit in the current year which included but not limited to scaling down on case work activities, curtailing non-critical projects and activities and insourcing.

The Commission working together with the Economic Development Department (EDD) and National Treasury, has begun a process to find a long-term sustainable funding model for the Commission. In the short term, management have implemented stringent cost control measures in order to avoid overspending. Management have decided to put on hold some of its investigations, curtail non-critical expenditure in 2018/19 financial year and have also submitted a request for additional budget allocation from government as part of the budget process. In addition, the Commission has set aside funds from the current year budget to cover and make good of the prior year cash overspending. These allocated funds are not available for use for in the 2018/19 financial year. There is however a material uncertainty on whether the Commission will be able to investigate and prosecute all cases that require its attention.

Management have prepared the financial statement of the Commission on a going concern basis as it is not aware of any plans by government to close it down nor to stop its current financial support.

3. FINANCIAL OVERVIEW	2018	2017
2.1 Financial Highlights	R'000	R'000
Revenue	335,913	279,424
Interest Received	16,843	10,174
Total Revenue	352,756	289,598
Total Exenditure	(422,080)	(367,869)
Net Deficit	(69,324)	(78,271)
Net Assets	99,191	119,730
Total Liabilities	(133,924)	(85,140)
Number of merger cases notified and recognised as revenue	378	412

### 3.2. Penalties levied and collected

Penalties levied against case respondents in 2018 amounted to R354 495 million (2017: R1 628 million)

In 2018, the Commission collected on behalf of Economic Development Department, R568 million (2017: R176 million) in penalties. During the same period, penalties to the value of R524 million (2017: R249 million) were transferred to the Economic Development Department.

### 3.3. Total Revenue

Revenue increased by R63,158 million from R289,598 million in 2017 to R352.756 million in 2018 which represents an increase of 22%. Income from the grant (government allocation and transfers) increased by 21% from R221,583 million in 2017 to R268,354 million in 2018. Income from filing fees increased by 10% from R57,105 million in 2017 to R62.686 million in 2018 as a result of an increase in the filling fee rates.

Interest earned increased by 66% due to more funds in the bank than in the previous year.

### 3.4. Expenditure

Expenditure increased by R54,211 million from R367,869 million in 2017 to R422,080 million in 2018 reflecting an overall increase of 15%. The increase relates mainly to the expenditure incurred on employee costs and case related costs.

### 3.5. Financial Performance

The Commission incurred a deficit of R69.324 million (2017: R78.271 Private Bag X23 million deficit) for the current year mainly due to high volumes and Lynwood Ridge complexity of cases as well as Market Inquiries. 0040 TSHWANE

### 4. CHANGES IN NATURE OF PROPERTY, PLANT & EQUIPMENT

No major changes in the nature of property, plant and equipment or changes in the policy relating to the use of property, plant and equipment took place during the year under review. The useful life of the assets have been reviewed at year end and changes were made thereto.

### 5. MATERIALITY FRAMEWORK

The Commission's business is such that it is not capital intensive and expenditure was regarded as the best indicator of business activity and therefore a percentage of budgeted expenditure was used in determining the materiality figure. Material facts and losses of a quantitative nature are disclosed when the materiality figure is exceeded, or if they arose through criminal conduct, financial misconduct, irregular expenditure and fruitless and wasteful expenditure as defined by the PFMA. Any disposal of significant assets when overall operational functions of the Commission changes, are disclosed.

### **6. ACCOUNTING AUTHORITY**

The Accounting Authority of the Competition Commission is Mr. T Bonakele.

### 7. SECRETARY

The Company Secretary of the Competition Commission is Mr Mduduzi Msibi.

### **Business address**

The dti campus Building C: Mulavo 7 7 Meintiies Street Sunnyside TSHWANE

### Postal address



## STATEMENT OF **FINANCIAL POSITION**

AS AT MARCH 31, 2018

	Note(s)	2018	2017 Restated*
		R'000	R'000
ASSETS			
Current Assets			
Inventories	4	405	481
Receivables from exchange transactions	5	11,893	1,008
Penalties Received	23	58,047	13,336
Cash and cash equivalents	6	3,401	82,188
	-	73,746	97,013
Non-Current Assets	-		
Property, plant and equipment	2	22,956	18,867
Intangible assets	3	2,489	3,850
	-	25,445	22,717
Total Assets	-	99,191	119,730
LIABILITIES			
Current Liabilities			
Finance lease obligation	7	912	866
Payables from exchange transactions	8	51,574	44,969
Provisions	30	22,530	23,954
Penalties Payable	23	58,047	13,336
	=	133,063	83,125
Non-Current Liabilities			
Finance lease obligation	7	861	1,670
Provisions		-	345
	-	861	2,015
Total Liabilities	-	133,924	85,140
Net Assets	-	(34,733)	34,590
Accumulated (deficit) surplus	-	(34,733)	34,590



### REVENUE

Fees earned Other income Interest received Government grants & subsidies Total revenue

### EXPENDITURE

Employee related costs Administrative expenses Depreciation and amortisation Finance costs Lease rentals on operating lease Operating expenses Total expenditure Operating deficit Loss on disposal of assets Deficit for the year

112

	(69,324)	(78,271)
	(1,527)	(178)
	(67,797)	(78,093)
	(420,553)	(367,691)
17	(175,735)	(160,375)
	(21,389)	(19,838)
16	(303)	(177)
2&3	(4,555)	(1,942)
15	(7,789)	(6,428)
14	(210,782)	(178,931)
9	352,756	289,598
13	268,354	221,583
12	16,843	10,174
11	4,873	736
10	62,686	57,105
	R'000	R'000
Note(s)	2018	2017 Restated*



# STATEMENT OF CHANGES IN NET ASSETS

FOR THE YEAR ENDED MARCH 31, 2018

CASH	FLOW
STATEM	IENT
	FOR THE YEAR ENDED MARCH 31, 2018

	Accumulated (deficit) surplus	Total net assets
Opening balance as previously reported	111,173	111,173
Adjustments		
Correction of errors	1,688	1,688
Restated Balance at 01 April 2016	112,861	112,861
Changes in net assets		
Deficit for the year	(78,271)	(78,271)
Deficit for the year as previously stated	(78,271)	(78,271)
Restated Balance at 01 April 2017	34,590	34,590
Deficit for the year	(69,324)	(69,324)
Total changes	(69,324)	(69,324)
Balance at March 31, 2018	(34,734)	(34,734)

2018

R'000

2017

R'000

CASH FLOWS FROM OPERATING ACTIVITIES
Receipts
Rendering of services
Grants
Interest received
Other income

Payments Employee costs Suppliers Finance costs

### Net cash flows from operating activities

### CASH FLOWS FROM INVESTING ACTIVITIES

Purchase of property, plant and equipment Purchase of other intangible assets Net cash flows from investing activities

CASH FLOWS FROM FINANCING ACTIVITIES Finance lease payments

Net increase/(decrease) in cash and cash equivale Cash and cash equivalents at the beginning of the ye Cash and cash equivalents at the end of the year



	Note(s)	2018	2017 Destated*
		<b>D</b> ² 000	Restated*
		R'000	R'000
		62,686	56,588
		268,354	221,583
		16,843	10,174
		2,332	731
		350,215	289,076
		(197,415)	(178,931)
		(221,837)	(191,002)
		(303)	(177)
		(419,555)	(370,110)
	18	(69,340)	(81,034)
	0	(0.070)	(0.010)
	2	(8,276)	(6,610)
	3	(408)	(984)
		(8,684)	(7,594)
		(763)	(208)
lents		(78,787)	(88,836)
/ear		82,188	171,024
r	6	3,401	82,188

## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

FOR THE YEAR ENDED MARCH 31, 2018

	R'000	R'000	R'000	R'000	R'000	R'000
Statement of Financial Performance	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
REVENUE						
Revenue from exchange transactions						
Fees earned	75,331	-	75,331	62,686	(12,645)	32.1
Other income	840	-	840	4,873	4,033	32.2
Interest received	6,000	-	6,000	16,843	10,843	32.3
Total revenue from exchange transactions	82,171	-	82,171	84,402	2,231	
Revenue from non-exchange transactions Transfer revenue						
Government grants & subsidies	258,354	5,000	263,354	268,354	5,000	32.4
Total revenue	340,525	5,000	345,525	352,756	7,231	
EXPENDITURE						
Personnel	(215,416)	-	(215,416)	(210,782)	4,634	32.5
Administration	(10,973)	-	(10,973)	(7,789)	3,184	32.6
Depreciation and amortisation	(4,921)	-	(4,921)	(4,555)	366	32.7
Finance costs	-	-	-	(303)	(303)	32.8
Lease rentals on operating lease	(17,165)	-	(17,165)	(21,389)	(4,224)	32.9
Operating expenses	(92,050)	(5,000)	(97,050)	(175,735)	(78,685)	32.10
Total expenditure	(340,525)	(5,000)	(345,525)	(420,553)	(75,028)	
Operating deficit	-	-	-	(67,797)	(67,797)	
Loss on disposal of assets and liabilities	-	-	-	(1,527)	(1,527)	
Deficit	-	-	-	(69,324)	(69,324)	
Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement	-	-	-	(69,324)	(69,324)	



### 1. BASIS OF PREPARATION

The annual financial statements have been prepared in accordance with the Standards of Generally Recognised Accounting Practice (GRAP), issued by the Accounting Standards Board in accordance with Section 91(1) of the Public Finance Management Act (Act 1 of 1999).

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention as the basis of measurement, unless specified otherwise. They are presented in South African Rand. All figures presented are rounded off to the nearest thousand.

Assets, liabilities, revenues and expenses were not offset, except where offsetting is either required or permitted by a Standard of GRAP and when the Commission has a legal right to set-off the amounts and intends to settle on a net basis to realize the asset and settle the liability simultaneously.

A summary of the significant accounting policies, which have been consistently applied in the preparation of these annual financial statements, are disclosed below.

These accounting policies are consistent with the previous period.

### 1.1 Going concern assumption

These annual financial statements have been prepared based on the expectation that the entity will continue to operate as a going concern for at least the next 12 months.

### 1.2 Materiality

Material omissions or misstatements of items are material if they could, individually or collectively, influence the decisions or assessments of users made on the basis of the financial statements.



Materiality depends on the nature or size of the omission or misstatement judged in the surrounding circumstances. The nature or size of the information item, or a combination of both, could be the determining factor.

Assessing whether an omission or misstatement could influence decisions of users, and so be material, requires consideration of the characteristics of those users. The Framework for the Preparation and Presentation of Financial Statements states that users are assumed to have a reasonable knowledge of government, its activities, accounting and a willingness to study the information with reasonable diligence. Therefore, the assessment takes into account how users with such attributes could reasonably be expected to be influenced in making and evaluating decisions.

### 1.3 Significant judgements and sources of estimation uncertainty

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Significant judgements include:

### Trade receivables

Trade and other receivables classified as Loans and Receivables and are measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in profit or loss when there is objective evidence that the asset is impaired.

**Contingent liabilities** 

The Commission is involved in a number of legal case proceedings



that form part of the nature of the operations of the entity. Due to inherent uncertainties precipitated by the nature of the cases, no accurate quantification of any cost, or timing of such cost, which may arise from any of the legal proceedings can be made.

### Lease classification

Management uses judgement in assessing whether an arrangement is or contains a lease is based on the substance of the arrangement at inception date of whether the fulfilment of the arrangement is dependent on the use of a specific asset or the arrangement conveys a right to use the asset. Management assess the following in each lease contract (using GRAP 13) to classify a lease as a finance lease or operating lease:

In order to make the determination as to whether a lease is a finance lease, the entity considers several variables (non- exhaustive) and applies judgment to the assessment of whether any of the conditions noted hereunder using the guidance of GRAP 13. These include but are not limited to:

- Transfer of ownership
- Remaining economic life of the asset
- The expected term of the lease •
- Fair value of the underlying asset

### Trade receivables (impairment of financial assets

The Commission assesses its trade receivables for impairment at the end of each reporting period. In determining whether an impairment loss should be recorded in profit and loss, the Commission makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from a financial asset.

### Performance Bonus

Performance bonus to employees and management is determined based on the performance of the Commission subject to availability of funds. This bonus is at management's discretion and is decided annually. The bonus is based on performance and is evaluated using a rating method on an annual basis.

### Determination of impairment of non-financial assets

Management is required to make judgements concerning the cause, timing and amount of impairment of such assets. In the identification of impairment indicators, management considers the impact of changes in current market conditions, technological obsolescence, physical damage, the cost of capital and other circumstances that could indicate that impairment exists. Management's judgement is also required when assessing whether a previously recognised impairment loss should be reversed.

Where impairment indicators exist, determination of the recoverable amount requires management to make assumptions to determine the fair value less costs to sell and value in use. Fair value less costs to sell is based on the best information available to management that reflects the amount that the Group could obtain, at the year end, from the disposal of the asset in an arm's length transaction with a market participant in its principal market, after deducting the costs of disposal. Value in use is based on key assumptions on which management has based its determination.

Impairment of non-cash generating assets

The Commission assesses at each reporting date whether there is any indication that an asset may be impaired. If any such indication exists, the Commission estimates the recoverable service amount of the asset.

If there is any indication that an asset may be impaired, the recoverable service amount is estimated for the individual asset. If it is not possible to estimate the recoverable service amount of the individual asset, the recoverable service amount of the cashgenerating unit to which the asset belongs is determined.

The recoverable service amount is the higher of a non-cash generating asset's fair value less costs to sell and its value in use. The value in use for a non-cash generating asset is the present value of the asset's remaining service potential.

If the recoverable service amount of an asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable service amount. That reduction is an impairment loss.

An impairment loss of assets carried at cost less any accumulated depreciation or amortization is recognised immediately in surplus or deficit.

Management assesses at each reporting date whether there is any indication that an impairment loss recognised in prior periods for assets may no longer exist or may have decreased. If any such indication exists, the recoverable service amounts of those assets are estimated.

The increased carrying amount of an asset attributable to a reversal of an impairment loss does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset in prior periods.

A reversal of an impairment loss of assets carried at cost less accumulated depreciation or amortization is recognised immediately in surplus or deficit.

### Impairment of cash generating assets

The Commission assesses at each reporting date whether there is any indication that an asset may be impaired. If any such indication exists, the Commission estimates the recoverable amount of the individual asset.

If there is any indication that an asset may be impaired, the recoverable amount is estimated for the individual asset. If it is not possible to estimate the recoverable amount of the individual asset. the recoverable amount of the cash-generating unit to which the asset belongs is determined.

The best evidence of fair value less cost to sell is the price in a binding sale agreement in an arm's length transaction, adjusted for the incremental cost that would be directly attributable to the disposal of the asset.

The recoverable amount of an asset or a cash-generating unit is the higher of its fair value less costs to sell and its value in use.

If the recoverable amount of an asset is less than its carrying amount. the carrying amount of the asset is reduced to its recoverable amount. That reduction is an impairment loss.

An impairment loss of assets carried at cost less any accumulated depreciation or amortization is recognised immediately in surplus or deficit.



Provisions

Provisions were raised and management determined an estimate based on the information available. Additional disclosure of these estimates of provisions are included in note 30 - Provisions.

**Depreciation and amortisation** 

The entity's management determines the estimated useful lives and related depreciation charges. This estimate is based on industry norm. Management will increase the depreciation charge where useful lives are less than previously estimated useful lives.

### 1.4 Property, plant and equipment

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits or service potential associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses. The useful lives of items of property, plant and equipment have been assessed as follows:

Depreciation method	Average useful life
Straight line	12 - 21 years
Straight line	5 - 8 years
Straight line	8 - 20 years
Straight line	3 - 17 years
Straight line	5 - 9 years
Straight line	3 - 14 years
Straight line	3 years
Straight line	6 years
Straight line	Period of lease
	method Straight line Straight line Straight line Straight line Straight line Straight line Straight line Straight line

The depreciable amount of an asset is allocated on a systematic basis over its useful life.

The entity assesses at each reporting date whether there is any indication that the entity expectations about the residual value and the useful life of an asset have changed since the preceding reporting date. If any such indication exists, the entity revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

The depreciation charge for each period is recognised in surplus or deficit unless it is included in the carrying amount of another asset

Items of property, plant and equipment are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property. plant and equipment is included in surplus or deficit when the item is derecognised. The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

### 1.5 Intangible assets

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and
- the cost or fair value of the asset can be measured reliably.

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date.

Reassessing the useful life of an intangible asset with a finite useful life after it was classified as indefinite is an indicator that the asset may be impaired. As a result the asset is tested for impairment and the remaining carrying amount is amortised over its useful life.

### Intangible assets are acquired.

Amortisation is provided to write down the intangible assets, on a straight line basis, to their residual values as follows:

Depreciation method	Useful life
Straight line	3 - 21 years
	method

Intangible assets are derecognised:

- on disposal: or
- when no future economic benefits or service potential are . expected from its use or disposal.

### 1.6 Financial instruments

### Classification

The entity has the following types of financial assets (classes and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Trade and other receivables	Financial asset measured at amortised cost
Cash and cash equivalents	Financial asset measured at fair value
Penalties Received	Financial asset measured at fair value

The entity has the following types of financial liabilities (classes and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Trade and other Payables	Financial liability measured at amortised cost
Penalties Payable	Financial liability measured at fair value

Initial recognition and measurement

Financial instruments are recognised when The Commission becomes a party to the contractual provision of the instrument. These financial instruments are initially measured at fair value plus transaction costs, except for those financial instruments that are classified at fair value through profit or loss

### Subsequent measurement of financial assets and financial liabilities

The subsequent measurement of financial instruments is stated below:

The Commission classifies financial instruments, or their component parts, on initial recognition as a financial asset, a financial liability or an equity instrument in accordance with the substance of the contractual arrangement.

### Trade and other receivables

Trade and other receivables classified as Loans and Receivables and are measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in profit or loss when there is objective evidence that the asset is impaired.

### Cash and cash equivalents

Cash and cash equivalents comprise cash on hand, on deposit and other short-term readily realisable liquid instruments. Cash and cash equivalents that have been classified as Loans and Receivables are initially recognised at fair value and subsequently measured at amortised cost.

### Trade and other payables

Trade and other payables are classified as liabilities at amortised cost When a lease includes both land and buildings elements, the entity and are measured at amortised cost using the effective interest rate assesses the classification of each element separately. method.

### Offsetting

Financial assets and financial liabilities are set-off against each other and the net amount presented in the statement of financial position when the Commission has a legal right to set-off the amounts and intends to settle on a net basis to realize the asset and settle the liability simultaneously.

### Impairment of financial assets

Financial assets are assessed for indicators of impairment at each Minimum lease payments are apportioned between the finance end of the reporting period. The financial assets are impaired where charge and reduction of the outstanding liability. The finance charge there is objective evidence that, as a result of one or more events is allocated to each period during the lease term so as to produce a that have occurred after the initial recognition of the financial asset, constant periodic rate of on the remaining balance of the liability.

the estimated future cash flows of the asset have been impacted. Impairment losses are recognised in profit or loss.

Where an impairment loss subsequently reverses, the carrying amount of the asset is increased to the revised estimate of its recoverable amount, but so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset in prior years. Reversal of impairment losses are recognised in profit or loss.

### Derecognition

Financial assets are derecognized if The Commission's contractual rights to the cash flows from the financial assets expire or if The Commission transfers the financial assets to another party without retaining control, or transfers substantially all of the risks and rewards of the asset. Financial liabilities are derecognized if The Commission's obligations specified in the contract expire or are discharged or cancelled.

### 1.7 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

### Finance leases

Finance leases are recognised as assets and liabilities in the statement of financial position at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the statement of financial position as a finance lease obligation.

The discount rate used in calculating the present value of the minimum lease payments is the interest rate implicit in the lease. Any contingent rents are expensed in the period in which they are incurred.

### **Operating leases - Lessee**

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability.

### 1.8 Inventories

Inventories are initially measured at cost except where inventories are acquired through a non-exchange transaction, then their costs are their fair value as at the date of acquisition.

Subsequently inventories are measured at the lower of cost and net realisable value.

Net realisable value is the estimated selling price in the ordinary course of operations less the estimated costs of completion and the estimated costs necessary to make the sale, exchange or distribution.

Current replacement cost is the cost the entity incurs to acquire the asset on the reporting date.

The cost of inventories comprises of all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

The cost of inventories of items that are not ordinarily interchangeable and goods or services produced and segregated for specific projects is assigned using specific identification of the individual costs.

The cost of inventories is assigned using the first-in, first-out (FIFO) formula. The same cost formula is used for all inventories having a similar nature and use to the entity.

### 1.9 Employee benefits

Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid vacation leave and sick leave, bonuses, and non-monetary benefits such as medical

care), are recognised in the period in which the service is rendered and are not discounted.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs.

The expected cost of bonus payments is recognised as an expense when there is a legal or constructive obligation to make such payments as a result of past performance.

### 1.10 Provisions and contingencies

Provisions are recognised when:

- the entity has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement is recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation.

Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense.

A provision is used only for expenditures for which the provision was originally recognised. Provisions are not recognised for future operating loss.

If an entity has a contract that is onerous, the present obligation (net of recoveries) under the contract is recognised and measured as a provision.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in a note 31.

### 1.11 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners.

An exchange transaction is one where the commission receives a fee and in exchange investigates and assess whether a merger is likely to substantially likely to prevent or lesson competion and whether a merger can or cannot be justified on subtstantial public grounds and for exemptions and advisory opinions.

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

### Measurement

Revenue is measured at the fair value of the consideration received or receivable, net of trade discounts and volume rebates.

### 1.12 Revenue from non-exchange transactions

Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, an entity either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

### Recognition

An inflow of resources from a non-exchange transaction recognised as an asset is recognised as revenue, except to the extent that a liability is also recognised in respect of the same inflow.

As the entity satisfies a present obligation recognised as a liability in respect of an inflow of resources from a non-exchange transaction recognised as an asset, it reduces the carrying amount of the liability recognised and recognises an amount of revenue equal to that reduction.

### Measurement

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

When, as a result of a non-exchange transaction, the entity recognises an asset, it also recognises revenue equivalent to the amount of the asset measured at its fair value as at the date of acquisition, unless it is also required to recognise a liability. Where a liability is required to be recognised it will be measured as the best estimate of the amount required to settle the obligation at the reporting date, and the amount of the increase in net assets, if any, recognised as revenue. When a liability is subsequently reduced, because the taxable event occurs or a condition is satisfied, the amount of the reduction in the liability is recognised as revenue.

### 1.13 Borrowing costs

Borrowing costs are interest and other expenses incurred by an entity in connection with the borrowing of funds. Borrowing costs are recognised as an expense in the period in which they are incurred.

### 1.14 Fruitless and wasteful expenditure

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

### 1.15 Irregular expenditure

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including -

- a. this Act: or
- b. the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- c. any provincial legislation providing for procurement procedures in that provincial government.

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

Irregular expenditure that was incurred and identified during the current financial and which was condoned before year end and/or before finalisation of the financial statements must also be recorded appropriately in the irregular expenditure register. In such an instance, no further action is also required with the exception of updating the note to the financial statements.

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end must be recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements.

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements must be updated with the amount condoned.

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority must be recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps must thereafter be taken to recover the amount from the person concerned. If recovery is not possible, the accounting officer or accounting authority may write off the amount as debt impairment and disclose such in the relevant note to the financial statements. The irregular expenditure register

must also be updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto must remain against the relevant programme/expenditure item, be disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

### 1.16 Budget information

Entity are typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

General purpose financial reporting by entity shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

The approved budget is prepared on a accrual basis and presented by functional classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 4/1/2017 to 3/31/2018.

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

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

### 1.17 Related parties

A related party is a person or an entity with the ability to control or jointly control the other party, or exercise significant influence over the other party, or vice versa, or an entity that is subject to common control, or joint control.

The entity is exempt from disclosure requirements in relation to related party transactions if that transaction occurs within normal supplier and/or client/recipient relationships on terms and conditions no more or less favourable than those which it is reasonable to expect the entity to have adopted if dealing with that individual entity or person in the same circumstances and terms and conditions are within the normal operating parameters established by that reporting entity's legal mandate.

Where the entity is exempt from the disclosures in accordance with the above, the entity discloses narrative information about the nature of the transactions and the related outstanding balances, to enable users of the entity's financial statements to understand the effect of related party transactions on its annual financial statements.

### 1.18 Events after reporting date

Events after reporting date are those events, both favourable and unfavourable, that occur between the reporting date and the date when the financial statements are authorised for issue. Two types of events can be identified:

- those that provide evidence of conditions that existed at the reporting date (adjusting events after the reporting date); and
- those that are indicative of conditions that arose after the . reporting date (non-adjusting events after the reporting date).

The entity will adjust the amount recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred.

The entity will disclose the nature of the event and an estimate of its financial effect or a statement that such estimate cannot be made in respect of all material non-adjusting events, where non-disclosure could influence the economic decisions of users taken on the basis of the financial statements.

### 1.19 Commitments

Commitments represent goods/services that have been ordered, but no delivery has taken place at the reporting date. These amounts are not recognised in the statement of financial position as a liability or as expenditure in the statement of financial performance as the annual financial statements are prepared on an accrual basis of accounting, but are however disclosed as part of the disclosure.

### 1.20 Penalties and Settlements

In terms of section 59(1) of the Competition Act, the Competition Tribunal may impose an administrative penalty in terms of an order, which is collected by the Competition Commission and in terms of Section 59(4) of the Competition Act must be paid over to the National Revenue Fund.

In terms of section 49D of the Competition Act, the Competition Commission and a respondent may agree on the terms of an appropriate order, which the Competition Tribunal may confirm as a consent order in terms of section 58(1)(b). The consent order may contain a settlement amount which is collected by the Competition Commission. In terms of Section 59(4) of the Competition Act must be paid over to the National Revenue Fund.

The accepted practice of National Treasury is that no monies are directly paid to the National Revenue Funds but rather they are paid via a specific department to which the entity reports. In the case of the settlement amounts or administrative penalties, the Competition Commission pays the monies to the Economic Development Department who in turn must pay the monies over to the National Revenue Fund.

The consent orders and orders of the Tribunal may allow the respondents to pay the settlement amount or administrative penalty over more than one financial year of the Competition Commission. This situation will result in an outstanding amount due to the National Revenue Fund which will be collected by the Competition Commission.

In terms of Section 40(1) of the Competition Act, the settlement amounts and the administrative penalties are not listed as a source of finance for the Competition Commission nor are the amounts of revenue defined in terms of GRAP 23. As such these amounts are not recognised in the statement of financial performance. Furthermore, the outstanding amounts do not meet the asset and liability definitions in terms of GRAP 1 and are therefore not recognised on the statement of financial position of the Competition Commission.

Penalties levied and received

The Statement of Financial Position includes a financial asset and a financial liability relating to penalties levied and received. The financial asset and financial liability will be the same amount and are shown as "Penalties Received" and "Penalties Payable" in the Statement of Financial Position.

For penalties levied but not yet received

Penalties levied but not yet received do not meet the requirements of a financial asset and financial liability in terms of GRAP 104 and accordingly are not presented in the Statement of Financial Position.



## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED MARCH 31, 2018

2018 2017 R'000 R'000

### 2. PROPERTY, PLANT AND EQUIPMENT

		2018			2017		
	Cost	Accumulated depreciation and accumulated impairment	Carrying value	Cost	Accumulated depreciation and accumulated impairment	Carrying value	
Leasehold Improvements	1,973	(658)	1,315	990	(28)	962	
Furniture and fixtures	6,571	(2,292)	4,279	5,728	(1,950)	3,778	
Motor vehicles	4,430	(907)	3,523	2,338	(613)	1,725	
Office equipment	3,502	(996)	2,506	2,927	(664)	2,263	
IT equipment	13,670	(4,121)	9,549	10,116	(2,835)	7,281	
Cell phone	26	(12)	14	322	(24)	298	
Leased Assets	3,110	(1,340)	1,770	2,954	(394)	2,560	
Total	33,282	(10,326)	22,956	25,375	(6,508)	18,867	

### Reconciliation of property, plant and equipment - 2018

	Opening Balance	Additions	Disposals	Depreciation	Total
Leasehold Improvements	962	984	-	(631)	1,315
Furniture and fixtures	3,778	869	-	(368)	4,279
Motor vehicles	1,725	2,093	-	(295)	3,523
Office equipment	2,263	576	-	(333)	2,506
IT equipment	7,281	3,738	(154)	(1,316)	9,549
Cell phone	298	16	(288)	(12)	14
Leased Assets	2,560	156	-	(946)	1,770
Total	18,867	8,432	(442)	(3,901)	22,956

### Reconciliation of property, plant and equipment - 2

Leasehold Improvements Furniture and fixtures Motor vehicles Office equipment IT equipment Cell phone Leased Assets Total

### Pledged as security

None of the property plant and equipment were pled acquisition of property plant and equipment

### **3. INTANGIBLE ASSETS**

Cost/Valuation

Computer Software

4,167

Reconciliation of intangible assets - 2018

### Computer software

Reconciliation of intangible assets - 2017

Computer software

### Pledged as security

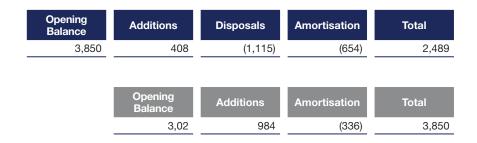
None of the intangible assets were pledged as security for any obligation. There are no future contractual commitments for acquisition of intangible assets.

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2017			2018 R'000	2017 R'000
Opening Balance	Additions	Disposals	Depreciation	Total
-	990	-	(28)	962
2,953	1,103	-	(278)	3,778
1,330	553	-	(158)	1,725
713	1,705	-	(155)	2,263
6,059	1,960	(72)	(666)	7,281
21	298	-	(21)	298
440	2,536	(117)	(299)	2,560
11,516	9,145	(189)	(1,605)	18,867

None of the property plant and equipment were pledged as security for any obligation. There are no future contractual commitments for

2018			2017	
Accumulated amortisation and accumulated impairment	Carrying value	Cost/Valuation	Accumulated amortisation and accumulated impairment	Carrying value
(1,678)	2,489	5,877	(2,027)	3,850



	2018	2017
4. INVENTORIES	R'000	R'000
Consumable stores	405	481
5. RECEIVABLES FROM EXCHANGE TRANSACTIONS		
Sundry Debtors	11,893	1,008
Trade and other receivables pledged as security		
None of the trade and other receivables were pledged as security for any obligation		
Sundry debtors is made up of the follwing.		
Accrued interest	2,857	155
Refunds	8,063	-
Deposits	712	712
Other	261	141
Total	11,893	1,008
6. CASH AND CASH EQUIVALENTS		
Cash and cash equivalents consist of:		
Bank Balances	3,398	2,889
Short-term deposits	-	79,282

### Credit quality of cash at bank and short term deposits, excluding cash on hand

The credit quality of cash at bank and short term deposits, excluding cash on hand that are neither past due nor impaired can be assessed by reference to external credit ratings (if available) or historical information about counterparty default rates. None of the financial institutions with which bank balances are held defaulted in the prior periods and as a result a credit rating of high was ascribed by the financial institutions. The entity's maximum exposure to credit risk as a result of the bank balances held is limited to the carrying value of these balances as detailed above. All the bank balances are held with two banking institution which reduces the related banking risk.

### 7. FINANCE LEASE OBLIGATION

### Minimum lease payments due - within one year

- in second to fifth year inclusive

### less: future finance charges Present value of minimum lease payments

### Present value of minimum lease payments due

- within one year
- in second to fifth year inclusive

Non-current liabilities Current liabilities

The entity is leasing equipment under finance lease. The lease agreement does not impose any restrictions. The average lease term was 3 years and the average effective borrowing rate was 13.65% (2017: 16%).

The entity's obligations under finance leases are secured by the lessor's charge over the leased assets. Refer note 2. The lease agreement can be extended at the end of the 3 year period for a further period. One (1) asset was acquired during the current year.

### 8. PAYABLES FROM EXCHANGE TRANSACTIONS

Trade payables Accrued expense Operating lease payables

In the previous financial year, leave due to employees and performance bonus were classified as payables from exchange transactions. In the current financial year it has been reclassified to provisions in line with GRAP standards.

### 9. REVENUE

17

3

Fees earned Other income Interest received - investment Government grants & subsidies

Cash on hand

2018	2017
R'000	R'000
1,099	1,150
909	1,897
2,008	3,047
(235)	(511)
1,773	2,536
912	866
861	1,670
1,773	2,536
861	1,670
912	866
1,773	2,536

39,398
5,350
221
44,969

62,686	57,105
4,873	736
16,843	10,174
268,354	221,583
352,756	289,598

	2018 R'000	2017 R'000	14. EMPLOYEE RELATED COSTS
The amount included in revenue arising from exchanges of goods or services are as follows:			Basic
Fee income	62,686	57,105	Performance Bonus
Other income	4,873	736	Cellphone and Data allowance
Interest received - investment	16,843	10,174	Other short term costs
	84,402	68,015	Overtime payments
The amount included in revenue arising from non-exchange transactions is as follows:			Group life and pension administration Medical Aid Recruitment fees
Transfer revenue			Other staff related costs
Government grants & subsidies	268,354	221,583	
10. FEE INCOME			Accounting Authority's Emoluments
Fees earned	62,686	57,105	
The filing fees relate to revenue generated from mergers, exemptions and advisory opinion cases.			Annual Remuneration Subsistence allowance
11. OTHER INCOME			
Insurance recovered	69	45	Executive Committee's Emoluments
Study bursaries recovered	57	31	Annual Remuneration
Refunds, SETA grant and recoveries	4,747	660	Performance Bonuses
	4,873	736	Cellphones and data allowances
12. INTEREST RECEIVED			Group life and pension administration
Interest received on short term deposits and late penalties	16,843	10,174	
13. GOVERNMENT GRANTS AND SUBSIDIES			Other Employees
Operating grants			Annual Remuneration
Government grants and subsidies	268,354	221,583	Performance Bonuses
			Cellphone and data allowances
			Group life and pension administration

Other staff related cost - medical aid Other staff related cost - recruitment cost

Other staff related cost - Other

COMPETITION COMMISSION



2018	2017
R'000	R'000
175,293	140,228
13,328	16,812
1,491	1,187
3	-
2	-
2,742	1,992
5,929	5,140
3,041	2,606
8,953	10,966
210,782	178,931

1,839	1,882
116	117
1,955	1,999

13,355
1,691
73
636
15,755

145,670	125,272
-	15,121
1,175	1,114
13,196	1,234
5,564	5,140
3,621	2,581
5,931	10,715
175,157	161,177

	2018	2017
15. ADMINISTRATIVE EXPENSES	R'000	R'000
General and administrative expenses	6,371	5,000
Auditors remuneration - external audit fees	1,418	1,428
	7,789	6,428
16. FINANCE COSTS		
Leased assets (Photocopiers)		177
17. OPERATING EXPENSES		
Audit and Risk and Remuneration committee fees	430	614
Advertising	425	468
Internal audit fees	1,247	985
Consulting and professional fees	37,536	69,730
Case related costs - Legal	85,218	46,703
Research and development costs	1,532	4,050
Security	16,067	1,134
Subscriptions and membership fees	694	1,096
Training	1,203	1,549
Travel and accommodation	7,426	6,922
Education and awareness	12,552	14,288
Maintenance, repairs and running costs	4,187	3,285
Publications	2,958	4,705
Meeting Refreshments	956	511
Workshops	2,033	3,900
Other expenses	1,271	435
	175,735	160,375

### **18. CASH USED IN OPERATIONS**

Deficit Adjustments for: Depreciation and amortisation Loss on disposal of assets Movements in provisions Other non-cash items Changes in working capital: Inventories Receivables from exchange transactions Payables from exchange transactions

### **19. COMMITMENTS**

### Approved and contracted

- Existing contracts goods and services
- Other goods and services

This committed expenditure will be financed by allocated operation

Operating leases - as lessee (expense) Minimum lease payments due - within one year

- in second to fifth year inclusive
- later than five years

Operating lease payments represent rentals payable years and rentals. No contingent rent is payable.

### **20. RELATED PARTIES**

### Relationships

The Competition Tribunal The Department of Trade and Industry Economic Development Department Public Investment Corporation Department of Telecommunications and Postal Services Members of key management



	2018	2017
	R'000	R'000
	(69,324)	(78,271)
	4,555	1,942
	1,527	178
	(1,769)	18,227
	(125)	33
	76	(178)
	(10,885)	2,066
	6,605	(25,031)
	(69,340)	(81,034)
	40,029	19,812
	2,401	12,070
	42,430	31,882
tional budget of future vegra		
tional budget of future years.		
	24,700	13,522
	11,319	25,720
	-	-
	36,019	39,242

Operating lease payments represent rentals payable by the entity for leased office space. Leases are negotiated for an average term of three

	Public entity in National sphere
	National Department in National sphere
	National Department in National sphere
	Public entity in National sphere
es	National Department in National sphere
	Members of the Executive Authority



	2018	2017	Remuneration of management
	R'000	R'000	
RELATED PARTY BALANCES			EXECUTIVE MANAGEMENT
RELATED PARTY BALANCES			
Amounts included in trade payables regarding related parties			NAME:
The Competition Tribunal	2,465	2,264	Commisioner
The Department of Trade and Industry	-	91	Mr T Bonakele
Economic Development Department	-	13,336	<b>Deputy Commissioner</b> Mr H Ratshisusu
Amounts included in the trade receivables regarding related parties			Divisional Manager: Economic Research Bureau
The Department of Trade and Industry	5,715	-	Dr L Mncube
RELATED PARTY TRANSACTIONS			Divisional Manager: Market Conduct Ms N Nompucuko
			Divisional Manager: Human Capital
The Department of Trade and Industry			Mr A Gwabeni (Appointed 1 May 2017)
Rental expense	1,335	16,661	Chief Financial Officer Mr M Kgauwe
Telephone and Internet costs expense	326	706	Divisional Manager: Legal Services Mr B Majenge
The Competition Tribunal			Divisional Manager: Cartels
Filing fees	16,295	13,860	Mr M Mohlala
Facility Fee	828	764	Divisional Manager: Advocacy
Other admin related costs	72	-	Ms K Qobo
			Divisional Manager: Mergers and Acquisition Ms L Mabidikane
Economic Development Department	000 50 4	001 500	Company Secretary
Government grant received	263,534	221,583	Mr M Msibi
Department of Telecommunications and Postal Services			Divisional Manager: Office of the Commissioner Ms A Khun (Resigned 30 November 2017)
Grant received	5,000	-	
Penalties collected on behalf of related parties and transferred to related parties	E60 604	175.070	
Economic Development Department	568,634	175,876	



2018					
Cost to Company	Bonuses and performance related payments	Other short-term employee benefits	Other	Subsistence Allowance	Total
1,839	-	-	-	117	1,956
2,061	293	-	-	61	2,415
1,753	275	-	-	43	2,071
1,915	93	-	1	21	2,030
1,907	-	-	-	10	1,917
1,655	197	-	-	-	1,852
1,691	226	-	3	1	1,921
1,745	272	-	37	33	2,087
1,676	222	-	-	7	1,905
1,539	52	-	-	1	1,592
1,290	95	-	-	-	1,385
1,138	-	-	-	30	1,168
20,209	1,725	-	41	324	22,299



EXECUTIVE MANAGEMENT		2017			
NAME:	Cost to Company	Bonuses and performance related payments	Subsistence Allowance	Total	
Commisioner Mr T Bonakele	1,882	-	117	1,999	
Deputy Commissioner Mr H Ratshisusu (Appointed 1 November 2016)	1,757	242	54	2,053	
Divisional Manager: Economic Research Bureau Dr L Mncube	1,539	239	38	1,816	
Divisional Manager: Market Conduct Ms N Nompucuko	1,744	198	1	1,943	
Divisional Manager: Human Capital Mr A Gwabeni (Appointed 20 July 2016)	928	-	1	929	
Chief Financial Officer Mr M Kgauwe	1,551	50	1	1,602	
<b>Divisional Manager: Legal Services</b> Mr B Majenge	1,502	178	8	1,688	
<b>Divisional Manager: Cartels</b> Mr M Mohlala	1,596	236	55	1,887	
Divisional Manager: Office of the Commissioner Ms A Khun( Appointed 15 March 2017)	72	-	-	72	
<b>Divisional Manager: Advocacy</b> Ms K Qobo (Appointed 15 February 2017)	232	-	1	233	
Divisional Manager: Mergers and Acquisition Ms L Mabidikane (Appointed 15 February 2017)	174	-	1	175	
Company Secretary Mr M Msibi	1,152,	-	1	1,153	
<b>Divisional Manager</b> Ms W Ndlovu (Resigned 15 April 2016)	76	226	-	302	
Acting Deputy Commissioner Adv O Josie (Resigned 3 May 2016)	147	-	322	469	
Acting Divisional Manager: Mergers and Acquisition Ms Nunkoo (Appointed 1 February 2016 - 14 February 2017)	1,433	-	-	1,433	
	15,562	1,143	278	17,754	

*The performance bonus component disclosed in 2016/17 was previously included in 2015/16 as a provision and was only paid in 2016/17 financial year."

### **21. GOING CONCERN**

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern basis as management is not aware of any plans by government to close it down nor to stop its current financial support.

The Commission working together with the Economic Development Department (EDD) and National Treasury, has begun a process to find a long-term sustainable funding model for the Commission. In the short term, management have implemented stringent cost control measures in order to avoid overspending. Management have decided to put on hold some of its investigations, curtail non-critical expenditure in 2018/19 financial year and have also submitted a request for additional budget allocation from government as part of the budget process. In addition, the Commission has set aside funds from the current year budget to cover and make good of the prior year cash overspending. These allocated funds are not available for use for in the 2018/19 financial year. There is however a material uncertainty on whether the Commission will be able to investigate and prosecute all cases that require its attention.

exceed its assets by R34,734 million.

### 22. EVENTS AFTER THE REPORTING DATE

There were no events after the reporting date

### 23. PENALTIES RECEVIED AND PENALTIES PAYABLE

Opening Balance Penalties collected Less: Amounts paid to the Economic Development De

An amount of R568,634 million was collected in the current year and R523,923 million was paid over to Economic Development Department as at 31 March 2018. The balance of R58,047 million (2017: R13,336 million) is still to be paid to the Economic Development Department in the next financial year. The penalties payable are held in the Commission's bank account and are represented by penalties received disclosed under current assets on the Statement of Financial Position.

Outstanding penalties amount at the beginning of the Add: Amounts of settlements and penalties levied by Less: Amounts collected by Competition Commission Outstanding penalties amount at the end of the year



2018	2017
R'000	R'000

We draw attention to the fact that at March 31, 2018, the entity had an accumulated deficit of R34,734 million and that the entity's total liabilities

	568,634	175,876
epartment	(523,923)	(248,981)
	58,047	13,336

e year	1,799,583	347,390
the Competition Tribunal	354,495	1,628,069
n	(568,634)	(175,876)
	1,585,444	1,799,583

2018 2017 R'000 R'000

Section 64(3) states that proceedings under subsection (2) may not be initiated more than three years after the imposition of the administrative penalty. A total of R354.495 million (2017: R1.628,069 million) was levied by the Competition tribunal in the current financial year.

The closing balance of R1,585,444 million as at 31 March 2018, included a total amount of R126,283 million of which fined entities are behind the agreed payment terms. This may result in a material loss to the National Revenue Fund.

Management has effected collection processes to recover the outstanding amounts in default. Some of the defaulters have regusted a defferal of their payment arrangement due to financial challenges and those requests are being considered by management.

### 24. NEW STANDARDS AND INTERPRETATIONS

### 24.1 Standards and interpretations issued, but not yet effective

The entity has not applied the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after April 1, 2018 or later periods. The below standards will be applied when they become effective:

Standard / Interpretation:	Effective date: Years beginning on or after	Expected impact:
GRAP 20: Related parties	April 1, 2019	Impact is currently being assessed
GRAP 32: Service Concession Arrangements: Grantor	April 1, 2019	Unlikely there will be a material impact
GRAP 108: Statutory Receivables	April 1, 2019	Unlikely there will be a material impact
GRAP 17 (as amended 2016): Property, Plant and Equipment	April 1, 2019	Unlikely there will be a material impact
GRAP 21 (as amended 2016): Impairment of non-cash- generating assets	April 1, 2019	Unlikely there will be a material impact

### 25. FRUITLESS AND WASTEFUL EXPENDITURE

Opening balance	23	23
Fruitless and wasterful current year	-	
Balance at the end of the year	23	23

The amount relates to payment to a fraudulent bank account. The Commission was fraudulently requested to change the bank account details for one of the service providers. This fraud was identified before any additional payments were made. The fraud case has been reported to the South African Police Services. Controls have been put in place to ensure that such expenditure is avoided in the future.

### **26. IRREGULAR EXPENDITURE**

Opening balance Add: Irregular Expenditure - current year Less: Amounts condoned Add: Irregular expenditure incurred in prior year but ide Balance at the end of the year

Irregular expenditure is made up of the following:

- could be instituted.
- found liable.
- duly approved
- inform a resolution and a way forward.
- disclosed amount and the outcome thereon will inform a resolution and a way forward.

	2018	2017
	R'000	R'000
	3,972	2,466
	86,103	1,506
	(1,506)	-
lentified in current year	40,021	
	128,590	3,972

1. An amount of R745 000 for which a forensic investigation was commissioned. A fraud case has been reported to the South African Police Services in line with the recommendation of the report. The employee involved has resigned and as a result, no consequence management

2. An amount of R1.7 million of which an investigation has been completed and management have submitted a request for Condonation to the National Treasury in line with the recommendation of the report. Consequence management has not been effected as no employee was

3. An amount of R1.506 million which relates to an expenditure incurred in contravention of the Supply Chain Management Regulation. Management has investigated this case in accordance with the guideline for irregular expenditure issued by National Treasury and has submitted a condonation of the irregular expenditure to the accounting authority for his consideration. The request for condonation was

4. An amount of R40,021 million which relates to an expenditure incurred in contravention of the Supply Chain Management Regulation. The supply chain management contravention relates to cost incurred on forensic, economic and legal experts utilised on cases. Management will investigate the basis of this irregular expenditure as well as the completeness of the disclosed amount and the outcome thereon will

5. The current year irregular expenditure relates to contravention of the Supply Chain Management Regulation (R51,369 million) and spending above the allocated budget (R34.734 million). The supply chain management contravention relates to cost incurred on forensic, economic and legal experts utilised on cases. Management will investigate the basis of this irregular expenditure as well as the completeness of the

	2018	2017
27. RECONCILIATION BETWEEN BUDGET AND	R'000	R'000
STATEMENT OF FINANCIAL PERFORMANCE		

Reconciliation of budget surplus/deficit with the surplus/deficit in the statement of financial performance:

Net deficit per the statement of financial performance	(69,324)	(78,271)	Payables from exchange transactions
Adjusted for:			
(Increase)/ Decrease in fee income	12,645	(1,774)	2017
Decrease in Government grants & subsidies	(5,000)	-	
Increase in interest received	(10,843)	(2,174)	
(Increase)/ Decrease in other income	(4,033)	42	
Under expenditure on personnel	(4,634)	(2,836)	Payables from exchange transactions
Under expenditure on administration	(3,184)	(731)	
Over/ (Under) expenditure on depreciation	(366)	(1,671)	CONCENTRATION OF CREDIT RISK
Over expenditure on finance costs	303	177	
Under expenditure on operating lease	4,224	(3,067)	2018
Loss disposal of assets	1,527	178	
Over/ (Under) expenditure on general expenses	78,685	(2,369)	
Net deficit per approved budget		(92,496)	Cash and cash equivalents
			Trade and other receivables

### **28. COMPARATIVE FIGURES**

Certain comparative figures have been reclassified.

At the beginning of the financial year the useful lives of some assets were reviewed and adjusted in the prior period.

### **29. RISK MANAGEMENT**

### Financial risk management

The Commission has a policy and framework on risk management. The strategic risk register is reviewed annual by management. The entity's activities expose it to interest, credit and liquidity risks.

### Liquidity risk

The Commission's risk to liquidity is a result of the funds available to cover future commitments. The Commission manages liquidity risk by monitoring forecasted cashflows and ensuring that the necessary funds are available to meet any commitments which may arise. Cash which is not utilised is immediately invested in the Corporation for Public Deposits and call accounts.

### Exposusre to liquidity risk

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

2017

2018

Cash and cash equivalents Trade and other receivables

### **Credit risk**

The Commission trades only with recognised, creditworthy third parties. In addition, receivables balances are monitored on an ongoing basis with the result that the Commission's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed . There is no significant concentration of credit risk within the Commission. With respect to credit risk arising from the other financial assets of the Commission, which comprise cash and cash equivalents, the Commission's exposure to credit risk arises from default of the counterparty, with a maximum exposure equal to the carrying amount of these instruments. The Commission cash and cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is low. Trade and other receivables are not rated.



2018	2017
R'000	R'000

Carrying Amount	Total Cash Flow	Contractual Cash Flow within one year	Contractual cashflow between two and five years
51,574	51,574	51,574	-
Carrying Amount	Total Cash Flow	Contractual Cash Flow within one year	ToContractual cashflow between two and five yearsal
44,969	44,969	44,969	-

Neither past due nor impaired	Past due but not impare - less than two months	Past due but not impared - more than two months	Carrying Value
3,401	-	-	3,401
11,893	-		11,893
Neither past due nor impaired	Past due but not impare - less than two months	Past due but not impared - more than two months	Carrying Value
82,188	-	-	82,188
1,008			1,008

	2018	2017
	R'000	R'000
Financial assets exposed to credit risk at year end were as follows:		
Financial instrument	2018	2017
Cash and cash equivalents	3,401	82,188
Trade and other receivables	11,893	1,008
Total	15,294	83,196

### Market risk

Market risk is the risk that changes in the market prices, such as the interest rates which will affect the value of the financial assets of the commision

### Interest rate risk

As the entity has no significant interest-bearing assets, the entity's income and operating cash flows are substantially independent of changes in market interest rates.

The Commission is exposed to interest rate changes in respect of returns on its investments with financial institutions and interest payable on finance leases contracted with outside parties.

The Commission's exposure to interest risk is managed by investing, on a short term basis, in current accounts and the Corporation for Public Deposits.

### **30. PROVISIONS**

Leave provision	9,202	6,632
Performance bonus provision	13,328	17,322
	22,530	23,954

In the previous financial year, leave due to employees and performance bonus were classified as payables from exchange transactions. In the current financial year it has been reclassified to provisions in line with GRAP Statement.

### Performance bonus provision

Employees sign performance contracts as part of their conditions of service at the beginning of each financial year. Employees are assessed biannually. The amount is dependent on the outcome of individual performance evaluations and it is at the discretion of management, subject to the availability of funds.

### Leave provision

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The Commission does not have an unconditional right to defer settlement of its leave liabilities and its policies stipulate that leave is forfeited if not used within 6 months after the reporting date.

### **31. CONTIGENT ASSETS AND LIABILITIES**

### Cases before the courts

costs awarded against or for the Commission.

### **32. BUDGET DIFFERENCES**

### Material differences between budget and actual amounts

32.1. Fee income

effected mid-year.

32.2. Other income

Other income is higher than budgeted amount due to higher recoveries than anticipated.

### 32.3. Interest received - investment

Interest is higher than budgeted amount due to more funds in the bank.

### 32.4. Government grants & subsidies

Government grants & subsidies are higher than the budgeted due to a contribution from the Department of Telecomunications and Postal Services.

### 32.5. Employee related costs

Personnel cost is lower than the budgeted amount due to cost saving measures.

### 32.6. Administrative expenses

Administration is lower than the budgeted amount due to cost saving measures.

### 32.7. Depreciation and amortisation

No material difference.

32.8. Finance costs

No material difference

There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal

Fee income is below the budgeted amount due to lower merger applications filed than anticipated and filing fee increase that could only be

2018	2017
R'000	R'000

### 32.9. Lease rentals on operating lease

Lease rentals are higher than the budgted amounts due to operating lease smoothing adjustment.

### 32.10. Operating expenses

Operating expenses are higher than the budgeted amount due to high case load, complex cases and Market Inquiries

### **33. PRIOR PERIOD ERROR**

At the beginning of the financial year the useful lives of some assets have been reviewed and adjusted in the prior period. The adjustments have been made according to GRAP 3.

The result of prior period adjustment is as follows:

Statement of financial position	2018	2017
Property, plant and equipment		
Accumulated depreciation and accumulated impairment	-	1,216
Intangible assets		
Accumulated depreciation and accumulated impairment	-	769
Net Assets		
Accumulated Deficit	-	(1,688)
Statement of Financial Position		
Expenditure		

Experio			
Depreci	ation and amortisation	-	(297





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Fax: +27 12 394 0166 Email: ccsa@compcom.co.za Website: www.compcom.co.za RP340/2018 ISBN: 978-0-621-46689-8