

# Annual Report 2011/2012



competitioncommission  
south africa

# Our purpose and function

## Background information

In 1998, a new framework for competition regulation was established by the democratic government of South Africa. The Competition Act of 1998 established three independent bodies (the Competition Commission, The Competition Tribunal and the Competition Appeal Court) which replaced the previous Competition Board.

The Commission is the investigation and enforcement agency while the Tribunal is the adjudicative body, very much like a court. Finally, the Appeal Court considers appeals against decisions of the Tribunal.

In Practice, the Act regulates two broad areas of competition: mergers and acquisitions, and prohibited practices (e.g. cartels).

### The Competition Commission

The Competition Commission is a statutory body constituted in terms of the Competition Act, No 89 of 1998 (the Act).

It is empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy.

Its purpose is to promote and maintain competition in South Africa in order to do the following:

- 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 Republic

- Ensure that small- and medium-sized enterprises have an equitable opportunity to participate in the economy.
- Promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons

To achieve its purpose, the Commission's core functions are to do the following:

- Implement measures to increase market transparency
- Implement measures to develop public awareness of the provisions of the Act
- Investigate and evaluate alleged anti-competitive conduct
- Grant or refuse applications for exemption from the application of the Act
- Authorise, with or without conditions, prohibit or refer mergers of which it receives notice
- Negotiate and conclude consent orders
- Refer matters to the Competition Tribunal of South Africa (the Tribunal) and appear before the Tribunal when required
- Negotiate agreements with any regulatory authority to coordinate and harmonise the exercise of jurisdiction over competition matters within the relevant industry or sector, and ensure the consistent application of the principles of the Act
- Participate in the proceedings of any regulatory authority
- Advise – and receive advice from – any regulatory authority
- Over time, review legislation and public regulations, and report to the Minister concerning any provision that permits uncompetitive behaviour
- Deal with any other matter referred to it by the Tribunal

# Executive Committee

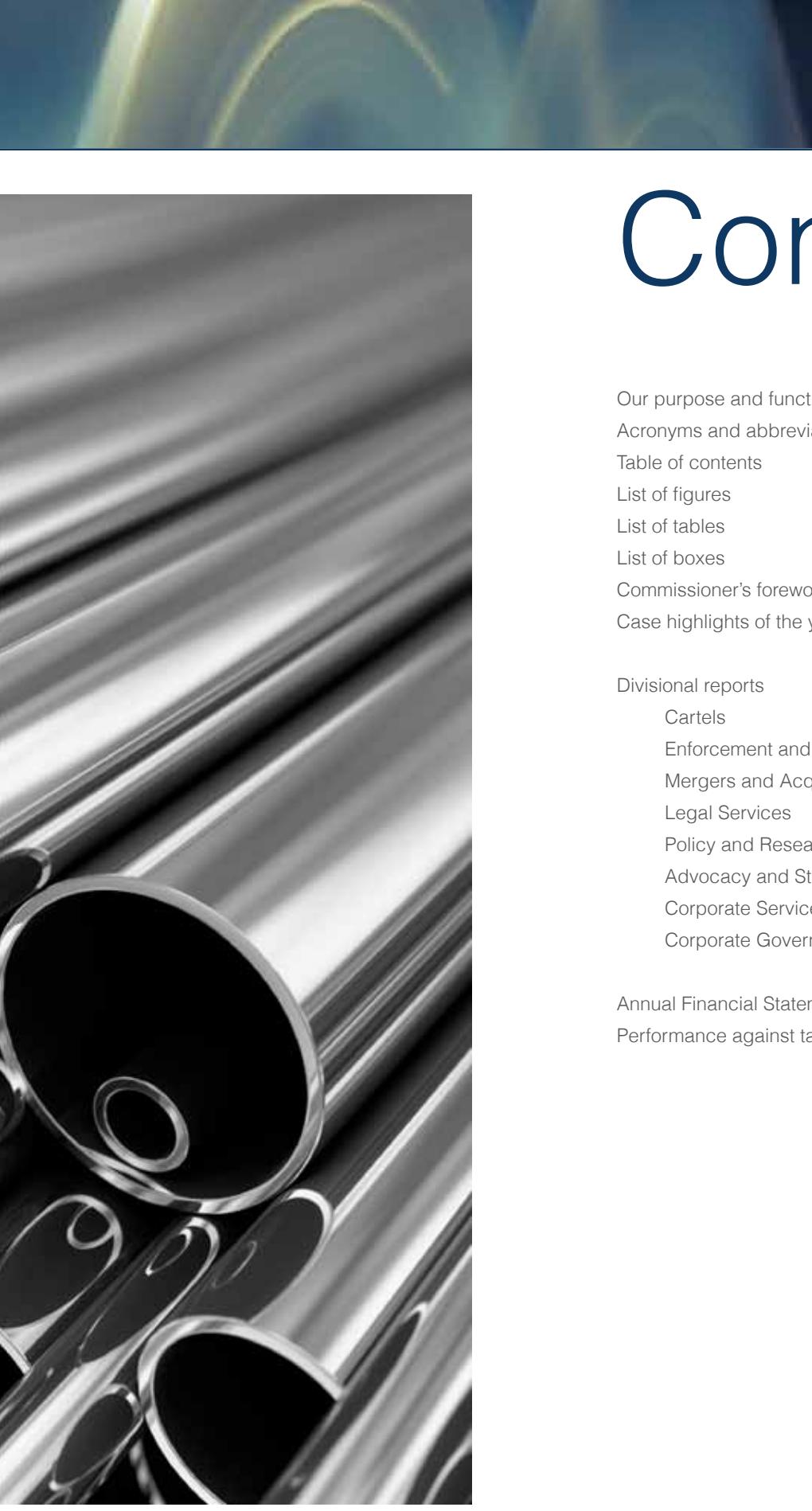


From Left: Oliver Josie (Manager: Cartels), Simon Roberts (Chief Economist & Manager: Policy & Research), Tembinkosi Bonakele (Deputy Commissioner), Shan Ramburuth (Commissioner), Wendy Mwananzi (Chief Legal Counsel and Manager: Legal Services), Trudi Makhaya (Manager: Advocacy & Stakeholder Relations) and Mahendrin Moodley (Chief Financial Officer & Manager: Corporate Services)

# Acronyms and abbreviations

ACLE	Amsterdam Centre for Law and Economics
AFMA	Animal Feed Manufacturers Association
AFROX	African Oxygen Limited
ASCOLA	Academic Society for Competition Law
B-BBEE	Broad-based black economic empowerment
BRICS	Brazil, Russia, India, China and South Africa
BUSA	Business Unity South Africa
CAC	Competition Appeal Court
C&CI	Cement and Concrete Institute of South Africa
CCMA	Council for Conciliation, Mediation and Arbitration
CLP	Corporate Leniency Policy
CMA	Concrete Manufacturers Association
CMS	Content Management System
CSP	Construction Fast-track Settlement Project
DoJ&CD	Department of Justice and Constitutional Development
EC	European Commission
FTC	Federal Trade Commission
GFIP	Gauteng Freeway Improvement Project
HR	Human resources
ICAS	Independent Counselling and Advisory Service
ICASA	Independent Communications Authority of South Africa
ICN	International Competition Network
IDC	Industrial Development Corporation
ISMO	Independent System and Market Operator
IT	Information technology
IRC	Information Resource Centre
KM	Knowledge management
LSM	Living standards measure

MDDA	Media Development and Diversity Agency
MOU	Memorandum of Understanding
NAAMSA	National Automobile Manufacturers of South Africa
NERSA	National Energy Regulator of South Africa
NMa	Netherlands Competition Authority
NPC	Natal Portland Cement
OECD	Organisation for Economic Cooperation and Development
PAJA	Promotion of Administrative Justice Act
PFMA	Public Finance Management Act
PPC	Pretoria Portland Cement
REDISA	Recycling and Economic Development Initiative of South Africa
SAAFF	South African Association of Freight Forwarders
SADC	Southern African Development Community
SAIC	State Administration for Industry and Commerce
SAISI	South African Iron and Steel Institute
SAN	Storage area network
SAPA	Southern African Poultry Association
SAPEG	South African Petroleum and Energy Guild
SAPIA	South African Petroleum Industry Association
SAPRA	South African Petroleum Retail Trade Association
SATRA	South African Telecommunications Regulatory Authority
SAVA	South African Value-added Network Services Association
SCA	Supreme Court of Appeal
SEDiC	Small Enterprise Development in Construction
SETA	Sector Education and Training Authority
SLG	Spring Lights Gas
SME	Small and medium enterprise



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# Commissioner's foreword

It is not surprising, in light of South Africa's economic history, that there are different visions of the role and scope of competition law in the economy. In the past year, these divergent views were debated in various competition cases, especially as they relate to the Commission's public interest mandate in merger evaluation. The transparency of legal proceedings and coverage of our cases have made the issues accessible to a wider public. We are encouraged and receptive to the public debate that our work elicits. This has resulted in greater appreciation and understanding of the role and limits of competition law as an instrument of public policy.

Although the Competition Commission has had a considerable workload and has encountered many challenges over the past year, it has emerged with greater clarity and a heightened sense of purpose. The Commission has also demonstrated institutional integrity by its independence, transparency and objective decision-making.

In the past year, we considered 282 merger transactions of which 234 were approved without conditions, within respectable turn-around times. Thirty three transactions were approved subject to conditions and eight were prohibited. Most conditions related to limiting job losses, but also included remedies to restrict information exchange between competitors and, in some instances, divesture.

We are very satisfied with our enforcement activity during the year. Sixteen investigations were prepared for prosecution and eight cases were referred to the

Competition Tribunal for adjudication. Settlement agreements were concluded with 28 firms, in various cases, and in particular cases in grain storage and cement. The penalties imposed, all confirmed by the Tribunal, amounted to a total of R548m.

The Commission's outputs reflect the successes of our prioritisation framework and corporate leniency policy. The fast-track settlement incentive for construction firms was implemented in the year under review. The significant increase in leniency applications by construction firms indicates the high level of participation in the project. This project will be finalised in the next financial year.

The Commission expends substantial resources in litigation before the Tribunal and courts. Following a number of procedural challenges in the courts, a long standing complaint of abuse of dominance against Telkom, was heard at the Tribunal. Three matters were heard by the Constitutional Court, all relating to the powers of the competition authorities. The Commission was successful in the *Senwes* matter where the Constitutional Court affirmed that the Competition Act be interpreted in light of its objectives, and not in a narrow, formalistic manner. The outcomes of the other appeals will provide guidance on the powers of the authorities.

For the second time, the Competition Commission won the Deloitte's award for the *Best Company to Work for in the Public Sector*. I am grateful to staff for sustaining a stimulating, productive and professional working environment at the Competition Commission.

# Commissioner's Office



Back row: Mmboswobeni Nkhumeleni, Freda Mathaba, Mapule Letshweni, Hardin Ratshisu, Malefyane Mogale and Sesule Mojapelo  
Front row: Innocent Tau, Shan Ramburuth, Tembinkosi Bonakele and Mittah Sibanyoni

# Case highlights of the year

## Competition law cases before the Constitutional Court

A significant body of jurisprudence has emerged from the Competition Appeal Court and the Supreme Court of Appeal that has created uncertainty in the complaint, investigation and adjudication practices and procedures underpinning the Competition Act. This has compelled the Competition Commission to seek guidance from the Constitutional Court as it is concerned that this jurisprudence will stifle the investigation and prosecution of complaints lodged by members of the public and those initiated by the Commission. In turn, this would undermine the policy objectives of competition law and policy.

These cases, namely *The Competition Commission v Yara South Africa (Pty) Ltd and Others*, *The Competition Commission v Loungifoam (Pty) Ltd and Others* and *The Competition Commission v Senwes Limited*, are the first generation of competition law cases to be heard by the Constitutional Court.

A central conception of this jurisprudence, although expressed in varying formulations, is that the content of a complaint (as submitted to the Commission by a complainant or initiated by the Commission) places rigid limits on the ensuing investigation, the referral to and the ultimate adjudication of the complaint by the Competition Tribunal. The authorities are unable to incorporate, in a meaningful and efficient manner, any new information that is uncovered as the case makes its way through the competition investigation and adjudication system. In *Competition Commission v South African Breweries Limited and Others*,<sup>1</sup> the Tribunal asserted that this jurisprudence should be reconsidered.

A complaint marks the beginning of an investigation. Neither the complainant nor the Commission possesses full knowledge of the main facts necessary to support the allegation of a prohibited practice at the time of instituting a complaint.<sup>2</sup> The strict approach requiring that a complaint lodged by a

1 - CT Case No.134/CR/Dec07 at paragraph 97–158, available at [www.comprtrib.co.za](http://www.comprtrib.co.za). Accessed: 13 June 2012.

2 - Ib at paragraph 141.

3 - 14 out of 34 pending complaint referrals

4 - Loungifoam case ibid

5 - Yara case ibid

6 - Senwes case ibid

complainant or initiated by the Commission be the same as the referral to the Tribunal presupposes omniscience by the Commission or the complainant.

As reported in the Commission's annual report of 2010/11, this jurisprudence resulted in a spate of interlocutory challenges being filed by parties in pending complaint referrals.<sup>3</sup> It was therefore necessary for the Commission to seek clarity from the Constitutional Court as to the proper scope of the Commission's powers to investigate both complaints initiated by the Commissioner<sup>4</sup> and those lodged with it by third parties,<sup>5</sup> as well as the scope of the Tribunal's powers to hear and determine complaints of anticompetitive conduct referred to it by the Commission<sup>6</sup>.

## The scope of the Tribunal's powers - Competition Commission v Senwes Limited

In the *Senwes* case, involving differential pricing in the grain storage market, both the Tribunal and the CAC had ruled in the Commission's favour. Senwes is a vertically integrated firm that provides grain storage facilities to farmers and traders. It also trades in grain, which is in competition with traders who purchase storage facilities from it. Senwes' differential pricing between farmers and traders undermined the profitability of rival grain traders by squeezing their margins. The Tribunal had found that Senwes had committed a 'margin squeeze', and that such conduct was considered exclusionary under section 8(c) of the Act.

Senwes appealed to the SCA, which upheld its appeal. The SCA reasoned that the 'margin squeeze' conduct did not form part of the complaint referral and that the Tribunal's powers were limited to determining conduct disclosed in the complaint referral. The Commission challenged the findings of the SCA that the referral did not cover a complaint relating to "margin squeeze". The Commission contended that the complaint formed part of the referral submitted to the Tribunal. The case was heard in the Constitutional Court on 22 November 2011.



In a judgment delivered on 12 April 2012, just days into the 2012/13 financial year, the Constitutional Court reversed the decision of the SCA and found that a complaint relating to section 8(c) was covered in the referral. The Constitutional Court asserted that the term "margin squeeze" was a red herring and that the substance of the case was about a contravention of section 8(c) of the Act.

The Constitutional Court rejected a restrictive approach to the interpretation of referrals and reasserted the Tribunal's adjudicative functions and inquisitorial powers when determining complaints brought before it.

## The Commission's powers to investigate third party complaints - Competition Commission v Yara South Africa (Pty) Ltd and Others

The case originates from a complaint lodged with the Commission by Nutri-Flo CC and Nutri-Fertiliser CC. This case concerns abuse of dominance by Sasol, and cartel conduct by Yara, Omnia and Sasol in the nitrogenous fertiliser market. Sasol concluded a settlement agreement with the Commission.<sup>7</sup> In addition to paying an administrative penalty, Sasol undertook to co-operate with the Commission in the prosecution of the remaining respondents. Sasol provided the Commission with additional evidence on cartel conduct among the respondents.

The scope, nature and boundaries of that complaint and the question of whether the Commission is entitled to amend its referral to introduce new evidence has given rise to a legal battle between the Commission, and Yara and Omnia in the Tribunal, the CAC and the Constitutional Court.

Yara and Omnia objected to the Commission's reliance on the additional evidence provided by Sasol on the basis that this evidence was not covered by the complaint. In response, the Commission brought an application to amend its referral papers. This application was granted by the Tribunal.

On appeal, the CAC took a different approach to that taken by the Tribunal. It found that the complainants did not intend to lodge a complaint against Yara and Omnia and thus dismissed the Commission's referral. The CAC arrived at this finding notwithstanding the fact that the attachment to the Form CC1, which a complainant is required to complete and sign for purposes of lodging a complaint with the Commission, expressly referred to cartel

conduct involving Sasol, Yara and Omnia. The CAC argued that reference to cartel conduct in the attachment to the CC1 did not "constitute a distinct complaint in the sense of a separate cause of action in the complaint; as opposed to further information concerning the initial complaint."

The CAC also found that "there is no provision in the Act for amendment of complaints" and that the "Legislature must have intended that the Commission should only refer to the Tribunal such a complaint as initiated by or submitted to it." The CAC's approach in the Yara case stands in stark contrast to the approach taken by the SCA in the Woodlands case that "the Act presupposes that the complaint (subject to possible amendment and fleshing-out) will be referred to the Tribunal".

The Commission launched an application for leave to appeal to the Constitutional Court on the basis that the CAC's restrictive and formalistic interpretation of complaints will have a chilling effect on the proper investigation and ventilation in the Tribunal of complaints lodged with the Commission by members of the public. It further undermines the policy objectives of the Competition Act to uproot anti-competitive conduct. The matter was heard on 24 November 2011.

## The Commission's powers to investigate complaints initiated by the Commissioner - The Competition Commission v Loungefoam (Pty) Ltd and Others

This case concerns cartel conduct in the flexible polyurethane market. In 2008, the Commission referred a case against Loungefoam, Vitafoam and Feltex to the Tribunal. Steinhoff International and Kap International were cited as respondents, but no relief was sought against them.

Two developments in the matter prompted the Commission to apply for an amendment of the referral. The first was that, in opposing the referral, Loungefoam and Vitafoam argued that they were part of a single economic entity and thus coordinated conduct between them was lawful. They also argued that their course of action in the market was directed by their parent company, Steinhoff International. The second was that, in preparation for proceedings before the Tribunal, the Commission had obtained information indicating that Feltex was involved in cartel conduct relating to chemicals used in the production of polyurethane foam (the chemical cartel).

7 - On 18 May 2009, Sasol paid an administrative penalty of R250 680 000.

Steinhoff International and Feltex resisted the amendment, which was granted by the Tribunal. They launched an appeal in the CAC against the Tribunal's decision to grant the amendment. Steinhoff argued that the complaint of collusion against itself and Kap had not been initiated by the Commission.

In a similar vein, Feltex argued that the complaint that was sought to be introduced against it in respect of the chemical cartel, had not been initiated. The case turned on whether a complaint could be brought before the Tribunal even though it did not form part of the initiation; the Commission had initiated three complaints.

The CAC found that the initiation did not include a complaint against Feltex in respect of the chemical cartel. The CAC reasoned that it is not permissible to amend a complaint that has been referred to the Tribunal by including new transgressions and new parties to existing transgressions without following the sequence of initiation, investigation and referral. However, the CAC accepted that it was possible to amend a complaint that had not been referred to the Tribunal. The acceptance of the possibility of the amendment of a complaint, albeit prior to referral, was in contradiction to the CAC's earlier position in Yara that the Act does not make provision for the amendment of a complaint.

In respect of the amendment relating to Steinhoff International and Steinhoff Africa, the CAC also found that it was not legally competent for the Commission to introduce such an amendment.

Faced with these contradictory decisions of the CAC and the SCA, the Commission brought an application for leave to appeal in the Constitutional Court which was heard on 7 February 2012. The Commission argued that the amendments should have been allowed and that there was no warrant for requiring that an initiation, which is a document commencing an investigation, should identify each and every respondent to the conduct, as well as each and every permutation of the prohibited conduct. Over and above, the Act permits the Commission to add particulars to a complaint. The Constitutional Court has reserved judgment on the matter.

8 - The case against Gralio was dismissed by the Tribunal. See Case no. 23/CR/Feb09

9 - See case no. 105/CAC/Dec 10 and 106/CAC/Dec10

## Evaluating impact

In the 2011/12 financial year, the Commission conducted research to evaluate the impact of its work in specific markets. This is in line with the Commission's Strategic Plan and serves to provide the institution with insight into the outcomes of its prosecutions, as guided by its Prioritisation Framework. The impact assessment studies were both qualitative (in the case of concrete pipes) and quantitative (in the case of various food value chains) in nature.

### The dismantling of the concrete pipes cartel

As a result of a leniency application by Rocla (Pty) Ltd (Rocla), the Commission uncovered a 34-year-old cartel in the precast concrete products market in December 2007. In its application, Rocla informed the Commission that, together with nine other firms, it had engaged in anti-competitive conduct involving price fixing, market allocation and collusive tendering in the market for precast concrete pipes, culverts and manholes.

Cartel members agreed to divide market shares by product in defined areas of Gauteng, KwaZulu-Natal and the Western Cape. Firms that were allocated market shares in each of the three provinces agreed to only supply within a 150 km radius of Johannesburg and in defined areas around Durban and Cape Town. Only Rocla was allowed to supply outside these areas across the remainder of South Africa.

All firms except Gralio<sup>8</sup> admitted to their involvement in the cartel. As a result, the Tribunal imposed various fines on all the respondents except Rocla and Gralio. Two of the implicated firms, Southern Pipeline Contractors (SPC) and Conrite Walls, lodged appeals with the CAC against the level of the fines imposed on them. The CAC ruled in favour of the two firms and imposed lesser fines<sup>9</sup>. The CAC held that the penalty calculation should have taken account of the extent of extra profits earned and the higher prices charged under the cartel – evidence that had not been presented in this case.

Given that precast concrete products fall into the prioritised infrastructure industry, and in response to the CAC's criticism of the fining methodology followed by the Tribunal, the Policy and Research Division conducted a study of the impact of the Commission's intervention in the precast concrete products market. The first phase of the study assessed changes in the

market structure by looking at: expansion into previously reserved markets by cartel members; entry into cartelised markets by new firms; price changes after the uncovering of the cartel and a simple estimation of the cartel overcharge.

The study found evidence of increased competition after the Commission had uncovered the cartel and prosecuted its members. The increased competition came about through more expansion into formerly restricted geographic and product markets by former cartelists, and entry into cartelised markets by new firms. It should be noted, however, that rivalry took time to unfold and to have an impact on prices.

In terms of the anti-competitive mark-ups under the cartel, different counterfactuals were used to estimate what the price would have been under competitive rather than collusive conditions. These counterfactuals included utilised prices after the ending of the cartel, prices during a price war and the price of a similar product (which was apparently not included in the collusive arrangements). Each of these was imperfect as coordinated outcomes may well persist after the end of explicit cartel arrangements. Furthermore, understandings between firms may well extend to other products, suggesting post-cartel prices and comparator products that would underestimate the cartel mark-ups. A price war may temporarily yield prices below the competitive level.

Using these different approaches, it was found that the estimated cartel overcharge was very significant (16-28% for concrete pipes in Gauteng and 51-57% for concrete pipes in KwaZulu-Natal). These are at the high end of international studies but may be explained by the fact that demand for concrete pipes is relatively insensitive to price. The somewhat lower mark-ups in Gauteng reflect the large number of producers including those that had been on the fringe of the cartel rather than formal members.

In addition, the study established that the cartel members continued to share monthly sales volume data at the national level through the Concrete Manufacturers Association (CMA) after the cartel had been uncovered.

The difficulties with computing mark-ups, including the persistence of coordinated outcomes after the ending of formal arrangements, suggests that the quantification of cartel overcharge to determine administrative penalties, as suggested by the CAC, will lead to a system that is difficult to administer.

## Outcomes in the food and agro-processing sector

In 2008, the Commission earmarked the food and agro-processing sector for prioritisation, given the negative impact of increasingly high staple food prices for the majority of South Africans and the various competition concerns that had arisen due to its regulated history and concentrated nature. Since then, the Commission has conducted several extensive investigations into this sector particularly in the poultry, fats and oils, grains, milling and bread, and dairy subsectors. This has led to the uncovering of various cartels and settlements by firms involved in misconduct, most notably in the landmark settlement with Pioneer Foods in November 2010.

A review of the Commission's prioritisation of the food and agro-processing sector was completed during the 2011/12 financial year. It highlighted the impact of the Commission's investigations to date and recommended future work for the Commission in this sector over the next financial year.

### Poultry

The Commission has investigated the poultry subsectors on all levels of the value chain. This led to the uncovering of a fresh poultry product cartel in the Western Cape through a leniency application. The Commission is in the process of finalising settlements with the other parties involved in this conduct. The Commission has also observed recent new entry in this subsector since the exit of Country Bird from the Elite Breeding Farms agreement and its introduction of the Arbor Acres breed. This has led to increased competition in the market, which can be observed through more competitive pricing, reduced margins and better outcomes for consumers since 2008. Compared to 2006, around R1 billion per annum has been saved by consumers as a result of heightened competition.

### Fats and oils

The structural characteristics of this market, including family networks and product homogeneity, make this market prone to collusion and led to its prioritisation in 2008. The Commission has subsequently investigated possible collusion and/or abuse of dominance in this subsector. In November 2010, the Commission decided not to refer the investigation as a result of insufficient evidence.



Photo by: Hannelie Coetzee,  
MediaClubSouthAfrica.com

## Dairy

A review of the dairy subsector reveals that, in certain respects, there has been a change in the behaviour of firms following the Commission's investigation and referral of the complaint against dairy processors in 2006. Exclusive supply agreements between processors and farmers, and long-term surplus exchange and removal agreements between processors, are no longer common practice in the industry. Furthermore, there is an on-going trend towards consolidation, cooperation and vertical integration among dairy farmers, which ultimately may give them greater power in negotiations.

## Grains, milling and bread

The Commission has conducted several investigations into products in the grains, milling and bread subsector with successful prosecutions and penalties levied by the Tribunal in the past. The Commission is also in the process of finalising settlements with the remaining respondents in the wheat flour milling information exchange investigation, which involves the exchange of commercial information through the National Chamber of Milling by its members. Information exchange may lead to anti-competitive outcomes (see 'The implications of information exchange for competition').

10 - See Capobianco, A. 2010. Competition Division of the OECD,

## The implications of information exchange for competition

Firms compete in order to increase sales at the expense of their rivals through keener pricing and better quality and/or service. They seek higher overall profits through larger volumes, although profit margins may be lower on a per unit basis. Vigorous competition means lower prices to the benefit of consumers but collectively lower profits than would be the case under collusion for instance. Firms therefore have a collective interest not to compete aggressively against each other. Under collusion, firms overcome the individual incentive to win customers away from rivals and co-ordinate to maximise their collective profit.

Over recent years, the Commission has been grappling with the question of where and how information exchange between competitors dampens competition and constitutes a contravention of section 4 of the Act.

Through the exchange of certain types of information, rivals can easily identify and respond to each other's competitive moves, dampening the impetus to compete. Where there are well-understood pricing points or geographic, product or customer segmentation, the information exchange can amount to the indirect fixing of prices between competitors or the division of markets. These would be contraventions of section 4(1)(b) of the Competition Act.

Information exchange may also be problematic where it facilitates competitors reaching an agreement to eliminate or dampen competition, monitoring adherence to the agreement and punishing deviations from the agreement.

The European Commission (EC) views information exchange in two ways: whether the exchange of information lessens competition by object (defined as an intentional offence) or by effect. Both are subject to potentially severe penalties.<sup>10</sup> Exchanging information on firms' individualised intentions concerning future prices or quantities (for example, future sales, market shares, territories and sales to particular customer groups) is considered a restriction by object.

In cases involving the exchange of other types of information, the EC considers the effects by assessing the characteristics of the market affected

by the information exchange (concentration, transparency, stability and complexity) and the exchanged information itself (market coverage and the type of information exchanged including commercial sensitivity, availability of information, level of disaggregation, age of the information and frequency of exchange<sup>11</sup>).

In South Africa, the Competition Commission has typically confronted the question of information exchange in markets that have been characterised by a history of coordination. This would include tight-knit business communities with many interactions through platforms such as industry associations. In some cases, the information exchange appears to occur alongside explicit agreements. In other cases, it is part of understandings and informal arrangements.

The Competition Act covers arrangements that are agreements and concerted practices, which are defined broadly. What is critical in terms of whether the conduct falls under section 4(1)(b) of the Act is whether the arrangements directly or indirectly fix prices, divide markets or allow for collusion on tenders. This involves characterisation of the arrangements and understandings. The test under section 4(1)(a) covers coordination between competitors that does not amount to any of these three practices but nevertheless has the effect of limiting competition.

In the past financial year, there was one referral and several settlements involving information exchange.

Recent investigations involving information exchange include those in the petroleum, cement, animal feed, poultry, steel, wheat and maize milling, and bread baking industries. In these investigations, industry bodies (including associations) played an active role by acting as the platform for the information exchange.

In the petroleum industry, the information exchanged was highly disaggregated by firm, province, magisterial district, end-customer grouping and product, and disseminated on a monthly basis. In the cement industry, producers agreed to exchange monthly sales data aggregated across firms but disaggregated by region, defined sub-regions, product categories and customer categories as a way of maintaining and monitoring agreed market

shares<sup>12</sup>. In the wheat milling industry, firms exchange weekly industry production and sales volume data; monthly production and sales volume data aggregated across firms but disaggregated by region, product type, pack size and customer category; and average annual costing data<sup>13</sup>.

Prior to the initiation of the Commission's investigation in the poultry subsector, firms exchanged information relating to monthly breeding stock and broiler production including monthly movements in broiler slaughtering. Members of the Southern African Poultry Association (SAPA) also exchanged monthly broiler producer prices, disaggregated into fresh and frozen chicken but aggregated across firms. This information included monthly and annual volumes of imported poultry products disaggregated by type of product (turkey or fowl), pack type (frozen portions or whole, boneless or bone-in) and by source country (Brazil, Canada, etc.). The producers also shared information on monthly export volumes by destination country. This, however, changed after the initiation of the investigation, when SAPA decreased the frequency of the information exchange to a lagged quarterly basis, with the information aggregated nationally.

Through South African Iron and Steel Institute (SAISI), steel producers exchanged industry aggregated information as well as individual totals disaggregated by HS code<sup>14</sup>, product description (width and coating), relevant specifications, local and export sales and so forth. However, there were only two active players in the market: ArcelorMittal South Africa Ltd, and Highveld Steel and Vanadium Corporation Ltd. The case study (see box 1) highlights the use of information exchange as an instrument for dampening competition.

Although the Commission has not prosecuted any of the firms involved in cases of information exchange, it has settled some of the cases through commitments regarding future information exchange conduct. In the cement industry, the Commission agreed that information exchange should take place on a lagged quarterly basis (aggregated across products) nationally given the high levels of concentration. The Commission also accepted the commitment of the Animal Feed Manufacturers Association (AFMA) to provide data on a lagged quarterly basis (aggregated to the main categories of feed) nationally instead of regionally, given the high levels of regional concentration, and to simultaneously make the data publicly available to both members and non-members.

11 - This is typically considered in relation to the characteristics of the market and case specific facts.

12 - The cement market is highly concentrated with three independent producers and one other producer (Natal Portland Cement) jointly owned by the three producers until 2002.

13 - The wheat milling markets are also highly concentrated and characterised by the prior existence of long-standing collusive arrangements.

14 - Harmonised System code

## Box 1: Cartel conduct and concerted practice between flat-steel producers ArcelorMittal, and Highveld Steel and Vanadium, facilitated by information exchange

The Commission referred a collusion case against ArcelorMittal South Africa Ltd (Mittal), and Highveld Steel and Vanadium Corporation Ltd (Highveld) to the Competition Tribunal on 30 March 2012. The conduct involved price-fixing and market allocation in respect of flat-steel products in contravention of section 4(1)(b)(i) and (ii), and alternatively, section 4(1)(a) of the Act.

The Commission initiated its investigation on 21 April 2008, following allegations by a customer that Mittal and Highveld had adjusted their prices for flat-steel products around the same time and by the same magnitudes.

The investigation revealed that the steel producers, who compete in a range of flat-steel products specifically steel slabs, hot-rolled plate and hot-rolled sheet in coils and lengths of particular width and thickness, engaged in concerted practices or had an understanding that Highveld would follow Mittal's lead on the pricing mechanism for flat-steel products. This included changes in pricing and discounts such as import parity price discounts (when these were still in place) as well as settlement and volumetric discounts and transport tariffs. The Commission alleged that this amounted to the direct or indirect fixing of the selling prices or other trading conditions of the relevant flat-steel products. The steel producers also divided markets by specific types of goods, maintaining market shares and allocating supply quotas for exports.

This conduct was enabled through information exchange on sales volumes, which allowed Mittal and Highveld to monitor and maintain market share and prices. The understanding was facilitated through meetings and information exchange via the South African Iron and Steel Institute (SAISI). Mittal and Highveld engaged in extensive information exchange on, inter alia, sales volumes which allowed them to target and maintain local market share and prices, and to monitor export volumes. The information submitted to SAISI by Mittal and Highveld on a monthly basis was highly disaggregated, broken down

by HS code level, and included details on product specifications, such as length, thickness, width and coating. The SAISI collated this information and aggregated and distributed the industry-aggregated information back to Mittal and Highveld.

In this instance, where there are only two active players in the market, such exchange is tantamount to the firms directly exchanging commercially sensitive information between them. This information exchange allowed Mittal and Highveld to monitor each other's market shares quite specifically down to sub-products in the broader flat-steel market. It dampened the incentive to compete to gain market share by offering greater discounts or other competitive offerings.

The Commission asked the Tribunal to impose an administrative penalty of 10% of annual turnover on each of the steel producers.



# Media as an emerging priority sector

Over the past year, the Commission has considered various matters in the media industry. This industry is concentrated and characterised by high barriers to entry. Successful entry and expansion relies on access to printing, distribution and advertising customers.

## Predatory pricing in community newspapers

Advertising rates charged in the community newspaper segment are the subject of the first predation case to come before the Competition Tribunal. “Community newspaper” is the term commonly used in the industry to describe a newspaper that is distributed in a defined local area, typically focusing on local news stories. Such newspapers are often free to the reader and distributed in bulk at taxi ranks, shopping malls and directly to households. They serve as a critical medium for local and national advertisers to reach their customers. On 31 October 2011, the Commission referred a case of predatory pricing against Media 24 to the Competition Tribunal for adjudication.

The referral relates to the rates charged by Media24 for advertising in community newspapers in the Goldfields region of the Free State. The referral followed a complaint that was lodged by Berkina Twintig (Pty) Ltd, trading as Gold-Net News (Gold-Net), on 30 January 2009. *Gold-Net News* was one of three community newspapers circulating in the Goldfields region between 2004 and 2009. The other two newspapers, *Vista* and *Forum*, were both owned by Media24. Gold-Net claimed that Media24's titles were charging below-cost prices for advertising in its newspapers, making it impossible for Gold-Net to compete for the business of advertisers and eventually forcing it to exit the market in April 2009.

The Commission's investigation found that Media24 had indeed engaged in exclusionary pricing conduct. The Commission found that *Forum* had been used as a fighting brand, offering very low prices to advertisers so as to prevent competition with Media24's larger and more lucrative title, *Vista*. Evidence before the Commission revealed that *Forum* had budgeted for and operated at a loss throughout the period, but was only closed down in January 2010 after *Gold-Net News* had been driven out of the market. In light of this, the Commission considered that the whole decision to continue operating *Forum* constituted an avoidable or variable cost in this case. A price-cost analysis revealed that *Forum* had offered average advertising prices that were below its average variable cost.

The rationale for such behaviour is twofold. First of all, it can exclude competitors from the market as part of a strategy by the incumbent firm to protect its existing market share as well as potentially increasing its market power, allowing it to increase prices once the prey has left the market. In this case, once *Gold-Net News* had exited the market, Media24's publications were the only community newspapers circulating in the area and would have a monopoly over advertisers. Secondly, the conduct would have the effect of bolstering Media24's reputation as an aggressive competitor in order to reduce the likelihood of future entry into the community newspaper market. This reputational effect may have been extended to other nearby local markets, increasing Media24's market power in other areas as well.

The Commission therefore found that Media24's conduct amounted to an abuse of dominance under Section 8(d)(iv) of the Competition Act, and it asked the Tribunal to levy an administrative penalty of 10% on Media 24's turnover.

As the first predation case to come before the Competition Tribunal, this case will explore the appropriate tests for predatory conduct under the Competition Act. In particular, it gives the Commission the opportunity to put forward its view on the appropriate interpretation of the average variable cost test set out in the Act.

## Merger conditions safeguard competition in African language community papers

In July 2011, the Commission referred the merger between Media24 Limited and Paarl Coldset, and Natal Witness Printing and Publishing Company (Natal Witness) to the Competition Tribunal for adjudication. Caxton acted as an intervenor in this matter. In this merger, Media24 sought to acquire a 100% shareholding interest in the Natal Witness (a firm jointly owned with Lexshell 496 Investments).

Media24's activities include publishing and printing magazines and newspapers, as well as the electronic provision of news and magazine content on the internet. Natal Witness publishes and prints regional and community newspapers (free and paid for), which are primarily distributed in Pietermaritzburg and the surrounding areas of KwaZulu-Natal, as well as high-volume commercial/retail inserts and pamphlets. Media24, Natal Witness and a third party also jointly own African Web (a newspaper and commercial/retail inserts and pamphlets printing company also situated in Pietermaritzburg), and provide services mainly to smaller community newspaper titles and commercial advertisers.

The Commission's investigation found that the merger would result in Media24 gaining control of a range of community newspaper titles (prior to the merger it only directly controlled paid-for titles in the province), as well as African Web (a key input provider to potential competitors in the community newspaper space).

In analysing this transaction, the Commission placed considerable emphasis on the African language market, which has been dynamic and fast-growing in KwaZulu-Natal over the past few years. The isiZulu market, in particular, has expanded significantly as publishers have realised the huge potential in this market and have begun to provide a more varied product offering.

Some of the free community newspapers published and printed in KwaZulu-Natal were found to also be circulated in other regions in close proximity to the province, in particular, the northern part of the Eastern Cape. The Commission noted that the barriers to entry into small independent community newspaper publishing are high, mainly due to the amount of time and capital required to establish a readership, reputation and relationships with advertisers. This is compounded by limited access to printing facilities and the high costs of printing. These small publishers have proven to be important to the market in terms of providing an effective alternative for advertisers as they are able to keep their prices down. They also provide an alternative to the major media groups for readers.

However, their smaller scale and lack of attractive printing alternatives leaves them vulnerable to exclusionary strategies by the larger players, who own the bulk of the newspaper publishing facilities nationwide. Small publishers rely on printing facilities owned by actual or potential competitors. The Commission's investigation revealed that there are a small number of newspaper printing facilities in KwaZulu-Natal that have a fee structure that is affordable to community newspapers. Most of these firms are either owned by the four big players (Independent Newspapers, Caxton, Avusa and Media24) or affiliated to them, putting the independent papers in danger of being excluded from the market whenever they are perceived to be a threat to competing publications owned by the bigger players.

While the Commission found that this transaction was unlikely to raise any significant merger-specific concerns in the paid-for newspaper market, it took the view that in some of the free community newspaper markets, there is a possibility that this transaction will result in Media24 being in a dominant position with only smaller independent publications as competitors.

Furthermore, the Commission was concerned that the merged entity could leverage more market power in the free newspaper publishing market

through its control of key printing facilities (African Web), which some of the small competing publications rely on to print their publications. These newspapers indicated that there are limited affordable printing facilities available to them in KwaZulu-Natal.

In view of this, the Commission recommended conditions to be imposed on the transaction. One of the proposed conditions agreed to between the Commission and the merging parties was that Media24 should divest 29.9% of the shareholding it owns in African Web, which serves largely as a printer for small independent newspaper publishers.

The remainder of the conditions recommended by the Commission related to the protection of the small independent newspaper publishers in terms of price, quality and the timing of printing. While the merging parties contended that conditions were unwarranted and that the merger would have minimal impact on small independent publishers, Caxton (as intervenor) argued for an outright prohibition stating that the proposed conditions were not adequate. The merging parties argued that the smaller independents are not their true competitors, but are merely niche publications based on language and location. The Commission's witnesses gave evidence that they do compete with Media24 and Caxton's publications.

On 25 February 2012, the Tribunal approved the merger with conditions that were aimed at protecting the competitive terrain for independent newspaper publishers. Most of those conditions were agreed to between the Commission and the merging parties or were proffered by the merging parties at the hearing or soon thereafter. These conditions will be in place for a period of five years and are as follows:

- Post-merger, the community newspaper businesses of Media24 in KwaZulu-Natal and the northern part of the Eastern Cape must have no influence over the operational or strategic decisions at African Web.
- The Commission should be notified of all future small mergers between Media24 and any other small independent publisher or a firm that provides printing services to a small independent publisher.
- The merging parties must invest in African Web over a five-year period to maintain, repair, refurbish, replace or upgrade African Web's printing facilities or any part of these facilities.
- Within six months of the Tribunal order, Natal Witness must increase its printing capacity and no less than 1 000 tons per annum must be made available to small independent publishers. This capacity is to be offered on the same terms and conditions as in the Tribunal's conditions.

- The merging parties must conclude written long-term agreements with small independent publishers at favourable terms which include reasonable prices subject to a reasonably determined increase. This condition also specified that printing slots should be offered during the so-called “golden hours”.
- The conditions were extended to the benefit of any Media Development and Diversity Agency (MDDA) supported publication. The MDDA would represent the interests of such publishers and facilitate any dispute that might arise between that publisher and the merged entity.
- The merged entity must report annually to the Commission on all matters pertaining to compliance with the Tribunal’s conditions. Furthermore, all current and new directors and shareholders of Media24 should be given the Tribunal order.

## Mergers and the public interest

The Commission is required by legislation to consider the impact that a merger will have on the public interest. The majority (22) of the conditions (33) imposed on mergers in the past financial year were aimed at alleviating some negative impact on the public interest. Thirteen of the public interest conditions were designed to mitigate the negative impact on employment. Employment conditions include a moratorium on the number of job losses where a rational process is not followed and no proper justification is laid out for the job losses, or a restriction placed on the number of job losses. The Commission may also require parties to re-employ or re-skill affected employees.

Some of these mergers, and their associated conditions, include the following:

- Marley Pipe Systems (Pty) Ltd (Marley) and Petzetakis Africa (Pty) Ltd (Petzetakis):** To prevent the loss of 459 jobs in the merger, the Commission imposed a remedy that would require Marley to re-employ no less than 311 of Petzetakis's employees.
- Le Groupe Lactalis and Parmalat SPA:** The Commission placed a moratorium on job losses arising from the merger.
- AON South Africa (Pty) Ltd (AON) and Glenrand MIB Ltd (Glenrand):** The Commission imposed a moratorium on job losses, fearing that 218 jobs were at stake and that there was no rational link between the number of job losses and the reasons for the losses. The merging parties applied for a review of the matter at the Tribunal and came forth with further results showing fewer employees facing retrenchments than was initially envisaged. The Tribunal imposed conditions amounting to a cap on the number of retrenchments.

- Synergy Income Fund Ltd and SA Corporate Real Estate:** The Commission placed an obligation on the parties to remove an exclusivity clause from the lease agreement. The Commission found that the involvement of the Spar Group (Spar) in the merger and its being an anchor tenant in certain shopping centres where it had concluded exclusive lease agreements would prevent “part line” retailers, who were largely small and medium business enterprises, from competing in the affected shopping malls.
- Kansai Paint Co Limited (Kansai) and Freeworld Coating Limited (Freeworld):** The parties to the merger were obligated to continue production of coatings for Freeworld, to invest in research and development in Freeworld's decorative paint business and to establish an automotive coatings facility in South Africa.
- Ardutch BV (Ardutch) and Defy Appliances (Pty) Ltd (Defy):** The merged entity was required to continue sourcing from local suppliers and to invest a specified amount in the local production capacity of Defy. These conditions were aimed at alleviating concerns of de-industrialisation should there be a relocation of the production facilities from South Africa to other parts of the world, and to promote local production.
- Media24 Limited and Paarl Coldset, and Natal Witness Printing and Publishing Company:** The Commission imposed a set of conditions that were aimed at mitigating the likely harm to community newspaper publications owned by historically disadvantaged individuals.





# Divisional reports

## Enforcement

The Competition Commission has two divisions that are responsible for investigating anti-competitive conduct, those being Cartels, and Enforcement and Exemptions.

The Cartels Division investigates conduct by two or more firms in the same line of business that agree or by concerted practice, engage in practices that serve to dampen or eliminate competition in the market. These are per se contraventions that require only the existence of an agreement without any proof of effects on the market.

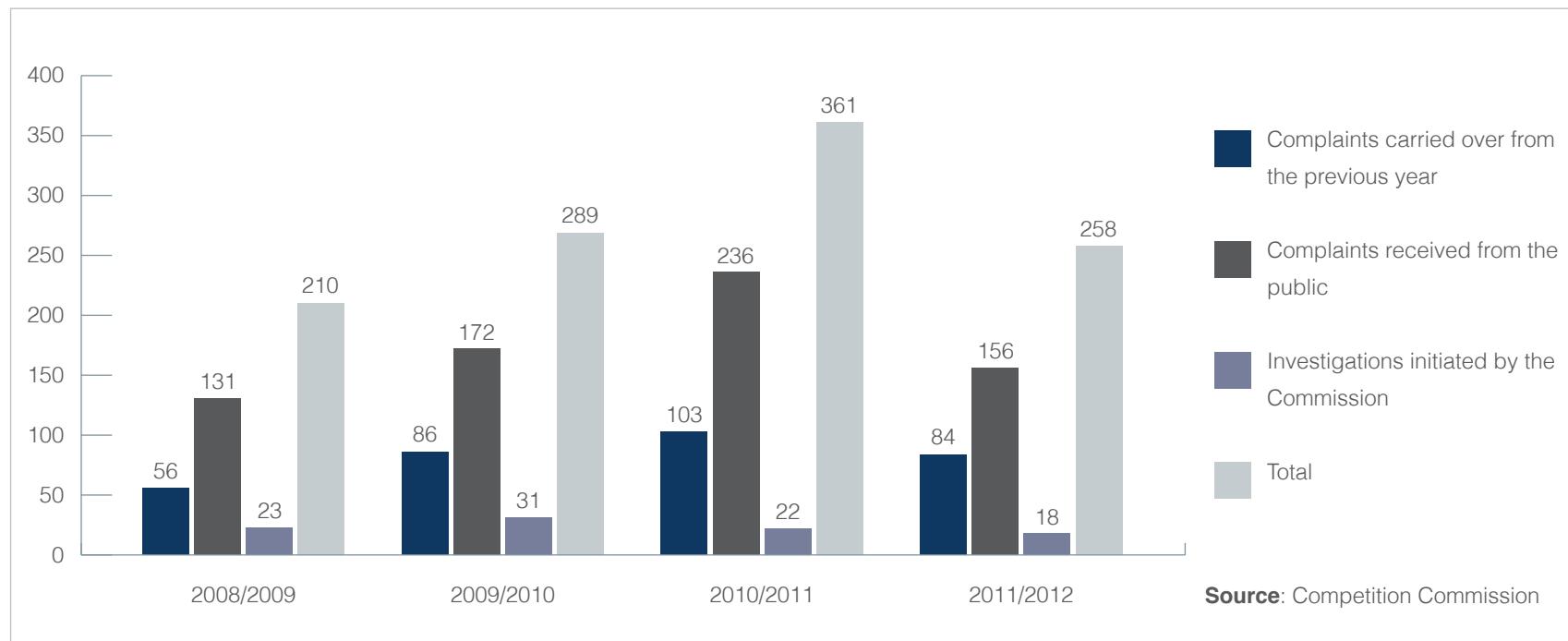
The Enforcement and Exemptions Division investigates complaints of anti-competitive conduct, namely vertical restrictive practices, horizontal restrictive practices and abuses of dominance that require a rule of reason analysis. It also considers applications from firms for exemptions from the provisions of the Competition Act.

During the period under review, the Commission's enforcement divisions handled the following cases<sup>15</sup>:

- The Commission received 156 complaints and initiated 18 of its own complaints.
- A total of 84 cases were carried over from investigations in previous years.
- Of the 258 cases under investigation, 16 complaints were referred to the Legal Services Division and recommended for prosecution in the Competition Tribunal.
- A total of 138 cases did not proceed beyond screening. The Commission could not establish a substantial lessening of competition in these complaints, which mainly related to allegations of exclusionary conduct. In 18 of these cases, the Commission identified other appropriate institutions, such as the National Consumer Commission and the Independent Communications Authority of South Africa (ICASA), that are competent to deal with the complaints. A total of 22 cases were non-referred after further investigation.
- Three cases were withdrawn.
- Consent agreements were concluded in 28 cases.
- The remainder of the cases were carried over to the next financial year.

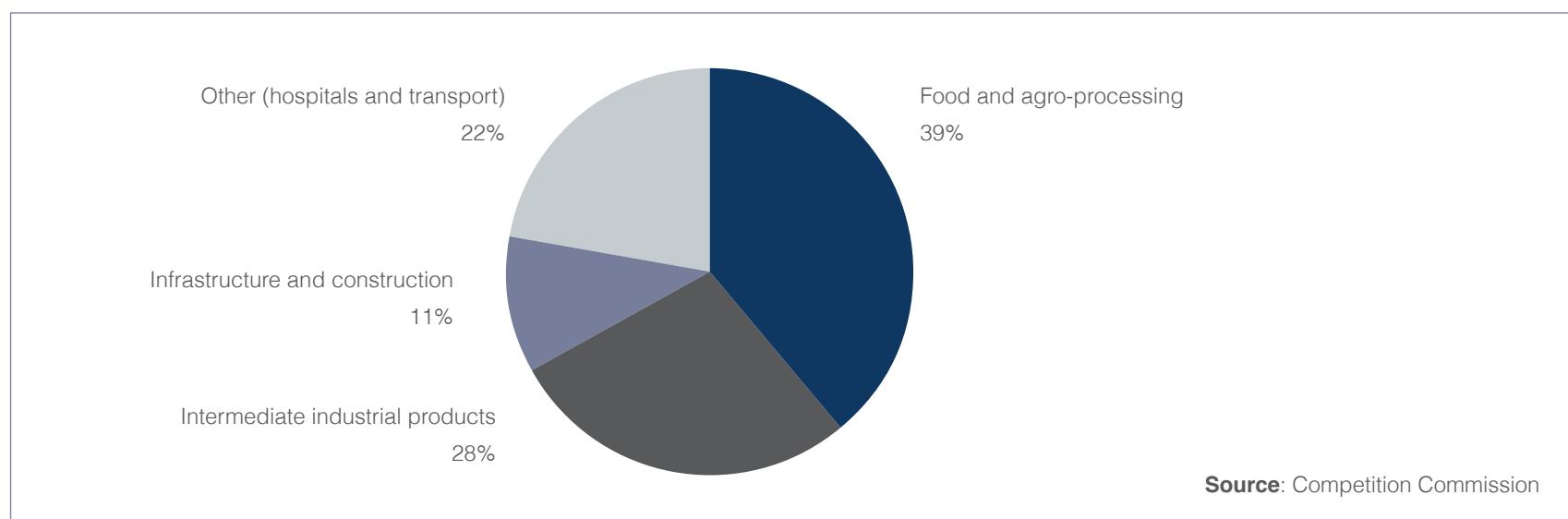
15 - From the 2012/13 financial year onwards, the Enforcement and Exemptions, and Cartels divisions will report separate figures.

*Figure 1: Enforcement cases under investigation, by year*



Of the 18 complaints initiated by the Commissioner, 14 are in the Commission's priority sectors.

*Figure 2: Cases initiated by the Commission in 2011/12, classified by sector*



# Cartels



Back row: Tshepiso Mnguni, Perceive Maswanganyi, Katlego Monareng, Anthony Ndzabandzaba, Lebogang Madiba, Fulufhelo Neudani, Makgale Mohlala, Mongezi Menye, Bongani Ngema, Kgashane Kgomo, Eric Papo, Matodzi Nefale

Front row: Thandile Charlie, Maria Chipasula, Mosima Tambani, Oliver Josie, Lesego Boshielo, Khomotso Modjadji and Nokupiwa Kunene

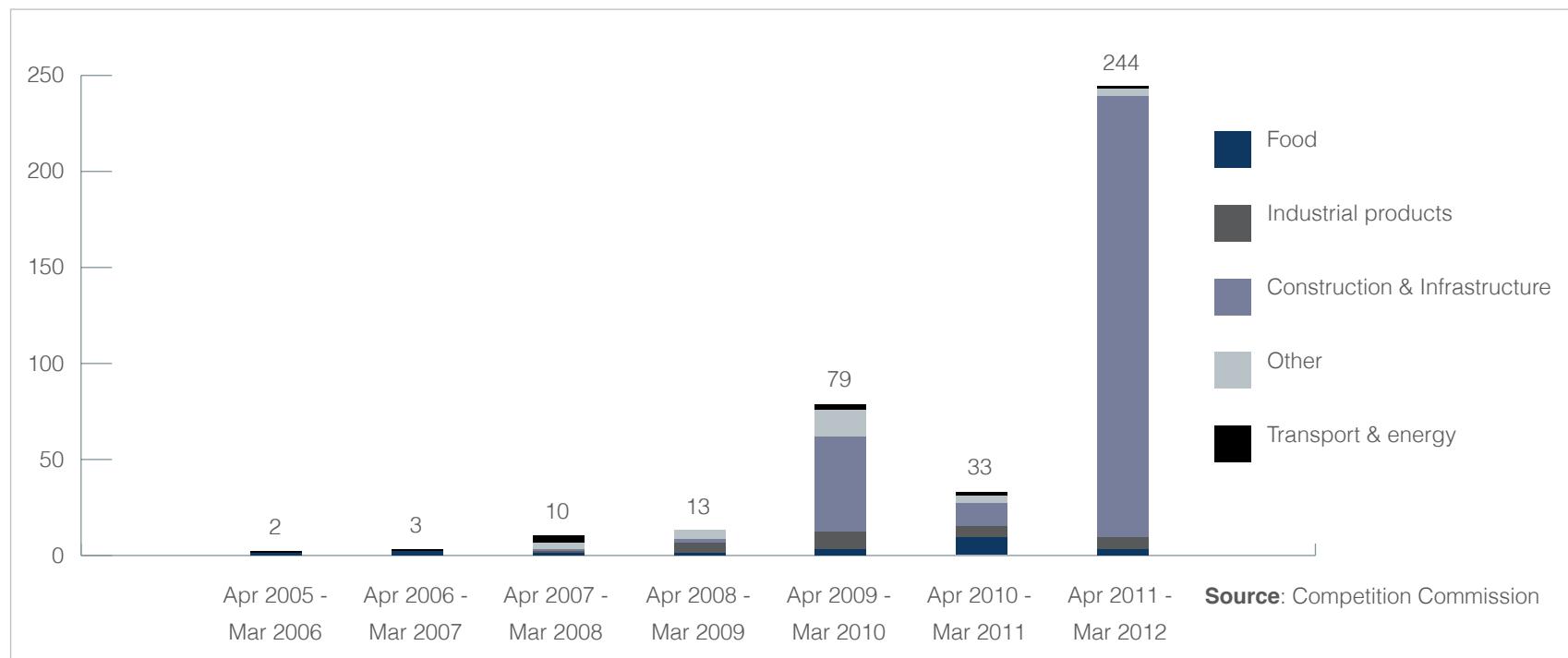
# Cartels

At the close of the financial year, the Cartels Division had been in existence for 11 months. Cartels are prevalent in South Africa and their existence is difficult to detect as anti-competitive meetings take place in secret. The Competition Commission's decision to establish this dedicated division to fight cartels is reaping rewards. Numerous legacy cartel investigations have been finalised and the division has conducted extensive investigations into bid rigging in the construction sector.

In 2004, the Commission introduced the Corporate Leniency Policy (CLP)<sup>16</sup> as a key measure to fight cartels. This programme has achieved a number of notable successes, including processes leading to settlements with two key respondents in the cement cartel and a large number of leniency applications received in the Construction Fast-track settlement project.

The CLP is complemented by proactive investigations. The Commission continues to utilise its powers to summon witnesses to enable effective investigations. During the period under review, the Commission conducted 137 interviews and interrogations. Following investigations, 15 cases were recommended for referral to the Tribunal and 12 cases were non-referred.

Figure 3(a): Total number of CLP applications received per year

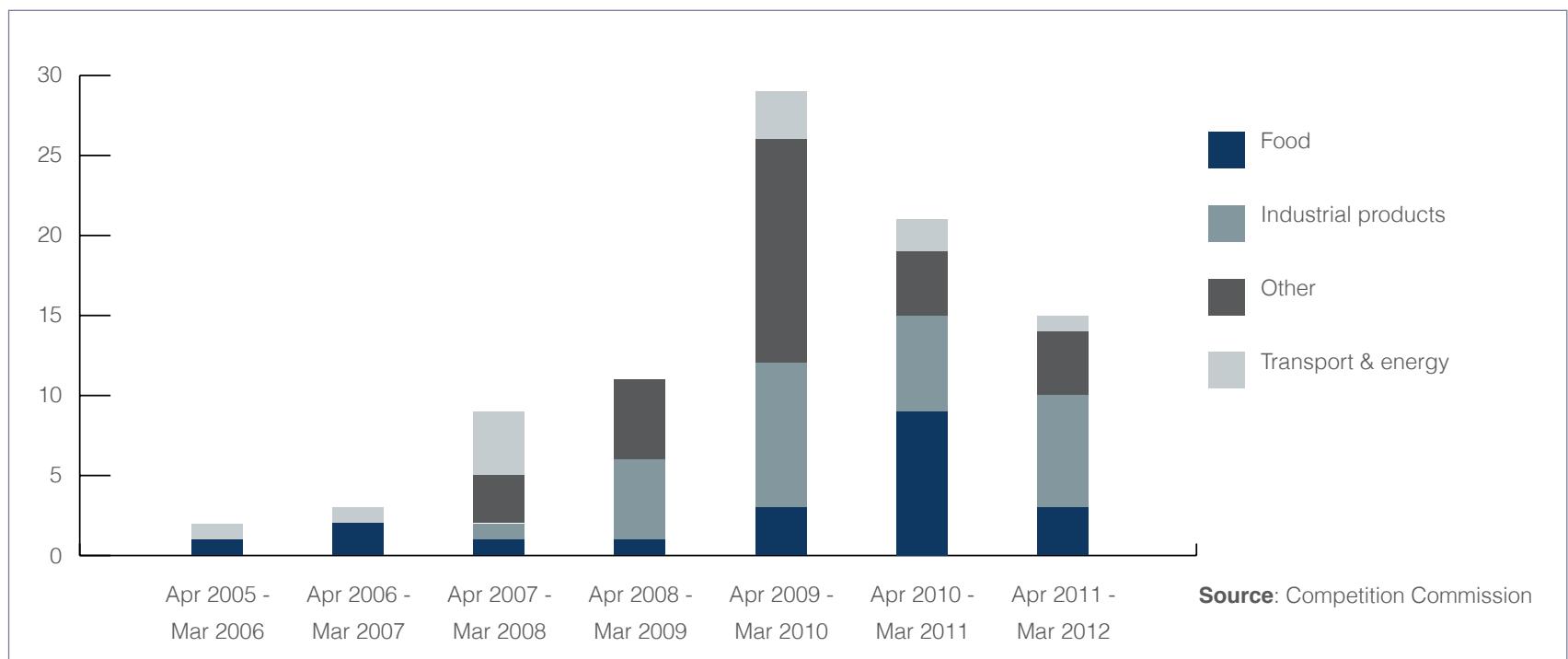


A total of 44 leniency applications were carried over from previous years and 244 were received during the period under review. Of these, 52 received conditional leniency, eight were rejected because they did not meet the requirements as set out in the CLP, and 53 applications were carried over

to the new financial year. A total of 175 applications from the construction project were not granted leniency because they related to prescribed projects and/or were not first "through the door". No corporate leniency applications qualified for total immunity during the year under review.

16 - The CLP serves to incentivise cartel members who are first to blow the whistle on other cartelists, in exchange for immunity from prosecution.

Figure 3(b): Total number of CLP applications received per year (excluding construction and infrastructure)



#### Box 2: Construction Fast-track Settlement Project

The Commission launched the Construction Fast-track Settlement Project (CSP) on 1 February 2011. The objective of the project was to invite firms in the construction industry to disclose projects and tenders that were subject to bid-rigging conduct in return for lower penalties. The closing date for this invitation was 15 April 2011.

Since the launch of the CSP, the Commission has received applications from 21 firms in the construction industry, including the top five construction firms.

After the first-phase assessment of all the applications, the Commission identified 301 different projects and tenders that were subject to bid-rigging. These projects and tenders

included some of the major infrastructure developments in South Africa, including the Soccer World Cup stadiums and the Gauteng Freeway Improvement project (GFIP). During the evaluation process, 24 firms that did not apply for settlement were also implicated in bid-rigging conduct. This conduct is currently being investigated. The estimated value of all the projects and tenders is R29 billion.

After an intensive data collection and analysis process, the Commission evaluated conditional leniency for the firms that had applied for settlement. This evaluation process enabled the Commission to determine the respective projects and tenders that the firms are liable to settle. The Commission is expected to commence with the settlement negotiations with the respective firms in the first half to the middle of the 2012/13 financial year.

### Box 3: The cement cartel: PPC, La Farge and Afrisam admit to collusion



Photo by: Chris Kirchhoff  
MediaClubSouthAfrica.com

There is a saying in competition law circles, famously coined by Professor Richard Whish in his book, *Competition Law* (2001), that: "The first thing for any new competition regulator is to go out and find the cement cartel. Because my experience of this subject is, it is always there, somewhere. The only countries in which I had been unable to find the cement cartel is where there is a national state-owned monopoly for cement." The South African account is no different, as demonstrated by the outcomes of the cement investigation.

For the Commission, the journey to find the cement cartel started in the early days of its existence when a raid was executed at the offices of Pretoria Portland Cement (PPC) in 2000. Due to the presence of members of the media during its execution, this raid was regarded by the court as an infringement of

the respondent's right to privacy and dignity. The raid was set aside by the Supreme Court of Appeal and the Commission was restrained from using any documents obtained from it. However, this setback did not deter the Commission from pursuing its journey to find the cement cartel.

In 2008, the newly appointed Commissioner, Shan Ramburuth, initiated a fresh investigation into the cement industry on the basis of internal economic research. This research suggested that the cement producers could still be colluding, despite the disbandment of the lawful cement cartel that had operated until 1996 and the Commission's raid on PPC's premises in 2000. Subsequently, the Commission raided the premises of PPC, Lafarge Industries South Africa (Pty) Ltd (Lafarge), AfriSam (South Africa) (Pty) Ltd (AfriSam) and Natal Portland Cement Cimpel (Pty) Ltd (NPC-Cimpel). The raids proved to be a success, yielding valuable evidence and a confession from PPC of its involvement in market division. The collusion took place through the exchange of detailed sales information by cement producers through the Cement and Concrete Institute of South Africa (C&CI). After this, the remaining cement producers, with the exception of NPC-Cimpel, confessed to their involvement in collusion.

The confession resulted in PPC securing conditional immunity, while AfriSam and Lafarge paid fines of R124 878 870 and R148 724 400 respectively after concluding consent agreements with the Commission. However, this outcome does not mark the end of the Commission's journey as the investigation against NPC-Cimpel is still in process. International experience shows that in almost all jurisdictions, cement companies have a tendency to reconstitute a cartel a few years after being fined by the competition authorities. Although the Commission believes that the current investigations would deter the cement companies from colluding again, it remains alert.

#### Box 4: In defence of the Corporate Leniency Policy: Agri Wire (Pty) Ltd and Another v The Commissioner of the Competition Commission and Others.



The Competition Commission referred a complaint to the Competition Tribunal for alleged price-fixing, market allocation and collusive tendering against 11 competitors in the manufacture and distribution of wire and wire-related products in South Africa. In response to the referral, the respondents filed an application with the High Court seeking: an order to review and set aside the Commission's granting of conditional immunity to one of the respondents, Consolidated Wire Industries (Pty) Ltd, in terms of the Corporate Leniency Policy (CLP); to declare the evidence obtained from the leniency applicant as unlawful and inadmissible; and, alternatively, to initiate and refer it to the Competition Tribunal as unlawful and therefore to be set aside.

The main purpose of the CLP is to facilitate whistleblowing by a cartel member in return for immunity from prosecution. However, the cartel member must be the first to approach the Commission and fulfil certain

conditions before final immunity is granted at the conclusion of the case at the Tribunal. Some of the conditions include honest disclosure of all evidence relating to the cartel activity, full and expeditious cooperation in the investigation and ensuing prosecution, immediate cessation of the cartel activity, and undertaking not to destroy, falsify or conceal evidence.

The application to the High Court resulted in the stay of proceedings before the Competition Tribunal. The court found that the Tribunal has exclusive jurisdiction (which it shares with the Competition Appeal Court) to entertain the review application, but nevertheless ruled on the merits of the matter.

The court found that the granting of conditional immunity is an undertaking by the Commission that it will not seek relief against the leniency applicant in the complaint referred to the Competition Tribunal, provided that the applicant continues to offer its full cooperation. This does not, however, oblige the Tribunal to accept the recommendation made by the Competition Commission.

Furthermore, the Commission had authority to make a promise not to seek relief against a leniency applicant in terms of the Competition Act in the consent order regime set out in section 49D. These provisions provided the Commission with the discretion not to seek relief or adjudication against particular respondents.

This decision of the High Court has set a precedent for the lawfulness of the CLP, which is a useful tool in the effective detection, investigation and prosecution of cartel activity. The decision is, however, the subject of an appeal to the Supreme Court of Appeal and a hearing is pending.

# Enforcement and Exemptions



Back Row: Sipho Mtombeni, Myra Crave, Ziyanda Buthelezi, Selelo Ramohlola, Phil Alves, Grashum Mutizwa, Liberty Mncube, Marlon Dasarath, Magdaleen van Wyk, Tshegofatso Radinku and Itumeleng Lesofe

Front row: Naasha Loopoo, Edward Chiweza, Mamontshi Keleme, Leanie Mouton, Nyadzani Mabasa, Cassandra Mongake, Shadrack Rambau and Vanessa Kruger

# Enforcement and Exemptions

## Abuse of dominance cases

The Competition Act prohibits the abuse of a dominant position by firms in a market, but does not prohibit firms from being dominant. Abuse of dominance cases require extensive legal and economic analysis. The hurdles for proving abuse of dominance are high. This is evident in the small number of cases where abuse has been found and the extensive evidence that has been required for these findings.

The tests applied under the Competition Act relating to abuse of dominance have two common elements: whether a firm is dominant in a relevant market; and, if so, whether it is abusing that dominant position. The Commission is required to demonstrate evidence of the anti-competitive effects of the firm's conduct, and to balance these effects against any potential pro-competitive and/or efficiency gains.

### Box 5: Complaints lodged against Telkom finally make it to a Competition Tribunal hearing

The 21 complaints lodged by the South African Value-added Network Services Association (SAVA) and other complainants against Telkom in 2002 were heard before the Competition Tribunal from 17 to 27 October 2011, 1 to 9 December 2011 and 15 to 17 February 2012.

After finalising the investigation of these complaints in 2003, the Commission consolidated the complaints and referred them to the Tribunal for adjudication in February 2004. Telkom immediately brought a review application to the Pretoria High Court (the TPD as it then was) to set aside the referral on the grounds that the Commission and the Tribunal did not have jurisdiction to deal with the referred issues, as only the Independent Communications Authority of South Africa (ICASA) had such jurisdiction. Telkom further raised alternative arguments: that the Commission had failed to follow proper procedures, including complying with the provisions of its Memorandum of Understanding (MoU) with ICASA; and that the Commission was biased and did not refer the complaint within the prescribed period in terms of the Act. The Commission opposed the application and raised two points: the decision to refer and the referral itself were not administrative acts subject to review, and the forum to raise Telkom's objections and review was the Tribunal and not the High Court.

The court ruled in favour of Telkom by setting aside the Commission's decision to refer the complaint to the Tribunal for adjudication. The Commission appealed against the entire judgment of the High Court to the Supreme Court of Appeal (SCA). On 2 November 2009, the SCA heard the matter and subsequently delivered its judgment in favour of the Commission on 27 November 2009. In its judgment, the SCA held that the decision to refer and the referral by the Commission did not amount to administrative action, but were of an investigative nature and were accordingly not reviewable in terms of the Promotion of Administrative Justice Act of 2000 (PAJA). The SCA further held that the Commission's reliance on a report produced by the Link Centre Report was not evidence of bias. The SCA dismissed Telkom's claim that the Commission had failed to procure a lawful extension of its investigation period and the claim that the Commission did not comply with the MoU. It took almost two years for the matter to be heard before the Tribunal as Telkom brought a series of convoluted interlocutory applications that delayed the hearing.

SAVA is an industry organisation that represents independent value-added network service (VANS) providers. Broadly speaking, VANS describes the network communication services provided by large IT companies to corporations with multiple geographic locations and significant intra-company communication requirements. Independent VANS providers developed South Africa's virtual private network (VPN) technology, which greatly reduced companies' communication costs.

### Box 5: Complaints lodged against Telkom finally make it to a Competition Tribunal hearing (continued)

SAVA complained that since 1999, Telkom had attempted to prevent independent VANS providers from selling VPN services and hampered their ability to compete effectively against Telkom's own VANS provider. SAVA's specific allegations centred on Telkom's refusal to grant some independent VANS providers access to its network or to expand their existing access (the so-called "freezing" of independents' networks), as well as Telkom's policy of granting its own VANS provider access at preferential prices. Disputes over this conduct were lodged with the South African Telecommunications Regulatory Authority (SATRA) in 1999 which ruled in SAVA's favour but the ruling was later overturned in the High Court.



Telkom's network was an essential input for any VANS provider's business because Telkom was a *de jure* monopoly.

No independent VANS provider was legally allowed to replicate the network infrastructure in which Telkom had invested. The limits of Telkom's exclusivity lie at the root of all of the disputes between Telkom and independent VANS providers. Telkom believed that VPN services fell within its exclusivity rights, such that no other company could legally provide them. Independent VANS providers, SATRA and later ICASA, all disagreed.

The Commission's case established Telkom's dominance, and argued that Telkom's pricing conduct contravened the price discrimination and excessive pricing prohibitions in the Competition Act. The Commission argued that Telkom's freezing of independent VANS providers' networks constituted an illegal refusal to grant access to an essential facility. Telkom's actions also induced customers not to deal with its rivals. Finally, the Commission argued that Telkom's conduct also contravened the Competition Act's prohibition of "general exclusionary conduct" by dominant firms.

In its defence, Telkom denied certain allegations outright, particularly the alleged refusal to grant access or supply services to independent VANS providers. In the alternative, it argued that its conduct or policies were approved by the sector regulators of the day (first SATRA and later ICASA).

Telkom also argued that the impact of this conduct – particularly its attempt to enforce its exclusivity rights – had not resulted in the exclusion of a significant number of independent VANS providers from the VPN market. Finally, Telkom argued that it was at all times within its rights to enforce its exclusivity rights, and indeed was required to do so by law. After about seven years of delays, the merits of this matter have finally been heard in the appropriate legal forum.

# Exemptions

During the year under review, the division finalised exemption<sup>17</sup> applications from the following firms:

- Western Cape Citrus Producers Forum
- South African Petroleum Industry Association (SAPIA)
- SAA/Star Alliance
- SAA/ Qantas Airways Limited
- Health Professions Council of South Africa (HPCSA)
- Spring Lights Gas (Pty) Ltd

The HPCSA and Spring Lights Gas (Pty) Ltd applications were rejected while the SAPIA, Western Cape Citrus Producers Forum and SAA/Qantas Airways Limited applications were granted with conditions. The SAA/Star Alliance application was approved.

## Box 6: SAPIA exemption granted with conditions

In October 2011, the Commission granted the South African Petroleum Industry Association (SAPIA) and its members an exemption with conditions for engaging in restrictive horizontal practices prohibited in terms of section 4 of the Competition Act. The exemption was granted in terms of section 10(3)(b) (iv) of the Competition Act, which allows firms to apply for an exemption if the purpose of the agreement or practice is to contribute to maintaining economic stability in an industry. The exemption was granted following the designation of the petroleum and refinery industry by the Minister of Trade and Industry in June 2009 for purposes of section 10(3)(b)(iv) of the Act.

The exemption commenced on 3 October 2011 and will end on 31 December 2015. The exemption is in relation to a category of information exchange agreements and practices that, according to SAPIA, are required to ensure the continuity and stability of liquid fuel supply to various sectors of the country. The exemption followed SAPIA's exemption application on 7 December 2009 relating to a wide range of cooperation agreements and practices required to ensure the continuity and stability of liquid fuel supply during the FIFA Soccer World Cup. The Commission granted SAPIA an exemption solely for the purposes of the FIFA Soccer World Cup, ending on 31 August 2010.

### *Industry consultations*

During its assessment of the application, the Commission consulted with industry participants, including the Department of Energy, the National Automobile Manufacturers of South Africa (NAAMSA) and the National Energy Regulator of South Africa (NERSA). NAAMSA and NERSA supported the application. African Oxygen Limited (AFROX), the South African Petroleum Retail Trade Association (SAPRA), the South African Association of Freight Forwarders (SAAFF) and the Consumer Council were invited to make representations as to why the exemption should not be granted. No objections were received from them.

The South African Petroleum and Energy Guild (SAPEG), a non-profit organisation constituted to represent emerging companies in the energy sector opposed the application. In general, SAPEG's objection centred around obtaining access by third parties to the national infrastructure used by oil companies at different stages of the liquid fuel supply chain. It contended that access to such infrastructure for historically disadvantaged South African wholesalers should be fair and transparent.

<sup>17</sup> - An exemption is written permission granted by the Competition Commission to a firm/s, allowing it to engage in a prohibited practice, should the application meet the criteria set out in the Act.

## Box 6: SAPIA exemption granted with conditions (continued)

### *Conditions to the exemption application*

The Commission concluded that the above agreements and practices would give rise to a contravention of the provisions of the Competition Act prohibiting collusive conduct. However, the Commission was satisfied that these agreements and practices would contribute to maintaining the economic stability of the petroleum and refinery industry by reducing the risk of fuel supply interruptions. To this end, SAPIA, its members and other industry participants would be allowed to participate in joint arrangements and share information to the extent necessary to coordinate their logistics and supply requirements. In granting the exemption, the Commission imposed certain conditions aimed at minimising anti-competitive outcomes and promoting greater participation in the sector.

These include the following:

- SAPIA and its members may not share competitively sensitive information, except for the purpose described in the exemption application.
- SAPIA and its members may not share information relating to setting margins, the imposition of levies and/or the approval of tariffs unless required to do so by the Department of Energy or NERSA.
- SAPIA must open up its membership to accommodate both existing and potential marketers in the petroleum and refinery industry on fair, reasonable and transparent grounds.

The Commission believes that the opening up of SAPIA membership, which is currently restricted to refineries, will allow existing and potential marketers to benefit from the exempted agreements and practices, which otherwise would not have been the case. The condition will therefore contribute to levelling the playing field and promoting competition in the petroleum and refinery industry.

### *Commission decision appealed to the Competition Tribunal*

Gas2Liquids, a member of SAPEG, appealed the Commission's decision to the Competition Tribunal in November 2011. While the Competition Act allows any person with a substantial financial interest affected by a decision of the Commission to appeal that decision to the Competition Tribunal, this exemption appeal is the first of its kind since the inception of the Competition Act.

In its appeal, Gas2Liquids would like the Competition Tribunal to set aside what it considers to be a "wide-ranging exemption". Gas2Liquids argues that there is a discrepancy between the purpose for which the designation by the Minister of Trade and Industry was granted, and the nature and purpose of the agreements and practices covered by the exemption.

The Competition Tribunal's decision on Gas2Liquids's appeal is still pending.



Photo by: Sasol,  
MediaClubSouthAfrica.com

### Box 7: Spring Lights Gas exemption application rejected

Spring Lights Gas (Pty) Ltd (SLG), a broad-based black economic empowerment (B-BBEE) company, sought an exemption to continue with the non-compete agreements it had entered into with Sasol Gas Ltd upon its inception in 2002. SLG argued that it needed the exemption in order to survive and expand its business in the natural gas trading market and that it was not yet ready to compete with Sasol, which is also its sole supplier.

SLG was created through a partnership between Coal, Energy and Power Resources Limited, which owns 51% of the company, and Sasol Gas Holdings (Pty) Ltd, which owns the remaining 49%. As part of the B-BBEE deal, Sasol Gas sold some of its customers in the Durban South region to SLG. Sasol Gas further made a commitment not to compete with SLG for customers in that region.

The Commission found that these agreements amounted to market allocation, which is in contravention of section 4 of the Competition Act. An investigation into the exemption application revealed that the non-compete agreements were not necessary for SLG to become competitive. Furthermore, the National Energy Regulator of South Africa (NERSA) has the necessary tools to protect SLG from any abusive conduct by Sasol Gas. The Competition Act would act as a secondary defence. The exemption application was therefore denied and SLG and Sasol must compete for customers in KwaZulu-Natal.



# Mergers and Aquisitions



Back row: Grace Mohamed, Dineo Mashego, Rakgole Mokolo, Werner Rysbergen, Thelani Luthuli, Mogau Aphane, Takalani Ramavhoya, Bheki Masilela, Mogalane Matsimela, Brenda Maseko and Lindiwe Khumalo

Front row: Xolela Nokela, Lerato Monareng, Zanele Hadebe, Lebohang Molefe, Kholiswa Mnisi, Seema Nunkoo and Themba Mahlangu

# Mergers and Acquisitions

The Mergers and Acquisitions Division administers Chapter 3 of the Competition Act. A party to an intermediate or large merger is required to notify the Commission of the merger in the prescribed manner and form. An intermediate merger may not be implemented without the prior written approval of the Commission, while a large merger may not be implemented without the prior approval of the Competition Tribunal.

This division investigates and assesses whether a merger is likely to substantially prevent or lessen competition and whether a merger can or cannot be justified on public interest grounds.

It is not compulsory for firms to notify the Commission of a small merger. However, where a small merger is likely to lead to a substantial prevention or lessening of competition, or cannot be justified on public interest grounds,

the Commission will need to be notified. This may either be done voluntarily or through a directive issued by the Commission. No filing fees are required.

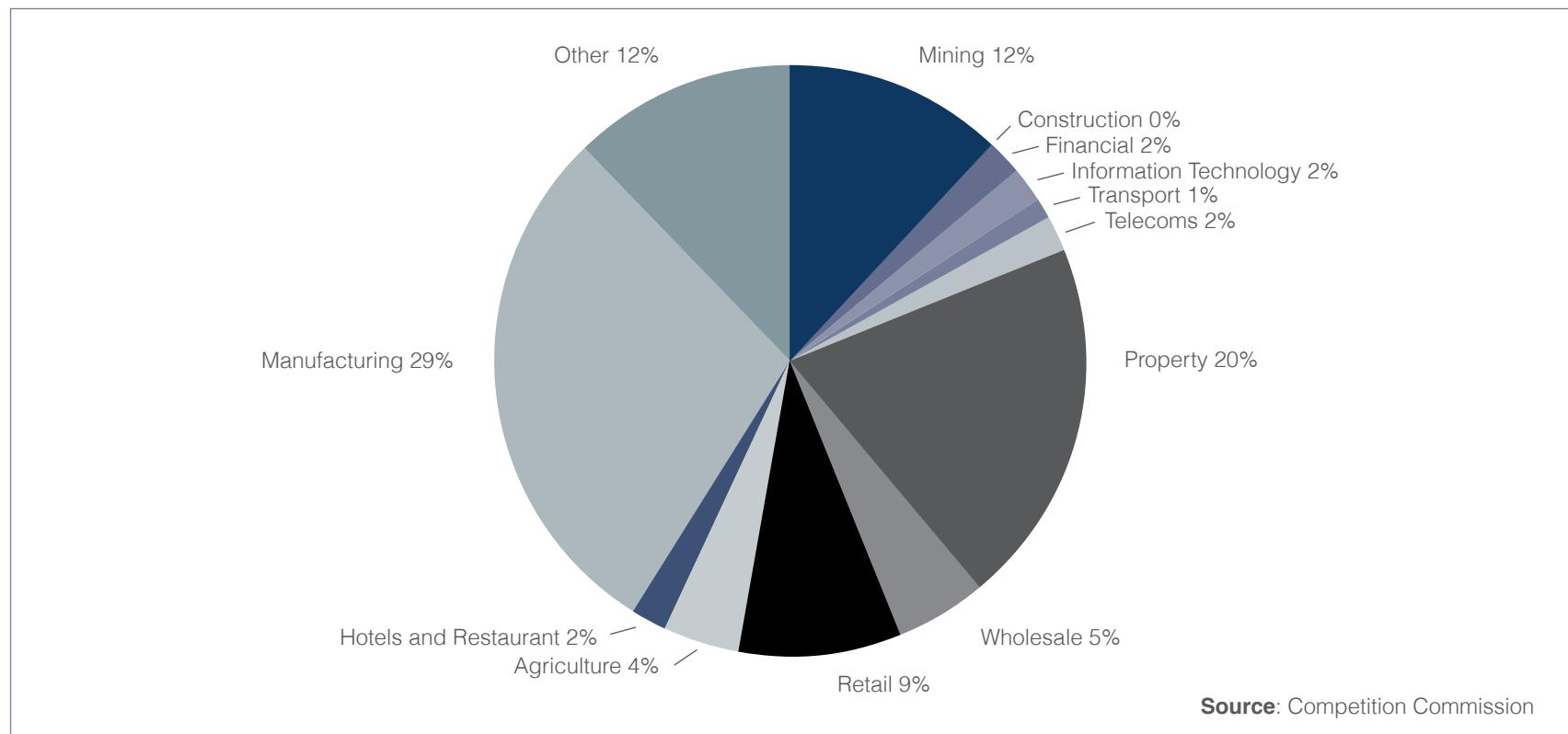
## Trends in merger notification

During the period under review, the Commission was notified of 291 mergers. This is an increase of 21% on the previous year. The majority of the cases filed were intermediate mergers.

Most mergers fell within the manufacturing, property and mining sectors, which together account for 61% of the total investigations completed.

The Commission investigated 14 cases involving prior implementation where parties implemented notifiable mergers prior to obtaining the Commission's approval. These investigations are still on-going.

Figure 4: Mergers notified by sector



## Trends in merger review

Merger investigations may be classified into three phases based on their complexity:

- Phase 1 – merger investigations raise no serious competition or public interest concerns and can be concluded easily
- Phase 2 – investigations require further analysis
- Phase 3 – investigations require in depth and complex analyses

Figure 5: Merger review by phase

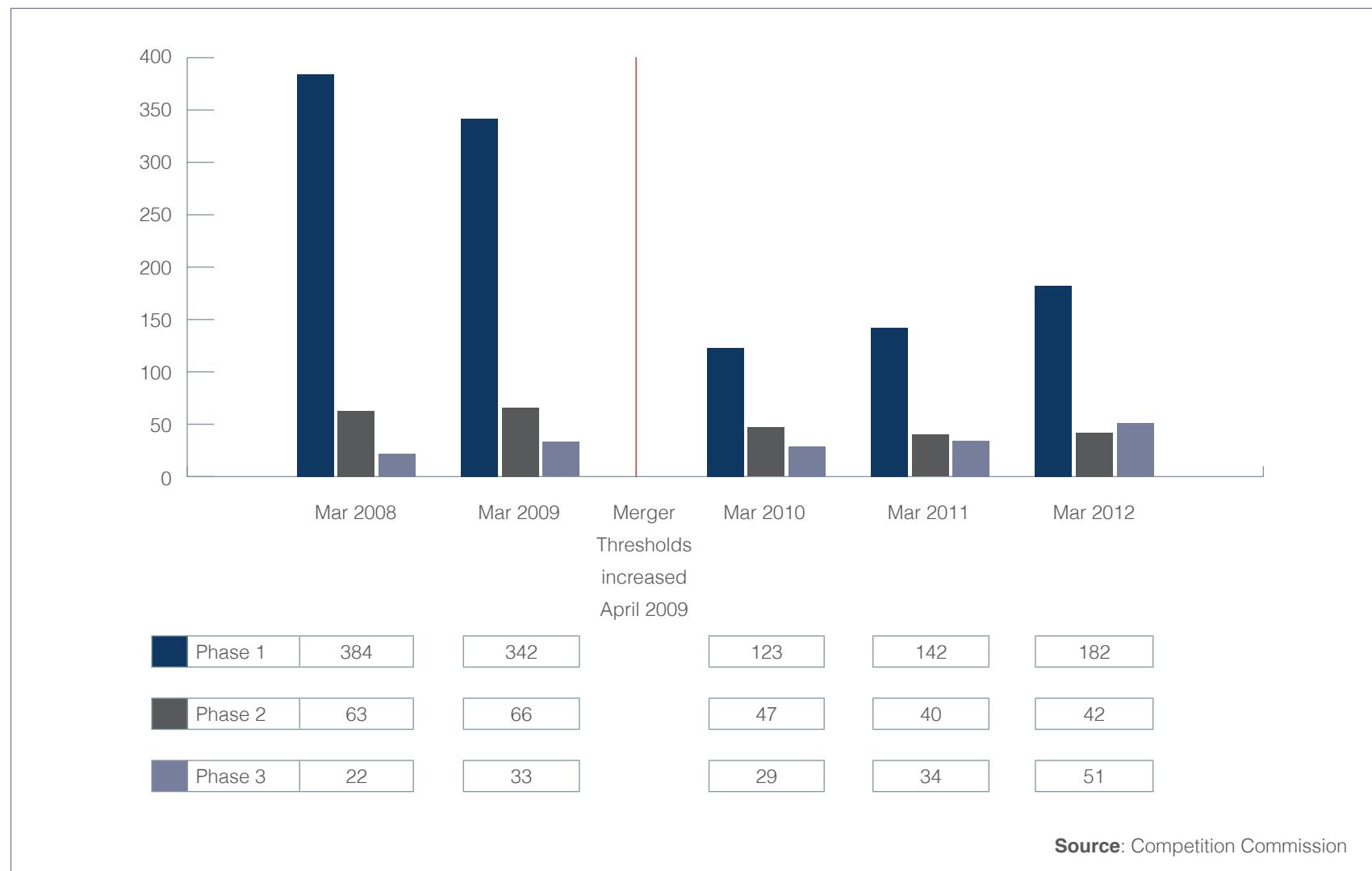


Figure 5 depicts the notable decrease in the number of filing notifications in the past three years after the thresholds for filing a merger were increased in April 2009.

During the year under review, the division assessed a number of complex investigations, including the following mergers:

- Kansai Paint and Freeworld Coatings
- Media24 Limited and Paarl Coldset, and Natal Witness Printing and Publishing Company
- Mystic Blue Trading and the Rhino Group
- Thaba Cheu Mining and SamQuartz
- Senmin and Cellulose Derivatives
- Life Healthcare and Joint Medical Holdings

#### Box 8: Walmart required to divest stores as a condition to acquire Rhino

In November 2011, the Commission recommended that the Competition Tribunal approve the acquisition of Rhino stores by Mystic Blue, subject to divestiture conditions. Mystic Blue is ultimately controlled by Walmart through Masscash Retail. The stores to be divested were two wholesale (grocery and liquor) stores located in Matatiele and two retail (grocery and liquor) stores located in Nongoma.

In this transaction, Mystic Blue was acquiring 16 Rhino stores located mostly in KwaZulu-Natal and the Eastern Cape. It was a horizontal transaction and the activities of the merging parties overlapped in respect of the wholesaling and retailing of grocery and liquor products. The geographic markets affected by the transaction were Ulundi, Lusikisiki, Mtata, Mtubatuba, Matatiele and Nongoma. However, no competition concerns arose in any of these markets other than in Matatiele and Nongoma.

The Commission was concerned that this transaction was likely to give rise to unilateral effects, since it would result in the removal of Rhino as an effective competitor in the wholesaling of grocery and liquor products in Matatiele and the retailing of grocery and liquor products in Nongoma. Rhino (trading as Matat Wholesalers) is the only effective competitor to Walmart/Massmart (trading as Browns Cash and Carry) in both the wholesaling of grocery products and liquor products in Matatiele. Other competitors in that area do not exert significant competitive constraints to the merging parties. Barriers to entry in the wholesaling market are also relatively high due to scale requirements. The removal of Rhino as an effective competitor would enable the merged entity to unilaterally increase prices to the detriment of its low-income customers.

In Nongoma, the Commission found that the retailing market was highly concentrated and the merged entity had a significant share of this market. Cambridge (owned by Walmart/Massmart) and Rhino are the closest competitors. Although there were other retailers in Nongoma, they did not pose any significant competitive constraint to the merging parties due to their location, target market and lack of necessary buyer power, among other factors. Therefore, the merger would result in the removal of Rhino as an effective competitor in the retailing of grocery and liquor products in Nongoma.

To maintain competition in these areas, the Commission recommended to the Tribunal that the transaction be approved on condition that the merging parties divest the Rhino stores located in Nongoma and Matatiele. The Tribunal accepted the Commission's recommendations and approved the transaction subject to conditions.



## Trends in merger review outcomes

The Commission finalised 282 merger investigations during the period under review, in comparison to the 220 investigations that were finalised in the previous financial year. Of the investigations that were finalised, 85 were large, 182 were intermediate and 15 were small mergers. Eight cases were withdrawn after the investigation had either commenced or due to the Commission not having jurisdiction.

*Table 1: Merger review by type 2009/10 to 2011/12*

	2009/10	2010/11	2011/12
<b>Notified</b>	<b>190</b>	<b>229</b>	<b>291</b>
Large	44	60	88
Intermediate	136	150	186
Small	10	19	17
<b>Finalised</b>	<b>208</b>	<b>220</b>	<b>282</b>
Large	54	55	85
Intermediate	140	145	182
Small	14	19	15
<b>Approved without conditions</b>	<b>190</b>	<b>200</b>	<b>234</b>
Large	48	49	72
Intermediate	131	135	155
Small	11	16	7
<b>Approved with conditions</b>	<b>8</b>	<b>14</b>	<b>33</b>
Large	2	6	10
Intermediate	5	5	19
Small	1	3	4
<b>Prohibited</b>	<b>1</b>	<b>2</b>	<b>8</b>
Large	1	0	1
Intermediate	0	2	4
Small	0	0	3
<b>Withdrawn/no jurisdiction</b>	<b>9</b>	<b>4</b>	<b>7</b>
Large	3	0	2
Intermediate	4	4	4
Small	2	0	1

**Source:** Competition Commission

The increase in the complexity of merger investigations has contributed to an overall increase in the number of cases being approved with conditions or prohibited by the Commission.

The Commission will approve, or recommend the approval of, a merger with conditions when it believes that a specific remedy can address the harm identified during its merger review. Where no appropriate remedy is found, the Commission will prohibit an intermediate merger or recommend the prohibition of a large merger to the Competition Tribunal.

Merger conditions are designed to remedy merger-specific anti-competitive harm and public interest concerns. Structural remedies are designed to prevent the creation of an anti-competitive structure and include the divestiture of businesses, prohibition on cross-shareholding or prohibitions on cross-directorships. Behavioural remedies are designed to prevent particular behaviour and require greater resources to monitor. These include supply obligations, non-discriminatory pricing conditions, investment commitments and a cap on retrenchments.

Of the 33 cases conditionally approved, structural remedies were imposed in seven cases. These remedies addressed concerns with cross-shareholding and cross-directorships, and a divestiture was also called for. There were 24 cases with behavioural remedies and two cases with a combination of structural and behavioural remedies. The employment conditions imposed on mergers prevented the loss of 618 jobs.

Conditions are monitored to ensure compliance and market impact. A dedicated email account has been established for reporting of merger-related conditions<sup>18</sup>. The Commission relies on information obtained through reporting obligations imposed on the merging parties, trustees, relevant trade unions, employees and industry participants to assess compliance with the conditions.

### Box 9: Ardutch and Defy merger approved subject to investment conditions

The Commission approved the proposed acquisition by Ardutch BV (Ardutch) of Defy Appliances (Pty) Ltd (Defy) with conditions.

Ardutch, a subsidiary of Arcelik AS (Arcelik), is involved in the durable goods sector which includes the manufacture of large domestic appliances such as refrigerators, washing machines, dishwashers, dryers and gas stoves. It produces these goods at various plants located globally. Similarly, Defy manufactures and distributes domestic appliances in southern Africa. Its local operations are the largest in South Africa, manufacturing through its three facilities located in Durban, Ladysmith and East London. Its local operation thus serves as an essential customer base for some of its local suppliers.



Before the merger, Arcelik and Defy shared a vertical relationship, as Arcelik supplied Defy with various fully assembled products such as washing machines, dryers and refrigerators. Given this vertical dimension, the Commission assessed the likelihood of foreclosure of local suppliers from both a competition and public interest perspective. From a competition perspective, the Commission found that there is no incentive for the merged entity to foreclose upstream suppliers given the importance of local (close-range) sourcing.

However, from a public interest perspective, there was a concern that if Arcelik were to vertically integrate with Defy and supply it with the inputs required in the manufacture of domestic appliances, local suppliers would be foreclosed from the merged entity's value chain. In this regard, Arcelik might import certain inputs (in part or in whole) at the expense of local suppliers or relocate production entirely to one of its other international plants. In this case, more than 2 500 jobs in the value chain in South Africa would be at risk. However, the merging parties gave undertakings that there would be no job losses as a result of this merger and suggested that, given the increased output from the planned investments in expanding capacity at the local plant of Defy, there might even be increases in employment.

To this end, the Commission imposed conditions to safeguard against the immediate foreclosure of local suppliers and to ensure that the investment undertaking by Arcelik is fulfilled. The conditions are as follows:

- For a period of one year after the approval date, the merging parties shall not, outside of commercial reasons, terminate supply arrangements with Defy Appliances' local suppliers.
- In the event that the merging parties intend to terminate the supply arrangements with Defy Appliances' local supplier, the merging parties will notify the local suppliers at least 6 months prior to the termination of the arrangement, giving the reasons thereof.
- Arcelik shall invest in the local production capacity of Defy Appliances after the approval date and improve its technology.

Table 2: Summary of conditions placed on mergers

Acquiring firm/ Target firm	Market	Condition
AON South Africa (Pty) Ltd/ Glenrand Limited	Insurance products	<ul style="list-style-type: none"> <li>• Restriction on the number of job losses</li> </ul>
Kansai Paint Company Limited/ Freeworld Coatings Limited	Automotive coatings	<ul style="list-style-type: none"> <li>• Divestiture of Freeworld's automotive coating business</li> <li>• Moratorium on job losses</li> <li>• Obligation to continue production of coatings for Freeworld</li> <li>• Obligation to invest in research and development of Freeworld's decorative paint business</li> <li>• Obligation to notify the Commission of small mergers</li> <li>• Obligation to notify the Commission of the extension of the master global alliance agreement to South Africa</li> <li>• Obligation to conclude a BEE equity transaction</li> </ul>
Steinhoff Southern Cape (Pty) Ltd/PJ Van Reenen (Pty) Ltd	Timber and forestry	<ul style="list-style-type: none"> <li>• Obligation to invest in the Van Reenen plantations</li> <li>• Moratorium on job losses for three years</li> </ul>
Media 24 Limited and Paarl Coldset (Pty) Ltd/The Natal Witness Printing and Publishing Company (Pty) Ltd	Printing and media	<ul style="list-style-type: none"> <li>• Various measures to safeguard the competitive terrain for independent newspaper publishers</li> </ul>
Robor (Pty) Ltd/ KMG Steel Services Centres (Pty) Ltd	Steel products	<ul style="list-style-type: none"> <li>• Restriction on the number of job losses for a period of two years</li> </ul>
Shoprite Checkers (Pty) Ltd/ Metcash Seven Eleven (Pty) Ltd and a portion of the Friendly Distribution Division of Metcash Trading Africa (Pty) Ltd	Retail of food, grocery and general merchandise	<ul style="list-style-type: none"> <li>• Obligation to find alternative employment for affected employees</li> </ul>
Terzocept Investments and Ivy-Moon 137 (Pty) Ltd/La Garonne Estates (Pty) Ltd, and Graham Beck Enterprises (Pty) Ltd and Kangra Group (Pty) Ltd	Wine production and sale	<ul style="list-style-type: none"> <li>• Restriction on the number of job losses for one year and the obligation to honour commitments reached with trade unions</li> </ul>
Life Healthcare Group (Pty) Ltd/Aurora Hospital (Pty) Ltd	Private health care services	<ul style="list-style-type: none"> <li>• Obligation to continue the provision of pro bono health care to quadriplegic patients</li> </ul>
Astral Operations Ltd/The Abbatoir Business (currently operated by Corpclo 2410 (Pty) Ltd)	Poultry industry	<ul style="list-style-type: none"> <li>• Obligation in respect of procurement of day-old chicks</li> </ul>
Shaniqe Investments No. 137 (Pty) Ltd/Tiso Group (Pty) Ltd and Kagiso Trust Investments (Pty) Ltd	Steel products	<ul style="list-style-type: none"> <li>• Restriction on the appointment of directors</li> </ul>
Mystic Blue Trading 62 (Pty) Ltd/The Rhino Group	Retail and wholesale of food, grocery and liquor products	<ul style="list-style-type: none"> <li>• Divestiture of the Rhino Nongoma and Matatiele stores</li> </ul>
Senwes Limited/Bunge Senwes Africa (Pty) Ltd	Trading of grain and oil seeds	<ul style="list-style-type: none"> <li>• Obligation in respect of the storage and handling of grain and oil seeds</li> </ul>
Le Groupe Lactalis/Parmalat SPA	Dairy processing markets	<ul style="list-style-type: none"> <li>• Moratorium on job losses for a period of one year</li> </ul>
Fruit & Veg Holdings (Pty) Ltd/ Everfresh Wholesale (Pty) Ltd	Retail of fresh fruit and vegetables	<ul style="list-style-type: none"> <li>• Obligation to cancel exclusivity clause in lease agreement</li> </ul>
Opiconsivia Trading 99 (Pty) Ltd c/o Masstores (Pty) Ltd t/a Makro/The Fruitspot Group	Supply of fresh fruit and vegetables	<ul style="list-style-type: none"> <li>• Obligation in respect of the supply of fresh produce</li> </ul>
Synergy Income Fund Limited/ Sipan 1 (Pty) Ltd and Superstrike Investments 53 (Pty) Ltd in respect of the property letting enterprise known as KwaMashu Shopping Centre	Retail property	<ul style="list-style-type: none"> <li>• Obligation to cancel exclusivity clause in lease agreement</li> </ul>

Table 2: Summary of conditions placed on mergers (continued)

Acquiring firm/ Target firm	Market	Condition
Actom (Pty) Ltd/ Savcio Holdings (Pty) Ltd	Supply of electrical products	<ul style="list-style-type: none"> <li>Obligation in respect of the supply of commutators and copper wire</li> </ul>
Wispeco (Pty) Ltd/Xline Aluminium Solutions (Pty) Ltd	Aluminium products	<ul style="list-style-type: none"> <li>Obligation to re-employ affected employees</li> </ul>
Ardutch BV/Defy Appliances (Pty) Ltd	Manufacture and supply of domestic appliances	<ul style="list-style-type: none"> <li>Obligation to honour supply agreements with local suppliers</li> <li>Obligation to invest in Defy's local production capacity</li> </ul>
Bidserv Industrial Products (Pty) Ltd t/a G Fox & Co/ Alsafe (Pty) Ltd	Protective clothing and equipment	<ul style="list-style-type: none"> <li>Restriction on job losses for one year</li> <li>Obligation to re-skill</li> </ul>
Marley Pipe Systems (Pty) Ltd/Petzetakis Africa (Pty) Ltd	Plastic pipes	<ul style="list-style-type: none"> <li>Obligation to re-employ affected employees</li> </ul>
Marsh (Pty) Ltd and Marsh Holdings (Pty) Ltd/The business of Alexander Forbes Risk Services (Pty) Ltd, Alexander Forbes Compensation Technologies Administration(Pty) Ltd and Alexander Forbes I-Connect (Pty) Ltd	Insurance products	<ul style="list-style-type: none"> <li>Restriction on the number of job losses for a period of two years</li> </ul>
Piruto BV and Lexshell 165 Investments (Pty) Ltd/ Optimum Coal Holdings Limited and others	Coal industry	<ul style="list-style-type: none"> <li>Obligation to reduce coal allocation</li> </ul>
Tedalex Trading (Pty) Ltd/ Sammeg Satellite (Pty) Ltd, Samsat (Cape) (Pty) Ltd and Samsat (KZN) (Pty) Ltd	Supply of electrical products	<ul style="list-style-type: none"> <li>Moratorium on job losses for a period of two years</li> </ul>
Synergy Income Fund Limited/ Khuthala Alliance (Pty) Ltd	Retail property	<ul style="list-style-type: none"> <li>Obligation to remove exclusivity clause from lease agreement</li> <li>Restriction on appointment of directors</li> </ul>
Johnson & Johnson/Synthes Inc.	Medical equipment	<ul style="list-style-type: none"> <li>Restriction on the number of job losses for a period of two years</li> </ul>
The Industrial Development Corporation of South Africa Limited/ Eerste Flambeau Huur (Pty) Ltd	Retail of textiles	<ul style="list-style-type: none"> <li>Restriction on the appointment of directors to the board</li> <li>Restriction on the number of job losses</li> </ul>
Government Employees Pension Fund (represented by Public Investment Corporation Limited/Afrisam Consortium (Pty) Ltd)	Construction materials	<ul style="list-style-type: none"> <li>Restriction on board representation</li> <li>Restriction on information exchange</li> </ul>
Synergy Income Fund Limited/ SA Corporate Real Estate Fund	Retail property	<ul style="list-style-type: none"> <li>Obligation to remove exclusivity clause from lease agreement</li> </ul>
Evonik Industries AG and Maizey (Pty) Ltd/Ampaglas Plastics Group (Pty) Ltd and Main Street 902 (Pty) Ltd	Plastic products	<ul style="list-style-type: none"> <li>Divestiture of Maizey's shareholding in merged entity</li> </ul>
Sasol Oil (Pty) Ltd/BP Southern Africa (Pty) Ltd	Distribution of petroleum products	<ul style="list-style-type: none"> <li>Restriction on information exchange</li> </ul>
BP Southern Africa (Pty) Ltd/ Alrode Depot (owned by Sasol Limited)	Distribution of petroleum products	<ul style="list-style-type: none"> <li>Restriction on information exchange</li> </ul>
Zeder Financial Services Limited/Agricol Machinery (Pty) Ltd, in respect of Agricol Holdings Limited	Manufacture of seeds	<ul style="list-style-type: none"> <li>Obligation to reduce restraint of trade period</li> </ul>

**Source:** Competition Commission

## Box 10: Commission prohibits mergers in the horseracing industry

The Commission prohibited a set of proposed transactions in the horse-racing industry involving Kenilworth Racing (Pty) Ltd (Kenilworth).

The first transaction entailed the acquisition by Kenilworth of the Western Cape business of Gold Circle (Pty) Ltd (Gold Circle WC). The second transaction involved the take-over by the Thoroughbred Horseracing Trust of Kenilworth. These transactions were interdependent and could not be carried out individually.

As part of the transactions, Phumelela would manage Kenilworth and Gold Circle WC through a management agreement between Phumelela and Kenilworth (Phumelela and Gold Circle WC administer the sport of horse-racing and associated betting, and televise horse-racing events. Kenilworth is a shelf company created for the purposes of this transaction).

Gold Circle currently holds the totalisator licence (a licence that allows certain betting and gambling activities in South Africa) in the Western Cape and KwaZulu-Natal, and Phumelela holds the licence in the remaining provinces. As a result of the transactions, Phumelela would operate in eight of the nine provinces while Gold Circle would remain in KwaZulu-Natal only. This would substantially increase Phumelela's share of the market for the administration of horse-racing and the associated betting activities in South Africa.

The transactions would allow Phumelela to entrench its already strong position such that it would be able to exert market power in horse-racing administration, horse-racing television rights, as well as the betting markets. This would most likely lead to a lessening of competition as the market structure after the merger would entrench existing barriers to enter the market at all levels of horse-racing in South Africa to the exclusion of other firms, particularly small and emerging horseracing entities. The merging parties also submitted that the merger would save jobs in the operations of Gold Circle WC as the firm was most likely to fail otherwise.

The Commission recommended that the merger be prohibited on the grounds that it would lead to a significant lessening of competition, that Gold Circle WC was not likely to fail and that there were other potential buyers. The merging parties appealed the prohibition of the merger in the Tribunal.

The Commission also approved a separate but unrelated merger transaction in the horse-racing industry involving the acquisition of the Clairwood Racecourse in KwaZulu-Natal by Global Pact 225 (Pty) Ltd, a property developer. As a result of this merger, the Clairwood Racecourse will be redeveloped into an industrial and commercial park linked to the Durban harbour expansion.



# Legal Services



Back Row: Khotso Modise, Thabo Khumalo, Maya Swart, Jabulani Ngobeni, Bukhosibakhe Majenge, Kamogelo Maputla, Mosh Thulare, Romeo Kariga, Bongani Ngcobo, Tsholofelo Letsike and Paulina Mfomme

Front row: Ngoako Moropene, Hugh Dlamini, Hildah Ligammba, Wendy Mkwananzi, Temosho Sekgobela, Mervin Dorasamy and Neo Molefe

# Legal Services

The Legal Services Division manages the Commission's litigation before the Tribunal and the appellate courts. It also assists in investigations carried out by the Cartels, Mergers and Acquisitions, and Enforcement and Exemptions divisions.

During the year under review, Legal Services filed several matters in the Constitutional Court (see 'Case highlights of the year').<sup>19</sup>

## Mergers contested in the Tribunal and higher courts

The year under review has seen an increase in litigation and the contestation of merger cases in the Tribunal and the CAC.

The merger between Pioneer Hi-Bred International Inc and Pannar Seed (Pty) Ltd was contested in the Tribunal and the CAC. This merger involved the maize seed market and has a bearing on food security. The Commission prohibited the merger as it would reduce the number of players in the market from three to two. Following reconsideration proceedings instituted by the merging parties, the Tribunal confirmed this prohibition. The parties further appealed the Tribunal's decision to the CAC.

The Commission was also involved in litigation involving two mergers in the media market; the merger between Paarl Media (Pty) Ltd and Primedia (Pty) Ltd (involving advertising in community newspapers); and the merger between Media24 Limited and Natal Witness Printing and Publishing Company (Pty) Ltd (operating in the printing market). In the first of these mergers, Caxton and CTP Publishers and Printers Ltd, who were intervenors in this merger, successfully reviewed the Commission's decision to approve

the merger between Paarl Media (Pty) Ltd and Primedia (Pty) Ltd with the matter being sent back to the Commission for reconsideration. In the latter merger, the Commission approved the merger with conditions and the merging parties reviewed this decision in the Competition Tribunal.

## Advisory opinions, training and presentations

In the year under review, Legal Services received 42 requests for advisory opinions. Of these, 29 were finalised and 12 were carried over to the next financial year. The requests for advisory opinions emanate mainly from law firms and are becoming increasingly complex. Legal Services also conducted internal training sessions and members of the division presented papers on competition law at the Annual Competition Law Conference.

## Settlement agreements

Legal Services negotiated and entered into 28 settlement/consent agreements in the year under review. These agreements involved the following markets and sectors, inter alia:

- **Bitumen:** Southern African Bitumen Association, Engen Petroleum (Pty) Ltd and Shell SA Marketing (Pty) Ltd
- **Food and agro-processing:** Carolina Rollermeule (Pty) Ltd, Kaap Agri Bedryf Limited, Agri Operations Limited, Tuinroete Agri Limited, NWK Limited, etc.
- **Steel/construction:** Aveng (Africa) Limited t/a Steeledale, AfriSam (South Africa) (Pty) Ltd and Lafarge Industries South Africa (Pty) Ltd
- **Tyre production:** Apollo Tyres South Africa (Pty) Ltd

A total of R548 494 066 was levied in administrative penalties.

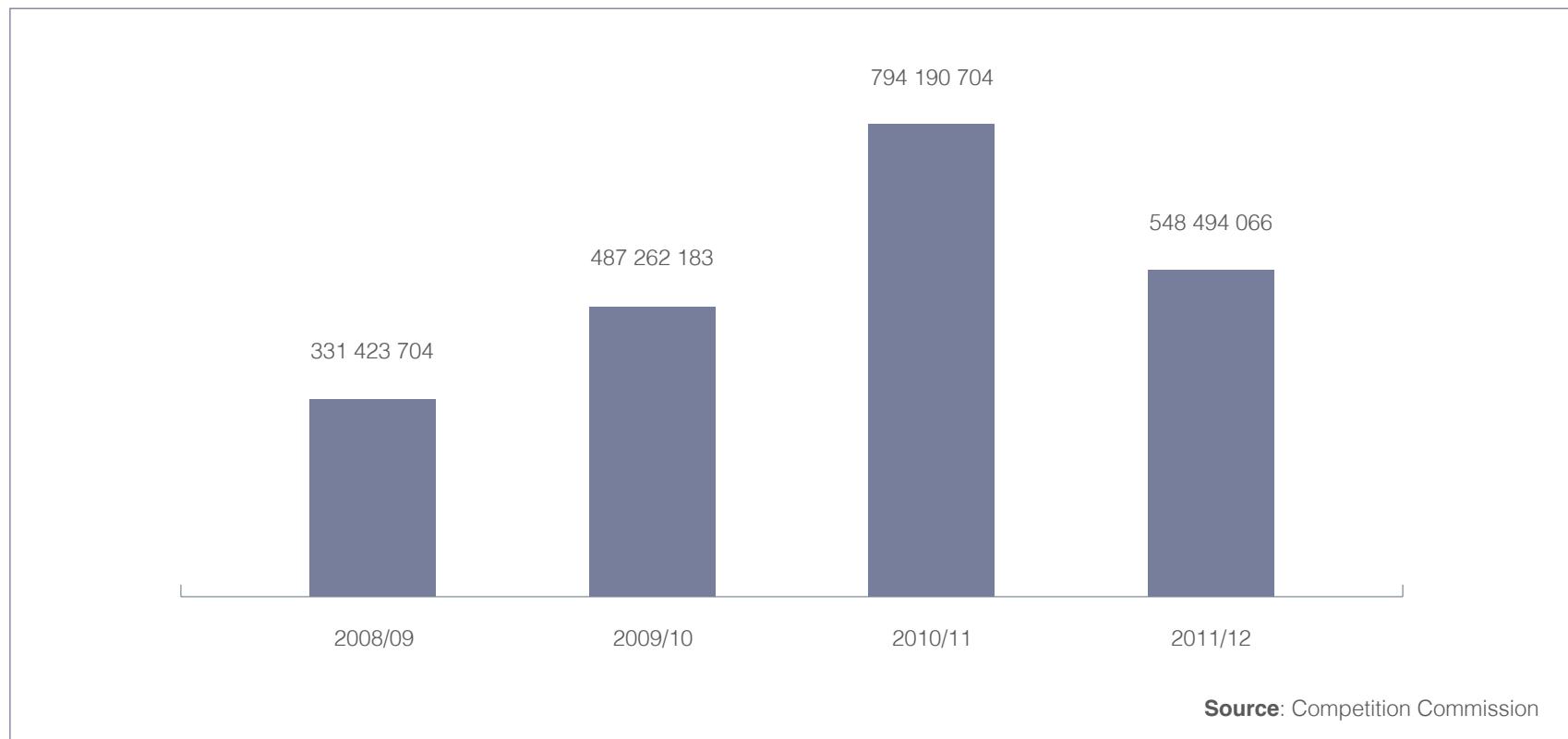
<sup>19</sup> - The Competition Commission v Yara South Africa (Pty) Ltd and Others, The Competition Commission v Loungefoam (Pty) Ltd and Others, and The Competition Commission v Senwes Limited.

Table 3: Administrative penalties levied in 2011/12

<b>Parties fined</b>	<b>Conduct</b>	<b>Penalty</b>	<b>Percentage turnover</b>
Aveng (Africa) Limited t/a Steeledale	Price fixing and market allocation	R128 904 640	5%
Carolina Rollermeule (Pty) Ltd	Price fixing	R4 417 546	5%
Royal Bafokeng Holdings (Pty) Ltd, Mogs (Pty) Ltd, Elbroc Mining Products (Pty) Ltd and Stope Technology (Pty) Ltd	Prior implementation	R1 100 000	-
Kaap Agri Bedryf Limited	Price fixing	R1 199 075	10%
Afgri Operations Limited	Price fixing	R15 600 000	4%
Tuinroete Agri Limited	Price fixing	R48 048	4%
NWK Limited		R520 290	3%
Rand Merchant Bank, a division of First Rand Bank Limited	Price fixing	R2 100 000	3%
Suidwes Agriculture (Pty) Ltd	Price fixing	R4 644 617	10%
MGK Bedryfsmaatskappy (Pty) Ltd	Price fixing	R226 800	4%
Southern African Bitumen Association	Price fixing	R500 000	10%
Overberg A	Price fixing	R241 186	4%
Moorreeburgse Koringboere (Pty) Ltd	Price fixing	R159 364	4%
Sentraal-Suid Cooperative Limited	Price fixing	R75 852	4%
NTK Limpopo Agric Beperk	Price fixing	R189 854	4%
Grain Silo Industry (Pty) Ltd	Price fixing	R94 556	4%
NWK	Price fixing	R3 295 158	4%
GWK Limited	Price fixing	R301 415	4%
Senwes Limited	Price fixing	R7 628 670	4%
Vrystaat Kooperasie Beperk	Price fixing	R1 286 969	4%
OVK Operations Limited	Price fixing	R375 615	4%
Afrisam	Price fixing and market allocation	R124 878 870	3%
Apollo Tyres South Africa (Pty) Ltd	Price fixing	R45 000 000	4.75%
Scheker SA (Pty) Ltd	Price fixing	R959 000	
Kuehne & Nagel (Pty) Ltd	Price fixing	R962 657	5%
Engen Petroleum (Pty) Ltd	Price fixing	R28 800 000	10%
Shell SA Marketing (Pty) Ltd	Price fixing	R26 259 480	10%
Lafarge Industries South Africa (Pty) Ltd	Price fixing and market allocation	R148 724 400	6%
<b>Total</b>		<b>R548 494 066</b>	

**Source:** Competition Commission

Figure 6: Total administrative penalties levied over a four-year period



## Prosecution of cases

Legal Services is responsible for representing the Commission in courts, briefing attorneys and counsel, and directing and managing the Commission's strategy in respect of litigation. Of the 31 enforcement cases recommended for referral, Legal Services referred eight cases to the Tribunal for adjudication. Nine cases came before appellate courts: three before the Constitutional Court, four before the Competition Appeal Court and two before the Supreme Court of Appeal.

Table 4: Cases before appellate courts in 2011/12

Appellant/applicant	What is appealed or reviewed	Appeal court
Vitafoam and Loungefoam, Feltex, and others	Competition Tribunal decision	Constitutional Court
Senwes	Competition Appeal Court reversal of Competition Tribunal decision	Constitutional Court
Senwes	Competition Tribunal decision on margin squeeze	Supreme Court of Appeal
ArcelorMittal South Africa Ltd Cape Gate (Pty) Limited	Remedy	Competition Appeal Court
Computicket	Interlocutory finding	Competition Appeal Court
Southern Pipeline Contractors	Penalty	Competition Appeal Court
Conrite Walls (Pty) Ltd		
Competition Commission, Tracetec (Pty) Ltd	Competition Appeal Court decision	Supreme Court of Appeal

**Source:** Competition Commission

# Policy and Research



Back row: Raksha Darji, Bongisa Lekezwa, Ayanda Sikakane, Annalee van Reenen, Ratshidaho Maphwanya, Ntsako Mngwena, Nonkululeko Moeketsi, Pamela Mondliwa and Katerina Barzeva

Middle Row: Siphamandla Mwanazi, Avias Ngwenya, Sifiso Mhlaba, Nicolas Ngepah, Genna Robb, Pamela Halse, Thando Vilakazi, Linton Reddy, Andrew Sylvester and Jeffrey Mashiane

Front row: Sunél Grimbeek, Junior Khumalo, Reena das Nair, Simon Roberts, Herminah Rasetlola, Gilbert Muzata and Trudi Makhaya

# Policy and Research

In the past financial year, the Policy and Research Division provided economic analysis for cases as part of interdivisional teams, undertook several research projects and contributed to local and international forums and conferences.

## Investigations

Due to an increase in merger activity during the past financial year, the Policy and Research division experienced a substantial increase in its workload when compared to the previous year. The division worked on 50 mergers, which was a substantially higher number than had been anticipated. More complex economic analysis was required as a greater proportion of mergers were approved with conditions, or prohibited all together.

At the same time, the division maintained its focus on key enforcement cases in the Commission's identified priority areas, contributing economic analysis to 16 enforcement investigations. This included work on the alleged cement cartel, intermediate industrial products (including the referral of the case of coordinated conduct against ArcelorMittal South Africa, and Highveld Steel and Vanadium) and on-going analysis of the issues relating to exclusive leases in supermarkets.

## Expert reports and submissions to the Tribunal

The division produced expert reports filed at the Tribunal in two mergers: the merger of MTO and Boskor; and the merger of Media 24 and Paarl Coldset, and Natal Witness. The division also produced a referral report in the Berkina Twintig enforcement case.

Submissions were also made to the Tribunal regarding settlements. This included settlements by Afrisam and Lafarge with regard to collusion in cement, and the settlements of Shell and Engen in the bitumen cartel case.

## Projects

The main research projects conducted by the division during the period under review were case studies of the effects of anti-competitive conduct and a review of the Commission's work in food and agro-processing.

The examination of cartels is part of the Commission's focus on understanding the impact of its interventions. A study was done on the concrete products cartel that was uncovered in 2007. The Commission also examined developments in two cases where cartel conduct has ended although litigation in the Tribunal is on-going. The food review, which focused on staple foods, took stock of the Commission's work in identifying and addressing anti-competitive conduct in this sector, and explored whether there were important areas that should remain a priority. This is part of the on-going prioritisation process by the Commission.

Policy and Research contributed papers to the Organisation for Economic Cooperation and Development (OECD) on excessive pricing, competition in hospital services, and impact evaluation of merger decisions. The division also played an active role in the International Competition Network.

## Publications, conference papers and economic briefs

The division presented a number of papers at international and local conferences on competition policy and economics. Twelve briefing papers were prepared for internal use, while a series of seminars and capacity-building sessions were hosted with external experts. Five articles were also published in local and international journals.



Table 5: Conference papers and publications<sup>20</sup>

<b>Author(s)</b>	<b>Title and conference/publication</b>
Makhaya, G, Mwananzi, W & Roberts, S	<b>How should young institutions approach enforcement? Reflections on South Africa's experience</b> <i>South African Journal of International Affairs</i> , 2012, 19(1), 43–64. Also presented at the Amsterdam Centre for Law and Economics Competition Conference, 20 April 2011.
Roberts, S	<b>Administrability and business certainty in abuse of dominance enforcement: An economist's review of the South African record</b> <i>World Competition</i> , forthcoming, June 2012. Also presented at Fifth Annual Competition Commission, Competition Tribunal, Nelson Mandela Institute Conference on Competition Law, Economics and Policy in South Africa, 4 and 5 October 2011.
Das Nair, R, Khumalo, J & Roberts, S	<b>Corporate conduct and competition policy in intermediate industrial products</b> <i>New Agenda</i> , First Quarter, 2012 16–21.
Ngwenya, A & Robb, G	<b>Theory and practice in the use of merger remedies: Considering South African experience</b> <i>Journal of Economic and Financial Sciences</i> , 4, 203–220.
Corbett, C, Das Nair, R & Roberts, S	<b>Bargaining power and market definition: A reflection on two mergers</b> <i>Journal of Economic and Financial Sciences</i> , 4, 147–166.
Ngepah, N	<b>Exploring the impact of energy resources on production, inequality and poverty in simultaneous equations models for South Africa</b> <i>African Development Review</i> , 23(3), 335–351
Bonakele, T & Mncube, L	<b>Designing appropriate remedies for competition law enforcement: The Pioneer Foods Settlement Agreement</b> <i>Journal of Competition Law and Economics</i> , forthcoming, June 2012. Also presented at Fifth Annual Competition Commission, Competition Tribunal, Nelson Mandela Institute Conference on Competition Law, Economics and Policy in South Africa, 4 October 2011.
Mncube, L & Ngwenya, A	<b>South Africa's Pioneer Settlement: An innovative way to remedy competition law violations in developing countries?</b> Presented at the Amsterdam Centre for Law and Economics Conference, 20 April 2011.
Darji, R, Grimbeek, S & Muzata, G	<b>The impact of anti-trust fines on firm valuation in South Africa.</b> Presented at Cresse Sixth International Conference, 1 July 2011, and Fifth Annual Competition Commission, Competition Tribunal, Nelson Mandela Institute Conference on Competition Law, Economics and Policy in South Africa, 4 and 5 October 2011.
Grimbeek, S	<b>The consistency of merger decisions in a developing country</b> Presented at Economic Society of South Africa Conference, Stellenbosch, 5 September 2011.
Sekgobela, T	<b>Can socioeconomic justice be adequately addressed through the competition law system: A look at the efficacy of structural remedies in abuse of dominance matters in light of the structure of South Africa's economy</b> Presented at Fifth Annual Competition Commission, Competition Tribunal, Nelson Mandela Institute Conference on Competition Law, Economics and Policy in South Africa, 4 and 5 October 2011.
Ravhugoni, T	<b>Interpretation of market shares, countervailing power, barriers to entry and innovation in a differentiated products market</b> Presented at Fifth Annual Competition Commission, Competition Tribunal, Nelson Mandela Institute Conference on Competition Law, Economics and Policy in South Africa, 4 and 5 October 2011.
Sakata, N	<b>Are southern African competition law regimes geared up for effective cooperation in competition law enforcement?</b> Presented at Fifth Annual Competition Commission, Competition Tribunal, Nelson Mandela Institute Conference on Competition Law, Economics and Policy in South Africa, 4 and 5 October 2011.
Alves, P	<b>ATM pricing and retail bank competition in South Africa</b> Presented at Fifth Annual Competition Commission, Competition Tribunal, Nelson Mandela Institute Conference on Competition Law, Economics and Policy in South Africa, 4 and 5 October 2011.
Kariga, R	<b>Between a rock and a hard place? A closer look at the Competition Appeal Court.</b> Presented at Fifth Annual Competition Commission, Competition Tribunal, Nelson Mandela Institute Conference on Competition Law, Economics and Policy in South Africa, 4 and 5 October 2011.

**Source:** Competition Commission

20 - Table 5 includes papers presented by employees of the Competition Commission as a whole and not only of the Policy and Research Division. Papers presented at seminars are excluded.

## Knowledge Management

A new Knowledge Management System has been implemented across the Commission. It will support the execution of cases and other projects as well as improve collaboration, retention and retrieval of information. Usage of the system is high and new elements are developed and added on a regular basis in response to user requests. Active knowledge management support is provided to all users.

Training activities played an important role in the on-going transition towards the desired knowledge management culture. Knowledge management champions and system super-users also play a critical and active role in ensuring knowledge management initiatives and tools to support the needs of each division and facilitate effective change.

## Information Resource Centre

The Information Resource Centre maintains access to international and local legal databases. It also offers various business and marketing resources that are well used; during the past year, 1 047 publications were issued, of which books comprised the majority (899). Thirty new titles were added to the book collection.

The centre also assisted 553 requests for information. Fourteen new staff members were oriented on the Information Resource Centre's resources and 71 people attended presentations on the databases.



# Advocacy and Stakeholder Relations



Back row, from left: Andile Mangisa, Thapi Matsaneng, Yu-Fang Wen, Busisiwe Molefe, Tebello Sello and Mziwodumo Rubushe  
Front Row, from left: Keitumetse Letebele, Itebogeng Palare, Molebogeng Taunyane and Nerice Barnabas

# Advocacy and Stakeholder Relations

The Advocacy and Stakeholder Relations Division promotes voluntary compliance with the Competition Act, forges and maintains relationships with international and domestic stakeholders in the public and private spheres, and communicates the decisions and activities of the Commission.

## Advocacy for a competition culture in society

Competition advocacy refers to those activities conducted by a competition authority that are related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms. This is mainly through relationships with other government entities and increasing public awareness of the benefits of competition.

The Commission resolved the following cases through advocacy:

- Jarman/Sanparks (Case No. 2007Oct3296)
- Competition Commission/Oceana (Case No. 2008Jul3827)
- Core/Apple (Case No. 2009Sept4644)
- Shoprite and Other (Case No. 2010Mar4988)
- Picksie/Unisa (Case No. 2010Oct5406)
- Peter Kruger/Riebeeck High School (Case No. 2010Feb4901).

In all these cases, the competition issue raised was around exclusive agreements.

The Commission also engaged with the University of Stellenbosch, the University of the Western Cape, the University of Cape Town and the Cape Peninsula University of Technology in an effort to promote competition in the market for the procurement of academic attire. This was informed by complaints received by the Commission which suggested the existence of exclusive agreements for the procurement of academic attire at tertiary institutions.

*Table 6: Stakeholder engagements during the year*

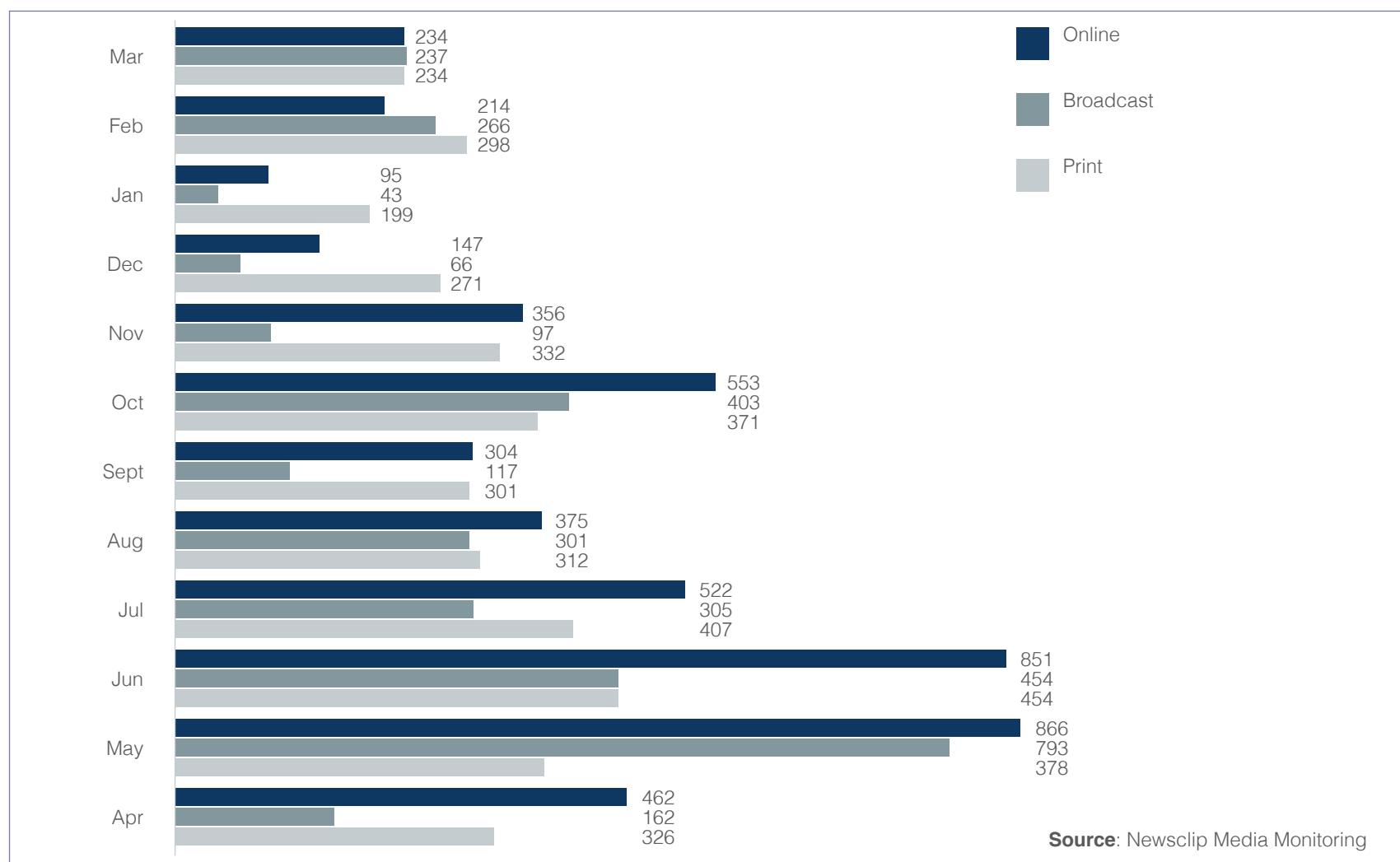
Stakeholders	Nature of engagement
Government	<ul style="list-style-type: none"><li>• Five bid-rigging workshops for the Consumer Tribunal, Office of the Accountant General, National Department of Correctional Services, Gauteng Provincial Department of Correctional Services and Eskom</li><li>• Presentation to South African National Parks</li><li>• Submission on the Legal Practice Bill to the Department of Justice and Constitutional Development</li><li>• Submission on the Marine Living Resources Act to Department of Agriculture, Forestry and Fisheries</li><li>• Submission on the Sugar Act to the Department of Trade and Industry</li><li>• Submission on the Superior Court Bill to the Department of Justice and Constitutional Development</li><li>• Submission to the Department of Environmental Affairs on the Recycling and Economic Development Initiative of South Africa (REDISA) Plan</li></ul>
Business	<ul style="list-style-type: none"><li>• Hosting the 2<sup>nd</sup> Business Consultative Forum with members of Business Unity South Africa (BUSA)</li><li>• Presentation to Liviero Group of Companies</li><li>• Presentation to the South African Insurance Association</li><li>• Presentation to Small Enterprise Development in Construction (SEDiC)</li></ul>
Trade unions	<ul style="list-style-type: none"><li>• Trade Union Working Committee meeting</li></ul>
Small- and medium-sized enterprises	<ul style="list-style-type: none"><li>• Participation in three small and medium enterprise (SME) exhibitions: the SEDiC Conference, the Department of Trade and Industry's Small Enterprise Exhibition and the Soweto Small Business Expo</li></ul>
Regulatory bodies	<ul style="list-style-type: none"><li>• Signed Memoranda of Understanding (MoUs) with the National Gambling Board and the National Consumer Commission</li></ul>
Industry associations	<ul style="list-style-type: none"><li>• Presentations on information exchange to the South African Paint Manufacturers Association, the pelagic fish processors and the fisherman's associations</li></ul>
Academic institutions	<ul style="list-style-type: none"><li>• Presentation on the Massmart/Walmart merger to the University of KwaZulu-Natal</li></ul>

**Source:** Competition Commission

## Advice to small businesses and members of the public

During the year under review, the Commission issued 66 clarifications<sup>21</sup>. Most of the requests for clarifications from small businesses were about exclusive agreements and abuse of dominance. Common competition issues that arose related to: dominant firms refusing to supply products to small businesses if they don't sell the products at the suppliers' preferred prices; agents of foreign firms in South Africa selling products at exorbitant prices; and small businesses being forced to buy products from agents at high prices due to exclusive agreements between the wholesaler and the retailer.

Figure 7: Media coverage by month from April 2011 to March 2012



21 - A clarification is advice provided by the Commission free of charge to SMEs and members of the public.

Members of the public mainly complained about what they perceived to be the excessively high prices of products or services. The most common concern from the public was the cost of cell phone calls.

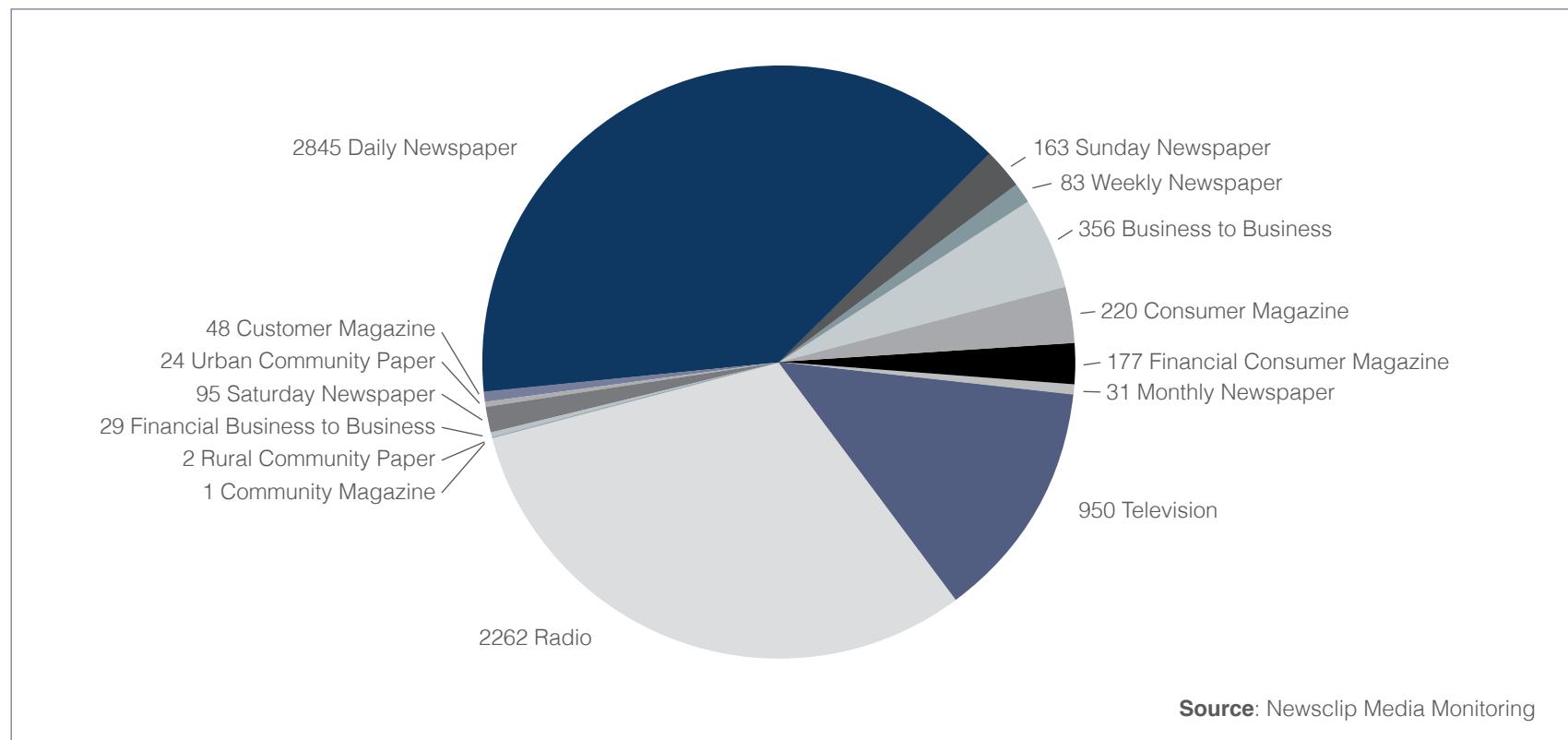
## Communications

### Media Relations

In the period under review, the Commission issued 26 media releases which was a decline from the 33 issued in the previous financial year. Commission news that dominated the media included the Walmart/Massmart merger, the Telkom case and cases before the Constitutional Court or in the media sector.

Online communication generated the most coverage (40%), followed by print (34%) and broadcast media (27%). In terms of reach, the majority of the coverage emanated from national and daily media, with print contributing 51% and broadcast 48% of the total coverage. Radio dominated the broadcast coverage by contributing 60% of the total coverage for this type of media.

Figure 8: Total coverage received by media type



## Publications and website

The Commission uses various publications to communicate with its external stakeholders. *Competition News* is published on a quarterly basis and aims to highlight key cases, explain the Commission's decisions and communicate other competition developments. Other publications produced by the Commission include the *Pocket Act* and various guides targeting different stakeholders.

The number of website visits and visitors to the Commission's website increased during 2011/12.

Table 7: Commission publications and website visits since 2008/09

	2008/09	2009/10	2010/11	2011/12
Number of times the Commission's website was visited	27 400	106 738	65 526	76 422
Number of people visiting the Commission's website	11 930	45 619	34 177	47 148

**Source:** Google Analytics

The web pages that received the highest number of hits were those related to the Competition Act (15 154 visits), Mergers and Acquisition (11 636 visits) and the Contact Us page (11 535 visits). Most visitors were from South Africa (79.99%) followed by the United Kingdom (5.19%) and the USA (3.6%).

## Internal Communication

During the period under review, the division produced and circulated 12 electronic newsletters (*Newsflash*), issued 75 news updates and created opportunities for information sharing through 18 *Kom Praat Saam* forums<sup>22</sup>. The division also organised eight staff meetings, commemorated four national days and held an awards ceremony to recognise staff commitment and hard work.

## International Relations

The Commission's participation in regional and international competition forums, such as the International Competition Network (ICN), Organisation for Economic Cooperation and Development (OECD), Southern African Development Community (SADC) and the United Nations Conference on Trade and Development (UNCTAD), has allowed it to follow international developments in competition law and policy, and to apply globally accepted competition principles. Participation in non-traditional competition forums such as the World Trade Organisation (WTO) and World Intellectual Property Organisation (WIPO), has given the Commission the opportunity to advocate for a competition culture to a broader policy audience. During the year under review the Commission continued to strengthen bilateral relations with strategic partners in order to achieve common competition goals.

## Regional developments in competition law

The Commission's commitment to the enhancement of competition law and policy in the region was realised through its active participation in the SADC Competition Committee, the establishment of the African Competition Forum and building the capacity of new competition agencies in Africa through bilateral relations. The progression of competition agencies in the region<sup>23</sup> will open the doors for deepened cooperation in the detection, investigation and eradication of international cartels.

## Capacity building

During the year under review, the Commission participated in four staff secondments with its counterparts in Mauritius, Namibia, Swaziland and Zambia. It provided practical dawn raid training for the staff of the competition authority of Namibia and provided resource persons for various training workshops hosted by SADC and UNCTAD. During 2011, the Commission benefited from the three-month secondment of a legal advisor from the Netherlands Competition Authority (NMa) who acted as a consultant on the Commission's Construction Fast-track Settlement Project. Commission staff also received valuable practical training from the Federal Trade Commission (FTC) of the USA and South Africa's Department of Justice and Constitutional Development.

22 - A Competition Commission forum

23 - 10 of out 15 SADC member states now have operational competition authorities

*Table 8: International Relations engagements*

<b>Stakeholders</b>	<b>Nature of engagement</b>
The International Competition Network	<ul style="list-style-type: none"> <li>• Participation in the 10th Annual Conference</li> <li>• Participation in the ICN Cartel Workshop 2011</li> <li>• Participation in the ICN Agency Effectiveness Roundtable for Agency Heads</li> <li>• Contributions to the ICN Curriculum Project</li> </ul>
Southern African Development Community	<ul style="list-style-type: none"> <li>• Participation in roundtable on SADC Regional Competition Policy</li> <li>• Presentation by Commissioner Ramburuth on the newly established African Competition Forum and its expected programmes</li> <li>• Participation at the SADC regional training workshop on competition and consumer policies</li> <li>• Design of a training programme on dawn raids for the Namibian Competition Commission</li> <li>• Hosting of a Seychelles senior official who learned about the practical implementation of the Commission's advocacy and communication strategies</li> </ul>
World Intellectual Property Organisation	<ul style="list-style-type: none"> <li>• Organisation of an international seminar on intellectual property and competition policy in collaboration with WIPO on the interface between intellectual property rights and competition policies</li> </ul>
The Organisation for Economic Cooperation and Development	<ul style="list-style-type: none"> <li>• Participation in the competition meetings of the OECD and Global Forum on Competition</li> <li>• Contribution of papers to the OECD on:</li> <li>• remedies in merger cases</li> <li>• the impact evaluation of merger cases</li> <li>• promoting compliance with competition law</li> <li>• excessive pricing</li> <li>• procedural fairness</li> <li>• competition in hospital services, and</li> <li>• competition, regulation and state-owned enterprises</li> </ul>
United Nations Conference on Trade and Development	<ul style="list-style-type: none"> <li>• Participation in the 11<sup>th</sup> session of the Intergovernmental Group of Experts on Competition and Consumer Policy meeting</li> </ul>
Brazil, Russia, India, China and South Africa (BRICS) group of countries	<ul style="list-style-type: none"> <li>• Participation in the 2<sup>nd</sup> BRICS international competition forum</li> <li>• Hosting of a high-level delegation from the State Administration for Industry and Commerce (SAIC) of the People's Republic of China</li> </ul>
Others	<ul style="list-style-type: none"> <li>• Presentation of key cases dealing with the interface between competition law, intellectual property rights and public health at the Trade-related aspects of Intellectual Property rights (TRIPS) Workshop on Public Health</li> <li>• Presentation of papers at the Amsterdam Centre for Law and Economics (ACLE) Conference and the 6<sup>th</sup> Academic Society for Competition Law (ASCOLA) Conference</li> </ul>

**Source:** Competition Commission

# Corporate Services



Back Row: Alet Aucamp, Wilfred Steenkamp, Rhime Letsoalo, Nomsa Zilindile, Charlotte Sithole, Tsholofelo Dlamini, Rohaan Singh, Tshepiso Diremelo, Moranye Phala and Johanna Mncwanga

Middle row: Bellah Kekana, Maggie Mofokeng, Bonolo Suping, Abram Tiro, Leon Rossouw, Binu Idiculla, Tshegofatso Moloto, Nicole Gounder, and Eunice Cele

Front row: Elmarie Wiehahn, Kelebogile Nkosi, Mahendrin Moodley, Pinky Nxumalo and Layla Sadick

# Corporate Services

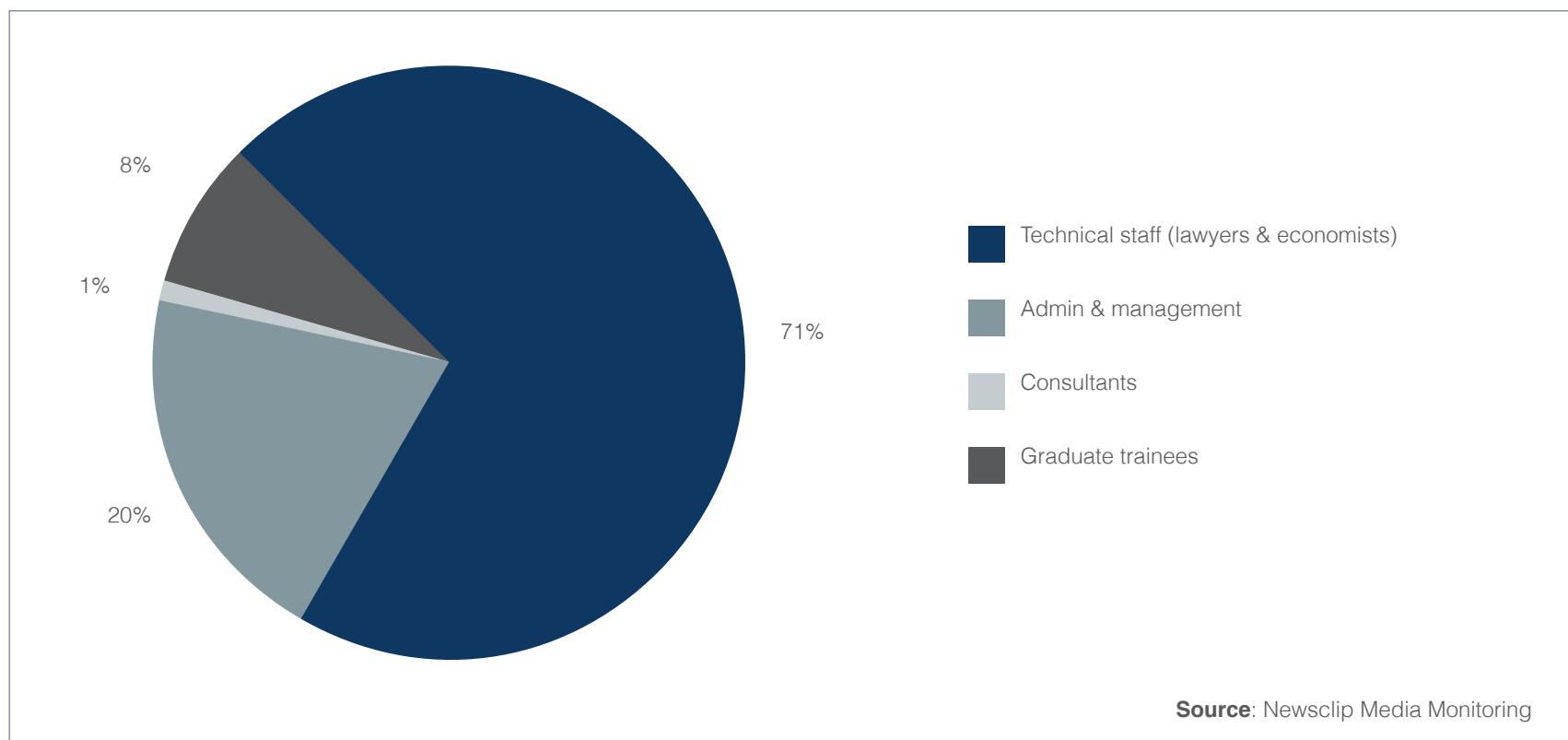
## Human Resources

The Human Resources Department seeks to develop the Commission's organisational capability so as to enable the institution to deliver on its strategic objectives. The Commission's human resources (HR) objectives are aligned to the strategic objective of becoming a high performance organisation.

### Staff complement

The Commission's staff complement increased to 171 by the end of the year, as opposed to 163 staff members at the end of the previous financial year. Of this, 112 staff members are directly involved in competition enforcement. The organisation also employed 14 graduate trainees. Although the Commission's organisational structure was revised to ensure that it fulfils its mandate, with provision made for expanding its staff complement, severe space constraints prevented the Commission from expanding any further.

Figure 9: Staff complement for 2011/12



## Graduate Trainee Programme

The Commission's Graduate Trainee Programme has proven to be a successful intervention through which the organisation can groom and develop the skills of graduates with high potential in the field of competition law and economics. These graduates are trained along a pre-determined curriculum in order to equip them with work exposure and to grant them relevant work experience. After completion of the programme, graduate trainees may be suitable for entry level positions in the Commission and will be appointed where there is a vacancy. However, they are also prepared for the job market in general. During the period under review, two graduate trainees were absorbed into the Commission's structure.

*Table 9: Break-down of graduate trainees by university*

<b>University</b>	<b>No. of graduates</b>
University of Pretoria	3
University of Johannesburg	1
University of South Africa	2
University of North-West	1
University of Fort Hare	1
University of Cape Town	1
University of KwaZulu-Natal	3
University of the Witwatersrand	1
University of the Western Cape	1
<b>Total</b>	<b>14</b>

**Source:** Competition Commission

## Staff turnover

At 11.44%, the Commission's annual turnover rate is below the rate experienced in the public sector (12.6%) but has increased in comparison to the previous year.

*Table 10: Turnover rate of Commission staff*

<b>Year</b>	<b>Percentage staff turnover</b>
2007/08	26%
2008/09	16%
2009/10	15%
2010/11	9.14%
2011/12	11.44%

**Source:** Competition Commission

In order to retain highly skilled staff, the Commission has implemented retention measures that have become formally documented in a retention strategy.

## Employment Equity and Transformation

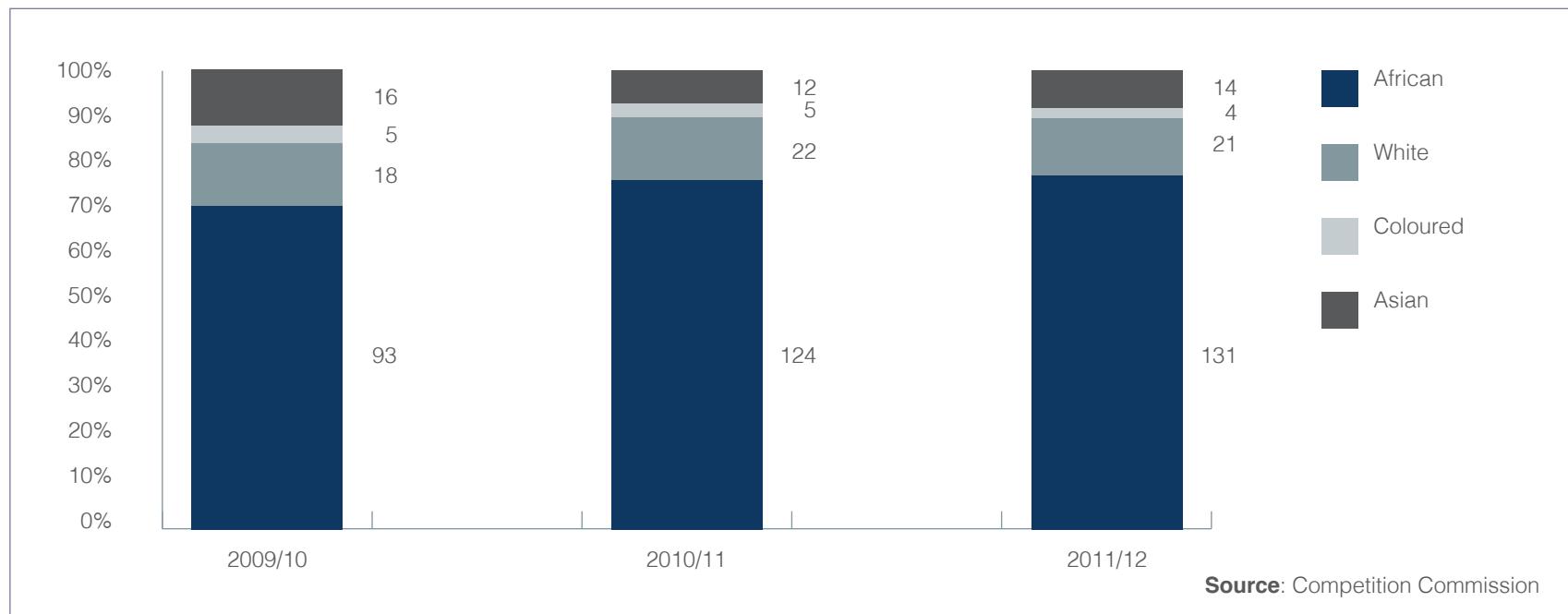
The Commission maintained a female to male ratio of almost 50/50, in line with the government's gender equity targets. The organisation's Employment Equity Report was submitted to the Department of Labour in October 2011 in accordance with the stipulations of the Employment Equity Act.

*Table 11: Equity breakdown of the staff complement*

<b>Year</b>	<b>Number of female staff</b>	<b>Number of male staff</b>
2009/10	59	73
2010/11	84	79
2011/12	86	85

**Source:** Competition Commission

Figure 10: Employment equity (race) over a three-year period



## Learning and Development and other capacity-building initiatives

The Commission's investment in its staff in terms of learning and development remains one of its most attractive employee value propositions. An amount of R2 321 439 was invested in training and study loan opportunities for staff in different areas.

The following study loans were awarded to Commission staff:

- **Junior diplomas/certificates:**
  - National Diploma in Credit Management
  - Certificate in Forensic Investigations
- **Junior degrees:**
  - LLB
  - BCom Public Relations
  - BCom Economics
  - BCom Accounting Science
- **Honours degrees:**
  - Bcom (Hons) Economics
- **Master's degrees:**
  - LLM (Company Law)
  - LLM (Mercantile Law)

- MBL
- MBA
- Masters in Economics

- **Certificate programmes:**

- Certificate Programme in Knowledge Management
- Postgraduate Management Programme
- Certificate in Advanced Competition Law
- Certificate Course in Chartered Company Secretary and Governance
- Postgraduate Certificate in Energy Law

- **Doctorates:**

- PhD Economics

The study loans are converted into bursaries, based on the results obtained by the individuals and in accordance with the Commission's Learning and Development Policy. During the period under review, 21 study loans were converted into bursaries.

An annual target of 3.8 training days per employee was set. This target was exceeded. The total number of training days per employee was 4.11, which represents a total of 84 learning and development opportunities that took place (including internal capacity-building initiatives but excluding formal academic studies).

Training programmes are linked to the strategic objectives of the Commission as far as possible. A training analysis is performed on an annual basis to determine whether training opportunities are distributed equally. The Commission's executives are also offered further development and executive coaching.

## Employee Wellbeing

The Commission offers its staff the services of a free and comprehensive Employee Assistance Programme through the Independent Counselling and Advisory Service (ICAS).

The service offers telephonic assistance through a toll-free helpline and free counselling sessions, if necessary, on a variety of matters ranging from relationship issues to debt counselling.

The Commission hosted its annual Health Day on 20 May 2011 in collaboration with Discovery medical aid and other relevant service providers. Employees had the opportunity to examine their health status through the various services provided. Staff members were also afforded the opportunity to undergo voluntary counselling and testing (VCT) for HIV/Aids. Forty employees underwent VCT during the Health Day. Free flu vaccinations are offered to staff in April every year.

## Employee Relations

The Commission operates in a non-unionised environment. Irrespective of the absence of a union, management and staff have still maintained sound employee relations through governance structures such as the Management Committee, the HR Committee and regular staff meetings.

In any disciplinary matters, the stipulations of the Labour Relations Act are followed strictly to ensure procedural and substantive fairness. One senior employee was dismissed for misconduct during the period under review. The matter was settled at the Council for Conciliation, Mediation and Arbitration (CCMA).

## Remuneration

Annual cost of living and performance-linked increases are awarded to staff in July each year based on budget availability. In July 2011, a 5.5% cost

of living increase plus an average 2.5% performance-linked increase were awarded.

## Security and Facilities Management

The Security and Facilities Management Department focused on improving the Facilities Management System and on the effective use of available space. Limited office space is still a major challenge as the organisation grows in order to deliver effectively on its objectives. Its current office space of 3 592 m<sup>2</sup> is insufficient to meet the growing work of the Commission which requires 9 580 m<sup>2</sup>. The establishment of the Cartels division has also placed immense pressure on the Commission's facilities. This could result in potential health, safety and security risks. The Commission is currently occupying two buildings which slows processes down and interrupts workflow.

The replacement of old and non-repairable furniture was completed in the 2011/12 financial period.

## Information Technology

The Information Technology Department provides a secure, user-friendly and efficient information technology (IT) environment for all the Commission's employees. There were no security breaches of the Commission's IT environment and system downtime was kept to a minimum. However, the Commission runs off the network of the Department of Trade and Industry which is not well suited to its needs in terms of speed and security. To assist the staff of the Commission with continuous access to its resources and the Commission's work/life balance initiative, the IT Department has introduced various information and communication technologies like Outlook Anywhere, remote connectivity and collaboration platforms. Access to the communication IT systems is provided through various mobile and direct technologies.

The revamped Knowledge Management System is widely used in the Commission. The system is complemented with various functionalities and workflows to manage daily cases and other operational issues.

The department replaced 36 laptops during the period under review at an expense of R515 000. It also upgraded the backup servers and purchased a new storage area network (SAN). All software licences were renewed during the period under review to cater for the new staff intake and to ensure that the Commission is legally compliant in its use of the IT systems.

# Corporate Governance

## Structures and decision-making

The powers of the Competition Commission are vested in the Commissioner. He/she acts as the accounting authority, and is responsible for the general administration of the Commission and for performing any functions assigned to him/her in terms of the Public Finance Management Act (PFMA) and the Competition Act. The Commission reports to the Minister of Economic Development as executive authority. The Commissioner, Shan Ramburuth, is the Chief Executive Officer of the Competition Commission.

The Commission's corporate governance structure provides for a Commission Meeting, as well as an Executive Committee Meeting.

### Commission Meeting

The Commission is the highest decision-making structure on cases and the case-related work of the Competition Commission. The Commission consists of the Commissioner and the Deputy Commissioner. The Chief Legal Counsel, Chief Economist and relevant divisional managers sit in on the Commission meetings in an advisory capacity. The Commission held 47 meetings during the period under review.

Its functions are as follows:

- Receive recommendations and take decisions on cases
- Provide guidance and direction in the conduct of investigations
- 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
- Any other matter referred to the Commission Meeting by the Executive Committee

The Commission is assisted by case management meetings, which are chaired by the Deputy Commissioner and held on a regular basis. The case management meetings assess the degree of work conducted in priority cases, reprioritise cases and allocate resources as appropriate. The meeting provides a mandate on the strategic direction of cases and serves as an official briefing to the Commission on work undertaken by divisions responsible for cases. The meetings are attended by divisional managers from Enforcement and Exemptions, Mergers and Acquisitions, Legal Services, Policy and Research, Cartels, as well as Advocacy and Stakeholder Relations.



## Executive Committee Meeting

The Commission's Executive Committee is chaired by the Commissioner. The committee is an administrative body of the Commission and advises the Commissioner and the Deputy Commissioner on any administrative aspect of their functions.

Its functions are as follows:

- Undertake strategic and business planning
- Monitor the implementation of business and strategic plans
- Mobilise and allocate resources, including budgeting and financial management
- Manage human resources
- Ensure that all support services, such as Information Technology, and Security and Facilities Management, are properly managed
- Deal with general administrative issues
- Approve policies
- Oversee the management of the risks of the institution, and
- Internal audit

The Commission Secretary advises the committee on compliance with relevant legislation and regulations. The committee held 17 meetings in the period under review.

Targets, as set out in the Strategic Plan and Annual Performance Plan, are approved by the Minister of Economic Development. Performance against targets is discussed on a quarterly basis at the Executive Committee and Management Committee meetings in order to monitor expenditure, activities and progress. Quarterly reports by the Commission are submitted to the Department of Economic Development in terms of the PFMA.

The Executive Committee has several committees that assist it in performing its oversight function and provide it with guidance on matters of importance. Two new committees were established in the current financial year: the IT Committee and the HR Committee. The terms of reference have been approved by the Executive Committee and members have been appointed to the committees. The members of the committees are representatives of the divisions of the Commission.

These committees are as follows:

- Management Committee (Mancom)

- Audit Committee
- Risk Committee
- Human Resources Committee
- Information Technology Committee

## Management Committee

The Management Committee (Mancom) comprises of middle management and assists in an advisory and consultative role.

Its functions are as follows:

- Monitor and check if the Commission is achieving its objectives as set out in its Strategic Plan
- Facilitate the flow of information throughout the institution
- Set common benchmarks and standards to ensure a high level of quality across divisions
- Provide input and recommendations to the Commission's strategic documents, policies and activities

## Audit Committee

The Audit Committee supports the Commission's Executive Committee in fulfilling its oversight responsibilities relating to internal control, risk management, financial management and compliance with laws and regulations. An independent non-executive member chairs the committee and both the internal and external auditors have unrestricted access to the committee.

The Audit Committee held five meetings in the period under review. It reviewed quarterly internal audit reports, internal and external audit plans, the Risk Assessment Plan and the financial statements for the period ending 31 March 2012. The Audit Committee is chaired by Victor Nondabula.

## Risk Committee

The primary objective of the Risk Committee is to assist the Executive Committee in its oversight of risk management by reviewing the effectiveness of the Commission's risk management systems, practices and procedures. It also provides recommendations for improvement.

The committee held six meetings in the period under review. The Risk Committee is chaired by Karen Teixeira, as Independent Chair.

Table 12: Meetings held during the year under review

Name	Designation	Number of meetings
Karen Teixeria	Chairperson	5
Maemili Ramataboe	Member	5
Sathie Gounden	Member	5
Nala Mhlongo	Member	5
Victor Nondabula	Member	6
Rentia Solomon	Management representative	6

**Source:** Competition Commission

## Internal Audit

The Commission's Internal Audit function is outsourced. During the period under review, this function was carried out by PricewaterhouseCoopers.

## Internal financial control

The Commission has policies, procedures and systems in place that have been designed to provide reasonable assurance of the integrity and reliability of its financial statements, and to adequately protect, verify and maintain accountability for its assets. These internal financial controls are implemented by qualified and trained personnel within a system characterised by checks and balances. The effectiveness of internal financial controls is monitored by the Commission's management, as well as by the internal auditors. All significant findings are reported to the Audit Committee and Commissioner. The Commissioner and the external and internal auditors are not aware of any material breakdown in the functioning of these internal controls and systems for the period under review.

## Risk Management

With the assistance of the internal auditors, management is responsible for identifying, evaluating, managing and monitoring all significant risks faced by the Commission. Some of the significant risks to which the Commission was exposed in the period under review include operational, technological and regulatory risks.

The Commission has a comprehensive Risk Register for each division. The following are strategic risks:

- **Disaster recovery:** The loss of data, unauthorised access and use of information and corruption of the network. An IT Security Audit is scheduled to take place in the 2012/13 financial year. This will assist

the Commission in dealing with the risk. Back-ups are currently done on a daily basis.

- **Adverse decisions from courts on powers and procedures:** Court decisions on appeal, which were handed down during the period under review, have impacted negatively on the Commission's ability to initiate and investigate complaints submitted to it by third parties. The Commission's response to this has been to tighten internal procedures.
- **Reputational harm:** The reputation of the organisation might be damaged if the Commission executes its legislative mandate, powers and duties inappropriately. This is being managed by taking due consideration of public interest concerns, stakeholder perceptions and policy expectations.
- **Independence undermined:** The Commission may be subject to external influences in executing its legislative duties. The Commission manages such situations by ensuring transparency in decision-making and justifying its decisions on merit within the parameters of the Competition Act. It also engages in continuous advocacy on the role of the Commission.
- **Unmanageable caseload:** The current caseload has placed the Commission's structure and resources under severe pressure. This has a negative impact on the quality of service delivered and demoralises staff. The Commission manages this situation by focusing its resources on priority cases and sectors, as well as the effective screening of cases. The issue of space constraints has been escalated to the Minister of Economic Development in order to address the organisation's inability to hire much-needed staff within the current premises.

## Compliance with legislation

### Public Finance Management Act, 1999, and Treasury Regulations

In accordance with the PFMA and Treasury Regulations, the Commission submitted the following documents to the Department of Economic Development for approval during the period under review:

- Request to retain surpluses generated as at 31 March 2012
- Quarterly reports on the Commission's expenditure, budget variance, activities and performance against set targets
- Monthly expenditure reports
- Annual Performance Plan for the period 2012–2013
- Strategic Plan and Budget for the five-year period 2012–2016.

## **Skills Development Act, 1998**

The Commission submitted the Annual Training Report and the Annual Workplace Skills Plan in June 2011.

## **Skills Development Levies Act, 1999**

A skills development levy equal to 1% of the total payroll is paid to the South African Revenue Service monthly. This is distributed to the relevant Sector Education and Training Authorities (SETAs) which promote training in various disciplines. Employers are able to claim back part of the skills levies paid as a Skills Grant. The Skills Grant received for 2011/12 was R400 113.

## **Employment Equity Act, 1998**

The Commission submitted its Employment Equity Report in October 2011.  
Compensation for Occupational Injuries and Diseases Act, 1993

A return of earnings was submitted in March 2012. This provides an estimated cost of possible claims that can be lodged against the Compensation Fund in terms of this Act.

## **Unemployment Insurance Act, 2001**

For the period under review, all contributions to the Unemployment Insurance Fund were paid over on a monthly basis. These contributions consist of an employee contribution of 1% and an employer contribution of 1%, capped at a maximum of R124.78.

## **Occupational Health and Safety Act, 1993**

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

## **Income Tax Act, 1962**

The South African Revenue Service exempted the Commission in terms of section 10(1)(A)(i) of the Income Tax Act, 1962.

## **Levies and taxes**

The Commission has registered for and met its obligations in relation to the following levies and taxes:

- Skills Development Levy
- Workmen's Compensation
- Unemployment Insurance Fund
- Pay-as-you-earn (PAYE)

# Annual Financial Statements

for the year ended 31 March 2012

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# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING AUTHORITY'S RESPONSIBILITIES AND APPROVAL

The Accounting Authority is required by the Public Finance Management Act (Act 1 of 1999), to maintain adequate accounting records and are 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 entity 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 responsible for reporting on the fair presentation of the annual financial statements.

The annual financial statements have been prepared in accordance with South African Statements 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 going concern basis has been adopted in preparing the financial statements. The Accounting Authority has no reason to believe that the Commission will not be a going concern in the foreseeable future based on forecasts and available cash resources. These financial statements support the viability of the Commission.

The external auditors are responsible for independently reviewing and reporting on the entity's annual financial statements. The annual financial statements have been examined by the entity's external auditors and their report is presented on page 70.

The annual financial statements set out on page 72, which have been prepared on the going concern basis, were approved by the accounting authority :



**Mr. M Ramburuth**

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## Report of the Audit Committee for the year ended 31 March 2012

We are pleased to present our report for the financial year ended 31 March 2012.

### Audit committee members and attendance

The Audit Committee of the Competition Commission (the "Committee") consists of the members listed hereunder and is required to meet 4 times per annum as per its approved terms of reference. During the year under review 5 meetings were held.

The Committee's meetings have regularly included the internal auditors and representatives from the Auditor-General South Africa.

Name of member		Number of meetings attended	Number of meetings held
V. Nondabula (appointed AC Chairperson in January 2011) - MBA, MA Political Science, BA Hons.	Non Executive	5	5
K. Teixeira (appointed Risk Chairperson in January 2011) - CA(SA).	Non Executive	5	5
M. Ramataboe (appointed member in October 2010) - CA(Lesotho), Masters in Business Administration (UOFS).	Non Executive	5	5
N. Mhlongo (appointed member in October 2010) - CA(SA).	Non Executive	5	5
S Gounden (appointed member in October 2010) - CA(SA).	Non Executive	5	5

### Audit committee responsibility

The audit committee reports that it has complied with its responsibilities arising from section 55 (1)(b) of the Public Finance Management Act (PFMA) and Treasury Regulations 27.1.7 and 27.1.10(b) and (c).

The audit committee also reports that it has adopted appropriate formal terms of reference as its audit committee charter, has regulated its affairs in compliance with this charter and has discharged all its responsibilities as contained therein.

Accordingly, the committee operates in accordance with the terms of the said charter and is satisfied that it has discharged its responsibilities in compliance with it.

### The effectiveness of internal control

The quality of in year management and monthly/quarterly reports submitted in terms Financial and Performance information of the PFMA.

The audit committee reviewed the financial and performance information reports as issued by the Commission during the year under review and is satisfied with both the content and quality of the reports.

# ANNUAL FINANCIAL STATEMENTS

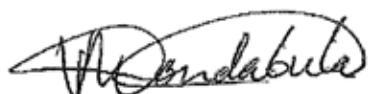
for the year ended 31 March 2012

## Evaluation of annual financial statements

The audit committee has:

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

The audit committee concur with and accept the Auditor-General of South Africa's report on 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.



**V Nondabula (Chairperson of the Audit Committee)**

Date: 14 August 2012

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## Accounting Authority's Report

The Accounting Authority hereby reports on its financial activities to the Executive Authority, Parliament and Public of the Republic of South Africa.

### 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 Competition 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 recognise the role of foreign competition in the Republic;
- To ensure that small and medium sized enterprises have an equitable opportunity to participate in the economy; and
- To promote the greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

### 2. Financial overview

	2012 ‘000	2011 ‘000
Revenue	178 149	161 447
Interest received	2 932	1 423
<b>Total Revenue</b>	<b>181 081</b>	<b>162 870</b>
<b>Expenditure</b>	<b>178 891</b>	<b>141 104</b>
 <b>Net surplus/(deficit)</b>	 <b>2 190</b>	 <b>21 766</b>
 <b>Total assets</b>	 <b>84 228</b>	 <b>50 990</b>
 <b>Total liabilities</b>	 <b>54 820</b>	 <b>23 772</b>
 <b>No. of Merger cases filed</b>	 <b>268</b>	 <b>210</b>

### 2.2. Total Revenue

Revenue increased from R163 million in 2011 to R181 million in 2012. Income from the grant increased by 7% from R118 million in 2011 to R127 million in 2012. Income from filing fees increased by 33,7% from R38 million in 2011 to R50,8 million in 2012, this was due to a significant increase in merger cases filed. Due to increase economic activity 29 more large mergers were filed in the current year than anticipated which resulted in an increase in merger filing fees of R10 million over the approved budget.

Interest earned on temporarily available funds doubled in the current year as a result of receiving the second half of the grant allocation in December which increased the funds held in the bank. Other income received due to repayment of study loans, a refund from SASSETA and Insurance recovery amounting to R737 thousand.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## 2.3. Expenditure

Expenditure increased from R141 million in 2011 to R179 million in 2012 reflecting an overall increase of 27%. This amounted to the Commission spending 100% of its budgeted expenditure.

The increase in expenditure was a result of the number of cases undertaken by the Commission. There were 144 cases investigated by the Commission as well as 268 merger cases filed with the Commission in the current financial year.

## 2.4. Financial Performance

The Commission generated a surplus of R2,2 million (2011: R21,8 m ) for the current year.

The approved grant funding from government for the year 2012/13 amounting to R157, 2m, income from filing fees plus any accumulated surplus that the Commission is allowed to retain will ensure that the Commission is able to continue as a going concern.

The Commission carries forward an accumulated surplus of R30 million (cash surplus of R23,9 million after deducting current liabilities & commitments) for the current financial year, of which R27, 8 million was approved in the prior year and 2009/10 financial year to be retained.

## 3. Executive committee

The members of the Executive Committee during the year and to the date of this report are as follows:

Name	Title	Changes
Mr. M Ramburuth	Commissioner	
Mr. T. Bonakele	Deputy Commissioner	
Mr. O. Josie	Divisional Manager: Cartel unit	Appointed 01 May 2011
Mr. S Roberts	Divisional Manager: Policy & Research and Chief Economist	
Mr. M. Moodley	Divisional Manager: Corporate Services & CFO	Appointed 01 June 2011
Ms. W. Mkwananzi	Divisional Manager: Legal Services and Chief Legal Counsel	
Mr. Maarten van Hoven	Divisional Manager: Mergers and Acquisitions	Resigned 18 November 2011
Mr. K. Weeks	Divisional Manager: Enforcements and Exemptions Commission Secretary	
Ms. R. Solomon	Commission Secretary	Deceased 04 June 2012
Mr. O. Bodibe	Divisional Manager: Advocacy and Stakeholder Relations	Resigned 30 September 2011

## 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. Changes regarding the estimated useful life of the asset have been taken into account in the calculation of the depreciation values of the asset. Computer equipment not in use and with a zero net value has been identified and will be donated after year-end. Other assets broken and in disrepair has been identified and will be disposed after year-end.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## 5. Materiality framework

The Commission determined a materiality figure of R475 400 for the year under review. The Commission's business is such that it is not capital intensive and revenue was regarded as the best indicator of business activity and therefore 1% of budgeted fee income 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.

Disposal of significant assets when overall operational functions of the Commission changes, are disclosed.

## 6. Events subsequent to financial position date

The Divisional Manager of Enforcements and Exemptions resigned in March 2012 and the appointment of Divisional Manager for Advocacy and Stakeholder Relations effective 1 April 2012.

## 7. Penalties levied and collected

Penalties levied against respondents in 2012 R548,494 million (2011 R794,191 million).

The Commission collected R538,285 million (2011 R489,337 million) in penalties which were transferred to the EDD.

## 8. Secretary

The details of the Commission's secretary are as follows:

The secretary of the entity was Ms. R. Solomon, who passed away on 4 June 2012

### *Business address*

The dti campus  
Building C: Mulayo  
77 Meintjies Street Sunnyside TSHWANE

### *Postal address*

Private Bag X23  
Lynnwood Ridge  
0040  
TSHWANE

## 9. Address

### *Business address*

*Postal address*  
The dti campus  
Building C: Mulayo  
77 Meintjies Street Sunnyside TSHWANE

Private Bag X23  
Lynnwood Ridge  
0040  
TSHWANE



Mr. M. Ramburuth  
Accounting Authority  
30 July 2012

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

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

### REPORT ON THE FINANCIAL STATEMENTS

#### Introduction

- I have audited the financial statements of the Competition Commission as set out on pages 72 to 107, which comprise the statement of financial position as at 31 March 2012, the statement of financial performance, statement of changes in net assets and the cash flow statement for the year then ended and the notes, comprising a summary of significant accounting policies and other explanatory information.

#### Accounting Authority's responsibility for the financial statements

- The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act of 1999) (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.

#### Auditor-General's responsibility

- My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA), the *General Notice* issued in terms thereof and International Standards on Auditing. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
- An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including

the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements 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 entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

- I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

#### Opinion

- In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission as at 31 March 2012, and its financial performance and cash flows for the year then ended in accordance with SA Standards of GRAP and the requirements of the PFMA.

### REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

- In accordance with the PAA and the *General Notice* issued in terms thereof, I report the following findings relevant to performance against predetermined targets, compliance with laws and regulations and internal control, but not for the purpose of expressing an opinion.

#### Predetermined objectives

- I performed procedures to obtain evidence about the usefulness and reliability of the information in the annual performance report as set out on pages 109 to 111 of the annual report.
- The reported performance against predetermined objectives was evaluated against the overall criteria of usefulness and reliability. The usefulness of information in the annual performance report relates to whether it is presented in accordance with the National Treasury annual reporting principles and whether the reported performance is consistent with the planned objectives. The usefulness of information further relates to whether indicators and targets are measurable (i.e.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

well defined, verifiable, specific, measurable and time bound) and relevant as required by the *National Treasury Framework for managing programme performance information*.

The reliability of the information in respect of the selected objectives is assessed to determine whether it adequately reflects the facts (i.e. whether it is valid, accurate and complete).

10. There were no material findings on the annual performance report concerning the usefulness and reliability of the information.

## Additional matter

11. Although no material findings concerning the usefulness and reliability of the performance information were identified in the annual performance report, I draw attention to the following matters.

## Achievement of planned targets

12. Of the 35 planned targets, only 18 targets were achieved during the year under review. This represents 49% of total planned targets that were not achieved during the year under review. This was mainly due to the complexity of the cases that the public entity was investigating. Reasons of deviations on non-achievement of targets are included in the report on performance against predetermined targets.

## Material adjustments to the annual performance report

13. Material misstatements in the annual performance report were identified during the audit, all of which were corrected by management.

## Compliance with laws and regulations

14. I performed procedures to obtain evidence that the entity has complied with applicable laws and regulations regarding financial matters, financial management and other related matters. My findings on material non-compliance with specific matters in key applicable laws and regulations as set out in the General Notice issued in terms of the PAA are as follows:

## Procurement and contract management

15. Certain goods and services with a transaction value below R500 000 were procured without obtaining the required price quotations, as required by Treasury Regulation 16A6.1.

16. Contracts and quotations were awarded to bidders who did not submit a declaration on whether they are employed by the state or connected to any person employed by the state, which is prescribed in order to comply with Treasury regulation 16A8.3.

## Expenditure management

17. The accounting authority did not take effective steps to prevent irregular expenditure as per the requirements of section 51(1)(b)(ii) of the PFMA.

## Internal control

18. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with laws and regulations. The matters reported below under the fundamentals of internal control are limited to the significant deficiencies that resulted in the findings on compliance with laws and regulations included in this report.

## Leadership

19. The account authority did not exercise effective oversight in ensuring compliance with relevant Supply Chain Management Regulations.

*Auditor-General*

Pretoria

31 July 2012



*Auditing to build public confidence*

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## STATEMENT OF FINANCIAL POSITION

for the year ended 31 March 2012

	Note(s)	2012 ‘000	2011 ‘000	Restated
<b>ASSETS</b>				
<b>Current Assets</b>				
Inventory			331	276
Receivables from exchange transactions	2	61	323	
Cash and cash equivalents	3	78 724	42 873	
		<b>79 116</b>	<b>43 472</b>	
<b>Non-Current Assets</b>				
Property, plant and equipment	4	4 345	5 120	
Intangible assets	5	767	2 398	
		<b>5 112</b>	<b>7 518</b>	
<b>Total Assets</b>		<b>84 228</b>	<b>50 990</b>	
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Finance lease obligation	6	165	1 010	
Payables from exchange transactions	7	54 528	21 969	
Unspent conditional grants	8	-	130	
Provisions	9	127	127	
Unspent donor funds	10	-	20	
		<b>54 820</b>	<b>23 256</b>	
<b>Non-Current Liabilities</b>				
Other financial liabilities	11	-	287	
Finance lease obligation	6	-	229	
		-	516	
<b>Total Liabilities</b>		<b>54 820</b>	<b>23 772</b>	
<b>Net Assets</b>		<b>29 408</b>	<b>27 218</b>	
<b>Net Assets</b>				
Accumulated surplus		<b>29 408</b>	<b>27 218</b>	

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 31 March 2012

	Note(s)	2012 ‘000	Restated 2011 ‘000
<b>Revenue</b>			
Non-exchange revenue			
Government grants & subsidies	12	126 595	117 661
Exchange revenue			
Fee income	13	50 770	37 955
Other income	14	784	5 831
Interest received - other	19	2 932	1 423
<b>Total Revenue</b>		<b>181 081</b>	<b>162 870</b>
<b>Expenditure</b>			
Personnel	15	(101 523)	(82 496)
Administrative expenses	16	(3 505)	(3 303)
Depreciation and amortisation		(4 295)	(2 886)
Finance costs	17	(80)	(155)
Loss on disposal of assets		(51)	(10)
General Expenses	18	(69 393)	(52 193)
<b>Total Expenditure</b>		<b>(178 847)</b>	<b>(141 043)</b>
Loss on foreign exchange		(44)	(61)
<b>Surplus for the year</b>		<b>2 190</b>	<b>21 766</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## STATEMENT OF CHANGES IN NET ASSETS

for the year ended 31 March 2012

	Accumulated surplus '000	Total net assets '000
<b>Balance at 1 April 2010</b>	5 452	5 452
Changes in net assets		
Surplus for the year	21 766	21 766
Total changes	<hr/> 21 766	<hr/> 21 766
Opening balance as previously reported	27 297	27 297
Adjustments		
Prior year adjustments	(79)	(79)
<b>Balance at 01 April 2011 as restated</b>	<hr/> <b>27 218</b>	<hr/> <b>27 218</b>
Changes in net assets		
Surplus for the year	2 190	2 190
Total changes	<hr/> 2 190	<hr/> 2 190
<b>Balance at 31 March 2012</b>	<hr/> <b>29 408</b>	<hr/> <b>29 408</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## CASH FLOW STATEMENT

for the year ended 31 March 2012

	Note(s)	2012 ‘000	Restated 2011 ‘000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Receipts</b>			
Sale of goods and services		50 643	38 284
Grants		126 595	117 661
Interest received		2 932	1 423
Other receipts		804	5 831
Penalties received on behalf of Economic Development Department		538 285	489 337
		<b>719 259</b>	<b>652 536</b>
<b>Payments</b>			
Employee costs		(99 009)	(79 749)
Suppliers		(42 714)	(55 205)
Finance costs		(80)	(155)
Penalties paid to Economic Development Department		(538 285)	(489 337)
		(680 088)	(624 446)
<b>Net cash flows from operating activities</b>	20	<b>39 170</b>	<b>28 090</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Addition of property, plant and equipment		4	(1 903)
Addition of other intangible assets		5	(35)
<b>Net cash flows from investing activities</b>		<b>(1 938)</b>	<b>(3 577)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Repayment of other financial liabilities		(287)	287
Movement in unspent donor funds		(20)	15
Finance lease repayments		(1 074)	(797)
<b>Net cash flows from financing activities</b>		<b>(1 381)</b>	<b>(495)</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b>35 851</b>	<b>24 018</b>
Cash and cash equivalents at the beginning of the year		42 873	18 855
<b>Cash and cash equivalents at the end of the year</b>	3	<b>78 724</b>	<b>42 873</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1. Basis of preparation

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

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention unless specified otherwise.

#### 1.1 Presentation currency

These financial statements are presented in South African Rands.

#### 1.2 Revenue

Revenue is recognised to the extent that it is probable that the economic benefits will flow and can be reliably measured. Revenue is measured at fair value of the consideration receivable on an accrual basis. The following specific recognition criteria must also be met before revenue is recognised:

##### *Fee Income*

Revenue comprises of merger filing fees and facility fees received. Revenue from merger filing fees is recognised when the case is accepted by the Commission. Facility fees are recognised on a monthly basis for services rendered by the Commission for infrastructure usage by the Competition Tribunal. Other income is recognised as and when received

##### *Government grant*

Government grants are recognised in the year to which they relate, once reasonable assurance has been obtained that all conditions of the grants have been complied with and the grant has been received.

##### *Interest income*

Revenue is recognised as interest accrues using the effective interest rate.

##### *Other income*

Other income is recognised on an accrual basis.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.3 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.

### 1.4 Fruitless and wasteful expenditure

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

The expenditure portion of any fruitless and wasteful expenditure is charged against income and the capital portion of irregular expenditure is charged against the related liability in the period in which they are determined.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.5 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, 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 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.

#### *PENSION AND POST RETIREMENT BENEFITS*

Payments to defined contribution retirement benefit plans are charged as an expense as they fall due.

Payments made to industry-managed (or state plans) retirement benefit schemes are dealt with as defined contribution plans where the entity's obligation under the schemes is equivalent to those arising in a defined contribution retirement benefit plan.

The entity operates a defined contribution plan for all its employees.

Contributions to the defined contribution plan are charged to the statement of financial performance in the year to which they relate.

### 1.6 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 associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Property, plant and equipment are stated at historical cost less accumulated depreciation. Depreciation is calculated on a straight-line basis at rates considered appropriate to reduce the cost of the assets less their residual value over the estimated useful life. Useful life, depreciation policy and residual value are assessed annually.

The period over which various categories of assets are depreciated is detailed below:

<b>ITEM</b>	<b>AVERAGE USEFUL LIFE</b>
Furniture and fixtures	12 years
Motor vehicles	5 years
Office equipment	8 years

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.6 Property, plant and equipment (continued)

#### IT equipment

• Computer Equipment	3 years
• Servers	5 years
• GPS	5 years
Cellphones	3 years
Leased Assets	Period of the lease

The residual value, and the useful life and depreciation method of each asset are reviewed at the end of each reporting date. If the expectations differ from previous estimates, the change is accounted for as a change in accounting estimate.

Reviewing the useful life of an asset on an annual basis does not require the entity to amend the previous estimate unless expectations differ from the previous estimate.

Each part of an item of property, plant and equipment with a cost that is significant in relation to the total cost of the item is depreciated separately.

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.

### 1.7 Intangible assets

An intangible asset is recognised when:

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

Intangible assets are initially recognised at cost and are carried at cost less accumulated amortisation and impairment losses. Computer software costs that exceed beyond one year are recognised as intangible assets. These assets are amortised from the date the asset is brought into use, using the straight-line method over their useful lives. The estimated useful life of computer software is 3 years.

The useful lives of the assets are reviewed at each balance sheet date and adjusted if appropriate. Computer software has no residual value as the software is not resaleable.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.7 Intangible assets (continued)

Expenditure on research (or on the research phase of an internal project) is recognised as an expense when it is incurred.

An intangible asset arising from development (or from the development phase of an internal project) is recognised when:

- it is technically feasible to complete the asset so that it will be available for use or sale.
- there is an intention to complete and use or sell it.
- there is an ability to use or sell it.
- it will generate probable future economic benefits.
- there are available technical, financial and other resources to complete the development and to use or sell the asset.
- the expenditure attributable to the asset during its development can be measured reliably.

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

An intangible asset is regarded as having an indefinite useful life when, based on all relevant factors, there is no foreseeable limit to the period over which the asset is expected to generate net cash inflows. Amortisation is not provided for these property, plant and equipment. For all other intangible assets amortisation is provided on a straight line basis over their useful life.

The amortisation period and the amortisation method for intangible assets are assessed at financial period-end.

Reassessing the useful life of an intangible asset with a definite 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.

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

ITEM	USEFUL LIFE
Computer software	3 years

### 1.8 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.

When a lease includes both land and buildings elements, the entity assesses the classification of each element separately.

#### *LEASED ASSETS*

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.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.8 Leases (continued)

Leases of assets are classified as finance leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee.

Assets held under finance leases are recognised as assets at their fair value at the inception of the lease or, if lower at 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. Lease payments are apportioned between finance charges and reduction of the lease obligation so as to achieve a constant rate of interest on the remaining balance of the liability. Finance charges are charged to surplus or deficit.

The finance leases are measured at fair value in subsequent periods.

Leases under which the lessor effectively retains the risks and benefits of ownership are classified as operating leases. Obligations incurred under operating leases are charged to the statement of financial performance in equal instalments over the period of the lease.

#### *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. This liability is not discounted.

Any contingent rents are expensed in the period they are incurred.

### 1.9 Inventory

Inventory are initially measured at cost except where inventory is acquired at no cost, or for nominal consideration, then their costs are their fair value as at the date of acquisition.

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

Inventory are measured at the lower of cost and current replacement cost where they are held for:

- distribution at no charge or for a nominal charge; or
- consumption in the production process of goods to be distributed at no charge or for a nominal charge.

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

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.9 Inventory (continued)

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

When inventory are sold, the carrying amounts of those inventory are recognised as an expense in the period in which the related revenue is recognised. If there is no related revenue, the expenses are recognised when the goods are distributed, or related services are rendered. The amount of any write-down of inventory to net realisable value or current replacement cost and all losses of inventory are recognised as an expense in the period the write-down or loss occurs. The amount of any reversal of any write-down of inventory, arising from an increase in net realisable value or current replacement cost, are recognised as a reduction in the amount of inventory recognised as an expense in the period in which the reversal occurs.

### 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 deficits.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.10 Provisions and contingencies (continued)

If a contract 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 note 28.

### 1.11 Financial instruments

#### *CLASSIFICATION*

The Commission's principal financial instruments are receivables, cash and cash equivalents, payables and lease liabilities.

Classification depends on the purpose for which the financial instruments were obtained / incurred and takes place at initial recognition. Classification is re-assessed on an annual basis, except for derivatives and financial assets designated as at fair value through surplus or deficit, which shall not be classified out of the fair value through surplus or deficit category.

#### *INITIAL RECOGNITION AND MEASUREMENT*

Financial assets are recognised in the Commission's statements of financial position when the Commission becomes a party to the contractual provisions of an instrument.

Financial instruments are initially recognised using the trade date accounting method.

Financial assets are classified as financial assets at fair value through surplus or deficit, loans and receivables or held to maturity investment as appropriate. When financial assets are initially recognised they are measured at fair value.

The Commission determines the classification of its financial assets on initial recognition and, where allowed and appropriate, re-evaluates this designation at each financial year end.

#### *IMPAIRMENT OF FINANCIAL ASSETS*

At each end of the reporting period the entity assesses all financial assets, other than those at fair value through surplus or deficit, to determine whether there is objective evidence that a financial asset or group of financial assets has been impaired.

Impairment losses are recognised in surplus or deficit.

Impairment losses are reversed when an increase in the financial asset's recoverable amount can be related objectively to an event occurring after the impairment was recognised, subject to the restriction that the carrying amount of the financial asset at the date that the impairment is reversed shall not exceed what the carrying amount would have been had the impairment not been recognised.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.11 Financial instruments (continued)

Reversals of impairment losses are recognised in surplus or deficit except for equity investments classified as available for sale.

Impairment losses are also not subsequently reversed for available-for-sale equity investments which are held at cost because fair value was not determinable.

#### *ASSET CARRIED AT AMORTISED COST*

In relation to receivables a provision for impairment is made when there is objective evidence (such as the probability of insolvency or significant financial difficulties of the debtor) that the Commission will not be able to collect all the amounts due under the original terms of the invoice. The carrying amount of the receivable is reduced through use of an allowance account. Impaired debts are derecognised when they are assessed as uncollectible.

#### *RECEIVABLES FROM EXCHANGE TRANSACTIONS*

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. After initial measurement loans and receivables are carried at amortised cost using the effective interest method less any allowance for impairment. Gains and losses are recognised in surplus or deficit when the receivables are derecognised or impaired, as well as through the amortisation process.

Trade and other receivables are classified as loans and receivables.

#### *PAYABLES FROM EXCHANGE TRANSACTIONS*

Trade payables are initially measured at fair value, and are subsequently measured at amortised cost, using the effective interest rate method.

After initial recognition, payables are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in surplus and deficit when the liabilities are derecognised as well as through the amortisation process.

#### *CASH AND CASH EQUIVALENTS*

Cash and cash equivalents in the statement of financial position comprise cash at banks and on hand and cash equivalents with an original maturity of three months or less. For the purpose of the cash flow statement, cash and cash equivalents consist of cash and cash equivalents as defined above, net of outstanding bank overdrafts.

Cash and cash equivalents are recognised at fair value.

#### *DERIVATIVES*

Derivative financial instruments, which are not designated as hedging instruments, consisting of foreign exchange contracts and interest rate swaps, are initially measured at fair value on the contract date, and are re-measured to fair value at subsequent reporting dates.

Changes in the fair value of derivative financial instruments are recognised in surplus or deficit as they arise.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.12 Related Parties

A related party transaction is a transfer of resources or obligations between related parties, regardless of whether a price is charged. Parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions or if the related party entity and another entity are subject to common control.

Related parties include:

- (a) Entities that directly, or indirectly through one or more intermediaries, control, or are controlled by the entity;
- (b) Associates (International Public Sector Accounting Standard (IPSAS) 7, "Accounting for Investments in Associates");
- (c) Individuals owning, directly or indirectly, an interest in the reporting entity that gives them significant influence over the entity, and close members of the family of any such individual;
- (d) Key management personnel, and close members of the family of key management personnel; and
- (e) Entities in which a substantial ownership interest is held, directly or indirectly, by any person described in (c) or (d), or over which such a person is able to exercise significant influence

The following are deemed not to be related parties:

- (a) (i) Providers of finance in the course of their business in that regard; and
  - (ii) Trade unions in the course of their normal dealings with an entity by virtue only of those dealings (although they may circumscribe the freedom of action of the entity or participate in its decision-making process); and
- (b) An entity with which the relationship is solely that of an agency.

### 1.13 Revenue from non-exchange transactions

Revenue comprises gross inflows of economic benefits or service potential received and receivable by an entity, which represents an increase in net assets, other than increases relating to contributions from owners.

Conditions on transferred assets are stipulations that specify that the future economic benefits or service potential embodied in the asset is required to be consumed by the recipient as specified or future economic benefits or service potential must be returned to the transferor.

Control of an asset arise when the entity can use or otherwise benefit from the asset in pursuit of its objectives and can exclude or otherwise regulate the access of others to that benefit.

Exchange transactions are transactions in which one entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of cash, goods, services, or use of assets) to another entity in exchange.

Expenses paid through the tax system are amounts that are available to beneficiaries regardless of whether or not they pay taxes.

### *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.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## ACCOUNTING POLICIES

### 1.13 Revenue from non-exchange transactions (continued)

#### *MEASUREMENT*

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

### 1.14 Borrowing costs

It is inappropriate to capitalise borrowing costs when, and only when, there is clear evidence that it is difficult to link the borrowing requirements of an entity directly to the nature of the expenditure to be funded i.e. capital or current.

Borrowing costs are recognised as an expense in the period in which they are incurred.

### 1.15 Unspent Conditional Grants/Donor Funds

Revenue received from conditional grants, donations and funding are recognised as revenue to the extent that the entity has complied with any of the criteria, conditions or obligations embodied in the agreement. To the extent that the criteria, conditions or obligations have not been met a liability is recognised.

### 1.16 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 a cash basis of accounting, but are however disclosed as part of the disclosure notes.

### 1.17 Change in accounting estimates

A change in accounting estimate is an adjustment of the carrying amount of an asset or a liability, or the amount of the periodic consumption of an asset, that results from the assessment of the present status of, and expected future benefits and obligations associated with, assets and liabilities.

Changes in accounting estimates result from new information or new developments and, accordingly, are not correction of errors.

The effect of a change in an accounting estimate, other than a change to which the following paragraph applies, shall be recognised prospectively by including it in surplus or deficit in:

- (a) The period of the change, if the change affects the period only; or
- (b) The period of the change and future periods, if the change affects both.

To the extent that a change in an accounting estimate gives rise to changes in assets and liabilities, or relates to an item of net assets/equity, it shall be recognized by adjusting the carrying amount of the related asset, liability or net assets/equity item in the period of change.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012 ‘000	2011 ‘000
<b>2. Receivables from exchange transactions</b>		
Trade debtors from exchange transactions	-	100
Sundry debtors	61	223
	<b>61</b>	<b>323</b>

## TRADE AND OTHER RECEIVABLES PLEDGED AS SECURITY

None of the trade and other receivables have been pledged as security for any obligations.

## FAIR VALUE OF OTHER RECEIVABLES

The carrying value of trade and other receivables approximates fair values.

### 3. Cash and cash equivalents

Cash and cash equivalents comprise cash that is held with registered banking institutions and are subject to insignificant interest rate risk. The carrying amount of these assets approximates their fair value.

Bank balances	29 844	2 266
Short-term deposits	48 870	40 597
Other cash and cash equivalents	10	10
	<b>78 724</b>	<b>42 873</b>

Cash and cash equivalents held by the entity that is available for use by the entity.

50 209

21 107

## 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 historical information about counterpart default rates. None of the financial institutions with which bank balances are held defaulted in prior periods and as a result a credit rating of high are ascribed to the financial institutions. The company'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 bank balances are held with one banking institution increasing the related concentration risk. However, to mitigate the risk of loss, the company only transacts with highly reputable financial institutions.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## 4. Property, plant and equipment

	2012			2011		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	3 065	(1 898)	1 167	2 263	(1 653)	610
Motor vehicles	442	(273)	169	442	(200)	242
Office equipment	820	(457)	363	791	(417)	374
IT equipment	5 613	(3 170)	2 443	5 773	(3 015)	2 758
Cell phone	6	(4)	2	6	(2)	4
Photocopiers	2 792	(2 591)	201	2 792	(1 660)	1 132
<b>Total</b>	<b>12 738</b>	<b>(8 393)</b>	<b>4 345</b>	<b>12 067</b>	<b>(6 947)</b>	<b>5 120</b>

## RECONCILIATION OF PROPERTY, PLANT AND EQUIPMENT - 2012

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	610	802	-	(245)	1 167
Motor vehicles	242	-	-	(73)	169
Office equipment	374	29	-	(40)	363
IT equipment	2 758	1 072	(51)	(1 336)	2 443
Cell phone	4	-	-	(2)	2
Photocopiers under finance lease	1 132	-	-	(931)	201
	<b>5 120</b>	<b>1 903</b>	<b>(51)</b>	<b>(2 627)</b>	<b>4 345</b>

## RECONCILIATION OF PROPERTY, PLANT AND EQUIPMENT - 2011

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	677	45	-	(112)	610
Motor vehicles	313	-	-	(71)	242
Office equipment	144	252	-	(22)	374
IT equipment	1 903	1 788	(10)	(923)	2 758
Cell phone	-	6	-	(2)	4
Photocopiers under finance lease	1 950	92	-	(910)	1 132
	<b>4 987</b>	<b>2 183</b>	<b>(10)</b>	<b>(2 040)</b>	<b>5 120</b>

Assets with zero values consisting of computer and office equipment and furniture and fittings with a cost price of R 1 276 631 were either donated or scrapped due to redundancy and disrepair.

The Commission is leasing photocopiers under a finance lease however there is a photocopier that is owned by the Commission with a carrying value of R 30 569. The lease agreement does not impose any restrictions.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## 5. Intangible assets

	2012			2011		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Computer software	4 429	(3 662)	767	4 393	(1 995)	2 398

## RECONCILIATION OF INTANGIBLE ASSETS - 2012

	Opening balance	Additions	Amortisation	Total
Computer software	2 398	35	(1 666)	767

## RECONCILIATION OF INTANGIBLE ASSETS - 2011

	Opening balance	Additions	Amortisation	Total
Computer software	1 850	1 394	(846)	2 398

The useful life of computer software still in use were assessed. There are no residual values in computer software as computer software is considered not to be resaleable.

	2012	2011
	'000	'000

## 6. Finance lease obligation

### MINIMUM LEASE PAYMENTS DUE

- within one year	167	1 097
- in second to fifth year inclusive	-	237
	167	1 334
less: future finance charges	(2)	(95)
<b>Present value of minimum lease payments</b>	<b>165</b>	<b>1 239</b>

### PRESENT VALUE OF MINIMUM LEASE PAYMENTS DUE

- within one year	165	1 010
- in second to fifth year inclusive	-	229
	<b>165</b>	<b>1 239</b>

Non-current liabilities	-	229
Current liabilities	165	1 010
	<b>165</b>	<b>1 239</b>

Obligations under finance leases are secured by the lessor's title to the leased asset. The average lease term is 3 years and the average effective borrowing rate was 11%.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012 ‘000	2011 ‘000
7. Payables from exchange transactions		
Trade payables	5 326	6 243
Leave due to employees	4 235	3 351
Accrued performance bonus	9 779	9 045
Accrued Expenses	8 929	3 330
Penalties received payable to Economic Development	26 259	-
	<b>54 528</b>	<b>21 969</b>

Performance bonus is the accrued amount due to employees at 31 March 2012. Amount accrued was paid out in May 2012.

The trade and other payables are interest free and are also unsecured.

## *FAIR VALUE OF TRADE AND OTHER PAYABLES*

Fair value approximates carrying value.

## 8. Unspent conditional grants

### *DFID project description:*

Anti-competitive behaviour simply means the markets do not work. It raises prices to consumers, costs to downstream users, barriers to the entry and impedes the growth of small and emerging firms, constraining output and employment. To effectively address anti-competitive behaviour to unlock development in these sectors requires dedicated small teams, in whom capacity is developed, and who can both learn from international experience, and can pass on their experience in the region. The funding is for work in two important sectors with major impacts, namely construction and food.

#### **Construction**

The construction project is about being able to deal with the large number of cartel contraventions through a fast track approach, as well as prosecuting contraventions effectively, and thereby ensure more competitive pricing going forward. The Commission has initiated several investigations into specific product markets and generally into the construction sector. Specifically, investigations have been launched in the upstream markets for long steel products and downstream markets for reinforcing steel, cement, bricks, coal, concrete pipes, culverts, manholes, plastic pipes and the broad construction services industry.

#### **Food and Agro-processing**

The work on food involves improving investigations in staple food products given the key cases in this area and their effect on low income consumers, and job creation in agro-processing businesses. Key areas on which work is being undertaken are:

- Bread and milling cases, with settlement to impact on consumers
- Animal feed

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

- Fish was not originally identified but the Commission has in the past three months had leniency applications which go directly to conduct affecting prices, and activity (including employment in smaller firms, fishing boats) in this sector

## UNSPENT CONDITIONAL GRANTS AND RECEIPTS COMPRISSES OF:

	2012 ‘000	2011 ‘000
DFID		130
<b>MOVEMENT DURING THE YEAR</b>		
Balance at the beginning of the year	130	-
Received	-	5 000
Utilised	(130)	(4 870)
	<b>-</b>	<b>130</b>

## 9. Provisions

### RECONCILIATION OF PROVISIONS - 2012

	Opening Balance	Total
Provision	127	127

### RECONCILIATION OF PROVISIONS - 2011

	Opening Balance	Additions	Utilised during the year	Total
Provision	154	127	(154)	127

The provisions for the current and previous year includes a provision for the Commissioner's performance bonus for the year ending March 2011.

## 10. Unspent donor funds

The International Development Research Centre (IDRC) provided a grant to the Commission to enable the Commission to undertake the research support project entitled: "Evaluation of Competition issues in the production, supply and pricing of staple foods". The remaining R19,760 was utilised in the current year.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

2012	2011
'000	'000

## 11. Other financial liabilities

### AT FAIR VALUE THROUGH SURPLUS OR DEFICIT

#### Software License

This contract relates to software licenses that is payable over 3 years. The contract is in USD. The final payment to be made in July 2012.

331	287
-----	-----

### NON-CURRENT LIABILITIES

#### Fair value through surplus or deficit

-	287
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The carrying amount of financial liabilities at fair value through surplus or deficit are denominated in the following currencies:

US Dollar	7.6820	6.6531
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## 12. Government grants and subsidies

Government grants and subsidies	126 595	117 661
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## 13. Fee Income

Facility fee	1 925	1 756
Filing Fees	48 845	36 199
	<b>50 770</b>	<b>37 955</b>

**The amount included in revenue arising from exchange and non-exchange transactions is as follows:**

Government grants	126 595	117 661
Fee income	50 770	37 955
	<b>177 365</b>	<b>155 616</b>

## 14. Other Income

Discount received	-	1
Insurance recovered	81	24
Study loans recovered	69	35
Other (SASETA refunds, Photocopies)	504	901
Conditional grant - DFID	130	4 870
	<b>784</b>	<b>5 831</b>

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012 ‘000	2011 ‘000
<b>15. Employee related costs</b>		
Basic	80 923	64 801
Performance bonus	9 785	9 137
Cellphone allowance	938	785
Group life and pension administration	1 107	1 316
Other staff related costs	8 770	6 457
	<b>101 523</b>	<b>82 496</b>

## ACCOUNTING AUTHORITY'S EMOLUMENTS

Annual Remuneration	1 236	1 057
Performance Bonus	-	92
Group Life and pension admin cost	16	23
Cell phone allowance	22	28
	<b>1 274</b>	<b>1 200</b>

## EXECUTIVE COMMITTEE EMOLUMENTS

Annual Remuneration	9 832	6 334
Performance Bonus	1 182	955
Group life and pension admin costs	124	134
Cell phone allowance	102	80
	<b>11 240</b>	<b>7 503</b>

## OTHER EMPLOYEES

Annual Remuneration	69 857	57 411
Performance Bonus	8 646	8 090
Group life an pension admin coss	965	1 159
Cell phone allowance	814	676
Other staff related costs - Medical aid	2 787	2 210
Other staff related costs - Recruitment cost	1 725	753
Other staff related costs - Training and Bursaries	1 926	1 630
Other staff related costs - other	2 332	1 864
	<b>89 052</b>	<b>73 793</b>

Included in other staff related costs are costs related to Funeral Cover, UIF, Workmens Compensation, SDL, Social/Team Building, Employee Assistance Programme, Long Service Awards, Graduate Trainee Programme, Labour Relations.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012 ‘000	2011 ‘000
<b>16. Administrative expenditure</b>		
General and administrative expenses	2 807	2 537
Auditors remuneration - External audit fees	698	766
	<b>3 505</b>	<b>3 303</b>

Included in general and administration expenses are costs related to Bank charges, Corporate Stationery, Courier Service, Email and Telephone, Printing, Postage, Parking.

## 17. Finance costs

Leased assets (Photocopiers)	79	155
Other interest paid	1	-
	<b>80</b>	<b>155</b>

## 18. Operating expenses

Audit committee fees	222	93
Internal audit fees	683	899
Consulting and professional fees	17 818	15 799
Case related costs	25 417	14 812
Property rental	8 117	7 615
Research and development costs	20	20
Travel and accommodation	2 718	2 267
Education and awareness	1 248	1 075
Maintenance, repairs and running costs	650	356
Fees paid to Tribunal	10 015	6 950
Other expenses	2 485	2 307
	<b>69 393</b>	<b>52 193</b>

Included in other expenses are costs related to internal training courses, office flowers, security services, office storage, software licences, entertainment, meeting refreshments, flowers & gifts, subscriptions, books & publications, workshops and government gazettes.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012 ‘000	2011 ‘000
<b>19. Interest received</b>		
<b>INTEREST REVENUE</b>		
Interest received on short-term deposits	2 932	1 423
<b>20. Net cash flows from operating activities</b>		
Surplus	2 190	21 766
<b>ADJUSTMENTS FOR:</b>		
Depreciation and amortisation	4 295	2 886
(Loss)/Surplus on sale of assets	51	10
Interest Received	44	61
Dividends received	-	-
Movements in provisions	-	(27)
<b>CHANGES IN WORKING CAPITAL:</b>		
Inventory	(55)	(111)
Receivables from exchange transactions	262	329
Payables from exchange transactions	32 514	3 046
Unspent conditional grants	(130)	130
	<b>39 170</b>	<b>28 090</b>
<b>21. Movement in investments</b>		
Acquisition of property, plant and equipment	(1 898)	(2 183)
Acquisition of intangible assets : computer software	(35)	(1 394)
	<b>(1 933)</b>	<b>(3 577)</b>

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012	2011
	‘000	‘000

## 22. Reconciliation between budget and statement of financial performance

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

	2012	2011
	‘000	‘000
Net surplus per the statement of financial performance	2 190	21 766
<b>ADJUSTED FOR:</b>		
(Increase)/Decrease in merger & acquisitions	(10 300)	1 500
Increase in exemption applications	(110)	(76)
Increase in advisory opinions	(95)	(63)
(Increase)/Decrease in facility fees	(125)	210
Funds for DFID not received	5 000	-
(Increase)/Decrease in interest received: General funds	(1 132)	328
(Increase)/Decrease in other income	(54)	(125)
Savings on human resources	(5 941)	(9 281)
Savings on premises & equipment expenditure	(636)	(4 910)
Savings on other operational expenses	(1 513)	(1 013)
(Under)/Over expenditure on IT & system development	22	(196)
(Under)/Over expenditure on research & information	30	(252)
Savings on educational awareness programmes	(258)	(204)
(Under)/Over expenditure on case related costs	6 979	(7 497)
(Under)/Over expenditure on other programme costs	5 444	(814)
Over expenditure on depreciation	499	627
<b>Net surplus per approved budget</b>	<hr/>	<hr/>
	-	-

## 23. Financial risk management

The main risks arising from the Commissions financial instruments are market risk, liquidity risk, credit risk and foreign exchange risk.

### CREDIT RISK

The Commission trades only with recognised, creditworthy third parties. It is the Commission's policy that all customers who wish to trade on credit terms are subject to credit verification procedures. In addition, receivables balances are monitored on an ongoing basis with the result that the Commissions exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed in Note 2. 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 limited.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012 ‘000	2011 ‘000
<b>EXPOSURE TO CREDIT RISK</b>		
The maximum exposure to credit risk at the reporting date from financial assets was:		
Cash and cash equivalents	78 724	42 873
Trade and other receivables	61	323
<b>Total</b>	<b>78 785</b>	<b>43 196</b>

## CONCENTRATION OF CREDIT RISK

The maximum exposure to credit risk for financial assets at the reporting date by credit rating category was as follows:

2012	AAA and government	Unrated
Cash and cash equivalents	78 724	-
Trade and other receivables	61	323
2011	AAA and government	Unrated
Cash and cash equivalents	42 873	-
Trade and other receivables	-	-
Ageing of financial assets		

The following table provides information regarding the credit quality of assets which may expose the Commission to credit risk.

2012	Neither past due nor impaired	Past due but not impaired - less than 2 months	Past due but not impaired - more than 2 months	Carrying value
Cash and cash equivalents	78 724	-	-	-
Trade and other receivables	61	-	-	-
2011 Neither past due nor impaired				
2012	Neither past due nor impaired	Past due but not impaired - less than 2 months	Past due but not impaired - more than 2 months	Carrying value
Cash and cash equivalents	42 873	-	-	-
Trade and other receivables	323	-	-	-

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

## MARKET RISK

Market risk is the risk that changes in market prices, such as the interest rate will affect the value of the financial assets of the Commission.

## INTEREST RATE RISK

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.

## SENSITIVITY ANALYSIS

	Change in interest rates	Increase/(decrease) in net surplus for the year	
		Upward change	Downward change
<b>2012</b>			
Cash and cash equivalents	1.00%	787	(787)
Finance lease	1.00%	(2)	2
<b>2011</b>			
Cash and cash equivalents	1.00%	429	(429)
Finance lease	1.00%	(12)	12

## LIQUIDITY RISK

The Commission's risk to liquidity is a result of the funds available to cover future commitments. Taking into consideration the Commission's current funding structures and availability of cash resources the Commission regards this risk to be low provided National Treasury approves the retention of the surplus.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012	2011
	'000	'000

## EXPOSURE TO LIQUIDITY RISK

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

2012	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Trade and other payables	54 531	54 531	54 531	-
Lease Liabilities	165	165	165	-
Other financial liabilities	331	-	331	-
2011	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Trade and other payables	21 970	21 970	21 970	-
Lease liabilities	1 239	1 239	1 010	229
Other financial liabilities	287	-	-	287

## FINANCIAL INSTRUMENTS

The following table shows the classification of the Commission's principal instruments together with their carrying value:

Financial instrument	Categories	Carrying Amount	Carrying Amount
		2012	2011
Cash and cash equivalents	Loans and receivables	78 724	42 873
Trade and other receivables	Loans and receivables	61	323
Trade and other payables	Financial liabilities	54 531	21 970
Finance Leases	Financial liabilities	165	1 239
Other financial liabilities	Financial liabilities	331	287

## FINANCIAL RISK MANAGEMENT

The entity's activities expose it to a variety of financial risk, market risk, fair value interest rate risk, cash flow interest rate risk and price risk, credit risk, liquidity risk and foreign exchange risk.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012	2011
	‘000	‘000

## FOREIGN EXCHANGE RISK

The entity does not hedge foreign exchange fluctuations.

## FOREIGN CURRENCY EXPOSURE AT STATEMENT OF FINANCIAL POSITION DATE

### CURRENT LIABILITIES

Trade and other payables, USD 43,094 (2011 : USD 43,094)	331	287
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## EXCHANGE RATES USED FOR CONVERSION OF FOREIGN ITEMS WERE:

USD	7.6820	6.6531
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## 24. Comparative figures

There have been no adjustment to prior year figures, unless stated.

## 25. Income Taxation Exemption

The Commission is exempted from income tax in terms of Section 10(1)(a) of the Income Tax Act, 1962.

## 26. Employee benefit obligations

## DEFINED CONTRIBUTION PLAN

All employees are members of a defined contribution scheme administered by Sanlam Ltd. The scheme is currently invested in investment policies underwritten by Metropolitan Life.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012	2011
	‘000	‘000

## 27. Rental and finance lease commitments

### Office rental

There is no written lease agreement with the dti. However premises are rented from the dti and rental payments are based on amounts determined by the dti including annual CPIX changes.

### Finance lease commitments:

#### Photocopiers

Up to 1 year	165	1 010
1 to 5 years	-	229
	<b>165</b>	<b>1 239</b>

The Commission is leasing equipment under a finance lease. The lease agreement does not impose any restrictions. The lease agreement can be extended at the end of the three year period for a further period.

## 28. Contingencies liabilities

### Accumulated surplus

The accumulated surplus of R2,2 million has been classified as a contingent liability at 31 March 2012 as there is no approval received to retain the surplus. In terms of PFMA Section 53 (3) entities are not allowed to accumulate surpluses unless approved by National Treasury. An approval was granted by National Treasury to retain the surplus of R21,8 million (February 2012). The Commission is obliged to repay to National Treasury any amount of the surplus not granted for retention. The Commission is of the opinion that National Treasury will grant the approval for R2,2 million which is the Accounting Surplus and therefore the Commission will not be required to repay this amount.

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012	2011
	‘000	‘000

## 29. Related parties

### Relationships

The Competition Tribunal	Public entity in National sphere
The Department of Trade and Industry	National Department in National sphere
Economic Development Department	National Department in National sphere
Members of key management	Mr. M. Ramburuth (Commissioner), Mr. T. Bonakele (Deputy Commissioner), Ms. R. Solomon (Commission Secretary), Mr. S. Roberts (Divisional Manager: Policy & Research and Chief Economist), Ms. W. Mwanazi (Divisional Manager: Legal Services and Chief Legal Counsel), Mr. O. Bodibe (Divisional Manager: Advocacy and Stakeholder Relations), Mr. M. van Hooven (Divisional Manager: Mergers and Acquisitions), Mr. K. Weeks (Divisional Manager: Enforcements & Exemptions) Mr. M. Moodley (Divisional Manager: CSD & CFO) Mr. O. Josie (Divisional Manager: Cartel)

### RELATED PARTY BALANCES

#### AMOUNTS INCLUDED IN TRADE PAYABLES REGARDING RELATED PARTIES

The Competition Tribunal	757	895
The Department of Trade and Industry	78	89
The Department of Economic Development	26 259	-
	<b>27 094</b>	<b>984</b>

### RELATED PARTY TRANSACTIONS

#### THE DEPARTMENT OF TRADE AND INDUSTRY

Rent paid	8 109	7 615
Telephone and Internet costs paid	1 058	996

#### THE COMPETITION TRIBUNAL

Filing fees refunded	10 150	6 950
Facility Fee income received	1 924	1 756
Net employee costs recovered	77	501
Net administration costs recovered	-	38

#### ECONOMIC DEVELOPMENT DEPARTMENT

Government grant received	126 595	117 661
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#### PENALTIES COLLECTED ON BEHALF OF RELATED PARTIES AND TRANSFERRED

#### TO RELATED PARTIES

Economic Development Department	538 285	489 337
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# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012 ‘000	2011 ‘000
Compensation to key management		
Member of key management		
Commissioner: Mr. M. Ramburuth		
Package	1 519	1 099
Bonus	-	145
Deputy Comissioner: Mr. T. Bonakele		
Package	1 451	1 207
Bonus	205	200
Manager: Policy & Research - Mr. S. Roberts		
Package	1 395	1 139
Bonus	211	202
Manager: Corporate Services & CFO - Mr. M. Moodley (current year 10 months)		
Package	1 030	-
Bonus	145	-
Manager: Legal Services - Ms. W. Mwananzi		
Package	1 239	985
Bonus	208	176
Manager: Cartel unit - Mr. O. Josie (current year 11 months)		
Package	1 009	-
Bonus	129	-
Manager: Mergers & Acquisitions - Mr. M van Hooven (resigned 18 November 2011)		
Package	750	978
Bonus	-	138
Manager: Enforcements & Exemptions - Mr. K. Weeks		
Package	1 168	999
Bonus	139	143
Company Secretary - Ms. R Solomon		
Package	861	176
Bonus	99	-
Manager: Strategy and Stakeholder Relations - Mr. O. Bodibe (resigned 30 September 2011)		
Package	502	693
Bonus	-	96
	<b>12 060</b>	<b>8 376</b>

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012 ‘000	2011 ‘000
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## 30. Commitments

### AUTHORISED CAPITAL EXPENDITURE

#### ALREADY CONTRACTED FOR BUT NOT PROVIDED FOR

• Property, plant and equipment	-	798
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This committed expenditure related to the purchase of Furniture and was financed by prior year end bank balance

## 31. Change in estimate

## 32. Going concern

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

The ability of the entity to continue as a going concern is dependent on a number of factors. The most significant of these is that the Department of Economic Development continue to procure funding for the ongoing operations for the entity and National Treasury approves the retention of the accounting surplus of R2,1 million.

## 33. Irregular expenditure

Opening balance	-	75 719
Add: Irregular Expenditure - current year	6 220	14 812
Less: Amounts condoned	(6 220)	(94 008)
Add: Prior year adjustment irregular expenditure	-	3 477
	-	-

### DETAILS OF IRREGULAR EXPENDITURE CONDONED

	2012 ‘000
Legal Counsel Expenses	Condoned by Accounting Authority
Expired contracts	Yes
Forensic experts	Yes
Professional consultants	Yes
	2 150
	188
	3 868
	14
	6 220

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

	2012	2011
	‘000	‘000

## Comment

The appointment of legal counsel is core to the fulfillment of the Commission's mandate in prosecuting cases at the Competition Tribunal and in the courts. The rules governing the legal profession do not contemplate the submission of quotes for their services by advocates and attorneys. Those rules provide for the setting of a tariff by the relevant professional associations, namely the General Council of the Bar ("GCB") and the Law Societies. In respect of the Law Societies, this is a statutory guideline and a guideline tariff in the case of the GCB. The rules further provide for the engagement of counsel through the office of an attorney thereby necessitating the appointment of an attorney to instruct the advocate. Given the rules governing the professions and the nature of litigation, it is not possible for the Commission to procure the services of attorneys and counsel in accordance with the National Treasury Supply Chain Management rules ("NT SCM rules"). The Commission has, since its inception and in terms of its Supply Chain Management Policy, appointed counsel in a manner that constitutes a deviation from the NT SCM rules. In deviating from NT SCM rules, the Commission did not document the reasons for each such deviation.

The requirements of PFMA and National Treasury Regulations require SBD 4 and SBD 9 forms to be submitted by service providers; however no forms were received for the newly appointed legal counsel.

## Expired contracts

Service providers with expired contracts were still being paid up to 31 March 2012. The procurement process in terms of SCM has been followed to obtain new service providers and new agreements have been signed.

## Forensic experts and Professional consultants

The procurement process was not followed on appointment of the service providers as it is not in line with PFMA and Treasury Regulations.

## 34. Gifts

Books, Diaries and Calendars	1	-
Food Baskets	2	-
Vouchers, Flowers and Confectionary	2	-
Christmas gift for securities	17	3
MDP - Penset x15	-	4
MDP - Solstice bags x 15	4	
	<b>22</b>	<b>11</b>

## 35. Fruitless and Wasteful expenditure

FRUITLESS AND WASTEFUL EXPENDITURE	1	-
SARS - interest on late payment		

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

2012	2011
‘000	‘000

## 36. Prior period errors

### Accruals for Consultants

Invoices were received for consultants in 2012 but these related to 2011 financial year. The total received was R78,721. It was noticed that there were no accrual raised in 2011. Therefore an adjustment of R78,721 be made in 2011.

The correction of the error results in adjustments as follows:

#### **STATEMENT OF FINANCIAL POSITION (COMPARATIVE FIGURES RESTATED)**

Retained Earnings	-	79
Accruals	-	(79)

#### **STATEMENT OF FINANCIAL PERFORMANCE (COMPARATIVE FIGURES RESTATED)**

Consultants	-	(79)
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## 37. New standards and interpretations

### 37.1 STANDARDS AND INTERPRETATIONS NOT YET EFFECTIVE

The entity has chosen not to early adopt the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after April 01, 2011 or later periods:

<b>Standard</b>	<b>Summary and impact</b>	<b>Effective date</b>
GRAP 18 – Segment Reporting	<p>This standard establishes principles for reporting financial information by segments.</p> <p>The impact on the financial results and disclosure is considered to be minimal.</p>	<p>Issued by the ASB – March 2005</p> <p>Effective date - To be determined by the Minister of Finance</p>

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2012

<b>Standard</b>	<b>Summary and impact</b>	<b>Effective date</b>
GRAP 21 – Impairment of Non- cash-generating Assets	<p>This standard prescribes the procedures that the Entity applies to determine whether a non-cash generating asset is impaired and to ensure that impairment losses are recognised.</p> <p>The impact on the financial results and disclosure is considered to be minimal.</p> <p>However, in terms of Directive 5, the Entity, considered the accounting principles of GRAP 23 and developed an accounting policy to account for government transfers and foreign aid assistance. I</p>	<p>Issued by the ASB – March 2009</p> <p>Effective date - 1 April 2012</p>
GRAP 24 – Presentation of Budget Information in the Financial Statements	<p>This standard requires a comparison of budget and actual amounts and an explanation for material differences.</p> <p>The impact on the financial results is considered to be minimal. However the impact on disclosure is significant.</p>	<p>Issued by the ASB – November 2007</p> <p>Effective date - 1 April 2012</p>
GRAP 25 - Employee Benefits	<p>The standard prescribes the accounting treatment and disclosure for employee benefits.</p> <p>The impact on the financial results and disclosure is considered to be minimal.</p>	<p>Issued by the ASB – November 2009</p> <p>Effective date - To be determined by the Minister of Finance</p>
GRAP 26 - Impairment of Cash- generating Assets	<p>This standard prescribes the procedures to determine whether a cash generating asset is impaired and to ensure that impairment losses are recognised.</p> <p>The impact on the financial results and disclosure is considered to be minimal.</p>	<p>Issued by the ASB – March 2009</p> <p>Effective date - 1 April 2012</p>
GRAP 104 – Financial Instruments	<p>This standard establishes principles for recognising, measuring, presenting and disclosing financial instruments.</p> <p>The impact on the financial results and disclosure is considered to be minimal.</p>	<p>Issued by the ASB – October 2009</p> <p>Effective date - To be determined by the Minister of Finance</p>



# Performance against Pre-determined Targets

# PERFORMANCE AGAINST PRE-DETERMINED TARGETS

## A – Performance against Pre-Determined Targets

	<b>Goal</b>	<b>Output</b>	<b>Key Performance Indicators</b>	<b>Targets</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
Core Programme 1: Mergers and Acquisitions						
1	To ensure that merger transactions do not lead to a substantial lessening of competition to the detriment of consumers and the public interest	Mergers approved	Total number of mergers approved	216	234	Positive variance as a result of increase in merger notifications.
2		Mergers prohibited	Total number of mergers prohibited	3	8	A higher than anticipated number of mergers gave rise to competition concerns, leading to a number of prohibitions of such proposed mergers.
3		Mergers approved with conditions	Total number of conditional mergers approved	9	33	More conditions imposed because of public interest concerns, especially regarding employment.
4		Merger fee income earned	Amount of merger fee income earned	R 38 m	R 48.5 m	Positive variance as a result of increase in merger notifications
Core Programme 2: Enforcement (includes Enforcements and Exemptions Division and Cartels Division)						
5	To investigate and prosecute anti-competitive conduct, including restrictive horizontal practices, restrictive vertical practices, and the abuse of dominant position.	Cartel investigations completed:	Number of cases referred for adjudication	12	15	Dependent on facts of each investigation.
6			1Number of cartel cases non-referred	25	12	
7		Abuse and restrictive practices investigations completed:	Number of cases referred for adjudication	4	2	Dependent on facts of each investigation.
8			2Number of abuse and restrictive cases non-referred	140	138	
9			Number of exemption certificates granted unconditionally	3	0	Dependent on number of applications received and the facts of each individual application.
10		Exemption evaluation completed	Number of exemption certificates granted conditionally	1	3	
11			Number of exemption certificates rejected	1	2	
12		Corporate Leniency Applications completed	Number of applications that received total immunity	16	0	Dependent on number of applications received and the facts of each individual case.
13			Number of applications that received conditional immunity	48	52	
14			Number of applications rejected	2	8	

# PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Output</b>	<b>Key Performance Indicators</b>	<b>Targets</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
Core Programme 3: Legal Services Division						
15	To manage litigation of cases before the Tribunal, Competition Appeals Court, the Higher Court, Supreme Court of Appeal as well as advising the Commission on the investigation of mergers and complaints.	Prosecutions finalised	Number of prosecutions finalised	8	2	The outcome of each case is dependent on the facts of the matter, as well as the relevant juridical body's interpretation of not only the facts, but also the Competition Act. During the period under review, the Commission's ability to successfully prosecute cases were hampered by earlier adverse court decisions. The Commission has since brought applications to appeal these court decisions to the Constitutional Court.
16			Number of prosecutions in favour of the Commission	95%	0	
17			Number of prosecutions found against the Commission	5%	2	
18		Settlement agreements concluded	Number of settlement agreements concluded	12	28	Total amount: R 548 494 666.28. The Commission continues to use the settlement process as it is a quicker and more effective manner of confirming penalties, than litigation.
19		Advisory opinions issued to legal firms and the public	Number of advisory opinions issued	50	29	Dependent on numbers received
20		Guidelines issued to stakeholders	Number of guidelines issued	2	0	Finalized and in process of internal consultation and approval
Core Programme 4: Policy and Research						
21	To undertake economic research and analysis in merger and enforcement cases	Competition policy papers formally and informally published	Number of economic briefs published	10	12	Achieved.
22			Number of papers published	4	5	Achieved.
23			Number of papers presented at conferences	8	11	Achieved.
24		Market enquiry conducted	Number of market enquiries conducted	1	0	Amendment Act not been promulgated yet.
25		Case reports produced	Number of case expert reports produced	2	2	Achieved.

## PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Output</b>	<b>Key Performance Indicators</b>	<b>Targets</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
Core Programme: Advocacy and Stakeholder Relations						
28	To ensure sound corporate governance, maintain effective international relations and compliance to the Competition Act	Changes to policies and regulations effected to ensure consistency with the provisions of the Competition Act	Number of changes effected	4	0	Submissions made on the following: Legal Practice Bill, Marine Living Resources Act, Sugar Act, Superior Courts Bill and REDISA .
29	Act through advocacy and education.	Engagement Stakeholders	Number of stakeholder events	21	24	3 SME Exhibitions; 8 Advocacy Meetings; 5 Workshops and 8 Presentations were held.
30		Clarifications issued to stakeholders	Number of clarifications issued	80	66	Dependent on requests received.
Support Programme: Human Resources, IT and Financial Management						
31	To provide Information Technology, Human Resources, Financial Management and Security and Facilities services to the Commission	Employment Equity Plan Submitted	Comprehensive Employment Equity Plan	1	1	Achieved.
32		Workplace Skills Plan Submitted	Comprehensive Workplace Skills Plan	1	1	Achieved.
33		Staff learning and development initiatives held	Average number of training days per staff member	3.8	4.11	Achieved.
34		Performance Assessments conducted.	Number of assessments.	2	2	Achieved.
35		Unqualified Audit Report Produced	Clean Audit Report	1	1	Achieved.

# PERFORMANCE AGAINST PRE-DETERMINED TARGETS

## B – Performance against Strategic Implementation Plan

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
1	Achieved demonstrable competitive outcomes in the economy through prioritisation of sectors and cases	Continuously prioritise sectors in response to a changing environment	Review the criteria developed for identifying and selecting priority sectors	Reviewed criteria for identifying and selecting priority sectors	Completed in 2010/11	n.a..
2			Revise and enhance criteria for guidelines identifying and selecting priority sectors	Revised and enhanced criteria for identifying and selecting priority sectors	Completed in 2010/11	n.a..
3			Develop performance assessment measures and monitoring and Reporting mechanisms to determine progress in priority sectors, developed	Performance assessment measures, monitoring and reporting mechanisms to determine progress in priority sectors, developed	Achieved	The reporting mechanisms have been developed. Performance assessment measures are currently being reviewed.
4			Undertake regular reviews to determine continued relevance of selected priority sectors	Regular reviews to determine continued relevance of selected priority sectors undertaken	Achieved.	Food sector review completed.
5			Review international experience	International experience reviewed	Completed in 2010/11	n.a..
6			Develop a discussion document on guidelines for the selection and prioritisation of cases (e.g abuse cases; CLP's, mergers) developed	Discussion document on guidelines for the selection and prioritisation of cases (e.g abuse cases; CLP's, mergers) developed	Completed in 2010/11	n.a..
7			Pilot and review the implementation of guidelines for the prioritisation of cases	Implementation of guidelines for the prioritisation of cases piloted and reviewed	Achieved	
8			Approve and implement guidelines	Guidelines approved and implemented guidelines	Achieved	
9			Undertake market enquiries in selected markets	Develop guidelines with criteria and procedures (based on best practice) for the selection of markets in which to undertake market enquiries developed	Deferred	Pending effective date of Competition Amendment Act.
10			Develop and implement market enquiry resource mobilisation and deployment plan	Market enquiry resource mobilisation and deployment plan developed and implemented	Deferred	Pending effective date of Competition Amendment Act.
11			Establish market enquiry teams	Market enquiry teams established	Deferred	Pending effective date of Competition Amendment Act.

## PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
12	Achieved demonstrable competitive outcomes in the economy through prioritisation of sectors and cases	Undertake market enquiries in selected markets	Develop and implement market enquiry communication plan	Market enquiry communication plan developed and implemented	Deferred	Pending effective date of Competition Amendment Act.
13			Undertake market enquiry	Market enquiry undertaken	Deferred	Pending effective date of Competition Amendment Act.
14			Monitor market enquiry processes and outcomes	Market enquiry processes and outcomes monitored	Deferred	Pending effective date of Competition Amendment Act.
15			Formulate post-market enquiry advocacy and intervention (where necessary) strategy	Post-market enquiry advocacy and intervention (where necessary) strategy formulated	Deferred	Pending effective date of Competition Amendment Act.
16			Develop the methodologies and capacities to continuously undertake assessments of the impact of the Commission's interventions in markets and sectors	Conduct an international review of impact assessment frameworks, methodologies and tools conducted	Completed in 2010/11	n.a..
17			Prepare a discussion document with proposals and options in regard to the Commission's approach to impact assessment	Discussion document with proposals and options in regard to the Commission's approach to impact assessment prepared	Completed in 2010/11	n.a..
18			Host an international workshop on impact assessment for competition authorities hosted	International workshop on impact assessment for competition authorities hosted	Completed in 2010/11	n.a..
19			Develop an impact assessment framework for the Commission	Impact assessment framework for the Commission developed	Achieved	
20			Develop the capacity to implement impact assessment framework	Capacity to implement impact assessment framework developed	Achieved	Seminar on approaches to assessing impact, with illustrations from SA cases, was facilitated by Prof Stephen Davies, Oct 2011.
21			Pilot different aspects of the impact assessment framework	Different aspects of the impact assessment framework piloted	Achieved	Reports for rebar and concrete pipes completed and presented to Exco.
22			Review and incorporate changes to framework	Changes to framework reviewed and incorporated	Deferred	Deferred to next financial year.
23			Continuously undertake impact assessment projects	Continuous impact assessment projects undertaken	Deferred	Deferred to next financial year.

## PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
24	Enhance competitive environment for economic activity through strategic partnership, engagement, dialogue and advocacy	Strategically engage with the key stakeholders in the economy to influence economic policy formulation	Identify the specific stakeholders (at different levels) involved in policy formulating and implementation in the economic cluster	Specific stakeholders (at different levels) involved in policy formulating and implementation in the economic cluster identified	Achieved	
25			Identify the established communication and consultation fora and channels	Established communication and consultation fora and channels identified	Achieved	
26			Formulate strategic themes based on the priorities of the Commission as the basis for the strategic engagements	Strategic themes based on the priorities of the Commission as the basis for the strategic engagements formulated	Achieved.	
27			Undertake and monitor strategic engagement processes	Strategic engagement processes undertaken and monitored	Achieved	
28			Provide regular feedback to the organisation on the discussions and outcomes of the strategic engagement processes	Regular feedback provided to the organisation on the discussions and outcomes of the strategic engagement processes	Achieved	
29			Segment the stakeholders in respect of levels of engagement	Stakeholders segmented in respect of levels of engagement	Achieved	
30		Strengthen dialogue and advocacy aimed at ensuring policy, legislative and regulatory consistency with competition principles	Develop the capacity to continuously monitor and review policies, laws and regulations for consistency with competition principles	Capacity to continuously monitor and review policies, laws and regulations for consistency with competition principles developed	Achieved	Commented on the Superior Courts Bill from Department of Justice; the REDISA Plan from Department of Environmental Affairs; the Sugar Act from the Department of Trade and Industry; The Energy Bill from the Department of Energy; the Companies Act and the ISMO Bill comments submitted to Parliament.

# PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
31	Enhance competitive environment for economic activity through strategic partnership, engagement, dialogue and advocacy	Strengthen dialogue and advocacy aimed at ensuring policy, legislative and regulatory consistency with competition Principles	Develop proposals for making identified policies, law and regulations consistent with competition Principles developed	Proposals for making identified policies, law and regulations consistent with competition principles developed	Achieved.	Submissions made on the Superior Courts Bill; the REDISA Plan; the Sugar Act and the ISMO Bill.
32			Dialogue with relevant government departments and agencies to adopt proposed changes to achieve consistency with competition principles	Dialogue underway with relevant government departments and agencies to adopt proposed changes to achieve consistency with competition principles	Achieved.	-Policy paper on: "The role of government in promoting the competitive landscape and addressing challenges that hamper growth and development in the Sawmilling sector", submitted to the IDC.
33			Identify and initiate consultations with the relevant regulatory authorities	Consultations with the relevant regulatory authorities identified and initiated	Achieved	
34		Improve communication and consultation with sector specific regulatory agencies	Establish MoUs that define working relationship with relevant regulatory authorities	MoUs that define working relationship with relevant regulatory authorities established	Achieved	Signed MOUs with the National Gambling Board and the National Consumer Commission. MOU with the Council on Built Environment is awaiting comments from LSD. Completed draft MoUs with provincial Gambling Boards, awaiting approval by their Board of Directors
35			Consult with regulatory agencies to ensure consistency with competition principles in relevant economic sectors	Consultations held with regulatory agencies to ensure consistency with competition principles in relevant economic sectors	Achieved.	
36		Consolidate working partnerships with law enforcement agencies in preparation for criminalisation	Develop proposals on the protocols and procedures related to the prosecution of directors contravening the Competition Amendment Act	Proposals on the protocols and procedures related to the prosecution of directors contravening the Competition Amendment Act developed	Deferred.	Deferred to next financial year pending effective date of the Competition Amendment Act.

## PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
37	Enhance competitive environment for economic activity through strategic partnership, engagement, dialogue and advocacy	Consolidate working partnerships with law enforcement agencies in preparation for criminalisation	Discuss and workshop protocols and procedures with the relevant law enforcement agencies discussed and workshopped	Protocols and procedures with the relevant law enforcement agencies discussed and workshopped	Deferred.	Deferred to next financial year pending effective date of amendments to the Competition Act.
38			Enter into partnership agreements with relevant law enforcement agencies	Concluded partnership agreements with relevant law enforcement agencies	Deferred.	Deferred to next financial year pending effective date of amendments to the Competition Act.
39			Implement and monitor implementation of partnership agreements	Partnership agreements implemented and monitored	Deferred.	Deferred to next financial year pending effective date of amendments to the Competition Act.
40	Realised a high performance competition regulatory agency	Develop and strengthen distributed management and leadership capability within the Commission	Review the management and leadership development needs of the organisation in consultation with the executive leadership of the Commission	Management and leadership development needs of the organisation in consultation with the executive leadership of the Commission reviewed	Completed in 2010/11	n.a..
41			Implement the existing Management Development Programme and ensure the prepared curriculum supports the holistic leadership and management objectives as formulated	Existing Management Development Programme with curriculum that supports the leadership and management objectives implemented	Completed in 2010/11	n.a..
42			Establish and implement a system of coaching and mentorship for managers and leaders in the Commission	System of coaching and mentorship for managers and leaders in the Commission established and implemented	Completed in 2010/11	n.a..
43			Monitor the implementation of management and leadership development intervention	Implementation of management and leadership development intervention monitored	Achieved.	
44			Evaluate and improve the management development programme and interventions	Management development programme and interventions evaluated and improved	Achieved.	

## PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
45	Realised a high performance competition regulatory agency	Implement the knowledge management system and continuously improve the knowledge management culture and practices	Finalise and approve the Knowledge Management (KM) Strategy for the Commission	Knowledge Management (KM) Strategy for the Commission finalised and approved	Achieved.	
46			Implement the Case Management System and its knowledge management functionality	Case Management System and its knowledge management functionality implemented	Achieved.	Exceptions to the complete implementation: Cartels has been deployed to the staging environment and at quarter end is in the user acceptance testing phase
47			Implement the change management processes in line with the implementation of the KM Strategy and system, with a specific focus on training	Change management processes implemented in line with the implementation of the KM Strategy and system, with a specific focus on training	Achieved	Training exceptions: Cartels Investigators for cases processes. The training manual has been further developed (10 significant additions) and specific guidance has been distributed via email (6 editions) KM Induction training continues will all new staff undergoing training in their first 2 weeks.
48			Communicate the KM policies and protocols	KM policies and protocols communicated	Achieved.	
49			Implement capacity building measures to support the uptake and use of the system and knowledge management practices	Capacity building measures to support the uptake and use of the system and knowledge management practices implemented	Achieved	<ul style="list-style-type: none"> <li>• “Toolkit” emails highlighting functionality and how to use it distributed</li> <li>• Continued interaction with champions and superusers</li> <li>• Training of specific individuals to manage specific areas of the system, with guidance provided</li> <li>• Introduction of new functionality and support provided for its use</li> </ul>

# PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
50	Realised a high performance competition regulatory agency	Implement the knowledge management system and continuously improve the knowledge management culture and practices	Include Knowledge Management (CMS and other) formally in all performance contracts, and recognise strong performers accordingly	Knowledge Management (CMS and other) included formally in all performance contracts, and recognise strong performers accordingly	Achieved	Performance contracts are concluded annually. All performance contracts have KM included as an objective
51			Monitor and evaluate the business impact of the implementation of the KM Strategy	Business impact of the implementation of the KM Strategy monitored and evaluated	Achieved.	Quarterly and annual statistics compiled and distributed as part of regular reporting KM Exit interview feedback regarding KM within the Commission collated and reported on
52		Improve staff retention and put in place succession planning measures	Clearly define career and career pathing opportunities (also investigate the appropriateness of introducing dual career pathing)	Career and career pathing opportunities (also investigate the appropriateness of introducing dual career pathing) clearly defined	Achieved.	Whilst formal document ready for approval by HR Committee, career development and career opportunities are firmly entrenched in the Commission.
53			Incorporate career and career pathing opportunities into a retention strategy for the commission	Career and career pathing opportunities incorporated into a retention strategy for the commission	Achieved.	Developed and recommended by HR Committee for approval by Exco
54			Implement, monitor and evaluate retention strategy	Retention strategy implemented, monitored and evaluated	Not Achieved.	Retention strategy to be implemented once approved by Exco.
55			Develop a succession planning implementation plan	Succession planning implementation plan developed	Not Achieved.	Once the Career pathing and succession planning documents are approved, this will be implemented.
56			Implement and review succession planning	Succession planning implemented and reviewed	Not Achieved.	Target moved to next Financial year
57		Enhance effective decision-making in the Commission and improve the quality of the work	Identify/ review key indicators or management information required for decision-making	Key indicators or management information required for decision-making identified/ reviewed	Achieved.	

# PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
58	Realised a high performance competition regulatory agency	Enhance effective decision-making in the Commission and improve the quality of the work	Identify and agree the timing and format of required management information	Timing and format of required management information identified and agreed	Achieved.	Monthly EXCO meetings where HR, IT, Business Planning and Finance are standing items. Distribution of monthly management reports. Discussion of performance indicators on a quarterly basis.
59			Identify management information sources and appropriate reporting systems (people and technology)	Management information sources and appropriate reporting systems (people and technology) identified	Achieved.	Establishment of Date Library (March 2012), which is kept up to date by Divisional Assistants, which should provide real-time access to data.
60			Identify and communicate expectations in terms of analysis of collected data	Expectations in terms of analysis of collected data identified and communicated	Ongoing.	Data Compilation amended to include expectations from divisions.
61			Communicate and implement management reporting systems	Management reporting systems communicated and implemented	Achieved.	
62			Monitor and evaluate management reporting and decision making capabilities	Management reporting and decision making capabilities monitored and evaluated	Achieved.	Decisions made by Commission, Exco and sub-committees are tracked and follow-up to ensure implementation.
63			Undertake a comprehensive review of all the current cases to establish the status of each	Comprehensive review of all the current cases to establish the status of each undertaken	Achieved.	
64			Make recommendations on case follow up with a view to streamlining the current case load	Recommendations made on case follow up with a view to streamlining the current case load	Achieved.	
65			Undertake a review of the case management methods, processes and supporting systems in core divisions	Review of the case management methods, processes and supporting systems in core divisions undertaken	Achieved.	

## PERFORMANCE AGAINST PRE-DETERMINED TARGETS

	<b>Goal</b>	<b>Measurable Objectives</b>	<b>Outputs</b>	<b>Key performance indicators</b>	<b>Performance Results</b>	<b>Reasons for Variance</b>
66	Realised a high performance competition regulatory agency	Enhance effective decision-making in the Commission and improve the quality of the work	Document the work processes (or review the work processes documented in the knowledge management process mapping exercise) of core divisions and develop quality and performance standards for major work activities	Work processes (or review the work processes documented in the knowledge management process mapping exercise) of core divisions and develop quality and performance standards for major work activities documented	Achieved.	
67			Develop and formalise case management methodology	Case management methodology developed and formalised	In process	Delays in the implementation of the Knowledge Management System caused a deferment in the comprehensive review of all work methods.
68			Establish management structures and systems to monitor and evaluate performance against quality and performance standards	Management structures and systems to monitor and evaluate performance against quality and performance standards	Achieved.	Quarterly case management meetings where the status of cases are discussed, as well as the input provided into each case. EXCO discuss performance against targets on a quarterly basis.



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 30 July 2012



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