



Competition Regulation for a Growing and Inclusive Economy

ANNUAL REPORT

2015/16



*competition*commission
south africa

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Acronyms and Abbreviations

ACF	African Competition Forum
AGSA	Auditor-General of South Africa
AMG	Allens Mescho Group of Companies
AMSA	ArcelorMittal South Africa Ltd
ATC	Average total cost
AVC	Average variable costs
B-BBEE	Broad-based Black Economic Empowerment
BEE	Black economic empowerment
BRICS	Brazil, Russia, India, China, South Africa
CAC	Competition Appeal Court
CBE	Council for the Built Environment
CLP	Corporate Leniency Policy
COLTO	Committee of Land Transport Officials
Commission	Competition Commission of South Africa
CRESSE	Competition and Regulation European Summer School
CTA	Copper Tubing Africa (Pty) Ltd
DEA	Department of Environmental Affairs
DSP	Duferco Steel Processing (Pty) Ltd
E&E	Enforcement and exemption
EAP	Economically active population
EDD	Economic Development Department
DED	Gauteng Department of Economic Development
EEA	Employment Equity Act
ENE	Estimates of National Expenditure
ESSA	Economics Society of South Africa
EXCO	Executive Committee
FEDSAS	Federation of the Association of School Governing Bodies of South Africa

FeSi	Ferrosilicon
FMC	Ferromarine Cape
FSD	Firm size distribution
FVC	Fruit & Veg City Holdings (Pty) Ltd
GBF	Governing Body Foundation
GNN	Gold Net News
GSM	Globe Specialty Metals Inc.
HMI	Healthcare Market Inquiry
HR	Human resources
ICASA	Independent Communications Authority of South Africa
ICN	International Competition Network
IRBA	Independent Regulatory Board for Auditors
IT	Information technology
ITAC	International Trade Administration Commission South Africa
LPG	Liquid petroleum gas
LSD	Legal Services Division
M&A	Mergers and acquisitions
M&R	Murray & Roberts Limited
MoU	Memorandum of understanding
MTN	Mobile Telephone Networks (Pty) Ltd
NARTD	Non-alcohol ready-to-drink
NGO	Non-government organisation
NGP	New Growth Path
NNPR	New Number Plate Requisites CC
NPA	National Prosecuting Authority
OECD	Organisation for Economic Co-operation and Development
OPCO	Business Venture Investments (Pty) Ltd
PET	Polyethylene terephthalate
PIC	Public Investment Corporation

PMFA	Public Finance Management Act
PMS	Performance Management System
PnP	Pick n Pay Retailers (Pty) Ltd
PRO	Product Responsibility Organisation
RAN	Radio access network
RSOI	Revised Statement of Issues
SABC	South African Broadcasting Corporation SOE Ltd
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAFCEC	South African Federation of Civil Engineering Contractors Association
SANRAL	South African National Roads Agency
SAPIA	South African Petroleum Industry Association
SAPS	South African Police Services
SARB	South African Reserve Bank
SCA	Supreme Court of Appeal
SISA	Sun International (South Africa) Limited
SLC	Substantial lessening of competition
SMME	Small, medium and micro enterprise
TCCC	The Coca-Cola Company
the dti	Department of Trade and Industry
TNPA	Transnet National Port Authority
ToR	Terms of Reference
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
WBG	World Bank Group
WTO	World Trade Organisation

Glossary of Terms

For the purposes of this report, the meaning of the following terminology is explained below:

- **‘Abuse of dominance’** means engaging in prohibited practices as provided in Sections 8 and 9 of the Competition Act (No. 89 of 1998).
- **‘Advisory opinion’** refers to a non-binding written opinion provided by the Commission to a requester, who may be an individual or a firm, setting out the Commission's likely view on the subject matter of the opinion.
- **‘Advocacy’** refers to activities aimed at the promotion of voluntary compliance to the Act through non-enforcement mechanisms.
- **‘Consent agreement’** refers to an agreement concluded between the Commission and a respondent, and which is confirmed as an order of the Competition Tribunal in terms of Section 49(d) of the Act, setting out: (i) the alleged contravention; (ii) where appropriate, an admission by the respondent; (iii) a penalty, where applicable; and (iv) where applicable, a remedy addressing the harm occasioned by the alleged contravention of the Act.
- **‘Enforcement’** refers to the investigation and/or prosecution of anti-competitive conduct.
- **‘Exemptions’** refers to the granting of exemption from prosecution to firms for engaging in anti-competitive conduct for a specific period of time, through the process and criteria prescribed in Section 10 of the Act.
- **‘Non-referral’** means that, after conducting an investigation, the Commission has decided not to refer a particular case to the Competition Tribunal for prosecution.
- **‘Public interest’** refers to the consideration of socio-political and economic issues, as prescribed in Section 12(a) of the Act, in the evaluation of merger and acquisition applications.
- **‘Referral’** refers to the submission by the Commission of a complaint to the Tribunal for prosecution, upon completion of its investigation.



Part General Information





I

Introduction

This document constitutes the Annual Report of the Competition Commission for the 2015/16 financial year. It is premised on the Strategic Plan 2015–2020 and the Annual Financial Statements, as approved by the Minister of Economic Development. According to the Public Finance Management Act (PFMA) (No. 1 of 1999), as amended, it is a statutory requirement that an entity such as the Competition Commission produces an Annual Report. Accordingly, Section 41 of the Competition Act (No. 89 of 1998) requires that the Commissioner prepares and submits an Annual Report to the Minister, in the prescribed form, who will then table it to the National Assembly.

This Annual Report has been prepared in line with the *Annual Report Guide for Schedule 3A and 3C Public Entities*¹. It captures the key performance outputs, outcomes and impact of the Competition Commission during the reporting period, and articulates how the Commission fared in the management of its resources, as well as in complying with corporate governance principles, as captured in the Annual Financial Statements and the Corporate Governance sections.

The report is organised as follows:

- Part A: General Information;
- Part B: Economic Impact;
- Part C: Performance Information;
- Part D: Corporate Governance;
- Part E: Annual Financial Statements; and
- Part F: Appendices, including the Performance Against Targets as set out in the Annual Performance Plan.

¹ National Treasury. 2014. *Annual Report Guide for Schedule 3A and 3C Public Entities*.



Mandate and Functions

The Competition Commission (“the Commission”) is a statutory body constituted in terms of the Competition Act (No. 89 of 1998) (“the Act”). It is one of three independent competition regulatory authorities, the other two being the Competition Tribunal (“the Tribunal”) and the Competition Appeal Court (“CAC”). While the Commission is the investigative and enforcement agency, the Tribunal is the adjudicative body and the CAC considers appeals against decisions of the Tribunal. The three competition authorities are functionally independent institutions. The Commission and The Tribunal are administratively accountable to the Economic Development Department (EDD).

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

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

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

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

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





The Executive Committee



**Tembinkosi
Bonakele**

LLB, Fort Hare,
MBA, GIBS
Commissioner

**Nompumelelo
Nkabinde**

MBA, GIBS
Chief Human Resources
Officer and Acting
Divisional Manager:
Corporate Services

**Liberty
Mncube**

PhD (Economics),
UKZN
MSc (Economics),
YORK
Chief Economist

**Nompucuko
Nontombana**

MPhil (Economics
Policy), Stellenbosch
MBL, UNISA
Divisional Manager:
Enforcement and
Exemptions

**Oliver
Josie**

LLM, UNISA,
MBL, UNISA
Acting Deputy
Commissioner

**Clint
Oellermann**

LLB, UNISA
Director: Health
Inquiry
(Resigned Feb
2016)

**Bukhosibakhe
Majenge**

BProc, Fort Hare,
LLM, UNISA
Divisional Manager:
Legal Services



**Mduduzi
Msibi**

B Paed, BA
Hons, UKZN

Company
Secretary

**Makgale
Mohlala**

BProc, UP
LLM (Corporate
Law), UP

Divisional
Manager: Cartels

**Tracey
Gwatkin**

LLM (Corporate
Law), UJ

Company Secretary
(Resigned Oct 2015)

**Seema
Nunkoo**

BSocSc, (Honours
Economic), UKZN

Acting Divisional
Manager: Mergers and
Acquisitions

**Hardin
Ratshisusu**

MCom
(Economics) Wits,
MBL, UNISA

Acting Deputy
Commissioner, and
Divisional Manager:
Mergers and
Acquisitions

**Molatlhegi
Kgauwe**

CA (SA)
BCom, UCT
PGDA, UCT

Chief Financial
Officer

**Wendy
Ndlovu**

LLBS, University
of Zimbabwe

Divisional
Manager: Office of
the Commissioner



Minister's Foreword

Mr Ebrahim Patel
Minister of Economic Development

Competition policy plays an important role in our efforts to reorient the growth path of our economy away from its dependence on the minerals-energy complex towards labour absorbing industries along the agricultural value chain and in downstream manufacturing. The implementation of competition policy in South Africa is underpinned by wider socio-economic developmental goals that explicitly take into account public interest considerations focusing on industrial development, employment and economic transformation.

This approach allows us to deal with the realities of an economy characterised by high levels of concentration – one in which dominant firms can exercise market power and achieve abnormal returns by means of collusion and rent extraction. Broadening economic participation hinges on addressing high concentration levels and combating the barriers to entry that dominant firms create to keep out new entrants.

In line with this approach, I am pleased to note progress made in addressing cartel activity and the extent to which public interest consideration are incorporated into merger regulations. However, I remain concerned about the difficulties in enforcing abuse of dominance provisions and recognise the need to strengthen provisions in the Competition Act related hereto.

The excellent work of the Commission on cartels in the construction industry has helped to flush out anti-competitive behaviour in a key sector affecting infrastructure development. I continue to engage with the companies involved in the construction fast-track settlement process regarding a broader reparation package, and am committed to ensuring that collusion and other forms of corruption are eradicated in the construction sector.

A recent World Bank study, entitled South African Economic Update, contained a special focus section on competition policy. The study highlighted

the prevalence of cartels and noted the 76 cartels cases outside the construction sector, which were finalised in the past decade by the Competition Tribunal. It found that cartels are more frequent in markets dominated by a few large firms, where barriers to entry are high and where there is excess capacity. It also estimated the costs of cartel behaviour to the economy and the poor. The cost of cement overcharges resulting from the cement cartel is estimated to R1.1 – 1.4 billion per year, while 202 000 people stood to be lifted above the poverty line by breaking up the maize, wheat, poultry and pharmaceutical cartels.

Firm steps must be taken to end cartels. Businesses continue to conspire to raise prices and keep new entrants out of their markets. The competition authorities therefore need to step up their enforcement activities against this type of costly, inefficient behaviour. Progress in cartel investigations initiated in the banking, automotive, liquid petroleum gas (LPG) and wood-based product sectors during the reporting period, will be monitored closely in future.

The Commission imposed public interest conditions related to protecting employment in a number of mergers in the past year. It is anticipated that these conditions will have the net effect of protecting 6 875 jobs. I have a keen interest in ensuring that an appropriate approach is adopted in practice to protect jobs, develop local capabilities and promote empowerment in merger regulation.


I note the mixed outcome in the abuse of dominance cases finalised during the period under review. I am pleased with the outcome of the predatory pricing case in which the Tribunal found in favour of the Commission against Media24. The judgement of the Competition Appeal Court in the excessive pricing case against Sasol Chemical Industries Ltd requires careful reflection on the burden of proof and the standard to be met for a successful excessive pricing finding.

It is evident that the prosecution of abuse of dominance cases are both time and resource consuming. We need to use the tools of competition and industrial policies in combination to ensure greater levels of competition, less concentration in the economy and deeper industrialisation. This calls for greater coordination across the state and with regulators, operating always within the prescripts of the law, to unleash the full potential of the economy.

We have activated provisions in the Competition Act that, from 1 May 2016, criminalises collusion. We are considering further measures to address abuse of market dominance, excessive pricing and guidelines for competition leniency applications. This will be the focus of our short-term efforts so that we empower the competition authorities to play their part even more effectively in addressing anti-competitive practices that impose unnecessary costs on consumers, undermine industrial policy objectives and reduce the competitiveness of the economy.

In the Foreword to the previous Annual Report of the Competition Commission, I drew attention to the importance of six i's to the economy: infrastructure development, industrialisation, investment, innovation, inclusion (economic and social) and integration (regional). In the contemporary reality, I want to add a further "i", namely integrity. This refers not only to actions against cartels but also resolute action against corruption, which erodes our institutions and economic performance.

Finally, I wish to thank Commissioner Tembinkosi Bonakele and his dedicated team for their work and professionalism over the past 12 months and wish them a successful year ahead.



Ebrahim Patel
Minister of Economic Development



Commissioner's Overview

It gives me great pleasure to table the Competition Commission Annual Report for the 2015/16 financial year. The period under review represents the first year of the implementation of a newly adopted strategy covering the 2015–2020 period. In this strategy, we committed ourselves once more to paying particular attention to sectors and industries that have an impact on the lives of the poor, such as food and agro-processing, as well as sectors that influence competitiveness across the economy, such as intermediate industrial products. Developments in seven key areas dominated our work during this period. Some of these developments were highly beneficial in terms of supporting the work we do, while others demonstrated the limits of applying competition policy to resolving industrial policy concerns or under-regulation in network industries, as discussed later in my overview.

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Tembinkosi Bonakele
Commissioner

Celebrating Success in the Predatory Pricing Case

A notable development is the Commission's first successful prosecution of a predatory pricing case. In September 2015, the Competition Tribunal ruled that Media24 had contravened the Competition Act by engaging in a predatory pricing strategy to drive a rival community newspaper publication, **Gold-Net News (GNN)**, out of the market in the Welkom area. Media24 engaged in a multi-pronged strategy that included the use of one of its titles, **Forum**, as a 'fighting brand' to prevent **GNN** from expanding in the market; pricing its advertising rates below average total cost; and operating **Forum** for a lengthy period even though it was making a loss. Media24 closed down **Forum** within ten months of **GNN** exiting the market in 2009. According to the Tribunal, Media24 contravened the Act by abusing a dominant position and engaging in predatory conduct to exclude a rival from the market for the period 2004–2009.

Finding against the Commission in Excessive Pricing Case

The Competition Appeal Court (CAC) overturned a decision in which the Competition Tribunal found in favour of the Commission in the excessive pricing case against Sasol Chemical Industries Ltd (Sasol). Sasol took their case on appeal to the CAC after the Tribunal found that it had charged excessive prices for propylene and polypropylene to the detriment of customers from 2004–2007, and levied an administrative penalty of R534 million. The CAC rejected the Commission's evidence and found in favour of Sasol in respect of both propylene and polypropylene. The CAC was critical of the evidence provided by the Commission, especially in relation to the appropriate cost calculations. The outcome of this case demonstrates the complexity and cost (both in terms of time and resources) associated with the litigation of excessive pricing cases and the uncertainties related to securing a favourable result. Moreover, the outcome of the case demonstrates the limits of the competition policy as a mechanism to deal with the entrenched positions of dominant firms that exert market power. It suggests that appropriate industrial policy is needed to ensure an environment which is conducive to, among others, competitively priced inputs. Finance and technology underpin the development of production capabilities over time. This is especially important where the behaviour of upstream firms affects the expenses and competitiveness of downstream firms.

Clarifying Procedures

A number of decisions taken by the Competition Tribunal, High Court and CAC provided clarity on various procedural matters. The Commission is frequently asked to provide respondents with records of its evidence before they file their responses to complaint referrals. Group Five brought an application to compel the Commission to produce the record of its investigation prior to filing its answer to the complaint referral. The Competition Tribunal held that the reasonable time to grant access was at the discovery stage after the close of pleading in the litigation process. This decision provides clarity on the correct timing for the production of documents during Tribunal litigation.

The Tribunal also provided clarity on the level of particularity required when a complaint is initiated in the interlocutory application brought by Pioneer Foods (Pty) Ltd against the Commission to challenge the scope and subsequent referral of the authority's case against it to the Tribunal. The Tribunal ruled that the level of specificity required in the initiation

statement cannot be equated to that required in a referral affidavit. The High Court confirmed a number of key features of the Commission's Corporate Leniency Policy (CLP) relating to the review application brought by Allens Mescho Group of Companies (AMG). The High Court held that marker applications and leniency applications are separate and distinct and that each process has to comply with its own set of requirements.

These decisions contribute significantly to the development of jurisprudence in respect of competition law and serve to provide guidance on the procedural conduct required by parties.

Producing Public Interest Guidelines

The Commission continued in its efforts to bring a degree of certainty to the application of public interest considerations in merger regulation. It is obliged to take into account not only the impact a merger is likely to have on competition in the market, but also if it can be justified on public interest grounds in accordance with the Competition Act. In December 2015, the Commission published draft guidelines on the approach it will follow and the types of information that may be required when evaluating public interest considerations in terms of Section 12(a)(3) of the Competition Act. Final guidelines were subsequently published in June 2016. Public interest considerations include the effect of the merger on a particular industrial sector or region; employment; the ability of small businesses, or firms controlled or owned by historically disadvantaged persons to become competitive; and the ability of national industries to compete in international markets. These guidelines aim to make the application of public interest considerations transparent and promote predictability in the analysis thereof. We trust that these guidelines will encourage analysis of public interest considerations at the onset of a merger in the same way that an economic analysis of the impact on competition is undertaken.

Regulating Mergers in the Telecommunications Sector

The need for access to high-demand spectrum bands have been brought to the fore in significant mergers initiated in the telecommunications industry. These spectrum bands are required to build the fourth-generation wireless broadband networks, without which the prospects for satisfying growing demand for high-speed data connections appear limited. In the year under review, Vodacom (Pty) Ltd made a bid to acquire Neotel (Pty) Ltd; while Mobile Telephone Networks (Pty) Ltd (MTN), a subsidiary of the MTN Group, intended to acquire certain radio access network assets of Telkom SA SOC Ltd (Telkom). The Commission recommended approval of the Vodacom and Neotel merger with structural and public interest

conditions, of which the condition that Vodacom does not use Neotel's spectrum until 31 December 2017 was most significant. It recommended the prohibition of the MTN and Telkom deal on competition grounds. The parties involved eventually abandoned the transactions for various reasons. The transactions do, however, point to the need to expedite the formal policy development process and the finalisation of regulations for licensing access to high-demand spectrum bands as a strategic priority for the sector.

Strengthening International Collaboration

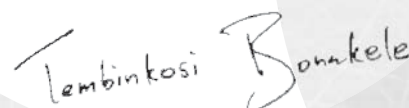
The year under review has been a major success in terms of our efforts to influence the global discourse on competition policy, particularly from a developing country perspective in which the need to transform and broaden participation in the economy is a major priority. We were proud hosts of the 4th Brazil, Russia, India, China, South Africa (BRICS) International Competition Conference held in Durban in November 2015. The conference provided an opportunity for competition authorities from member countries, as well as representatives from African authorities, practitioners, academics, government and civil society, to consider competition policy in the context of emerging market conditions where both **efficiency** and **distributive** outcomes are critical to economic growth and development. Furthermore, we made concrete our commitment to co-operate with competition authorities in the southern African region by entering into our first memorandum of understanding (MoU) with the Namibian Competition Commission. We will continue to expand co-operation in the region, especially in the context of a growing regional market presence of many firms that requires an understanding of the cross-border nature of competition regulation. We were at an advanced stage of negotiating a Southern African Development Community (SADC)-wide MoU by the end of the reporting period in this regard. The MoU is expected to be signed in the new reporting year and will provide a multilateral platform for cooperation in the region.

Lowering Prices and Increasing Disposable Income for the Poor

The World Bank's *South African Economic Update*, published in February 2016, focused on competition policy and provided encouraging independent feedback on how our efforts to address competition issues, particularly cartel enforcement, have contributed to lowering prices in specific sectors and increasing the disposable income of the poor. This serves as a reminder that the work we do, notwithstanding the setbacks we may encounter, contributes to promoting competitiveness and poverty

alleviation.

Of course, it is the commitment, dedication and energy of our staff that makes this possible! Once again, I wish to thank every single staff member for their contribution to translating policy goals into outcomes. We remain grateful to the Minister and staff of the Economic Development Department for their support to help the Commission meet its goals.



Tembinkosi Bonakele
Commissioner



Office of the Commissioner

Back row: Tembinkosi Bonakele, Alex Kuhn, Gavin Williams, Leonard Morapedi, Hardin Ratshisusu, Nomsa Zilindile, Mziwodumo Rubushe
 Centre row: Itumeleng Lesofe, Mmboswobeni Nkhumeleni, Mittah Sibanyoni, Thandekile Qinga, Edward Makola, Samson Mamba, Oliver Josie
 Front row: Nolubabalo Golimpi, Lydia Molefe, Elizabeth Hlatshwayo, Cheneal Cowin, Nompumelelo Malenga, Mandisa Mbele, Wendy Ndlovu



Strategic Overview

6.1. Vision and Mission

The Commission's Vision 2030 is to "attain a growing and inclusive economy that serves all South Africans, and which includes the eradication of poverty and unemployment by 2030, in line with the National Development Plan". This vision emphasises the transformational role played by the Commission with regard to the economy.

Over the next few years, the Commission's mission is to undertake "Competition regulation for a growing and inclusive economy". It entails balancing the efficiency objectives of the Competition Act with its public interest objectives.

6.2. Values

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

- act independently, subject only to the Constitution and the law;
- strive for an efficient, competitive economic environment;
- be objective in balancing the interests of workers, owners and consumers;
- create effective collaborations in regulation, service delivery and management;
- execute duties with a sense of urgency and in a timely manner;
- undertake work with rigorous analysis, integrity, teamwork, transparency and professionalism;
- act impartially without fear, favour or prejudice; and
- act with respect for all.

6.3. The strategic goals

The Commission has identified three strategic goals, namely:

Strategic Goal One: Effective Competition Enforcement and Merger Regulation

The Commission seeks to use its regulatory instruments to contribute to a growing and inclusive economy. It will do so by creating an enabling environment for small, medium and micro enterprises (SMMEs) to thrive; promoting job creation and preventing job losses; preventing further market concentration; and supporting competition in industries that have the potential to drive economic growth in South Africa. Additionally, it ensures that markets work competitively, which leads to consumer choice and fair prices. As such, the balance between efficiency and public interest is taken into account in its decision-making. The outcomes pertaining to the achievement of this goal are:

- efficient and effective merger regulation;
- competitive markets;
- improved public interest outcomes in market;
- increased competition compliance; and
- improved understanding of market dynamics in priority sectors.

Strategic Goal Two: Strategic Collaboration and Advocacy

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

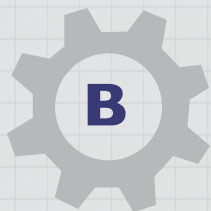
- improved co-ordination in the application of economic policy and competition policy;
- increased importance of developmental perspectives in domestic and international competition law discourse;
- improved compliance and awareness; and
- improved understanding of market dynamics in priority sectors.

Strategic Goal Three: A High-performance Agency

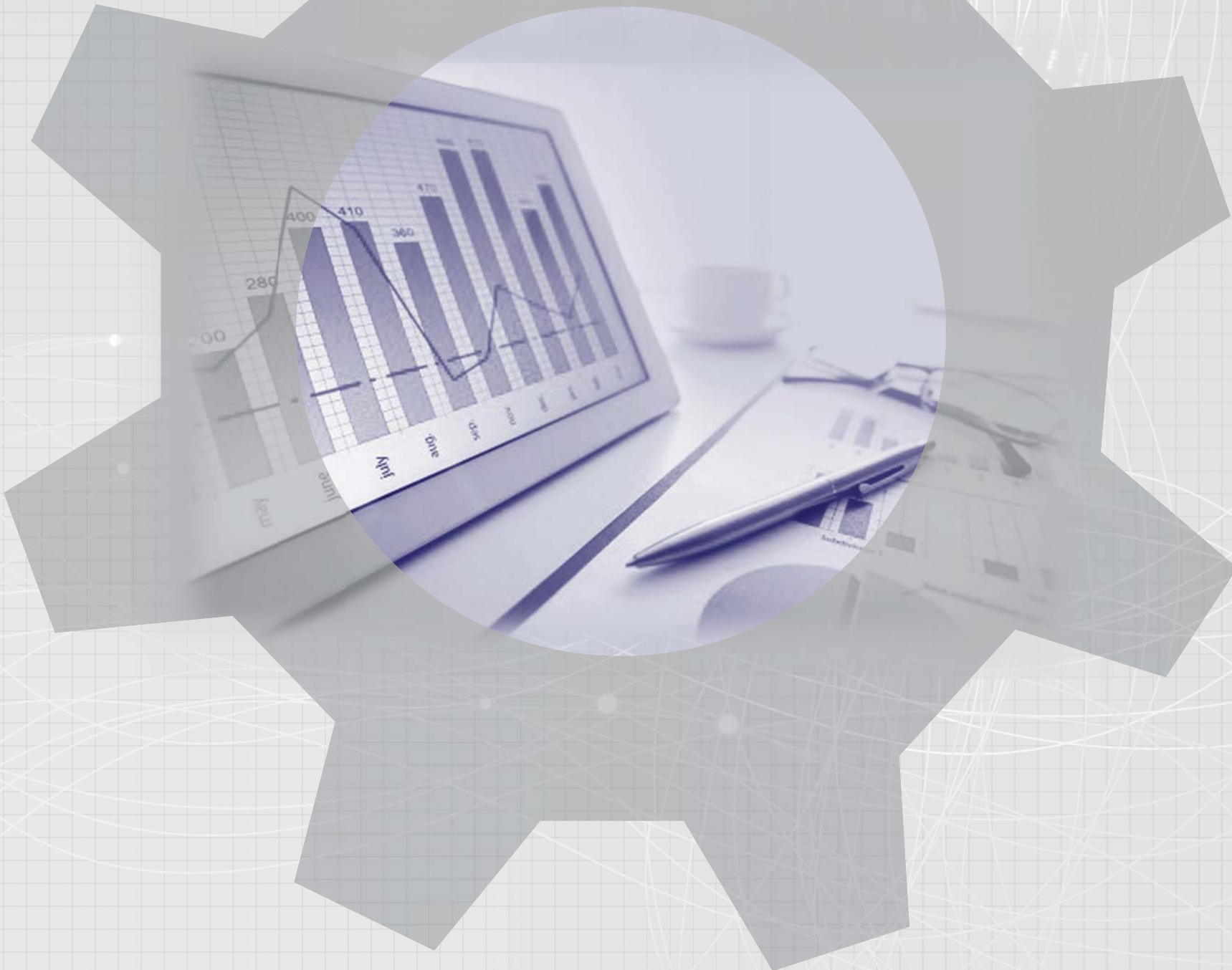
The Commission successfully delivers on its objectives through a cohesive and well-structured organisation in which people, processes and systems perform optimally. In achieving this goal, the Commission optimises its human capital, resources, systems and processes to become an effective agency. It seeks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

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

Part



Economic Impact





7

Impact Assessment

Impact assessments refer to the economic studies the Commission undertakes to evaluate its work in specific markets. The purpose is to demonstrate to stakeholders the harm of anti-competitive conduct and the gains arising to the public from the Commission's interventions. Impact assessment studies are carried out under three main categories:

- Estimation of the impact of anti-competitive conduct.
- Ex-post evaluation of specific enforcement interventions.
- Evaluation of the broader impact.

In the period under review, the Commission has sought to deepen its knowledge of the effects of its competition enforcement interventions by undertaking several ex-post evaluations of specific enforcement interventions and their impact on the affected market(s). Furthermore, the World Bank Group also carried out its own evaluation of the broader impact of competition policy on economic growth and poverty alleviation. The outcomes of these studies are discussed below.

The World Bank Study – South Africa Economic Update: Promoting Faster Growth and Poverty Alleviation through Effective Competition Policy

The World Bank Group's eighth edition of the *South Africa Economic Update*, published in February 2016, included a special focus section which examined how competition policy could contribute to promoting faster growth and poverty alleviation.

The study examined South Africa's strong track record in addressing competition issues. Reviewing actual cartel cases completed by the competition authorities over the past decade, the study found that, on average, sanctioned cartels lasted for a period of eight years. Affected sectors included those which directly impact consumers, such as food markets and healthcare, as well as those which impact the expenses faced by firms and agricultural producers, including inputs to the manufacturing, construction and agricultural sectors. The study used these cases to identify the factors that facilitate cartel activity in South Africa and to map

connections between firms in cartels.

The study explored how competition policy can promote lower prices on key inputs and enhance competitiveness and growth. Using the example of the cement sector, the study showed how stronger competition that resulted from the sanctioning of a cartel in the sector lowered prices of cement (cement accounts for 2% of all industry inputs) and spurred new investment and job creation in the sector. The study also found that strong competition enforcement needs to be supported by an appropriate regulatory environment to encourage healthy competition between firms and new market entrants, especially in network sectors. To illustrate this point, the study reviewed the telecommunications sector, especially broadband services, and showed how the regulatory environment has contributed to costly and poor-quality broadband services in South Africa.

The study also estimated the potential gains to the poor should the lack of competition in key food markets be addressed. The study found that the sanctioning of cartels in the maize, poultry and pharmaceuticals sectors stood to lift an estimated 202 000 people above the poverty line through lowering the retail prices of these goods that form a large part of the poor's consumption basket. The study explained what steps could be taken to further promote competition. For example, the study estimated that if South Africa reduces regulatory restrictiveness of professional services sectors, growth in value add in industries which use professional services intensively would, other things being equal, be between \$1.4–1.6 billion. This is equivalent to an additional 0.4–0.5 percentage points of GDP growth.

Entry of Wal-Mart

In October 2012, the Competition Appeal Court (CAC) approved the merger between Wal-Mart and Massmart² subject to public interest conditions. One of the main concerns that arose from the transaction was that the merged entity would switch some of its procurement away from domestic suppliers to imports post-merger. Such import substitution would compromise the sustainability and participation of SMMEs and historically disadvantaged firms in productive sector activities, with adverse knock-on effects on employment and output. In addition, cheaper imports posed a threat to Wal-Mart's suppliers and competitors.

² 110/CAC/Jul11 and 111/CAC/Jun11.

In order to assess the impact of the merger on imports, suppliers and competitors, the Commission undertook a study which supplements a prior impact assessment which focused on the impact of the merger of small businesses (see the Commission's *2015 Annual Report*). The study found that the Massmart Supplier Development Fund that was established as a condition to the merger, had facilitated the entry and expansion of suppliers in the agriculture, agro-processing and manufacturing sectors into Massmart's supply chain, and had positively contributed to job creation. The recent study found that there are no substantial changes to the proportion of imports pre and post-merger. The study also found that Massmart suppliers have not been adversely affected by the entry of Wal-Mart.

Ex-post Review of the Impact of the Commission's Interventions in Respect of Sasol's Activities in the Fertiliser Market

After investigations by the Commission during the period 2003 to 2009, and the subsequent referral of various anti-competitive contraventions in the nitrogenous fertiliser value chain to the Tribunal, Sasol admitted to contravening Section 4(1)(b) of the Competition Act and in May 2009 paid an administrative penalty of approximately R250 million. Sasol also reached an agreement with the Commission in respect of Sections 8 and 9 contraventions. Broadly stated, the agreement effectively imposed behavioural and structural conditions on Sasol. As regards the former, Sasol undertook to provide fertilisers on an ex-works basis and to refrain from discriminating across customer types (i.e. blenders, traders and end users) and across geographic regions (i.e. inland and coastal regions). With regard to the structural conditions, Sasol undertook to divest five of its blending plants.

The study found that post-intervention, there have been some positive outcomes in both the upstream and downstream levels of the nitrogenous fertiliser value chain. Importantly, post-intervention, Omnia, a competitor to Sasol entered the upstream ammonia market through its investment in a nitric acid plant. Omnia's new nitric acid plant in Sasolburg has the capacity to produce 40% more nitric acid per annum compared to the plant's previous capacity of 73 000 tons during the pre-intervention period. The study revealed that the Commission's intervention has contributed significantly to the breakdown of artificial barriers to entry in the market. For instance, prior to the intervention, there was little incentive for such investment in fertiliser production or ammonia imports due to the existence of cartel conduct.

In the downstream market, the study found that the structural conditions imposed on Sasol and the divestiture of five of its blending plants contributed to entry and expansion into the blending and distribution market. The entry into fertiliser blending and trading was mainly through the purchase of Sasol's divested facilities as part of the divestiture order in 2010. Other than the acquisition of Sasol's divested plants, the study showed that a significant number of smaller players have entered the market at the blending level post-intervention. Last, the study found that the Commission's intervention contributed to positive price benefits in the fertiliser industry. As a result of the increase in market participants, fertiliser retail prices have become more competitive post-intervention relative to the pre-intervention period.

Ex-post Review of the Media24/Natal Witness Merger

On 14 May 2012, the Tribunal conditionally approved the large merger involving Media24 Limited (Media24) and Paarl Coldset (Pty) Ltd (Paarl Coldset) as the acquiring firms and The Natal Witness Printing and Publishing Company (Pty) Ltd (Natal Witness) as the target firm (Media24/Natal Witness merger). Following a full hearing, the Tribunal imposed a set of behavioural remedies, where the merged entity increased its share of Africa Web from 50% to 80%. At the time of the merger investigation, Africa Web was the so-called 'coldset' printer of community newspapers in KwaZulu-Natal and the northern regions of the Eastern Cape. The Tribunal maintained that by Media24 increasing its holding in Africa Web to 80%, it would ensure that the merged firm injected adequate capital into Africa Web to ensure that it remained a viable alternative for small, independent community newspapers in the two affected regions.

The study found that small independent community newspaper publishers in the KwaZulu-Natal and northern Eastern Cape regions still face similar competitive challenges post-merger as at the time of the Tribunal's hearing in 2012. The study found that the set of behavioural conditions that were imposed by the Tribunal on the merging parties did not have the intended effect in the market. Small, independent newspaper publishers are facing increasingly high barriers to entry in the region, specifically with regards to high printing costs and their inability to attract sufficient advertising revenue from grocery retail chains and other national advertisers in competition with large, vertically integrated media houses.

Ex-post Review of the Abandoned Merger between Pick n Pay and Fruit & Veg City

In January 2007, the Commission recommended that the proposed merger between Pick n Pay Retailers (Pty) Ltd (PnP) and Fruit & Veg City Holdings (Pty) Ltd (FVC) be prohibited after its investigation revealed that at the time of the proposed merger, FVC and PnP were: (i) effective (close) and or potential competitors in the retailing of fresh produce which would have likely resulted in the merged entity increasing prices in an anti-competitive manner; and (ii) individually big purchasers of fresh produce from farmers and fresh produce markets and consequently the merged entity's buying power would have been significant, which would have resulted in the harm of farmers and relevant stakeholders along the value chain.

The information obtained through engagements with market participants during the course of this study indicated that the impact of the Commission's recommendation to prohibit the proposed merger between PnP and FVC in January 2007 has largely been viewed as positive in the market for retailing of fresh produce and groceries in South Africa. Market participants that were contacted during the course of the study were of the view that the Commission's decision to recommend a prohibition of the proposed merger, which led to the withdrawal of the merger by the parties, had positive effects in the South African retail market, as well as the wider South African economy.

The study further found that FVC has experienced substantial growth and evolution over the past ten years since the merger was abandoned, which would likely not have occurred if the proposed merger had been approved. This is evident from the increase in the number of stores that FVC has rolled out since 2007, in particular the rebranding and rolling out of the Food Lover's Market brand from only two stores in 2007 to 75 stores by 2016 and the rolling out of 220 FreshStop stores during the same time period. FVC's growth is also evident through the increase in the number of product lines it offers – increasing from just fresh produce (limited to fruit and vegetables) to a wide range of product lines.

A Qualitative Review of the Commission's Intervention in the Cement Industry

In 2013/14, the Commission conducted a quantitative study in the cement industry assessing the competitive outcomes following its interventions in the industry in 2009. This study quantified cartel overcharges and assessed consumer savings due to the intervention by the Commission. During the period under review, the Commission conducted an extension

of this study, with the focus to perform a qualitative assessment of the competition dynamics in the sector.

The study found that post-intervention, there have been many positive outcomes in the cement industry, with evidence that various new cement manufacturers have entered into regions that were previously allocated to other cement manufacturers. There is also evidence of strong competition in the inland regions where cement manufacturers and independent cement blenders are supplying cement. Sephaku, a relatively new entrant that commenced cement production in 2014, has made a competitive impact in this market by supplying cement to most of the regions. Furthermore, cement importers have grown in terms of their competitive impact, especially in the coastal regions. However, the introduction of provisional anti-dumping tariffs has deterred the ability of imported cement to constrain local manufacturers.



Part Performance Information



8

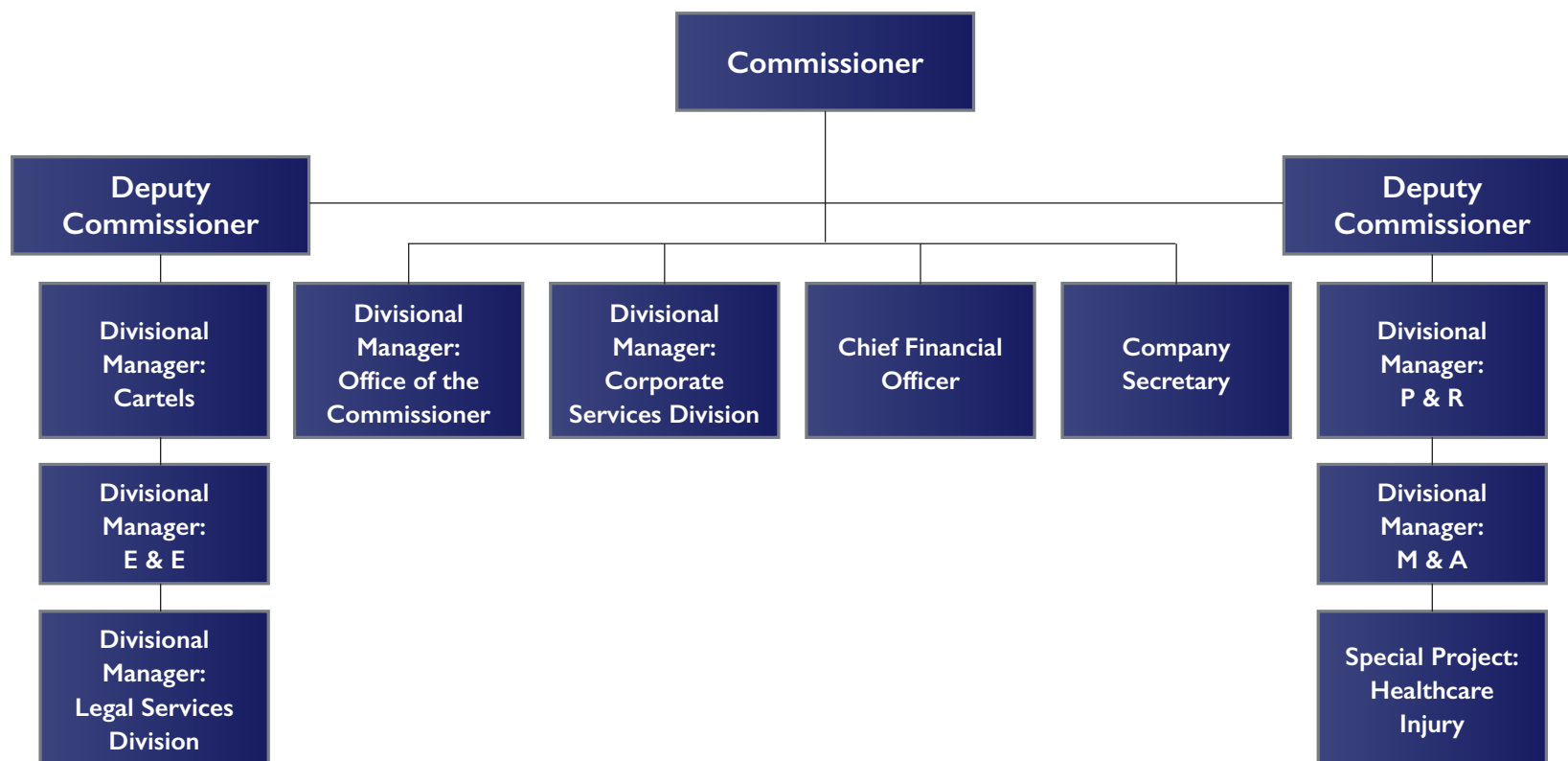
Organisational Structure

The Commission has four functions underpinning its mandate:

- Enforcement
- Advocacy
- Market inquiries
- Regulation of mergers and acquisitions.

The enforcement function can be divided into sub-categories according to contraventions identified in the Act: abuse of dominance, vertical restrictive practices, and horizontal restrictive practices, including cartels. The Commission's analysis and evaluation of mergers and acquisitions relates to corporate bundling and unbundling activities. Advocacy relates the promotion of voluntary compliance to the Competition Act. For the purposes of efficiency, the Commission established an organisational structure that best attends to its four key functions.

Figure 1: Organisational structure 2015/16





Performance by Programme

This section sets out the performance results achieved through the Commission's programmes and sub-programmes in pursuit of its strategic outcomes-orientated goals.

The six core programmes under which the Commission organised its work during the reporting period, and their core functions, are as follows:

- **Enforcement and Exemptions:** investigating abuse of dominance, vertical restrictive practices and assessing exemption applications.
- **Cartels:** investigating collusive practices.
- **Mergers and Acquisitions:** analysing and evaluating corporate bundling and unbundling transactions.
- **Legal Services:** providing litigation services and legal expertise to the organisation and advisory opinions to the public.
- **Policy and Research:** providing economic expertise to the organisation and deepening the understanding of market dynamics, including the undertaking of market inquiries.

All support services fall under the Corporate Services Programme, and include the Human Resources, Finance, Security and Facilities and Information Technology sub-programmes. The Office of the Commissioner completes the support services and its functions include strategy, governance, communication, advocacy, stakeholder relations and international relations.

Table 1 shows each of the Commission's strategic goals and the programmes that contribute thereto.

Table 1: Strategic Goals and Programmes

Strategic Goal	Accountable Programmes
Effective competition enforcement and merger regulation	<ul style="list-style-type: none">• Enforcement and Exemptions• Cartels• Mergers and Acquisitions• Legal Services• Policy and Research• Market Inquiries
Strategic collaboration and advocacy	<ul style="list-style-type: none">• Office of the Commissioner
A high-performance agency	<ul style="list-style-type: none">• Corporate Services• All other divisions

9.1. Enforcement and Exemptions

The Enforcement and Exemptions (E&E) Programme is implemented by the E&E function, with the support of the Legal Services and Policy and Research functions, primarily. This programme focuses on the investigation and prosecution of the abuse of dominant positions, restrictive vertical practices, as well as the analysis of exemption applications. The work of the E&E function comes from two main sources – complaints lodged by the public and investigations that are proactively initiated by the Commission.

The **abuse of a dominant position** by a firm may include excessive pricing of goods or services, denying competitors access to an essential facility, price discrimination (unjustifiably charging customers different prices for the same goods or services) and other exclusionary acts (such as refusal to supply scarce goods to a competitor; inducing suppliers or customers not to deal with a competitor; charging prices that are below cost so as to exclude rivals, bundling goods or services and buying up a scarce input required by a competitor).

The Act prohibits the abuse of a dominant position by firms in a market, but does not prohibit firms from holding a dominant position. The hurdles for proving abuse of dominance cases are significant and require extensive legal and economic analysis. This is evident in the small number of cases where abuse of dominance has been found and the extensive evidence required for these findings. First, proving allegations of abuse of a dominant position requires proof that the respondent is dominant. The Act uses both market share and market power to define dominance. Market power is the ability of a firm to control prices, or to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers. Second, there must be evidence that the respondent is abusing its dominance.

Restrictive vertical practices are agreements involving firms at different levels of the value chain (such as a supplier and its customers). Certain of these agreements require the Commission to conduct the substantial lessening of competition (SLC) test, which assesses possible justifications for such agreements. However, a category of these agreements that are outright prohibited (*per se* prohibition) exists: those involving the practice of minimum resale price maintenance.

Performance Overview

In the year under review, the E&E programme received a total of 160 complaints from the public. Four complaints were initiated in the airline (3) and construction (1) industries. All these complaints were initiated on the basis of information received from the public.

Table 2: Enforcement Caseload, 2012/13–2015/16

	2012/13	2013/14	2014/15	2015/16
Complaints received	177	167	144	160
Initiations	4	3	7	4
Investigations from previous financial year	86	45	37	36
Total	267	215	188	200

Preliminary investigations (screening process) of 155 complaints (this includes both complaints received in the year, and those carried over from previous years) were completed. The outcome of 113 preliminary investigations were non-referrals, 33 are being fully investigated (16 by the E&E function and 17 by the Cartels function) and nine cases were withdrawn by the complainants.



Enforcement and Exemptions

Back row: Priya Reddy, Mogau Aphane, Marlon Dasarath, Edward Chiweza, Hlumani Mandla, Isaac Mohale, Mamontshi Keleme, Mbongiseni Ndlovu

Centre row: Ronald Rateiwa, Tlabo Mabye, Lebohang Mabidikane, Katlego Chuene, Karabo Motaung, Shadrack Rambau, Siphiwo Bitterhout, Tshegofatso Radinku

Front row: Themba Mahlangu, Selelo Ramohlola, Letitia Kgwadi, Nompucuko Nontombana, Mulalo Shandukani, Nonjabulo Sambo, Kulani Nkuna, Khalirendwe Ranenyeni, Tshegofatso Koma

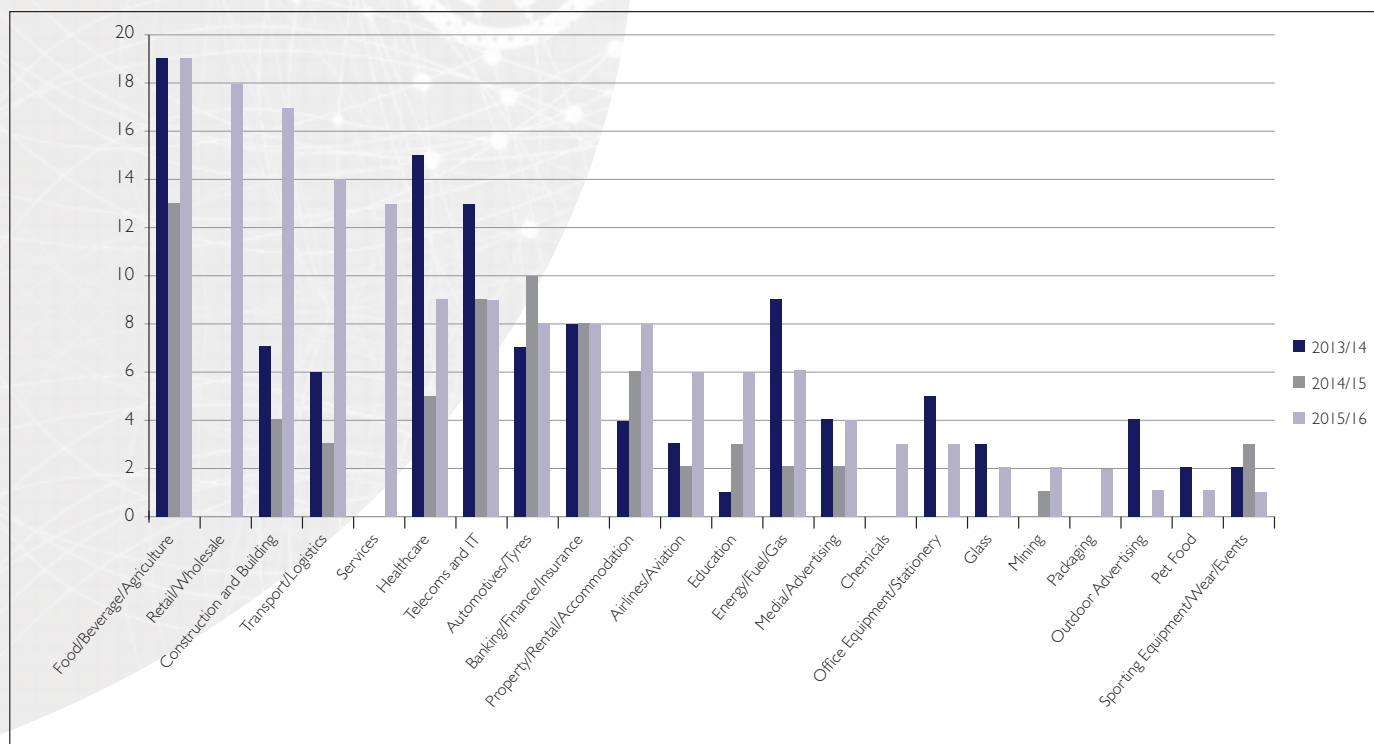


Figure 2: Trends in complaints received from the public, 2013/14–2015/16

Most complaints received in the past three years have been in the food/beverage/agriculture, telecoms and IT, banking/finance/insurance, automotive, property and healthcare sectors.

In 2015/16 the complaints received from members of the public mostly related to the food/beverage/agriculture, retail, construction and building, transport/logistics, services, healthcare and telecoms and IT sectors. Most of the complaints filed in the retail sector were in relation to long-term exclusive lease agreements concluded between landlords of various shopping centres and malls; and what is referred to in the retail sector as ‘anchor tenants’. The exclusive agreements prevent new tenants from occupying rental spaces in competition with the incumbents in a number of shopping centres and malls across the country. Most of these complaints are likely to be addressed through the Grocery Retail Market Inquiry, which is currently underway. Similarly, most of the concerns that have been raised in the healthcare sector are being dealt with in the Healthcare Market Inquiry.

It is worth highlighting that the Commission received a number of queries and some complaints in the education sector in relation to school uniforms following the publication of the ***National Guidelines on School Uniforms*** by the Department of Basic Education.

In the transport sector, the Commission received a complaint from meter taxis against Uber alleging unfair competition and is looking into the matter.

Abuse of dominance investigations

The Commission identified five abuse of dominance investigations for prioritisation in the 2015/16 financial year. These are investigations in following sectors:

- The steel industry (investigation into ArcelorMittal South Africa Ltd (AMSA) on excessive pricing).
- Mobile telephony (complaint by Cell C (Pty) Ltd against both Vodacom (Pty) Ltd and Mobile Telephone Networks (Pty) Ltd on on-net/off-net call rates).
- Waste management (complaint against Enviroserv Waste Management (Pty) Ltd and Vissershok Waste Management Facility (Pty) Ltd).
- Broadcasting (investigation into MultiChoice SA Holdings, MultiChoice Africa (Pty) Ltd and Supersport International (Pty) Ltd, looking into exclusive rights for content, especially premium sporting events).
- Polymers (excessive pricing complaint against Sasol Chemical Industries Ltd).

During the period under review, the number plates investigation was finalised and referred to the Tribunal in November 2015.

The section below provides a brief overview of the use of advocacy as an approach to resolve complaints.

Resolution through advocacy

A number of complaints were successfully resolved through advocacy. One of these was a complaint lodged by Southey Holdings (Pty) Ltd t/a Dormac Offshore Engineering against DCD-Dorbyl (Pty) Ltd (DCD), Ferromarine Cape (FMC), Business Venture Investments (Pty) Ltd (OPCO) and Transnet Limited t/a Transnet National Port Authority (TNPA).

The complaint emanated from a 2009 Tribunal³ finding in the DCD (Pty) Ltd and Globe Engineering Works (Pty) Ltd merger (DCD/Globe merger), which resulted in Globe Engineering Holdings and DCD enjoying individual access to the A-Berth facility in Cape Town Harbour, as a result of an existing sublease pre-merger. During this merger, the Tribunal expressed concerns regarding the state of competition in the market for repairs and services of large and very large gas vessels and structures post-merger, in particular the possibility of foreclosure of competitors. The merger was approved subject to a condition that should the merging parties wish to extend their sublease upon expiry on a long-term basis, the subsequent sub-lease should not include more than 50% of the A-Berth. Following the conditional approval of the DCD/Globe merger on 30 July 2009, FMC and DCD (through DCD's operating company, OPCO) entered into a sublease agreement in terms of which DCD was permitted to lease not more than 50% of the A-Berth. However, the sublease agreement between FMC and DCD contained a clause that grants DCD an option to lease more than 50% of the A-Berth on or after 20 March 2014. In this complaint, Dormac alleged that DCD was attempting to exercise this option to exclude competitors from gaining access to the A-Berth in the Cape Town Harbour. Dormac further alleged that the lease agreement between FMC and DCD constitutes a restrictive vertical practice in contravention of the Act.

During the course of the investigation, the Commission was advised that the respondents and the complainant were engaged in negotiations aimed at settling the dispute that gave rise to the complaint and that if an agreement was reached, Dormac would withdraw the complaint. These discussions resulted in a settlement agreement, and as a result, Dormac withdrew its complaint from the Commission. The settlement agreement concluded by the parties introduced some changes in the market which, among others, sought to ensure improved access to the A-Berth. However, there were concerns regarding the rental base model which was based on turnover plus a *pro rata* contribution to rates and taxes for the duration of the project, regardless of whether the actual resultant turnover is less than what was projected or a project is cancelled. The Commission engaged market participants who

³ Case no: 108/LM/Oct08.

indicated that the effect of the rental base model is substantial and may render their businesses unprofitable. They proposed a normal market rate, that is, a flat per square meter rate, like other berths, could make the A-Berth more accessible.

The Commission then conducted advocacy with the TNPA and FMC to sensitise them of the potential anti-competitive effects of their rental model, especially in relation to potential competitors. The TNPA has since changed the rental model based on the turnover model to a fixed-rate model, which the Commission and the market participants view as a more inclusive and sustainable solution. The TNPA also advised that, due to the complaints from other market participants, they would directly lease out the A-Berth facility to other market participants when this lease expires in 2020.

Abuse of dominance case referred for prosecution

Competition Commission vs Uniplate Group (Pty) Ltd

In November 2015, the Commission referred two abuse of dominance complaints against Uniplate Group (Pty) Ltd (Uniplate) to the Competition Tribunal for adjudication. This followed an investigation conducted by the Commission after receiving complaints from New Number Plates Requisites CC (NNPR) and JJ Plates and Signs CC (JJ plates). From its investigation, the Commission found that Uniplate entered into long-term, exclusive agreements of generally ten years with a significant number of embossers. In terms of these agreements, embossers are required to exclusively purchase their number plate blanks from Uniplate when acquiring a Uniplate embossing machine.

The effect of Uniplate's conduct is that competing manufacturers of number plate blanks are prevented from gaining access to a significant number of embossers. This conduct also denies embossers the benefit of purchasing number plate blanks from other manufacturers at competitive prices. Based on these findings the Commission alleges that Uniplate has abused its dominance in contravention of Section 8 of the Act.

Exemption applications

During the period under review, the Commission received four exemption applications. Two were filed by parties in the airline sector, one in the agricultural sector and another in the energy (petroleum) industry. Three of these exemption applications were finalised during the course of 2015/16, and two were granted (one in the airline industry and the other in the energy industry) while one was rejected (airline industry).

The Commission also finalised 11 out of 12 exemption applications received from the Council for the Built Environment (CBE), which were prioritised for finalisation during the reporting period. The six professional councils that belong to the CBE (Architecture, Quantity Surveyor, Project Management, Landscape Architecture, Engineering and Property Valuers) applied to the Commission for their professional rules on identification of work (work reservation) and the publishing of fee guidelines to be exempted.

The Commission rejected 11 of the CBE's exemption applications on the basis that they failed to prove that there is justification for the anti-competitive conduct that they sought to be exempted from, i.e. the fee guidelines and the identification of work rules.

Table 3: Exemption Applications Received and Outcomes

Exemptions	2012/13	2013/14	2014/15	2015/16
Applications received	4	11	4	4
Exemptions granted	1	0	4	3
Exemptions rejected	0	0	0	13

The joint exemption application received from *Alitalia Società Aerea Italiana S.p.A* and Etihad Airways PJSC, relating to maintenance or promotion of exports, as well as a change in productive capacity necessary to stop the decline in the industry, was also rejected. There was no evidence to suggest that granting the exemption will stimulate significant volumes of new traffic to South Africa that will promote significant exports, or that the global airline industry and/or the market for passenger airline services between Italy and South Africa is on the decline.

The Commission granted The South African Petroleum Industry Association (SAPIA) a conditional exemption for a period of six months, starting from 1 January 2016 to 30 June 2016. The application is an extension of the 2010 conditional exemption previously granted to the industry. The exemption applied for and granted by the Commission covers a wide range of agreements and practices which are aimed at ensuring the continuity and stability of liquid fuels supply to various sectors of the economy.

Case Study 1: The CBE Exemption Application

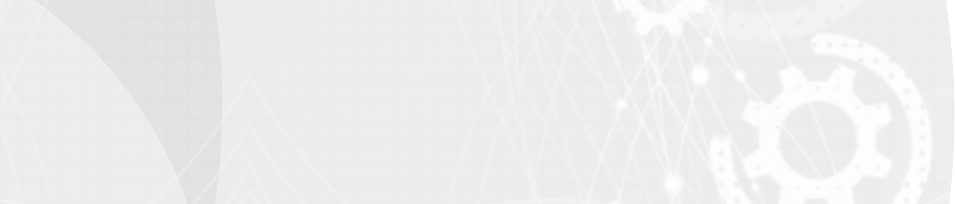
The Commission rejected two categories of exemption applications filed by professional councils under the CBE. The professional councils comprised the Engineering Council of South Africa, the South African Council for the Project and Construction Management Professions, the South African Council for the Landscape Architectural Profession, the South African Council for the Property Valuers Profession, the South African Council for the Architectural Profession⁴ and the Council for the Quantity Surveying Profession.

The first category of exemption applications relates to the identification of work (the IDOW rules). The second category of exemption application relates to the publication of fee guidelines by each respective professional council.

In their exemption applications, the professional councils argued that the IDOW rules and the publication of fee guidelines are (1) necessary to maintain professional standards or the ordinary function of the professions; and (2) are provided for in the legislation of each of the aforementioned professional councils. In addition, they submitted that granting the exemption applications will protect the general public against financial, health and safety risks.

The Commission found that the IDOW rules proposed by the CBE and its professional councils in their current form are likely to harm competition by restricting competition between registered and unregistered persons. Once the IDOW rules are implemented, unregistered persons will not be allowed to undertake work reserved in terms of the rules. Further, the IDOW rules create categories of registration and allocate work to these categories. Once implemented, the rules will therefore not allow persons registered in a specific category to undertake work outside their category of registration. The above restrictions are regardless of the academic qualifications, practical experience and skills acquired by the person.

⁴ However, it has to be noted that the South African Council for the Architectural Profession's IDOW rules exemption application is yet to be decided upon by the Commission. CC/Raubex (Pty) Ltd (17012), CC/WBHO Construction (Pty) Ltd (17061), CC/Basil Read Holdings (Pty) Ltd (16949), CC/Stefanutti Stocks Holdings Ltd (17038), CC/Aveng (16931).



The Commission was concerned that the restrictions imposed by the IDOW rules will likely reduce the number of persons operating in the relevant markets, and that the CBE councils will become a virtual monopoly in the provision of professional services in the built environment. The implication of such conduct is that consumer surplus is transferred to producers, resulting in a reduction in social welfare.

Furthermore, the Commission found that there are already existing regulations in the built environment designed to cater for public health, safety and financial risks. Such regulations include the Occupational Health and Safety Act, the National Building Regulations Act, the Mine Health and Safety Act in the mining engineering sector and the Electrical Installation Regulations in the electrical engineering sector. Investigation also revealed that there are municipal approval and monitoring systems in place. In this regard, the CBE and its professional councils were not able to adequately explain the deficiencies of these regulations and the need for a new body of regulations in the form of the IDOW rules. Last, the Commission could not comprehend why the South African built environment would require such a stringent form of regulation compared to other countries to deal with risks emanating from incompetency or underperformance by persons operating in the built environment.

Thus, the Commission decided not to grant the IDOW rules exemption application.

In rejecting the fee guideline exemption application, the Commission relied primarily on three key findings. First, its analysis of the published fee guidelines revealed that professional fees of different professional councils have increased on average by more than 10% per annum, to the detriment of consumers. For example, between 2006 and 2012, the professional fees charged by some of the CBE councils increased by between 16% and 20% and appears not to be reflective of market forces, particularly during the period of economic slowdown.

Second, the structure of the professional fee guidelines is retrogressive, in the sense that fees charged by the persons operating in the built environment are higher for smaller projects and much lower for bigger projects. Such a structure of fee guidelines appears to be detrimental to consumers who are doing smaller projects. Thus, the conduct defies the logic of regulatory economics, which endeavours to correct market failures, such as the exploitation of smaller consumers who do not have much bargaining power.

Last, a review of international best practices in respect of the provision of fee guidelines for the various professions that fall under the built environment revealed that most jurisdictions are doing away with the publication of such guidelines. One of the major reasons cited for not using fee guidelines is the need for price competition to improve efficiencies in the built environment professions.

Thus, the Commission rejected both the IDOW rules and fee guidelines exemption applications because their implementation would increase the cost of providing built environment services, which are considered to be an important input in the sector.

9.2. Cartels Division

The Cartels Division is responsible for investigating and prosecuting cartel activities. Cartel conduct includes price fixing, market division and collusive tendering, which are prohibited in terms of Section 4(1)(b) of the Competition Act. The Cartels Division is also responsible for administering the Commission's Corporate Leniency Policy (CLP), through which a self-confessing cartel member report a cartel in exchange for immunity from prosecution.

During the current reporting period, the Commission continued to clear the backlog on its case pipeline to focus on real-time investigations. The Cartels Division continued to develop its investigative and prosecution capacity.

Performance Overview

During the 2015/16 financial year, the Commission initiated 133 cartel investigations. The majority of these investigations were in the automotive components sector. A total of 38 cartel investigations were completed. Of these, 22 were referred to the Tribunal for prosecution, while 16 were not prosecuted. The Commission received ten CLP applications and granted four, while the balance of six was under assessment. as at year end.

Table 4 and Figure 3 summarise the performance of the Cartels function during the reporting period.

Table 4: Performance Statistics

Initiation of new cases	133
CLP applications received	10
CLP applications granted	4
Completed investigations	38
Referrals to the Tribunal	22

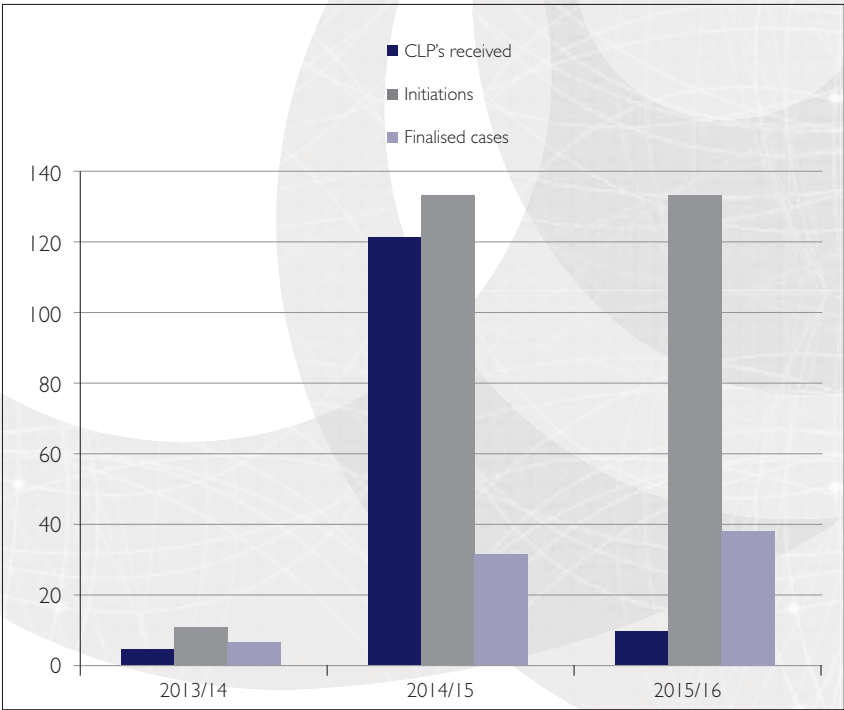


Figure 3: The year-on-year performance of the Cartels function

Initiation of key cartel investigations

Automotive components cartel

The Commission initiated 119 investigations into the automotive components sector, specifically the manufacturers of automotive components, including Maruyasu Industrial Company Limited, Hitachi Company Limited, Denso Corporation, Mitsubishi Electric Corporation, Tokai Rika Company Limited, NGK Spark Plug Company Limited, Mikuni Corporation, Aisin Industries Company Limited, Panasonic Corporation, Futaba Corporation and Fijistu-Ten Limited. These companies colluded when bidding for tenders to supply car parts to original equipment manufacturers, such as BMW, Mercedes Benz, Toyota, Ford and Nissan. A total of 237 cartel investigations covering 92 components have been initiated as at the end of the financial year.

Foreign exchange cartel

The Commission initiated an investigation into several banking and financial institutions, including Barclays Bank Plc, BNP Paribas, Citigroup



Cartels Division

Back row: Thembekile Tshabalala, Thandi Nkabinde, Eric Papo, Matodzi Sivhaga, Offentse Motshudi, Khomotso Hlongoane, Mfundo Ngobese

Second row: Mehluli Nxumalo, Makgale Mohlala, Lesego Moseki, Khotso Modise, Laura Mantshidi, Katlego Monareng

Third row: Tshepo Ramoshaba, Rudzani Maumela, Mosima Tambani, Kweni Mahlakoana, Lungile Mkhwanazi, Fhatuwani Mudimeli, Noluthando Jokazi

Front row: Tshepiso Mnguni, Londeka Mgobhozi, Yolanda Matwa, Mpho Moate, Nokuphiwa Kunene, Maria Chipasula, Kgashane Kgomo

Inc., JPMorgan Chase & Co., Investec Ltd, Standard New York Securities Inc. and Standard Chartered Bank. These foreign currency exchange traders are alleged to have colluded when trading in foreign currency exchange in that they directly or indirectly fix prices in relation to bids, offers and bid offer spreads in respect of trade in US Dollar and South African Rand (USD/ZAR) currency pair. The investigation is ongoing.

Liquefied petroleum gas cartel

The Commission initiated a cartel investigation into African Oxygen, Oryx Oil South Africa (Pty) Ltd, KayaGas (Pty) Ltd, Totalgaz Southern Africa (Pty) Ltd, and EasiGas (Pty) Ltd. These companies are wholesale suppliers of LPG and are alleged to have engaged in the practice of fixing deposit fees paid by first-time purchasers of LPG gas cylinders. They are further alleged to have simultaneously increased the deposit paid for cylinders. The investigation is ongoing.

Particle boards cartel

The Commission initiated a cartel investigation into PG Bison and Sonae Novaboard, which are manufacturers of wood-based products, including but not limited to particle boards, chipboards, medium-density fibreboard, etc. These particle board manufacturers are alleged to have engaged in fixing the price of wood-based products. They are also alleged to have increased the price simultaneously. The investigation is ongoing.

New furniture removal cartel

The Commission initiated a cartel investigation into JH Retief Transport CC, Cape Express Removals (Pty) Ltd, Stuttford Van Lines (Pty) Ltd, Pickfords Removals SA (Pty) Ltd, AGS Frasers International (Pty) Ltd, Key Moves CC and Afriworld 142 (Pty) Ltd. These furniture removal companies are alleged to have engaged in practices to fix prices, divided markets and collude on tenders in the provision of furniture removal services. The investigation is ongoing.

Key cartel cases referred to the Competition Tribunal for prosecution

N17 contractual conditions cartel

A bid rigging case against WBHO Construction (Pty) Ltd and Group Five Construction Ltd, which colluded by fixing contractual conditions relating to the N17 link road between New Canada and the Soccer City project (N17 project), was referred to the Tribunal for prosecution.

The Commission's investigations found that WBHO and Group Five held a meeting through the South African Federation of Civil Engineering Contractors Association (SAFCEC) during which they discussed and agreed on contractual conditions they need for the N17 tender issued by the South African National Roads Agency Limited (SANRAL). They then requested SAFCEC to approach SANRAL on their behalf and demand that SANRAL change its tender conditions and issued the tender with the conditions they agreed on. This conduct amounts to fixing of trading conditions which contravenes Section 4(1)(b)(i) of the Act.

Panel beaters cartel

Following the Commission's dawn raid in June 2014, it referred a cartel case against Eldan Auto Body CC and Precision & Sons (Pty) Ltd to the Tribunal for prosecution. These firms are accredited panel beaters of Mercedes Benz. The Commission found that these firms are engaged in fixing the prices for auto body repair services and dividing markets by allocating auto body repair customers between each other in contravention of Section 4(1)(b)(i) and (ii) of the Act. The investigation also found that they discussed and shared information regarding each other's quotes to their respective clients in relation to prices for panel beating and spray painting.

Cartel on Pikitup waste collection tender

The Commission referred a complaint lodged by Pikitup in October 2012 against Aqua Transport and Plant Hire (Pty) Ltd, Midmar Plant Hire CC, Casalinga Investments t/a Waste Rite and X-moor Transport CC t/a Crossmoor Transport to the Tribunal for prosecution. The Commission found that these firms had colluded when bidding for a tender issued by Pikitup under tender number PU 298/2012. The tender was for the supply, operation and maintenance of plant and equipment at designated landfill, garden sites and depots around Johannesburg.

Furniture removal cartel

The Commission referred cartel complaints against several furniture removal companies to the Tribunal for prosecution. This followed its investigations which included a dawn raid in November 2010. The investigation revealed that over 3 500 relocations tenders were subjected to collusion by the 66 companies providing furniture removal services. In terms of the collusive arrangement, a firm that is contacted first regarding a request for quotation for furniture removal services would offer to source two or more quotations on behalf of the customer, and will then contact two or more of its competitors and request the competitors to submit cover prices. The majority of the furniture removal firms settled with the Commission and it only referred cartel cases against 13 to the Tribunal for prosecution.



Case Study 2 - Dawn raids

The Commission conducted five dawn raids during 2015/16, an increase from the four dawn raids conducted in 2014/15.

ADVERTISEMENT PLACEMENT AGENCIES DAWN RAID

In September 2015, the Commission conducted dawn raids at the premises of Human Communications (Pty) Ltd, Kone Staffing Solutions (Pty) Ltd and Jobvest (Pty) Ltd. The firms are recruitment and advertisement placement agencies which are alleged to have been involved in price fixing, market division and collusive tendering in contravention of Section 4(1)(b) of the Act. They are alleged to be agreeing on tender prices, allocating and rotating customers. Their customers include government departments, municipalities and state-owned enterprises, which required recruitment and advertisement placement services. The investigation is ongoing.

SECOND DAWN RAID ON FURNITURE REMOVAL COMPANIES

The Commission conducted a second dawn raid on the premises of furniture removal companies in September 2015, following the initial dawn raid in November 2010. The dawn raid was carried out at the premises of Stuttaford Van Lines (Pty) Ltd, Pickfords Removals (Pty) Ltd, Cape Express Removals (Pty) Ltd and Afriworld 142 (Pty) Ltd. Furniture removal companies are alleged to have continued to collude by exchanging cover quotes on furniture removal tenders issued mainly by the South African Defence Force, SAPS and the Department of Health. The investigation into these firms is ongoing.

LIQUEFIED PETROLEUM GAS DAWN RAID

In October 2015, the Commission conducted dawn raids at the premises of African Oxygen, Oryx Oil South Africa (Pty) Ltd, Kaya Gas Pty Ltd, Totalgaz Southern Africa (Pty) Ltd, EasiGas Pty Ltd, the Liquefied Petroleum Safety Gas Association of Southern Africa and South African Petroleum Industry Association. African Oxygen, Oryx Oil South Africa (Pty) Ltd, Kaya Gas Pty Ltd, Totalgaz Southern Africa (Pty) Ltd, and EasiGas Pty Ltd are wholesale suppliers of LPG. LPG wholesale suppliers are members of the Liquefied Petroleum Safety Gas Association of Southern Africa and South African Petroleum Industry Association, which are alleged to have been used as a platform for collusion.

These firms alleged to have fixed deposit fees paid for gas cylinders by first-time buyers of LPG. The firms are also alleged to have increased the price of LPG cylinders at the same time with the same amount.

AUTOMOTIVE GLASS FITMENT DAWN RAID

In March 2016, the Commission raided the premises of PG Glass and Glasfit. These firms are alleged to be involved in price fixing, market division and collusive tendering in the provision of automotive glass fitment and repair services. Shatterprufe and Digicall premises were also raided. Shatterprufe supplies PG Glass and Glasfit with automotive glass, while Digicall processes and administers automotive glass-related insurance claims on behalf of PG Glass and Glasfit. The investigation is ongoing.

WOOD-BASED PRODUCTS DAWN RAID

In March 2016, the Commission carried out a dawn raid at the premises of PG Bison (Pty) Ltd and Sonae Novobord (Pty) Ltd as part of its investigation into alleged collusion relating to supply of particle board and medium-density fibreboard. These firms are alleged to have engaged in price fixing of wood-based products, such as particle boards, chipboards, medium-density fibreboards board, etc. They are also alleged to have increased the price simultaneously. The investigation is ongoing.

Referrals to the Tribunal to safeguard the rights of consumers to bring civil claims for damages

The Commission's Corporate Leniency Policy envisages the granting of immunity from the imposition of an administrative penalty, but does not immunise a leniency applicant against claims for civil damages. In order to preserve the rights of consumers to bring civil claims for damages against leniency applicants, the Commission referred two complaints to the Tribunal during the period under review:

Competition Commission vs Murray & Roberts Limited

In February 2016, the Commission referred a complaint against Concor (Pty) Ltd (Concor), a subsidiary of Murray & Roberts Limited (M&R), for tendering collusively in contravention of Section 4(1)(b)(iii) of the Competition Act. The collusive conduct relates to certain construction projects for which M&R, on behalf of Concor, applied and was granted conditional immunity in terms of the Commission's Corporate Leniency Policy and under the construction fast-track settlement process. These include various construction projects, such as the upgrading and rehabilitation of certain national roads and the undertaking of certain civil works.

After investigating this conduct, the Commission finalised its case against the other firms involved in this conduct.⁵ As a result, M&R/Concor was the only remaining firm whose conduct was confirmed by the Tribunal as collusive tendering. The Commission referred Concor to the Tribunal to obtain a declaratory order that Concor had contravened Section 4(1)(b)(iii) of the Act in respect of projects for which it was granted conditional immunity. A finding or declaratory order by the Tribunal that a firm has engaged in a prohibited practice is a prerequisite for bringing a civil claim for damages against a firm that participated in cartel conduct. Accordingly, the Commission has brought the present application to safeguard and preserve the rights of affected third parties to bring civil damages claims.

Competition Commission vs WBHO Construction (Pty) Ltd

In February 2016, the Commission referred a complaint against WBHO Construction (Pty) Ltd (WBHO) for tendering collusively in contravention of Section 4(1)(b)(iii) of the Competition Act. The collusive conduct relates to certain construction projects WBHO applied for, and was granted, conditional immunity in terms of the Commission's Corporate Leniency Policy and under the construction fast-track settlement process. The projects connected with this referral include the Construction of Greenpoint Stadium, Coega Development Project and projects relating to the upgrading and construction of several roads.

After investigating, the Commission finalised its case against the other firms involved in this conduct. As a result, WBHO was the only remaining firm whose conduct in this matter was not confirmed by the Tribunal as collusive tendering. The Commission referred WBHO to the Tribunal to obtain a declaratory order that WBHO has contravened Section 4(1)(b)(iii) of the Act in respect of projects for which it was granted conditional immunity.

A finding or declaratory order by the Tribunal that a firm has engaged in a prohibited practice is a prerequisite for bringing a civil claim for damages against a firm that participated in cartel conduct. Accordingly, the Commission has brought the present application to safeguard and preserve the rights of affected third parties to bring civil damages claims.

9.3. Mergers and Acquisitions

The Mergers and Acquisitions function administers Chapter 3 of the Competition Act. The Commission investigates and assesses whether a merger is likely to substantially prevent or lessen competition and whether a merger can or cannot be justified on substantial public interest grounds. Mergers are classified into three different categories based on the thresholds for notification: small, intermediate or large. The framework to determine thresholds is set out in Section 11 of the Competition Act. In April 2009, the merger thresholds were revised as reflected in Table 5.

⁵ CC/Raubex (Pty) Ltd (17012), CC/WBHO Construction (Pty) Ltd (17061), CC/Basil Read Holdings (Pty) Ltd (16949), CC/Stefanutti Stocks Holdings Ltd (17038), CC/Aveng (16931).

Table 5: Mergers and Acquisition Thresholds as at 1 April 2009

Threshold	Combined Turnover or Asset Value	Target Turnover or Asset Value	Size of Merger	Filing Fee
Lower threshold	R560 million	R80 million	Intermediate	R100 000
Higher threshold	R6.6 billion	R190 million	Large	R350 000

Any party to an intermediate or large merger is required to notify the Commission of the merger in the manner and form prescribed in the Act. The Commission receives a filing fee for every intermediate and large merger filed. Where a proposed merger does not meet the thresholds of either an intermediate or large merger, it is categorised as a 'small merger'. Small mergers do not require compulsory notification and no fees are payable. However, the Commission may call for their notification within six months of implementation if the small merger is likely to substantially prevent or lessen competition, or cannot be justified on substantial public interest grounds. In particular, the Commission expressly requires notification of a small merger if any of the following criteria are met:

- at the time of entering into the transaction, any of the firms, or firms within their group, are subject to an investigation by the Commission in terms of Chapter 2 of the Act; or
- at the time of entering into the transaction any of the firms, or firms within their group, are respondents to pending proceedings referred by the Commission to the Tribunal in terms of Chapter 2 of the Act.

The Commission issued guidelines on the notification of small mergers to this effect, effective from April 2009.

The Commission has jurisdiction to decide on intermediate and small mergers notified. However for large mergers, the Commission only makes recommendations to the Competition Tribunal. The merging parties or parties who intervene in merger proceedings can appeal the decisions of the Commission and Competition Tribunal.

For operational efficiency, the Commission classifies notified mergers based on the complexity of the competition and/or public interest issue as follows: Phase 1 (non-complex), Phase 2 (complex) or Phase 3 (very complex). In addition, the Commission has published service standards for merger investigations, particularly the time it takes to complete an investigation. The service standards are necessary, as the Act sets out timeframes for investigations that apply to a merger, regardless of complexity. Small or intermediate mergers must be reviewed within 20 business days and the Commission can extend this by a maximum of 40 business days. Large mergers must be reviewed within 40 business days and, upon an application made by the Commission, the Tribunal may grant an extension of the investigation period of no more than 15 business days at a time.

Performance Overview of Merger Activity

In the year under review, the Mergers and Acquisitions (M&A) Division received 391 merger notifications. This is a slight drop from the previous financial year of 395. The majority of cases received were intermediate mergers, which is consistent with previous years. The Commission also received many mergers involving firms placed on business rescue in terms of the Companies Act.

The Commission finalised 413 merger cases. This is a significant increase from previous years, in which 327, 329, and 375 cases were finalised, respectively. Several cases in strategic industries were evaluated, including telecoms and intermediary products, such as steel. Out of the 413 mergers finalised, 37 were approved with conditions and seven were prohibited.



Mergers and Aquisitions

Back row: Thelani Luthuli, Rakgole Mokolo, Brenda Maseko, Maanda Lambani, Lindiwe Khumalo, Grashum Mutizwa, Daniela Bove,

Centre row: Dineo Mashego, Nolubabalo Myoli, Kholiswa Mnisi, Zintle Siyo, Xolela Nokele, Seema Nunkoo, Boitumelo Makgabo, Ratshidaho Maphwanya

Front row: Zanele Hadebe, Gilberto Biacuana, Relebohile Thabane, Phillipine Mpane, Reabetswe Molotsi, Billy Mabatamela, Portia Bele

Table 6: Mergers Notified and Reviewed from 2012/13 to 2015/16

	2012/13	2013/14	2014/15	2015/16
Notified	324	320	395	391
Large	68	95	119	116
Intermediate	223	209	260	262
Small	33	16	16	13
Finalised	327	329	375	413
Large	70	95	108	129
Intermediate	227	214	251	270
Small	30	20	16	14
Approved without conditions	278	302	321	364
Large	55	84	86	108
Intermediate	200	201	221	246
Small	23	17	14	10
Approved with conditions	37	22	43	37
Large	12	10	18	15
Intermediate	22	11	23	21
Small	3	1	2	1
Prohibited	0	1	5	7
Large	0	0	2	2
Intermediate	0	0	3	2
Small	0	1	0	3
Withdrawn/no jurisdiction	12	4	6	5
Large	3	1	2	4
Intermediate	5	2	4	1
Small	4	1	0	0

Turnaround times

One of the key performance measures for the M&A Division is the average turnaround time in which decisions for the different types of mergers are made. The Commission seeks to adhere to the set service standards, and its performance in this regard is detailed in Table 7.

Table 7: Average Turnaround Times against Set Service Standards

Phase	Service Standard	Total Number of Transactions	Average Turnaround Time
Phase 1	20	239	18
Phase 2	45	124	44
Phase 3 (small and intermediate)	60	32	56
Phase 3 (large)	120	13	128
Total		408 ⁶	33

The Commission met all its services standards, except the 120 days for Phase 3 (large merger cases). These are typically very complex cases where numerous competition and public interest concerns arise.

In the period under review, there were three mergers in the mobile telecommunications industry wherein significant competition and public interest concerns were investigated. Due to the nature and inability to arrive at workable solutions to address the concerns arising in these mergers, the investigations took significantly longer than usual.

Mergers with conditions

During the period under review, 37 mergers were approved with conditions. This is a slight decline from 43 cases in 2014/15. The Commission imposes either a behavioural or structural remedy, depending on the nature of the concerns arising from the merger. In 28 cases, remedies were imposed to address negative public interest concerns, particularly employment-related concerns, with the balance addressing competition-related concerns.

Behavioural conditions: addressing public interest concerns

Section 12(a)(3) of the Act identifies four public interest grounds that the Commission must consider:

- Employment.
- Impact on a particular sector or region.
- The ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive.
- The ability of national industries to compete in international markets.

Behavioural conditions: addressing competition concerns

Behavioural remedies were imposed in eight cases to address competition concerns. These conditions mainly relate to an obligation to continue supply, restriction on information sharing and appointment of directors.

⁶ This figure excludes cases that were withdrawn or where the Commission had no jurisdiction.

Structural remedies: addressing structural market distortions

Structural remedies are aimed at preventing an anti-competitive structure from arising. These typically include divestitures. In this financial year, the Commission imposed one structural remedy.

Table 8: Public Interest Conditions Imposed on Mergers in 2015/16

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2014Aug0414	Telkom SA SOC Ltd	Business Connexion Group Ltd	Telecommunications	Public interest Employment restriction on the number of job losses Behavioural Obligation to offer non-discriminatory pricing and terms
2015Jan0013	RCS Cards (Pty) Ltd	Consumer Finance Business of the JD Group Ltd	Finance: unsecured credit	Public interest Employment moratorium on retrenchments Behavioural Obligation to ensure the continuance of the insurance business for three years
2015Mar0124	Neue Halberg-Guss GmbH	Atlantis Foundries (Pty) Ltd	Automotive castings for commercial vehicles	Public interest Employment moratorium on retrenchments Industrial sector or regional obligation to not relocate manufacturing plant or facilities outside of South Africa
2015Mar0109	Hebei Iron & Steel Group Co Ltd	Duferco International Trading Holding SA	Iron and steel	Public interest Employment moratorium on retrenchments Industrial sector or regional obligation to not relocate manufacturing plant or facilities outside of South Africa
2015Mar0108	Grupo Ferroátlantica SA	Globe Speciality Metals Inc	Production of ferrosilicon ("FeSi") and microsilica	Behavioural Obligation to supply Public interest Industrial sector or regional obligation to continue investment in manufacturing facility

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2015Jun0312	VKB Agriculture (Pty) Ltd and Louis Dreyfus Commodities Africa (Pty) Ltd	The Kromdraai Group of Companies	Agriculture:Trade of wheat and storage and handling of grain	Public interest Employment restriction on the number of job losses over one year
2014Jul0382	Vodacom (Pty) Ltd	Neotel (Pty) Ltd	Telecommunications	Public interest and behavioural Employment moratorium on retrenchments Public interest Industrial sector or regional obligation to invest in infrastructure Obligation to increase black economic empowerment (BEE) shareholding Behavioural Obligation to not use facilities for two years
2015Jun0323	Nokia Corporation	Alcatel-Lucent Societe Anonyme	Telecommunications	Public interest Restriction on job losses for 12 months Obligation to not dilute BEE shareholding
2015Jun0310	Dimension Data Middle East and Africa (Pty) Ltd	Britehouse Holdings (Pty) Ltd	Information technology services	Public interest Employment moratorium on retrenchments for two years
2015Jul0378	Bravo Manufacturing (Pty) Ltd	Viva CC and Show Cupboards CC	Manufacturing of furniture	Public interest Employment obligation to offer employment and inform retrenched employees of any job opportunities for two years
2015Jun0330	Ismanetix (Pty) Ltd	Penumbra Coal Mining (Pty) Ltd (in business rescue)	Mining: coal	Public interest Employment obligation to give preference in the employment of retrenched employees for two years

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2015Jul0371	The RTT Group (Pty) Ltd	Courierit SA (Pty) Ltd and Warehouseit (Pty) Ltd	Logistics: courier transport services	<p>Public interest Employment moratorium on retrenchments for two years</p> <p>Public interest Small business obligation to continue using current subcontractors for five years</p> <p>Behavioural Information exchange limitation on the appointment of directors</p>
2015Apr0226	SBV Services (Pty) Ltd	Certain movable and immovable assets of Absa Bank Ltd	Financial services	<p>Public interest Employment obligation to employ affected employees</p>
2015Jul0416	Libstar Operations (Pty) Ltd	Patleys (Pty) Ltd	Production and supply of honey	<p>Behavioural Employment obligation to continue supply agreement</p>
2015Nov0605	Hudaco Trading (Pty) Ltd	The Business of Hydraulic Engineering Repair Services (Pty) Ltd	Wholesale: supply and repair of hydraulic equipment	<p>Public interest Employment restriction on retrenchments</p>
2015Nov0624	Ichor Coal NV	Universal Coal PLC	Mining: coal	<p>Public interest Employment moratorium on retrenchments</p>
2015Sep0525	Easigas (Pty) Ltd	Reatile Gaz (Pty) Ltd	Supply of gaseous fuels	<p>Public interest Obligation to maintain BEE status</p> <p>Behavioural Obligation to acquire additional shares and obligation to implement a competition law compliance policy</p>
2015Jul0438	Diageo South Africa (Pty) Ltd	Brandhouse Beverages (Pty) Ltd	Wholesale: alcoholic beverages	<p>Public interest Restriction on retrenchments for 18 months and obligation to create jobs</p>
2015SEP0511	Steinhoff Doors and Building Materials (Pty) Ltd	Iliad Africa Ltd	Retail of building supplies, hardware and related products	<p>Public interest Moratorium on job losses for two years along with obligation to explore opportunities for alternative employment for affected employees</p>

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2015Mar0130	Coca-Cola Beverages Africa Limited, a subsidiary to be formed of SABMiller Plc	Coca-Cola Sabco (Pty) Ltd, Coca-Cola Shanduka Beverages South Africa (Pty) Ltd, Waveside (Pty) Ltd and Coca-Cola Cannery of Southern Africa (Pty) Ltd	Manufacturing of non-alcoholic beverages	Public interest Employment restriction on the number of job losses, obligation to assist in re-skilling and seeking alternative employment and obligation to create jobs Undertaking to invest in new small businesses Obligation to implement a BEE transaction
2015Nov0629	Totalgaz Southern Africa (Pty) Ltd	The LPG storage, supply and distribution business of Kaya Gas (Pty) Ltd and certain assets associated therewith	Distribution and supply of LPG	Public interest Small business obligation to assist historically disadvantaged retailers and continuation of supply Obligation to implement BEE
2015Nov0616	DSV A/S	Uti Worldwide Inc	Logistics: freight forwarding	Public interest Employment restriction on retrenchments for two years
2015Dec0687	Tegeta Exploration and Resources (Pty) Ltd	Optimum Coal Mine (Pty) Ltd (in business rescue) and 6 other target firms	Mining: coal	Public interest Employment moratorium on retrenchments
2015Dec0754	Konecranes Acquisition Company LLC	Terex Corporation	Industrial lifting equipment	Public interest Employment restriction on retrenchments and obligation for re-training affected employees
2015Dec0687	Super Group Trading (Pty) Ltd	Corsair Logistics (Pty) Ltd	Road logistics	Public interest Employment obligation to continue using third party contractors
2015Dec0694	Coty Inc	Haircare, colour cosmetics and fragrance businesses of the Procter and Gamble Company	Cosmetics	Public interest Employment obligation to continue using third party distributors

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2015Nov0627	Sibanye Platinum Bermuda Ltd	Acquarius Platinum Ltd	Mining	Public interest Employment restriction on retrenchments Obligation to continue with BEE procurement policy
2015Nov0625	Sibanye Platinum Bermuda Ltd	The Rustenburg Mines (a division of Rustenburg Platinum Mines Ltd)	Mining	Public interest Employment restriction on retrenchments Obligation to continue with BEE procurement policy

Table 9: Behavioural Conditions Addressing Competition Concerns

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Behavioural Condition
2015Apr0151	Transpaco Plastics (Pty) Ltd	East Rand Plastics Division of Astrapak Manufacturing Holdings (Pty) Ltd	Manufacture of plastic products	Obligation to supply for three years and development of compliance policy
2015May0255	Pembani Group (Pty) Ltd	Shanduka Group (Pty) Ltd	Coal mining	Obligation relating to the appointment of common directors
2015Sep0520	Vukile Property Fund Ltd	Thavhani Property Investments (Pty) Ltd in respect of a 1/3 interest in the Thavhani Mall Letting Enterprise	Property	Obligation to inform the Commission of a specific transaction within a specified period
2015Nov0610	Capital Propfund (Pty) Ltd	Vacant Immovable Property to be known as Erf 2551 Louwlandia, Ext 74 Township	Property	Obligation to inform the Commission of a specific transaction within a specified period
2015Aug0499	Roche Molecular System Inc.	Kapa Biosystems Inc	Chemicals	Obligation to supply
2015Jun0343	VAPS Holdings (Pty) Ltd	Motorite Administrators (Pty) Ltd, Engine Room (Pty) Ltd and Small Area Repair Technology Underwriting Managers (Pty) Ltd	Insurance	Obligation to supply competitors' products and to not induce distributors

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Behavioural Condition
2015Sep0503	Edcon Limited, Accenture Holdings BV and Accenture South Africa (Pty) Ltd	The Consumer Credit and Collection	Consumer finance	Obligation to not share competitively sensitive information
2015Nov0608	Mobile Telephone Networks (Pty) Ltd	Smart Village (Pty) Ltd	Telecommunications	Obligation to grant access to third party service providers

Table 10: Structural Remedies

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Structural Condition
2015Dec0715	Afrimat Ltd	Cape Lime (Pty) Ltd	Mining: aggregates	Divestiture

The trend towards embedding public interest concerns reflects the increasing endeavours by the Commission to achieve its objectives relating to the developmental goals of competition policy through designing remedies aimed at addressing public interest factors. Some of the notable mergers approved, subject to conditions are discussed below.

Totalgaz Southern Africa (Pty) Ltd and Kaya Gas (Pty) Ltd

The Commission assessed the merger in which Totalgaz Southern Africa (Pty) Ltd (Totalgaz) acquired the LPG storage, supply and distribution business of Kaya Gas (Pty) Ltd and certain assets associated therewith (Kaya Gas). Both Totalgaz and Kaya Gas are distributors of LPG in South Africa. The Commission found that Kaya Gas had positioned itself to supply LPG in 5 kg cylinders into the low-income areas of the Western Cape, which differentiated it from other distributors. The Commission was concerned about the prospect of Totalgaz not maintaining the Kaya Gas distribution network, which would have led to a lessening of competition and public interest harm, as the 5 kg cylinders are important to low-income households.

The Commission, therefore, imposed conditions on the merger parties that would ensure that Totalgaz continues to supply LPG in 5 kg cylinders in the low-income areas of the Western Cape. The Commission also imposed conditions related to BEE and the development of small LPG retailers in the townships.



Grupo Ferroátlantica S.A and Globe Specialty Metals Inc merger

The Commission approved with conditions, an acquisition by Grupo Ferroátlantica S.A. (Grupo F.A.) of Globe Specialty Metals Inc. (GSM). Grupo FA (through Silicon Smelters (Pty) Ltd) and GSM (through Silicon Technologies (Pty) Ltd (Siltech)) supply ferrosilicon (FeSi) and microsilica. The Commission found that there are significant imports of FeSi, indicating a global market, with sufficient competition. However, some customers cannot import and view these firms as the only viable alternative. Additionally, suppliers of Siltech raised foreclosure concerns resulting from the merger. The Commission imposed conditions relating to continued sourcing of silica rock and electrode paste from local suppliers by Siltech, pricing of ferrosilicon by Silicon Smelters and Siltech, investments for the continued operation of Siltech's production plant in KwaZulu-Natal to address the concerns.

Hebei Iron & Steel Group Co. Ltd and Duferco International Trading Holding SA

The Commission imposed conditions in this merger whereby Hebei Iron & Steel Group Co Limited acquired shares in Duferco International Trading Holding SA (Duferco). The activities of Duferco in South Africa are undertaken by Duferco Steel Processing (Pty) Ltd (DSP) and Duferco Distribution Services (Pty) Ltd. The Commission found that the proposed merger would raise public interest concerns relating to the effect on the steel sector as well as employment. To address the public interest concerns, the Commission imposed employment conditions as well as investment conditions on the facilities of DSP.

Impact on employment

Table 11 provides an overview of the impact on employment arising from merger and acquisition activity in 2013/14, 2014/15 and 2015/16 and considers the number of jobs lost and jobs saved.

Table 11: Comparison of Impact on Employment, 2013/14–2015/16

	2013/14	2014/15	2015/16
Total number of jobs lost	574	2 594	1 399
Total number of jobs saved	2 231	5 340	8 274
Total number of cases with employment impact	18	44	39
Net effect	+ 1 657	+ 2 746	+6 875

In the period under review, 39 cases had an impact on employment. These were mainly in the manufacturing and telecommunications sector. Overall, 1 399 jobs were lost and 8 274 jobs were saved. Overall, merger and acquisition activities had a positive effect on employment during the year under review. The Commission endeavours to minimise negative impacts on employment to attain its long-term developmental goal of a growing and inclusive economy.

The Commission achieves this by imposing remedies aimed at alleviating employment losses. During the financial year, the Commission imposed employment-related remedies in 25 cases. Through its interventions, firms committed to saving 7 020 jobs through employment-related conditions.

Significant mergers

A number of significant mergers were investigated and finalised in the year. The most notable ones were the telecommunications and the casino/gambling mergers discussed below.

Vodacom/Neotel merger

The Commission recommended that the large merger whereby Vodacom (Pty) Ltd intended to acquire Neotel (Pty) Ltd be approved with conditions. It found that the proposed transaction would substantially lessen competition in the mobile services market. Vodacom is the current market leader and the additional service spectrum from Neotel would compound Vodacom's dominant position. The acquisition would confer first mover advantages to Vodacom relating to network speed, capacity and mobile offerings. Vodacom would unlikely be constrained by other competitors as they are unlikely to match its offering. These factors taken together would likely lead to fewer choice and higher prices to end customers in the absence of effective constraints on Vodacom. The merger is also likely to have a significant impact on the structure of the South African mobile market and future competitive dynamics.

To address the concerns arising from the proposed merger, the Commission recommended some structural and public interest conditions. The main condition was that Vodacom shall not directly or indirectly use Neotel's spectrum for the purpose of offering wholesale or retail mobile services to any of its customers for a period of two years from the approval date or 31 December 2017, whichever is earlier. Upon appeal by several third parties in the telecommunications sector, the merger was eventually abandoned in January 2016.

MTN and Telkom ran sharing and bi-lateral roaming arrangement

The Commission recommended to the Competition Tribunal the prohibition of the large merger whereby Mobile Telephone Networks (Pty) Ltd (MTN), a subsidiary of MTN Group Limited, intended to acquire certain radio access network (RAN) assets of Telkom SA SOC Limited (Telkom). The nature of the transaction was such that MTN and Telkom would conclude a network management services agreement and reciprocal roaming agreements, in terms of which (a) MTN will take over financial and operational responsibility for the roll-out and operation of Telkom's RAN; and (b) each party would be able to roam on the other party's mobile network. Effectively MTN would be able to access additional spectrum capacity from Telkom to roll-out a long-term evolution network.

Although the transaction did not involve the combination of MTN and Telkom's mobile retail businesses, the Commission found that the proposed transaction would substantially prevent or lessen competition in the mobile services market. The access to additional spectrum capacity by

MTN would confer first-mover advantages to it relating to network speed, capacity and mobile offerings. MTN would be able to gain a significant competitive and time advantage, offering a superior network and services that cannot be significantly constrained by rivals, particularly given the market position of Cell C and Telkom Mobile.

Importantly, the nature of the transaction was such that Telkom Mobile's ability to grow aggressively would be significantly curtailed, as the mobile data capacity available to Telkom will be limited whereas MTN's capacity will not be limited. The Commission found that the merger would effectively limit the ability of Telkom Mobile to grow and independently compete against MTN and other mobile operators. This is particularly so in the mobile data markets where future competition is likely to take place. This outcome is likely to entrench a duopolistic market structure dominated by Vodacom and MTN. Such a resultant duopoly market structure is unlikely to serve customers well, particularly when considering that it is the smaller mobile operators that lower prices before the larger operators, MTN and Vodacom.

The merger was also likely to have a significant impact on the structure of the South African mobile markets and future competitive dynamics. This is undesirable, especially when considering that South Africa experiences higher mobile prices than other comparable countries in the world. There were several objections to the merger from third parties in the industry.

No workable remedies were identified and the Commission therefore recommended prohibition of the transaction. The parties, however, abandoned the merger after the referral.

Telkom SA SOC Ltd and Business Connexion Group Limited

In this transaction, the Commission recommended an approval with conditions of Telkom and Business Connexion Group Limited (BCX) merger. It found that Telkom, being the largest provider of wholesale leased lines to downstream customers, had the ability to foreclose its downstream rivals from access to these wholesale leased lines which are essential inputs for the provision of downstream services including managed network services, value-added network services and hosting and information technology services. The Commission also found that the merger would result in the merged entity having the ability and incentive to engage in bundling strategies that may result in anticompetitive behaviour. To address these concerns, it recommended certain behavioural and employment conditions to the Tribunal.

Raumix Aggregates (Pty) Ltd and OMV Kimberley Mining (Pty) Ltd

The Commission prohibited the small merger whereby Raumix Aggregates (Pty) Ltd (Raumix), a subsidiary of the Raubex Group Limited (Raubex) intended to acquire control of OMV Kimberley (Pty) Ltd (OMV Kimberley) and OMV Kimberley Mining (Pty) Ltd (OMV Mining), collectively known as the OMV Group.

Raubex operates a fully integrated business model covering all aspects of road construction, including the supply of construction materials. The OMV Group produces aggregates that are used *inter alia* as road stone by road contractors, as well as in asphalt production and high-quality concrete applications.

The Commission narrowed the aggregates market further to the production and supply of aggregates used in road surfacing, namely, road stones. This is because aggregates that are used for road surfacing have to meet the Committee of Land Transport Officials (COLTO) specifications for road surfacing and reseal, as required by SANRAL. Within the COLTO specifications, road stones that are used for the surfacing of national roads are also required to meet the Polishing Stone Value Test, which is conducted as a separate test.

The Commission found that the proposed transaction would substantially prevent or lessen competition in the market for road stones used in the surfacing of national roads in the Kimberley area. Other than the OMV Group, there was no other supplier of the road stones required for the surfacing of national roads in Kimberley. With the acquisition, Raubex would have the ability and incentive to raise costs to its competitors downstream in instances where they require road stones that meet the specifications for national roads.

The Commission considered possible supply remedies proposed by the merging parties, but concluded that these did not adequately address the concerns. Also, the merging parties did not make any submissions on efficiencies or pro-competitive gains that would alleviate the concerns.

CTP Limited and the Digital Disc Manufacturing and Replicating Business of CDT

The Commission considered an intermediate merger whereby CTP Limited (CTP) intended to acquire the Digital Disc Manufacturing and Replicating Business of CDT (CDT), a division of Times Media (Pty) Ltd (Times Media). Post-merger, CTP would control CDT. Both firms were active in the replication of CDs and DVDs in South Africa. The Commission found that the merging parties were the only firms able to replicate CDs and DVDs at a large scale, and hence the merger was effectively a merger to monopoly.

The Commission found that the merged entity would (i) have the ability to increase prices, (ii) would likely raise the minimum order sizes for the replication of CDs and DVDs; and (iii) would likely engage in a bundling strategy post-merger which would drive other music distributors out of the market. The Commission proposed remedies to the merging parties to deal with these concerns, however, the merging parties were not amenable to merger conditions. The Commission, therefore, prohibited the merger.

The merging parties filed an application for reconsideration with the Tribunal. Following the hearing, the Tribunal approved the merger subject to several conditions:

- The merged entity would not increase the minimum orders beyond 100 units.
- The merging parties would not bundle the replication of CDs/DVDs with their distribution.
- The merging parties will not require customers to sign exclusive contracts.
- The merger would not result in more than the identified 23 merger-specific retrenchments.

JoJo Tanks (Pty) Ltd and Nel Tanks CC

The Commission prohibited the small merger whereby JoJo Tanks (Pty) Ltd intended to acquire the operating assets and liabilities of the Nel Tanks business as a going concern. The Commission found that the activities of the merging parties mainly overlap in the markets for the manufacture and supply of vertical water tanks and horizontal transport tanks in the Western Cape, or within a 300–400 km radius of their operation in the Western Cape (relevant markets). The Commission prohibited this merger based, *inter alia*, on the following reasons:

- The merged entity will be able to increase prices post-merger as it will have market power and would not face significant competitive constraints.
- The merger removes an effective competitor and by so doing raises the level of concentration in an already fairly transparent market.
- The proposed merger weakens the ability of customers to bargain against the two largest players who are now merging.

Further, the Commission found that the market was structured in such a way that competitors focused on certain segments of the market. Therefore, this was likely to further enhance the ability of firms to coordinate their activities in the Western Cape. The remedies proposed by the merging parties were insufficient to address the competition harm arising from the proposed transaction.



Maxshell 114 Investments (Pty) Ltd/Sun International (Pty) Ltd

The Commission was notified of a large merger whereby Sun International (South Africa) Limited (SISA) intended to acquire the entire issued shareholding of Maxshell 114 Investment (Pty) Ltd (Peermont).

The merging parties are owners and operators of casino gaming complexes throughout the country. The Commission's investigation found that the only area wherein a competitive overlap arises is in the market for casinos and gambling in Gauteng. SISA owns and operates Carnival City and Morula Casino, whereas Peermont operates Emperors Palace in Gauteng.

The Commission found that the merger increased concentration levels in an already highly concentrated central Gauteng market with resultant unilateral effects.

Furthermore, the Commission found that, as a result of the proposed transaction, the merged entity and the sole remaining competitor, Tsogo Sun Holdings Limited, would no longer act as a constraint to each other, but would likely coordinate their behaviour post-merger. The Commission, therefore, recommended that the proposed merger be prohibited.

Monier Coverland and Technicrete Polokwane Tile Plant

The Commission considered the small merger whereby Monier Coverland (Pty) Ltd (South Africa) (Monier) intended to acquire the assets and business of Technicrete Polokwane Tile Plant (Technicrete) as a going concern from Technicrete ISG (Pty) Ltd. Post-merger, Monier would acquire sole control over Technicrete.

In the relevant market for the manufacture and supply of concrete roof tiles for pitched roofs within a radius of the merging parties' facilities in Polokwane, the Commission found that Monier and Technicrete would have a combined market share of between 50% and 60% post-merger, with a market share accretion of between 20% and 30%. Monier and Technicrete were the two largest players, followed by significantly smaller rivals, such as Marley Roofing, Casa Roof Tiles, Tech on Tile, York Roof Tiles, Masequa, Brilliant Roof Products, Ga-matala Brick and Tile and Murendi Tiles.

In addition, the Commission found that the merger would result in the removal of an effective competitor given that Technicrete was the market leader before Monier's entry and the major constraining influence to





Monier pre-transaction. The small players were fragmented within the Limpopo province and would unlikely constrain the merged entity post-merger.

The Commission found that the proposed efficiency arguments were not merger-specific and the efficiency gains raised did not outweigh the substantial lessening of competition arising from the merger. In addition, there were no structural remedies proposed that could address the structural harm arising.

In relation to the effect of the merger on small businesses, the Commission found that the merger would have a negative effect on small businesses since they do not show signs of expanding their production of concrete roof tiles comparable to the scale of the merging parties and to meet the requirements of large retailers. The Commission prohibited the merger; however, it was approved subject to conditions on appeal at the Tribunal.

Coca-Cola Beverages Africa Limited and Coca-Cola Sabco (Pty) Ltd

The Commission conditionally approved a large merger in terms of which SABMiller Plc (SABMiller), Gutsche Family Investments (Pty) Ltd and the Coca-Cola Company (TCCC), sought to combine the bottling operations of their non-alcoholic beverages (NABs) businesses in South Africa under a single entity to be known as Coca-Cola Beverages South Africa (Pty) Ltd (CCBSA). Further, through this transaction, SABMiller will transfer Appletiser, Grapetiser, Fruitiser and Peartiser (the Appletiser brands) and its Lecol brand to TCCC.

The Commission's investigation of the proposed merger found several competition and public interest concerns:

- A negative impact of the proposed transaction on employment since it would result in job losses of 250 employees of the merging parties in South Africa.
- The owner-driver scheme (which largely comprises ex-employees of TCCC) and how it is currently being operated by TCCC. When recruited to join the owner-driver scheme, the owner-drivers have no real control over the operation and finances of their businesses. They also had limited understanding of how the contracts work and the risks involved, which could potentially result in their contracts being terminated for no reason whatsoever.
- The impact of the proposed transaction on the local producers of polyethylene terephthalate (PET) bottles, tin cans, glass, packaging,

sugar and crates in South Africa. This is as a result of the increased bargaining power of the merged entity due to the consolidation of the various Coca-Cola bottlers in South Africa.

- The relocation of the merged entity head office post-merger is likely to have a negative impact on the non-alcoholic beverages market in South Africa, employment and localisation.
- The fruit juice concentrate of the Appletiser brand, currently sourced from South African producers, may be sourced by TCCC from suppliers outside of South Africa. Should the merged entity discontinue the sourcing of the fruit juice concentrate, this would have a negative impact on the growth of local producers and would result in them shutting down and/or reducing their current workforce.
- The lack of access to refrigeration and coolers in retail stores where there is only one fridge or cooler would prevent smaller rivals from competing effectively with the merged entity post-merger.
- The proposed transaction had a negative impact on Broad-based Black Economic Empowerment (B-BBEE) as it would likely dilute B-BBEE shareholding from 20% to 11.3% post-merger.

In order to address the above-mentioned concerns, the Commission and the merging parties agreed on a set of remedies, which was approved by the Tribunal. The remedies included, amongst others, the following:

- To support the small businesses, the merging parties undertook to invest no less than R400 million in developing the downstream distribution and retail aspects of the South African non-alcohol ready-to-drink (NARTD) business of CCBSA.
- The merging parties shall ensure that in micro outlets and small outlets where there is no dealer-owned product-visible cooler or competitor product-visible cooler, such outlets are at all times free to provide 10% of the visible space in their coolers and refrigerators supplied or funded by CCBSA to local smaller competitors' products competing with CCBSA products.
- Further, as part of the commitment, CCBSA shall not induce the retailers to refuse access to space in the coolers and refrigerators directly or indirectly provided or funded in whole or in part by CCBSA. This condition is subject to certain exclusions.
- The merging parties also undertook, through CCBSA, to establish a fund for enterprise development in the agriculture value chain,

particularly for the support and training of historically disadvantaged developing farmers and historically disadvantaged or small suppliers of inputs for Appletiser SA and CCBSA products.

- Further, the merging parties would use all reasonable endeavours to ensure that they maintain and, if possible, improve their level of local production and procurement of inputs made in South Africa.
- With regard to employment, the merging parties committed that, for a period of no less than three years, they will maintain at least the numbers of employees as are employed by the merging parties. The merging parties further committed to put in place suitable and appropriate measures to mitigate the consequences of the retrenchments by providing amongst others funding to re-skill affected employees.
- With respect to B-BBEE, the merging parties committed to increase its current levels of B-BBEE ownership to 20%.

9.4. Legal Services

The Legal Services function is responsible for managing the Commission's litigation before the Tribunal, CAC, High Court, Supreme Court of Appeal (SCA) and Constitutional Court. The Commission appears before the Tribunal, and in other cases, instructs attorneys and briefs counsel. The Legal Services function directs and manages the Commission's strategy in respect of litigation. Legal support is also provided to cartel, abuse of dominance, exemptions and merger investigations. The Legal Services function is also responsible for the prosecution of firms who fail to notify mergers and implement them without approval of the Commission and Tribunal, as the case may be.

Furthermore, the Legal Services function negotiates and concludes settlement agreements, with the input of other functions. The settlement process enables the Commission to conclude cases speedily and in a cost-effective manner. The Commission also provides a low-cost advisory service to members of the public on compliance with the Act.

Significant Judgments in the Courts and Tribunal

The significant legal matters handled by the Legal Services Division during 2015/16 are discussed below.



Legal Services

Back row: Ratshibvumo Ramabulana, Tshepiso Sepeng, Anisa Kessery, Ruan Mare, Emmanuel Tshikhudo, Sihle Mdludla, Vumile Vundla
 Centre Row: Ziyaad Minty, Layne Quilliam, Paulina Mfomme, Romeo Kariga, Lerato More, Bukhosibakhe Majenge, Maya Swart, Nomveliso Ntanjana
 Front left-right: Nelly Sakata, Kriska-Leila Goolabjith, Hildah Maringa, Jabulani Ngobeni, Thandile Charlie, Ally Makgopa, Korkoi Ayayee, Ngoako Moropene, Siseko Salela

The Constitutional Court's decision in the Sasol appeal

On 17 June 2015, the CAC handed down its decision on the Commission's case against Sasol Chemical Industries Ltd (Sasol), where it upheld an appeal brought by Sasol against a decision of the Tribunal. The Tribunal found that, between 2004–2007, Sasol had charged excessive prices for propylene and polypropylene, to the detriment of customers in contravention of Section 8(a) of the Act. The Tribunal imposed an administrative penalty of R534 million against Sasol for the excessive pricing contravention.

The CAC accepted most of the evidence presented by Sasol and effectively rejected the evidence presented by the Commission. The Commission applied for leave to appeal to the Constitutional Court against the CAC decision on various grounds including:

- the contradictions in the CAC's reasoning in the Arcelor Mittal and Sasol cases on how to evaluate excessive pricing, leading to confusing precedents;
- the CAC's failure to take into account that Sasol acquired its dominance through state support, rather than through innovation and risk-taking; and
- the CAC's failure to assess the impact of Sasol's pricing on downstream industries.

On 17 November 2015, the Constitutional Court dismissed the Commission's application for leave to appeal the decision of the CAC on the basis that it had no prospects of success. Accordingly the decision of the CAC stands.

The Commission wins its first predatory pricing case

On 8 September 2015, the Commission won a landmark case against Media24 (Pty) Ltd (Media24) in its first prosecution of a predatory pricing case under Sections 8(d)(iv) and 8(c) of the Act in the Tribunal. Predatory pricing occurs when a dominant firm engages in exclusionary abuse of selling its goods or services below their marginal or average cost to foreclose its competitors from the market, whereafter it increases prices to recoup its losses. The Tribunal found that between 2004 and 2009, Media24 deliberately drove a competitor, **Gold-Net News**, out of the market for advertising in community newspapers. Media24 did this by positioning a competing community newspaper, **Forum**, as a 'fighting brand' against **Gold-Net News** and running the brand at a loss until **Gold-Net News**

eventually closed down in 2009.

On 8 September 2015, the Tribunal delivered its decision in this important matter and found that the Commission has successfully established that Media24 priced its **Forum** publication below its average total cost (ATC) and, together with other evidence of direct and indirect intent to eliminate its competitor and its subsequent ability to recoup what it lost during the period, carried out an exclusionary act in contravention of Section 8(c) of the Act.

The Tribunal states the following in paragraph 221 of its judgment in respect of the difficulty of successfully prosecuting abuse of dominance cases under Section 8 of the Act:

"In our view the use of the ATC standard, even where prices are above AVC [Average Variable Costs], is appropriate, particularly in our economy, characterised as it is by high barriers to entry in many markets and the unwillingness of capital markets to sponsor the entry of competitors against dominant incumbent firms. They are the 'less financially' secure than Greer contemplates. Moreover, the ATC test is a more reliable standard when dealing with the problems associated with the vertically integrated or multi-product firm, because here the more orthodox measures of cost evaluation, whether marginal cost, AVC or AAC [Average Avoidable Costs], can so easily be obfuscated or frustrated. In such a context, the informational asymmetries between the outsider seeking to indict the firm as a predator and the insiders defending the firm, are such that in most instances the firm is better placed to win the cost classification debate. Not because it is necessarily doctrinally correct, but because it has command over the accounting choices."

This case is an important victory for small players in the media sector, and promotes competition and diversity in the broader community newspapers and media sector. The decision of the Tribunal on remedies is expected to be delivered in the next financial year.

High Court's decision on Allens Mescho review application

On 17 July 2015, the North Gauteng High Court, Pretoria, delivered a judgment in favour of the Commission and dismissed a review application brought by the Allens Meshco Group of Companies (AMG) challenging the Commission's refusal to grant them leniency for their participation in a cartel in the wire and wire products market. AMG brought the review application on 20 May 2013 and the hearing took place on 15 September 2014.

In its review application, AMG alleged, among others, that the Commission refused to grant them leniency solely on the basis that they were not the first through the door. AMG also contended that the granting of a marker and granting of immunity was one integrated process. In response to AMG's allegations, the Commission essentially argued that AMG had brought its review application after an unreasonable delay. It also contended that AMG only submitted a marker application and not a leniency application, and further said that the Corporate Leniency Policy (CLP) ordinarily precludes the granting of leniency to a second applicant in relation to a market or for conduct already disclosed to the Commission.

The High Court found that the delay in which AMG brought its application was unreasonable; that AMG failed to submit a leniency application and that it only submitted a marker application. It held that marker and leniency applications are separate and distinct from one another and stated that each has to comply with its own set of procedural and other requirements.

The High Court recognised that the delay had been highly prejudicial to the Commission and the public at large. It accepted the Commission's submission that any delay in the imposition of penalties affords the applicants time to restructure their affairs and thus to potentially frustrate the imposition and collection of any fines.

The High Court's decision confirms an important feature of the Commission's CLP, that the filing of a marker application does not amount to an application for leniency, and for the Commission to grant leniency to a party, such party will have to provide it with sufficient information to establish the cartel conduct involving the applicant and any other cartel members.

The Tribunal clarifies the level of particularity required in a complaint initiation

In *Commission vs Pioneer Fishing (Pty) Ltd (Pioneer Fishing) and others*, the Tribunal clarifies the level of specificity and particularity required in a complaint initiation. In this matter, Pioneer Fishing brought an interlocutory application to challenge, *inter alia*, the scope of the Commission's investigation and its subsequent referral of the case to the Tribunal. The main issue in dispute was whether the Commission had introduced a new prohibited practice (a restraint in a written agreement), not previously contemplated in the initiation statement or referral, in a reply to further particulars requested by Pioneer Fishing. If it had, Pioneer alleged it did so at a time when the complaint would have expired, as per the provisions of Section 67(1) of the Act, which states that a complaint in respect of a prohibited practice may not be initiated more than three years after the practice had ceased.

On the 31 August 2015, the Tribunal dismissed Pioneer Fishing's application, and in its assessment, confirmed the principles set out in *Yara*⁷ that the Commission's initiation merely sets the process in motion before there can be a formal investigation into a complaint. The level of specificity and particularity that is required of an initiating statement is thus not equivalent to that required in a referral affidavit. The Tribunal considered the Form CCI, read together with the initiation statement attached thereto, and concluded that from a fair reading of the initiation statement and the referral one can infer that the complaint was initiated and referred. The conduct initiated can be inferred from a fair reading of the initiation. All that may be required is that the Commission signal the relevance of the conduct for it to form part of the investigation.

Requirements for a civil claim for damages against a leniency applicant: *Premier Foods (Pty) Ltd v Norman Manoim NO and Others*

On 29 of September 2015, the SCA heard an appeal brought by Premier (Pty) Ltd (Premier) against a decision of the High Court, which held that it was competent for the Tribunal to issue a Section 65 certificate against a leniency applicant who had not been cited in the complaint referral. A Section 65 certificate allows a person(s) who suffered a loss or damages as a result of cartel conduct to bring claims for civil damages in the ordinary civil courts. The Commission opposed Premier's appeal.

⁷ *Competition Commission vs Yara (SA)(Pty) Ltd*, 2013 ZASCA 107 (13 September 2013).

On 4 November 2015, the SCA upheld Premier's appeal and found that the Tribunal has no power to issue a Section 65 certificate against a leniency applicant who had been cited in the referral and against whom no relief was sought in the referral. The Commission applied to the Constitutional Court for leave to appeal against the SCA's decision. The Commission subsequently withdrew its application for leave to appeal following a settlement of the civil claim between Premier and non-governmental organisations representing consumers affected by the bread cartel.

CAC clarifies merger notification requirements for a listed firm: Caxton vs Media24 and three others (Novus listing)

This case was brought to the Tribunal by Caxton and CTP Printers and Publishers Limited (Caxton) and relates to the loss of control that was exercised by one of the shareholders, Mr Retief under the 2008 management agreement between Media24 (Pty) (Media24) and Paarl Media (currently Novus Holdings Limited (Novus)). Before Novus was listed on the JSE on 31 March 2015, the parties concluded a restated management agreement, which retained some of the rights that Mr Retief enjoyed under the 2008 management agreement but also removed some of them.

On 25 November 2015, the CAC ordered Media24 and three others to notify the change of control of Novus brought about by implementation of the restated management agreement to the Commission. The Tribunal concluded that the restated management agreement does not constitute a merger and gave the green light for Novus to be listed on the JSE on 31 March 2015. Caxton appealed the decision of the Tribunal to the CAC.

In making its decision, the CAC stated that there is no need to embark on a factual enquiry, as suggested by the Tribunal, in determining control for purposes of Section 12(2)(g) of the Act, as long as there is a legal document conferring control. Furthermore, the CAC held that in terms of Section 66 of the new Companies Act, the Board is the repository of original power rather than a recipient of powers delegated to it by the shareholders through the articles of association. As a result, the Board is the one empowered to exercise power over the company, unless the Memorandum of Incorporation states otherwise. The CAC emphasised that there is therefore no place for the powers granted to Mr. Retief in the restated management agreement as it is subject to Section 66 of the Companies Act, King III and the Memorandum of Incorporation. The CAC further held that the loss of control by Mr. Retief resulted in a move from joint to sole control, regardless of who acquired the control, and as a

result, the transaction had to be notified to the Commission.

Application to compel production of documents before pleading: The Competition Commission vs Group Five Limited

On 18 January 2016, the Tribunal handed down a decision in the matter involving the Commission and Group Five. Group Five brought an application to compel the Commission to produce the record of its investigation in terms of Rule 35(12) and/or (14) of the High Court Rules and in terms of Rule 15 of the Commission's rules, prior to filing its answer to the complaint referral.

The Tribunal dismissed Group Five's application to compel production of documents. In dismissing the application, the Tribunal held firstly, that there was no sufficient reference of the requested documents in the complaint referral to give rise to the entitlement under Rule 35(12). Secondly, that Rule 15(1) creates a right of access to a record held by a public body, but not the right for a litigant to compel premature discovery in legal proceedings. Accordingly, the Tribunal held that the right of access to the documents was not in question in this matter, but the matter concerns the timing of production of documents. When a matter is at litigation stage, the reasonable time in which access could be granted is at a discovery stage after the close of pleadings. The matter subsequently went on appeal to the appellate courts.

Allegation that the commercial agreement between MultiChoice and the SABC constituted merger dismissed

On 11 February 2016, the Tribunal handed down its decision, dismissing an application that had been brought by Caxton, CTP Publishers and Printers Limited and Others (Caxton). Caxton sought an order to compel MultiChoice (Pty) Ltd (MultiChoice) and the South African Broadcasting Corporation SOE Ltd (SABC) to notify as an intermediate merger the Commercial and Master Distribution Agreement they concluded on 3 July 2013. Caxton alleged that the agreement gave control to MultiChoice over SABC's archived programmes and television broadcast strategy.

The Tribunal's finding was that Caxton failed to prove that the agreement on encryption constituted control by MultiChoice over the SABC's business for purposes of Section 12(2)(g) of the Act. Caxton lodged an appeal against the Tribunal's decision. Subsequently, the CAC referred the

matter back to the Commission for further investigation.

Abandonment of a challenge to the Commission's tacit initiation under the fast-track settlement process

On 19 November 2014, the Commission referred a complaint against Isipani Construction (Isipani) for allegedly participating in two instances of bid rigging between August and November 2010 in Stellenbosch, as part of its construction fast-track settlement process. In its answering affidavit, Isipani argued that the Commission did not initiate a complaint against it in the 2009 complaint. In its replying affidavit, the Commission submitted that it had tacitly initiated a complaint against Isipani. Following the Commission's reply, Isipani abandoned its challenge. The matter was heard in the Tribunal in August 2015, to determine the appropriate penalty, which was the only remaining issue left in dispute. The Tribunal subsequently imposed a fine of R21 million against Isipani for a contravention of Section 4(1)(b)(iii) for engaging in two separate instances of cover pricing with Neil Muller Construction (Pty) Ltd.

The Tribunal imposes unique remedies in a locking products cartel

On 28 August 2014, the Commission referred a complaint against Sam Louw NO, Anita Louw NO (Louw Keys Centre) and Welkom Key Centre CC (Welkom Key) for alleged market allocation in the locking products market in the Free State and Northern Cape between 1988–2014, in contravention of Section 4(1)(b)(ii) of the Act.

On 18 December 2014, following a two-day hearing, the Tribunal found that Welkom Key contravened Section 4(1)(b)(ii) of the Act. The Tribunal also found that the conduct was ongoing and therefore ordered the respondents to cease and desist from continuing with the conduct. A hearing in relation to remedies was held on 5 June 2015. On 25 July 2015, the Tribunal imposed an administrative penalty of R41 127.40 against Welkom Key and R123 868.75 against Louw Keys Centre. It also imposed behavioural remedies on the respondents, including an order for them to advertise in areas that were previously allocated among them.

Finalisation of the prosecution of the bicycle cartel

In this matter, the Commission concluded 17 settlement agreements with various firms implicated in the bicycle cartel on the basis that each

of the firms admitted to fixing the price of bicycles and accessories in contravention of Section 4(1)(b)(i) of the Act and agreed to fully co-operate with the Commission in relation to the prosecution of the remaining respondents. The 17 settlement agreements did not include an administrative penalty. The Commission withdrew a complaint against one respondent (Fritz Pienaar Cycles) due to it being liquidated. There were two remaining respondents in the matter who had not settled with the Commission - Omnico (Pty) Limited (Omnico) and Coolheat Cycle Agencies (Pty) Ltd (Coolheat). Omnico and Coolheat are wholesalers of bicycles and accessories. The trial against the remaining respondents was heard on 18 May 2015 until 21 May 2015. Final arguments were heard on 17 July 2015. The Tribunal subsequently imposed a fine of R4 627 412.00 against Omnico and a fine of R4 250 612.00 against Coolheat for a contravention of Section 4(1)(b)(i) of the Act.

Settlement Agreements

The LSD finalised the following settlement agreements during the reporting period:

Safeguarding the rights of consumers to bring civil claims for damages

As part of its strategy to secure and preserve the rights of consumers affected by cartel conduct to bring claims for civil damages against firms implicated in the construction fast-track settlement process, the Commission concluded three consent agreements with leniency applicants. The purpose of these consent agreements was to record the admission of the relevant leniency applicants to involvement in collusive tendering with other firms. The consent agreements with leniency applicants will enable consumers to obtain a certificate issued in terms of Section 65 of the Act from the Tribunal, which is a prerequisite for bringing a claim for civil damages. These three consent agreements are as follows:

Name of the Leniency Applicant	Project(s)
JT Ross Pty Ltd	Mondi Multi Fuel Boiler
Stefanutti Stocks Holdings Ltd	Rainbow Farms Building; Lanxess Groundwater Remediation
Basil Read Holdings Ltd	SANRAL's rehabilitation of sections of road P65/2 from Parys to NI

Murray & Roberts settles collusive conduct in construction industry

On 9 December 2015, the Tribunal confirmed the consent agreement between Murray & Roberts Limited (M&R) and the Commission, which involved certain instances of collusive tendering in the construction industry.

Following from its investigation into the construction industry the Commission found that Concor, a subsidiary of M&R, tendered collusively with its competitors for the Durban Undersea Tunnel project as well as the Sishen Saldanha railway project. M&R Botswana was also implicated in collusive tendering for the Tati Mining project in Botswana. In addition, the Commission found that Genrec, a division of M&R, colluded with a competitor for steel fabrication work for the Green Point Stadium. M&R admitted the involvement of the above entities within its group in the identified collusive conduct and agreed to pay a settlement amount of approximately R64 million.

Competition Commission vs Copper Tubing Africa (Pty) Ltd

On 25 July 2012, the Commission referred a complaint against Copper Tubing Africa (Pty) Ltd (CTA) and Maksal Tubes (Pty) Ltd (Maksal) for the alleged fixing of the price of copper plumbing tube products in the period commencing early 2006 until at least 2009, in contravention of Section 4(1)(b)(i) of the Act. Maksal was granted conditional immunity on 23 November 2009, in terms of the Commission's Corporate Leniency Policy for the above-mentioned conduct.

The Commission and CTA concluded a settlement agreement that was confirmed as an order of the Tribunal on 16 September 2015.

The administrative penalty imposed on CTA was R8 million, representing 3.05% of CTA's annual turnover for the financial year ending February 2014. This settlement agreement marks the finalisation of the case.

Referrals for Failure to Notify Mergers

In the year under review, the Commission referred six 'prior implementation' cases to the Tribunal relating to the following merger transactions:

- Fruit & Veg City (Pty) Ltd, Sandro Gastaldi and Luciano Gastaldi.
- Fruit & Veg City Holdings (Pty) Ltd, Fruit & Veg City SA (Pty) Ltd and Everfresh Wholesale (Pty) Ltd.
- Competition Commission vs Deican Investment (Pty) Ltd and New Seasons Investments Holdings (Pty) Ltd.
- Competition Commission vs Dickerson Investment (Pty) Ltd and Nodus Equity (Pty) Ltd.
- Competition Commission vs Standard Bank of South Africa Ltd.
- Competition Commission vs BB Investment Company (Pty) Ltd and Adcock Ingram Holdings Ltd.

Advisory Opinions

In the year under review, the Commission issued 26 advisory opinions to the public and private sectors. These opinions cover the following themes:

- corporate restructuring
- minimum advertised pricing
- competitor collaborations
- collective bargaining of rates between healthcare providers and medical aid schemes
- joint buying groups
- output limiting agreements
- increase of deposit prices for LPG cylinders
- franchisor's pricing policy and restraints in a franchise agreement

- information exchange system established by trade associations
- mandatory audit firm rotation
- mandatory filing of proposed merger transactions
- tying and bundling
- bid rigging
- the participation by a firm in more than one bidding consortia or joint venture in the same bidding process
- long-term exclusive agreements
- public-private partnerships



Penalties

The following penalties were imposed during the period under review:

Table 12: Penalties 2015/16

Decision Date	Name of Respondent	Case Number	Section Transgressed	Penalty Levied (R)
22/04/2015	African Oxygen Ltd	2011Apr5739	4(1)(b)(ii)	3 269 865
13/05/2015	Amsteele Systems (Pty) Ltd	2010Apr5034	4(1)(b)	2 800 000
05/06/2015	A & B Movers CC	2011Jun0069	4(1)(b)	199 301
06/05/2015	Pele Kaofela CC	2009Sep4641	4(1)(b)(iii)	437 624
27/07/2015	Execu Move CC	2011Jun0069	4(1)(b)(iii)	831 514
12/08/2015	SA Metal Group (Pty) Ltd	2007Aug3121	4(1)(b)(i)(ii)	22 430 000
13/08/2015	Wallenius Wilhelmsen Logistics	2013Aug0401	4(1)(b)(i)(ii)(iii)	95 695 529
19/08/2015	Tosaco Commercial Services	2012Aug0480	4(1)(b)(i)(ii)(iii)	3 000 000
08/09/2015	Nippon Yusen Kabushiki Kaisha Ltd	2012Sep0544	4(1)(b)(i)(ii)(iii)	103 977 927
08/09/2015	Nippon Yusen Kabushiki Kaisha Ltd	2012Sep0544	4(1)(b)(i)(ii)(iii)	966 196
16/09/2015	Copper Tubing Africa (Pty) Ltd	2008Nov4111	4(1)(b)	8 000 000
02/09/2015	Malasela Tahan Electric	2010Mar4981	4(1)(b)(i)(ii)(iii)	20 200 000
16/09/2015	H & M Removals	2011Jun0069	4(1)(b)(iii)	196 364
31/08/2015	BLD Leads Logistics of South Africa	2013Aug03664	4(1)(b)(i)(ii)	928 306
18/11/2015	Dura Soltanche Bachy	2009May4447	4(1)(b)(iii)	988 589
07/10/2015	Fruit & Veg Holdings	2012Aug0468	13A(3)	750 000
09/12/2015	Compania Sud Americana De Vapores SA	2012Sep0544	4(1)(b)(i)(ii)(iii)	8 813 227
09/12/2015	Murray & Roberts	2009Sep4641	4(1)(b)(i)	64 141 799
18/02/2016	Key Moves CC	2011Jun0069	4(1)(b)(iii)	216 249
TOTAL				337 842 490

Guidelines

On 17 April 2015, the Commission published its Guideline for the Determination of Administrative Penalties for Prohibited Practices in **Government Gazette** No 38693. The guidelines were issued in terms of Section 79(1) of the Act, which allows the Commission to prepare guidelines to indicate its policy approach on any matter falling within its jurisdiction.

The guidelines were developed under the guidance of the Tribunal's and the CAC's cases, particularly in relation to the determination of administrative penalties through the six-step methodology developed by the Tribunal (in Commission/Aveng and others, case no. 84/CR/Dec09) and endorsed by the CAC. The guidelines present the general methodology that the Commission will follow in determining administrative penalties for purposes of concluding consent orders, settlement agreements and recommending an administrative penalty in complaint referrals before the Tribunal.

The guidelines not only take cognisance of the approach now adopted by the Tribunal and the CAC in the six-step methodology, but also consider guidelines and penal codes developed by other competition law jurisdictions, such as the European Commission, the Department of Justice and the

Federal Trade Commission in the United States of America and the United Kingdom's Competition and Market Authority.

The Commission will apply the following six steps, as determined by the guidelines:

1. Determining the affected turnover in the base year.
2. Calculating the base amount, being that proportion of the affected turnover relied upon.
3. Multiplying the amount attained in 2 above by the duration of the contravention.
4. Rounding off the figure obtained in 3 above if it exceeds the cap provided for by Section 59(2) of the Act.
5. Considering factors that might mitigate and/or aggravate the amount reached in 4 above by way of a discount or premium expressed as a percentage of that amount that is either subtracted from or added to it.
6. Round off the amount determined in 5 above if it exceeds the cap provided for in Section 59(2) of the Act.

The Commission will exercise its own discretion where appropriate, for example in settlement cases where an additional discount of up to 50% may be granted based on the expeditious co-operation of the respondent. The Commission's guideline gives a clearer indication of what it will determine as affected turnover, especially where the Tribunal and the CAC have not given specific guidance. This includes the determination of affected turnover in contraventions, such as those which take place within the auspices of an association of firms, in market allocation cases where the affected turnover is essentially nil, and different cases of bid rigging. Moreover, the Commission may, where appropriate, impute liability for payment of the final administrative penalty on a holding or parent company where its subsidiary is found to have contravened the Act. The Commission will apply this principle in cases where it can show, *inter alia*, that the holding or parent company, through its ownership and day-to-day conduct, directs the commercial policy of the subsidiary.

The final guidelines were published on 17 June 2015 effective 1 May 2015 and the Commission considers it to be quite comprehensive and largely in line with the Tribunal and CAC's approach.

9.5. Policy and Research

The Policy and Research function headed by the Chief Economist, is the economic think tank within the Commission. It provides expert input into complex cases, and is also tasked with leading the Commission's work on impact assessments and research. The work also integrates the Commission's advocacy function.

Performance Overview

During the period under review, the key output included:

- Working on 25 complex mergers, 40% of which were approved with conditions addressing competition concerns or prohibited by the Commission.
- Contributing to nine complex enforcement and exemption cases.
- Providing economic input into five complex cartel cases.
- Initiating a market inquiry into the grocery retail sector.
- Providing input into five policies.
- Completing four scoping studies.
- Undertaking five impact assessments.

Expert Testimony to the Competition Tribunal

In January 2015, the Commission recommended to the Competition Tribunal that the large merger whereby Tsogo Sun Holdings Limited (Tsogo Sun) intended to acquire 40% equity interest in SunWest International (Pty) Ltd (SunWest) and Worcester Casino (Pty) Ltd (Worcester) be prohibited because it would substantially prevent or lessen competition in the relevant market, i.e., supply of casino services based in casino gambling venues in the Cape Metropole, Cape Winelands, Overberg and West Coast regions due to concerns over the likelihood of coordinated effects, post-merger.

The Commission defended its case for prohibition at the Tribunal with the Chief Economist providing expert testimony. The Commission's economic expert outlined two categories of theories of harm. The first category related to concerns over a change in the informational structure. The Commission was concerned that the merger would offer Tsogo Sun information rights, giving it a privileged insight into the commercial activities of SunWest and Worcester in which it will hold a share. This would make it

easier for tacit coordination because of the ease of detecting whether the behaviour of firms was in line with expectations. The increased information flow and higher transparency would increase the ability of firms to coordinate, in the first place. Furthermore, the likelihood of reciprocal ownership links would lead to or strengthen information exchange.

The second category related to concerns over the incentives of the merging parties. The Commission was concerned that coordinated effects would likely arise from the reduced incentive constraint of the firm with the highest incentive to deviate. Put differently, when a firm with the highest incentive to deviate from tacit coordination invests in a competing firm, this increases the potential for coordination. The Commission's economic expert argued that Tsogo Sun, post-merger, would have less incentive to compete aggressively, as this would devalue its investment and returns in GrandWest and Golden Valley casinos. Lastly, the Commission argued that Tsogo Sun's ownership of shares in GrandWest and Golden Valley casinos would reduce Tsogo Sun's incentives to compete aggressively. In other words, linking profits of competing firms increases the incentives that each would unilaterally adopt behaviour conducive to joint profit maximisation or coordination. During the course of the Tribunal process, the merging parties formally abandoned the merger on 3 July 2015.

Further, during the period under review, two expert reports were filed with the Tribunal in the area of merger regulation and competition enforcement by the Commission's economists.

Research and Policy Submissions

African Competition Forum research

The Commission is currently the chair of African Competition Forum (ACF) and in this role facilitated a collaborative study with the World Bank Group (WBG) entitled ***Boosting Competition in African Markets***. The study expands the scope of earlier ACF studies by providing an overview of the status of competition frameworks and implementation in Africa, and focused mainly on the competition dynamics and challenges in three important sectors for Africa's competitiveness, namely cement, fertilisers, and telecommunications. The study's main findings were:

- There has been important progress in the implementation of competition policy frameworks in Africa. The number of jurisdictions with competition laws has tripled in the last 15 years. The number of jurisdictions with competition law grew from 13 in 2000 (12 countries, one regional bloc) to 31 in 2015 (26 countries and five regional blocs). Importantly, competition authorities are now implementing these laws in 24 jurisdictions, including two regional blocs. The adoption of competition laws has also been discussed more broadly in countries such as Nigeria, Liberia, Ghana, Uganda, Democratic Republic of Congo and Djibouti among others. Despite this increase, stakeholders do not seem to systematically perceive that competition policies are uniformly effective across Africa and there is room for improvement and capacity building initiatives.
- The competition frameworks in these countries share similar goals and have similar scope. The three most common objectives are ensuring an effective competitive process, promoting consumer welfare, and enhancing efficiency. Some jurisdictions also have goals relating to equity and international competitiveness. Most jurisdictions consider hard-core cartels to be *per se* illegal. Even though it is recognised that cartels are the most harmful anticompetitive practice, anti-cartel enforcement was found to remain relatively weak across the continent. At least 16 competition authorities have search and seizure powers, but few have carried out raids. Corporate leniency policy provisions are not a common feature among African competition jurisdictions, with the exception of South Africa and Mauritius.
- In many African countries, certain business practices and regulations create obstacles to healthy competition.



Policy and Research

Back row: Qhawe Mahlalela, Martin Combrinck, Louise Clark, Liberty Mncube, Laila Ncwana, Ian Mrozek, Hariprasad Govinda, Godknows Giya, Donovan Linley, Arthur Mahuma

Centre row: Yongama Njisané, Thando Mtani, Ricky Mann, Sewela Moshoma, Thulani Mandiriza, Sthabiso Mkwana, Michelle Viljoen, Thabo Khumalo, Yariv Pavese

Front row: Queen Khetsi, Pontsho Mathebula, Phathutshedho Manenzhe, Nomsa Mokoena, Buhle Nyawo, Louise Du Plessis, Keabetswe Mojapelo, Hugh Dlamini, Khanyisa Ntshagase, Kerschyl Singh

The study's sector-specific findings were as follows:

- **Telecommunications** – the biggest competition concern for telecommunications in Africa is access to and pricing of essential communications facilities. Designing efficient and pro-competitive policies for assigning spectrum freed up due to the digital switchover will be key to increasing competition levels going forward. In internet services, full competition is allowed, but both the presence of large firms in the market and government ownership is common, and often leads to competition concerns. Competition authorities across Africa have been active in pursuing investigations in the telecommunications sector.
- **Fertiliser** – The fertiliser production and import market in most African countries is relatively concentrated, with high barriers to entry due to the capital-intensive nature of the fertiliser industry, with its large upfront investment and economies of scale in production and import, as well as the reliance on gas and mineral reserves as inputs. There are also a number of regulatory barriers, which may have a restrictive effect on the number or range of firms and products in the market. These include import restrictions, overly stringent registration and quality control procedures, and overly-specific product specifications which delay the launch of new products. As a homogenous product with stable demand, and given its concentrated market populated by a few international players, the fertiliser sector is prone to cartelisation. Investigations into anticompetitive behaviour in the fertiliser industry have been opened in Zambia, South Africa and Tunisia.
- **Cement** – Cement production in Africa shares many characteristics with the fertiliser production market. Ownership of the market is generally oligopolistic, with the industry dominated by large global cement players. Competition authorities have been active in the investigating infringements to their competition laws in the cement sector.

While the benefits of competition in Africa are clearly observable, considerable effort is required to ensure effective implementation of competition laws and policies. The adoption of competition laws shows a positive trend in recognising the importance of monitoring, regulating and promoting competition as a national policy.

Impact assessments

During the period under review, the Commission completed the following impact assessments as discussed in **Section 7** of this Annual Report:

- Ex-post review of the impact of the entry of Wal-Mart.
- Ex-post review of the impact of the Commission's interventions in respect of Sasol's activities in the fertiliser market.
- Ex-post review of the Media24/*Natal Witness* merger.
- Ex-post review of the abandoned merger between Pick n Pay and Fruit & Veg City.
- A qualitative review of the Commission's intervention in the cement industry.

Scoping studies

The Commission uses scoping studies as a tool for screening markets for potential competition distortions. During the period under review, the Commission completed the following scoping studies in priority sectors:

- Scoping study on plastic packaging material.
- Scoping study on the fresh produce market.
- Scoping study on Transnet (Ports).
- Scoping study on Transnet (Rail).

Policy submissions

During the period under review, the Commission made inputs into the following five policies:

- The Draft Infrastructure Sharing Discussion Document published by the Independent Communications Authority of South Africa.
- The World Trade Organisation (WTO) Review of Trade and Competition Policy in the Southern African Customs Union as requested by the Department of Trade and Industry.
- Aspen's Application for a Rebate Facility for Preparations for the Manufacture of Food for Infants and Young Children as requested by the International Trade Administration Commission of South Africa.

- Publication of the Payment Systems Information Return Industry Report in response to a request by the South African Reserve Bank.
- The National Pricing Strategy for Waste Management Discussion Document published by the Department of Environmental Affairs.

Workshops and Seminars

The Commission hosted the following workshops:

- Competition Policy, Economic Development and Inclusive Growth in Developing Economies: Implications for Competition Enforcement by Professor Eleanor Fox on 28 July 2015. The workshop was attended by Commission staff, law firms, independent economic consultants, media and government departments.
- Promoting Faster Growth and Poverty Alleviation through Competition by the World Bank Group on 5 February 2016. The workshop was attended by Commission staff, law firms, independent economic consultants, media and government departments;
- Presentation of Expert Economic Evidence in Competition Cases by Justice Dennis Davis on 9 December 2015. The workshop was attended by Commission and Tribunal staff members;
- The Competition Commission/Organisation for Economic Co-operation and Development (OECD) Workshop on Competition Assessment by Ania Thiemann on 16–18 November 2015. The workshop was attended by Commission staff members, government departments and regulators.
- Collusion – The Hidden Evil in the Marketplace. Are We Winning or Losing the Fight Against Cartels? by Professor Joseph Harrington on 11 September 2015. The workshop was attended by Commission staff members, law firms, independent economic consultants, media and government departments.



Publications and Conference Papers

The Commission published two articles in local and international peer-reviewed journals:

- Govinda, H. 2016. Competition, Openness and Inequality of Firm Size in the Indian Manufacturing, *Foreign Trade Review*, 51 (1): 1–17, Sage Publications.
- Govinda, H. and Bhattacharjee, S. 2015. Commercial Banks Performance in India during Sub-Prime Crisis, *Asian Journal of Research in Banking and Finance*, 5(6): 75–84, Asian Research Consortium.

A number of papers were presented at international and local conferences on topics related to competition policy and economics.

Table 13: Presentations and Conferences

Author(s)/Presenter(s)	Title and Event
Hardin Ratshisusu	Best Practices in Merger Control International Chamber of Commerce Roundtable, Sydney, Australia, 27 April 2015
Tembinkosi Bonakele	Agency Head Discussion on Agency Effectiveness ICN Annual Conference, Sydney, Australia, 28 April–1 May 2015
Hardin Ratshisusu	Outreach: International Merger Enforcement Co-Operation and Younger/Newer Agencies ICN Annual Conference, Sydney, Australia, 28 April–1 May 2015
Makgale Mohlala	Bid Rigging in Public Procurement ICN Annual Conference, Sydney, Australia, 28 April–1 May 2015
Liberty Mncube	Developing Consistent Tests across Categories of Unilateral Conduct ICN Annual Conference, Sydney, Australia, 28 April–1 May 2015 Successful Competition Advocacy Stories ICN Annual Conference, Sydney, Australia, 28 April–1 May 2015
Oliver Josie	Public Procurement in South Africa St Petersburg International Legal Forum, St Petersburg, Russia, 27–30 May 2015
Bakhe Majenge	Antimonopoly Law Enforcement in the Current Economic Conditions St Petersburg International Legal Forum, St Petersburg, Russia, 27–30 May 2015
Junior Khumalo	Cartels in Line Shipping OECD Competition Committee, Paris, France, 15–19 June 2015
Tembinkosi Bonakele	Role and Nature of Economic Evidence Used in Competition Law Enforcement in BRICS CRESSE Summer School, Greece, 3–5 July 2015

Author(s)/Presenter(s)	Title and Event
Yongama Njisane	The Inclusion of Public Interest Conditions in Assessing Prohibited Conduct CRESSE Summer School, Greece, 3–5 July 2015
Hardin Ratshisusu	The Role of Competition in the Pharmaceutical Sector and its Benefits for Consumers United Nations Conference on Trade and Development (UNCTAD), Geneva, Switzerland, 6–10 July
Liberty Mncube	Ways and Means of Strengthening Competition Law Enforcement and Advocacy UNCTAD, Geneva, Switzerland, 6–10 July
Wendy Ndlovu	Negotiating and Settling Complaints and Disputes: Legal and Practical Issues Competition Authority of Kenya Symposium, Kenya, Nairobi, 18–21 August 2015 Obtaining and Disclosing Information Competition Authority of Kenya Symposium, Kenya, Nairobi, 18–21 August 2015
Mfundo Ngobese	Planning and Conducting a Dawn Raid Competition Authority of Kenya Symposium, Kenya, Nairobi, 18–21 August 2015
Keabetswe Mojapelo	Evaluating the Role of Rule of Thumb Consumers in Fiscal Multipliers Biennial Economics Society of South Africa ("ESSA"), Cape Town, 2–4 September 2015
Sunel Grimbeek and Katerina Barzeva	The Effectiveness of Merger Control in South Africa Biennial ESSA, Cape Town, 2–4 September 2015
Yongama Njisane, Ricky Mann, Keabetswe Mojapelo and Pontsho Mathebula	How Competition Policy can Contribute Towards a More Equitable Society – A South African Perspective Biennial ESSA, Cape Town, 2–4 September 2015
Yongama Njisane	Pricing Conduct, State Aid and the Implications for Industrial Development in South Africa Biennial ESSA, Cape Town, 2–4 September 2015
Yongama Njisane	The Incorporation of Public Interest Considerations during the Assessment of Prohibited Conduct: A Juggling Act Biennial ESSA, Cape Town, 2–4 September 2015
Yongama Njisane, Louise du Plessis and Vinesh Ranchod	The Role of Economists and Economic Evidence in Competition Cases FTC, DoJ and CCSA Regional Training Workshop, Pretoria, 7–11 September 2015
Tembinkosi Bonakele	Competition Law Compliance: A CCSA Perspective Namibian Competition Commission, Windhoek, Namibia, 16 September 2015

Author(s)/Presenter(s)	Title and Event
Tembinkosi Bonakele	Pharmaceutical Companies' Use of Patents as a Legal Mechanism for Unfair Practices – South Africa's Experience
	Russia Competition Day Celebrations, Moscow, Russia, 21–24 September 2015
	Message of Congratulation on 25th Anniversary of Russian Antimonopoly Legislation
	Russia Competition Day Celebrations, Moscow, Russia, 21–24 September 2015
Oliver Josie	Does Competition Kill or Create Employment?
	OECD Competition Committee & Global Forum, Paris, France, 26–30 October 2015
Liberty Mncube	Serial Offenders – A Discussion on Why Some Industries Seem Prone to Endemic Collusion
	OECD Competition Committee & Global Forum, Paris, France, 26–30 October 2015
Nelly Sakata	Two Sides of the Same Coin – How Can the BRICS Countries Use the Interplay between Competition Law and Intellectual Property Rights to Spur Economic Development?
	4th BRICS International Competition Conference, 9–14 November 2015, Durban
Thulani Mandiriza and Michelle Viljoen	Tracking the Performance of South Africa within the BRICS Forum – A Trade Perspective
	4th BRICS International Competition Conference, 9–14 November 2015, Durban
Lee Langenhoven and Thembaletu Sithebe	Review of Cartel Conduct across Africa
	4th BRICS International Competition Conference, 9–14 November 2015, Durban
Hardin Ratshisusu and Yongama Njisane	Public Interest Issues in Cross-border Mergers: Is There a Role for Competition Authorities?
	4th BRICS International Competition Conference, 9–14 November 2015, Durban
Wendy Ndlovu	Obtaining Information
	2nd Annual Competition and Economic Regulation Week, Livingstone, Zambia, 8–12 March 2016
Hardin Ratshisusu	Fast-track Settlement Process in Cartels
	ICN Agency Effectiveness Workshop, Gaborone, Botswana, 10–11 March 2016
Liberty Mncube	Evaluation of Procedures, Practices and Impact of Cases
	ICN Agency Effectiveness Workshop, Gaborone, Botswana, 10–11 March 2016
Selelo Ramohlola	Anti-competitive Conduct
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016

Author(s)/Presenter(s)	Title and Event
Yongama Njisane	Fundamentals of Competition
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016
	The Role of Market Inquiries in Assessing the State of Competition and Facilitating Ex Ante Regulation of Markets
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016
Mfundo Ngobese	Cartels
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016
	Planning and Conducting a Dawn Raid
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016
Jabulani Ngobeni	Analysis of Swaziland Competition Act 2007
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016
Thabelo Masithulela	Merger Assessment
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016
Alex Kuhn	Advocacy
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016
	Cross-border co-operation and jurisdiction
	Swaziland Competition Commission Capacity Building Workshop, Mbabane, Swaziland, 14–18 March 2016
Hardin Ratshisusu	South Africa's Experience in the Pharmaceuticals Industry: The Case of Antiretroviral Drugs
	FAS International Roundtable on Pharmaceuticals, Moscow, Russia, 23–25 March 2016

Information Resource Centre

The information and knowledge-intensive nature of the Commission's business requires access to an extensive repository of information sources, both in the legal field and market research. It conducts its investigations within the South African legal framework, but due to the convergence of competition law worldwide, it can also tap into overseas jurisprudence. It therefore maintains access to international and local legal databases, as well as various business and marketing resources.

Book collections are kept current, with the addition of 18 new titles during the past year. Nine of the new titles are in e-book or electronic format, which will be the preferred format moving forward. A total of 310 publications were issued during the year; and the fairly small, 21-strong collection of e-books was viewed 80 times. Although the Information Resource Centre aims to bring information sources to the desktops of staff, it also assisted with 310 requests for information. During the year, 22 staff members received either an orientation or reorientation of the Information Resource Centre's resources; 47 people attended presentations of the different databases; and 100 people were oriented on and completed a survey of a specific database the centre wished to procure.

Market Inquiries

The 2009 amendment to the Competition Act provided the Commission formal powers to conduct market inquiries, which came into effect on 1 April 2013. In terms of the amendment, the Commission has powers to conduct a formal inquiry in respect of the general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm. The Commission can initiate a market enquiry if it has reason to believe that any feature of a market prevents, distorts or restricts competition within that market. The Commission can issue summons to compel persons to appear before the inquiry and provide evidence.

Launch of retail sector inquiry

During the period under review⁸ the Commission instituted a market inquiry into the Grocery Retail Sector ("the retail inquiry"). For the purposes of the inquiry, the grocery retail sector includes all traders that predominantly sell fast-moving consumer goods (for example food, toiletries and/or liquor), whether as a wholesaler, retailer, or both. It encompasses all kinds of shops, from small, informal businesses, such as street traders and hawkers, spaza shops and small independent grocery stores, to supermarket chains and wholesale groups and outlets. The scope of the retail inquiry, as set out in its terms of reference (ToR), covers six major areas:

- The impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers.
- The impact of long-term exclusive leases on competition in the sector.
- The dynamics of competition between local and foreign-owned small and independent retailers.
- The impact of regulations, including municipal town planning and by-laws, on small and independent retailers.
- The impact of buyer groups on small and independent retailers.
- The impact of certain identified value chains on the operations of small and independent retailers.

⁸ On 30 October 2015, the Commission published the final ToR for the grocery retail sector in Government Gazette No. 39347 (Volume 604 p73–82).



The Commission appointed Professor Halton Cheadle, Ms Lulama Mtanga and Mr Lumkile Mondi, as chairman and panellists respectively, to conduct the inquiry on its behalf. The panel is supported by a team comprising the Commission's economists and lawyers. The retail inquiry will be completed on 29 May 2017.

Liquefied petroleum gas

The purpose of the inquiry is to determine whether there are anti-competitive features in the South African LPG market and how they can be remedied. The ToR were published in the **Government Gazette** on 15 August 2014, with key themes focusing on high switching costs for bulk customers; regulatory impediments to effective competition; and limited growth of LPG usage by households, among others.

The Commission contacted market participants operating across the value chain and received more than 68 submissions from stakeholders. Some of the stakeholders that made submissions include regulators, such as the National Energy Regulator of South Africa, Department of Labour, Department of Energy, municipalities, industry associations, quality assurance bodies, shopping mall owners, all major wholesalers and smaller players, retail outlets, and refineries.

On 27 August 2015, a call for further submissions was issued by the Commission to solicit additional views on narrow issues highlighted by market participants. These issues related to preferential supply allocations, the limited ability of bulk end users to switch, cylinder exchange programmes, limited LPG import facilities and the associated cost of importing, as well as the price regulatory framework.

The Commission has now completed its analysis and is currently engaging market participants on its published proposed recommendations. The engagement with the market participants on draft recommendations has necessitated the Commission to extend the inquiry timeline to 30 September 2016.

Update on the market inquiry into private healthcare

The healthcare market inquiry (HMI) into private healthcare in South Africa continues to make good progress under the chairmanship of former Chief Justice, Sandile Ngcobo. The purpose of HMI is to determine whether or not there are anti-competitive features in the private healthcare market, and if so, to identify them and their effects. The Commission published the ToR for the HMI in the **Government Gazette** on 29 November 2013, as required by the Act.

The initial deadline set for the HMI to complete its work was 30 November 2015. However, the scope of the HMI, complexity of the issues, as well as



Healthcare Market Inquiry

Back row: Tankiso Thibane, Songezo Mabece, Melissa Naidoo, Jeffrey Mashiane, Clint Oellermann, Mapato Ramokgopa, Pamela Halse

Front row: Tobi Enigbokan, Pheny Montwedi, Londiwe Senona, Lorraine Ncube, Neelofah Ally, Sesule Mojapelo, Beverley Chomela

the time and resources required in collecting, presenting, cleaning, storing and analysing information and data, has necessitated a revised deadline for completion of the HMI. On 16 October 2015, the Commission published a revised ToR, extending the HMI to 15 December 2016.

The HMI published its Revised Statement of Issues (RSOI) on 11 February 2016, which outlines the panel's current thinking, based on its reading of the submissions received and the evidence gathered to date. It also highlights the HMI's priority focus areas for the remaining research and analysis it has embarked on.

During the course of its analysis phase, the HMI has collected significant data and information from eight key stakeholder groups listed below:

- Hospital groups
- Pathology providers
- Radiology providers
- Registered medical schemes
- Administrators of medical schemes
- Managed Care organisations
- Health insurance product providers
- Government.

The above information and data have been gathered from over 175 individual stakeholders and is one of the most comprehensive data sets ever gathered on the private healthcare sector in South Africa. This information and data will be utilised to address the key questions highlighted in the RSOI.

Public hearings

On 18 November 2015, the HMI re-opened registrations for public hearings to all stakeholders and the public alike. The closing date for such registrations was 11 December 2016. The HMI received 61 registrations, comprising mostly key stakeholders, civil society groups, non-governmental organisations (NGOs) and consumer groups.

The HMI held its first set of the public hearing, comprising six different hearings, from 16 February 2016 until 11 March 2016. These hearings were held in Pretoria, Cape Town and Durban. In this first set of public hearings

the HMI invited all relevant stakeholders to make oral submissions, which included:

- Consumers and consumer groups.
- Service providers comprising hospital groups and practitioners.
- Funders and financiers, which included medical schemes, medical scheme administrators and managed care organisations, brokers and health insurers.
- Regulators and policymakers.

The public hearings provided a platform for stakeholders to present their views on aspects of the market that impede competition, as well as matters that adversely affect the market. It also provided an opportunity for the HMI panel to probe issues of concern in the sector. General issues discussed during these hearing included:

- Understanding the nature of the private healthcare market.
- How stakeholders interact with each other.
- How consumers access, evaluate and use information about the sector.
- How healthcare services are provided and funded.
- The regulatory regime for the private healthcare market.

The panel heard varying submissions, including personal accounts from consumers about their experiences with stakeholders, including medical schemes, where they raised concerns related to the non-payment of their medical bills. Practitioners shared stories, including those of their relationships with hospitals. Medical schemes and their administrators described how they interact with their members and healthcare providers. Hospitals expressed concerns regarding shortages of nurses and specialists in the country. Regulators shared their experiences and challenges faced in fulfilling their duties.

The hearings were open to members of the public, who could either attend the hearings or watch via live-streaming. This provided an opportunity for them to learn more about how the private healthcare sector operates.

The oral submissions made at public hearings, as well as information gathered through the data analytical processes will all be taken into consideration by the panel, as it continues its work and begins preparations for its provisional findings.

9.6. Office of the Commissioner

Advocacy is one of the Commission's core functions, and relates to the promotion of voluntary compliance with the Competition Act. The role of the Advocacy and Stakeholder Relations Programme is to forge and maintain relationships with international and domestic stakeholders in the public and private sector; and to communicate the decisions and activities of the Commission to them.

In addition to general relationship management, the Commission engages with respondents in an effort to resolve cases through non-enforcement means, undertaking training workshops and public exhibitions for different groupings of stakeholders, negotiating MoUs with other economic regulators, co-ordinating the Commission's efforts in international forums and strategically engaging with the media. This function is also responsible for communicating the Commission's decisions and work internally.

Strategic Collaboration and Advocacy

Procurement of school uniforms

The Commission held meetings with a range of stakeholders to promote competitive bidding in the procurement of school uniforms. This followed a complaint lodged by a parent against a school and a specialist school wear retailer alleging that a school and most others in the area have appointed a service provider as their sole stockists for school uniforms, and that prices charged for various uniforms are too high leaving consumers with no alternatives. The Commission was concerned that these long-term exclusive agreements between the schools and stockists or manufacturers of school uniforms are susceptible to a contravention of the Act. In its analysis of the facts of the case, the Commission found that the mark-up for the various school wear items is as much as 50%. Stakeholders consulted included provincial education departments, the Members of the Executive Councils of Education in Gauteng and the Free State; the Chief Executive Officers of the Governing Body Foundation (GBF) and the Federation of the Association of School Governing Bodies of South Africa (FEDSAS). The objective of the engagements was to obtain their support in promoting competitive bidding in the procurement of school uniforms. The stakeholders provided the Commission their full support. The Commission drafted a circular on Exclusive Agreements in the procurement of School Uniform. The Commission also prepared an education leaflet for the school governing bodies. On 11 May 2015, the Director-General of the National Department of Basic Education issued

the circular to all provincial offices; district offices and schools nationally. The expectation is that schools would henceforth comply with the circular by following the competitive bidding process when procuring school uniforms.

Commission participates in the Gauteng Provincial Economic Development Department Spaza Shop Summit

The Commission presented at the Gauteng Provincial Department of Economic Development's Spaza Shop Summit on 23 March 2016 to raise awareness among business, government and spaza shop owners about the competition risk of franchise agreements and the Competition Act in general.

Commission participates in the South African Local Government Association's Gauteng Finance Week

The Commission presented at the Gauteng South African Local Government Association's Finance Week on 3 February 2016. The theme of the event was Combating Financial Misconduct and Corruption in Local Government. The audience comprised mayors, municipal managers, councillors, chief financial officers, heads of supply chain, Gauteng Provincial Treasury and National Treasury. The objective of the Commission's participation was to brief Gauteng municipalities on how they were affected by the construction cartel investigation.

Collaboration with the Public Investment Corporation

One of the specific measures outlined in the New Growth Path (NGP), South Africa's economic growth framework, is that competition authorities and development finance institutions should co-operatively identify instances where support for new market entrants is needed to secure more competitive outcomes and to combine competition and investment measures. To give effect to the measures outlined in the NGP, the Commission held a meeting with the Public Investment Corporation (PIC) to explore the role of the institution in promoting new entry and promoting competition.

Collaboration with the Independent Regulatory Board for Auditors

The Independent Regulatory Board for Auditors (IRBA) is a statutory body established in terms of Section 3 of the Auditing Professions Act (No. 26 of 2005). International Auditing Standard 240 provides for auditors' responsibilities relating to fraud in an audit of financial statements, particularly for reportable irregularity. Irregularity means any unlawful act or omission committed by any person responsible for the management of an entity which has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of their dealings with an entity, or which is fraudulent or amounts to theft. The contravention of the Competition Act constitutes a reportable irregularity by auditors. They therefore have a legal obligation to report irregularities to IRBA, which will then report such irregularities to the Commission. It is against this background that the Commission held a meeting with IRBA.

Co-operation with sector regulators

Section 21(1)(h) of the Act provides that the Commission is responsible for negotiating agreements with any regulatory authority to coordinate and harmonise the exercise of concurrent jurisdiction over competition matters within the relevant industry or sector, and ensure the consistent application of the competition principles of the Act. During 20015/16, the Commission signed MoUs with:

- The Ports Regulator of South Africa.
- The International Trade Administration Commission of South Africa.
- The National Department of Agriculture Forestry and Fisheries.

Education and awareness

The Commission participated in numerous workshops, seminars and made several presentations as part of its programme of education and awareness.

Table 14: Sample of Stakeholder Engagements and Presentation Made in 2015/16

Stakeholder	Nature of Engagement
Government	Presentation made to Trade and Investment South Africa on 17 June 2015. The presentation was made to export councils and the topic was The Exemptions Process in Terms of the Competition Act.
	The Commission held a Bid Rigging Workshop for 29 auditors of the Auditor-General of South Africa (AGSA) in June 2015. The objective was to train the auditors on detecting rigged tenders in the course of their audit work. The workshop was informed by the strategic relationship between the Commission and the AGSA, which is governed by a MoU signed on 1 July 2014.
	Local Procurement Seminar held on 1 July 2015 to sector clusters, state-owned companies and government departments. The topic was Pro-competitive Local Procurement.
	The Commission participated in a Bid Rigging Workshop with the Eastern Cape Provincial Government on 4 December 2015.
State-owned enterprises	Presentation made to Transnet Port, KwaZulu-Natal, on 23 November 2015. The audience was the port staff and topics included the Competition Act, bid rigging and information exchange.
Regulators	Presentations made to IRBA in Cape Town on 24 August 2015; Durban on 1 September 2015; Port Elizabeth on 18 September 2015 and Pretoria on 29 September 2015. The target audience was auditors and the topic was the Competition Act, with specific reference to collusive tendering.

Stakeholder	Nature of Engagement
Industry associations	Presentation made to the South African Independent Power Producers Association on 20 October 2015. The audience was independent power producers and the topic was The Prohibited Practices and Information Exchange.
	During the year under review, the Commission raised the awareness of the Domestic Appliances Association regarding information exchange. On 3 February 2016, the Commission made a presentation on the Competition Act's prohibited practices. The objective was to raise awareness among the members of the association about the competition risk of using information exchanged for collusive purposes.
Tertiary institutions	Presentation made to the Vaal University of Technology on 26 February 2016. The audience was academic staff, procurement officials and service providers and the topic was Exclusive Agreements Affecting Universities.
Multi-stakeholder forums	The Local Procurement Seminar took place on 1 July 2015 and was graced by the presence of the Minister of Economic Development, Mr Ebrahim Patel, who gave a keynote address. The objective was to consult with both the private and the public sectors on how to implement local procurement or localisation without contravening the Competition Act. The seminar resolved that the Commission should provide a guide on collaboration and collusion.

Exhibitions

The focus of the Commission's exhibitions for the year was on SMMEs and raising awareness among them about the Competition Act. The Commission participated in the following exhibitions:

- The Association of Certified Fraud Examiners Conference on 14–15 September 2015.
- The Gauteng Economic Development Spaza Shop Summit on 23 March 2016.

International Relations

The year under review saw further consolidation of the Commission's partnerships with other African and BRICS competition authorities.

Case Study 3 - 4th BRICS International Competition Conference

The Commission successfully hosted the 4th BRICS International Competition Conference in Durban from 11–13 November 2015. The competition authorities of all BRICS member states were in attendance, along with representatives from other African and international authorities, practitioners, academics, government and civil society, totalling 508 delegates.

The theme of the conference was Competition and Inclusive Growth and the programme featured 71 speakers, including eminent persons such as Nobel prize winner, Joseph Stiglitz; former Head of the US Federal Trade Commission, Bill Kovacic; Chair of the OECD's Competition Committee, Frédéric Jenny; and Judge Dennis Davis of the Competition Appeal Court. Minister Ebrahim Patel of the Economic Development Department was a keynote speaker, while the Minister of Higher Education and Training, Dr Blade Nzimande, facilitated the closing plenary on competition, inequality and inclusive growth.

One of the conference's principal successes was the way in which it enabled the articulation of new perspectives of competition. It was the first international competition conference that was dedicated to emerging markets, and which explored technical competition matters in the context of social issues and public interest. A joint statement by the heads of the BRICS competition authorities was issued, agreeing to conclude a MoU in the field of competition policy to strengthen co-operation and co-ordination between them. Activities envisaged under



4th BRICS International Competition Conference, 10 - 13 November 2015, Durban ICC, Durban, South Africa

the MoU include sharing of best practices, joint participation in capacity building initiatives, conducting joint studies and co-ordination of enforcement proceedings.

As a precursor to the conference, the Commission and Competition Tribunal jointly hosted their annual Competition Law Conference on 11 November 2015. A workshop focusing on the role of economic evidence in competition regulation was co-hosted on 10 November by the Commission, Competition and Regulation European Summer School (CRESSE) and the University of KwaZulu-Natal, also as a precursor to the BRICS Conference.

The conference and the pre-conference events enjoyed the support and hospitality of the KwaZulu-Natal provincial government and the City of Durban. Feedback received from stakeholders – participants and delegates alike – has been very positive. The quality of the discussions and engagements, due to the calibre of speakers and the careful thought that went into the design of the agenda, as well as the arrangements for the social programme, contributed to a successful conference.



SADC Competition and Consumer Protection Policy and Law Committee

As part of its efforts to strengthen regional co-operation in competition enforcement, the Commission focused on its membership of the SADC Competition and Consumer Law and Policy Committee, which held two meetings during 2015/16. One of the meetings was hosted by the Commission in Pretoria in July 2015, and established SADC Working Groups on Mergers (led by Botswana), Cartels (led by Zambia) and Research (led by the African Competition Forum). The committee agreed on a co-operation framework for the SADC Mergers Working Group and drafted a MoU between SADC competition authorities (will be signed in May 2016).

MoU with Namibian Competition Commission

The Commission's entered into its first MoU with another competition authority, the Namibian Competition Commission, on the side-lines of the BRICS International Competition Conference. The MoU formalises a long-standing relationship of co-operation and assistance between the two agencies. It provides *inter alia* for mutual assistance in investigations or enforcement proceedings in relation to competition matters, including service of process on companies and individuals, as well as exchange of information, rendering of technical assistance and staff exchanges.



African Competition Forum

As a founding member and current chair of the African Competition Forum (ACF), the Commission acted as Secretariat to the ACF during 2015/16. Three ACF Steering Committee meetings and three capacity building events were held, and the ACF co-hosted the ICN's Agency Effectiveness Workshop in Botswana in March 2016, which saw the participation of more than 20 international competition agencies. The OECD provided a venue and translation facilities for a successful ACF Workshop in Agency Effectiveness for heads of authorities attending its Global Forum in October 2015. The US Federal Trade Commission and Department of Justice, in co-operation with the Commission, hosted the sixth Regional Training Workshop for staff of African competition agencies in Pretoria in September 2015. The workshop focused on building legal writing skills in the 25 delegates from nine Africa authorities and was funded by the United States Agency for International Development (USAID).

International Competition Network

The Commission continued to participate as an active member in the International Competition Network (ICN), attending the annual conference in Sydney, Australia in April 2015, with approximately 520 participants from 90 jurisdictions. South Africa is a member of the ICN Steering Group, a Co-chair of the Cartels Working Group and contributes to the outputs of the ICN's five working groups.

ICN-WBG Competition Advocacy Award

The Commission was awarded an ICN-WBG Competition Advocacy Special Honourable Mention for its advocacy on the banking inquiry. The award was presented at a ceremony in Washington DC in June 2015 and recognised South Africa in the category Promoting Co-operation with Relevant Public Bodies in order to Balance Other Public Interests with Competition Goals.

Organisation for Economic Co-operation and Development

As in the past, the Commission participated in the work of the OECD's Competition Committee, attending meetings in June and October 2015, and making several submissions, including one on cartels in shipping liners and another on industries prone to endemic collusion. In addition, the OECD ran two workshops in South Africa on its competition assessment toolkit, one for the Commission in July 2015, and the second for stakeholders, including national and local government departments and professional associations, in November 2015. The workshops trained participants to use the toolkit, identify unnecessary restraints on competition, and develop alternative, less restrictive policies that still achieve government objectives.

United Nations Conference on Trade and Development

In July 2015, the Commission attended the 15th Session of the Intergovernmental Group of Experts on Competition Law and Policy in Geneva. A paper focusing on the role of competition in the pharmaceutical sector and its benefits for consumers in South Africa was presented.

Communications

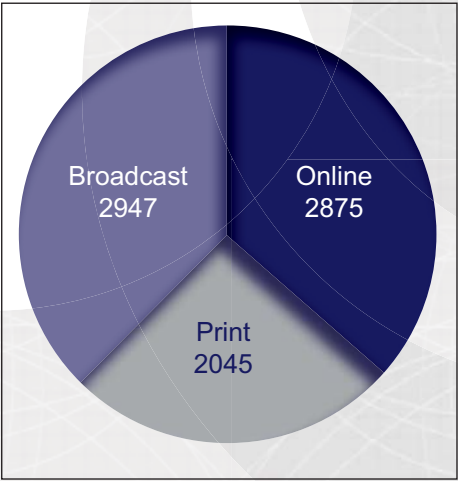
The role of the Communications functions is to inform, educate and engage with the public and stakeholders about the mandate and activities of the Commission using various platforms. This function is responsible for identifying communication and information opportunities, messages and relevant platforms or tools to use for this function. It is also the custodian of the Commission's external image and brand. In addition, it informs employees of key internal developments and organises events and activities that contribute to staff well-being and motivation.

A notable development in the communication arena has been the issuing of statements on decisions after Commission Meetings to enhance transparency.

Media relations

The media community remains one of the Commission's key stakeholders, as they play a pivotal role in information dissemination by reporting and informing the public on the Commission's activities. In the current financial year, the Commission issued 39 media releases and published two opinion pieces in two major newspapers. It organised and sponsored a media networking session with the National Press Club in Pretoria and hosted

11 media engagements, one being on the status of the market inquiry into the private healthcare sector. The Commission received a total combined media monitoring units of 7 867.



Source: Newsclip Media Monitoring

Figure 4: Media coverage, April 2015–March 2016

Corporate communications

Publications and website

The Commission's flagship newsletter, *The Competition News*, provides in-depth analyses of cases and commentary on local and international competition issues. The newsletter is published quarterly and distributed to a wide reach of stakeholders.

The Commission also reaches out to its stakeholders through its website, which remains the gateway to the Commission and a repository of information for everyone to access and use, including media (local and international), practitioners and the public. The Commission revamped its website in an effort to improve access to and the quality of its information and communication systems.

Table 15: Commission Publications and Website Visits over a Five-year Period

	2011/12	2012/13	2013/14	2014/15	2015/2016
Number of editions of the The Competition News issued	4	3	4	3	3
Number of times the website is visited	76 422	66 793	109 887	62 770 (since launch)	210 427
Number of people visiting the website	47 148	40 676	62 257	33 888 (since launch)	110 184

Sources: Google Analytics and Competition Commission

Social media

The Commission accelerated communication via social media to reach a wider audience. It is now active on five platforms: Twitter, Facebook, LinkedIn, SoundCloud and YouTube. Members of the public are able to get their queries answered faster and receive important notices about the Commission’s activities in a prompt manner. The platforms have a combined audience/following of 7 593.

Internal communications

The Commission internal newsletter, *Chronicles*, is a monthly electronic offering dedicated to employees. The newsletter is one of the engagement platforms that enables employees and management to share information. The department produced and circulated six editions of *Chronicles* and issued 60 *News Updates*. This function also organised eight social events for employees, including the year-end awards ceremony that recognises exceptional performance.

9.7. Corporate Services

Human Resources

The Commission is a fast-paced environment that requires specialists in the areas of law and economics. While the Human Resources (HR) function acknowledges that people management is a line function, it is equally important for the HR function to support managers. To that end, the department introduced an HR Business Partnering Model in which each function has been allocated an HR resource. In this way, HR will be able to focus on both functional and organisation-wide initiatives to harness and optimise individual performance.

Performance management

The Commission is committed to an effective performance management system and to providing the right environment and resources for all employees to perform to their full potential to enable a high-performance culture. Performance management is a continuous process, performed throughout the year, involving quarterly reviews to ensure that the organisation’s strategic priorities and organisational performance against these are aligned and on target. Performance management is a foundation for organisational success as it impacts on areas such as rewards and recognition, learning and development, succession management and career management.



Corporate Services

Back row: Nompumelelo Nkabinde, Elmarie Wiehahn, Andile Mangisa, Donation Shilubane, Londiwe Zwane, Tshepiso Diremelo, Moranye Phala, Binu Idiculla

Front row: Christabelle Roman, Lindy Sithole, Charlotte Sithole, Caroline Makena, Bonolo Suping, Anusha Ellary, Nomfundo Ngidi, Neo Dikgwejane



Finance

Back row: Suzan Nyamane, Rhime Lesoalo, Mhlangabezi Capha, Molatlhegi Kgauwe, Alet Aucamp, Nonhlanhla Kunene

Front row: Edgar Shingange, Sylvia Mogorosi, Yandisa Dinga, Devrani Moonsamy, Clifford Mathebula

Graduate Development Programme

The Commission is committed to transformation and skills development. These imperatives are deeply entrenched in the manner in which it approaches the Graduate Development Programme. In 2015/16, the Commission enrolled 22 graduates, the majority being from historically disadvantaged institutions, as illustrated in Table 16.

Table 16: Graduate Trainee Recruitment, 2013/14 - 2015/16

Institution	2013/14	2014/15	2015/16
PC Training	1	0	0
University of Johannesburg	2	1	2
University of KwaZulu-Natal	2	4	2
University of Limpopo	2	4	4
North-West University	1	3	3
Rhodes University	3	1	0
University of the Western Cape	2	1	0
University of the Witwatersrand	5	3	1
University of Pretoria	0	2	3
Nelson Mandela Metropolitan University	0	1	0
Cape Peninsula University of Technology	0	1	1
University of Fort Hare	0	2	1
University of Venda	0	2	1
University of South Africa	0	1	1
University of the Free State	0	1	2
Midrand Graduate Institute	0	1	1
Total	18	28	22

Employment equity

The Commission has made a deliberate effort to comply with the Employment Equity Act (EEA) (No. 55 of 1998) as amended. In terms of the applicable provisions of the EEA, the Commission's 2015/16 Employment Equity Report was submitted to the Department of Labour. The table below shows the equity breakdown for the past six years, including the year under review. From a gender and national economically active population⁹ (EAP) perspective, the Commission is doing very well. The EAP includes people between the ages of 15 and 64 who are either employed or unemployed and who are seeking employment¹⁰. In 2015/16 the equity ratio for female and male representation is 55.8% and 44.2%, respectively. People with disabilities represent 2% of Commission staff, in line with the target set by government.

⁹ The 16th Commission for Employment Equity Annual Report (2015/16:26) indicates that EAP for females and males stands at 54.8% and 45.2%, respectively. Source: Statistics South Africa, (Quarterly Labour Force Survey, 3rd Quarter, 2015).

¹⁰ Taken from the 16th Commission for Employment Equity Annual Report (2015/16:26).

Table 17: Employment Equity

Year	Total No. of Employees	No. of Female Employees		No. of Male Employees	
2009/10	132	59	45%	73	55%
2010/11	163	84	52%	79	48%
2011/12	171	86	50,2%	85	49.7%
2012/13	168	90	54%	78	46%
2013/14	159	86	54%	79	46%
2014/15	186	97	52%	89	48%
2015/16	197	110	55.8%	87	44.2%

Staff turnover

As at end of the financial year, the Commission's staff complement stood at 195 employees. Fifteen resignations were recorded for the period. The Commission's effort towards a healthy staff retention rate is yielding positive results in that there has been a marked reduction in staff turnover in the year under review, as depicted in Figure 5.

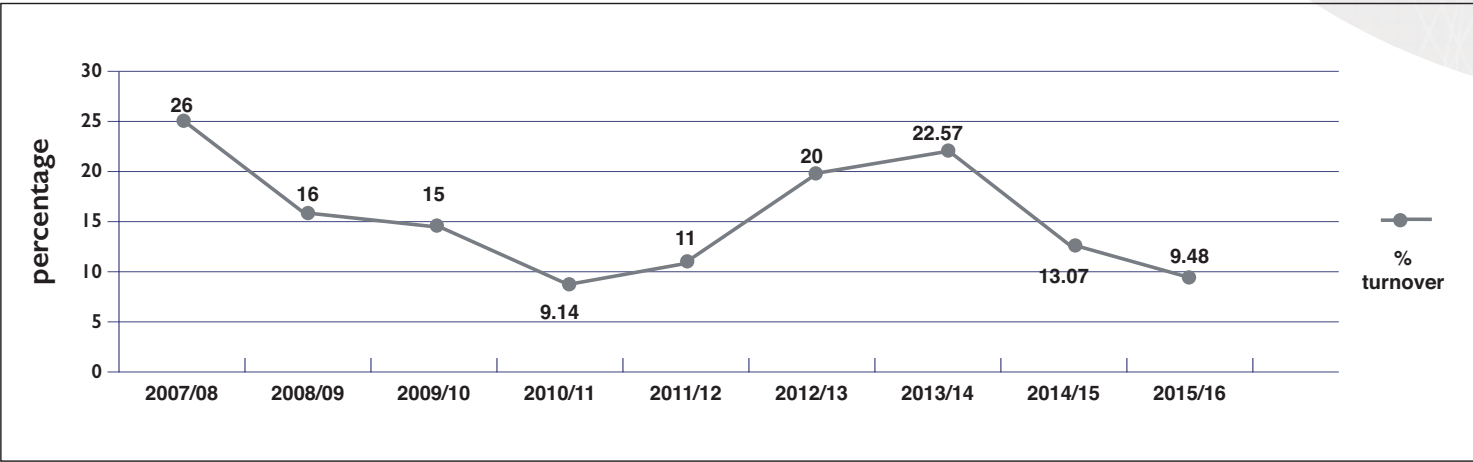


Figure 5: Staff turnover

Employee relations

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

Learning and development

The Commission places great emphasis on developing its most important assets – its people. R3.4 million was spent on learning and development initiatives during the reporting period. The training budget includes local training, overseas training and conferences, which is a slight increase of R1.2 million from 2014/15.

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

In line with its aspiration to support the development of its staff, the Commission supports staff to not only do their jobs, but also to grow as individuals. In 2015/16, 26 employees benefited from bursaries and loans offered by the Commission. R1.7 million was spent on bursaries on this initiative.



Table 18: Study Loans Registered for 2014/15 and 2015/16

Programme	2014/15	2015/16
	Number of Staff	Number of Staff
LLM	3	5
MBA/MBL	1	3
PhD Economics	2	1
Certificate Programme Telecoms and Law	1	0
Certificate: Investigation and Fraud	2	1
Masters in Economics	2	4
BCom Hons (Finance)	2	0
BCom HR	1	1
BCom Industrial Psychology	1	1
BCom Economics	2	1
BA Marketing	1	0
BTech Information Technology in Business	1	1
NDip Project Management	1	0
BCom Accounting	1	1
BCompt	0	1
BTech Administration	0	1
BSc Computing	0	1
Certificate Programme Company Secretary	0	1
Certificate Programme OHS	0	1
Certificate in Governance	0	1
Certificate in Competition Law	0	2
CIPS Diploma in Procurement	0	1
Diploma Computer Forensics	0	1
Advanced Diploma in Economics	0	1
Advanced Diploma in Procurement	0	1
DTech Organisational Leadership	0	1
PDM	0	1
Total	21	33

Information Technology

The Information Technology (IT) function provides a secure, user-friendly and efficient IT environment for all employees. The Commission's IT network is hosted by that of the **the dti** as the Commission is located on **the dti** campus. Managing an IT environment on **the dti** campus continues to be a complex task due to the intricate nature of the network and lack of access to the networking environment. The department has introduced various information and communication technologies to aid the smooth operation of the Commission. Staff access to the IT system is provided through various

mobile and direct technologies.

IT governance and improving research and communication technology was the main focus for the year. Updating and developing new IT policies included the Identity and Access Management Policy and the Disaster Recovery Policy. ToRs for the IT Committee were also developed during the financial year. Below are the main areas on which the IT function delivered.

Separation of connectivity from the dti network

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

Virtual private network services

The IT department rolled out a virtual private network to users. This enables them to remotely connect to all Commission resources and work using a secure connection.

Wi-Fi services

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

Forensic laboratory

The commission acquired forensic tools to aid its search and seizure operations. The Cartels function and IT staff were trained to use the resources and the Commission is now capable of handling forensic investigation of data acquired from search and seizure operations.

In order to meet the increased demand of managing data, a storage area network was implemented to accommodate data from the search and seizure operations and other operational records.

Hardware

Upgrades of servers and users' machines were undertaken during the period and the Commission is moving towards a virtual server environment to replace old servers. This will improve efficiency, reduce cost and contribute towards energy efficiency.



Performance Against Targets: 2015/16

Table 19: Performance Information

Performance Measure		Accountable Programme	2015/16 Target	2015/16 Actual Achievement	Reason for Variance
Output	Key Performance Indicator				
Merger and acquisition decisions	Average turnaround time for Phase 1 merger investigations	M&A	20 days	18 days Target met	
	Average turnaround time for Phase 2 merger investigations	M&A	45 days	44 days Target met	
	Average turnaround time for Phase 3 intermediate merger investigations	M&A	60 days	57 days Target met	
	Average turnaround time for Phase 3 large merger investigations	M&A	120 days	140 days Target not met	Three cases in particular required more time to finalise due to complexity (Telkom BCX, Vodacom/Neotel and MTN/Telkom)
Merger litigation	% of merger decisions upheld by Tribunal and/or courts	LSD	75%	100% Target exceeded	All Tribunal and/or court decisions found in favour of the CC
Compliance-monitoring for merger conditions	% of imposed merger remedies and conditions monitored	M&A	100%	100% Target met	
Cartel investigations	No. of cartel cases initiated	Cartels	10	133 Target exceeded	High volumes of initiations arising from the automotive components case
	% of cartel investigations completed within 12 months	Cartels	70%	100% Target exceeded	Result of concerted efforts to improve efficiencies

Performance Measure		Accountable Programme	2015/16 Target	2015/16 Actual Achievement	Reason for Variance
Output	Key Performance Indicator				
Cartel prosecutions	% of cartel cases won at the Tribunal and/or courts	LSD	70%	100% Target exceeded	All Tribunal and/or court decision found in favour of the Commission
Investigations of abuse of dominance and restrictive cases	% of abuse of dominance investigations completed within 24 months	E&E	60%	100% Target exceeded	Result of concerted efforts to improve efficiencies
	No. of abuse of dominance conduct cases initiated in prioritised sectors	E&E	2	1 Target not met	Research conducted did not lead to initiation of cases
Prosecution of abuse of dominance and restrictive cases	% of abuse of dominance cases won at the Tribunal and courts	LSD	50%	50% Target met	
Decisions on exemptions applications	% of exemption applications completed within 12 months	E&E	75%	29.16% Target not met	Applications were complex and required more time
External guidelines on the application of the Act	No. of guidelines on the application of the Act issued to stakeholders	LSD	1	1 Target met	
Advisory opinions	% of advisory opinions issued within three months	LSD	60%	98% Target exceeded	Result of concerted efforts to improve efficiencies.
Industry scoping studies	No. of industry scoping studies conducted in prioritised sectors	P&R	4	4 Target met	

Performance Measure		Accountable Programme	2015/16 Target	2015/16 Actual Achievement	Reason for Variance
Output	Key Performance Indicator				
Market inquiries	No. of market inquiries initiated	P&R	2	1 Target not met	The annual target was revised to one at mid-year due to capacity constraints-related market inquiries
	No. of market inquiries completed within 24 months	P&R	1	0 Target not met	The ToR for the LPG and private healthcare inquiries were revised and the completion dates moved to 2016/17 because of ongoing stakeholder consultations
Impact assessments on Commission decisions or competition policy	No. of impact assessment studies completed	P&R	4	6 Target exceeded	Two additional impact assessments in the food sector were initiated at mid-year as part of the Commission's efforts to demonstrate impact
Working partnerships with relevant economic stakeholders	No. of workshops or seminars on competition, trade/ industrial policy and regulatory matters hosted	P&R	4	5 Target exceeded	An additional workshop was held on the Sasol matter
	No. of submissions or responses to policy or regulation	P&R	4	5 Target exceeded	Many strategic issues arising in the policy environment which required responses
Working relationship with criminal justice system counterparts on anti-cartel activities	No. of training and capacity-building initiatives with criminal justice system counterparts hosted	CSR	3	1 Target not met	Meetings with criminal justice system counterparts were placed on hold due to a process underway regarding amendments to the criminal provisions in the Competition Act

Performance Measure		Accountable Programme	2015/16 Target	2015/16 Actual Achievement	Reason for Variance
Output	Key Performance Indicator				
Relationship-building engagements with BRICS and African competition agencies	No. of competition conferences and workshops with African and international partners hosted or participated in	CSR	2	15 Target exceeded	Unanticipated requests to participate in important workshops with African and BRICS partners
Thought leadership on competition and development issues	No. of Commission-initiated media engagements (editorial pieces, TV and radio, media events)	CSR	12	30 Target exceeded	There was a high level of media and public interest in the healthcare inquiry and BRICS Conference
	No. of issues of the Competition Policy Journal published	CSR	4	3 Target not met	Strained capacity due to resources being diverted to the private healthcare inquiry public hearings and the BRICS Conference
Domestic outreach initiatives	Annual competition conferences hosted	CSR	1	1 Target met	
	No. of stakeholder training and education workshops conducted	CSR	3	14 Target exceeded	Special training requests from stakeholders, including local and provincial government
	No. of forums with business, labour and government hosted	CSR	4	1 Target not met	Engagements have been moved to 2016/17 due to reprioritisation of projects
	No. of public exhibitions hosted	CSR	2	2 Target met	
Integrated IT and knowledge management system (IMS)	An implemented IT and knowledge management system	CSD	Approved integrated IMS design	Target not met	Procurement-related delays in appointment of a service provider to assist with the project

Performance Measure		Accountable Programme	2015/16 Target	2015/16 Actual Achievement	Reason for Variance
Output	Key Performance Indicator				
Clean financial audit	A clean audit	Finance	Clean audit	Clean audit Target met	
Human capital management systems which aligns individual, divisional and organisational performance	Completed re-design of the Performance Management System (PMS)	CSD	Approved PMS design	Target not met	Delays arising from misunderstanding between the Commission and the service provider
	% retention rate of staff complement	CSD	80%	98% Target exceeded	Result of concerted efforts towards staff retention
A strategy-relevant organisational structure	Completed re-design of the organisational structure	CSD	Approved design of the organisational structure	Target met	

Part



Corporate Governance





Decision-making Structures

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

11.1. The Commission Meeting

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

The Commission Meeting held 49 meetings during the period under review. Its core functions are to receive recommendations and to take decisions on cases, as well as provide guidance and direction in the conduct of investigations. The Commissioners receive updates on important cases, adopt policies and procedures regarding the conduct of cases, receive reports and give direction on advocacy and communication relating to the work of the Commission, as prescribed by the Competition Act.

During the reporting period, the commissioners consisted of the Commissioner and two Acting Deputy Commissioners.

11.2. The Executive Committee and Sub-committees

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

EXCO held nine ordinary meetings and eight special meetings during the period under review.

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

Performance against targets is discussed on a quarterly basis at the EXCO meetings in order to monitor expenditure, activities and progress. The Commission submits quarterly reports to the Economic Development Department in terms of the PFMA.

EXCO has established five committees to assist it in performing its oversight function and to provide it with guidance on matters falling within the ToR of the committees, as described below.

Management Committee

EXCO is assisted by the Management Committee, which is chaired by a Deputy Commissioner and meets on a half-yearly basis. The Management Committee comprises all management of the Commission including members of EXCO and a layer of management below EXCO, which is representative of all functions, including Heads of Departments. The Management Committee held three meetings during the financial year.

The role of the Management Committee is to review and confirm the Annual Performance Plan of the Commission, to approve business plans

for respective functions, and to review organisational and functional performance. It provides strategic and operational oversight over investigations to assess progress, review investigative strategies and to complement existing functional and inter-divisional structures.

IT Committee

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

Finance Committee

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

- Recommending the annual organisational budget to EXCO for adoption.
- Ensuring the organisational budget is aligned with the Commission's Strategic Plan and government priorities.
- Monitoring and reporting on the Commission's financial performance against organisational and divisional priorities and approved budgets.
- Formulating strategies for improving the Commission's financial position, including the approval and monitoring of organisational budget processes.
- Review the Interim and Annual Financial Statements for recommendation to the Audit and Risk Committee.
- Monitor and review under and over-expenditure.
-

The Finance Committee held six meetings during the period under review.

Human Resources Committee

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

Risk and Governance Committee

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



Audit and Risk Committee

The Commissioner has appointed an Audit and Risk Committee consisting of non-executive members who do not carry out any management responsibilities in the Commission, including the Chairperson, Mr. Victor Nondabula. The Audit Committee supported the Commissioner in fulfilling his oversight responsibilities relating to internal control, risk management, financial management and compliance with laws and regulations. Internal and external auditors had unrestricted access to the committee and helped provide assurance to it. The committee reviewed quarterly internal audit reports, internal and external audit plans, and the Financial Statements for the period ending 31 March 2016. The number of meetings held by the Audit and Risk Committee is shown in the table below.

Table 20: Audit and Risk Committee Meetings, April 2015–March 2016

Member	25 May 2015	23 Jul 2015	19 Aug 2015	23 Sep 2015	18 Nov 2015	23 Feb 2016	17 Mar 2016	Total Meeting Attendance
Mr V Nondabula	√	√	√	√	√	√	√	7 (7)
Ms M Ramataboe	√	√	√	√	√	√	X	6 (7)
Mr N Mhlongo	√	X	√	√	√	X	√	5 (7)
Mr S Gounden	X	√	√	√	√	√	√	6 (7)

Key: √ Present X Apology



Internal Audit

During the period under review, the Commission's internal audit function was carried out by Ernst & Young until August 2015, and thereafter by Sizwe Ntsaluba Gobodo until the end of the financial year.

13.1. Internal Financial Control

The Commission has policies, procedures and systems in place 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 management and the internal auditors. All significant findings are reported to the Audit and Risk Committee and to the 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 during 2015/16.



14 Risk Management

The executive management team is responsible for identifying, evaluating, managing and monitoring all significant risks faced by the Commission. The Commission has adopted a risk management framework and policy, which is in the process of being institutionalised. As part of the strategic review process, the strategic risk register was revised to ensure that it remains relevant.

Relevant risks are those that are within the control of the Commission. A strategic risk is a possible event or outcome that could lead to the Commission not being able to operate or fulfil its mandate. Other types of risks, such as operational risks, are viewed as important but are managed at an operational level and not at a strategic level. The Commission has identified five major risk categories, with specific contributing factors, as well as mitigating actions as follows:

Table 21: Strategic Risks and Mitigating Action

Risk Category and Contributing Factors	Mitigating Actions
1 Insufficient capacity <ul style="list-style-type: none">• Ineffective merger control leading to increased concentration in markets• Inability to effectively litigate in the Tribunal or courts• Inability to effectively detect and investigate the increased sophistication of perpetrators' tactics• Insufficient human resources to effectively meet the Commission's mandate	<ul style="list-style-type: none">• The Commission uses and continuously improves its case management process• Cases are subjected to internal decision-making processes, including the Commissioner's Meeting• The Commission uses information garnered through its Corporate Leniency Policy to detect and investigate cartel conduct• The Commission attracts and retains employees with the required skills and experience by providing competitive benefits such as fair remuneration, further education and training, and favourable working conditions• The Commission's Graduate Development Programme creates a future pool of competent people in all relevant fields, such as economics and law
2 Ineffective advocacy and partnerships <ul style="list-style-type: none">• Inadequate response to radical changes in policy and regulation• Inability to effectively influence policymakers• Ineffective stakeholder management	<ul style="list-style-type: none">• The Commission closely monitors for any possible changes to policy and/or regulation and is proactively involved in the consultation processes leading up to the implementation of such changes. Through this, it is also able to undertake any required actions, such as providing relevant training or changing internal processes and procedures• The Stakeholder Management Plan identifies all stakeholders and provides for ongoing engagement opportunities with these stakeholders

Risk Category and Contributing Factors	Mitigating Actions
3 Information security Inadequate controls to manage and secure information	<ul style="list-style-type: none"> The Information Security Plan ensures that adequate controls are in place to manage and secure information
4 Regulatory non-compliance Non-compliance with regulatory and policy requirements	<ul style="list-style-type: none"> The Regulatory Compliance Plan ensures compliance with regulatory and policy requirements
5 Inability to continue with business Lack of planning for disasters, including 'acts of God'	<ul style="list-style-type: none"> The Disaster Recovery Plan ensures adequate planning for all possible disasters





15

Compliance with Legislation

15.1. PFMA and National Treasury Regulations

In accordance with the PFMA and National Treasury Regulations, the Commission submitted the following documents to the Economic Development Department for approval:

- Request to retain surpluses generated as at 31 March 2015 (approval obtained).
- Quarterly reports on expenditure, budget variance, activities and performance against set targets.
- Monthly expenditure reports.
- Annual Performance Plan for the period 2016–2017.

15.2. Skills Development Act, 1998

The Commission submitted its Annual Training Report and the Annual Workplace Skills Plan on 30 June 2015.

15.3. 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, which promote training in various disciplines. Employers are able to claim back part of the skills levies paid as a skills grant.

15.4. Employment Equity Act, 1998

The Commission submitted its Employment Equity Report in January 2016.

15.5. Compensation for Occupational Injuries and Diseases Act, 1993

A return of earnings was submitted in May 2016. This provides an estimated

cost of possible claims that can be lodged against the Compensation Fund in terms of this Act.

15.6. Unemployment Insurance Act, 2001

All contributions to the Unemployment Insurance Fund were paid on a monthly basis. These contributions consist of an employee contribution of 1% and an employer contribution of 1%, capped at a maximum of R148.72 per month.

15.7. 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.

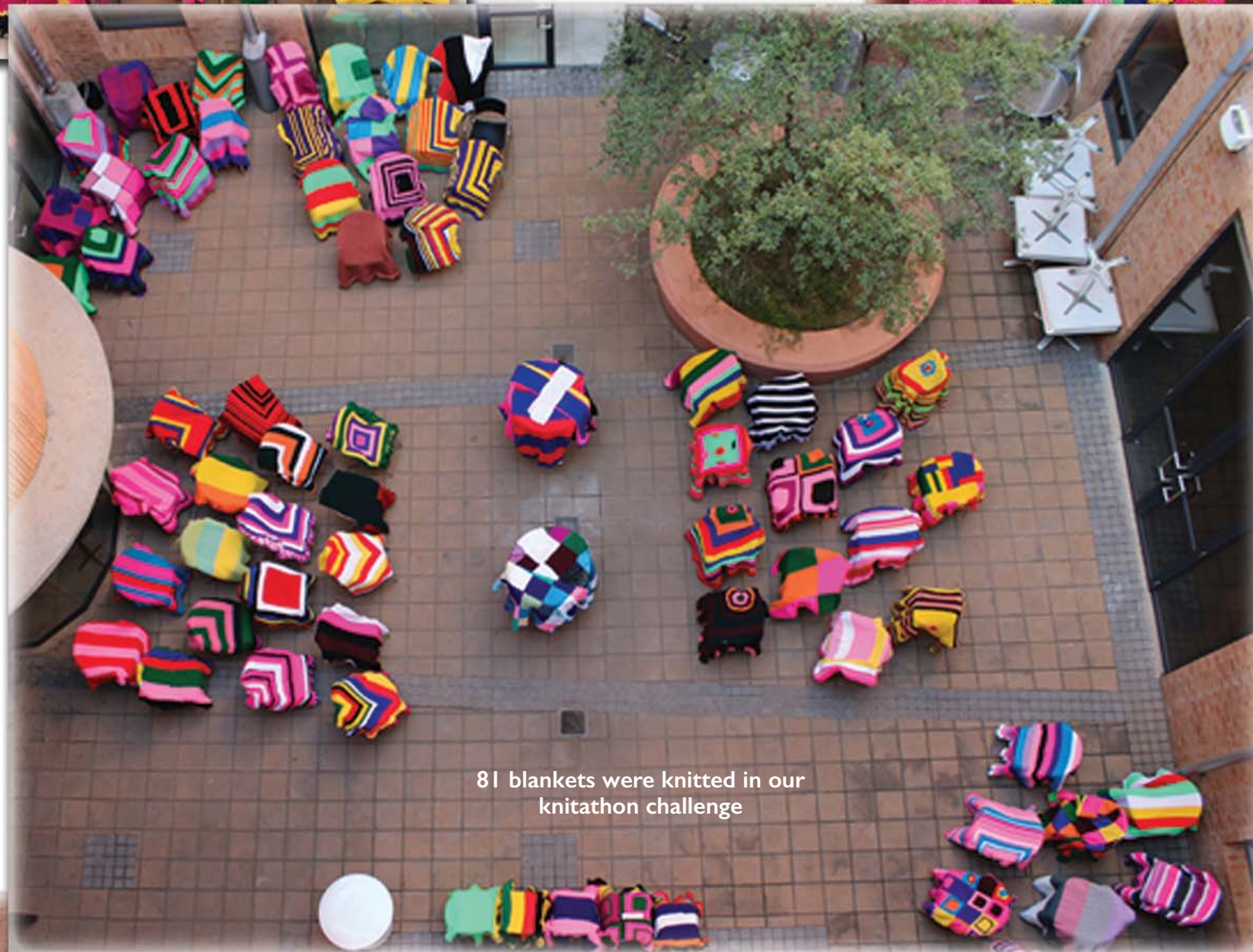
15.8. Income Tax Act, 1962

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

15.9. 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.



81 blankets were knitted in our knitathon challenge



Part



Financial Information





Competition Commission
Annual Financial Statements
for the year ended 31 March 2016



Index

The reports and statements set out below comprise the annual financial statements presented to the parliament:

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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 is responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is the responsibility of the accounting authority to ensure that the annual financial statements fairly present the state of affairs of the 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 financial statements and was given unrestricted access to all financial records and related data.

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

The accounting authority is of the opinion, based on the information and explanations given by management, that the system of internal control

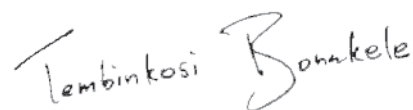
provides reasonable assurance that the financial records may be relied on for the preparation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or deficit.

The accounting authority has reviewed the entity's cash flow forecast for the year and, in the light of this review and the current financial position, is satisfied that the entity has access to adequate resources to continue in operational existence for the foreseeable future.

The entity is wholly dependent on the Economic Development Department for continued funding of operations. The annual financial statements are prepared on the basis that the entity is a going concern and that the Competition Commission of South Africa has neither the intention nor the need to liquidate or curtail materially the scale of the entity.

The external auditors are responsible for independently reviewing and reporting on the entity's annual financial statements.

The annual financial statements have been prepared on the going basis, and approved by the accounting authority on 31 July 2016, and were signed on its behalf by:



Mr. T Bonakele
Commissioner

Report of the Auditor-General to Parliament on the Competition Commission

Report on the financial statements

Introduction

1. I have audited the financial statements of Competition Commission, set out on pages 114 to 146, which comprise the statement of financial position as at 31 March 2016, the statement of financial performance, statement of changes in net assets, and cash flow statement and the statement of comparison of budget and actual amounts for the year then ended, as well as the notes, comprising a summary of significant accounting policies and other explanatory information.

Accounting authority's responsibility for the financial statements

2. 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 No. 1 of 1999) (PFMA), and for such internal control as the accounting authority determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor-general's responsibility

3. My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with 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.

4. 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.
5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

6. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission as at 31 March 2016 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.

Emphasis of matter

7. I draw attention to the matter below. My opinion is not modified in respect of this matter:

Restatement of corresponding figures

8. As disclosed in note 33 to the financial statements, the corresponding figures for 2015 have been restated as a result of an error discovered during 2016 in the financial statements of the Competition Commission at, and for the year ended, 31 March 2015.

Report on other legal and regulatory requirements

9. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) and the general notice issued in terms thereof, I have a responsibility to report findings on the reported performance information against predetermined objectives of selected programmes presented in the annual performance report, compliance with legislation and internal control. The objective of my tests was to identify reportable findings as described under each subheading but not to gather evidence to express assurance on these matters. Accordingly, I do not express an opinion or conclusion on these matters.

Predetermined objectives

10. I performed procedures to obtain evidence about the usefulness and reliability of the reported performance information of the following selected programmes presented in the annual performance report of the public entity for the year ended 31 March 2016:
 - Programme: Legal Service on pages 92 to 93.
 - Programme: Enforcements and Exemptions on page 93.
 - Programme: Policy and Research on pages 93 to 94.
11. I evaluated the usefulness of the reported performance information to determine whether it was presented in accordance with the National Treasury's annual reporting principles and whether the reported performance was consistent with the planned programmes. I further performed tests to determine whether indicators and targets were well defined, verifiable, specific, measurable, time bound and relevant, as required by the National Treasury's Framework for managing programme performance information (FMPPI).
12. I assessed the reliability of the reported performance information to

determine whether it was valid, accurate and complete.

13. I did not identify any material findings on the usefulness and reliability of the reported performance information for the selected programmes.

Additional matters

14. Although I identified no material findings on the usefulness and reliability of the reported performance information for the selected programmes, I draw attention to the following matters:

Achievement of planned targets

15. Refer to the annual performance report on pages 92 to 96 for information on the achievement of the planned targets for the year.

Compliance with legislation

16. I performed procedures to obtain evidence that the public entity had complied with applicable legislation regarding financial matters, financial management and other related matters. My material findings on compliance with specific matters in key legislation, as set out in the general notice issued in terms of the PAA, are as follows:

Procurement and contract management

17. Persons in service of the public entity whose close family members, partners or associates had a private or business interest in contracts awarded by the public entity failed to disclose such interest, as required by Treasury Regulation 16A8.4.

Internal control

18. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with legislation. The matter reported below is limited to the significant internal control deficiencies that resulted in the finding on non-compliance with legislation included in this report.

Financial and performance management

19. Management did not have adequate review and monitoring processes in place in certain instances, to adequately monitor and review compliance with certain legislation.

Auditor-General

Pretoria

31 July 2016



AUDITOR-GENERAL
SOUTH AFRICA

Report of the Audit & Risk Committee

We are pleased to present our draft report for the financial year ended 31 March 2016.

Audit and Risk committee members and attendance

The Audit and Risk Committee of the Competition Commission (the “Committee”) consists of the members listed hereunder and is required to meet at least 4 times per annum as per its approved terms of reference. During the year under review 7 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
Mr V Nondabula (re-appointed as Chairperson in November 2014)	7	7
Ms M Ramataboe (re-appointed as a member in November 2014)	6	7
Mr S Gounden (re-appointed as a member in November 2014)	6	7
Mr N Mhlongo (re-appointed as a member in November 2014)	5	7

Audit and Risk Committee responsibility

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

The effectiveness of internal control

The Committee considered all the reports issued by the various assurance providers – internal and external auditors, risk management as well as management. We can conclude that the system of internal control as applied over financial and non financial matters is satisfactory. The Committee has noted management's commitment to address the lack of control effectiveness, where they exist. We will be monitoring management's progress in resolving these issues on a regular basis.

The Adequacy, Reliability and Accuracy of Financial Information

The Committee is of the opinion, based on the information and explanations given by management as well as the results of audits performed by the internal auditors, and the Auditor-General South Africa, that the financial information provided by management to users of such information is adequate, reliable and accurate.

Evaluation of annual financial statements

The Audit and Risk Committee has:

- reviewed and discussed the audited annual financial statements 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 responses thereto;
- reviewed the entity's compliance with legal and regulatory provisions;
- reviewed significant adjustments resulting from the audit.

The Audit and Risk Committee concur with and accept the Auditor-General of South Africa's report the annual financial statements. We accept the audit opinion expressed by the external auditors 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.

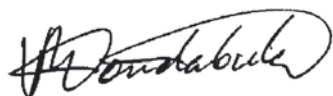
Internal Audit

Internal Audit is independent and positioned to provide objective assurance and consulting services designed to add value and improve the entity's operations.

We are satisfied that the internal audit function is operating effectively, has addressed the risks pertinent to the entity in its audits, and has assisted the entity to ensure that both financial and operational objectives are met.

Auditor-General of South Africa

The Audit and Risk Committee has met with the Auditor-General of South Africa to ensure that there are no unresolved issues that emanated from the regularity audit. Corrective actions on the detailed findings raised by the AGSA will be monitored by the Committee on a regular basis.



V Nondabula
Chairperson

Accounting Authority's Report

The Accounting Authority hereby reports on its financial activities to the Executive Authority and the Parliament:

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

2.1. Financial highlights

	2016	2015
	R '000	R '000
Revenue	283 278	239 990
Interest received	12 021	8 391
Total Revenue	295 299	248 381
Total Expenditure	(296 501)	(223 347)
Net surplus/(deficit)	(1 202)	25 034
Total assets	273 860	145 938
Total liabilities	(161 223)	(32 098)
Number of Merger cases notified and recognised as revenue	389	381

2.2. Penalties levied and collected

Penalties levied against case respondents in 2016 amounted to R338 million (2015: R191 million).

In 2016, the Commission collected on behalf of Economic Development Department, R763 million (2015: R880 million) in penalties which were transferred to the Economic Development Department.

2.3. Total Revenue

Revenue increased by R47 million from R248 million in 2015 to R295 million in 2016 which represents an increase of 19%. Income from the grant (government allocation and transfers) increased by 21% from R188 million in 2015 to R228 million in 2016. Income from filing fees increased by 7% from R52 million in 2015 to R55 million in 2016 as a result of an increase in the number of cases filed.

Interest earned on temporarily available funds increased due to less funds spent than anticipated.

2.4. Total Expenditure

Expenditure increased by R73 million from R223 million in 2015 to R296 million in 2016 reflecting an overall increase of 32%. The increase relates significantly to the expenditure incurred for the market inquiry into private healthcare, 4th International BRICS Competition conference and consulting fees.

2.5. Financial Performance

The Commission generated a deficit of R1.2 million (2015: R25 million surplus) for the current year.

The approved allocation and transfer from government for the year 2015/2016, income from filing fees and 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 approved surplus of R109.8 million from prior years. An application to retain the surplus generated in the current year will be made to National Treasury as the funds are required for the market inquiry into private healthcare, the retail sector market inquiry and case related costs. The accumulated surplus as at 31 March 2016 amounted to R112.6 million.

3 Accounting Authority

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

4 Changes in nature of property, plant & equipment

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

5 Materiality framework

The Commission determined a materiality figure of R1.8 million for the year under review. The Commission's business is such that it is not capital intensive and expenditure was regarded as the best indicator of business activity and therefore 0.5% of budgeted expenditure was used in determining the materiality figure.

Material facts and losses of a quantitative nature are disclosed when the materiality figure is exceeded, or if they arose through criminal conduct, financial misconduct, irregular expenditure and fruitless and wasteful expenditure as defined by the PFMA. Disposal of significant assets when overall operational functions of the Commission changes, are disclosed.

6 Events subsequent to financial position date

None.

7 Secretary

The company secretary is Mr M Msibi.

Business address

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

Postal address

Private Bag X23
Lynwood Ridge
0040
TSHWANE

Statement of Financial Position as at 31 March 2016

	Note(s)	2016 R '000	2015 Restated R '000
Assets			
Current Assets			
Inventories	2	303	375
Receivables from exchange transactions	3	3 074	2 329
Penalties	34	86 441	-
Cash and cash equivalents	4	171 024	132 102
		260 842	134 806
Non-Current Assets			
Property, plant and equipment	5	10 485	8 499
Intangible assets	6	2 533	2 633
		13 018	11 132
Total Assets		273 860	145 938
Liabilities			
Current Liabilities			
Finance lease obligation	7	100	654
Payables from exchange transactions	8	161 049	31 335
		161 149	31 989
Non-Current Liabilities			
Finance lease obligation	7	74	109
Total Liabilities		161 223	32 098
Net Assets		112 637	113 840
Accumulated surplus		112 637	113 427

Statement of Financial Performance

		2016	2015
	Note(s)	R '000	Restated R '000
Revenue			
Fee income	11	55 051	51 641
Other income	12	140	222
Interest received - investment	13	12 021	8 391
Government grants & subsidies	14	228 087	188 127
Total revenue		295 299	248 381
Expenditure			
Employee related costs	15	(155 718)	(140 111)
Administrative expenses	16	(5 174)	(5 336)
Depreciation and amortisation		(1 308)	(2 076)
Finance costs	17	(89)	(232)
Operating expenses	18	(134 169)	(75 561)
Total expenditure		(296 458)	(223 316)
Operating (deficit) surplus		(1 159)	25 065
Loss on disposal of assets	5	(43)	(31)
(Deficit) surplus for the year		(1 202)	25 034
Attributable to:			
Owners of the controlling entity		(1 202)	25 034

Statement of Changes in Net Assets

	Accumulated surplus R '000	Total net assets R '000
Opening balance as previously reported	85 187	85 187
Adjustments		
Correction of errors	3 617	3 617
Restated Balance at 01 April 2014	88 804	88 804
Changes in net assets		
Restated Surplus for the year	25 034	25 034
Prior period adjustment	(411)	(411)
Surplus for the year as previously stated	24 623	24 623
Restated Balance at 01 April 2015	113 839	113 839
Changes in net assets		
Deficit for the year	(1 202)	(1 202)
Total changes	(1 202)	(1 202)
Balance at 31 March 2016	112 637	112 637

Cash Flow Statement

	Note(s)	2016 R '000	2015 R '000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Sale of goods and services		55 051	51 641
Grants		228 087	188 127
Interest income		12 021	8 391
Other receipts		140	222
		295 299	248 381
Payments			
Employee costs		(155 718)	(140 111)
Suppliers		(96 745)	(78 924)
Finance costs		(89)	(232)
		(252 552)	(219 267)
Net cash flows from operating activities	19	42 747	29 114
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	5	(2 999)	(5 292)
Purchase of other intangible assets	6	(237)	(3)
Net cash flows from investing activities	20	(3 236)	(5 295)
CASH FLOWS FROM FINANCING ACTIVITIES			
Movement in donor funds		-	(1 925)
Finance lease payments/(receipts)		(589)	(359)
Net cash flows from financing activities		(589)	(2 284)
Net increase in cash and cash equivalents		38 922	21 535
Cash and cash equivalents at the beginning of the year		132 102	110 567
Cash and cash equivalents at the end of the year	4	171 024	132 102

Statement of Comparison of Budget and Actual Amounts

Budget on Accrual Basis

	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
	R '000	R '000	R '000	R '000	R '000	
Statement of Financial Performance						
Revenue						
Revenue from exchange transactions						
Fee income	56 765	(537)	56 228	55 051	(1 177)	11
Other income	738	-	738	140	(598)	12
Interest received - investment	2 971	157	3 128	12 021	8 893	13
Total revenue from exchange transactions	60 474	(380)	60 094	67 212	7 118	
Revenue from non-exchange transactions						
Taxation revenue						
Government grants & subsidies	223 045	10 084	233 129	228 087	(5 042)	14
Total revenue	283 519	9 704	293 223	295 299	2 076	
Expenditure						
Personnel	(168 318)	(514)	(168 832)	(155 718)	13 114	15
Administration	(5 649)	-	(5 649)	(5 174)	475	16
Depreciation and amortisation	(4 763)	1 542	(3 221)	(1 308)	1 913	5&6
Finance costs	(75)	-	(75)	(89)	(14)	17
Operating expenses	(189 665)	-	(189 665)	(134 169)	55 496	18
Total expenditure	(368 470)	1 028	(367 442)	(296 458)	70 984	
Operating deficit	(84 951)	10 732	(74 219)	(1 159)	73 060	
Loss on disposal of assets and liabilities	-	-	-	(43)	(43)	5
Deficit	(84 951)	10 732	(74 219)	(1 202)	73 017	
Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement	(84 951)	10 732	(74 219)	(1 202)	73 017	

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. Competition commission of South Africa is a Schedule 3A public entity and complies with the requirements of the PFMA Act.

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

A summary of the significant accounting policies, which have been consistently applied in prior years, are disclosed below.

1.1. Significant judgements and sources of estimation uncertainty

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

Provisions

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

Depreciation and amortisation

During each financial year, management reviews the assets within property, plant and equipment and intangible assets to assess whether the useful lives and residual values applicable to each asset are appropriate.

1.2. 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 initially recognised at cost and 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.

There has been no change in the useful live, depreciation policy and residual value in the current year.

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

Item	Average useful life
Furniture and fixtures	12 - 18 years
Motor vehicles	5 - 8 years
Office equipment	8 - 17 years
IT equipment	
• Computer equipment	3 - 17 years
• Servers	5 - 9 years
• GPS	3 - 14 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. It has been practice of the Commission to donate all assets except motor vehicles which have reached the end of the useful lives therefore residual values exist only for motor vehicles.

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 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.

Impairment losses are determined as the excess of the carrying amount over the recoverable service amount and are charged to the surplus or deficit.

1.3. Intangible assets

An asset is identified as an intangible asset when it:

- is capable of being separated or divided from an entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, assets or liability; or
- arises from contractual rights or other legal rights, regardless whether those rights are transferable or separate from the entity or from other rights and obligations.
- An intangible asset is recognised when:
 - it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and
 - the cost or fair value of the asset can be measured reliably.

Intangible assets are initially recognised at cost.

An intangible asset acquired through a non-exchange transaction, the cost shall be its fair value as at the date of acquisition.

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 or service potential.
- 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.

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

Internally generated brands, mastheads, publishing titles, customer lists and items similar in substance are not recognised as intangible assets.

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, other	3 - 14 years
Intangible assets are derecognised: <ul style="list-style-type: none">• on disposal; or• when no future economic benefits or service potential are expected from its use or disposal.	

Impairment losses are determined as the excess of the carrying amount over the recoverable service amount and are charged to the surplus or deficit. Amortisation charged for each period is recognised in surplus or deficit.

Intangible assets are subsequently measured at cost less accumulated amortisation.

1.4. Financial instruments

Initial recognition and measurement

Financial assets are recognised in the Commission's statement 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 gains/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.

Reversals of impairment losses are recognised in surplus

or deficit.

Assets 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 receivables 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 and due to their short term nature, the amortised cost approximates their fair value.

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 and due to their short term nature, the amortised cost approximates their fair value.

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 initially recognised at fair value and subsequently measured at amortised cost and due to their short term nature, the amortised cost approximates their fair value.

1.5. 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.

Finance leases

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

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

Operating leases - Lessee

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 installments over the period of the lease. Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability. Any contingent rents are expensed in the period they are incurred.

1.6. Inventories

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

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

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

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

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

1.7. Employee benefits

Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid vacation leave and sick leave, bonuses, and non-monetary benefits such as medical care), are recognised in the period in which the service is rendered and are not discounted.

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

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

1.8. 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.

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 26.

A financial guarantee contract is a contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a debt instrument.

Loan commitment is a firm commitment to provide credit under pre-specified terms and conditions.

The entity recognises a provision for financial guarantees and loan commitments when it is probable that an outflow of resources embodying economic benefits and service potential will be required to settle the obligation and a reliable estimate of the obligation can be made.

Determining whether an outflow of resources is probable in relation to financial guarantees requires judgement. Indications that an outflow of resources may be probable are:

- financial difficulty of the debtor;
- defaults or delinquencies in interest and capital repayments by the debtor;
- breaches of the terms of the debt instrument that result in it being payable earlier than the agreed term and the ability of the debtor to settle its obligation on the amended terms; and
- a decline in prevailing economic circumstances (e.g. high interest rates, inflation and unemployment) that impact on the ability of entities to repay their obligations.

Where a fee is received by the entity for issuing a financial guarantee and/or where a fee is charged on loan commitments, it is considered in determining the best estimate of the amount required to settle the obligation at reporting date. Where a fee is charged and the entity considers that an outflow of economic resources is probable, an entity recognises the obligation at the higher of:

- the amount determined using in the Standard of GRAP on Provisions, Contingent Liabilities and Contingent Assets; and
- the amount of the fee initially recognised less, where appropriate, cumulative amortisation recognised in accordance with the Standard of GRAP on Revenue from Exchange Transactions.

1.9. Revenue from exchange transactions

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

An exchange transaction is one in which the entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

Measurement

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

1.10. 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 arises 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.

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.

Measurement

Revenue from a non-exchange transaction is measured at the amount of

the increase in net assets recognised by the entity.

1.11. Borrowing costs

Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset are recognised as an expense in the period they are incurred.

1.12. Fruitless and wasteful expenditure

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

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

1.13. 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) the PFMA; 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.

1.14. Unspent Conditional Grants/Donor Funds

Funds received from the International Development Research Centre (IDRC) to be managed by the Commission on behalf of the African Competition Forum (ACF) in order to facilitate the administration of conferences and other requirements of the ACF. The funds are not recognised as revenue but rather recognised as a liability as the funds are due to the ACF.

1.15. Budget information

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

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

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

The approved budget covers the fiscal period from 2015-04-01 to 2016-03-31.

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

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

1.16. Related parties

The entity operates in an economic sector currently dominated by entities directly or indirectly owned by the South African Government. As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

Management are those persons responsible for planning, directing and controlling the activities of the entity, including those charged with the governance of the entity in accordance with legislation, in instances where they are required to perform such functions.

Close members of the family of a person are considered to be those family members who may be expected to influence, or be influenced by, that management in their dealings with the entity.

1.17. Commitments

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

Notes to the Annual Financial Statements

2 Inventories

Consumable stores

2016 R '000	2015 R '000
303	375

3 Receivables from exchange transactions

Trade debtors from exchange transactions

Sundry debtors

-	267
3 074	2 062
3 074	2 329

Trade and other receivables pledged as security

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

Fair value of trade and other receivables

The effect of discounting was considered and found to be immaterial since the carrying value of trade and other receivables approximates fair values.

4 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.

	2016 R '000	2015 R '000
Bank Balances	27 817	19 260
Short-term deposits	143 201	112 834
Cash on hand	6	8
	171 024	132 102
Cash and cash equivalents held by the entity that are not available for use by the economic entity	86 441	25

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

The credit quality of cash at bank and short term deposits, excluding cash on hand that are neither past due nor impaired can be assessed by reference to external credit ratings (if available) or historical information about counterparty default rates. None of the financial institutions with which bank balances

are held defaulted in the prior periods and as a result a credit rating of high was ascribed by the financial institutions. The entity's maximum exposure to credit risk as a result of the bank balances held is limited to the carrying value of these balances as detailed above. All the bank balances are held with two banking institution which reduces the related banking risk.

5 Property, plant and equipment

	2016			2015 Restated		
	R '000			R '000		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	4 625	(1 836)	2 789	4 528	(1 982)	2 546
Motor vehicles	1 790	(455)	1 335	846	(344)	502
Office equipment	1 223	(536)	687	1 197	(598)	599
IT equipment	8 090	(2 851)	5 239	7 629	(3 251)	4 378
Cell phone	24	(6)	18	16	(6)	10
Photocopiers	2 239	(1 822)	417	2 185	(1 721)	464
Total	17 991	(7 506)	10 485	16 401	(7 902)	8 499

Reconciliation of property, plant and equipment - 2016

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	2 546	468	-	(225)	2 789
Motor vehicles	502	944	-	(111)	1 335
Office equipment	599	142	-	(54)	687
IT equipment	4 378	1 377	(43)	(473)	5 239
Cell phone	10	14	-	(6)	18
Photocopiers under finance lease	464	54	-	(101)	417
	8 499	2 999	(43)	(970)	10 485

There was an adjustment in the prior year relating to the extension of useful lives of assets which resulted in the comparative figures being restated. Refer to note 33.

Reconciliation of property, plant and equipment - 2015

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	1 262	1 539	-	(255)	2 546
Motor vehicles	590	-	-	(88)	502
Office equipment	424	302	(1)	(126)	599
IT equipment	2 000	3 169	(30)	(761)	4 378
Cell phone	1	10	-	(1)	10
Photocopiers under finance lease	793	272	-	(601)	464
	5 070	5 292	(31)	(1 832)	8 499

6 Intangible assets

	2016 R '000			2015 Restated R '000		
	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer software	4 893	(2 360)	2 533	4 656	(2 023)	2 633

Reconciliation of intangible assets - 2016

	Opening balance	Additions	Amortisation	Total
Computer software	2 633	237	(337)	2 533

Reconciliation of intangible assets - 2015

	Opening balance	Additions	Amortisation	Total
Computer software	2 871	3	(241)	2 633

7 Finance lease obligation

	2016 R '000	2015 R '000
Minimum lease payments due		
- within one year	120	719
- in second to fifth year inclusive	78	156
	198	875
less: future finance charges	(24)	(112)
Present value of minimum lease payments	174	763
Present value of minimum lease payments due		
- within one year	100	654
- in second to fifth year inclusive	74	109
	174	763
Non-current liabilities	74	109
Current liabilities	100	654
	174	763

The Commission is leasing equipment under a finance lease. The lease agreement does not impose any restrictions. The average lease term is 3 years and the average effective borrowing rate was 16% (2015: 16%).

The entity's obligations under finance leases are secured by the lessor's charge over the leased assets, ie. photocopiers. The lease agreement can be extended at the end of the three year period for a further period. Three new assets were acquired during the current year.

8 Payables from exchange transactions

	2016 R '000	2015 R '000
Trade payables	43 771	11 876
Leave due to employees	6 072	5 753
Accrued performance bonus	12 086	7 664
Accrued expense	12 679	6 017
Penalties received payable to Economic Development Department	86 441	25
	161 049	31 335

The performance bonus is the accrued amount due to employees as at 31 March 2016. These bonuses will be paid in 2016/2017 financial year. The trade and other payables are interest free and also unsecured. The effect of discounting was considered and found to be immaterial.

9 Donor Funds

Funds received from the International Development Research Centre "IDRC" to be managed by the Commission on behalf of the African Competition Forum "ACF" in order to facilitate the administration of conferences and other requirements of the ACF. The project started in August 2012 and ended in November 2014. All the funds received from the IDRC have been used up for the project. As at 31 March 2015, there was an overspend on the project by R266 646 and the Commission used its own funds in order to finalise the project timeously. This amount was refunded by the IDRC in September 2015. As at 31 March 2016, there were no outstanding balances owing to or from the IDRC.

10 Revenue

	2016 R '000	2015 R '000
Fee income	55 051	51 641
Other income	140	222
Interest received - investment	12 021	8 391
Government grants & subsidies	228 087	188 127
	<u>295 299</u>	<u>248 381</u>

The amount included in revenue arising from exchanges of goods or services are as follows:

Fee income	55 051	51 641
Other income	140	222
Interest received - investment	12 021	8 391
	<u>67 212</u>	<u>60 254</u>

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

Transfer revenue		
Government grants & subsidies	<u>228 087</u>	<u>188 127</u>

11 Fee income

Fee income

2016 R '000	2015 R '000
55 051	51 641

The filing fees relates to revenue generated from merger, exemptions and advisory opinion cases filed.

12 Other income

Insurance recovered

Study bursaries recovered

Other

2016 R '000	2015 R '000
64	16
51	20
25	186
140	222

13 Interest received

Interest revenue

Interest received on short term deposits

2016 R '000	2015 R '000
12 021	8 391

14 Government grants and subsidies

Government grants and subsidies

2016 R '000	2015 R '000
228 087	188 127

15 Employee related costs

Basic

Performance Bonus

Cellphone allowance

Group life and pension administration

Medical Aid

2016 R '000	2015 R '000
126 262	116 842
11 867	7 725
1 101	1 038
1 890	1 757
4 462	4 056

	2016 R '000	2015 R '000
Recruitment fees	1 112	1 732
Other staff related costs	9 024	6 961
	155 718	140 111
Accounting Authority's Emoluments		
Annual Remuneration	1 592	1 642
Cellphone allowance	24	12
Group life and pension administration	128	118
	1 744	1 772
Executive Committee's Emoluments		
Annual Remuneration	15 363	12 652
Performance Bonus	1 691	1 129
Cellphone allowance	108	91
Group life and pension administration	1 066	924
	18 228	14 796
Other Employees		
Annual Remuneration	109 307	102 548
Performance bonus	10 176	6 596
Cellphone allowance	969	935
Group life and pension administration	696	715
Other staff related cost - Medical aid	4 462	4 056
Other staff related cost - Recruitment cost	1 112	1 732
Other staff related cost - other	9 024	6 961
	135 746	123 543

16 Administrative expenses

	2016 R '000	2015 R '000
General and administrative expenses	4 227	4 194
Auditors remuneration - external audit fees	947	1 142
	5 174	5 336

Included in general administrative expenses are costs relating to bank charges, general and corporate stationery, courier services, email, telephone, printing, postage and parking.

17 Finance costs

Leased assets (Photocopiers)

2016 R '000	2015 R '000
89	232

18 Operating expenses

	2016 R '000	2015 R '000
Audit and Risk and Remuneration committee fees	616	453
Internal audit fees	442	702
Consulting and professional fees	49 311	30 294
Case related costs - Legal	37 823	20 948
Property rental	15 236	10 610
Travel and accommodation	7 105	3 881
Education and awareness	10 466	1 729
Maintenance, repairs and running costs	4 260	2 375
Other expenses	8 910	4 569
	134 169	75 561

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

19 Cash generated from operations

	2016 R '000	2015 R '000
(Deficit) surplus	(1 202)	25 034
Adjustments for:		
Depreciation and amortisation	1 308	2 076
Gain on sale of assets and liabilities	43	31
Movements in provisions	-	(116)
Other non-cash items	(2)	-
Changes in working capital:		
Inventories	72	(226)
Receivables from exchange transactions	(745)	(877)
Penalties	(86 441)	-

	2016 R '000	2015 R '000
Payables from exchange transactions	129 714	3 192
	42 747	29 114

20 Movement in investing activities

	2016 R '000	2015 R '000
Property, plant and equipment	(2 999)	(5 292)
Intangible assets	(237)	(3)
	(3 236)	(5 295)

21 Reconciliation between budget and statement of financial performance

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

	2016 R '000	2015 R '000
Net (deficit) surplus per the statement of financial performance	(1 202)	25 034
Adjusted for:		
(Increase)/decrease in fee income	1 177	876
(Increase)/decrease in interest received	598	(5 569)
(Increase)/decrease in other income	(8 893)	481
(Under)/Over expenditure on Personnel	5 042	(17 828)
(Under)/Over expenditure on Depreciation	(13 114)	(246)
(Under)/Over expenditure on Finance cost	14	152
(Under)/Over expenditure on General Expenses	(57 884)	(50 621)
(Under)/Over expenditure on Losses	43	31
Net deficit per approved budget	(74 219)	(47 690)

22 Financial risk management

The main risks arising from the Commission's financial instruments are market risk, liquidity risk and credit risk.

Credit risk

The Commission trades only with recognised, creditworthy third parties. In addition, receivables balances are monitored on an ongoing basis with the result that the Commission's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed in Note 3. There is no

significant concentration of credit risk within the Commission.

With respect to credit risk arising from the other financial assets of the Commission, which comprise cash and cash equivalents, the Commission's exposure to credit risk arises from default of the counterparty, with a maximum exposure equal to the carrying amount of these instruments. The Commission cash and cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is low.

Exposure to credit risk

The maximum exposure to credit risk at the reporting date from financial assets was:

	2016 R '000	2015 R '000
Cash and cash equivalents	171 024	132 102
Trade and other receivables	3 074	2 329
Total	174 098	134 431

Concentration of credit risk

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

Ageing of financial assets

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

2016	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	171 024	-	-	171 024
Trade and other receivables	3 074	-	-	3 074

2015	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	132 102	-	-	132 102
Trade and other receivables	2 329	-	-	2 329

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

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

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

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

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.

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

Exposure to liquidity risk

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

2016	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 2 and 5 years
Trade and other payables	161 049	161 049	161 049	-

2015	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 2 and 5 years
Trade and other payables	31 336	31 336	31 336	-

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.

Foreign exchange risk

The entity does not hedge foreign exchange fluctuations.

23 Comparative figures

The comparative figures have been restated in line with the impact as disclosed in note 33.

24 Income Taxation Exemption

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

25 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.

26 Contingent liability

Surplus for the current financial year

The accumulated surplus of R112.6 million in the current year has been classified as a contingent liability as at 31 March 2016 as there is no approval received to retain the surplus as yet. In terms of PFMA Section 53(3), entities are not allowed to accumulate surpluses unless approved by National Treasury. The Commission had an approved retained surplus of R109.8 million as at 31 March 2015. 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 to retain surpluses in the current year therefore the Commission will not be required to repay any amount.

27 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	
Public Investment Corporation	Public entity in National sphere	
Members of key management	Members of the Executive Authority	
Related party balances	2016	2015
Amounts included in trade payables	R '000	R '000
The Competition Tribunal	2 015	1 175
The Department of Trade and Industry	12 500	93
The Department of Economic Development	86 441	25
	<u>100 956</u>	<u>1 293</u>
Related party transactions		
The Department of Trade and Industry		
Rental expense	12 500	9 746
Telephone and Internet costs expense	1 468	1 678
The Competition Tribunal		
Filing fees	13 440	13 288
Facility Fee	655	1 953
Economic Development Department		
Government grant received	228 087	188 127
Public Investment Corporation		
Rental of office building for the Health Inquiry	2 736	2 572
Penalties collected on behalf of related parties and transferred to related parties		
Economic Development Department	762 729	879 996

Compensation to key management on the Executive Committee

	2016 R '000	2015 R '000
Commissioner: Mr.T Bonakele		
Cost to Company	1 743	1 772
Performance Bonus	-	-
Acting Deputy Commissioner: Adv O Josie	-	-
Cost to Company	1 762	1 645
Performance Bonus	322	65
Acting Deputy Commissioner - Mr. H. Ratshisusu	-	-
Cost to Company	1 639	1 415
Performance Bonus	242	202
Chief Financial Officer - Mr.T. Kgokolo (Resigned 30 June 2015)	-	-
Cost to Company	406	1 332
Performance Bonus	-	214
Manager: Health Inquiry - Mr. C. Oellermann (Resigned 29 February 2016)	-	-
Cost to Company	1 663	1 551
Performance Bonus	-	164
Manager: Policy and Research - Dr. L. Mncube	-	-
Cost to Company	1 344	1 259
Performance Bonus	239	144
Manager: Office of the Commissioner- Ms. W. Ndlovu	-	-
Cost to Company	1 729	1 580
Performance Bonus	226	128
Manager: Enforcement & Exemptions - Mr. J. Khumalo (Resigned 15 October 2015)	-	-
Cost to Company	798	1 275
Performance Bonus	-	-
Manager: Corporate Services - Mr.A. Gwabeni (Resigned 31 January 2015)	-	-
Cost to Company	-	726
Performance Bonus	-	-
Manager: Cartels - Mr. M. Mohlala (Appointed 15 August 2014)	-	-
Cost to Company	1 386	764
Performance Bonus	236	155
Manager: Communications - Mr. M. Scott (Resigned 31 August 2015)	-	-
Cost to Company	609	813

	2016 R '000	2015 R '000
Performance Bonus	-	-
Company Secretary: Ms T Gwatkin (resigned 30 October 2015)	-	-
Cost to Company	783	1 126
Performance Bonus	-	60
Chief finance officer - Mr M Kgauwe* (Appointed 14 March 2016)	-	-
Cost to Company	1 022	-
Performance Bonus	50	-
Manager: Legal Services - Mr. B. Majenge	-	-
Cost to company	1 354	-
Performance Bonus	178	-
Manager: Enforcement and Exemptions - Ms. N. Nontombana (Appointed 15 October 2015)	-	-
Cost to Company	687	-
Performance Bonus	198	-
Acting Manager: Mergers and Acquisitions - Ms. S. Nunkoo (Appointed 1 February 2016)	-	-
Cost of Company	216	-
Performance Bonus	-	-
Company Secretary: Mr. M. Msibi** (Appointed 15 March 2016)	-	-
Cost to Company	380	-
Acting Manager: Corporate Services - Ms. M. Nkabinde (Appointed 1 May to 31 October 2015)	-	-
Cost to Company	761	-
	19 973	16 390

Cost to company includes total package, Subsistence & travel allowances, other allowances (Cellphone, data), company contributions (Unemployment Insurance Fund, Skills Development Levy, Group life insurance)

* Mr M Kgauwe was appointed as the acting CFO from 1 July 2015 to 13 March 2016 and as an acting Divisional Manager: Corporate Services from 1 November 2015.

**Mr M Msibi was appointed as the acting Company Secretary from 1 November 2015 to 14 March 2016.

28 Commitments

	2016 R '000	2015 R '000
Approved and contracted		
• Existing contracts - goods and services	32 856	18 481
• Other goods and services	2 390	3 197
	<u>35 246</u>	<u>21 678</u>

Existing contracts comprises of contracts in existence at year end for services to be provided in the next financial periods. Other goods and services consists of orders placed at year end and not delivered at 31 March 2016.

Operating leases – as lessee (expense)

	2016 R '000	2015 R '000
Minimum lease payments due		
• - within one year	16 486	2 687
• - in second to fifth year inclusive	-	-
	<u>16 486</u>	<u>2 687</u>

The Commission entered into a two year lease agreement for office space for the Health Inquiry which commenced on the 1 April 2014 and terminates on 31 March 2016. The lease has been extended for another year as a result of the extension in the inquiry into private healthcare. The total commitment amount relating to this lease agreement is R2.7 million. The Commission also has entered into a two year agreement for office space for the Commission with the Department of Trade and Industry (DTI)

29 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 Economic Development Department continues to procure funding for the ongoing operations for the entity and that the National Treasury approves the retention of surplus.

We draw attention to the fact that at March 31, 2016, the entity had accumulated surplus of R112.6 million and that the entity's total assets exceed its liabilities by R112.6 million.

30 Irregular expenditure

	2016 R '000	2015 R '000
Opening balance	-	6 763
Add: Irregular Expenditure current year	1 721	168
Add: Irregular expenditure prior year	745	-
Less: Amounts condoned	-	(6 931)
Balance at the end of the year	2 466	-

The prior year irregular expenditure of R745 000 was identified in the current year and relates to an alleged irregularity with the Supply Chain Management process. Management has commissioned a forensic investigation and the outcome thereof will inform the way forward. Controls have been put in place to avoid such irregular expenditure in the future.

The current year irregular expenditure of R1.7 million relates to Supply Chain management and will be investigated.

31 Gifts

	2016 R '000	2015 R '000
Consumables	2	1

32 Fruitless and wasteful expenditure

	2016 R '000	2015 R '000
Fruitless and wasteful expenditure	23	-

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

33 Prior year adjustment

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

The results of the prior period adjustment is as follows:

	2016 R '000	2015 R '000
Statement of Financial Position		
Property, plant and equipment		
Accumulated depreciation and accumulated impairment	95	1 082
Intangible assets		
Accumulated depreciation and accumulated impairment	316	2 535
Statement of Financial Performance		
Expenditure		
Depreciation and amortisation	(411)	(3 617)
	-	-

34 Penalties

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

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

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

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

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

In terms of GRAP 104 (91b) offsetting is allowed if settlements takes place on a net basis. Any penalties which are recognised as outstanding will therefore be the same as the penalties payable which will result in a nil effect for penalties recognised.

To the extent that the amounts in question are due and the respondents are in operation, the Competition Commission should be in a position to recover the penalties in accordance with the provisions of Section 64 (2) of the Competition Act, Section 64 (2) state that the Competition Commission may institute proceedings in the High Court on its own behalf for recovery of an administration penalty imposed by the Competition Tribunal.

Section 64(3) states that proceedings under subsection (2) may not be initiated more than three years after the imposition of the administrative penalty .

	2016 R '000	2015 R '000
Outstanding penalties amount at the beginning of the year	764 823	1 453 366
Add: amounts of settlements levied by the Competition Tribunal	337 904	191 453
Less: amounts collected by Competition Commission	(762 729)	(879 996)
Outstanding penalties amount at the end of the year	339 998	764 823

An amount of R763 million was collected and R677 million of it was paid over to Economic Development Department as at 31 March 2016. The balance of R86 million is still to be paid to the Economic Development Department in the next financial year.

35 New standards and interpretations

35.1. 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, 2016 or later periods:

Standard	Summary and impact	Effective date
GRAP 20 – Related party disclosures	This standard prescribes the disclosures that the Entity applies in terms of Related parties. The impact on the financial results and disclosure is considered to be minimal.	Issued by the ASB – June 2011 Effective date - To be determined by the Minister of Finance
GRAP 32: Service concession arrangements: Grantor	This standard prescribes the procedures regarding service concession arrangements. The impact on the financial results and disclosure is considered to be minimal	Issued by the ASB – August 2013 Effective date - To be determined by the Minister of Finance
GRAP 108 - Statutory receivables	This standard establishes principles for reporting on transfers of functions between entities in this regard. The impact on the financial results is considered to be minimal. However the impact on disclosure is significant.	Issued by the ASB – September 2013 Effective date - To be determined by the Minister of Finance
GRAP 109- Accounting by Principals and agents	This standard outlines the principles to be used for the Accounting by Principals and agents. The impact on the financial results and disclosure is considered to be minimal.	Issued by the ASB – July 2015 Effective date - To be determined by the Minister of Finance

PART F: APPENDICES

Addendum: Updating of the 2015/16 Annual Performance Plan

The 2015/16 Annual Performance Plan was updated in response to discovered administrative errors (typographical errors pertaining to four yearly targets and two performance indicators). As per the National Treasury's *Framework for Strategic Plans and Annual Performance Plans*, the Commission instituted quality control by updating the document accordingly for reporting purposes. The Minister of Economic Development, Mr Ebrahim Patel, was notified of the errors and revisions on 30 July 2015. The National Treasury was also notified for the purposes of Estimates of National Expenditure (ENE) reporting.

Table 22: Updated KPIs

No.	Performance Indicators	Accountable Programme	2015/16 Target	Q1	Q2	Q3	Q4
8	% of cartel investigations completed within 12 months	Cartels	70%	70%	70%	70%	70%
9	% of cartel cases won at the Tribunal and the courts	LSD	70%	70%	70%	70%	70%
12	% of abuse of dominance cases won at the Tribunal and the courts	LSD	50%	50%	50%	50%	50%
17	No. of market inquiries initiated	P&R	2	1	0	0	1
18	No. of market inquiries completed within 24 months	P&R	1	0	0	0	1
26	Annual competition conferences hosted	CSR	1	0	0	1	0



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