INTEGRATED ANNUAL REPORT 2020/2021

competitiontribunal
SOUTH AFRICA

VISION

To be seen as an exemplary administrative tribunal by being independent, impartial, ethical and professional.

MISSION

To develop credible competition law and to be an effective structure for administering the law.

VALUES

In pursuing its legislated mandate, the Tribunal strives to deliver:

- fairness, objectivity and independence;
- timeous decisions of a high calibre;
- effective communication of our work with the public; and
- courteous, efficient, informed interaction with our stakeholders.

CONSTITUTIONAL MANDATE

The mandate of the Tribunal is contained in section 34 of The Constitution of the Republic of South Africa, 1996, which states: *"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum".*

LEGISLATIVE MANDATE

The Tribunal derives its legislative mandate from Section 2 of the Competition Act of 1998 (Act 89 of 1998) (the "Act" or "the Competition Act") and its purpose is to promote and maintain competition in the Republic in order to:

(a) promote the efficiency, adaptability and development of the economy;

(b) provide consumers with competitive prices and product choices;

(c) promote employment and advance the social and economic welfare of South Africans;

(d) expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;

(e) ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;

(f) promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons; and

(g) detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, that tends to impede, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic.

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HIGHLIGHTS FOR 2020/2021

Responsive and reliable adjudication

152 matters were heard and **160** orders were issued

68 mergers were decided, 19 of them with conditions

The total transaction value for large mergers was **R426 587 190 971**

63 consent orders and settlement agreements were heard and **64** orders were issued

16 interlocutory applications were heard and **20** orders were issued

The total amount for penalties imposed was **R51 256 497**. More than **79%** of penalties imposed were for cartel conduct

The highest penalties were imposed on Cross Fire Management (**R12 894 000**) and Belfa Fire (**R10 100 126**) for cartel conduct

Accountable, transparent and sustainable entity

The Tribunal successfully implemented **online hearings** and **remote working** for the first time, due to **COVID-19**

The Tribunal received a **clean audit**

The Tribunal is an efficient organisation, allocating **76%** of its expenditure budget on its strategic objectives and spending **92%** of budget for the financial year

3 348 Tribunal stories were carried in the media

4 405 media release subscribers

News coverage of Tribunal matters increased by **25%**

47 221 website visitors

STRATEGIC OUTCOMES

Responsive and reliable adjudication

During the period under review, the Tribunal heard a total of 152 matters and issued a total of 160 orders, of which 68 were for mergers. 49 of the mergers were approved without conditions. 19 were approved with conditions, of which 15 included public interest conditions. The effects of COVID-19 led to a decline in merger and acquisition activity as we predicted.

Historically, abuse of dominance cases tend to be fewer. In the previous reporting period we decided one abuse of dominance case. In the current reporting period, we decided two abuse of dominance cases, both relating to COVID-19 excessive pricing.

In addition, we issued orders in five contested cartel cases which were heard by the Tribunal in the previous reporting period. The Corporate Leniency Programme is known to assist in uncovering cartels in that a cartel participant can apply for leniency in exchange for information on the cartel and other participants.

The Tribunal also heard 63 consent orders and settlement agreements (133% more than the previous year) primarily due to the influx of COVID-19 excessive pricing cases. A total of 64 orders were issued, 20 of these matters were collusion or cartel related, 43 were in relation to abuse of dominance (40 were specifically COVID-19 excessive pricing cases) and one was for a failure to notify a merger. We also heard 16 interlocutory applications and issued 20 orders in this regard. These are procedural applications that delay the hearing of the cases on the merits i.e. postponement and extension applications, applications for the discovery of documents and access to confidential information as well as proceedings relating to jurisdictional points.

Accountable, transparent and sustainable entity

The Tribunal strives to be accountable for its actions, transparent in conducting its affairs and sustainable in its operations. Ultimately accountable to Parliament, our second strategic goal requires us to have effective oversight structures in place to ensure effective financial management and reporting. We subscribe to a strong ethos of communication and recognise the importance of sharing information with our stakeholders, especially the public. A total of 3 348 news stories on Tribunal decisions and activities were carried in the media during the period under review.

The Tribunal's value of transparency is demonstrated in its strong track record of clean audits and winning awards for its Integrated Annual Report.

We also focus on developing and building sustainable capacity. We are an efficient organisation, allocating 76% of the total expenditure budget on our two strategic objectives and spending 92% of the budget. The remaining 24% of the budget is allocated to administration.

We are pleased to report that we stayed within budget during the reporting period and recorded a surplus of R1.17 million. While the Tribunal is not a profit-making institution, surpluses assist to offset the variability of filing fees. We had received approval from National Treasury and the Department of Trade, Industry and Competition (**the dtic**) to sustain a deficit for the 2020/2021 financial year from an accumulated surplus over the Medium-Term Expenditure Framework. Through prudent financial management and receipt of higher revenue than expected, there was no need to utilise the accumulated surplus in this financial year.

STATEMENT OF RESPONSIBILITY

The Chairperson and the Chief Operating Officer (COO) acknowledge their responsibility in terms of ensuring the integrity of this Integrated Annual Report. In their opinion this report addresses all the issues that are material to the Tribunal's ability to create value and presents the integrated performance of the Tribunal fairly. This report was approved by the Chairperson on 31 August 2021.

Mondo Mazwai
Chairperson

Oliver Josie
Chief Operating Officer

BOUNDARY AND SCOPE

This 2020/2021 Integrated Annual Report covers the Tribunal's performance for the year ending 31 March 2021. It provides information on our two strategic goals which are: responsive and reliable adjudication; and being an accountable, transparent and sustainable entity. We report on the extent to which we achieved our planned objectives for the year. Where we did not meet certain targets in full, we address the reasons. We also provide an overview of our governance structures and present details on how we adhere to effective corporate governance.

As with previous reports, we make use of infographics for easier understanding of our work and performance. We also explain how we utilised our financial resources during the reporting period.

Since 2020 was the year of the COVID-19 pandemic, we focus particularly on cases that were a direct result of the pandemic. A record number of excessive pricing cases were referred to the Tribunal during the reporting period, highlighting that the most vulnerable South Africans were faced with paying excessive prices for personal protective equipment (PPEs) including face masks and hand sanitisers during a global pandemic. Among others, we report on the findings and remedies we imposed in this regard.

We also focus on decisions that advanced the public interest during the reporting period, particularly with reference to merger transactions. We report on the Tribunal decisions that impacted on employment; on local or regional industries; on small and medium businesses or firms controlled or owned by historically disadvantaged persons; and on a greater spread of ownership, in order to create competitive and inclusive markets for all participants in South Africa's economy.

PART 1

AT A GLANCE

MINISTER'S FOREWORD

It is my pleasure to table the Annual Report of the Competition Tribunal for the 2020/21 financial year. The Report sets out the work of the Tribunal during a challenging year for the economy and society.

The COVID-19 pandemic affected the work of public entities and the Tribunal showed an agility in dealing with its mandate at a time when the normal hearings of the Tribunal were interrupted by social distancing prescripts and when the economy was vulnerable to the threat of excessive pricing.

On 19 March 2020, I issued Regulations prohibiting dominant firms from charging excessive prices for specified goods and services necessary to prevent the spread of COVID-19. The Tribunal made provision for complaint referrals to be heard remotely during the national lockdown. The highest profile case was the successful prosecution of Dis-Chem, which was fined R1,2 million for excessive pricing, having significantly raised the price of its face masks at the onset of the pandemic.

The evolution of Competition Law, through the promulgation of sections of the Competition Amendment Act, 2018, strengthens the competition authorities in a number of ways to deal with, inter alia, certain public interest objectives including the promotion of worker ownership. Encouraging progress is being made in implementation.

COVID-19 caused significant damage to the economy. As SA recovered from the first waves of COVID-19, the focus shifted to economic recovery, in line with the Economic Reconstruction and Recovery Plan (ERRP). In the new financial year ending March 2022, every agency of **the dtic** has been requested to report on its contribution to South Africa's national development goals, with a focus on seven key areas, which are termed 'joint indicators'. In this way, the combined efforts of all public entities will begin to be aligned to the national priorities in a more explicit manner.

These cover the following areas, which will be reported on in future Annual Reports:

- Joint Indicator 1: Integrated Support to Drive Industrialisation (which includes the work on localisation and sector master plans as well as efforts to support beneficiation)
- Joint Indicator 2: Contribution to the development of an AfCFTA Export Plan
- Joint Indicator 3: Investment Facilitation and Growth
- Joint Indicator 4: Development Model and Spatial Equity to enable the impact of all public sector work to be measured and integrated at district level
- Joint Indicator 5: Actions to Promote Transformation
- Joint Indicator 6: The Green Economy and Greening the Economy
- Joint Indicator 7: Strengthening and Building a Capable State.

In respect of building a capable state, for example, all public entities will be required to review their procedures, timeframes for delivery, forms to be filled in and public communication of services in order to simplify them, make processes expeditious where possible, remove unnecessary red-tape where it exists and make it easier for users to access services.

I wish to thank the Tribunal's Chairperson, Mondo Mazwai, for her work and contribution to the evolution of South Africa's competition jurisprudence, together with the eminent Panel of Tribunal members (drawing on a wide talent pool of South Africans) and the staff of the institution.

Ebrahim Patel
Minister of Trade, Industry and Competition

"The COVID-19 pandemic affected the work of public entities and the Tribunal showed an agility in dealing with its mandate at a time when the normal hearings of the Tribunal were interrupted by social distancing prescripts and when the economy was vulnerable to the threat of excessive pricing. "

CHAIRPERSON'S REPORT

2020 was a challenging year. The novel coronavirus pandemic precipitated a national lockdown which impacted many businesses and livelihoods, including our own activities. We saw less merger filings due to the economic downturn, and more complaint proceedings consequent on the influx of COVID-19 excessive pricing complaints.

I am pleased to report that despite these challenges we remained open for business, substantially achieving on our two core outcomes, to be a reliable and responsive administrative body; and to be a sustainable, transparent and accountable entity.

We immediately took heed of government's directive to work from home. We were fortunate that the investments in our IT systems made in prior years enabled us to rapidly respond and to work seamlessly from home.

We issued Procedural Directives to address the hearing of the different types of cases, prioritizing mergers and excessive pricing complaints related to COVID-19. We developed protocols for virtual hearings. By and large, cartel and abuse of dominance cases were put on hold. We heard 152 matters during the year under review.

Consistent with the decline in economic activity, the number of mergers decided dropped to 68 from 89 in the prior year, while the number of consent orders following complaints more than doubled from 24 in the prior year, to 64, with excessive pricing-related consent orders constituting 67% of the orders. The balance of the cases were procedural matters.

With the pandemic threatening livelihoods, employment was the leading public interest issue in the mergers we heard. Of the 68 mergers, 19 were approved subject to conditions, 13 of which were employment related. In the review period, we imposed employment conditions which contributed to saving 18 433 jobs. By and large the conditions were tendered by parties following negotiations with the Commission, trade unions and the Department of Trade, Industry and Competition.

Besides employment, other prominent public interest conditions related to ensuring local procurement; security of supply for customers and increasing the spread of ownership by historically disadvantaged persons and workers in firms in the market, as recently introduced by the 2019 Competition Amendment Act. We imposed conditions relating to local procurement in five mergers in the textile industry. Security of supply conditions were imposed in three mergers in the mining, rail and timber industries respectively. We imposed conditions addressing a greater spread of ownership in five mergers.

The highlight of the year was our landmark ruling which was upheld by the Competition Appeal Court (CAC) in the first successful excessive pricing case in over 20 years in a complaint brought by the Commission against Babelegi. Babelegi is a small reseller of face masks. As consumers scrambled to procure protective equipment and essential items during the lockdown, they were confronted by instances of suppliers taking advantage of the crisis by hiking prices. Babelegi defended its actions as a simple response to increased demand against limited supply. Babelegi claimed that with a 5% market share it was not a dominant firm as defined in the Act.

We found on the evidence that the disruption to the supply chain internationally and locally conferred market power on Babelegi as it had a stockpile of masks. This allowed Babelegi to charge prices unconstrained by competitive market

forces. Babelegi hiked its prices for face masks by 592% in February 2020 and 987% in March 2020.

It gave no rational or valid explanation for this, and there was no evidence of corresponding increases in its input costs. We relied on Babelegi's own prevailing prices for masks immediately prior to the market becoming dysfunctional.

Following Babelegi, we also found that Dis-Chem, a national pharmacy retailer, had also charged excessive prices for face masks during March 2020. Dis-Chem's prices were 261% higher than its prevailing prices in December 2019. No rational explanation for the price increase was provided. Dis-Chem appealed our finding to the CAC but subsequently withdrew its appeal.

Babelegi and Dis-Chem led to many firms reducing their prices for essential goods to combat COVID-19. We heard and confirmed 40 consent orders relating to COVID-19 excessive pricing out of 64 consent orders.

On the merger front, the Tribunal invoked its inquisitorial powers in two key sectors in the economy: agriculture and mining, resulting in divestiture conditions in both. In the Senwes merger, Senwes sought to acquire Suidwes, a competitor in the provision of concrete silos used for the storage of grain and oilseeds.

The Commission initially recommended a conditional approval of the merger on the basis that it would reduce the number of competitors from three to two and from two to one respectively in the relevant markets, and lead to increased prices for grain storage and prodcurement. The Commission, however, found that Suidwes was in financial distress and the merger would have significant public interest benefits. It subsequently recommended a prohibition on the basis that the remedies tendered by the merger parties were unsatisfactory. We engaged an agricultural economist as an independent expert. We concluded that the likely counterfactual to the merger was that Suidwes would continue to be loss making, which would have a negative effect on the public interest, and would result in job losses. Ultimately, we approved the merger subject to a range of conditions, including the divestiture of three silos, a pricing condition and public interest conditions related to employment.

"We remain committed to adjudicating for fair, competitive and inclusive markets."

In the mining industry, Thabong Coal sought to acquire South32 SA Coal Holdings (South32), ultimately contriolled by an Australian firm. Thabong Coal and South32 are two of South Africa's largest suppliers of coal. The Commission concluded that the merged entity would become a dominant coal supplier. However, it concluded that the merger was unlikely to substantially prevent or lessen competition due to the countervailing power of Eskom. We utilised our inquisitorial powers to summons Eskom being the largest consumer of thermal coal in South Africa.

We heard submissions from the Commission, Eskom, the merger parties and representatives of the affected mining community. We concluded that the tendered conditions, including the divestiture of a large thermal coal project by South32 would ameliorate the competition concerns identified. Further the merger had public interest benefits including advancing greater black ownership since Seriti is an approximately 90% black-owned company. Other public interest conditions included employment, the establishment of a Community Trust and an Employee Trust to be issued with shares in South32, undertakings relating to security of supply from historically disadvantaged suppliers, and compliance by SAEC with its social and labour plans.

We decided five cartel cases heard in the prior year. The highest fine imposed for cartel conduct was against Belfa Fire and Cross respectively for fixing prices, dividing markets, and tendering collusively in the market for the installation and maintenance of fire control and production systems. Cross was ordered to pay a fine of R12 894 000 and Belfa, a fine of R10 100 126.

We heard several cases following the Commission's market inquiries, the most notable being the Grocery Retail Market Inquiry ("GMRI"). The Commission identified foreclosure concerns due to long-term exclusive lease agreements between property developers and supermarket chains. These leases restrict the landlord from letting premises in the same shopping centre to potential competing grocery and other retailers, including specialty stores.

Shoprite and Pick n Pay have undertaken with immediate effect, to cease enforcing exclusivity provisions against SMMEs, HDIs and specialty and limited line stores in shopping malls in which they are anchor tenants. This means SMMEs and HDP retailers, among others, can immediately access shopping centres in the relevant areas where they were previously excluded.

Digital platforms and their impact on markets are increasingly becoming the focus for competition authorities around the world, as evidenced by the Commission's recent launch of a market enquiry into Online Intermediation Platforms. We have recently heard and granted interim relief against Facebook and WhatsApp interdicting them from off boarding GovChat from the WhatsApp digital platform.

GovChat is a digital platform that facilitates communication between government and citizens, including COVID-19 related information. While the case has not been heard on the merits as the Commission is still investigating the complaint, it is clear that competition policy must quickly adapt to deal with digital platforms and the modern economy.

This snapshot of cases illustrates the diverse nature of our work, and the increasing demand for our services. It is ever more important to build the capacity of the competition authorities to tackle the challenges that lie ahead in rebuilding the economy. We must be vigilant to ensure that the economy does not revert to increased concentration that the Competition Act and the 2019 Competition Amendments seek to further address. We remain committed to adjudicating for fair, competitive and inclusive markets.

Away from the case highlights, I am delighted to report that following the publication last year of the first Tribunal handbook covering more than 20 years of competition jurisprudence, the second edition has been published on our website.

In August, we welcomed Oliver Josie as the Tribunal's Chief Operations Officer following the resignation of Janeen de Klerk who dedicated more than 20 years to the Tribunal. Oliver brings institutional experience as a former member of the Tribunal's Audit and Risk Committees, and Chairperson of the Fraud Prevention Committee. We wish Oliver well in his role and look forward to his contribution in continuing to make the governance side of our work a success. I thank the Audit and Risk Committees for their oversight role during the reporting period.

I wish to especially thank my colleagues, Enver Daniels, the Deputy Chairperson, and Tribunal members, Yasmin Carrim and Andreas Wessels who have been stretched beyond normal in handling the volume and complexity of the cases. I thank the six part-time members for their valuable contribution and the perspective they bring to the cases.

It is a matter of institutional pride year on year that the Tribunal has received a clean audit. I am joyful that this year is no exception. I applaud the team for this achievement.

Finally, the work reported on in this section was made possible by the incredibly resilient staff of the Tribunal. Despite the challenges faced by each in this difficult year, the staff continued to give their best effort. It is a privilege to lead such a professional team.

Mondo Mazwai
Chairperson
31 August 2021

CHIEF OPERATING OFFICER'S REPORT

I joined the Tribunal on 24 August 2020 as Chief Operating Officer. Although I may be perceived as a new employee, I previously gained insight into the Tribunal's governance as I served on the Tribunal's Audit and Risk Committees as a Non-Executive Member for almost four years.

The 2020/2021 report represents the Tribunal's eighth Integrated Annual Report. It was indeed an excellent choice to implement the concept of integrated reporting. Although challenging at times, we were able to integrate the triple context of governance (i.e. financial, social and environment) into our operations while achieving our stated objectives and delivering on our mandate.

This report provides a detailed analysis of the Tribunal's work during the 2020/2021 period. We provide some forward-looking focus, particularly with regard to our main objective, that is, responsive and reliable adjudication.

We have combined both narratives and infographics in an innovative way to provide an easy-to-read Integrated Annual Report. The basic structure of the report has remained consistent over a number of years as it provides a logical and holistic picture for the reader.

2020/2021 has been a challenging year. In Part 1, the Minister and the Tribunal Chairperson refer to the COVID-19 challenges, its impact on the economy and the need for public entities to assist in economic recovery and contribute to inclusive growth. In Part 2, we provide the reader with an explanation of who the Tribunal is, what our role is and insights into the officials and members of the Tribunal.

Part 3 is, in essence, a detailed description of the Tribunal's operational environment. We highlight the strategic objectives set out by the Tribunal over the five year planning period and cascade these down into annual priorities.

Each strategic objective is addressed in detail and we provide an overview of achievement against predetermined targets i.e. whether we met, exceeded

"...we were able to integrate the triple context of governance (i.e. financial, social and environment) into our operations while achieving our stated objectives and delivering on our mandate."

or partially met the respective targets. We provide explanations for both under- and over-performance and where there has been under-performance, corrective action is addressed.

Our first strategic objective is responsive and reliable adjudication. We highlight statistics related to the type and number of matters heard as well as matters where orders and reasons were issued. We also provide a detailed narrative on particularly interesting cases considered by the Tribunal and any remedies or penalties imposed.

Our second strategic objective is being a transparent, accountable and sustainable entity. This objective is also discussed in detail in Part 3. In addition, we provide information on our relationship with stakeholders, who they are and how and what we communicate. Much of our stakeholder communication relates to Tribunal decisions and the reasons for these decisions. We provide substantial detail on media coverage. In Part 4 we address compliance, ethical behaviour and fraud and risk management. We provide answers to various questions, that is, who are we accountable to, how do we govern ourselves internally, what governance structures are in place, what is their role in ensuring accountability and transparency, and how effectively is risk and fraud prevention managed in the Tribunal?

Detailed financial analysis is provided in Part 5. We address revenue and financial resource management and explain how our budget is funded. Comparing spend against budget gives an indication as to whether we have managed our financial resources effectively. We are also able to provide an overview of spend by objective and provide a detailed analysis of the cost of the adjudicative process.

In Part 6 we present the audited Annual Financial Statements, prepared in compliance with Generally Recognised Accounting Practice standards. This section concludes with a detailed performance matrix submitted to our line department and National Treasury. It is pleasing to note that the Tribunal has once again achieved a clean audit. As the audit performed by the Auditor-General relates to financial and non-financial operations, it reflects both governance in financial and performance reporting. This is the result of the dedication of all staff in the Tribunal and I thank, in particular, the OPCOM team for managing their divisions effectively and for their contribution to excellence in the Tribunal.

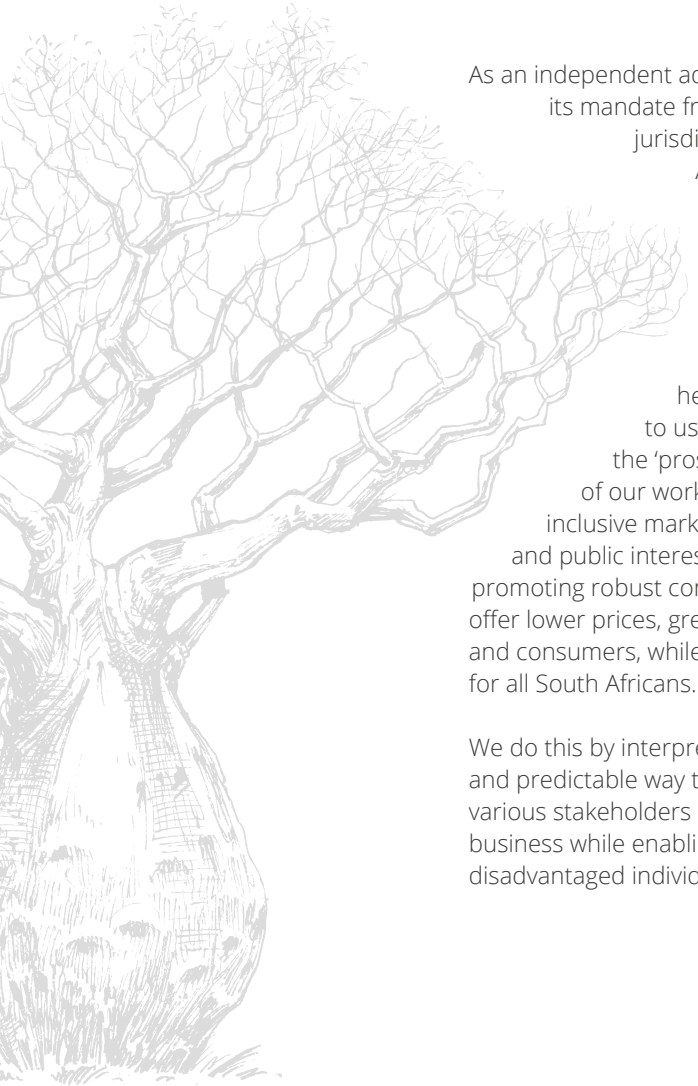
I must also convey my thanks to the Tribunal's MANCOM for their guidance at times and the support from the Audit & Risk Committees and **the dtic** during the year. We hope the reader is able to gain valuable insights and benefit from this Integrated Annual Report.

Oliver Josie
Chief Operating Officer
31 August 2021

PART 2

WHO WE ARE

OUR ROLE



As an independent adjudicative body, the Tribunal derives its mandate from the Competition Act and has jurisdiction throughout South Africa. The Act provides for three independent institutions, namely: the Competition Commission, the Competition Tribunal and the Competition Appeal Court.

The Tribunal is primarily tasked with hearing and adjudicating matters referred to us by the Commission which acts at the 'prosecutor' in the system. At the heart of our work is adjudicating for competitive and inclusive markets, which advance both competition and public interest objectives in the Act. This includes promoting robust competition in markets that ultimately offer lower prices, greater product choices for customers and consumers, while also providing fair access to markets for all South Africans.

We do this by interpreting the law in a clear, consistent and predictable way that balances the interest of various stakeholders so as to encourage investment by business while enabling small businesses and historically disadvantaged individuals to participate in the economy.

The Act provides for the Tribunal to regulate two broad areas of competition: mergers and acquisitions; and prohibited practices. Prohibited practices fall within two categories: cartel conduct or collusion and the abuse of a dominant position.

The most recent amendments to the Competition Act empower the competition authorities to play a more robust role in tackling persistently high levels of concentration in the economy.

Abuse of dominance provisions have been strengthened with a "buyer power provision" to, inter alia, prohibit a dominant firm from charging unfair prices or imposing unfair trading conditions on small and medium businesses or firms controlled by historically disadvantaged persons.

Prohibited practice matters brought before the Tribunal are conducted like a court hearing with pleadings, discovery, witness statements and a hearing that includes examination, cross-examination and legal argument. If settled by settlement/consent agreements, such matters can be brief. The outcomes of such matters can include a remedy for the contravention. The remedy may be in the form of the imposition of a fine or other appropriate order. We issue reasons for our decisions which are publicly available on our website.

APPLYING AND ADDING VALUE

In executing its mandate and role, the Tribunal must perform a balancing act between seemingly contrasting values as depicted below:

Independence

In terms of our adjudicative function, we remain independent of the Competition Commission and the state. Hearing panels consist of three Tribunal members.

Accountability

Administratively, the Tribunal reports to **the dtic** and is accountable to Parliament through annual briefings and ad hoc parliamentary requests.

Predictability

We strive to offer legal certainty in the adjudicative process and in the substance of the decisions we issue.

Flexibility

In the interest of justice, the Tribunal prefers flexibility over rigid legal precedents where circumstances warrant this approach.

Efficiency

The Tribunal invests in processes and systems aimed at improving its efficiency. These include technology that has improved our data analysis, modern adjudication techniques that improve the quality of our decisions and additional human resources to better service our stakeholders' needs.

Due process

In pursuit of administrative justice, fairness, accuracy and completeness, the Tribunal strives to hear all sides to disputes brought before it even when these ideals may lengthen the adjudicative process.

Transparency

As enjoined by the Act, the Tribunal promotes transparency and accessibility through various means such as: opening our hearings to the media and the public; issuing written reasons for decisions and accounting to Parliament annually about our performance.

Confidentiality

The Tribunal holds certain sessions *in camera* during public hearings in order to respect the confidentiality of a firm's information or evidence. Moreover, the Act allows parties to file confidentiality claims over information they submit. The Tribunal has vast experience in dealing with and protecting confidential information through practices that have been developed and refined over time.

Expertise

Each Tribunal Panel consists of three members. The Tribunal members are either economists or lawyers with varied industry, academic and professional experience. The majority of the Tribunal members serve in a part-time capacity which enables them to bring their external and on-going experience to bear on current Tribunal matters. The Tribunal currently has four full-time members (including the Chairperson and Deputy-Chairperson that serve in a full-time capacity) and six part-time members.

Detachment

The Tribunal ensures that no panel members adjudicate on cases in which they may have a conflict of interest. This takes place through allowing objections to be raised by stakeholders on the composition of a panel as well as a declaration of no conflict which the panel members sign before each hearing.

The Tribunal regulates for competitive and inclusive markets through the following:

Protecting and promoting the public interest – the competition authorities are obliged to consider public interest grounds in merger analysis in terms of its effect on small businesses (SMEs) or firms controlled or owned by historically disadvantaged individuals (HDIs) to become competitive, worker participation in firms, the impact of mergers on employment and the ability of national industries to compete internationally.

Levelling the playing field – the Tribunal facilitates expansion and new entry by ensuring that markets remain open for business and that consumer welfare is protected.

Reparation – with regard to some prohibited practices where the conduct is considered to have a serious impact on competition, including on customers, consumers and competitors, the Tribunal may approve remedies requiring firms to contribute to a development fund, for example, over and above the penalty imposed.

Innovation – the Tribunal is mindful of the importance of innovation and one of the considerations when reviewing a merger is whether it is likely to inhibit or encourage innovation. In hearing a prohibited practice complaint, the Tribunal would consider, among other things, if the practice discouraged innovation.

Creating judicial certainty - the Tribunal adjudicates on matters where there are disputes, contraventions or mergers, creating clarity for firms and encouraging investment both locally and internationally through legislative fairness and consistency. This creates a well-regulated regime, which includes appeal processes and guides companies on how to interpret jurisprudence as it refers to Competition Law.

TRIBUNAL IN OPERATION

Tribunal members are appointed by the President of the Republic of South Africa, on the recommendation of the Minister of Trade, Industry and Competition (the Minister). Members serve five-year terms and can be re-appointed. The Chairperson can serve a maximum of two five-year terms.

Tribunal members hear cases, rule on them and issue written reasons. For most matters, a quorum requires three members. Given the legal and economic considerations required in competition law, it is imperative that Tribunal members have the requisite skills. The current pool of members comprises six lawyers and four economists.

The current full-time members are Ms Mondo Mazwai (Chairperson); Mr Enver Daniels (Deputy Chairperson); Ms Yasmin Carrim; and Mr Andreas Wessels.

FULL-TIME MEMBERS

Ms Mondo Mazwai
Chairperson

Appointed
01 Jan 2013

Number of years at the Tribunal - 8

Mr Enver Daniels
Deputy Chairperson

Appointed
01 Jan 2017

Number of years at the Tribunal - 4

Ms Yasmin Carrim
Full-time member

Appointed
01 Aug 2004

Number of years at the Tribunal - 16

Mr Andreas Wessels
Full-time member

Appointed
01 Aug 2009

Number of years at the Tribunal - 11

PART-TIME MEMBERS

Dr Thando Vilakazi
Part-time member

Appointed
1 Aug 2019

Number of years at
the Tribunal - 1

Ms Andiswa Ndoni
Part-time member

Appointed
01 Aug 2009

Number of years at
the Tribunal - 11

Prof. Imraan Valodia
Part-time member

Appointed
01 Jan 2013

Number of years at
the Tribunal - 8

Mr Anton Roskam
Part-time member

Appointed
01 Jan 2013

Number of years at
the Tribunal - 8

Prof. Fiona Tregenna
Part-time member

Appointed
01 Aug 2014

Number of years at
the Tribunal - 7

Prof. Halton Cheadle
Part-time member

Appointed
01 Jan 2017

Number of years at
the Tribunal - 4

The Tribunal members are supported both logistically and operationally in their work by full-time employees who are referred to as the Secretariat. The Secretariat differs in function from the members as they do not decide cases. The Secretariat is headed by the Chief Operating Officer (COO) and comprises of four divisions, namely: Case Management; Finance; Registry; and Corporate Services. The Divisional Heads and the COO constitute the Operations Committee (OPCOM) which assists the Chair in her role as the Accounting Authority. The OPCOM has oversight responsibilities for all operational functions and is required to ensure good governance.

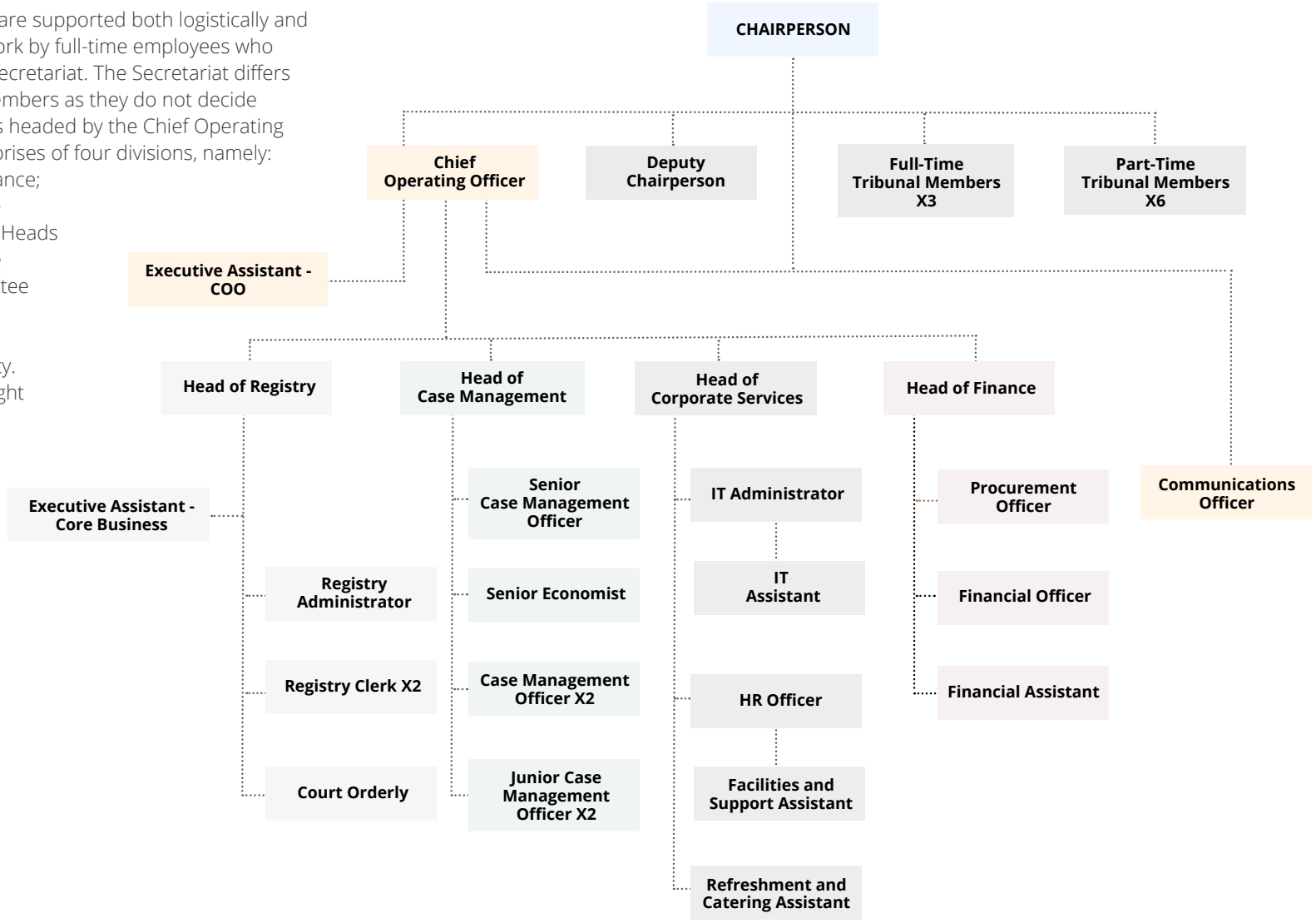


Diagram 1: The Tribunal's structure for the 2020/2021 period

OUR PEOPLE

OLIVER JOSIE
Chief Operating Officer

JUNIOR KHUMALO
Head of Case Management

DEVRANI MOONSAMY
Head of Finance

COLIN VENTER
IT Administrator

GILLIAN DE GOUVEIA
Communications Officer

BELLAH KEKANA
Human Resources Officer

TEBOGO MPUTLE
Head of Registry

MPUMELELO TSHABALALA
Senior Case Manager

NONKULULEKO MPEPUKA
Executive Assistant: Core

LUMKISA JORDAAN
Junior Economist

CYRIEL MPAKETSANE
Registry Assistant

RENDANI NESWISWI
IT Assistant

ONGEZWA DLULANE
Financial Assistant

SABINAH MONARENG
Facilities and Support Services Assistant

DUDUETSANG MOGAPI
Case Manager

FIKILE SIBANYONI
Financial Officer

SIBONGILE MOSHOESHOE
Registry Administrator

THEMBA CHAUKE
Registry Clerk

LUFUNO RAMARU
Executive Assistant: COO

PATRICIA FROUDE
Procurement Officer

MAGGIE MKHONTO
Catering Assistant

DAVID TEFU
Court Orderly

BUSISIWE MASINA
Case Manager

KGOTHATSO KGOBE
Case Manager

VERONICA CADMAN
Expert Advisor

PETER KUMBIRAI
Intern

ANDILE NTLANGA
Intern

REMBULUWANI MUELELWA
Intern

CAMILLA MATHONSI
Intern

CHARLOT MOSIA
Financial Assistant

JANEEN DE KLERK
Chief Operating Officer (resigned)

ALISTAIR DEY VAN HEERDEN
Case Manager

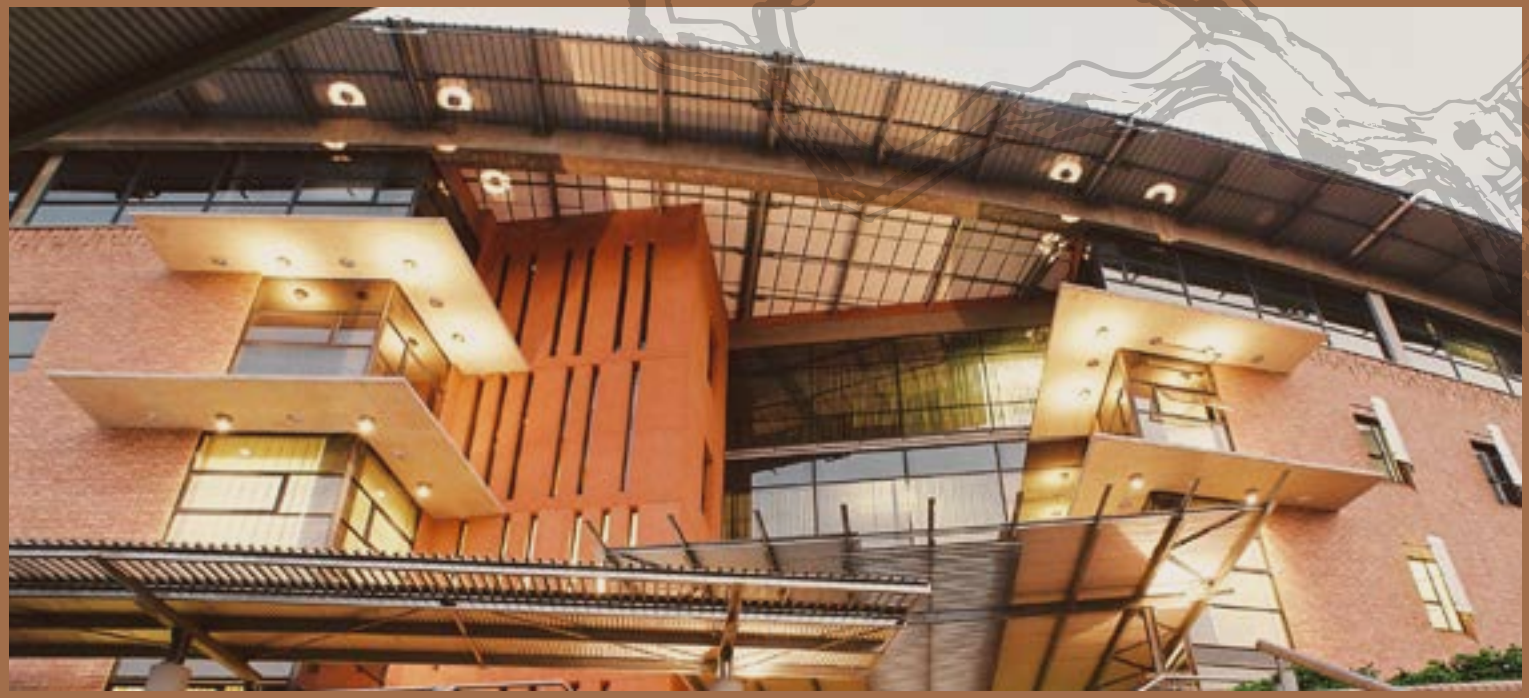
RIETSIE BADENHORST
Head of Case Management (resigned)

KARISSA MOOTHOO PADAYACHIE
Economist

THOSE WHO LEFT DURING THE PERIOD

PART 3

HOW DID WE PERFORM?



SETTING STRATEGIC GOALS AND OBJECTIVES

The core outcome of the Tribunal is to adjudicate in favour of fair conduct by market participants, and for equitable participation in markets, for an inclusive economy. To this end, the Tribunal has two strategic goals: responsive and reliable adjudication; and being an accountable, transparent and sustainable entity.

Each strategic goal includes objectives which have key performance indicators (KPIs) and targets assigned to it. Our performance is measured against these targets which are reassessed annually and, where relevant, adjusted. The Tribunal's budget is allocated according to the two strategic goals. This is reflected in Diagram 2.

While targets are set numerically and also in percentage terms, the KPIs of the Tribunal are generally dependent upon demands for our services driven by merger applications and adjudication of prohibited practices brought before the Tribunal. Not fully achieving the KPIs or set targets may also be the result of a number of case specific factors, *inter alia*, the complexity of the matter, delays or postponements requested by the parties, as well as the prioritising of certain matters based on relative urgency or importance.

In this section, we provide details of our performance against the 31 targets set for the period under review. 14 targets relate to responsive and reliable adjudication and 17 relate to being an accountable, transparent and sustainable entity.

PRIORITIES FOR THE YEAR

The Tribunal's 5-year strategic plan is rolled down into an Annual Performance Plan (APP) that sets out the Tribunal's immediate targets for the upcoming financial year. The budget is allocated according to each of the two strategic goals. We are therefore able to annually report expenditure against each goal and determine the direct cost of our core function, that is, adjudication. The two strategic goals reflect our priorities year-on-year.

The first (responsive and reliable adjudication) is our *raison d'etre*. This goal requires us to set matters down for hearings and issue orders and reasons within adopted delivery timeframes. In the period under review 14 of the 31 KPIs and targets were aligned to this goal and 51% of the budget was allocated to it. We discuss the targets in detail further in this section of the report.

In pursuit of this first goal, the Tribunal prioritised the following matters in the period under review:

- Excessive pricing cases relating to COVID-19 (Babelegi and Dis-chem);
- 40 consent orders relating to excessive pricing cases;
- Two excessive pricing cases involving state tenders issued by the South African Police Service ("SAPS") in which the respondents are alleged to have charged the SAPS excessive prices for 500 000 3-ply surgical face masks, in response to a request for quote. Hearings into the two matters have been recently concluded and decisions are pending;
- Mergers, particularly those with public interest conditions;
- Concent orders emanating from market inquiries - in relation to the Data Market Inquiry (involving MTN) and the Grocery Retail Market Inquiry (involving Shoprite and Pick n Pay); and
- Issued reasons in five cartel cases.

We allocated 76% of our total expenditure budget towards our two strategic goals. We provide a detailed narrative of performance against the 31 targets set for the period under review in the section that follows. We have summarised financial and non-financial information in diagram 2 while a detailed performance matrix is attached as Appendix A to this Integrated Annual Report. Overall we met, exceeded and partially achieved 87% of our collective targets emanating from our two strategic goals.

Diagram 2: Strategic focus areas and performance this financial year

Strategic orientated outcome goal	Goal statement	Budget allocated	Budget spent	Number of indicators	Number achieved or exceeded	Number partially achieved	Number that could not be measured
Responsive and Reliable Adjudication	To ensure effective and efficient adjudication on matters brought before the Tribunal	R25 385 817	R23 195 887	14	8	4	2
Accountable transparent and sustainable entity	To ensure effective leadership, transparency and accountability in the Tribunal through capacity building, effective reporting, policy management and financial compliance	R12 751 000	R12 043 369	17	11	4	2
Other expenses		R12 111 773	R10 379 359				
TOTAL		**R50 248 590**	**R45 618 616**	**31**	**19**	**8**	**4**

Diagram 3: Changes in targets made for 2020/2021 APP

Target	2019/2020 target	2020/2021 target	2019/2020 actual
% of large mergers to be set down for the beginning of a hearing or a pre-hearing, within 10 business days of filing of the merger referral	80%	75%	88%
% of intermediate and small merger considerations to be set down for the beginning of a hearing or a pre-hearing, within 10 business days of receipt of the Request for Consideration	70%	65%	0%
% of large merger reasons issued to parties within 20 business days of the date the order was issued on	80%	65%	71%
% of reasons for intermediate and small merger reconsiderations issued to parties within 20 business days of the order being issued	80%	65%	25%
Reasons for prohibited practice cases classified as simple are issued to parties within 100 business days of the last hearing date	100%	80%	No reasons issued
Reasons for prohibited practice cases classified as complex are issued to parties within 125 business days of the last hearing date	100%	80%	33%
Reasons for prohibited practice cases classified as very complex are issued to parties within 150 business days of the last hearing date	100%	80%	0%
% of procedural matters orders issued to parties within 45 business days of the last hearing date	85%	65%	55%
% orders for consent orders and settlement agreements issued to parties within 10 business days of last hearing date	95%	80%	96%
% of reasons in interim relief matters issued to parties within 20 business days of last hearing date	90%	65%	0%

LOOKING FORWARD

The Tribunal has made a contribution towards transforming the South African economy, especially in regard to equitable and inclusive growth. We will continue to prioritise our work to support the Economic Reconstruction and Recovery Plan, geared towards the attainment of Vision 2030 as articulated in the National Development Plan which underpins our mandate emanating from the Act. It emphasises, among others:

- Growing the productive base of the economy;
- Promoting employment;
- Developing SMMEs, including township and rural enterprises;
- Localisation;
- Promoting export competition;
- Interventions against excessive pricing; and
- Intervention in key growth markets including Infrastructure, Agro-processing, Health, Transport, Energy, Food, Tourism and the Digital and Green economies.

We are confident that our core activities as set out in our APP are aligned with the Economic Reconstruction and Recovery Plan imperatives.

The Competition Amendment Act came into effect on 12 July 2019 to address competition concerns relating to market concentration, spread of ownership, barriers to entry and broader participation of South Africans in the economy. The Tribunal will leverage these additional powers to maximise the outcomes of its work.

In deciding mergers, the Tribunal must also assess whether the merger can be justified on substantial public interest grounds, and we focus on addressing the following objectives set out in the Act:

- A particular industrial sector or region;
- Employment;
- The ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the market;
- The ability of national industries to compete in international markets; and
- The promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.

We anticipate increased consolidation in the economy as firms' sustainability is put under pressure against the background of COVID-19, resulting in businesses opting to merge which will enhance the dominance of the merging firm. The Tribunal will need to be particularly vigilant in balancing legitimate reasons for consolidation against the risk of increased anti-competitive practices.

During the COVID-19 national lockdown, there were many lessons to be learnt, particularly with reference to online or virtual hearings. This has proven to be successful, especially in less complex matters resulting in cost savings. We will continue to explore and enhance these and other procedural interventions that may contribute towards cost savings for all parties concerned beyond the pandemic.

MEASURING THE ADJUDICATIVE PROCESS

As a result of the national lockdown which commenced at the beginning of the reporting period, the Tribunal's operations were migrated online. We kept all of our stakeholders abreast of the changes that COVID-19 occasioned regarding the operations of hearings. Consultations were held with the Minister on the urgent prioritization of COVID-19 excessive pricing complaints and the re-prioritisation of matters. The consequential impact of the national lockdown and the shut-down of all economic activity throughout the Republic meant taking a more targeted approach to matters considered.

We measure our adjudicative process to assess our ability to meet objectives, to analyse the effectiveness and efficiency of our processes and to ensure compliance with the reporting requirements expected of public entities. We do this through a customised electronic case management system (CMS). This system stores large amounts of data and enables us to extract detailed reports and statistics. We are thus able to measure our efficiency and performance and compare numbers across different periods. Matters heard and decided, as well as the number of reasons issued over the past two financial years are illustrated below.

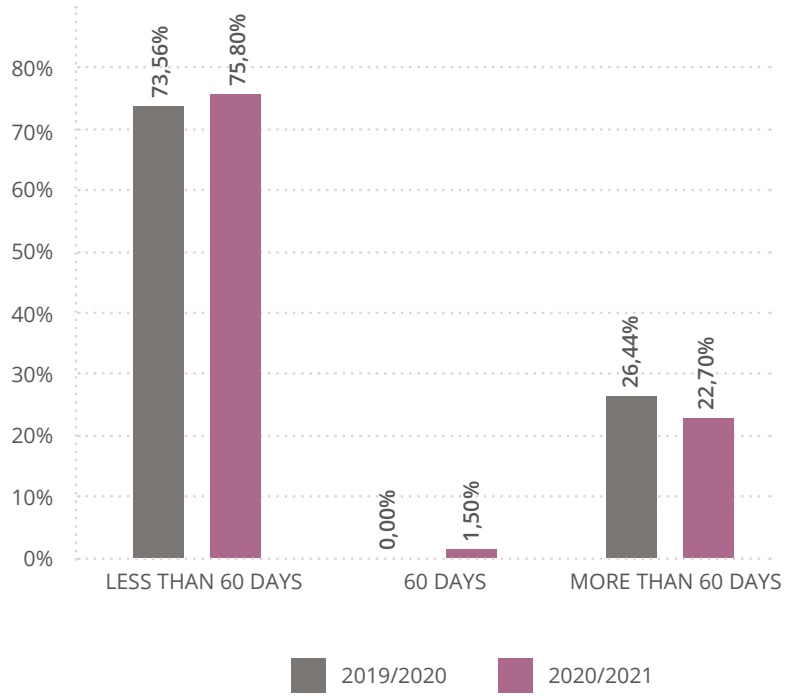
Diagram 4: Matters heard and decided over two years

Year	2019/2020	2020/2021	2019/2020	2020/2021	2019/2020	2020/2021
Case Type	**Number heard**		**Orders issued**		**Reasons issued**	
Large Mergers	86	66	87	66	87	72
Small/Intermediate Mergers	1	2	2	2	4	0
Complaints from the Commission	9	4	7	7	7	7
Consent Orders/ Settlement Agreements	27	63	24	64	0	0
Complaints from Complainant/High Court	0	0	0	0	0	0
Interim Reliefs	3	1	3	1	2	2
Interlocutory/Procedural Matters	28	16	44	20	28	8
Totals	**154**	**152**	**167**	**160**	**128**	**89**

** Not all procedural / interlocutory matters require reasons to be issued.*

The graph below illustrates the merger clearance period over the current and prior financial year. There is a slight increase in efficiency in the current year with 75.80% (50 out of 66) of decisions on large mergers being cleared in less than 60 days as opposed to 73.56% (64 out of 87) in the prior year.

Diagram 5: Merger clearance period over two years



The merger clearance period measures the time it takes for the Competition Authorities to deliberate on a large merger by measuring the time period between when a large merger is notified to the Commission and when the Tribunal issues an order.

During the reporting period the Tribunal issued 100% of orders and set down 97% of mergers within the required timeframes. This is an improvement when compared to the previous reporting period with 88% of mergers set down within the required time. The percentage of orders issued remained at 100%.

As indicated, extensions lead to delays in the adjudicative process and are requested by the Commission for various reasons which include but are not limited to:

- more time being required to investigate the merger;
- responses requested from competitors or customers; and
- outstanding documents from parties.

MERGERS – AN OVERVIEW

The 2019 amendments to the Competition Act seek to expand the public interest issues to be determined by the Tribunal when assessing mergers. They include enquiring into the spread of ownership in the economy for workers.

The Tribunal conditionally approved 19 mergers in the period under review, mainly with conditions on saving jobs and to ensure employee ownership schemes were enhanced or established.

The Tribunal considers three main types of merger transactions, of which horizontal mergers are the most common type, namely:

- Horizontal mergers – a merger between firms that are competitors in a market, selling the same kind of product or service;
- Vertical mergers – a merger between firms in the same industry but at different levels of the supply chain; and
- Conglomerate mergers – a merger between firms that operate in different unrelated product or services markets without a vertical relationship.

In the period under review, large mergers decided that were classified as horizontal transactions constituted 57% of the decided mergers, an increase of 3% from the previous year. Conglomerate transactions remained the second largest proportion of decided mergers, constituting 28%. Vertical mergers as a proportion of decided mergers reduced by 2% from 8% to 6%, while mergers with both horizontal and vertical elements reduced to just over 7%.

Diagram 6: Types of large mergers decided by the Tribunal

	2019/2020	%	2020/2021	%
Horizontal	47	54.02%	38	57.58%
Vertical	7	8.04%	4	6.06%
Both horizontal and vertical	10	11.49%	5	7.58%
Conglomerate	23	26.43%	19	28.79%
Total	**87**	**100.00%**	**66**	**100.00%**

For a transaction to require mandatory notification it must constitute a merger as defined, have an effect within South Africa and meet the asset and turnover thresholds established in terms of the Competition Act. Three categories of mergers are identified, namely small, intermediate and large mergers of which only intermediate and large mergers require mandatory notification. The rationale for this is to bring forward transactions that could potentially alter the structure of markets and thus harm competition. The Tribunal has jurisdiction to approve, conditionally approve or prohibit large mergers. Small and intermediate mergers are decided by the Commission. However, small and intermediate merger prohibitions by the Commission or conditional approvals can be taken to the Tribunal for reconsideration by the merger parties. Diagram 7 provides a comparative overview of the value of large merger transactions decided by the Tribunal over the last two financial years.

Diagram 7: Value of large merger transactions decided by the Tribunal

	2019/2020	2020/2021
Total combined turnover	R3 040 001 289 886	R10 175 713 799 301
Minimum combined turnover	R149 973 441	R46 000 000
Maximum combined turnover	R224 059 088 146	R6 233 804 841 300
Average combined turnover	R34 942 543 563	R156 549 443 066
Number of mergers decided	87	66
Total transaction value	**R1 810 481 756 865**	**R426 587 190 971**

** Several transactions involved acquiring firms with large turnovers, hence the substantial total combined turnover amount*

Many mergers do not significantly harm competition, while some could be pro-competitive if they benefit consumers by lowering cost or increasing innovation. However, in some situations, mergers will substantially prevent or lessen competition by enhancing the merged entity's market power or have a negative effect on public interest considerations such as employment, negatively impact on small businesses or participation by historically disadvantaged persons. In the year under review, most mergers (72%) were approved without conditions; 19 were conditionally approved (28%) and none were prohibited by the Tribunal.

Diagram 8: Comparative figures for all mergers decided over two years

	2019/2020	%	2020/2021	%
Approved	69	78%	49	72%
Approved subject to conditions	19	21%	19	28%
Prohibited	1	1%	0	0%
Total	**89**	**100%**	**68**	**100%**

ADJUDICATING MERGERS IN THE TIME OF COVID-19

The economic effect of the COVID-19 pandemic laid plain the types and rationales for mergers. Famous South African businesses were forced to pursue capital raising transactions. However, uncertainties created by the pandemic did not dampen the Tribunal's commitment to give effect to public interest considerations such as employment, promoting local procurement and a greater spread of ownership.

The timing of the 2019 Competition Amendment Act, with a focus on the increased role of public interest considerations in mergers, has meant that during this time of great uncertainty, the Tribunal played a role in stabilising the continued participation of workers in the economy, enhanced participation of historically disadvantaged populations and supported localisation initiatives. While structural constraints (which require industrial policy co-ordination and intervention) remain, public interest considerations have enabled the realisation of double dividends i.e. the promotion of both competition and economic transformation.

Most of the consolidation has been seen in the clothing and textile sector as illustrated by the five mergers below.

Retailability and parts of the Edgars business

The Tribunal conditionally approved the merger whereby clothing apparel retailer, Retailability (Pty) Ltd acquired parts of the Edgars business conducted by Edcon Limited in South Africa as a going concern, consisting of certain assets and liabilities. This merger formed part of a voluntary business rescue processes initiated by Edcon, the seller. The business had been struggling for some time, but the global COVID-19 pandemic and the subsequent national lockdown contributed to the decision to enter business rescue.

The Tribunal approved the transaction on condition that the merger parties would not retrench any employees on account of the merger for a period of three years from the merger implementation date. In addition, the acquiring firm would give preference to any former Edcon employees should vacancies arise within three years of the merger implementation date. The Commission, in its assessment of the transaction, found that the merger would result in 5200 jobs being saved.

Foschini and Jet Stores

One of the foremost independent chain-store groups in South Africa, Foschini Retail Group (Pty) Ltd (Foschini) acquired Edcon's discount department store division, the Jet Division, following conditional approval of the transaction by the Tribunal. In considering the transaction, the Tribunal conducted virtual proceedings and heard submissions from the Commission, the merger parties as well as the South African Commercial Catering and Allied Workers Union (SACCAWU).

The conditions imposed relate to, among others, employment and local procurement, that is, Foschini would not retrench any employees as a result of the merger for a period of two years from the merger's implementation date and that Foschini would give preference to eligible Edcon employees should vacancies arise in the Jet Business for a period of three years from

the merger implementation date. The merged entity would also have to ensure that Jet stores maintain at least the same ratio of procurement of apparel products from South African manufacturers and suppliers as it did at the end of its preceding financial year. In addition, the merged entity would have to endeavour to increase the target firm's ratio of procurement of apparel products from local manufacturers and suppliers as at the end of its preceding financial year. The merging parties would also need to ensure that the transferring stores were fully integrated into the acquiring firm's structures post-merger and operated in accordance with the acquiring firm's business plans. The Commission, in its assessment of the transaction, found that the merger would result in 4664 jobs being saved.

Truworths and Barrie Cline Clothing

K2020211444 (South Africa) (Pty) Ltd ("K2020"), a wholly owned subsidiary of Truworths Limited ("Truworths") acquired the business (assets and liabilities) of Barrie Cline Clothing (Pty) Ltd (Barrie Cline) as a going concern. This followed conditional approval of the merger by the Tribunal.

Barrie Cline manufactures (through outsourced arrangements) and supplies women's outerwear apparel exclusively to Truworths from a central head office and warehouse in Cape Town. It arranges for the manufacture of lady's outerwear apparel through outsourced arrangements with cut, make and trim operators which are factories that cut, make and trim fabrics into clothing.

Although the merger parties provided an undertaking that the transaction would not result in any merger-specific retrenchments, the Tribunal approved the merger with an employment condition to enhance the enforceability of the undertaking, that is, the acquiring firm could not retrench any employees as a result of the merger for a period of one year from the merger implementation date. The number of jobs saved was calculated to be 163.

Blue Falcon and John Craig

422 jobs were saved as a result of the large merger whereby Blue Falcon 188 Trading (Pty) Ltd ("Blue Falcon") acquired certain portions and assets of the "John Craig" Business, a Division of Pepkor Speciality (Pty) Ltd ("the transferring business"). The transaction took place against the background of several John Craig store closures and staff retrenchments due to financial difficulties faced by the transferring business.

The Tribunal approved the transaction subject to public interest conditions. In particular, they related to employment and local procurement concerns. The 422 employees of the transferring business would be transferred to Blue Falcon in line with the provisions of section 197 of the Labour Relations Act (this excluded certain executives who concluded "opt–out" agreements and voluntary separation agreements with Pepkor Speciality).

Blue Falcon would not retrench any employees as a result of the merger for a period of two years from the merger's implementation date and both Blue Falcon and Pepkor Speciality would give preference to eligible John Craig employees, who lost their jobs as a result of store closures, when new vacancies become available, for a period of two years from the implementation date of the merger. Internal vacancies would also be communicated to the affected former employees. Blue Falcon also agreed to a condition that it would use its best efforts to procure the labels it intends to offer at the John Craig stores from local manufacturers.

Mr Price and Otto Brothers Distributors

Following conditional approval of the transaction, Mr Price Group Limited ("Mr Price") acquired the retail apparel business operated by Otto Brothers Distributors (Pty) Ltd ("Otto Brothers") and its subsidiaries, trading as Power Fashion. Conditions were imposed on the merger to promote local procurement within the Mr Price Group post-merger. This followed concerns raised by the Minister in relation to local procurement. As such, the merged entity would have to ensure that Power Fashion maintains or improves its current level of locally procured goods and services; and that Power Fashion participates in **the dtic**'s Retail, Clothing, Textile, Footwear and Leather

Masterplan initiative along with the rest of Mr Price Group. **the dtic** initiative seeks to, among others, increase the share of locally manufactured clothing and footwear to 65% by 2030.

Mr Price is a national clothing retailer offering fashion and sport clothing, footwear, accessories, homeware and mobile products under various brands. Mr Price targets a wide range of customers and is well known for its fashion-value offering. Power Fashion is a national clothing retailer that services low to middle income households. It offers affordable clothing, cosmetics, mobile handsets, airtime, basic household items, electricity and other products. Power Fashion stores are typically located in 'high street' and community-centred malls and commuter nodes.

The retail industry aside, the Tribunal also considered mergers involving firms in financial distress in other industries as discussed below.

SA Bidco and Comair Limited

The Tribunal approved the acquisition by SA Bidco of Comair subject to a range of conditions relating to employment and a greater spread of B-BBEE ownership in the merged entity. The transaction formed part of Comair's approved business rescue plan which would see Comair resume operations and resolve its financial situation.

In terms of the conditions, there would be no merger-related retrenchments for 3 years from the date on which Comair's flying operations would resume, subject to regulatory approvals. Employees retrenched due to operational reasons would be offered employment when jobs become available at the new airline post-merger, with the commitment being for 36 months. The merged entity also committed to allocating a portion of its shares to a B-BBEE ownership structure which will include the participation of an Employee Share Ownership Program (ESOP) with a broad representation of Black participants, as well as one or more B-BBEE purchasers who will be agreeable to participating in this initiative on mutually acceptable terms and who will be able to demonstrate an alignment of interests and strategic skills which shall support and advance the medium to long-term business case of Comair.

Senwesbel, Senwes and Suidwes Holdings

The Tribunal approved, subject to conditions, the transaction whereby Senwesbel Ltd and its subsidiary Senwes Ltd sought to purchase the entire issued share capital of Suidwes Holdings (Ring Fenced) (Pty) Ltd. The Commission initially recommended conditional approval of the merger but later changed its recommendation to one of prohibition, saying the transaction would likely substantially prevent or lessen competition.

The Tribunal heard evidence and arguments in the matter, including submissions from an agricultural economist called by the Tribunal as an independent expert. The merging parties submitted that the Commission had not discharged the onus to show a substantial prevention or lessening of competition in the relevant market. The Commission defined the market narrowly as the market for concrete silos used for the storage of grain and oilseeds operated by commercial farmers. It concluded that Senwes would become dominant in three relevant geographic markets. This would increase storage and handling fees for farmers. Further that Senwes would be able to procure grain from farmers at lower prices due to the loss of competitive rivalry between it and Suidwes.

The merging parties contended that the market was broader than concrete silos and included alternative storage facilities such as silo bags, bunkers, zinc silos and farmer-owned facilities. Further they submitted that Suidwes was in financial distress and that absent the merger its silo assets would exit the market, which would have a significant impact on the public interest including job losses. We concluded on the evidence before us that the market was potentially broader than concrete silos, however, the evidence was inconclusive regarding the scope of the relevant product. We also concluded that the likely counterfactual was that Suidwes' financial position would continue to deteriorate.

The merging parties tendered a set of conditions which subsequently formed the basis for further iterations. The conditions were enhanced through the hearing, resulting in the final tender which included the divestiture of certain grain silos, a pricing condition, and public interest conditions related to employment whereby the parties undertook not to retrench any employees for a period of 24 months from the implementation

date of the merger (resulting in 934 jobs saved) as well as the provision of production loans to black farmers for three years from the date of implementation of the merger. We concluded that the remedies addressed the competition and public issues identified and approved the proposed merger subject to these conditions.

COVID-19 IMPACT ON MERGER CONDITIONS

We heard two applications by firms unable to comply with merger conditions due to the impact of COVID-19 as discussed below.

Black sugarcane farmers and local industry benefit from variation to conditions imposed in Coca-Cola mergers

The Tribunal granted a variation to conditions imposed in two Coca-Cola mergers, including two new substantive public interest obligations relating to localisation and procurement commitments which will benefit black sugarcane farmers. The applicants (Coca-Cola Beverages South Africa (Pty) Ltd ("CCBSA"); Coca-Cola Beverages Africa (Pty) Ltd ("CCBA"); The Coca-Cola Company; and Coca-Cola Fortune (Pty) Ltd) brought a variation application to the Tribunal in relation to the 2016 and 2017 mergers, namely those between: CCBA and Various Coca-Cola and Related Bottling Operations; and The Coca-Cola Company and CCBA.

The relevant portion of the conditions included the requirement that the merger parties had to increase B-BBEE ownership of CCBSA to a specific percentage by 11 May 2021 (the "Equity Ownership Condition"). The parties indicated that the Equity Ownership Condition could not be achieved within the stipulated time period due to the COVID-19 pandemic and the nationwide lock-down. The Tribunal agreed to vary the condition i.e. the B-BBEE ownership would be required to be increased to approximately 20% and it would be for the benefit of employees, creating a wider spread of ownership.

In addition, the variation included two new substantive public interest obligations relating to localisation and procurement, agreed to by the applicants in consultation with the Minister. In terms of the new commitment, CCBSA would contribute a specified amount to localisation initiatives agreed upon by **the dtic** and CCBSA. An appropriate structure, to agree on and monitor this commitment, would be established by CCBSA and **the dtic** and would have suitable representation from CCBSA and **the dtic**. CCBSA would also collaborate with its sugar suppliers in South Africa to increase the volume of sugar procured by CCBSA from black sugarcane farmers, subject to such arrangements being commercially reasonable and practical.

Tribunal extends compliance period for B-BBEE condition in PepsiCo, Pioneer merger

The Tribunal extended the compliance period for one of the conditions imposed in the March 2020 merger whereby PepsiCo Inc. (PepsiCo) indirectly acquired Pioneer Food Group Limited, through PepsiCo's South African subsidiary, Simba (Pty) Ltd ("the merged firm"). The merger, one of PepsiCo's largest acquisitions outside the United States, was approved by the Tribunal, subject to a raft of public interest conditions. The merger was the first major transaction under the provisions of the Competition Amendment Act, 2019 in which the promotion of a greater spread of ownership in firms, in particular, by workers and historically disadvantaged persons – was a central issue in assessing the transaction.

Of relevance to this extension application (brought by the merged firm) was the condition relating to a B-BBEE ownership plan which was to be implemented by 22 March 2021. The merging parties submitted that delays in implementing this condition had been caused by, among others, COVID-19 and the resulting lockdown.

The B-BBEE condition involved employees in the company being issued with shares in PepsiCo worth R1,6 billion. This condition had to be implemented by 22 March 2021, being 12 months since the transaction closing date (23 March 2020). The Tribunal extended the 12-month period to 18 months, that is, it granted a six-month extension. Further, in addition to employees

being issued with the shares worth R1.6 billion, the merged firm would provide an additional amount of R55 million as compensation for any potential economic prejudice to workers occasioned by the six-month extension period.

OTHER NOTABLE MERGERS

Thabong Coal and South32 SA Coal Holdings

The Tribunal conditionally approved the merger between two of South Africa's largest suppliers of coal involving Thabong Coal (Pty) Ltd (Thabong Coal), a subsidiary of Seriti Resources Holding (Pty) Ltd ("Seriti") and South32 SA Coal Holdings (Pty) Ltd (SAEC). Post-merger SAEC would be owned by a black-owned and controlled South African company, Seriti. The merger would thus advance greater black ownership since Seriti is an approximately 90% black-owned company.

In reaching its decision, the Tribunal considered submissions by the Commission, the merging parties, as well as the Phola Community's submissions on public interest issues, specifically in relation to a Community Trust. The Tribunal utilised its inquisitorial powers to summons Eskom representatives tasked with coal procurement to give evidence due to Eskom being the largest consumer of thermal coal in South Africa.

The conditions included no merger-related retrenchments for a 24 month period, conditions to ensure no sharing of competitively sensitive information at board level in any of the relevant entities as a result of the merger, the establishment of an Employee Trust, a Community Trust and the divestiture by SAEC of certain (pending) mining rights. The transaction would enable employees and communities in the affected areas to in future benefit from the transaction by providing employees and communities with a free and unencumbered shareholding in SAEC. At least 85% of the beneficiaries would be historically disadvantaged individuals who would benefit from the trust activities (as listed in the Trust Deed). Junior miners would also benefit through the divestiture condition. Seriti would continue to provide an opportunity to historically disadvantaged suppliers to continue to supply to it in terms of the Mining Charter and Seriti intended that SAEC would comply with its statutory duties in terms of the relevant provisions of the Mineral and Petroleum Resources Development Act (MPRDA) relating to social and labour plans.

IRL and Mapochs Mine

The Tribunal approved, subject to a range of public interest and competition-related conditions, the merger whereby IRL (South Africa) Resources Investments (Pty) Ltd (IRL) would acquire the movable and immovable assets of the Mapochs Mine (Pty) Ltd (Mapochs Mine). The Commission earlier prohibited the transaction as it was concerned that the merger was likely to foreclose Vanchem Vanadium Products (Pty) Ltd (Vanchem) from sourcing vanadium-bearing ore from the Mapochs Mine. The merger parties subsequently applied to the Tribunal to have the Commission's prohibition of the proposed merger reconsidered.

The Tribunal considered a set of proposed agreed conditions by the merger parties and intervenors in the transaction, that is, **the dtic** Minister and EVRAZ Highveld Steel and Vanadium Ltd (Highveld). The conditions addressed competition and public interest concerns relating to employment, local beneficiation and securing vanadium-ore supply, among others. Following a virtual (online) hearing during which the merger parties and intervenors made submissions, the Tribunal conditionally approved the merger.

In terms of the conditions, IRL would support the local community and work to create jobs at, and associated with, the Mapochs Mine. It committed to grow and improve the mining operations and create employment opportunities throughout the supply chain associated with the mine in South Africa. On the basis of an Ore Supply Agreement coming into effect, IRL would ensure a minimum of two hundred (200) direct employment opportunities and indirect employment opportunities within the Mapochs Mine and the surrounding area within three (3) years of the merger approval date. IRL also committed to invest an additional amount of R160 million into the mine. IRL further confirmed its willingness to sell the ore of the Mapochs Mine to local beneficiators. The conditions also catered for the potential scenario where other domestic beneficiators of

the ore enter the market . These new entrants will be supplied with ore on fair and reasonable terms. IRL shall also afford the local beneficiators a right of first refusal to acquire ore from the Mapochs Mine and ensure that they are afforded reasonable and sufficient opportunity to access the ore and/or output of the Mapochs Mine.

JSE and Link Market Services South Africa

The Tribunal approved, with conditions, the merger whereby the Johannesburg Securities Exchange (the JSE) would acquire shares registry firm, Link Market Services South Africa (LMS SA). The Commission, in its assessment of the transaction, earlier found there was a likelihood that the JSE would have a portfolio of products and services that no other party would have in the market, post-merger. The Commission concluded that it was likely that the JSE would leverage its position as the dominant exchange to tie and bundle different services across the capital market value chain to the detriment of competition and prohibited the merger.

However, the JSE and LMS SA subsequently approached the Tribunal for a reconsideration of the Commission's decision. Computershare South Africa, an intervenor in the proceedings, joined the Commission in opposing the merger. After 12 days of hearing oral evidence from factual witnesses and expert witnesses over a virtual platform, the Tribunal approved the intermediate merger subject to conditions crafted to guard against any potential merger-related competition-detriment. The conditions include the following, among others:

The JSE would not be permitted to bundle or tie any products/services related to its licensed functions with any of the services offered by LMS SA. In performing any of its regulatory functions, the JSE would not require, market, promote or incentivise issuers/sponsors to make use of LMS SA's products or services. In addition, the JSE would not be able to use any of its regulatory functions to favour issuers/sponsors on the basis that they make use of LMS SA's services. It would also not be permitted to influence, require or induce issuers/sponsors to make use of LMS SA's services. In relation to information sharing, the JSE would have to ensure that information relating to issuers/sponsors and their transactions and activities, obtained through its regulatory functions, was not directly or indirectly available or made available to LMS SA. The JSE would be required to have protocols in place to ensure that information it obtains in the performance of its regulatory functions was not made available to LMS SA.

Among other conditions, the JSE would be required to publish, on its website and in its JSE Quarterly publication (or any successive publication), the name and contact details of any provider of transfer secretarial services at the request of such a provider, and must state that, in so doing, it is complying with the conditions. Further, the JSE would, on request, provide its post box services to any provider of transfer secretarial services. It would have to do so on terms no less favourable than those on which it provides such post box services to LMS SA. In addition, the JSE would not be able to use its shareholding in Strate (Pty) Ltd, South Africa's principal central securities depository, to direct or influence the way in which Strate fulfils its regulatory functions, that is, its employees or representatives may not be appointed to committees of the Strate Board established in respect of a central securities depository participant that is authorised by Strate.

Gatsby Security and Cell C

The Tribunal conditionally approved the acquisition of certain assets of Cell C by Gatsby Security SPV, a newly incorporated private company to be controlled by a Trust. The transaction formed part of the recapitalization program of Cell C, one of the largest mobile companies.

The transaction did not raise any competition or public interest concerns. However, the Commission's submission to the Tribunal noted that the merging parties could not, at the time of the merger investigation and referral, indicate which trustees would be appointed to the Trust that would control Gatsby Security SPV. To guard against the possible exchange of competitive information and undisclosed competitive product overlap, the Tribunal approved the transaction subject to the condition that Gatsby Security SPV and/ or the Trust would not be owned/controlled by firms that compete or may compete with Cell C or firms that have a vertical relationship with Cell C. In addition, the Commission would have to approve the Trustees before appointment.

FAILURE TO NOTIFY A MERGER

Retail Capital and First Asset Finance

During the period under review, the Tribunal confirmed a consent agreement whereby Retail Capital (Pty) Ltd (Retail Capital) and First Asset Finance (Pty) Ltd (FAF) admitted that they contravened section 13A(3) of the Act by implementing their merger before approval of the transaction by the Commission.

Section 13A(3) of the Act stipulates that parties to an intermediate merger may not implement that merger until it has been approved, with or without conditions, by the Commission in terms of section 14(1)(b) of the Act. The merger parties notified the Commission of their merger in July 2020 but admitted that the merger had been implemented in November 2018.

Retail Capital and FAF agreed to pay an administrative penalty of R742 500. The firms also agreed and undertook to notify the Commission of any future transactions that constitute a notifiable merger and to refrain from engaging in prior implementation of notifiable mergers. The firms would also develop and implement a competition law compliance programme to ensure that employees, management, directors and agents did not engage in future contraventions of the Act.

PROHIBITED CONDUCT MATTERS BEFORE THE TRIBUNAL

ABUSE OF DOMINANCE

On 19 March 2020, the Minister published the Consumer and Customer Protection and National Disaster Management Regulations and Directions (Consumer Regulations) which aim to "protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national disaster". The Consumer Regulations contain a list of goods and services deemed necessary for the combatting of the pandemic. It is to these goods and services that the Regulations confine themselves. Regulation 4 deals with "excessive pricing" and regulation 5 with "unconscionable, unfair, unreasonable and unjust prices".

Dominant firms are regulated by Regulation 4 "excessive pricing" which incorporates section 8(1) and 8(3) of the Competition Act, while further providing that "...during any period of the national disaster, a material price increase of a good or service ... which (i) Does not correspond to or is not equivalent to the increase in the cost of providing that good or service; or, (ii) increases the net margin or mark-up on that good or service above the average margin or mark-up for that good or service in the three-month period prior to 1 March 2020; is a relevant and critical factor for determining whether the price is excessive or unfair and indicates prima facie that the price is excessive or unfair."

On 23 March 2020, President Ramaphosa announced a 21-day national lockdown to curb the spread of the COVID-19. On 26 March 2020, the Chairperson issued a Directive to apply during the lockdown period, which resulted in the *sine die* postponement of enrolled complaint referrals to cater for the priority complaint referrals relating to COVID-19.

On 3 April 2020, the Minister supplemented this regime by the publishing of the Tribunal Rules for COVID-19 Excessive Pricing Complaint Referrals which aim to regulate the complaints brought in terms of Consumer Regulation 4. On 6 April 2020, the Tribunal Chairperson issued the Tribunal Directive for COVID-19 Excessive Pricing Complaint Referrals, dealing with procedures and timeframes for the filing and hearing of COVID-19-related urgent complaint referrals. At the time of writing, two had already been decided (Babelegi and Dis-Chem) and hearings in the remaining two contested matters (BlueCollar and Tsutsumani) were recently concluded. The latter two matters (BlueCollar and Tsutsumani) differ from the former two in that they involve public procurement of PPEs by government through the Requests for Quotation ("RFQ") issued by the South African Police Service ("SAPS").

CC V Babelegi Workwear and Industrial Supplies CC

In South Africa's first contested excessive pricing case in the context of COVID-19, the Tribunal found Babelegi Workwear and Industrial Supplies CC (Babelegi) guilty of excessive pricing. The Tribunal heard this matter on an urgent basis via video conferencing in April 2020, shortly after the national lockdown commenced on 26 March 2020. We found that Babelegi had contravened section 8(1)(a) of the Act by charging excessive prices for face masks that it sold to customers between 31 January 2020 and 5 March 2020. The Tribunal ordered the Pretoria-based company to pay a R76 040 penalty.

In considering the matter the Tribunal noted Babelegi's successive and significant price increases during the complaint period. Babelegi effected several price increases (before the actual increase in its supplier costs on 18 March 2020). The first occurred on 31 January 2020, a day after the World Health Organization declared COVID-19 a public health emergency of international concern. On 10 February 2020, Babelegi again significantly increased its price and on 5 March 2020, when South Africa announced its first COVID-19 case, Babelegi again significantly raised its price. With each successive price increase, markups on the masks sold increased significantly. The Tribunal concluded that there was no rational and valid explanation for Babelegi's price increases and there was no corresponding increase in cost that could substantiate it.

The Tribunal regarded this exploitation of consumers or customers as both grave and reprehensible conduct in the light of the COVID-19 pandemic which weighed heavily in deciding the penalty amount. The Tribunal took the view that an appropriate penalty should exceed Babelegi's improper gains and should act as a deterrent.

Babelegi appealed the Tribunal's order to the CAC. It argued that the Tribunal had failed to determine that it possessed the necessary market power in terms of the Act. The CAC found that Babelegi acted as a "lucky monopolist" and independently charged an excessive price for masks for a period of six weeks, especially given the context of the pandemic. Babelegi could not provide evidence that its decision to increase mask prices could be justified by an anticipated increase in the price of acquiring further masks.

Although the CAC dismissed Babelegi's appeal that it contravened section 8(1) of the Act, the court however set aside the Tribunal's order that Babelegi pay a penalty because it is a small firm and there was minimal harm caused as a result of the small number of sales during a short period.

CC V Dischem Pharmacies Ltd

The Tribunal heard this matter on an urgent basis via video conferencing in early May 2020, shortly after Babelegi. The Tribunal found Dis-Chem Pharmacies Limited (Dis-Chem) guilty of charging excessive prices for surgical face masks during the COVID-19 pandemic and ordered it to pay an administrative penalty of R1 200 000. The Tribunal found that Dis-Chem had contravened section 8(1)(a) of the Act in that it charged an excessive price for three types of surgical face masks to the detriment of consumers in March 2020. The Tribunal considered the background to the COVID-19 pandemic as the economic context in which Dis-Chem had increased its prices on three occasions. This included, among others, the fact that the virus was spreading globally and at an alarming rate.

The Tribunal concluded that Dis-Chem had exerted market power in its pricing of the face masks by increasing its prices to significant levels in the context of the COVID-19 pandemic. One such increase took place on the day that South Africa's first COVID-19 case was announced.

We were of the view that Dis-Chem's massive price increases of surgical masks during the complaint period, which constitute an essential component of life saving first line protection in a pandemic of seismic proportions, without any significant increases in costs, were utterly unreasonable and reprehensible. The Tribunal found that Dis-Chem had failed to show that its price increases for SFM50 and SFM5 and Folio50 were reasonable in the circumstances of the COVID-19 pandemic.

We concluded that Dis-Chem engaged in excessive pricing to the detriment of consumers. We noted that material price increases of the magnitude of 47%-261%, without corresponding increases in costs, of any goods in a country such as South Africa (with a long history of economic exclusion and deep inequality) would seriously affect the public interest adversely. Material price increases of surgical masks without corresponding costs justifications

(in the context of COVID-19 for which there is no discernible cure and where health services are skewed towards the wealthy) would seriously impact vulnerable and poorer consumers even more. Poorer customers would have been excluded from accessing the masks by such exorbitant increases and other customers would have spent more on these items as a percentage of their disposable income.

In determining the appropriate penalty, we considered the extent of Dis-Chem's overcharge, any aggravating and mitigating factors, as well as the deterrent effect. We found that Dis-Chem's conduct was not only exploitative to the detriment of consumers but also reprehensible in the context of COVID-19. Dis-Chem appealed the Tribunal's order to the Competition Appeal Court but subsequently withdrew the appeal.

COVID-19 CONSENT ORDERS

The 2020/2021 financial year was extraordinary in that many fines levied by the Tribunal were against exploitative pricing (in terms of section 8(1)(a)) of PPEs with the advent of the COVID-19 pandemic. We heard 40 consent orders and settlement agreements related to COVID-19 excessive pricing allegations. The table below sets out the relevant cases. It is worth noting that although the number of consent orders and settlement agreements increased significantly during the reporting period, the total in penalties did not increase. This is attributable to the small turnovers and size of the firms concerned, as well as the fact that the settlement agreements provided for the firms to make donations to those directly impacted by the behaviour of the respondents.

Diagram 9: Covid-19 consent orders

	Parties to the agreement	Sections of the Act	Conduct	Penalty	Donations / other
1	CC And Matus	8(1)(a)	Matus fined for charging excessive prices for dust face masks	R 5 949 542,00	Matus to also make a donation to the Solidarity Fund
2.	CC And Sicuro Safety and Hennox 638	8(1)(a)	Sicuro and Hennox found to have increased their prices of face masks by 969.07% and 956% respectively between December 2019 and March 2020 without corresponding increases to their costs	R 1 500 000,00	Sicuro and Hennox to also make a donation to the Solidarity Fund
3.	CC And Mica Barberton	8(1)(a)	Excessive pricing of FFP2 NR face masks	R 0,00	R10 000 donation to be made to the Solidarity Fund
4.	CC And Caprichem	8(1)(a)	Caprichem charged excessive prices for hand sanitiser	R 500 000,00	Caprichem also to make a donation to the Solidarity Fund
5.	CC And Farpoint Trading 31 CC t/a Mica Durban North	8(1)(a)	Excessive pricing of hand sanitiser	R 0,00	Donated 772 units of 50ml and 50 units of 5-litre hand sanitisers valued at R14 400 and R19 500 respectively to different NGO's in the Durban North area
6.	CC And Swift Chemicals	8(1)(a)	Excessive pricing of isopropanol, input product in sanitiser and disinfectant	R 300 000,00	n/a

7.	CC And Crest Chemicals	8(1)(a)	Excessive pricing of isopropanol (IPA) and n-propanol (NPA) which are intermediate inputs into hand sanitiser and disinfectants	R 98 536,92	Crest Chemicals to donate hand sanitisers to the Utho Ngathi Disability Projects, a Soweto based non-profit company
8.	CC And Levtrade International	8(1)(a)	Excessive pricing of respiratory masks	R 50 000,00	R10 000 to be donated to the Solidarity Fund and R25 000 to Johannesburg Children's Home
9.	CC And Van Heerden Pharmacy Group	8(1)(a) and Regulation 4	Excessive pricing of face masks (Nelspruit)	R 30 000,00	n/a
10.	CC And Van Heerden Pharmacy Group	8(1)(a) and Regulation 4	Excessive pricing of sanitiser (Pretoria)		R3 875 donation to be made to the Solidarity Fund
11.	CC And Cilliers and Heunis	8(1)(a) and Regulation 4	Excessive pricing of face masks	R 0,00	Firm to donate hand sanitisers, surgical gloves and face masks valued at R25 410 to two old age homes
12.	CC And Mandini Pharmacy	8(1)(a)	Excessive pricing of face masks	R 0,00	Firm to donate essential goods to Mandini Child Welfare
13.	CC And Cedar Pharmaceuticals t/a Bel-Kem	8(1)(a) and Regulation 4	Excessive pricing of Dettol sanitiser	R 0,00	Donation of R1 059.10 to be made to the Solidarity Fund
14.	CC And Sunset Pharmacy	8(1)(a) and Regulation 4	Excessive pricing of face masks	R 0,00	Donation to be made to the Solidarity Fund of R8 640
15.	CC And C Sanua t/a Naturally Yours Weleda Pharmacies	8(1)(a)	Excessive pricing of hand sanitiser	R 0,00	R18 750 donation to be made to the Solidarity Fund
16.	CC And Manhattan Cosmetics	8(1)(a)	Excessive pricing of hand sanitiser	R 0,00	Donation of hand sanitisers valued at R612 to be made to Durban Child and Youth Care Centre
17.	CC And Retrospective Trading 200 t/a Seaside Pharmacy	8(1)(a)	Excessive pricing of hand sanitiser	R 0,00	R4168 donation to be made to the Solidarity Fund
18.	CC And Retrospective Trading 199 t/a Merlot Pharmacy	8(1)(a)	Excessive pricing of face masks	R 0,00	R16 832 donation to be made to the Solidarity Fund

19.	CC And Domoney Brothers Bloem	8(1)(a) and Regulation 4	Excessive pricing of face masks	R 0,00	R30 040 donation to be made to the Solidarity fund and R30 040 worth of face shields to the Carel du Toit School for the Deaf and the Universitas and Pelonomi Hospitals
20.	CC And N Bhabikan t/a T.N.T Basic Trading	8(1)(a) and Regulation 4	Excessive pricing of face masks	R 0,00	182 boxes of 3-ply surgical face masks, valued at R150 250 to be donated to various charities
21.	CC And Auction and Salvage Net	8(1)(a) and Regulation 4	Excessive pricing of face masks	R 0,00	R9521.74 to be donated to the Solidarity Fund
22.	CC And Samys Wholesalers	8(1)(a) and Regulation 4	Excessive pricing of hand sanitiser	R 0,00	Donate hand sanitiser worth R4000 to various charities in Kimberley
23.	CC And West Coast Hardware	8(1)(a)	Excessive pricing of face masks	R 0,00	R6 074.63 to be donated to the Solidarity Fund
24.	CC And Sanitech a division of Waco Africa (Pty) Ltd	8(1)(a)	Excessive pricing of hand sanitiser	R 0,00	R65 028 to be donated to the Solidarity Fund
25.	CC And Vasilis Supermarket t/a Vasilis Cleaning Supplies	8(1)(a)	Excessive pricing of disposable gloves, FFP1 and FFP2 facemasks	R 0,00	R243 148.70 worth of essential goods to be donated to three old age homes in Bloemfontein
26.	CC And Eldoram Dienste CC t/a Eldopark Pharmacy	8(a)	Excessive pricing of 3 types of face masks	R 0,00	R5 500 to be donated to the Solidarity Fund
27.	CC And Green Hygiene	8(a)	Excessive pricing of Betasan Auto spray sanitiser dispensers	R 0,00	R8 079 to be donated to the Solidarity Fund
28.	CC And Evergreens Fresh Market	8(1)(a) and Regulation 4	Excessive pricing of hand sanitiser	R 0,00	Hand sanitiser valued at R1800 to be donated to the Tembisa Provincial Hospital
29.	CC And D I Fraser CC t/a Umhlanga Medisport Pharmacy	8(a)	Excessive pricing of face masks and hand sanitisers	R 0,00	R20 000 worth of hand sanitisers to be donated to the Lungisisa Indlela Village
30.	CC And Stelkor Pharmacy	8(a)	Excessive pricing on 3Ply tie back surgical masks	R 0,00	R12 500 to be donated to the Solidarity Fund

31.	CC And Steelmate	8(a)	Excessive pricing of FFP1 face masks	R 0,00	R5 622 to be donated to the Solidarity Fund
32.	CC And Food Lovers Holdings	8(a)	Excessive pricing of raw ginger	R 0,00	Essential goods at a cost price value of R18 579 to be donated to the Mohlakeng Old Age Home
33.	CC And Cambridge Food	8(a)	Excessive pricing on 25 kg Top White Super Maize Meal.	R 0,00	R24 947 to be donated to Siyaphambili Qondile Home Based Care Project
34.	CC And Rand Safety Equipment	8(a)	Excessive pricing on FFP2 6200 dust masks.	R 0,00	R8 284 to be donated to the Solidarity Fund
35.	CC And Oil and More General Trading	8(a)	Excessive pricing of nitrile blue disposable gloves	R 0,00	R18 361.51 to be donated to the Solidarity Fund
36.	CC And Sentra Kem Pharmacy	8(a)	Excessive pricing of facial masks	R 0,00	R15 785.03 to be donated to the Solidarity Fund
37.	CC And Main Hardware	8(1)(a) and Regulation 4	Excessive pricing of surgical gloves	R 25 410,00	To refund customers for overcharge
38.	CC And Mzanzi Meat and Chicken (Pty) Ltd t/a Roots Dawn Park	8(a)	Excessive pricing of 5 dozen 60 large and medium eggs	R 0,00	R 12 000 to be donated to the Solidarity Fund
39.	CC And Oak Medical and Laboratory Supplies CC	8(1)(a) and Regulation 4	Excessive pricing of tongue depressors	R 0,00	Credit note to NHLS of R109 772.84
40.	CC And Supra Healthcare Cape Town (Pty) Ltd	8(1)(a) and Regulation 4	Excessive pricing of medical examination gloves	R 0,00	Supply 49 400 surgical masks to same value (at cost) as estimated excessive profits to Western Cape Health Dept

CARTEL CONDUCT

Section 4 of the Act regulates restrictive horizontal practices amongst competitors, also known as cartel conduct. Cartels can operate in any industry, locally, regionally, nationally or internationally. Cartels harm other businesses and consumers by artificially raising prices and reducing output and choice. Cartel conduct is considered to be the most egregious and harmful to competition and consumers alike and must be treated with the appropriate attention and sanction by competition agencies.

CC V Afrion Property Services CC and Six Others

The Commission referred this matter to the Tribunal in 2017 against seven firms that supply, install and maintain fire control and protection systems.

We found that two of the respondents, Cross and Belfa, were guilty of fixing prices, dividing markets, and tendering collusively in the relevant market. Cross was ordered to pay a fine of R12 894 000 and Belfa was ordered to pay R10 100 126.

Four of the respondents (Afrion, FPS, Fireco and Fireco Gauteng) had reached settlements with the Commission, which were heard and confirmed by the Tribunal. The case against the remaining respondent, Tshwane, was dismissed due to insufficient evidence as the Tribunal found that the Commission had failed to prove its case against the firm.

CC V Aranda Textile Mills (Pty) Ltd and Mzansi Blanket Supplies (Pty) Ltd

The Tribunal found blanket manufacturer and supplier, Aranda Textile Mills (Pty) Ltd ("Aranda"), and blanket reseller, Mzansi Blanket Supplies (Pty) Ltd ("Mzansi") guilty of price fixing and collusive tendering in relation to a 2015 National Treasury tender. The Tribunal ordered Aranda to pay a penalty of R5 000 000 and Mzansi to pay R500 000.

The tender, for which both Aranda and Mzansi had submitted bids, provided for the procuring of blankets, among other items, on behalf of multiple state departments including the Department of Correctional Services, the South African Police Service, and the South African Military Health Service and Emergency Medical Services.

CC V Irvin & Johnson (Pty) Ltd and Karan Beef (Pty) Ltd

The Tribunal dismissed a case of alleged cartel conduct against processed frozen foods company Irvin & Johnson (I&J) due to a lack of evidence. The Commission had accused I&J and beef processing company, Karan Beef, of dividing markets in the supply of processed beef products such as beef burger patties, steak sizzlers, crumbed beef steaklets, viennas and boerewors.

I&J was charged along with Karan Beef following a 2017 Commission investigation which emanated from a separate investigation into Karan Beef and several other feedlots. Karan Beef settled with the Commission in September 2018 and agreed to pay a penalty of R2 700 000.00. The Commission alleged that I&J and Karan Beef participated in a cartel to divide markets, by entering into a manufacturing agreement in 2000 and a subsequent amending agreement in 2002, in contravention of section 4(1)(b)(ii) of the Competition Act.

The Tribunal concluded that the Commission bears the burden to prove, on a balance of probabilities, that a contravention of section 4(1)(b) has occurred. In our view, the Commission failed to discharge its burden of proving that the manufacturing agreement and the subsequent amending agreement resulted in the division of markets between two competitors as contemplated in section 4(1)(b)(ii). We found that the conduct of the parties in the first two years of the manufacturing agreement is not the type of conduct contemplated in section 4(1)(b)(ii) and that the Commission failed to bring it within the ambit of section 4(1)(b)(ii).

CC V Catha Silkscreen and four others (two matters)

In two related matters before the Tribunal, a case of alleged price fixing and collusive tendering was dismissed, on 30 April 2020, against five Bloemfontein-based companies accused of colluding on a Free State

Treasury tender to supply and deliver office stationery to provincial government departments in 2014.

Catha Silkscreen Printers CC (Catha), Melemo Trading CC (Melemo), Lounge 848 CC (Lounge), Nakanyane Business Solutions CC (NBS) and V Litabe and Seema Trading CC (Litabe) were competitors in the market for the supply of office stationery. The Commission alleged that the companies had submitted similar bids, including the same or similar prices for certain stationery items and similar letters from suppliers, in response to the tender. The Commission argued that this conduct was the result of an agreement and/or a concerted practice between the companies and constituted price fixing and collusive tendering. The companies, however, denied that they had colluded with each other when bidding for the tender.

The Tribunal found that there was "simply no evidence" that the companies had reached an agreement among themselves. The prices submitted as part of the bids were not actual selling or purchase prices because, from the outset, it was clearly understood that the final purchase price would be determined through negotiations between the Free State Provincial Treasury and those bidders who had met the bid requirements (and had scored sufficiently high regarding the functionality requirements). In addition, the Tribunal found that the Commission led no evidence to substantiate its "concerted practice" argument either.

ADMINISTRATIVE PENALTIES

The 2020/2021 financial year was extraordinary in that many fines levied by the Tribunal were against exploitative pricing (in terms of section 8(1)(a)) of PPEs with the advent of the COVID-19 pandemic. These have been discussed above.

The highest percentage of penalties (65.58%) in terms of value was imposed on firms in the wholesale and retail sector for the supply of PPEs. In comparison, in the prior reporting period, the manufacturing sector accounted for the highest percentage of penalties (87.25%) of the total penalties imposed. Diagram 10 includes fines imposed in all consent/settlement agreements as well as in contested matters.

Diagram 10: Fines issued per sector over two years

	Sector	2019/2020	%	2020/2021	%
1.	Manufacturing	R75 887 709	87.25%	R14 062 895	27.44%
2.	Wholesale and retail trade	R139 400	0.16%	R33 612 294	65.58%
3.	Construction	R9 129 543	10.50%	R0	0%
4.	Human health and social work activities	R1 250 000	1.44%	R0	0%
5.	Professional scientific and technical activities	R286 846	0.33%	R0	0%
6.	Transportation and storage	R240 647	0.28%	R76 003	0.15%
7.	Administrative and support service activities	R40 300	0.05%	R250 305	0.49%
8.	Financial and insurance activities	R0	0%	R742 500	1.45%
9.	Information and communication	R0	0%	R2 512 500	4.90%
	TOTAL	**R86 974 445**	**100%**	**R51 256 497**	**100%**

Diagram 11 below indicates that in both the current and the prior financial years more than 79% of the penalties imposed by the Tribunal were imposed for cartel conduct. However, it is noteworthy that the quantity of penalties levied for abuse of dominance significantly increased in number from only 1 in the prior year to 10 during the period under review (albeit still constituting 18% in Rand value). This is attributable to fines that were levied against companies that supply PPEs. As in the prior period, only a single penalty was levied for failure to notify a merger.

Diagram 11: Penalties imposed per section of the Act over two years

		2019/2020			2020/2021		
	Sections of the Act	**Number of cases**	**Amount**	**%**	**Number of cases**	**Amount**	**%**
1..	Restrictive horizontal practices Sections 4(1)(b)(i), (ii) and (iii)	17	R69 242 731	79.61%	18	R40 784 469	79.57%
2.	Abuse of dominance-Sections 8(1)(a)8(c),8(d)(i),8(d)(iii)	1	R16 192 315	18.62%	10	R9 729 528	18.98%
3.	Failure to notify - Section13A(3)	1	R1 250 000	1.44%	1	R742 500	1.45%
4.	Resale price maintenance - Section 5(2)	2	R289 400	0.33%	0	R0	0%
	TOTAL	**21**	**R86 974 446**	**100%**	**29**	**R51 256 497**	**100%**

CONSENT ORDERS AND SETTLEMENT AGREEMENTS

The amendments to the Act in 2019 served to enhance the market inquiry provision in order to empower the Commission to inquire into market structures with oligopolistic features where no fault by the firms in the market can be found. The Commission can decide on interventions and remedies to enhance competition and advance the purposes of the Competition Act.

We heard three consent orders/settlement agreements following two market inquiries by the Commission into the Grocery Retail Market and Data Costs.

Shoprite Checkers

The Grocery Retail Market Inquiry (GRMI) report published by the Commission in November 2019 found, among others, that long-term exclusive lease agreements were widely prevalent in the grocery retail sector and impeded competition in the sector. The report recommended that the Commission secure voluntary compliance by national supermarket chains with its recommendations concerning long-term exclusive lease agreements.

The Tribunal confirmed a consent agreement between the Commission and Shoprite Checkers whereby the retailer agreed to immediately stop enforcing exclusivity provisions in its long-term exclusive lease agreements with its landlords against small, medium and micro enterprises (SMMEs) and speciality and limited line stores such as butcheries, bakeries, liquor stores and greengrocers.

Shoprite– which had participated in the work of the GRMI - resolved to agree with the Commission concerning its recommendations. In effect, Shoprite agreed to no longer exclude competition from smaller suppliers such as spaza shops, supermarkets, green grocers, and butchers who would therefore have better access to letting space in shopping centres where a Shoprite-owned store is located.

Pick n Pay

We also heard submissions relating to a consent agreement between the Commission and Pick n Pay in respect of the GRMI recommendations concerning long-term exclusive lease agreements. In terms of the consent agreement, supermarkets privately owned and controlled by historically disadvantaged persons ("HDP Supermarkets") would immediately be able to access letting space in all shopping centres where a Pick n Pay store has exclusivity provisions in its lease agreement.

MTN

Another significant consent agreement heard by the Tribunal resulted from a market inquiry into high data prices and affordability, initiated by the Commission in 2017. The consent agreement was concluded between the Commission and Mobile Telephone Networks (Pty) Ltd (MTN), whereby data prices would be reduced. The Tribunal confirmed a similar agreement between the Commission and Vodacom in the previous reporting period.

MTN made no admission of liability for any conduct prohibited under the Act. However, it made undertakings, among others, to reduce the price of 30-day prepaid bundles; to offer its customers a capped daily free data bundle to use in Ayoba (a low cost data offering); and to offer its customers capped Zero-Rated Access to websites focusing on education, healthcare and job recruitment via MTN's own website.

As mentioned earlier, the number of consent orders and settlement agreements increased significantly during the reporting period, particularly due to the COVID-19 related excessive pricing cases, when compared to the previous period under review. However, the total in penalties did not increase. This could be attributed to the donations made to those directly impacted by the behaviour of the respondents. Diagram 9 provides details of COVID-19 excessive pricing consent orders/settlement agreements.

Diagram 12 provides details on other consent orders/settlement agreements confirmed as orders during the reporting period.

Diagram 12: Other consent orders/settlement agreements

	Parties to the agreement	Sections of the Act	Conduct	Penalty
1.	CC And Adreach	4(1)(b)(i),4(1)(b)(ii)	Adreach and Sotoba admitted to price fixing and dividing markets for outdoor advertising	R 2 500 000,00
2.	CC And Mahle GMBH	4(1)(b)(ii),4(1)(b)(iii),4(1)(b)(i)	Colluded to co-ordinate pricing for inputs sold to German car manufacturers located outside of RSA	R 1 622 106,00
3.	CC And Westra Milling	4(1)(b)(i)	GWK Farm Foods (formerly known as Westra Industries) admitted to price fixing around February 2004 in a maize milling cartel	R 1 000 000,00
4.	CC And Eldan Auto Body	4(1)(b)(i),4(1)(b)(ii),4(1)(b)(iii)	Eldan Auto Body (Eldan Auto) admitted to price fixing, dividing markets and collusive tendering in a long-running panel beating cartel	R 750 000,00
5.	CC And Retail Capital and First Asset Finance	13A(3)	Retail Capital and First Asset Finance admitted to contravening section 13A(3) of the Act by implementing their merger before approval of the transaction by the Commission	R 742 500,00

6.	CC And Panasonic Corporation	4(1)(b)(i),4(1)(b)(ii),4(1)(b)(iii)	Colluded to fix prices quoted to original equipment manufacturers	R 537 980,00
7.	T.Rad Company	4(1)(b)(ii),4(1)(b)(iii),4(1)(b)(i)	Price fixing of quotes supplied to manufacturers of automotive equipment	R 500 000,00
8.	CC And Kalundu Trading	4(1)(b)(ii)	Divided market for starter and alternators	R 458 979,52
9.	CC And Sumitomo Electric Industries	4(1)(b)(i),4(1)(b)(ii),4(1)(b)(iii)	Sumitomo was accused of price fixing, market division and tender collusion in relation to the manufacture and supply of heater control panels ("HCPs") and body electric control units ("Body ECUs") used in Toyota vehicles sold in South Africa	R 437 278,38
10.	CC and Seatrade Reefer Chartering N.V	4(1)(b)(ii)	Market division in the transporting of citrus products	R 373 921,33
11.	CC And Quintax 31 CC	4(1)(b)(iii)	Quintax admitted that it colluded in a 2016 South African Social Security Agency (Sassa) tender for cleaning services in Sassa's North West offices	R 250 305,27
12.	CC And Eagle Fire Control	4(1)(b)(iii)	Collusively tendered to supply fire equipment to Old Mutual	R 120 000,00
13.	CC And Faurecia Emissions Control Technologies SA	4(1)(b)(ii),4(1)(b)(iii)	Bid rigging	R 66 855,66
14.	CC And Haw and Inglis Civil Engineering	4(1)(b)(iii)	Bid rigging in construction industry	R 0,00
15.	CC And Ramsin Industrial Supplies t/a Fire Unlimited	4(1)(b)(iii)	Collusive tendering of fire equipment in Old Mutual tender	R 59 660,05
16.	CC And J and H Furniture Removals	4(1)(b)(iii),4(1)(b)(i)	Bid rigging of government tenders for furniture removal services	R 57 859,00
17.	CC and Majorshelf 35 (Pty) Ltd	4(1)(b)(i),4(1)(b)(iii)	Bid rigging of government tenders for furniture removal services	R 18 144,00
18.	CC And Sotobe Media Holdings	4(1)(b)(i),4(1)(b)(ii)	Adreach and Sotoba admitted to price fixing and dividing markets for outdoor advertising	R 12 500,00
19.	CC And MTN	8(1)(a)	Excessive pricing conduct found in the market inquiry on data prices	R 0,00
20.	CC And Shoprite Checkers - Long Term Lease	8(1)(c)	Grocery Retail Market Inquiry: Retailer agrees to stop enforcing exclusivity provisions in its long-term exclusive lease agreement	R 0,00

21.	CC And Rooibos	8(d)(i),8(c)	Entered into long-term agreements with suppliers to the exclusion of other processors. Settled with Commission without paying penalty	R 0,00
22.	CC and Pretoria Portland Cement Company Ltd (PPC)	4(1)(b)(i),4(1)(b)(ii)	Price fixing and market division of cement. PPC granted leniency	R 0,00
23.	CC And Yazaki Corp	4(1)(b)(i), 4(1)(b)(ii), 4(1)(b)(iii)	Price fixing and dividing markets for the supply of automotive equipment	R 3 898 675,15
24.	CC And Aberdare Cables (Pty) Ltd	4(1)(b)(ii)	Colluded to fix the prices of electrical cables	R 0,00

INTERIM RELIEF

The Tribunal may grant interim relief to a complainant in respect of an alleged prohibited practice. A party seeking such relief must do it simultaneously with, or after filing, a complaint with the Commission.

Govchat (Pty) Ltd and Hashtag Letstalk (Pty) Ltd v Facebook Inc and WhatsApp Inc

Facebook Inc., WhatsApp Inc. and Facebook South Africa (Pty) Ltd were interdicted and restrained from removing GovChat from the WhatsApp platform. This followed an application for interim relief brought by GovChat and its subsidiary, #Let'sTalk, after Facebook threatened to remove GovChat from WhatsApp due to alleged non-compliance with WhatsApp's terms of use.

GovChat currently assists the Department of Health with COVID-19 education, symptom tracking and testing. It also assists the Department of Social Development and the South African Social Security Agency with enabling citizens to apply for distress grants.

We found that there was a *prima facie* case to grant interim relief while their complaint against Facebook was being investigated by the Commission.

We noted that members of the public who relied on GovChat's platform for assistance pertaining to distress grants and Covid-19 related information would be deprived of access to these critical services during the COVID-19 pandemic if GovChat were off-boarded from the WhatsApp platform, pending the outcome of the complaint lodged with the Commission. We concluded that the balance of convenience favoured the granting of interim relief to the applicants who provide an invaluable service to both government departments and citizens alike, whereas we could not conceive of any real prejudice which the respondents would suffer during the period of its order, pending the outcome of the Commission's investigation.

HOW DID WE PERFORM AGAINST OUR PREDETERMINED ADJUDICATION OBJECTIVES?

There are 14 targets identified in the Annual Performance Plan (APP) related to responsible and reliable adjudication. This sets out the Tribunal's objectives in a particular financial year and gives effect to the implementation of the strategic plan.

The targets are reviewed annually and revised where necessary based on a three-year baseline average. During the reporting period, we exceeded eight targets (relating to setting down matters and issuing orders and reasons within stipulated time periods), four were partially achieved and two could not be measured as there was no activity in the period related to these targets.

No of indicators	No. achieved/ exceeded	No. substantially but not fully achieved	No. that could not be measured
14	8	4	2

Overall we met, exceeded and partially achieved our targets by 71%.

To what degree did we not comply and why?

- Pre-hearings or hearings for small and intermediate mergers must be set down within ten business days. The target is set at 65%. Only one merger was set down and it was set down out of time as no record had been received from the Commission. In future, a pre-hearing will be set down irrespective of whether or not a record has been filed.

- Prohibited practices are internally classified as "simple", "complex" or "very complex" based on the issues in the matter or other technical factors. 80% of these are required to be issued within 100, 125 and 150 business days, respectively.

- Reasons issued for prohibited practices that are deemed "complex matters" were issued in four matters. All were issued outside the stipulated time period due to the fact that the complex nature of these matters required substantial analysis of evidence. These matters were also among those awaiting drafting during the high influx of COVID-19 relted cases.

- One out of the three reasons issued in prohibited practices matters deemed to be "very complex" was issued outside the stipulated time period. This was occasioned by staffing changes and postponements due to the proritising of COVID-19 related cases.

- The target set for the issuing of reasons in interim relief matters was set at 65%. Reasons were issued in two matters. Both were issued out of time by 40 and 17 days respectively, due to capacity issues and the complexity of matters.

Communication Targets

The Tribunal has set two targets for the issuing of media releases for final merger decisions and final decisions in prohibited practice cases:

- 95% of the media releases issued for final merger decisions are communicated within two business days of the order date; and

- 90% of media releases issued for final prohibited practice decisions are communicated within two business days of the order date.

However, when confidentiality claims are still to be settled with parties at the time that an order is issued, media releases are not issued within two business days.

During the reporting period, media releases were issued for, among others, 68 merger decisions. The target for issuing media releases for final merger decisions within two business days of the order date was partially met, that is, 90% of the media releases were issued within two business days. Seven were issued outside of two business days once confidentiality claims had been settled.

Media releases were also issued for final decisions in seven prohibited practice matters. Media releases for five of the matters were issued within two business days. Two were issued outside of two business days, pending the finalisation of confidentiality claims. Therefore, the target for issuing media releases for final prohibited practice decisions within two business days of the order date was partially met.

In addition to the above, media releases were also issued in relation to 62 consent orders / settlement agreements; 55 hearing alerts i.e. alerts on upcoming matters were issued as well as a further nine media releases relating to Tribunal activities.

The third target relates to the annual publication of the Tribunal's jurisprudence handbook. This target was met through the publication of the handbook on the Tribunal's website.

While we deal with communication targets here, further information on the Tribunal's communications activities is dealt with later in this section.

BEING ACCOUNTABLE, TRANSPARENT AND SUSTAINABLE

The Tribunal's second strategic goal requires us to have effective oversight structures in place to ensure efficient financial management and reporting. As a public entity, we are cognisant of our obligation to exercise transparency and accountability in our operations and reporting. In this section of the report, we address compliance, governance and ethics. There is also a focus on developing and building sustainable capacity. This strategic goal is aligned to the King Code on corporate governance, hence a focus on the Tribunal's activities in the financial, social and environmental context.

We have aligned our resources and capacity accordingly to achieve enhanced good governance. We continue to adopt an integrated and more holistic approach to our reporting, hence the annual production of our Integrated Annual Report. We strive to produce a report that is relevant, engaging and user-friendly while providing details on both financial and non-financial activities. We have taken into account and reported on both achievements and under achievements, thus enhancing transparency and accountability while addressing areas of improvement. We also focus on capacity building and address compliance, governance and ethics.

DID WE ACHIEVE OUR OBJECTIVES OF ACCOUNTABILITY, TRANSPARENCY AND SUSTAINABILITY?

17 of our 31 targets in the APP relate to the above objective. Of the total of 17 targets, 4 relate to effective business processes (integrated knowledge management and effective records management); 4 relate to effective financial management and 6 relate to capacity development, retention and training; and 3 relate to effective communication and information sharing.

The four targets that were partially achieved relate to percentage of press releases of final merger decisions communicated within two business days of order date; percentage of press releases of final prohibited practice decisions communicated within two business days of order date (discussed above); no findings of irregular expenditure reported on in the final audited financial statements; and at a minimum at least one representative sent annually to an OECD competition forum and at least one representative to the annual ICN conference.

- The target relating to no findings of irregular expenditure reported on in the Audited Financial Statements in 2019/2020 was partially met due to a delay in following the deviation process; and

- The target relating to a minimum of at least one representative sent annually to an OECD competition forum and at least one representative to the annual ICN conference was partially met due to COVID-19 restrictions. Several OECD online competition fora were attended. However, the annual ICN conferene was not attended.

Indicators	Achieved or exceeded	Partially achieved	Could not be measured
17	11	4	2

Overall we met, exceeded and partially achieved our targets by 88%.

We provide a detailed account of governance in the Tribunal in Part 4 of this report. How we managed our Human Resources is discussed at length in Part 5. The Tribunal's finances are unpacked in detail in Part 5 and Part 6.

B-BBEE SPEND

In terms of the Broad-Based Black Economic Empowerment (B-BBEE) Act, we are required to report on our B-BBEE compliance. We have a system that allows us to collect data on the suppliers we procure from and determine our spend both in terms of B-BBEE level and in enterprise size. We are thereby also able to measure our contribution towards the national agenda of redressing historical imbalances and to advance SMMEs. This is also in line with our legislative mandate to ensure that SMMEs have an equitable opportunity to participate in the economy. Our spend by B-BBEE for the year under review is reflected below.

Diagram 13: Tribunal spend by B-BBEE

Level	2019/2020		2020/2021	
	Spend	%	Spend	%
Government entities	R5,686,880	39%	R6,220,943	47%
Level 1	R3,508,463	24%	R1,532,761	12%
Level 2	R1,640,093	11%	R1,642,865	13%
Level 3	R139,982	1%	R250,678	2%
Level 4	R2,093,174	14%	R2,147,813	16%
Level 5	R86,012	1%	R83,893	1%
Level 6	R0	0%	R0	0%
Level 7	R0	0%	R0	0%
Level 8	R173,363	1%	R1,625	0%
Not defined	R1,158,386	8%	R1,232,204	9%
Total	**R14,486,353**	**100%**	**R13,112,782**	**100%**

INTERNSHIPS

The Tribunal is cognisant of the importance of training South Africa's youth for the workplace. Internships and on-the-job mentoring are an ideal way of integrating theory with practical experience and assisting in the development of promising employees in the field of Competition law enforcement and Competition economics. The Tribunal's internship programme was launched a decade ago and we continue to train both long and short-term interns from various colleges and universities.

Two university students were appointed as long-term interns in the Case Management Division during the reporting period, which coincided with the COVID-19 pandemic. As such, the interns mostly worked virtually. While training can be challenging and not optimal under such circumstances, the Tribunal continued to provide this opportunity and it proved to be beneficial. Long-term interns are appointed for a calendar year and are involved in all aspects of the cases working with more experienced case managers and Tribunal Members.

In addition, two long-term interns from colleges were also appointed in the Finance Division and the Corporate Services Division, respectively. The interns said:

"I started my internship at the Competition Tribunal in May 2020 and have since grown, both personally and in my career. As an intern, I have been given the unique and exciting opportunity to interact with a wide variety of professionals, ranging from legal practitioners to experts in the field of Economics. This experience has allowed me to understand Competition Law with more depth, while introducing me to the world of economics, which I had not encountered in the past. I am extremely grateful for the opportunity that the Competition Tribunal has given me. Many do not get to learn directly from legal and economic experts such as the Members of the Competition Tribunal. My intern experience, which came with the exciting opportunity to be the co-author of the second version of the Competition Tribunal's Handbook of Case Law, has given me valuable skills and knowledge, which I will continue to use throughout my legal career," – **Camilla Mathonsi**

"After having done competition law as an elective at Wits, the Tribunal's internship programme made for a seamless transition from law school to the workplace in a field. The internship programme has resulted in me being able to make a meaningful contribution in various matters within an area of law that holds huge transformational potential in South Africa. This experience has been invaluable to me, and this unique blend of law and economics within competition law will undoubtedly position me well for the future," – **Peter Kumbirai**

"The Competition Tribunal internship helped me to develop my workplace skills and get a better understanding of HR as a career. Everything that I have learnt is going to help me to be more attractive to employers," - **Rembuluwani Muelelwa**

	2019/2020	2020/2021
Number of interns	8	4
Male	4	3
Female	4	1
Days	915.13	758.45
Cost	R922 335.80	R790 858

RECYCLING INITIATIVES

Tribunal employees have mostly been working from home during the reporting period, due to the COVID-19 pandemic. As a result, there was less recycling.

Diagram 16 illustrates a decline in the amount of paper printed during the period under review and Diagram 14 details a corresponding decline in recycling figures.

Diagram16: Tribunal paper printing figures

Multifunction Copiers	2019/2020	2020/2021
Nashua copier one	399 958	365 033
Nashua copier two	200 078	115 693
Toshiba copier	129 960	115 486
Total sum of copies/ printouts made	**729 996**	**596 212**

Diagram 14: Tribunal recycling figures measured in kilograms

	Plastic	Tin	Glass	Tetra Pack	Computer equipment	Paper
2019/ 2020	20.70	17.60	25.60	30.60	9.00	2 490.00
2020/ 2021	2.60	2.80	6.70	3.80	0.00	280.00
kg difference	-18.10	-14.80	-18.90	-26.80	-9.00	-2 210.00

Using an online converter, we were able to determine the equivalent of what we saved through recycling 280kg of paper during the reporting period:

Diagram 15: What we saved through recycling paper

Paper recycled 280 KG	
Water saved	8833.33 litres
Oil	Approximately 861.18
Trees	Approximately 5.6 trees

COMMUNICATION AND INFORMATION SHARING

We subscribe to a strong ethos of communication and recognise the importance of sharing information with our stakeholders, especially the public. We are dedicated to this function through consistent and efficient communication and interaction with stakeholders, particularly the media. Delivering accurate, objective and timely communication of our decisions and activities is central to our accountability as well as maintaining trust with our stakeholders, particularly South Africans whom we serve.

The organisation has established and maintains professional and appropriate relationships with key stakeholders, with the ultimate objective of contributing towards the realisation of inclusive markets and advancing the welfare of all South Africans. The WHO, WHY, HOW and WHAT we communicate is illustrated below.

Diagram 17: Communication diagram

01

What we communicate

- Upcoming cases
- Hearing alerts
- Final merger decisions
- Final prohibited practices decisions
- Remedies
- Reasons
- Consent orders/settlement agreements
- Tribunal operations/activities
- Strategy, governance, performance (Annual Report)

02

Why we communicate

Awareness- informing the public and business about cases, decisions, competition law and how it is used to combat anti-competitive behavior and contribute towards a growing and inclusive economy. Creating judicial certainty

Accountability- showing how we carry out our mandate and how we spend public funds

Advocacy- changing hearts and minds towards compliance

03

How we communicate

Through the media (TV, radio and newspapers), social media, Tribunal website, e-newsletters, school programmes, workshops, meetings, networking events, Parliamentary Portfolio Committee briefings, Annual Report

04

Who our stakeholders are

- Consumers
- Businesses/firms
- Complainants, respondents, interested parties, witnesses (i.e. local and international businesses, corporates, trade unions etc.)
- Competition Commission
- Legal fraternity judiciary
- Government Departments (i.e. **the dtic**) National Treasury Auditor-General)
- Parliament
- Media (journalist and editors)
- Tribunal staff
- Sector-specific regulators i.e.Icasa
- Academics, other competition agendues

05

Legislation, Policy and Guidelines

- Constitution
- Competition Act
- PFMA
- Treasury Guidelines
- Communication Framework

Communication in the time of COVID-19

Communication around the Tribunal's decisions and activities has arguably never been more important, particularly due to the excessive pricing of essential goods that have impacted particularly the poorest and most vulnerable members of our society.

We successfully used technology to host virtual hearings throughout the pandemic and subsequent lockdowns. A substantial number of the matters centred around excessive pricing in the context of COVID-19. From a communications and stakeholder perspective, online hearings enabled the media and members of the public, among other stakeholders, to safely and easily observe Tribunal proceedings in real-time through the use of an internet connection, irrespective of their location.

Public discourse showed that consumers have developed a better understanding of the Tribunal's work and the impact of competition law on consumers. Narratives in the public domain also indicated that consumers are engaging more meaningfully with our content. Media relations and the issuing of press releases is one of the main ways through which we communicate our decisions and activities speedily and easily to our stakeholders.

REACHING OUR STAKEHOLDERS

We have kept our stakeholders informed through press releases, social media, updates to the Tribunal website, the Integrated Annual Report, the Government Gazette, virtual meetings as well as telephonic and email communications.

The Tribunal's communication activities are underpinned by a guideline document known as a Communication Framework. It is reviewed and updated annually to ensure that we keep abreast of new and innovative ways to communicate effectively and efficiently with stakeholders including the media, the public, corporate players, legal advisors, government departments and Parliament. It also equips us with the necessary guidelines to fulfil the Tribunal's predetermined stakeholder relationship objectives and details various roles and responsibilities to ensure that communication takes place in a coordinated manner and according to prescribed guidelines.

Press releases

Anyone can subscribe to receive the Tribunal's press releases via the Tribunal's website or through direct requests. The Tribunal's contact database both increases and decreases over time as people subscribe and unsubscribe from the various press release mailing lists. The option to unsubscribe is contained in every press release issued. As at 31 March 2021, we recorded a total of 4405 contacts and 4133 subscribers in our database.

Social media

We are pleased to once again report consistent growth in our Twitter follower numbers. Twitter is the Tribunal's main social media platform through which we report on Tribunal decisions and issue hearing alerts. As at the end of the current reporting period, Twitter followers stood at 3500 – an increase from 2690 at the end of the previous reporting period.

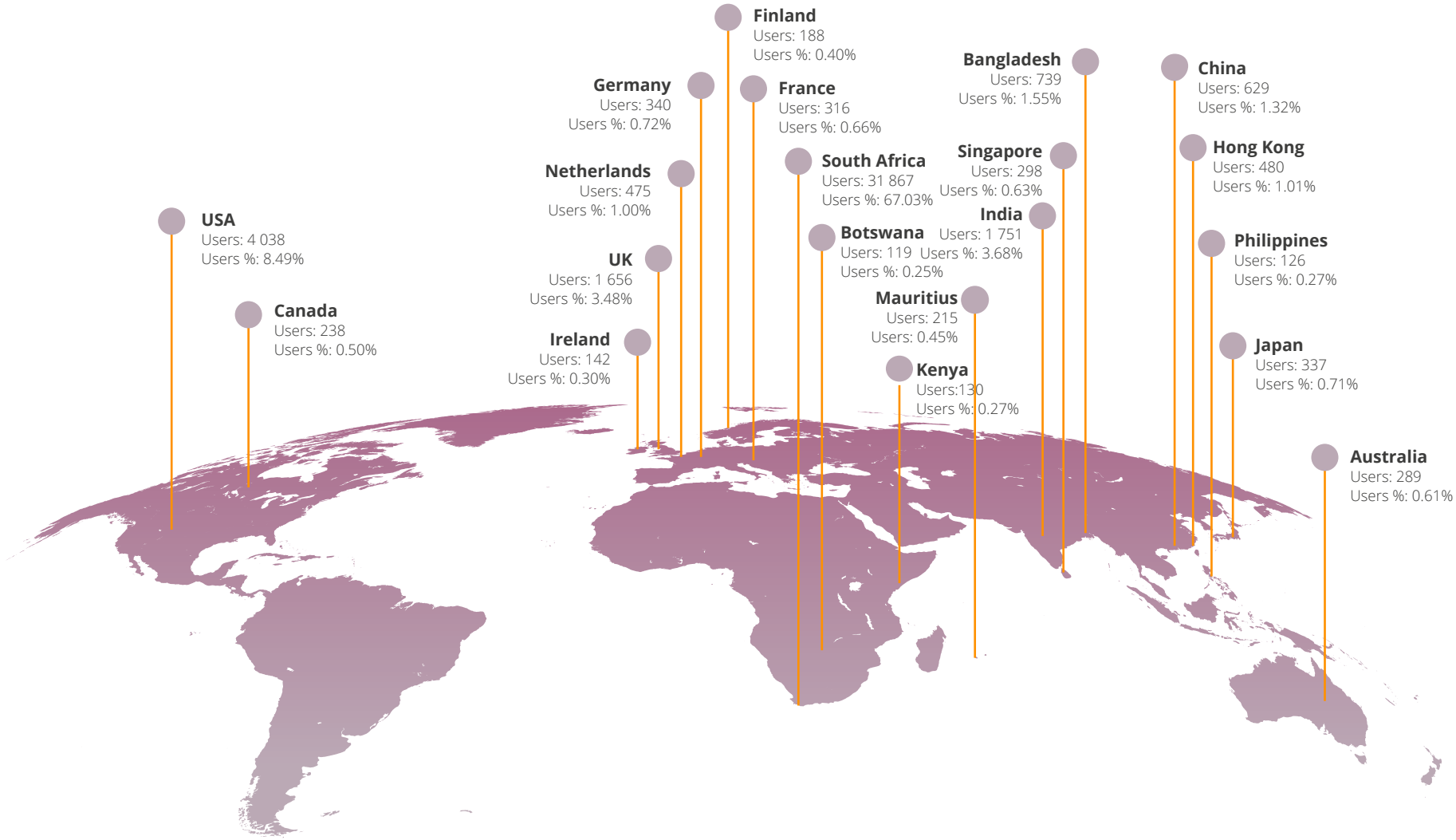
Tribunal website

Our website can be regarded as a "shop window" through which anyone, anywhere in the world, can have insight into the Tribunal's decisions and activities. Google analytics, used to measure traffic to our website, reveals the following data for the reporting period:

Diagram 18: Website statistics from Google Analytics for the 2020/2021 reporting period

Users (an individual person browsing the website)	47 221
New users (a person who visits the website for the first time)	46 898
Sessions (a single visit to the website consisting of one or more page views)	84 970
Sessions per user (average visits per user)	1.80
Pageviews (a page that has been viewed by a user on the website)	282 737
Pages per session (the average number of pageviews in each session)	3.33
Average session duration (how long users are spending on the website)	00:02:52

Diagram 19: Top 20 Tribunal website users per country 2020/2021



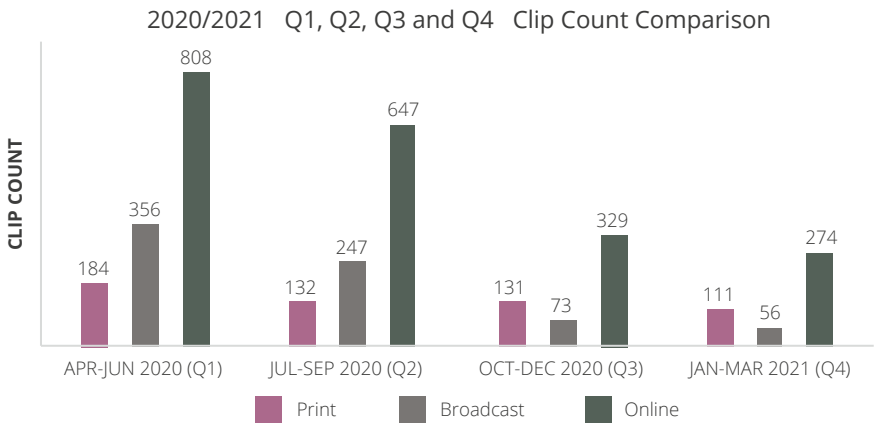
MEDIA MONITORING

Tribunal cases, particularly excessive pricing matters, continued to feature significantly in the media during the reporting period, thus ensuring that our stakeholders and the public at large remained informed of Tribunal decisions. Daily media monitoring enables us to determine the extent and reach of media coverage. It is also an effective way for us to determine the extent to which our communication is reaching communities through community media. We also do extensive analysis and report on media coverage quarterly. We source data from Newsclip Media Monitoring Services which provides data relating to print, broadcast and online media coverage.

Analysis of media coverage

A total of 3348 news stories on Tribunal decisions and activities were carried in print, broadcast and online media platforms during the reporting period. This means news coverage increased by 662 news stories (a 25% increase) when compared with the previous reporting period which yielded a total of 2686 news stories. The graph below illustrates how many news stories were published in each quarter during the reporting period, with a breakdown of stories published in print, broadcast and online media platforms respectively:

Diagram 20: Number of Tribunal news stories in print, broadcast and online media platforms



As illustrated in Diagram 21 below, most of the Tribunal's media coverage appeared in online media platforms (61%), followed by broadcast media (22%) and print media (17%), respectively. Daily newspapers accounted for 70% of the print coverage during the reporting period; commercial radio and TV stations yielded the most news reports for broadcast coverage (33%); and current affairs websites carried the bulk (41%) of the online coverage.

Diagram 21: Insights into news coverage by media category

	Print	Broadcast	Online
Number of news reports	558 (17%)	732 (22%)	2058 (61%)
Most news reports published	Business Report	Newzroom Afrika (TV) Power FM (Radio)	Business Live
Media type that yielded most of the coverage	Daily newspapers (70%)	Commercial stations (33%)	Current affairs websites (41%)

Highlights of Tribunal matters that received moderate to widespread media coverage are reflected below:

Q1: 1 April 2020 - 30 June 2020

- Consent agreements relating to excessive pricing in the context of COVID-19 dominated the news coverage and received widespread media attention across all media platforms (print, broadcast and online). This included coverage of the ***Babelegi*** matter, the ***Dis-Chem*** hearing and the Tribunal's confirmation of numerous consent agreements between the Commission and various pharmacies and other respondents;
- Media coverage also focused on other COVID-19 related issues i.e. regulations and exemptions; price gouging; and price hikes during the lockdown period;
- In April, the Tribunal approved the large merger involving ***Harmony Gold Mining Company Ltd, Harmony Moab Khotsong Operations (Pty) Ltd and Golden Core Trade & Invest (Pty) Ltd And the remaining gold mining South African operations of AngloGold Ashanti Ltd***. This matter received coverage in engineering and mining media platforms;
- In May, the Tribunal approved a settlement between the Commission and global automotive technology company, ***Faurecia***. This received moderate media coverage; and
- In May, the Tribunal approved the large merger involving ***Gatsby Security SPV (Pty) Ltd (Gatsby SPV) And Cell C Limited***. This matter also received moderate media coverage.

Q2: 1 July 2020 – 30 September 2020

- The Tribunal fined ***Dis-chem*** R1.2 million for excessive pricing of face masks during the COVID-19 pandemic. This matter received widespread media coverage across all media platforms;
- The Tribunal confirmed the consent agreement between the Commission and ***Food Lover's Market*** relating to raw ginger excessive pricing during COVID-19 (***Food Lovers Holdings***);
- There was moderate media coverage of various merger transactions i.e. The Tribunal conditionally approved ***Senwesbel's acquisition of Suidwes Holdings; the JSE and Link Market Services South Africa*** merger was approved with conditions; the Tribunal conditionally approved ***Foschini's*** acquisition of ***Jet Stores***; and the Tribunal conditionally approved the merger involving ***Retailability (Pty) Ltd And Parts of the Edgars business conducted by Edcon Limited in SA***; and
- Other matters that garnered media interest included the Tribunal's dismissal of the ***I&J cartel*** case due to a lack of evidence and the Tribunal's confirmation of the 14th settlement in the maize cartel case, involving ***GWK Farm Foods.*** Cleaning company, ***Quintax 31 CC t/a Quintax Cleaning Services***, admitted to 2016 Sassa tender collusion and was fined R250K; and the Tribunal confirmed the settlement in a panel beating cartel case, involving ***Life Wise (Pty) Ltd t/a Eldan Auto Body***.

Q3: 1 October 2020 – 31 December 2020

- The Tribunal confirmed the Commission and ***Shoprite Checkers'*** consent agreement which, in effect, prohibits exclusive lease agreements. This matter received moderate media coverage across all media platforms;
- There was widespread media coverage relating to the proposed coal mining merger involving ***Thabong Coal (Pty) Ltd and South32 SA Coal Holdings (Pty) Ltd*** (also known as "SAEC"), two of South Africa's largest suppliers of coal. The media coverage included reporting on two intervention applications and a strike-out application in relation to the transaction as well as the merger itself, which was approved with conditions.
- ***SA Bidco's*** acquisition of ***Comair,*** BA's local operator, also made headlines following the Tribunal's approval of the transaction. Most of the media coverage around this merger reflected the transaction as a "rescue deal";
- The conclusion of the so-called ***cement cartel*** case received moderate coverage in business media; and
- A government blanket tender winner was fined R5m for collusion. This matter received moderate news coverage, particularly on online media platforms.

Q4: 1 January 2021 – 31 March 2021

- ***Facebook Inc., WhatsApp Inc., and Facebook South Africa (Pty) Ltd.*** were interdicted and restrained by the Tribunal from removing ***GovChat*** from the WhatsApp platform. This matter received widespread media coverage (both in the mainstream media and in the tech-focused media) throughout the proceedings and when the Tribunal's order was ultimately issued;
- Two fire control companies were fined R20m for cartel conduct. This matter received moderate media coverage, particularly on online media platforms;
- ***Pepkor's*** sale of menswear brand, ***John Craig***, made news headlines, particularly due to the fact that 422 jobs were saved as a result of the transaction. Media coverage of this matter was widespread;
- In the same vein, other matters involving significant public interest issues were also the subject of news headlines. These included, for example: ***Workers to own 20% of Coca-Cola as part of a BEE deal; merger of Massmart-owned stores with Devland Cash and Carry to save over 600 jobs; and Coca-Cola to sweeten the pot for SA's black sugar cane growers;*** and
- There was moderate media interest in the COVID-19 related excessive pricing case involving a South African Police Service ("SAPS") tender for bulk hand sanitisers. The Commission accuses ***BlueCollar Occupational Health (Pty) Ltd*** of charging the SAPS excessive prices for bulk hand sanitisers during the period 21 March 2020 to 15 April 2020 following a tender issued by the SAPS. The second respondent is ***Ateltico Investments (Pty) Ltd***. At the time of writing, hearings had been concluded.

PART 4

GOVERNANCE IN THE TRIBUNAL

WHAT OVERSIGHT STRUCTURES DO WE HAVE?

The Tribunal has three oversight structures in place, namely, the Audit Committee, Risk Committee and Fraud Prevention Committee. These committees have oversight over the governance of the Tribunal as set out in their respective Charters and are chaired by independent Non-Executive Members.

The Audit Committee's main role is to assist the Accounting Authority in fulfilling her responsibilities of financial reporting, compliance with the law, adequacy of performance information reporting and internal governance. The Risk Committee is a formal governance committee responsible for assisting the Accounting Authority in discharging her responsibility of implementing an effective Risk Management Framework.

The Fraud Prevention Committee's role is to ensure that the necessary mechanisms are in place to prevent, detect and investigate fraud in the workplace.

The Audit and Risk Committees respectively consist of a maximum of five independent Non-Executive Members who collectively must have the required skills, experience and qualifications to fulfil their duties. Members' terms are limited to three years and they may serve a second term subject to a maximum of two terms. A member of the Audit Committee may be a member of the Risk Committee and the Chair of the Fraud Prevention Committee is an Audit Committee member.

Details pertaining to the members, their attendance and remuneration at the Audit Committee and Risk Committee are illustrated Diagram 22.

Diagram 22: Governance structures, meeting attendance and remuneration

Name		Independent/Non-Executive Members					Executive Members		
		M.Mofokeng	A Moosa	A Mlate	O Josie	S Harrop-Allin	M Mazwai	J de Klerk	O Josie
Audit Committee Meetings	5 meetings held	5	5	5	5	5	5	5	5
	Member attendance	5	3	5	2	5	5	1	3
	Fees (1)	66 625, 00	39 582, 19	R 0,00	24 585,20	54 087,44	0,00	0,00	0,00
Risk Committee Meetings	3 meetings held	3	3	3	3	3	3	3	3
	Member attendance	3	2	3	0	3	3	0	3
	Fees (2)	29 502,24	13 928,80	R 0,00	0.00	34 058,24	0,00	0,00	0,00
	Area Of Expertise	Financial	Financial	Compliance	Legal	Governance	Accounting Authority	COO until July 2020	COO from August 2020

The current Chairpersons of the Audit Committee and Risk Committee are Ms M Tintswalo and Ms S Harrop-Allin, respectively. Mr A Moosa, who chaired the Risk Committee, resigned in 2020 after serving the Tribunal as a Non-Executive Member for 4 years and 2 months. Ms S Harrop-Allin was subsequently appointed to chair the Risk Committee. Ms A Mlate is currently not remunerated as a Non-Executive Member, as she is working for an organ of the state.

MANAGING AND MONITORING ETHICAL BEHAVIOUR

The first two principles of King IV require that the Tribunal Chairperson, as the Accounting Authority, leads the Tribunal ethically and effectively and ensures that an ethical culture is established. The Tribunal has implemented various practices and policies that seek to avoid conflicts of interest and enforce good governance at the Tribunal. Other practices and policies in place include, but are not limited to, those listed below:

OPERATIONAL

- Any gift to the value of R300 or more has to be declared and recorded in the gift register;
- Mandatory disclosure requirements with regard to conflict of interest and financial interest are in place;
- All contracts of employment impose an obligation of disclosure on the employee;
- All employees and service providers (appointed on contract) are required to sign a non- disclosure agreement and an anti-fraud statement;
- A code of conduct policy is in place and is applicable to all employees; and
- A conflict of interest policy is in place that covers specific situations which may constitute a conflict of interest (e.g. person's using their position to obtain private gifts or benefits; diverting business opportunities in which the Tribunal may have an interest, away from the Tribunal and using the Tribunal's resources for personal gain).

ADJUDICATIVE

- Full-time, part-time Tribunal members and case managers are required to annually complete a financial interest disclosure form;
- Part-time Tribunal members are required to sign the roll to confirm that they do not have a direct financial or other interest in the matter in which they are sitting as a panel member;
- Tribunal members are required to disclose any conflict of interest that becomes evident during case proceedings;
- The Tribunal is accountable to the public through Parliament and presents both its plans and outcomes to Parliament's Portfolio Committee on Trade and Industry annually;
- In the case of a dissenting decision by a Tribunal panel member, the writing of a majority and a minority decision is possible. This also helps to frustrate any efforts by parties to unduly influence the panel members;
- Parties may object to the composition of a panel on grounds set out in the Act;
- The Act allows parties to claim information as confidential and the Tribunal will honour these requests if the information qualifies as confidential information in terms of the Act;
- *In camera* portions of hearings are recorded as such and marked as such in transcriptions and not made public;
- Written reasons are issued for all Tribunal decisions (other than consent / settlement agreements and certain interlocutory decisions that do not require written reasons) which ensures that the panel's decisions are transparent and fully motivated;
- No party to a case may address any single panel member at any time outside of the hearing;
- Case related side discussions with legal representatives are always held in chambers in the presence of all panel members and all parties to the case;
- Tribunal members are precluded from speaking to the media on cases. This ensures that no single member's views are expressed about a particular case. Parties to a matter and the public are exposed only to the panel's view on a matter, as expressed in a written judgment; and
- All hearings are open to the public. However, when a firm's confidential information is being presented, this is done *in camera* with appropriate procedures that are in place.

GOVERNANCE STRUCTURES

- Declarations of independence are to be signed by all members of interview panels and Bid Adjudication and Bid Evaluation Committees;
- Charters for the Audit Committee (AC), Risk Committee (RC) and Fraud Prevention Committee (FPC) all contain clauses pertaining to ethical conduct; and
- Committee members are required to sign a non-disclosure agreement and an anti-fraud statement.

IDENTIFYING AND MANAGING RISKS

The Tribunal has excelled in ensuring that a risk management culture permeates the entity with nearly 50% of the full-time staff being directly involved with the risk management process. A sound internal control environment and effective risk management are essential to achieving our objectives. Risk management has been integrated with the processes (governance, planning, management and reporting) within the Tribunal. Adopting this approach has allowed us to effectively and proactively identify, assess, quantify, and mitigate risks.

Structures that are in place for managing risk within the Tribunal include the Office of the COO (Chief Risk Officer), the Risk Management Committee and Risk Committee. The Risk Committee is a formal oversight governance committee of the Tribunal, responsible for assisting the Accounting Authority in discharging her responsibilities. At each of its meetings, the Risk Committee reviews the risk reports presented by the Chief Risk Officer to the extent to which risk management has been implemented in terms of the risk implementation plan. The Risk Committee submits a report, which is included in this Integrated Annual Report, providing assurance that risks are adequately managed in the Tribunal. The Chief Risk Officer, together with the Operations Committee (OPCOM) comprising the Heads of Registry, Case Management, Finance and Corporate Services, manages risk on an operational level while the Risk Management Committee oversees the work of the former.

A risk is defined as any event that may impact negatively on the Tribunal's ability to achieve its objectives. Diagram 23 illustrates the Tribunal's strategic risks. The Accounting Authority is responsible and accountable for the overall process of risk management in terms of the PFMA. However, implementation is the responsibility of management and staff. The Combined Assurance Plan is used to optimise assurance coverage from all the lines of defence (management, risk practitioners, internal auditors, external auditors, oversight committees and other assurance providers on the Tribunal's risk profile).

In the financial year under review, 12 strategic risks were identified on the Tribunal's risk register. Each risk is categorised according to its origin, inherent and residual exposure and the effectiveness of mitigating controls. A risk owner is assigned to each risk in order to develop action plans to address the risk exposure. On a quarterly basis, assurance providers assess mitigating controls and provide documentary evidence for the conclusions they make on their effectiveness. Early signals of increasing or decreasing risk exposure are obtained from key risk indicators (KRI's) assigned to each risk. Each KRI has a specific tolerance limit or acceptable level of exposure.

Risk owners must measure actual exposure against these limits and in instances where these are exceeded, determine an appropriate risk response and corrective action to be implemented. The Risk Management Committee monitors progress of these actions against set target dates. Quarterly risk meetings are also used by management to identify any risks to be added or removed from the register as well as identify any emerging risk management needs to consider.

Diagram 23: The Tribunal's strategic risks as at 31 March 2021

Risk profile	The Tribunal's strategic risks					
Risk no.	**Risk name**	**Category and Risk type**	**Inherent risk exposure**	**Control effectiveness**	**Residual risk exposure**	**Risk response**
1	Lack of capacity	Human resources	Extreme	Unsatisfactory	Extreme	Treat
2	Poor and ineffective case management	Reputation	Extreme	Satisfactory	High	Treat
3	Inability to retain Tribunal members, case manager and other critical positions	Human resources	Extreme	Satisfactory	Moderate	Treat
4	Compromised independence	Reputation	Extreme	Satisfactory	High	Treat
5	Lack of documented jurisprudence	Reputation	High	Good	Within risk appetite	Treat
6	Lack of Funding	Financial stability	Extreme	Unsatisfactory	Extreme	Treat
7	Inadequate Information Security	Information integrity and reliability	Extreme	Satisfactory	Moderate	Treat
8	Lack of systems and processes	Operational	High	Good	Within risk tolerance	Treat
9	Lack of information sharing	Multiple categories	Moderate	Good	Within risk appetite	Tolerate
10	Business interruption	Business continuity planning	High	Satisfactory	Within risk tolerance	Treat
11	Inadequate financial management and reporting	Strategic	Extreme	Good	Within risk tolerance	Treat
12	Poor governance ethics and regulatory compliance	Regulatory / Statutory / Legal	High	Good	Within risk tolerance	Treat

Report of the Risk Committee

The Risk Committee has adopted the appropriate formal Terms of Reference, as per its Charter, and has regulated its affairs in compliance with its Charter in the discharge of its responsibilities as contained therein.

The Risk Committee Charter includes the Committee's responsibilities to:

- Assist the Accounting Authority to review the risk management policy and recommend same to the Accounting Authority for approval.
- Monitor the implementation of the risk management framework, and through structured systems and processes designed for that purpose, ensuring that:

  Management disseminates the risk management policy and plan throughout the entity.

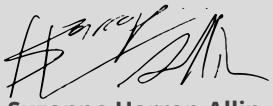
  Management ensures that the risk management plan is integrated into the daily activities of the business.
- Based upon the reports of management, and any reviews by internal and external auditors, express formally to the Accounting Authority their opinion on the effectiveness of risk management systems and processes.
- Review the risk management report at each meeting and have regard to:
  - ensuring that a process exists where risk management frameworks and methodologies are implemented to increase the possibility of anticipating unpredictable risk;
  - ensuring that a process exists where risk management assessments are performed on a continuous basis;
  - ensuring that management considers and implements appropriate risk responses; and
  - ensuring that continuous risk monitoring by management takes place.

In supporting these objectives, the Committee conducted the following activities:

- overseeing the review of the entity's risk management policy;
- reviewing procedures to ensure that the entity risk management framework was properly implemented throughout the operations and that the requisite training was undertaken;
- reviewing the implementation of the risk management plan and assessing whether the implementation efforts were successful and consistent with desired outcomes; and
- assisting the Accounting Authority in determining the material strategic and operational risks, and the concomitant opportunities that could potentially impact/benefit the entity.

During the year under review, the Committee is satisfied that it has complied with its Charter, which has been formalised to include principles contained in King IV and guides the Committee in performing its duties during the year. The Committee further confirms that in the current period the Tribunal has continued to rigorously manage its strategic and operational risks in order to achieve its mandate.

The membership of the Committee is made up of four independent non-executive members, and members of executive management, namely Mondo Mazwai (Accounting Authority) and Oliver Josie (Chief Operating Officer). The external auditors as well as internal auditors have a standing invitation to the meetings and have attended all the scheduled meetings during the year. The Committee met three times during the year under review.



Suzanne Harrop-Allin
Risk Committee Chairperson
31 August 2021

PREVENTING FRAUD

The PFMA and National Treasury regulations require that a Fraud Prevention Plan be included as a component of a Risk Management Strategy. Pursuant to these requirements the Tribunal has adopted a Fraud Prevention Plan (FPP) and appointed a Fraud Prevention Committee (FPC). The FPP is developed to ensure that the necessary mechanisms are in place to prevent, detect and investigate fraud. In addition, it addresses policy and processes for the reporting, investigation and resolution of fraud matters. The plan is communicated to all employees and they are required to sign an anti-fraud statement, thus confirming their commitment to the Tribunal's policy of zero tolerance towards fraud.

The functions, authority and responsibilities of the FPC are detailed in a Fraud Committee Charter and the report of the FPC is a standing item on the agenda of the Risk Committee meeting. The FPC also ensures that fraud risks are identified, evaluated and assessed as part of the Tribunal's risk management process. Any member of the FPC reported for or suspected of fraud may not form part of the Committee until the matter is resolved. The FPC has met once in the current reporting period and there have been no alleged incidents of fraud that required investigation or reporting.

Given the small size of our organisation, the Tribal will consider combining the Fraud Prevention Committee with the Risk Committee in the next reporting period to enhance efficiencies.

INFORMATION TECHNOLOGY AND GOVERNANCE

Maintaining effective IT Governance in the Tribunal

During the period under review, the Tribunal reviewed three of its four operational IT policies that detail the protocols and procedures when making use of information technology applications and services. The first policy deals with safe and secure internet usage, the second deals with e-mail usage and security thereof and the third deals with safe and secure conduct when working with the Tribunal's domain. In addition, the policy explains the software applications used in the Tribunal as well as the access procedures for the domain and software applications.

New staff members must read the four policies, accept and sign for consent on the first day of work at the Tribunal. These four policies are referenced in the Information Security Policy that describes all aspects of IT security in the Tribunal. Together the policies aim to ensure that we cover IT security, confidentiality of information and the safety of IT assets.

The IT Disaster Recovery Plan was reviewed and approved during the reporting period. The plan's main purpose is to explain the process and procedures on how to recover the Tribunal's IT hardware and software systems in the event of a disaster. In addition, the plan explains the information backup and restoration process performed by the current service provider.

Further to the approval of the policy, the Tribunal conducted a disaster recovery test with the assistance of the backup service provider. The test was successful and completed well within the service level agreement time frames set out in the plan. The successful test, while staff worked remotely, indicated that we are able to access critical business systems and services remotely in the event of an actual disaster.

Information Technology and the COVID-19 pandemic

Readiness to work remotely

In late March of 2020 President Ramaphosa announced that South Africa would enter into a national lockdown due to the COVID-19 pandemic. The lockdown placed companies, government entities and public entities in a difficult situation as work had to continue. Ways had to be found where daily work could be performed remotely. The Tribunal had to set down hearings and case outcomes had to be reached.

The IT Department was tasked with ensuring that the relevant tools were in place to assist staff in working remotely without challenges. Within two weeks of the national lockdown, we succeeded in this objective. Hearings

continued and were heard remotely. Operational staff were given the ability to work on in-office services and applications without difficulty.

Cyber security in the Tribunal

A critical topic in today's information technology conversations is cyber security. With many companies transitioning to work remotely due to the global pandemic, cybercrime is a threat that cannot be ignored or underestimated. The Tribunal takes cyber threats seriously. We invested in a secure remote connectivity service and have improved our security tools. In addition, we are making use of security systems such as encryption, e-mail threat protection and vulnerability scanning.

IT Budget

The IT budget for the reporting period was set at R3.665 million.

Diagram 24: IT expenditure line items

Items	Budget	Actual	Variance
Computer equipment	R 666 727	R 477 935	R 188 791
Software, services and renewals	R 993 640	R 684 471	R 309 169
Intangible assets	R 316 496	R 321 795	-R 5 298
Repairs and maintenance combined	R 1 688 673	R 1 604 884	R 83 789
Totals	**R 3 665 538**	**R 3 089 086**	**R 576 452**

The section below highlights portions of the information technology budget expenditure for the reporting period.

The expenditure on intangible assets is broken down as follows:

1. An amount of R 92 044 was spent to procure the latest versions of our e-mail and database systems.
2. We spent an amount of R 156 331 on further development of our case management system, and an amount of R 73 419 on our case reporting application.

The expenditure for information technology hardware consists of the replacement of essential server hardware and essential laptops and desktops that have reached their end of useful life.

In an effort to save costs due to the COVID-19 pandemic's effect on the economy, we extended the useful life of hardware items such as specific monitors, laptops, desktops and server infrastructure. The items that had their useful life extended will have a roll over effect on future budgets. The replacement of these items will be necessary going forward.

With employees working from home throughout the pandemic, we had to ensure that efficient and secure tools were put in place in order to connect and work on in-office systems, services and applications. We therefore revised the budget to procure a fast and safe remote management service at a cost of R 46 400 per annum. The service was designed to securely connect home computer equipment to office computer equipment. This provides the user with the ability to work on in-office systems from an offsite location with little to no effort.

Report of the Audit Committee

We are pleased to present our report for the financial year ended 31 March 2021.

The Audit Committee (the Committee) is required, as per the approved Charter, to meet at least four times per annum. During the period under review the Committee held five meetings. The 5th meeting was a special meeting held to discuss the audited Annual Financial Statements.

Audit Committee responsibility

The Committee reports that it has complied with its responsibilities arising from section 55 (1) of the PFMA and Treasury regulations 27.1.7 and 27.1.10(b) and (c).

The Committee also reports that it has adopted appropriate formal terms of reference as approved by the Accounting Authority. The Committee has regulated its affairs in compliance with its Charter and has discharged all its responsibilities as contained therein.

The effectiveness of internal control

The system of controls is designed to provide cost effective assurance that assets are safeguarded and that liabilities and working capital are efficiently managed.

In line with PFMA and the King IV report on corporate governance requirements, internal audit provides the Committee and management with assurance that the internal controls are appropriate and effective.

This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes.

From the various reports of the internal auditors, the audit report on the annual financial statements, any qualification and/or emphasis of matter, and the management letter of the Auditor-General, it was noted that no significant or material noncompliance with prescribed policies and procedures has been reported.

Accordingly, we can report that the system of internal control for the period under review was efficient and effective.

The quality of in year management and monthly/quarterly reports submitted in terms of the PFMA

Monthly and quarterly reports on performance information and the Tribunal's finances were presented and reported in Committee meetings and were monitored throughout the year. The Committee is satisfied with the content and quality of monthly and quarterly reports prepared and issued by the Accounting Authority of the Tribunal in the year under review.

Evaluation of annual financial statements

The Committee has:

- reviewed and discussed the draft annual financial statements to be included in the annual report, with the Auditor-General and the Accounting Authority;
- reviewed and discussed the performance information with management;
- reviewed changes in accounting policies and practices; and
- reviewed the entities compliance with legal and regulatory provisions.

The Committee would like to highlight that the Tribunal is highly dependent on the approval of the retention of accumulated surplus from National Treasury, as well as the approval of the annual grants from the Department of Trade, Industry and Competition in order to maintain its going concern status.

The Committee is satisfied that the entity continues to be a going concern per the assessment that has been performed by management.

Internal audit

We are satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the Tribunal in its audits.

Auditor-General of South Africa

We have met with the Auditor-General to ensure that there were no unresolved issues.

Combined Assurance

The Tribunal has implemented a formalised combined assurance plan that encompasses four lines of defence. The Committee has received assurance from management as well as internal and external assurance providers that risks are being appropriately managed.

Maggie Mofokeng
Chairperson of the Audit Committee
31 August 2021

AUDITING OUR WORK, PROCESSES AND PROCEDURES

The Tribunal has ensured that an internal and external audit function is in place thus ensuring compliance with section 188 of the Constitution, section 4(3)(a) of the Public Audit Act, 2004, section 5(1)(a)(ii) of the PFMA, Treasury Regulation 27.22.2 and section 40(10) of the Competition Act.

The external audit function is a statutory function performed by the Auditor-General and its current focus is on the financial accounts, financial management, regulatory compliance and performance against predetermined objectives. This audit is performed at year-end and an opinion is provided by the Auditor-General as to whether the financial statements present a true reflection of the Tribunal's financial position and financial performance. The respective responsibilities of the Accounting Authority and the Auditor-General with regard to the annual audit are contained in an engagement letter.

An Audit Steering Committee consisting of the COO, the Head of Finance and representatives of the Auditor-General meet regularly to discuss matters pertaining to the audit and to monitor progress against the plan. The COO and the Head of Finance are responsible for resolving audit findings reported in the management letter. In the prior period, a clean audit was obtained, and 8 findings were raised, none of which were significant matters. The audited financial statements, as presented to the Accounting Authority and Audit Committee as well as the audit opinion, are presented in Part 6.

We are pleased to report that the Tribunal has once again received a clean audit with 2 findings that will be addressed in the forthcoming financial year. Since inception the Tribunal has had 22 audits performed by the Auditor-General and we are proud to report that we have never received a qualified report. In addition, 64% (14) of these audits have been clean audits (no qualifications or emphasis of matter reported) while the other 36% (8) were unqualified.

While the external auditors perform a single audit per annum, the internal audit is conducted throughout the year. The internal audit function has been outsourced to Nexia SAB&T who are in the third of a five-year appointment. The names, qualifications and years of service of each member of the internal audit team are set out in the table below:

Diagram 25: Internal audit team

Team Management	Name	Qualification/s	Years of experience
	Philemon Mawire	CA(SA)	17
	Busisiwe Tshabalala	BTech Internal Audit	9
	Herman van der Merwe	CA(SA) CISA	18
	Vincent Mano	CISA ; CIA- IT	16
Audit Team			
	Dieketseng Sithole	B Tech Internal Audit	3
	Refiloe Thebele	B Tech Internal Audit	3
	Rari Molope	B Tech Internal Audit	2
	Lucia Jonas	B Tech Internal Audit	2
	Ayanda Lubisi	B Tech Internal Audit	2
	Leka Sally Lekalakala	BCom Financial Sciences BCom Honours Internal	4 months
	Brian Mahlangu	NHC Accountancy B-tech Internal Auditing	1 year

The Tribunal has implemented and adheres to a combined assurance process and therefore, where possible, the internal audit functions are co-ordinated with other external and internal assurance providers so as to ensure proper coverage and reduce duplication where possible. The audit is risk-based and is conducted in accordance with standards of conduct and codes of ethics prescribed by the Institute of Internal Auditors (IIA) while an Internal Audit Charter defines the purpose, authority, terms of reference, objectives, powers, duties and responsibilities of this function.

A total of 8 audits were performed by internal audit during the financial year under review and findings are shown in Diagram 26 below:

Diagram 26: Internal audits

Audit Area	Major	Significant	Moderate	Low	**Total findings**
Supply Chain Management	0	0	1	1	**2**
Follow-up of prior year findings	0	0	0	0	**0**
Audit of Performance information(twice in the year)	0	0	1	0	**1**
Human Resource	0	3	2	3	**8**
IT general controls	0	3	3	1	**7**
Governance	0	1	1	1	**3**
Enterprise Risk management	0	0	0	0	**0**
Total	**0**	**7**	**8**	**6**	**21**

Management has, in consultation with the internal auditors, adopted a robust corrective action process for resolving prior year audit findings. We are pleased to report that the internal auditors have concluded their audit and that 28 (100%) of the prior year's audit findings have been resolved.

There are currently 13 internal audit findings outstanding from the 2020/2021 financial year, of which 11 are ready for audit and 2 are not yet due for audit.

The illustration below reflects the status of all internal audit findings as at 31 March 2021:

Diagram 27: status of all internal audit findings

Status	**Prior Years**	**2020/2021**	**Total**	**%**
Resolved (R)	28	8	36	**73%**
Partially Resolved	0	0	0	**0%**
Not Resolved	0	0	0	**0%**
Ready for Audit	0	11	11	**22%**
Not Yet Due	0	2	2	**4%**
Total Findings	**28**	**21**	**49**	**100%**

EVALUATING OUR OVERSIGHT STRUCTURES

In order to determine whether the Audit Committee members are performing as required and to identify any gaps that require corrective action, an annual assessment of the Committee is undertaken. The assessment for the current reporting period was completed by Audit Committee members and the COO.

Assessments were conducted during the reporting period for the Audit Committee, Risk Committee and Internal Audit. Performance areas below the maximum average will be reviewed and addressed accordingly.

Assessment of Governance Committees

Audit Committee Chairperson

The Audit Committee Chairperson was assessed in four areas and achieved the following scores:

- Meeting preparation, participation and direction 96%
- Behaviour 95%
- Committee performance 95%
- Committee development 88%

Audit Committee

The Audit Committee was assessed in sixteen areas and achieved the following scores:

- Terms of reference 100%
- Independence 100%
- Range of skills 100%
- Additional skills 100%
- Relationship with Internal Audit 100%
- Other participants 100%
- Relationship with Internal Audit and Auditor-General 100%
- Internal Control 100%
- Reporting to the Executive Authority/Accounting Authority 100%
- Conflict of interest 90%
- Committee performance 95%
- Terms of appointment 97%
- Training and development 90%
- Fraud 93%
- Financial reporting 98%
- Relationship with Auditor-General 85%

Risk Committee Chairperson

The Risk Committee Chairperson was assessed in four areas and achieved the following scores:

- Meeting preparation, participation and direction 96%
- Behaviour 96%
- Committee performance 91%
- Committee development* 48%

**This area has been addressed and is not of concern i.e. the Committee members will undertake their own development*

Risk Committee

The Risk Committee was assessed in five areas and achieved the following scores:

- Composition and quality 96%
- Understanding the business and associated risks 97%
- Process and procedures 97%
- Monitoring activities 98%
- Communication activities 87%

Internal Audit

Internal Audit was assessed in eight areas and achieved the following scores:

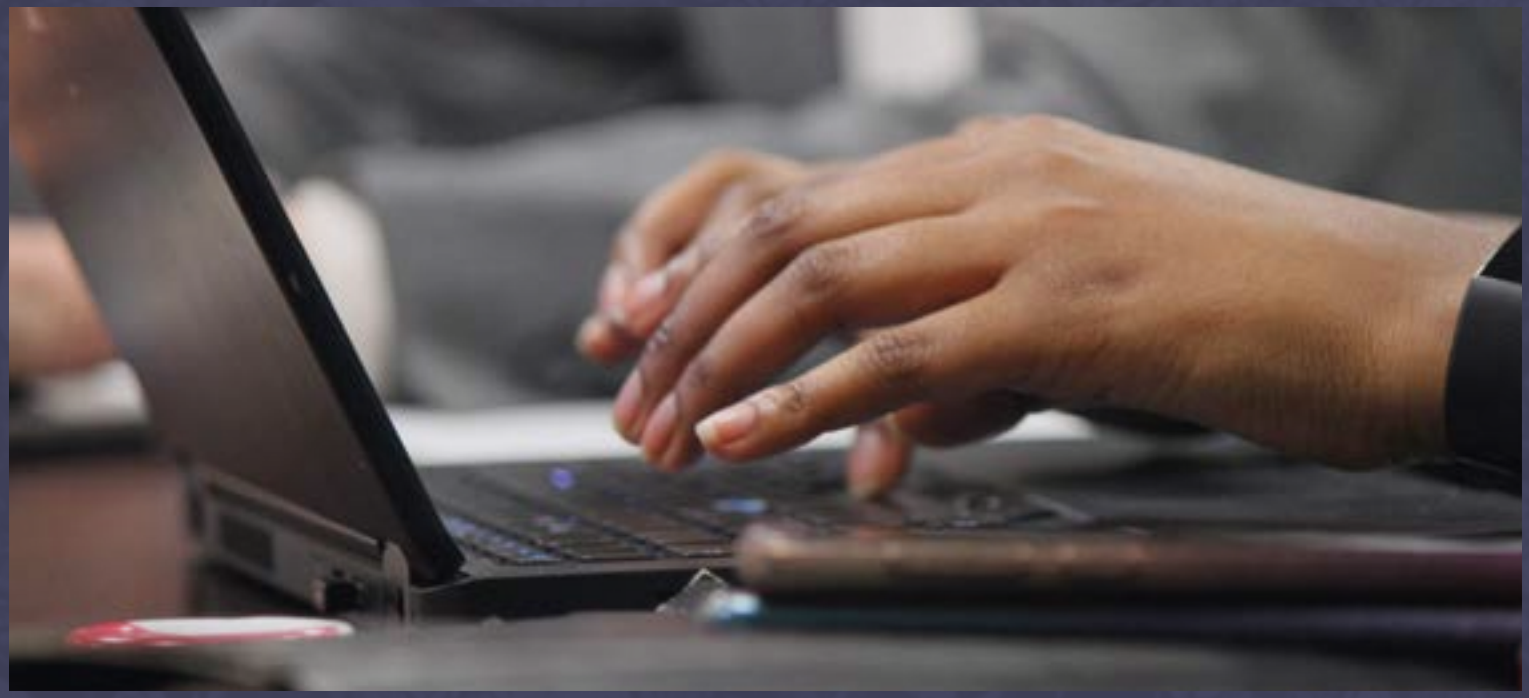
- Understanding of role and responsibilities 87%
- Skills and experience 80%
- Relationship with the committee 86%
- Performance and audit plan 81%
- Robustness of the audit 85%
- Quality of delivery 88%
- Quality of people and service 84%
- Charter, structure and positioning 77%

Diagram 28: Legislation and areas of compliance that guide our operations

Legislation/guideline	Application in our day-to-day activities
Competition Act and Rules	Prescribes our functions, powers, activities and procedures and rules of the Tribunal. Compliance is monitored quarterly by **the dtic** and annually by Parliament.
The PFMA and Treasury Regulations	Prescribes requirements for accountable and transparent financial management. Compliance is monitored quarterly by **the dtic** and annually by the Auditor-General.
Occupational Health and Safety (OHS) Act	Requirements implemented by an OHS Committee and compliance is monitored internally and by the Tribunal's Risk Committee.
Levies and taxes	Compliance internally and by the Auditor-General to ensure that we are registered for and meet our obligations in respect of required and legislated levies and taxes.
Ethics	Internal policies and procedures adopted and implemented to ensure that we maintain high ethical standards and compliance to principles of honesty, integrity and independence.
Internal audit	The internal audit function is outsourced, and its function is defined in a charter. The audit is conducted in accordance with an internal audit plan approved by the Audit Committee.
External audit	In accordance with the PFMA, this audit is conducted by the Auditor-General so as to provide an independent opinion on the financial statements of the Tribunal and report findings regarding predetermined objectives, compliance with laws, regulations and internal controls. See the Auditor-General's report in Part 6 for its detailed findings.
Broad- Based Black Economic Empowerment	The Tribunal is currently working on becoming compliant with the relevant sections of the Act in terms of promoting black economic empowerment.
COVID-19 policy	The Tribunal developed a COVID-19 policy and it has been implemented as per the Department of Public Service and Administration and Department of Labour guidelines. The Tribunal is compliant with all COVID-19 regulations.

PART 5

HOW DID WE MANAGE OUR HUMAN AND FINANCIAL RESOURCES?

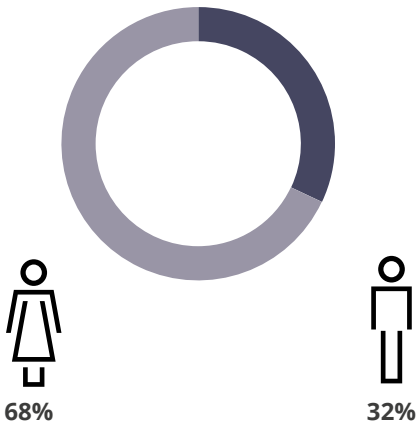


HOW DID WE MANAGE OUR HUMAN RESOURCES?

Our Human Resources division ensures that we adhere to best practices in all aspects involving employees. We focus on remuneration and benefits, training and development, performance management, employee wellness and occupational health and safety.

As at March 2021, the Tribunal had four full-time Tribunal members, 22 full-time employees, three staff members on fixed term contracts (of six months, one-year and two-years respectively) and two interns. In addition, the Tribunal had six members serving in a part-time capacity.

The Tribunal's staff is presented graphically with statistics profiling the demographics, qualifications, age analysis and years of service of the 22 full-time employees excluding interns, Tribunal members and staff on fixed-term contracts.



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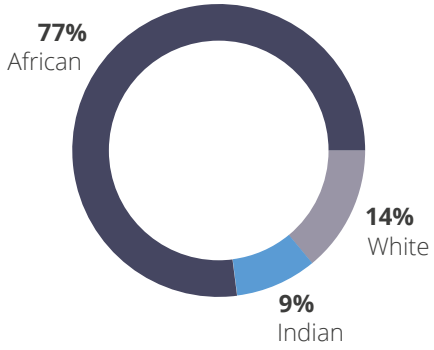

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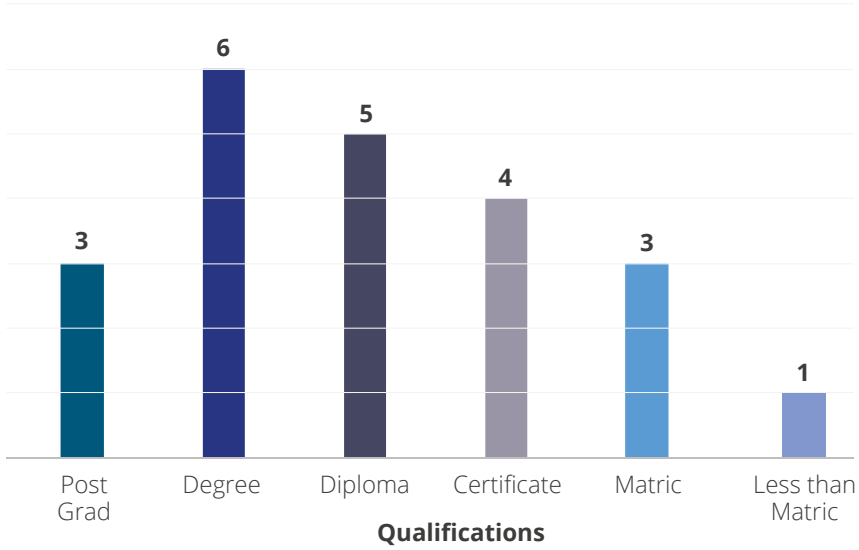
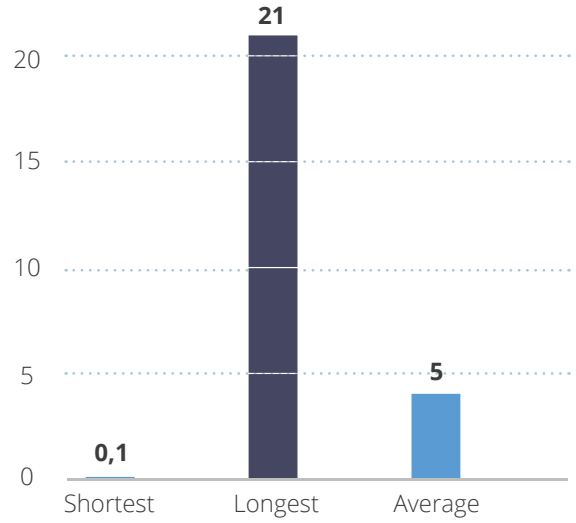
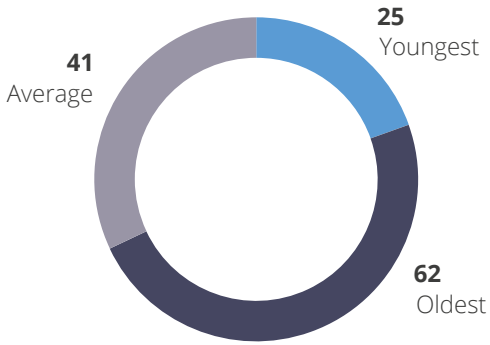


Qualifications



Years of service



Age Analysis

Employment equity

The Tribunal takes employment equity into account in recruiting staff, and this is reflected in the racial and gender distribution of the staff. The Tribunal has complied with the requirements of the Employment Equity Act in ensuring that suitably qualified employees from designated groups have equal opportunity and are equitably represented in all occupational categories and levels of the workforce and submitted our employment equity plan to the Department of Labour as required.

Making changes to our staffing

During the period under review, the Tribunal accepted three resignations from the Chief Operating Officer, the Head of Case Management, and an Economist. The two critical positions of Chief Operating Officer and Head of Case Management were quickly filled and recruitment for the Economist position is in progress.

The position of Head of Corporate Services is currently vacant and recruitment was put on hold due to CODIV-19.

How do we remunerate our human capital?

The Tribunal maintains market related salaries and remunerates its employees in line with the designated market. The remuneration structure we apply is a Total Cost to Company (TCC) structure and includes compulsory medical and retirement contributions. Additional benefits (reflected as company contributions) include risk cover benefits, parking, contributions to an employee assistance programme (EAP) and a communication allowance where the job function requires it. All these benefits are subject to perks tax.

Annual cost-of-living adjustments, applicable and implemented in the public sector, are used as a basis for annual salary adjustments for Tribunal staff, subject to budget availability. During the current reporting period, cost-of-living adjustments for non-senior management employees averaged 3.9%. There was no cost-of-living adjustment or any other salary increases for Tribunal members. In principle, Tribunal members' salaries should be equivalent to those of High Court judges. While High Court judges received no cost-of-living adjustment in the period, there are significant non-taxable benefits which judges enjoy which cannot be replicated in the Tribunal's remuneration structure, thus equivalence may not be achieved. The remuneration structure of the Tribunal members will be reviewed in the next reporting period and if appropriate, addressed accordingly.

The salary scale of Tribunal staff is structured to include a range of job grades. Grades range from junior positions (Grade 16) to senior positions (Grade 3). As per Diagram 29, each job grade represents a salary band of pay ranges that are structured to reflect a minimum, midpoint, and maximum payment level for each grade.

Diagram 29: Tribunal salary scales

Peromnes Grade	Equate Grade	Band ranges (as at March 2021)		
		Min	Mid	Max
18	1	R137 187	R141 395	R145 603
17	2	R147 778	R160 928	R174 080
16	3	R176 685	R192 408	R208 130
15	4	R209 387	R228 018	R246 648
14	4	R209 387	R228 018	R246 648
13	5	R250 345	R278 652	R306 957
12	6	R300 614	R327 361	R354 108
11	7	R371 133	R404 158	R437 183
10	8	R448 334	R488 937	R529 539
9	9	R628 568	R692 526	R756 483
8	10	R665 203	R759 476	R853 747
7	11	R759 034	R905 723	R1 052 410
6	12	R899 554	R1 140 422	R1 381 290
6 U	12	R947 170	R1 285 526	R1 623 882
5	13	R1 173 406	R1 518 663	R1 863 921
4	14	R1 422 232	R1 726 017	R2 029 802
3	15	R1 752 134	R2 165 614	R2 579 093

Performance Management

The performance management system helps to align individual performance with the Tribunal's institutional objectives. Divisional Managers undertake annual performance reviews of staff to ensure high levels of support and feedback for employees in meeting their work responsibilities. Goals and achievements individually set by employees are appraised during such meetings and areas of improvement as well as training needs are identified to rectify performance gaps. Performance bonuses and salary adjustments are also linked to the outcome of the appraisals.

Provision was made for performance bonuses at the end of the 2019/2020 financial year due to the uncertainty brought on by the COVID-19 pandemic, disruption to the economy and related budget cuts. Following much work to obtain clarity on the impact of the pandemic on our cashflow and to secure our financial position, the Tribunal received permission from National Treasury to use our accumulated surplus to fund the budget deficit in the 2020/2021 year and the Tribunal was in a position to release bonuses provisioned for, for the year ending March 2020. Bonuses to the value of R890 500 were awarded to eligible staff, which was 4.5% of payroll and the average evaluation score was 3.7 out of 5.

Training and human resource development

The Tribunal recognises that its employees are its most important resource for ensuring the long-term sustainability of the organisation and is committed to cultivating and nurturing a stable environment that is conducive to attracting, retaining and developing competent and professional employees. Employees of the Tribunal have therefore been provided with opportunities for personal development and further education.

Training and development programmes provided in the year under review took place virtually in the form of local training, workshops and webinars. The Tribunal held its annual virtual workshop during September 2020. The workshop was facilitated by Professor Eleanor Fox from the University of

the New York School of Law. The delegates included the full-time Tribunal members, part-time members and case managers. The following topics were covered in the workshop:

- Unilateral issues: excessive pricing, price gouging, buyer power, exclusionary practices and inclusiveness, digital markets and access;
- Collaboration issues: special needs and problems during the pandemic, health care and possible block exemptions, analysing whether a collaboration is anti-competitive and when it needs an exemption, and new provisions under the Competition Amendment Act; and
- Mergers: including failing firms during the pandemic, and public interest issues under the Amendment Act.

Staff members also attended the following:

- Risk Management training – provided by Mr. Thomas Kgokolo CA (SA) MBA, on 16 March 2021;
- Annual Tax Update webinar – provided by Rob Cooper from SAGE South Africa on 10 March 2021;
- Coping with COVID-19 in the workplace webinar– provided by Andrew & Dan Levy from SAGE South Africa on 8 July 2020; and
- Occupational health and safety course – provided by MAB Consultancy on 12 March 2021.

The Tribunal continues to encourage staff members to undertake further education and training through the Tribunal's bursary and study loan scheme, thus providing them with career advancement opportunities through general education. Study loans are converted to bursaries upon the employee successfully completing a course.

During the year under review, a study loan totalling R15 084.00 was awarded to one staff member, and study loans totalling R59 341.54 were converted into bursaries. As per the Tribunal's Training and Development policy, study loans are converted into bursaries when employees pass their registered modules at the end of the study term. Employees are then required to provide services to the Tribunal for a minimum period stipulated in the contractual agreement.

Employee Wellness

The Tribunal has contracted with Health 1st to provide various services such as emotional/psychological counselling and life management to staff and their immediate family at no cost. Having such services available mitigates the associated risk of employees' stressors. Other initiatives in support of employee wellness include the distribution of desk drops/articles dealing with a range of health topics including COVID-19 educational information.

We saw an increased utilisation of the wellness services offered to Tribunal staff, due to the impact of the lockdown and remote working conditions. Health 1st continued to support the staff on a range of issues including bereavement due to loss of family and mental health. The Tribunal will continue to embark on focused interventions to ensure the wellness of staff.

Occupational Health and Safety (OHS)

The Tribunal is obliged, in terms of the Occupational Health and Safety Act (OHS Act), to ensure a healthy and safe environment for Tribunal employees. The HR Officer has been appointed as the section 16(2) appointee and is responsible for ensuring compliance with the OHS Act.

The HR officer reports on a quarterly basis, to the Risk Committee, on the compliance review (legislative and safety aspects) undertaken. In this way, bringing to their attention any issues that may compromise the safety of employees. The Tribunal has implemented a training programme that ensures these role players are adequately trained to perform their allocated functions.

The Tribunal, in support of the government's objectives to slow the rate of COVID-19 infection, put in place a COVID-19 policy as per guidelines issued by the Department of Public Service and Administration. Protective equipment such as masks, sanitisers and face shields were procured for employees. Specific areas within the office were demarcated for social distancing purposes and awareness posters and safety information from government was circulated to employees. In light of the COVID-19 restrictions and lockdown measures, Tribunal staff worked remotely from home during the period under review.

MANAGING OUR BUDGET AND FINANCIAL RESOURCES

Effective financial oversight, management and sustainability form a strategic pillar of the Tribunal. The Tribunal takes pride in its financial management, which is founded in disciplined budgeting, clear policies reflecting best-practice, effective controls and accountability.

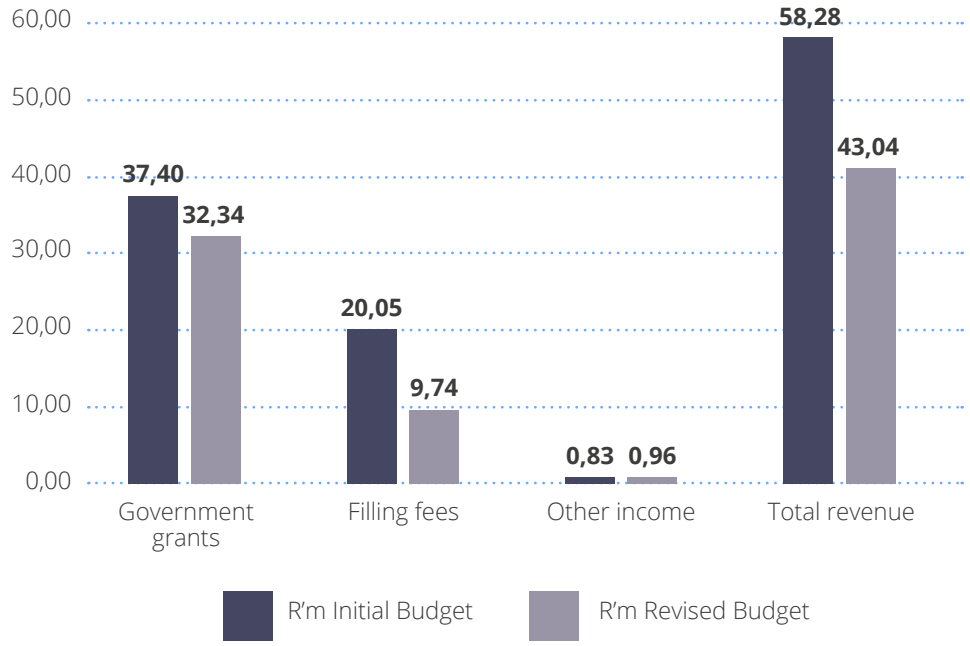
As a public entity we view seriously our duty to be transparent about the use of funds allocated to us and to be accountable for the manner in which it is spent. We maintain a set of policies that conform to the Public Finance Management Act and relevant National Treasury regulations. These policies are periodically reviewed and approved by the Accounting Authority or the delegated authority. The Tribunal retained the services of Nexia SAB&T as internal auditors to verify the policies and procedures and to test the Tribunal's compliance with these policies.

The Head of Finance produces monthly management accounts which are reviewed by the Chief Operating Officer and finally by the Accounting Authority before submission of the accounts to **the dtic**. Quarterly financial reports are submitted to National Treasury, and the Annual Financial Statements are submitted to Parliament after being audited by the Auditor-General.

How did we budget?

The Tribunal's 2020/2021 initial budget included in its Annual Performance Plan was approved by **the dtic** in April 2020. This budget was revised in June 2020 and included in our revised Annual Performance Plan which was approved by **the dtic** in July 2020 and tabled in Parliament in November 2020. The revision of the annual budget was a result of budget cuts emanating from the Appropriations Bills tabled in Parliament by the Minister of Finance in June and October 2020.

Diagram 30: Comparison of intial and revised annual budget for 2020/2021

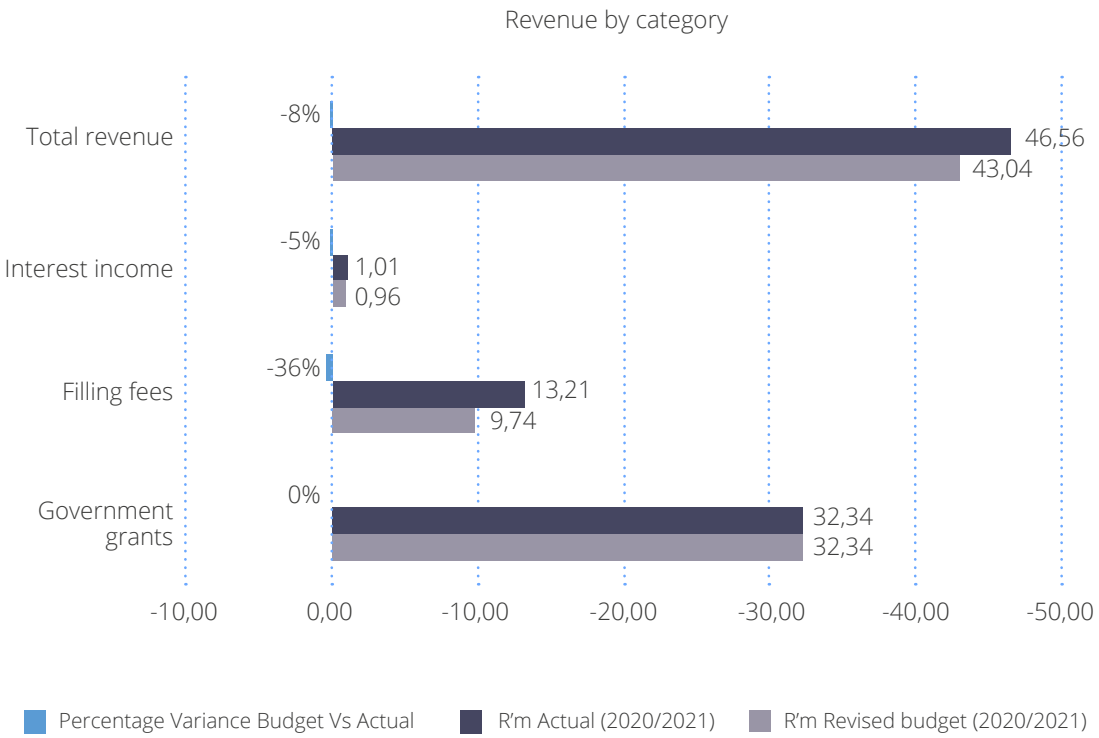


In terms of the revised budget for the period under review, total revenue for the year reflected a decrease of 26% from R58.28 million to R43.04 million. This was due to a reduction of the Tribunal's annual grant and a decrease in filing fee income estimates due to the impact of COVID-19. Furthermore, the Tribunal decreased total expenditure estimates by 22% from R64.64 million to R50.25 million with an expected deficit of R7.21 million (excluding capital expenditure). A shortfall of R8.21 million (including capital expenditure) was funded from accumulated cash surpluses as approved by National Treasury.

The Tribunal's revenue comprises three components: a grant (69% of total revenue earned in the 2020/2021 financial year); filing fees (29% of total revenue); and other income (2% of total revenue).

The first component of revenue is a grant from **the dtic** which was received in full in the first quarter of the financial year. The initially approved and received grant was R37.40 million. However, National Treasury reduced this by 14% to R32.34 million due to funds being reallocated to relief packages to combat the pandemic. The annual budget was adjusted accordingly during the 2020/2021 adjustment budget process.

Diagram 31: Analysis of the Revenue Budget

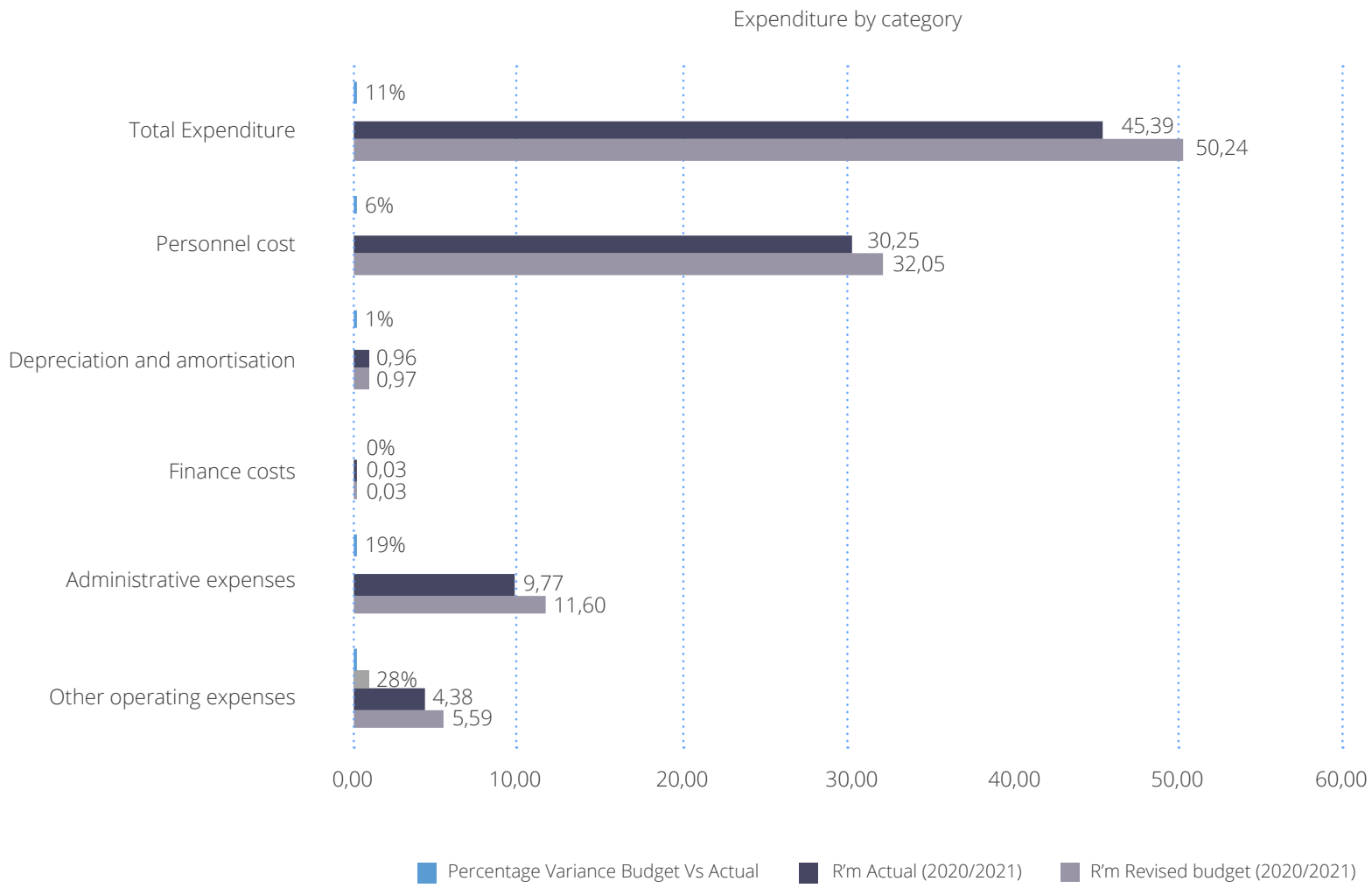


The second component of revenue is filing fees. In terms of a memorandum of agreement between the Commission and the Tribunal, the Tribunal receives 30% of all large merger filing fees and 5% of all intermediate merger filing fees received by the Commission, which are paid over by the Commission to the Tribunal on a monthly basis. Given the anticipated decline in merger activity due to the COVID-19 pandemic, the annual budgeted amount of filing fee income was revised downwards. However, the Tribunal ultimately received 36% more filing fee income than budgeted for since merger activity increased from the third quarter of the financial year.

The final component of revenue, "Interest income", pertains to interest received on cash balances. These are held between the South African Reserve Bank and the Tribunal's commercial bankers, ABSA.

Thus, the Tribunal's ultimate total revenue received was 8% above the budgeted amount. This variance related to higher filing fee income received than budgeted for.

Diagram 32: Analysis of the Expenditure Budget



Considering the reduced revenue and expenditure estimates for the year, the Tribunal was prudent in managing its spending. Actual expenditure for the year - including capital expenditure - was 9% under what we budgeted for. We achieved our target of not underspending more than 10% of our total budgeted expenditure for the year as per the Annual Performance report.

Personnel costs account for the bulk of the Tribunal's total expenditure. During the year, the personnel budget was reduced by R0.84 million due to budget cuts, which was accounted for from the vacancy of one full-time Tribunal member position. The Tribunal furthermore did not spend 6% of the budgeted personnel costs for in the year mainly as a result of the vacancy of the Head of Corporate Services position and normal vacancies due to a small number of resignations during the year.

The Tribunal also managed not to spend 19% of administrative expenses as budgeted for and 28% of other operating expenses. The detail of what makes up these expenses can be found in notes 17 and 18 of the Annual Financial Statements. The COVID-19 pandemic resulted in employees working from home throughout the year and digitalising all systems, which lead to cost savings on administrative expenditure. Furthermore, the pandemic also restricted travel, resulting in cost savings on training and travel related costs.

All other expenses are in line with the budget. The Tribunal has made a conscious effort to reduce spending in accordance with cost containment measures which contributed to the lower spending against the 2020/2021 annual budgeted expenditure.

What does it cost us to meet our strategic goals?

We conclude this section with an illustration on page 89 of how our budget was allocated and spent across the Tribunal's strategic objectives. The table is exclusive of capital expenditure. From the results it is clear that the Tribunal is an efficient organisation, having spent 92% of its total budget on its strategic objectives in the financial year.

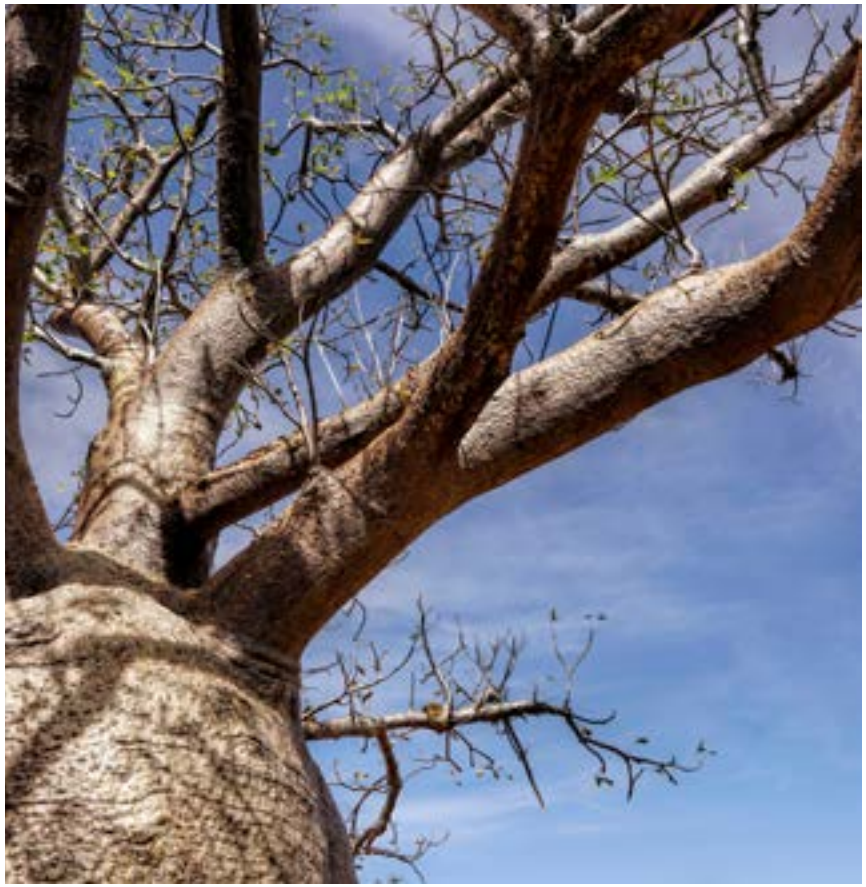


Diagram 33: Budget across the Tribunal's strategic objectives

2020/2021					
Objectives	Budget (R)	% budget by objective	Expenditure (R)	% spend of total expenditure	% of budget spent
Objective 1- Responsive and Reliable Adjudication	**25 385 817**	**51%**	**22 977 313**	**51%**	**91%**
Effective Case Management Procedures	11 921 579	24%	10 082 524	22%	85%
Effective and Timeous Issuing of Orders and Reasons	13 464 238	27%	12 894 789	28%	96%
Objective 2 - Transparent, Accountable and Sustainable Tribunal	**12 751 000**	**25%**	**12 029 962**	**27%**	**94%**
Effective Communication and Information Sharing	1 334 596	3%	1 145 562	3%	86%
Integrated Knowledge Management and Effective Records Management	3 734 681	7%	3 351 487	7%	90%
Sound Governance	3 715 930	7%	3 448 428	8%	93%
Effective Financial Management	3 013 100	6%	3 156 680	7%	105%
Capacity Development, Retention and Training	952 692	2%	927 805	2%	97%
Total Strategic Objectives	**38 136 817**	**76%**	**35 007 275**	**77%**	**92%**
Other Expenditure	**12 111 773**	**24%**	**10 381 143**	**23%**	**86%**
Administration	10 839 138	22%	9 398 275	21%	87%
Depreciation	1 043 105	2%	963 526	2%	92%
Appeal Court	229 530	0%	19 342	0%	8%
Total Expenditure	**50 248 590**	**100%**	**45 388 418**	**100%**	**90%**

PART 6

HOW DID WE USE OUR FINANCIAL RESOURCES?

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

Report on the audit of the financial statements

Opinion

1. I have audited the financial statements of the Competition Tribunal set out on pages 94 to 131 which comprise the statement of financial position as at 31 March 2021, statement of financial performance, statement of changes in net assets, cash flow statement and statement of comparison of budget and actual amounts for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.

2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2021, and its financial performance and cash flows for the year then ended in accordance with Standards of General Recognised Accounting Practice (GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA).

Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the Auditor-General's responsibilities for the audit of the financial statements section of this auditor's report.

4. I am independent of the public entity in accordance with the International Ethics Standards Board for Accountants' International Code of Ethics for Professional Accountants (including International Independence Standards) (IESBA codes) as well other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA codes.

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

Responsibilities of the Accounting Authority for the financial statements

6. The Accounting Authority is responsible for the preparation and fair presentation of the financial statements in accordance with GRAP and the requirements of the PFMA, and for such internal control as the Accounting Authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

7. In preparing the financial statements, the Accounting Authority is responsible for assessing the public entity's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the public entity or to cease operations, or has no realistic alternative but to do so.

Auditor-General's responsibilities for the audit of the financial statements

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

9. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

Report on the audit of the annual performance report

Introduction and scope

10. In accordance with the Public Audit Act of South Africa 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected outcomes presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.

11. My procedures address the usefulness and reliability of the reported performance information, which must be based on the approved performance planning documents of the public entity. I have not evaluated the completeness and appropriateness of the performance indicators / measures included in the planning documents. My procedures do not examine whether the actions taken by the public entity enabled service delivery. My procedures also do not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.

12. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected outcome presented in the annual performance report of the public entity for the year ended 31 March 2021:

Outcomes	Pages in the annual performance report
Outcome: Responsive and reliable adjudication	133-135

13. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.

14. I did not identify any material findings on the usefulness and reliability of the reported performance information for the outcome: responsive and reliable adjudication.

Other matter

15. I draw attention to the matter below.

Achievement of planned targets

16. Refer to the annual performance report on pages 133 to 139 for information on the achievement of planned targets for the year and management's explanations provided for the under/over achievement of targets.

Report on the audit of compliance with legislation

Introduction and scope

17. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the public entity's compliance with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.

18. I did not identify any material findings on compliance with the specific matters in key legislation set out in the general notice issued in terms of the PAA.

Other information

19. The Accounting Authority is responsible for the other information. The other information comprises the information included in the annual report the ministers report, the Audit Committee's report and chief operating officers report. The other information does not include the financial statements, the auditor's report and the selected goal presented in the annual performance report that has been specifically reported in this auditor's report.

20. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.

21. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected goal presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
22. I did not receive the other information prior to the date of this auditor's report. When I do receive and read this information, if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

Internal control deficiencies

23. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. I did not identify any significant deficiencies in internal control.

Auditor General

Pretoria
30 July 2021

AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

STATEMENT OF RESPONSIBILITY

The Accounting Authority is responsible for the preparation, integrity and fair presentation of the financial statements of the Tribunal for the year ended 31 March 2021.

The financial statements presented on pages 94 to 131 have been prepared in accordance with the South African Statements of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 55 of the Public Finance Management Act to the extent as indicated in the accounting policies, and include amounts based on judgments and estimates made by management.

The Accounting Authority, in consultation with the management committee, prepared the other information included in the Integrated Annual Report and is responsible for both its accuracy and its consistency with the financial statements.

The going concern basis has been adopted in preparing the financial statements. The Accounting Authority has no reason to believe that sufficient funding will not be obtained to continue with the official functions of the Tribunal. These financial statements support the viability of the Tribunal.

The Accounting Authority initially approved and submitted the annual financial statements to the Auditor-General South Africa on 31 July 2021.

Audited Annual Financial Statements 2020/2021

TABLE OF CONTENTS

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

Statement of Financial Position	100
Statement of Financial Performance	101
Statement of Changes in Net Assets	102
Cash Flow Statement	103
Statement of Comparison of Budget and Actual Amounts	104
Accounting Policies	105 - 115
Notes to the Annual Financial Statements	116 -131

INTRODUCTION

1. NATURE OF BUSINESS

The Competition Tribunal ("Tribunal") is an independent adjudicative body established in terms of section 26 of the Competition Act, No. 89 of 1998 ("the Act"). It has jurisdiction throughout the Republic of South Africa. The Tribunal adjudicates on competition matters including mergers and acquisitions, and prohibited practices (anti-competitive conduct). It exercises its functions in accordance with the Act, the Constitution and without fear, favour or prejudice.

The Tribunal is one of three independent authorities established in terms of the Act. These are the Competition Commission ("Commission"), which is the investigative and enforcement authority; this Tribunal which adjudicates on matters referred to it by the Commission or by private parties, and the Competition Appeal Court, which considers appeals or reviews against Tribunal decisions.

The Tribunal can inter alia: a) prohibit or approve large mergers (with or without conditions) or intermediate mergers decided by the Commission and brought to it for consideration; b) adjudicate in relation to any conduct prohibited in terms of chapter 2 or 3 of the Act, and c) consider consent agreements and grant an order for costs in terms of section 57 of the Act on matters. Once the Tribunal arrives at a decision, it is required to publish its reasons.

MEMBERS

In all matters, the Tribunal holds hearings which are open to the public. In most cases, apart from a certain procedural cases, three Tribunal members must hear a case and make a decision.

Tribunal members are appointed by the President of the Republic, on recommendation by the Minister of Trade, Industry and Competition. These members are appointed on either a full-time or part-time basis for a five-year term. The members holding this office in the period under review are as follows:

	Full/part time	Date of appointment
Mondo Mazwai (Chairperson)	Full-time	Appointed in August 2019
Enver Daniels (Deputy Chairperson)	Full-time	Appointed in January 2017
Yasmin Carrim	Full-time	Reappointed in August 2019
Andreas Wessels	Full-time	Reappointed in August 2019
Halton Cheadle	Part-time	Appointed in January 2017
Andiswa Ndoni	Part-time	Reappointed in August 2019
Anton Roskam	Part-time	Reappointed in January 2018
Fiona Tregenna	Part-time	Reappointed in April 2019
Thando Vilakazi	Part-time	Appointed in August 2019
Imraan Valodia	Part-time	Reappointed in January 2018

2. OBJECTIVES AND TARGETS

The year in review is measured against the objectives set in the 2020/2021 Annual Performance Plan. This in turn is informed by the 2017 - 2021 Medium Term Expenditure Framework.

I am pleased to report that we met or exceeded 19 of the 31 targets set. Four targets were not measurable, while the remaining 8 targets were partially or substantially achieved.

Our highest area of achievement was in relation to our two strategic goals a) responsive and reliable adjudication, b) transparent, accountable and sustainable Tribunal.

The area of under-achievement relates to certain matters not being set down, heard and adjudicated within the targeted timeframes. The reasons for this include: parties not being available or ready to proceed on dates open in the Tribunal's calendar, unavailability of Tribunal members, Tribunal members capacity, complexity of matters and the prioritisation of COVID-19 cases.

3. FINANCIAL HIGHLIGHTS AND PERFORMANCE

	2021 '000	2020 '000
Total Revenue	46,560	52,835
Expenditure	(45,390)	(48,687)
Net surplus/(deficit)	1,170	4,148
Total assets	16,994	31,216
Total liabilities	4,186	4,878

The financial objective of the Tribunal is to be sustainable while meeting its adjudicative objectives. The budget was revised downwards following budget cuts emanating from the Adjustments Appropriations Bills tabled in Parliament by the Minister of Finance in June and October 2020. The budget was accordingly set to meet operational expenses.

Revenue comprises two elements. The first component of revenue is a grant from the Department of Trade, Industry and Competition. The grant received was 14% lower than the grant actually awarded and 11% lower than the previous year at an amount of R32.34 million due to annual budget cuts. The second component of revenue is filing fees. In terms of a memorandum of agreement between the Commission and the Tribunal, the Tribunal is entitled to a set portion of filing fees that the Commission levies for mergers. In the period under review filing fees decreased by 14% from the previous year as merger activity had decreased due to economic circumstances including the COVID-19 pandemic. This resulted in a 12% decline in total revenue year-on-year.

Personnel costs, which account for the bulk of the Tribunal's total expenditure dropped by 1% from the prior year. Due to budget cuts emanating from the Appropriations Bills, and through prudent financial management, the Tribunal reduced spending on all other expenses by 17% thereby reducing the total expenditure by 7%.

The net effect is that the Tribunal reported a surplus of R1.17 million. In terms of Section 53 (3) of the Public Finance Management Act the Tribunal will request permission from National Treasury and the Department of Trade, Industry and Competition to retain the small surplus as a source of funding over the Medium Term Expenditure Framework (MTEF) period.

4. SUBSEQUENT EVENTS

There were no subsequent events idenified.

5. MANAGEMENT COMMITTEE

In compliance with Treasury Regulation 28.1.1 the annual financial statements disclose remuneration in respect of the person's in charge of the entity, the Chairperson, Deputy Chairperson, Members and the Chief Operating Officer. These are found in Note 26.

6. NUMBER OF EMPLOYEES

At the year-end the Tribunal's personnel complement comprised 31 people in total; 4 full-time Tribunal members, 22 full-time staff members, 3 fixed-term employees and 2 interns.

7. IRREGULAR AND FRUITLESS AND WASTEFUL EXPENDITURE

It is a point of institutional pride that the Tribunal has not incurred any irregular or fruitless and wasteful expenditure in the 2020/2021 financial year.

8. MANAGEMENT FEE PAID TO THE COMPETITION COMMISSION

The Tribunal and the Commission share premises and therefore certain services. In terms of a memorandum of agreement (MOA) signed between the two institutions the Tribunal pays a monthly management fee to the

Commission for services related to the use of these premises. The management fee for the period under review was R60 657 per month. The MOA and management fee are reviewed annually.

9. ADDRESS

Business address

Mulayo Building
77 Meintjies Str
Sunnyside
0132

Postal address

Pvt Bag X24
Sunnyside
0132

10. GOING CONCERN

The annual financial statements are prepared on the basis of accounting policies applicable to a going concern and that the Department of Trade, Industry and Competition has neither the intention nor the need to liquidate or curtail materially the scale of the Tribunal.

Despite the significant revenue reductions, the Tribunal's revised budget indicates that it continues business, with its full complement of employees and fulfillment of its mandate under the current economic conditions. The entity is solvent, and the liquidity ratios are favourable. The cash flows are such that the Tribunal can maintain its operations for at least one year of the reporting date of the financial statements. There are no contingent liabilities that may jeopardise the Tribunal's ability to operate.

Chairperson

STATEMENT OF FINANCIAL POSITION AS AT 31 MARCH 2021

	Note(s)	2021 '000	2020 '000
Assets			
Current Assets			
Cash and cash equivalents	2	10,211	24,293
Inventories		11	12
Receivables from exchange transactions	3	1,558	2,143
Prepayments		525	120
		12,305	**26,568**
Non-Current Assets			
Property, plant and equipment	4	1,932	1,813
Intangible assets	5	2,757	2,835
		4,689	**4,648**
Total Assets		**16,994**	**31,216**
Liabilities			
Current Liabilities			
Finance lease obligation	6	167	195
Operating lease liability	9	1,157	536
Payables from exchange transactions	7	1,166	1,905
Provisions	8	1,671	893
		4,161	**3,529**
Non-Current Liabilities			
Finance lease obligation	6	25	192
Operating lease liability	9	-	1,157
		25	**1,349**
Total Liabilities		**4,186**	**4,878**
Net Assets		**12,808**	**26,338**
Accumulated surplus		12,808	26,338

	Note(s)	2021 '000	2020 '000
Revenue			
Revenue from exchange transactions			
Fees earned	10	13,208	15,279
Other income		-	15
Interest income	11	1,010	1,369
Total revenue from exchange transactions		**14,218**	**16,663**
Revenue from non-exchange transactions			
Transfer revenue			
Government grants & subsidies	13	32,342	36,172
Total revenue		**46,560**	**52,835**
Expenditure			
Personnel costs	14	(30,256)	(30,514)
Depreciation and amortisation	15	(963)	(933)
Finance costs	16	(30)	(45)
Administrative expenses	17	(9,765)	(10,696)
Loss on disposal of assets	12	-	(19)
Other operating expenses	18	(4,376)	(6,480)
Total expenditure		**(45,390)**	**(48,687)**
Surplus for the year		**1,170**	**4,148**

STATEMENT OF CHANGES IN NET ASSETS

	Accumulated surplus '000	Total net assets '000
Balance at 01 April 2019	**22,190**	**22,190**
Changes in net assets		
Surplus for the year	4,148	4,148
Total changes	4,148	4,148
Balance at 01 April 2020	**26,338**	**26,338**
Changes in net assets		
Surplus for the year	1,170	1,170
Transfer of accumulated cash surplus to National Treasury	(14,700)	(14,700)
Total changes	(13,530)	(13,530)
Balance at 31 March 2021	**12,808**	**12,808**

	Note(s)	2021 '000	2020 '000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Grants		37,403	36,172
Interest income		1,010	1,369
Other income		-	15
Fees received		13,793	15,000
		52,206	52,556
Payments			
Employee costs		(29,478)	(30,548)
Suppliers		(15,820)	(16,978)
Finance costs		(30)	(45)
Grant returned due to budget cuts		(5,061)	-
		(50,389)	(47,571)
Net cash flows from operating activities	19	**1,817**	**4,985**
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	4	(683)	(368)
Proceeds from sale of property, plant and equipment	4	-	-
Purchase of other intangible assets	5	(322)	(242)
Net cash flows from investing activities		**(1,005)**	**(610)**
CASH FLOWS FROM FINANCING ACTIVITIES			
Finance lease payments		(194)	(184)
Transfer of accumulated cash surplus to National Treasury		(14,700)	-
Net cash flows from financing activities		**(14,894)**	**(184)**
Net increase/(decrease) in cash and cash equivalents		**(14,082)**	**4,191**
Cash and cash equivalents at the beginning of the year		24,293	20,102
Cash and cash equivalents at the end of the year	2	**10,211**	**24,293**

Budget on Accrual Basis

	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
	'000	'000	'000	'000	'000	
Statement of Financial Performance						
Revenue						
Revenue from exchange transactions						
Fees earned	9,735	-	9,735	13,208	3,473	Note a
Interest income	960	-	960	1,010	50	
Total revenue from exchange transactions	**10,695**	**-**	**10,695**	**14,218**	**3,523**	
Revenue from non-exchange transactions						
Transfer revenue						
Government grants and subsidies	33,176	(834)	32,342	32,342	-	
Total revenue	**43,871**	**(834)**	**43,037**	**46,560**	**3,523**	
Expenditure						
Personnel	(32,885)	834	(32,051)	(30,256)	1,795	Note b
Depreciation and amortisation	(969)	-	(969)	(963)	6	
Finance costs	(32)	-	(32)	(30)	2	
Administrative expenses	(9,163)	(2,437)	(11,600)	(9,765)	1,835	Note c
Other operating expenses	(5,592)	-	(5,592)	(4,376)	1,216	Note c
Total expenditure	**(48,641)**	**(1,603)**	**(50,244)**	**(45,390)**	**4,854**	
Actual amount on a comparable basis	**(4,770)**	**(2,437)**	**(7,207)**	**1,170**	**8,377**	Note d

REASONS FOR DIFFERENCES BETWEEN THE COMPARISON OF BUDGET AND ACTUAL AMOUNTS

Note a: The Tribunal's budget estimate for filing fees from the Commission is based on the expected merger activity during a particular financial year. Given the anticipated decline in merger activity due to the COVID-19 pandemic, the initial estimate was revised downwards. However, merger activity was higher than anticipated in the revised scenario. This explains the variance.

Note b: During the year, the personnel budget was reduced by R0.83 million due to budget cuts, which was accounted for from the vacancy of one Tribunal member. The variance on personnel costs is mainly the result of the vacancy of the Head of Corporate Services position and normal vacancies due to a small number of resignations during the year.

Note c: During the year, the National treasury approved that R2.44 million of accumulated surpluses be retained to account for 40% of the office rental expense that was not included in the approved budget. The COVID-19 pandemic resulted in employees working remotely throughout the year and digitalising all systems which lead to savings on administrative expenditure. Futhermore, the pandemic also restricted travel therefore savings on training and travel related costs also account a significant part of the variance. The Tribunal has made a conscious effort to reduce spending in accordance with cost containment measures.

Note d: The Tribunal received approval from National Treasury to utilise a portion of its accumulated surplus to fund the budget deficit when it tabled its Annual Performance Plan. The actual performance reported a surplus, therefore the portion of accumulated surplus was not utilised.

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 in accordance with Section 91(1) of the Public Finance Management Act.

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

All figures have been rounded to the nearest thousand rand. These accounting policies are consistent with the previous period.

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. Significant judgments include:

Provision for accumulated leave

Management took the number of annual leave days due per employee as at year end and estimated a cost for this provision by multiplying the number of days due per employee by the daily wage per employee as reflected in payroll.

Amortisation of internally generated software

The Tribunal developed an electronic document management software system that was officially signed off in February 2013 and became fully operative from this date. All development costs associated with

this development (development costs, legal fees, technical support, project management, etc.) were capitalised and the entire cost is amortised over 15 years from this "go live date".

Useful life of property, plant and equipment and other assets

The Tribunal's management determines the estimated useful life and related depreciation charges for property, plant and equipment and other assets. This estimate is based on the pattern in which the asset's future economic benefits or service potential is expected to be consumed by the Tribunal.

1.2 GOING CONCERN ASSUMPTION

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

1.3 PRESENTATION CURRENCY

These financial statements are presented in South African Rands, which is the functional currency of the Tribunal.

1.4 FINANCIAL INSTRUMENTS

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or a residual interest of another entity.

A financial asset is:
- cash;
- a contractual right to:
  - receive cash or another financial asset from another entity; or
  - exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity.

A financial liability is any liability that is a contractual obligation to:
- deliver cash or another financial asset to another entity; or
- exchange financial assets or financial liabilities under conditions that are potentially unfavourable to the entity.

Classification

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

Class	Category
Cash and cash equivalents	Financial asset measured at fair value
Trade receivables	Financial asset measured at fair value

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

Class	Category
Trade payables	Financial liability measured at fair value

Initial recognition

The Tribunal recognises a financial asset or a financial liability in its statement of financial position when the Tribunal becomes a party to the contractual provisions of the instrument.

Initial measurement of financial assets and financial liabilities

The Tribunal measures a financial asset and financial liability, other than those subsequently measured at fair value, initially at its fair value plus transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability.

Subsequent measurement of financial assets and financial liabilities

The entity measures all financial assets and financial liabilities after initial recognition using the following categories:
- Financial instruments at fair value;
- Financial instruments at amortised cost; and.
- Financial instruments at cost.

Fair value measurement considerations

Short-term receivables and payables are not discounted where the initial credit period granted or received is consistent with terms used in the public sector, either through established practices or legislation.

Gains and losses

A gain or loss arising from a change in the fair value of a financial asset or financial liability measured at fair value is recognised in surplus or deficit.

Derecognition

Financial assets

The entity derecognises a financial asset only when:
- the contractual rights to the cash flows from the financial asset expire, are settled or waived.

On derecognition of a financial asset in its entirety, the difference between the carrying amount and the sum of the consideration received is recognised in surplus or deficit.

Financial liabilities

The Tribunal removes a financial liability (or a part of a financial liability) from its statement of financial position when it is extinguished — i.e. when the obligation specified in the contract is discharged, cancelled, expires or is waived.

1.5 STATUTORY RECEIVABLES

Identification

Statutory receivables are receivables that arise from legislation, supporting regulations, or similar means, and require settlement by another entity in cash or another financial asset.

Carrying amount is the amount at which an asset is recognised in the statement of financial position.

The cost method is the method used to account for statutory receivables that requires such receivables to be measured at their transaction amount, plus any accrued interest or other charges (where applicable) and, less any accumulated impairment losses and any amounts derecognised.

Nominal interest rate is the interest rate and/or basis specified in legislation, supporting regulations or similar means.

The transaction amount (for purposes of this Standard) for a statutory receivable means the amount specified in, or calculated, levied or charged in accordance with, legislation, supporting regulations, or similar means.

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.

The Tribunal measures its inventories at the lower of cost and current replacement cost as they are held for:

(a) distribution at no charge or for a nominal charge; or

(b) consumption in the production process of goods to be distributed at no charge or for a nominal charge.

The costs of purchase of inventories comprise the purchase price, import duties and other taxes (other than those subsequently recoverable by the Tribunal from the taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and supplies. Trade discounts, rebates and other similar items are deducted in determining the costs of purchase.

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

The cost of inventories is assigned using the weighted average cost formula. The same cost formula is used for all inventories having a similar nature and use to the entity. Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average is calculated as each delivery is received.

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

When inventories are donated or issued to other entities for no cost/ nominal values, inventories shall be measured at the lower of cost and net realisable value.

1.7 PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment are tangible non-current assets that are held for use in the production or supply of goods or services, rental to others, or for administrative purposes, and are expected to be used during more than one period.

The cost of an item of property, plant and equipment is recognised as an asset when:
- it is probable that future economic benefits or service potential associated with the item will flow to the entity; and
- the cost or fair value can be measured reliably.

Property, plant and equipment is initially measured at cost.

The cost of an item of property, plant and equipment is the purchase price and other costs attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Trade discounts and rebates are deducted in arriving at the cost.

Where an asset is acquired through a non-exchange transaction, its cost is its fair value as at the date of acquisition.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses.

Property, plant and equipment are depreciated on the straight line basis over their expected useful lives to their estimated residual value.

The useful lives of items of property, plant and equipment have been assessed as indicated in the table below.

Item	Depreciation method	Average useful life
Furniture and fixtures	Straight line	Between 5 and 18 years
Motor vehicles	Straight line	Between 5 and 9 years
Office equipment	Straight line	Between 5 and 18 years
IT equipment	Straight line	Between 3 and 10 years
Other leased assets	Straight line	Period of lease

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

The depreciation method used reflects the pattern in which the asset's future economic benefits or service potential are expected to be consumed by the entity. The depreciation method applied to an asset is reviewed at least at each reporting date and, if there has been a significant change in the expected pattern of consumption of the future economic benefits or service potential embodied in the asset, the method is changed to reflect the changed pattern. Such a change is accounted for as a change in an accounting estimate.

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

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

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

The entity separately discloses expenditure to repair and maintain property, plant and equipment in the notes to the financial statements.

1.8 INTANGIBLE ASSETS

An intangible asset is an identifiable non-monetary asset without physical substance.

An asset is identifiable if it is either:
- separable, i.e. 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, identifiable assets or liability, regardless of whether the entity intends to do so; or
- arises from binding arrangements (including rights from contracts), regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.

A binding arrangement describes an arrangement that confers similar rights and obligations on the parties to it as if it were in the form of a contract.

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.

Where an intangible asset is acquired through a non-exchange transaction, its initial cost at the date of acquisition is measured at its fair value as at that date.

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; and
- 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 software refers to our electronic case management system and a customised reporting tool. It has been estimated to have a useful life of 15 years as the system is very sustainable and does not need to be replaced before this time. Any enhancements to the system are reflected as additions to the value of the asset in the period they occur and are amortised over the remaining useful life of the asset.

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, internally generated	Between 5 and 15 years
Computer software, other	Between 5 and 15 years

The entity discloses relevant information relating to assets under construction or development, in the notes to the financial statements (see note 5).

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

The gain or loss arising from the derecognition of intangible assets is included in surplus or deficit when the asset is derecognised (unless the Standard of GRAP on leases requires otherwise on a sale and leaseback).

1.9 IMPAIRMENT OF NON-CASH GENERATING ASSETS

Non-cash generating assets are assets other than those that are primarily held for service delivery purposes i.e. assets not generating a commercial return.

Impairment is a loss in the future economic benefits or service potential of an asset, over and above the systematic recognition of the loss of the asset's future economic benefits or service potential through depreciation (amortisation).

Fair value less costs to sell is the amount obtainable from the sale of an asset in an arm's length transaction between knowledgeable, willing parties, less the costs of disposal.

Recoverable service amount is the higher of a non-cash-generating asset's fair value less costs to sell and its value in use.

Identification

When the carrying amount of a non-cash generating asset exceeds its recoverable service amount, it is impaired.

The Tribunal assesses at each reporting date whether there is any indication that a non-cash generating asset may be impaired. If any such indication exists, the Tribunal estimates the recoverable service amount of the asset.

Irrespective of whether there is any indication of impairment, the Tribunal also tests a non-cash generating intangible asset with an indefinite useful life or a non-cash generating intangible asset not yet available for use for impairment annually by comparing its carrying amount with its recoverable service amount. This impairment test is performed at the same time every year. If an intangible asset was initially recognised during the current reporting period, that intangible asset was tested for impairment before the end of the current reporting period.

Value in use

Value in use of non-cash generating assets is the present value of the non-cash-generating assets remaining service potential.

The present value of the remaining service potential of non-cash generating assets is determined using the following approach:

Depreciated replacement cost approach

The present value of the remaining service potential of a non-cash generating asset is determined as the depreciated replacement cost of the asset. The replacement cost of an asset is the cost to replace the asset's gross service potential. This cost is depreciated to reflect the asset in its used condition. An asset may be replaced either through reproduction (replication) of the existing asset or through replacement of its gross service potential. The depreciated replacement cost is measured as the reproduction or replacement cost of the asset, whichever is lower, less accumulated depreciation calculated on the basis of such cost, to reflect the already consumed or expired service potential of the asset.

Recognition and measurement

If the recoverable service amount of a non-cash generating asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable service amount. This reduction is an impairment loss.

An impairment loss is recognised immediately in surplus or deficit.

After the recognition of an impairment loss, the depreciation (amortisation) charge for the non-cash generating asset is adjusted in future periods to allocate the non-cash-generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

Reversal of an impairment loss

The Tribunal assess at each reporting date whether there is any indication that an impairment loss recognised in prior periods for a non-cash-generating asset may no longer exist or may have decreased.

If any such indication exists, the Tribunal estimates the recoverable service amount of that asset.

A reversal of an impairment loss for a non-cash-generating asset is recognised immediately in surplus or deficit.

After a reversal of an impairment loss is recognised, the depreciation (amortisation) charge for the non-cashgenerating asset is adjusted in future periods to allocate the non-cash-generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

1.10 ACCUMULATED SURPLUS

The Tribunal's surplus or deficit for the year is accounted for in the accumulated surplus in the statement of changes in net assets.

The accumulated surplus/deficit represents the net difference between total assets and total liabilities of the entity. Any surpluses and deficits realised during a specific financial year are credited/debited against accumulated surplus/deficit. Prior year adjustments relating to income and expenditure are debited/credited against accumulated surplus when retrospective adjustments are made.

1.11 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.

Leased assets

The Tribunal recognises assets acquired under finance leases as assets and the associated lease obligations as liabilities in the statement of financial position. The assets and liabilities shall be recognised at amounts equal to the fair value of the leased asset, or if lower, the present value of the minimum lease payments, each determined at the inception of the lease.

The discount rate to be used in calculating the present value of minimum lease payments is the interest rate implicit in the lease.

Minimum lease payments are apportioned between finance charges and reduction of the outstanding liability. The finance charge shall be allocated to each period so as to achieve a constant periodic rate of interest on the remaining balance of the liability.

Finance charges are charged to surplus or deficit in the statement of financial performance.

A finance lease gives rise to a depreciation expense for depreciable assets as well as finance expense for each accounting period. The depreciation policy for depreciable leased assets must be consistent with that for depreciable assets that are owned, and the depreciation recognised shall be calculated in accordance with the Standard of GRAP on Property, Plant and Equipment. Refer to note 6 for detail on finance leases.

Operating leases – lessee

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease liability. This liability is not discounted.

1.12 PROVISIONS AND CONTINGENCIES

Provisions are recognised when:
- the Tribunal has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits 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 obligation at the reporting date.

Where the effect of time value of money is material, the amount of the 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.

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 will be required to settle the obligation.

A provision is used only for expenditures for which the provision was originally recognised.

Provisions are not recognised for future operating expenditure.

A contingent liability is:
- a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or
- non-occurrence of one or more uncertain future events not wholly within the control of the entity; or
- a present obligation that arises from past events but is not recognised because:
  - *it is not probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation;and*
  - *the amount of the obligation cannot be measured with sufficient reliability.*

1.13 EMPLOYEE BENEFITS

Employee benefits are all forms of consideration given by the Tribunal in exchange for services rendered by employees.

Short-term employee benefits

Short-term employee benefits are employee benefits (other than termination benefits) that are due to be settled within twelve months after the end of the period in which the employees render the related service.

Short-term employee benefits include items such as:
- salaries and social security contributions;
- short-term compensated absences (such as paid annual leave and paid sick leave) where the compensation for the absences is due to be settled within twelve months after the end of the reporting period in which the employees render the related employee service;and
- 13th cheque and performance related payments payable within twelve months after the end of the reporting period in which the employees render the related service.

When an employee has rendered service to the Tribunal during a reporting period, the Tribunal recognises the undiscounted amount of short-term employee benefits expected to be paid in exchange for that service:
- as a liability (accrued expense), after deducting any amount already paid. If the amount already paid exceeds the undiscounted amount of the benefits, the Tribunal recognises that excess as an asset (prepaid expense) to the extent that the prepayment will lead to, for example, a reduction in future payments or a cash refund; and
- as an expense, unless another Standard requires or permits the inclusion of the benefits in the cost of an asset.

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 Tribunal measures the expected cost of accumulating compensated absences as the additional amount that the entity expects to pay as a result of the unused entitlement that has accumulated at the reporting date.

The entity recognises the expected cost of bonus, incentive and performance related payments when the Tribunal has a present legal or constructive obligation to make such payments as a result of past events and a reliable estimate of the obligation can be made. A present obligation exists when the entity has no realistic alternative but to make the payments.

1.14 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 Tribunal receives assets or services, or has liabilities extinguished, and directly give approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

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

When the outcome of a transaction involving the rendering of services can be estimated reliably, revenue associated with the transaction is recognised by reference to the stage of completion of the transaction at the reporting date. The outcome of a transaction can be estimated reliably when all the following conditions are satisfied:

- the amount of revenue can be measured reliably;
- it is probable that the economic benefits associated with the transaction will flow to the entity;
- the performance obligations are met and at reporting date can be measured reliably; and
- the costs incurred for the transaction and the costs to complete the transaction can be measured reliably.

When the outcome of the transaction involving the rendering of services cannot be estimated reliably, revenue shall be recognised only to the extent of the expenses recognised that are recoverable.

Service revenue is recognised by reference to the stage of completion of the transaction at reporting date. Stage of completion is determined by the number of cases filed at the Competition Commission.

Revenue is measured at the fair value of the consideration received or receivable and represents the amounts receivable for goods and services provided in the normal course of business.

Filing fees

In terms of a memorandum of agreement between the Commission and the Tribunal, the Tribunal receives a portion of the filing fees paid to the Commission on notification of mergers. Filing fees due to the Tribunal are recognised as receivables by the Tribunal when the papers have been filed with the Commission and the filing fees have been paid to the Commission. Any filing fees paid to the Commission for cases but not filed or those that lapse for the periods stipulated in the Competition Act are refunded by the Commission to the parties. In the event that the Tribunal had received a portion of these fees they would be reflected as payables or netted off against receivables due from the Commission.

Interest income

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

Other income

Other income is recognised on an accrual basis. Other income received by the Tribunal may include monies due/paid for photocopying of documents or insurance refunds.

1.15 REVENUE FROM NON-EXCHANGE TRANSACTIONS

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

Recognition

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

As the Tribunal satisfies a present obligation recognised as a liability in

respect of an inflow of resources from a nonexchange transaction recognised as an asset, it reduces the carrying amount of the liability recognised and recognises an amount of revenue equal to that reduction.

Government grants

Government grants are recognised in the year to which they relate, once reasonable assurance has been obtained that all conditions of the grants have been complied with ie. the submission of required reports to the parent department, the grant has been received and there is no liability to repay the amount in the event of non-performance.

Measurement

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

1.16 COMPARATIVE FIGURES

Where necessary, comparative figures have been reclassified to conform to changes in presentation in the current year.

1.17 FRUITLESS AND WASTEFUL EXPENDITURE

Fruitless and wasteful 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.

1.18 IRREGULAR EXPENDITURE

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

(a) this Act; or

(b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or

(c) any provincial legislation providing for procurement procedures in that provincial government.

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

Irregular expenditure that was incurred and identified during the current financial year and which was condoned before year end and/or before finalisation of the financial statements is recorded appropriately in the irregular expenditure register. In such an instance, no further action is 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 is 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 is 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 is 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 are thereafter 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 is updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto remains against the relevant programme/expenditure item, is disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

1.19 BUDGET INFORMATION

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

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

The approved budget covers the fiscal period from 1 April 2020 to 31 March 2021.

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.

1.20 COMMITMENTS

Items are classified as commitments when the Tribunal has committed itself to future transactions that will normally result in the outflow of cash.

1.21 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.

Only transactions with related parties not at arm's length or not in the ordinary course of business are disclosed.

1.22 EVENTS AFTER REPORTING DATE

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

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

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

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

1.23 STANDARD IN ISSUE NOT YET EFFECTIVE

Standards in issue but not yet effective, are disclosed in the financial statements as well as the impact on the financial statements in future periods. Refer to note 31.

	2021 '000	2020 '000

2. CASH AND CASH EQUIVALENTS

Cash and cash equivalents comprise cash that is held with registered banking institutions. As the interest rate risk at these institutions is deemed to be insignificant, the carrying amount of these assets approximates their fair value.

There are no restrictions on the use of cash.

Cash on hand	2	3
Bank balances	10,209	24,290
Total	10,211	24,293

The significant decrease in Cash on hand from the prior year is as a result of the transfer of accumulated cash surpluses of R14.7 million to the National Treasury during the year.

3. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Receivables	1,558	2,143

Trade receivables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice. The effect of discounting was considered and found to be immaterial since the carrying value of receivables approximates it fair value.

Figures in Rand thousand

4. PROPERTY, PLANT AND EQUIPMENT

	2021			2020		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	1,280	(663)	617	1,280	(574)	706
Motor vehicles	415	(108)	307	210	(107)	103
Office equipment	56	(41)	15	56	(34)	22
IT equipment	2,150	(1,335)	815	1,673	(1,064)	609
Photocopiers (Leased)	586	(408)	178	586	(213)	373
Total	**4,487**	**(2,555)**	**1,932**	**3,805**	**(1,992)**	**1,813**

Figures in Rand thousand

4. PROPERTY, PLANT AND EQUIPMENT (continued)

Reconciliation of property, plant and equipment - 2020/2021

	Opening balance	Additions	Depreciation	Total
Furniture and fixtures	706	-	(89)	617
Motor vehicles	103	205	(1)	307
Office equipment	22	-	(7)	15
IT equipment	609	478	(272)	815
Photocopiers (Leased)	373	-	(195)	178
	1,813	**683**	**(564)**	**1,932**

Reconciliation of property, plant and equipment - 2019/2020

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	677	119	(1)	(89)	706
Motor vehicles	104	-	-	(1)	103
Office equipment	31	-	-	(9)	22
IT equipment	658	249	(18)	(280)	609
Photocopiers (Leased)	365	200	-	(192)	373
	1,835	**568**	**(19)**	**(571)**	**1,813**

Pledged as security and contractual commitments

During the financial year, there was no property, plant or equipment pledged as security.

The Tribunal has not entered into any contractual commitments to acquire new property, plant and equipment.

Assets subject to finance lease (Net carrying amount)

Leased assets	178	373

Figures in Rand thousand

5. INTANGIBLE ASSETS

	2021			2020		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Computer software, internally generated	4,713	(2,456)	2,257	4,483	(2,137)	2,346
Computer software, acquired	882	(382)	500	790	(301)	489
Total	**5,595**	**(2,838)**	**2,757**	**5,273**	**(2,438)**	**2,835**

Reconciliation of intangible assets - 2020/2021

	Opening balance	Additions	Amortisation	Total
Computer software, internally generated	2,346	230	(319)	2,257
Computer software, acquired	489	92	(81)	500
	2,835	**322**	**(400)**	**2,757**

Reconciliation of intangible assets - 2019/2020

	Opening balance	Additions	Amortisation	Total
Computer software, internally generated	2,447	185	(286)	2,346
Computer software, acquired	508	57	(76)	489
	2,955	**242**	**(362)**	**2,835**

Pledged as security and contractual commitments

During the financial year, there was no intangible assets pledged as security.

The Tribunal has not entered into any contractual commitments to acquire new intangible assets.

	2021 '000	2020 '000

6. FINANCE LEASE OBLIGATION

Minimum lease payments due		
- within one year	177	226
- in second to third year inclusive	26	203
	203	429
less: future finance charges	(11)	(42)
Present value of minimum lease payments	**192**	**387**
Present value of minimum lease payments due		
- within one year	25	195
- in second to third year inclusive	167	192
	192	**387**
Non-current liabilities	25	192
Current liabilities	167	195
	192	**387**

The Tribunal is leasing photocopiers under three finance leases. There are no restrictions imposed on the Tribunal in terms of the leases. There are no escalation clauses reflected in the lease agreements. The obligation under the finance leases are secured by the lessor's title to the leased assets. The leases can be extended for a further period after the initial period has expired. The average lease period is 3 years and the average effective borrowing rate used is 10.33% per annum. The effect of the change in interest rates were considered and the impact was immaterial therefore no adjustments were made.

7. PAYABLES FROM EXCHANGE TRANSACTIONS

Creditors	573	423
Accrued performance bonus	-	891
Other accruals	593	591
	1,166	**1,905**

Trade payables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice. The effect of discounting was considered and found to be immaterial since the carrying value of trade and other creditors approximates its fair value.

During the period under review there were no breaches of contracts or agreements held with the Tribunal and it was not necessary to negotiate any new terms with suppliers.

	2021 '000	2020 '000

8. PROVISIONS

Reconciliation of provisions - 2020/2021

	Opening balance	Additions	Utilised during the year	Reversed during the year	Total
Leave provision	893	1,671	(205)	(688)	1,671

Reconciliation of provisions - 2019/2020

	Opening balance	Additions	Utilised during the year	Reversed during the year	Total
Leave provision	926	893	(516)	(410)	893

The leave provision is calculated based on the leave due and daily salary paid to an employee as at the end of the financial year. This leave is paid out if and when an employee leaves the entity. The uncertainty with regard to the provision is that we have no indication as to whether an employee will or when they will leave the entity. In addition this leave may be used or may continue to accumulate during the next financial year. The leave policy allows for leave to be taken for a further 6 months after a 12 month cycle. If the accumulated leave is not taken, the leave is forfeited.

9. OPERATING LEASE LIABILITY

Non-current liability	-	1,693
Current liability	(1,157)	(536)
	(1,157)	**1,157**

The Tribunal entered into a 5 year lease agreement for building occupation on the DTI Campus which commenced on 1 April 2017 and terminates on 31 March 2022. The monthly payment escalates by 10% annually.

Minimum Lease payments due

- within one year	6,830	6,210
- second to fifth year inclusive	-	6,830
	6,830	**13,040**

10. FEES EARNED

Filing fees earned from cases registered	13,208	15,279

	2021 '000	2020 '000
11. INTEREST INCOME		
Interest revenue		
- Bank deposits	1,010	1,369
12. NET GAIN/(LOSS) ON DISPOSAL OF ASSETS		
Loss on disposal of property, plant and equipment	-	(19)
13. GOVERNMENT GRANT AND SUBSIDIES		
Department of Trade, Industry and Competition	32,342	36,172
14. PERSONNEL COSTS		
Basic salaries	16,162	15,016
Performance bonus and service awards	4	857
Medical aid - company contributions	893	844
Statutory contributions	154	215
Insurance	306	239
Other salary related costs	149	161
Defined contribution pension plan expense (see Note 20)	1,168	1,108
Executive management	11,420	12,074
	30,256	**30,514**
15. DEPRECIATION AND AMORTISATION		
Depreciation		
Furniture and fixtures	89	89
Motor vehicles	1	1
Office equipment	7	9
IT Equipment	272	280
Photocopiers(Leased)	195	192
Amortisation		
Computer Software	399	362
	963	**933**
16. FINANCE COSTS		
Finance lease	30	45

	2021 '000	2020 '000
17. ADMINISTRATIVE EXPENSES		
Audit Committee members' fees	209	215
Risk committee members' fees	54	142
Fraud prevention committee members' fees	7	24
Audit Committee training	-	68
Audit Committee meeting expenses	2	32
General expenses	395	949
External audit fees	967	882
Internal audit fees	449	435
Travel and subsistence	69	448
Building occupation	5,674	5,674
IT Expenses	1,855	1,809
COVID-19 expenses	84	18
	9,765	**10,696**
18. OTHER OPERATING EXPENSES		
Consultants, contractors and special services	1,581	2,596
Staff training and development	120	1,099
Fees paid to part-time Tribunal members	2,537	2,626
Legal fees	2	33
Software under development	-	40
Maintenance, repairs and running costs	136	86
Total	**4,376**	**6,480**
19. CASH GENERATED FROM OPERATIONS		
Surplus	1,170	4,148
Adjustments for:		
Depreciation and amortisation	963	933
Loss on disposal of assets	-	19
Movements in operating lease liability	(536)	29
Movements in provisions	778	(33)
Changes in working capital:		
Inventories	1	30
Receivables from exchange transactions	585	(279)
Prepayments	(405)	2
Payables from exchange transactions	(739)	136
	1,817	**4,985**

	2021 '000	2020 '000

20. EMPLOYEE BENEFIT OBLIGATIONS

Defined contribution plan

The Competition Tribunal Pension Fund, which is governed by the Pensions Fund Act of 1956 as amended, is a compulsory defined contribution plan for all employees in the Tribunal. The fund is administered by Sanlam Retirement Fund Administrators. The Tribunal is a participating employer on the Sanlam Umbrella Fund. The scheme offers the members various investment options for their pension fund contributions. As an insured fund, the Sanlam Umbrella Fund and thus the Competition Tribunal as participating employer, complies with regulation 28 of the Pension Fund Act of 1956. (see Note 14).

21. INCOME TAX EXEMPTION

The Tribunal is currently exempt from Income Tax in terms of section 10 (1) (a) of the Income Tax Act, 1962.

22. FINANCIAL RISK MANAGEMENT

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

Credit risk

The Tribunal trades only with recognised, creditworthy third parties. It is the Tribunal's policy that all customers who wish to trade on credit terms are subject to credit verification procedures. In addition, receivables balances are monitored on an ongoing basis with the result that the Tribunal'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 Tribunal.

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

Exposure to credit risk

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

Cash equivalents	10,209	24,290
Receivables	1,558	2,143
Total	**11,767**	**26,433**

	2021 '000	2020 '000

22. FINANCIAL RISK MANAGEMENT (continued)

Concentration of credit risk

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

The Tribunal's cash is either held in an ABSA current account or invested with the Corporation for Public Deposits.

2020/2021	Rated and government	Unrated
	'000	'000
Cash equivalents	10,209	-

2019/2020	Rated and government	Unrated
	'000	'000
Cash equivalents	24,290	-

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

2020/2021	Neither past due nor impaired	Past due but not impaired - less than 2 months	Carrying value
	'000	'000	'000
Cash equivalents	10,209	-	10,209
Receivables	1,558	-	1,558

2019/2020	Neither past due nor impaired	Past due but not impaired - less than 2 months	Carrying value
	'000	'000	'000
Cash equivalents	24,290	-	24,290
Receivables	2,143	-	2,143

	2021 '000	2020 '000

22. FINANCIAL RISK MANAGEMENT (continued)

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 Tribunal.

Interest rate risk

The Tribunal 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 Tribunal's exposure to interest risk is managed by investing surplus funds in the Corporation for Public Deposits as the interest rate is favourable and still allows easy access to funds both in terms of movement from and movement to.

The change in net surplus of a 1% change in interest is based on year end exposure.

Sensitivity Analysis

		Increase/(decrease) in net surplus for the year	
2020/2021	Change in Investments	Upward change	Downward change
Cash equivalents	1.00%	102	(102)
2019/2020			
Cash equivalents	1.00%	243	(243)

Liquidity risk

Liquidity risk is the risk that the Tribunal would not have sufficient funds available to cover future commitments. The Tribunal regards this risk to be low; taking into consideration the Tribunal's current funding structures and availability of cash resources.

	2021 '000	2020 '000

22. FINANCIAL RISK MANAGEMENT (continued)

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

2020/2021	Carrying amount '000	Total cash flow '000	Contractual cash flow within 1 year '000	Contractual cash flow between 1 and 5 years '000
Finance lease obligation	192	192	167	25
Payable from exchange transactions	1,166	1,166	1,166	-

2019/2020	Carrying amount '000	Total cash flow '000	Contractual cash flow within 1 year '000	Contractual cash flow between 1 and 5 years '000
Finance lease obligation	387	387	195	192
Payable from exchange transactions	1,905	1,905	1,905	-

Financial Instruments

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

Financial Instrument			
Cash equivalents	Financial asset measured at fair value	10,209	24,290
Trade debtors	Financial asset measured at fair value	1,558	2,143
Payables from exchange transactions	Financial liabilities measured at fair value	1,166	1,905

The accounting policies for financial instruments have been applied to the items above.

23. COMPARATIVE FIGURES

There were no adjustments to the prior year figures.

24. FRUITLESS AND WASTEFUL EXPENDITURE

The Tribunal has not incurred fruitless and wasteful expenditure in the current and prior year.

25. IRREGULAR EXPENDITURE

Opening balance as previously reported	33	10
	33	**10**
Add: Irregular Expenditure - current	-	33
Less: Amounts not recoverable and condoned	(33)	(10)
Amounts awaiting condonation	**-**	**33**

The Tribunal has not incurred irregular expenditure in the current year.

	2021 '000	2020 '000

26. RELATED PARTIES

Related party	Relationship
The Competition Commission	Public entity in the National Sphere
Industrial Development Corporation	Public entity in the National Sphere
International Trade Administration Commission	Public entity in the National Sphere
The Department of Trade, Industry and Competition	National Department in the National Sphere
Members of key management	Management committee members

Related party balances

Amounts included in trade payables regarding related parties		
The Department of Trade, Industry and Competition	-	2
Amounts included in trade receivables regarding related parties		
Refund on administrative costs due from the Commission	-	97
Filing fees due from the Commission	1,516	1,930

Related party transactions

The Competition Commission		
Filing fees	13,208	15,279
Facility fees	(728)	(737)
Administrative costs	-	61
The Department of Trade, Industry and Competition		
Unitary payments	(6,209)	(5,645)
Administrative costs	(3)	(29)
The Department of Trade, Industry and Competition		
Government grant	32,342	36,172

Figures in Rand thousand

26. RELATED PARTIES (continued)

Remuneration of executive management

2020/2021

	Package	Statutory benefits	Other salary related benefits	Total
Full-time member/Chairperson: M Mazwai	2,443	16	68	2,527
Full-time member/Deputy Chairperson: E Daniels	2,276	15	33	2,324
Full-time member: Y Carrim	2,276	15	65	2,356
Full-time member: A Wessels	2,136	14	62	2,212
Chief Operating Officer: J de Klerk(resigned July 2020)	579	5	17	601
Chief Operating Officer: O Josie (appointed September 2020)	1,352	12	36	1,400
	11,062	**77**	**281**	**11,420**

2019/2020

	Package	Bonuses and performance related payments	Leave payout	Statutory benefits	Other salary related benefits	Total
Full-time member/Chairperson: M Mazwai	1,986	-	-	19	59	2,064
Full-time member/Chairperson: N Manoim	862	-	146	10	21	1,039
Full-time member/Deputy Chairperson: E Daniels	2,254	-	-	21	33	2,308
Full-time member: Y Carrim	2,254	-	87	23	63	2,427
Full-time member: A Wessels	2,103	-	162	22	60	2,347
Chief Operating Officer: J de Klerk	1,723	94	-	19	53	1,889
	11,182	**94**	**395**	**114**	**289**	**12,074**

	2021 '000	2020 '000

27. CONTINGENT LIABILITIES

In terms of Section 53(3) of the PFMA, a public entity may not accumulate surplus funds without approval from the National Treasury. Approval will be requested from the National Treasury to retain estimated cash surpluses amounting to R10.4 million to fund deficits in the future financial years. As approval has not yet been granted, this is reflected as a contingent liability.

28. CHANGE IN ESTIMATE

Property, plant and equipment

In the current period, management has extended the estimate of the useful life of IT equipment with the intention of containing costs at the Tribunal. Further to this, there were a few other assets that could be used for a longer period and therefore the useful life was extended. The effect of this revision has decreased the depreciation charges for the current year by an insignificant amount.

29. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE

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

(Deficit)/surplus per the statement of financial performance	1,170	4,148
Adjusted for:		
Other income	-	(15)
Gain on the sale of assets	-	19
Transfer from retained income	8,207	5,306
Adjustments for items reflected as capital expenditure on budget:		
Leased equipment	(224)	(161)
Capital expenditure	(995)	(1,832)
Income under/(in excess of) budget:		
Filing fees from the Competition Commission	(3473)	4220
Interest received	(50)	(690)
Over/(under) expenditure on budget:		
Personnel	(1,795)	(5,329)
Part-time Tribunal member fees	67	(1,880)
Local training	60	(343)
Overseas training	(105)	(404)
Professional fees	(1,125)	(905)
Recording and transcription services	(708)	(565)
Recruitment costs	(157)	(117)
Administrative expenses	(314)	(483)
Facilities and capital	(14)	(355)
Competition Appeal Court	(210)	(384)
Other IT expenses	(334)	(230)
Net (deficit)/surplus per approved budget	**-**	**-**

	2021 '000	2020 '000

30. COMMITMENTS

Total commitments

There are no commitments apart from those relating to signed contracts with service providers.

31. NEW STANDARDS AND INTERPRETATIONS

31.1 STANDARDS AND INTERPRETATIONS ISSUED, BUT NOT YET EFFECTIVE

The entity has not applied the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after 01 April 2021 or later periods:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
• GRAP 104 (amended): Financial Instruments	01 April 2021	Unlikely there will be a material impact

P A R T 7

A P P E N D I C E S

Appendix A: Annual Performance Information Report

Appendix B: Abbreviations

	ANNUAL	QUARTER 1	QUARTER 2	QUARTER 3	QUARTER 4	YEAR TO DATE	REASON FOR DEVIATIONS
TOTAL OUTCOME BUDGET	R 25 385 817	R 6 554 955	R 6 554 955	R 5 932 867	R 6 343 040	R 25 385 817	As result of the COVID-19 pandemic, the Tribunal staff are working remotely and therefore savings on some expenditure exists.
TOTAL OUTCOME EXPENDITURE	R 22 977 313	R 5 694 929	R 5 766 016	R 5 304 785	R 6 211 583	R 22 977 313	

1. Effective Case Management Procedures to Ensure Hearings Set Down Within Legislated Timeframes

Output budget	**R11 921 579**	**R2 980 395**	**R2 980 395**	**R2 980 395**	**R2 980 394**	**R11 921 579**
Output expenditure	**R10 082 524**	**R2 146 351**	**R2 114 220**	**R2 225 729**	**R3 596 223**	**R10 082 524**

OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
% of large mergers set down for the beginning of a hearing or a pre-hearing, within 10 business days of filing of the merger referral.	75%	88%	75%	100%	75%	100%	75%	100%	75%	91%	97%	The target has been exceeded for the for the year. 65 of the 67 matters were set down within 10 business days. No corrective action is required
% of intermediate and small merger considerations to be set down for the beginning of a hearing or a pre-hearing within 10 business days of the receipt of the Request for Consideration.	65%	0%	65%	No matters were set down	65%	No matters were set down	65%	0%	65%	No matters were set down	0%	Target was not met for the year. It was difficult to set the matter down as there was no record received from the Commission. In future, a pre-hearing will be set down irrespective of whether or not a record has been filed.
% of matters classified as complex or very complex where a pre-meeting is held by the panel members and case managers prior to the first scheduled hearing.	70%	New indicator	70%	100%	70%	No hearings	70%	No hearings	70%	100%	100%	The target has been exceeded for the year. No corrective action is required
% of matters classified as complex or very complex where a post-meeting is held by the panel members and case managers after the hearing is concluded.	80%	New indicator	80%	100%	80%	No hearings	80%	No hearings	80%	100%	100%	The target has been exceeded for the year. No corrective action is required

2. Effective and Timeous Issuing of Orders, and Reasons

Output budget	**R13 464 238**		**R3 574 560**		**R3 574 560**		**R2 952 472**		**R3 362 646**		**R13 464 238**	
Output expenditure	**R12 894 789**		**R3 548 578**		**R3 651 796**		**R3 079 055**		**R2 615 360**		**R12 894 789**	
OUTPUT INDICATOR	**ANNUAL AND QUARTER TARGET**	**PRIOR YEAR ANNUAL ACTUAL**	**TARGET Q1**	**ACTUAL Q1**	**TARGET Q2**	**ACTUAL Q2**	**TARGET Q3**	**ACTUAL Q3**	**TARGET Q4**	**ACTUAL Q4**	**ANNUAL ACTUAL YEAR TO DATE**	**EXPLANATIONS FOR DEVIATIONS**
% of large merger orders issued to parties within 10 business days of last hearing date (See 1 of Definitions and rules).	95%	100%	95%	100%	95%	100%	95%	100%	95%	100%	100%	The target has been exceeded for the year. All 66 matters decided were decided within 10 business days. No corrective action is required
% of large merger reasons issued to parties within 20 business days of order being issued.	65%	71%	65%	82%	65%	60%	65%	59%	65%	79%	72%	The target was exceeeded for the year. 52 of the 72 of the reasons were issued within 20 business days. No corrective action is required
% of orders for intermediate and small merger reconsideration issued to parties within 10 business days of last hearing date. (See 1 of Definitions and rules).	80%	50%	80%	No order issued	80%	100%	80%	100%	80%	No order issued	100%	The target has been exceeded for the year. There were two orders issued within 10 business days. No corrective action required
% of reasons for intermediate and small merger reconsiderations reasons issued to parties within 20 business days of the order being issued.	65%	25%	65%	No reasons issued	65%	No reasons issued	65%	No reasons issued	65%	No reasons issued	No reasons issued	Target cannot be measured for the year to date as there were no reasons issued. No corrective action required
Reasons for prohibited practices cases (see 2 of Definitions and rules) classified as simple (see 3 of Definitions and rules) are issued to parties within 100 business days of the last hearing date.	80%	No reasons issued	80%	No reasons issued	80%	No reasons issued	80%	No reasons issued	80%	No reasons issued	No reasons issued	Target cannot be measured for the quarter or the year to date as there were no reasons issued. No corrective action required

2. Effective and Timeous Issuing of Orders, and Reasons (continued)

OUTPUT INDICATOR	ANNUAL AND QUARTER TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
Reasons for prohibited practices cases classfied as complex (see 3 of Definitions and rules) are issued to parties within 125 business days of the last hearing date.	80%	33%	80%	0%	80%	0%	80%	0%	80%	No reasons issued	0%	Target not met for the year. All the four reasons issued were late by 33, 136 and 216 (x2) day. Complex matters which require lots of analysis of evidence. The cases were among those awaiting drafting during the high influx of COVID-19 cases. The Tribunal has engaged **the dtic** to secure more Tribunal members to address the issue of Tribunal Member capacity.
Reasons for prohibited practices cases classified as very complex (see 3 of Definitions and rules) are issued to parties within 150 business days of the last hearing date.	80%	0%	80%	100%	80%	100%	80%	No reasons issued	80%	0%	67%	Target not met for the year. One out of the three reasons issued was late by 313 days The delay was occasioned by staffing changes and postponements brought on by proritising of COVID-19 cases. The Tribunal has engaged **the dtic** to secure more Tribunal members to address the issue of Tribunal Member capacity.
% of procedural matter (see 3 of Definitions and rules) orders issued to parties within 45 business days of last hearing date.	65%	55%	65%	75%	65%	100%	65%	100%	65%	100%	90%	The target has been exceeded for the year. 20 of the 22 orders issued were issued within 45 business days. No corrective action required.
% of orders for consent orders and settlement agreements issued to parties within 10 business days of last hearing date.	80%	96%	80%	100%	80%	97%	80%	33%	80%	100%	92%	The target has been exceeded for the year. 59 of the 64 orders issued were issued within 10 business days. No corrective action required.
% of interim relief reasons issued to parties within 20 business days of last hearing date.	65%	0%	65%	No reasons issued	65%	No reasons issued	65%	No reasons issued	65%	0%	0%	Target not met for the year. Reasons were issued in two matters and it was out of time because of capacity issues and complexity of matters. The reasons were out by 17 and 40 days.

		QUARTER 1	QUARTER 2	QUARTER 3	QUARTER 4	YEAR TO DATE	REASON FOR DEVIATIONS
CURRENT BUDGET	R 12 750 999	R 3 509 374	R 3 470 440	R 2 646 824	R 3 124 361	R 12 750 999	As result of the COVID-19 pandemic, the Tribunal staff are working remotely and therefore savings on some expenditure exists.
ACTUAL EXPENDITURE	R 12 029 962	R 3 502 057	R 3 012 465	R 2 616 866	R 2 898 573	R 12 029 962	

3. Effective Communication and Information Sharing

Output budget	**R1 334 596**	**R588 240**	**R54 690**	**R321 465**	**R370 202**	**R1 334 596**
Output expenditure	**R1 145 562**	**R543 244**	**R34 853**	**R284 411**	**R283 054**	**R1 145 562**

OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
% of press releases of final merger decisions communicated within two business days of order date.	95%	97%	95%	100%	95%	100%	95%	100%	95%	70%	90%	Press releases were issued for all final merger decisons for the year. However, some were issued outside of two business days due to case management having to finalise confidentiality first. Press releases can only be issued after confidentiality has been finalised. Therefore the target was partially met.
% of press releases of final prohibited practice decisions communicated within two business days of order date.	90%	60%	90%	100%	90%	100%	90%	0%	90%	0%	71%	Press releases were issued for all final decisions on prohibited practice decisions for the year. However, some were issued outside of two business days due to confidentiality still having to be finalised. This target was therefore partially met.
Annual publication (update) of jurisprudence handbook	Handbook updated and published	New indicator	Handbook updated and published in Quarter 1 on Tribunal website								Handbook updated and published on Tribunal website	Target met.

4&5. Effective Business Processes (4. Integrated Knowledge Management and 5. Effective Records Management)

Output budget	**R3 734 681**		**R805 530**		**R1 278 675**		**R685 265**		**R965 211**		**R3 734 681**	
Output expenditure	**R3 351 487**		**R881 226**		**R1 164 229**		**R709 200**		**R596 831**		**R3 351 487**	

OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
Approved electronic records management policy and filing system. Approved file plan and system implemented according to project plan milestones.	Policy and file plan approved. Draft project plan implemented	New indicator	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		Draft project plan approved	n/a	n/a	No target set for the year

6. Sound Governance

Output budget	**R3 715 930**		**R1 164 580**		**R1 105 206**		**R689 071**		**R757 073**		**R3 715 930**	
Output expenditure	**R3 448 428**		**R1 142 955**		**R796 989**		**R668 398**		**R840 085**		**R3 448 428**	

OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
Percentage of prior financial year audit (internal and external) findings resolved by the end of the current financial year	100%	New indicator	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		100%	100%	100%	Target met.
At least one meeting held annually to inform the Tribunal employees of stated APP performance targets and to assess performance against these targets and implement corrective action or revise targets as required	One meeting	New indicator	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		One meeting	One meeting	One meeting	Target met.

6. Sound Governance (continued)

OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
Not more than one finding by the Auditor-General at year end that indicates that the Tribunal does not have effective oversight structures or corporate governance structures in place	One finding	No findings	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		One finding	No finding	No finding	Target met.

7. Effective Financial Management

Output budget	**R3 013 100**		**R753 273**		**R753 273**		**R753 273**		**R753 281**		**R3 013 100**	
Output expenditure	**R3 156 680**		**R721 349**		**R741 320**		**R758 977**		**R935 034**		**R3 156 680**	

OUTPUT INDICATOR	ANNUAL TARGET	PRIOR YEAR ANNUAL ACTUAL	TARGET Q1	ACTUAL Q1	TARGET Q2	ACTUAL Q2	TARGET Q3	ACTUAL Q3	TARGET Q4	ACTUAL Q4	ANNUAL ACTUAL YEAR TO DATE	EXPLANATIONS FOR DEVIATIONS
Percentage variance on expenditure against budget	-10%	New indicator	-40%	-13%	-30%	-10%	-20%	-12%	-10%	-9%	-9%	Target met.
No findings of fruitless & wasteful expenditure reported on in the final audited financial statements.	No findings	No findings	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		No findings	No findings	No findings	Target met.
No findings of irregular expenditure reported on in the final audited financial statements.	No findings	No findngs	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		No findings	1 finding - not material	1 finding - not material	Target not met - Deviation process not followed timeously 2019/2020 audit - immaterial amount
No material misstatements in AFS submitted to National Treasury at 31 May.	None	No findings	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		None	None	None	Target met.

8. Capacity Development, Retention and Training

Output budget	**R952 692**		**R197 751**		**R278 596**		**R197 751**		**R278 594**		**R952 692**	
Output expenditure	**R927 805**		**R213 282**		**R275 074**		**R195 880**		**R243 569**		**R927 805**	

OUTPUT INDICATOR	**ANNUAL TARGET**	**PRIOR YEAR ANNUAL ACTUAL**	**TARGET Q1**	**ACTUAL Q1**	**TARGET Q2**	**ACTUAL Q2**	**TARGET Q3**	**ACTUAL Q3**	**TARGET Q4**	**ACTUAL Q4**	**ANNUAL ACTUAL YEAR TO DATE**	**EXPLANATIONS FOR DEVIATIONS**
Average employee performance evaluation score (see 7 of Definitions and business rules)	3,50	3,50	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		3,5	3,7	3,70	Target met.
Percentage vacancy rate (see 8 of Definitions and business rules)	7%	4%	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		7%	9,09%	4%	Target met.
Percentage staff turnover (see 9 of Definitions and business rules)	20%	4%	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		20,0%	13,64%	12%	Target met.
At a minimum at least one representative sent annually to an OECD competition forum and at least one representative to the annual ICN conference	1 person per conference/ forum/per year	Achieved	No target set in quarter 1		No target set in quarter 2		No target set in quarter 3		1 person per forum per conference	Not Achieved	Not Achieved	Target not met due to COVID-19
"Facilitate an annual capacity building workshop for case manager and Tribunal members."	No target set for the year as a result of COVID-19	New indicator	No target set for the year		No target set for the year		No target set for the year		No target set for the year		No target set for the year	Due to COVID-19
Number of long-term case management interns appointed.	2	2	2	2	0	0	0	0	0	0	2	Target met.

DEFINITIONS AND BUSINESS RULES

NOTE	ITEM	EXPLANATION
1	Hearing Date	A business rule has been established where "hearing date" can refer to any one of the following: actual hearing, telephonic hearing, paper hearing (date on which required documents are submitted – currently referred to as "last submission date")
2	Reasons in prohibited practice cases	In exceptional cases an order may be issued before reasons but in most instances orders and reasons are issued simultaneously and therefore reasons date is taken as the indicator
3	Simple/Complx/ Very Complex Matters	Throughout the document we refer to matters as Simple matter, Complex matter or Very Complex matter. Factors that determine the complexity of a matter include but are not limited to length of case, size of the record and complexity of legal argument. The complexity is determined by the Head of Case Management at the beginning of the hearing.
4	Prohibited Practices - 100%	The target is binary in that it is either 0% or 100% for e.g. if one out of one set of reasons is not issued within the timeframe then the target is not achieved. The threeyear target is set at 100% as stricter monitoring processes are followed.
5	Procedural matters	While we refer to procedural matters they include interlocutory applications.
6	Percentage expenditure against budget	While this is a new indicator we do have the information to reflect prior performance and therefore determine a target based on prior performance
7	Average employee performance evaluation score	These three targets are measured annually and there is therefore no target set for the first three quarters of the year
8	Percentage vacancy rate	The targets reflected are based on prior period figures as well as an estimation of how many vacancies the Tribunal can accommodate for a short period of time
9	Percentage staff turnover	The targets reflected are based on prior period figures as well as an estimation of what level of turnover the Tribunal can accommodate for a short period of time

ABBREVIATIONS

The Act	Competition Act of 1998 (Act 89 of 1998)
APP	Annual Performance Plan
B-BBEE	Broad-based black economic empowerment
CAC	Competition Appeal Court
CMS	Case management system
Consumer Regulations	Consumer and Customer Protection and National Disaster Management Regulations and Directions
COVID-19	Coronavirus disease
the dtic	The Department of Trade, Industry and Competition
ESOP	Employee share ownership program
FPC	Fraud Prevention Committee
FPP	Fraud Prevention Plan
GRMI	Grocery Retail Market Inquiry
HDIs	Historically disadvantaged individuals
HDPs	Historically disadvantaged persons
KPIs	Key performance indicators
KRIs	Key risk indicators
The Minister	The Minister of Trade, Industry and Competition
OHS Act	Occupational Health and Safety Act 85 of 1993
OPCOM	Operations Committee
PFMA	Public Finance Management Act 1 of 1999
PPEs	Personal protective equipment
SMMEs	Small, medium and micro enterprises

2020/2021 CASE HIGHLIGHTS

**This is not an exhaustive list of matters considered by the Tribunal during the reporting period. It merely highlights a few cases in relation to the categories listed below.*

LEVELLING THE PLAYING FIELD

South Africa's economy has historic and persistently high levels of concentration and barriers to entry. We adjudicate with a view to stimulating competitive, inclusive and equitable market practices. Diversifying the economy through a greater spread of ownership as well as encouraging access to markets are crucial considerations for the Tribunal.

Tackling barriers to entry, concentration, access to markets and security of supply

In the ***IRL and Mapochs Mine*** merger, IRL confirmed its willingness to sell the ore of the Mapochs Mine to local beneficiators i.e., Highveld or any future new entrants. An Ore Supply Agreement would be entered into and concluded with Highveld as a requirement for the approval of the merger. Among others, the agreement would provide for guaranteed minimum volumes of ore to be supplied to Highveld, at a competitive price, as and when the mine became operational again. The conditions also catered for the potential scenario where other domestic beneficiators of the ore enter the market. They would be supplied with ore on fair and reasonable terms after the volume commitments in terms of the Ore Supply Agreement had been met. IRL would afford local beneficiators a right of first refusal to acquire ore from the Mapochs Mine and ensure that they were afforded reasonable and sufficient opportunity to access the ore and/or output of the Mapochs Mine.

The Tribunal approved the merger whereby ***Alstom Société Anonyme*** would acquire ***Bombardier Transportation (Investment) UK Limited***. The conditions imposed on this international transaction relate to security of supply of particular locomotive signaling systems and related spare parts as well as repair and maintenance support in South Africa post-merger. The merger parties committed to make these available for the duration of the life cycle of the products in question.

Rooibos Limited, accused of pressuring rooibos tea commercial farmers not to deal with rooibos tea processors it competes with, undertook that it would not enter into any long-term supply agreements that restrict or prevent producers from supplying rooibos tea to its competitors. The tea processor also undertook that its long-term supply agreements with producers would not be of a duration of more than five years. This formed part of a settlement agreement which was confirmed as an order of the Tribunal. In addition to the abovementioned undertakings, Rooibos would not be able to restrict access to completed production research it contracted or commissioned. It would publish such on its website without any restrictions or conditions. This type of research, relating to the production and harvesting of rooibos, could include clinical trials and studies. However, it specifically excluded business and trade secrets, own research, technical experience and advice.

The Tribunal approved the merger whereby ***Shiselweni Forestry Company*** acquired the businesses being conducted by ***Peak Timber*** and ***Peak Forest Products*** as going concerns. The Tribunal approved the transaction subject to various conditions to secure supply for existing customers of the target firms. The conditions related to the following markets: mining timber (not sawn and untreated; and final product); untreated transmission poles; untreated building and fencing poles; treated building and fencing poles; pulp logs; and saw logs.

CREATING JUDICIAL CERTAINTY

Market participants in South Africa have faced challenging economic conditions for some time and rely on the competition authorities for legal certainty. We strive to provide legal certainty in the adjudicative process and in the substance of the decisions we issue. We provide certainty for firms and seek to promote investment both locally and internationally through legislative fairness and consistency.

Playing fair

The Tribunal dismissed several cartel cases brought by the Commission against respondents, due to a lack of evidence. These are discussed in detail in Part X of this report. While the Tribunal regards cartel conduct as the most egregious of competition law violations, the dismissal of such cases speaks to the Tribunal's independence, legislative fairness and objectivity as an adjudicative body.

REPARATION

Reparation serves to remedy the damage or harm caused and can also serve to achieve social justice. We impose remedies requiring firms, for example, to pay administrative penalties. At times we also require firms to contribute to a development fund over and above the penalty imposed. This is in relation to some prohibited practices where the conduct is considered to have a serious impact on the economy.

Administrative penalties and other remedies

The Tribunal confirmed various consent/settlement agreements relating to COVID-19 excessive pricing complaints. These are listed in detail on Page XX of this report. Firms accused of charging excessive prices for essential goods, such as sanitisers and face masks, paid penalties and/or agreed to donate money to the Solidarity Fund and/or donated essential goods to charity organisations. Firms also agreed to immediately stop excessive pricing practices and to reduce the high mark-ups of the essential goods to an agreed maximum percentage for the duration of the state of national disaster.

Page XX contains a full list of all consent/settlement agreements confirmed by the Tribunal during the reporting period.

INNOVATION

Innovation in a business context refers to improving processes, services or products. We view the impact on innovation as an important factor when considering both mergers and prohibited practice complaints. The concept of innovation also applies to the Tribunal's application of the amendments to the Act and the development of legal precedent in relation to competition law. Precedent in the context of the amendments is an important element in the strengthening of legal certainty.

Innovation in the context of the amendments

The amendments to the Act enhance the market inquiry process in order to analyse and address structural problems in a market. One of the most significant consent agreements confirmed by the Tribunal during the reporting period resulted from a market inquiry on high data prices and affordability, initiated by the Commission in 2017. In terms of its settlement with the Commission, ***MTN*** agreed to reduce data prices. In the previous reporting period ***Vodacom***, which also settled with the Commission, agreed to reduce headline bundle prices within the 30-day data bundle portfolio across all channels, among others.

In relation to the Grocery Retail Market Inquiry (GRMI), the Tribunal confirmed a consent agreement between the Commission and ***Shoprite Checkers*** whereby the retailer agreed to immediately stop enforcing exclusivity provisions in its long-term exclusive lease agreements. The GRMI report found, among others, that long-term exclusive lease agreements were widely prevalent and impeded competition in the grocery retail sector.

The Tribunal also heard submissions relating to a consent agreement between the Commission and ***Pick 'n Pay*** in respect of the GRMI recommendations concerning long-term exclusive lease agreements. In terms of the consent agreement, supermarkets privately owned and controlled by historically disadvantaged persons ("HDP Supermarkets") would immediately be able to access letting space in all shopping centres where a Pick 'n Pay store has exclusivity provisions in its lease agreement. The Tribunal confirmed the consent agreement on 14 June 2021.

A common feature between the Pick 'n Pay and Shoprite consent agreements was that they both contained undertakings to, with immediate effect, cease enforcing exclusivity provisions against SMMEs and specialty and limited line stores. The Pick 'n Pay consent agreement was, however, distinguishable from that of Shoprite in that Pick 'n Pay adopted an approach of waiving exclusivity insofar as it related to HDP privately owned supermarkets. Instead of the HDP Supermarket provisions, the Shoprite undertakings related to not enforcing exclusivity provisions against any other supermarket in shopping centres located in non-urban areas. These areas include peri-urban areas (locations adjoining an urban area between suburbs and the countryside); townships (less formal and underdeveloped urban areas that were set aside during the period of apartheid for black population groups); and rural areas (areas located outside towns and cities and without access to ordinary public services such as water and sanitation, especially areas of predominant agricultural production).

PROTECTING THE PUBLIC INTEREST

It is in the public interest that South Africa has an inclusive, vibrant and competitive economy. We are mandated through the Act to consider the effects of mergers on employment and small businesses. We also consider worker participation in firms and the interests of firms controlled or owned by historically disadvantaged persons (HDPs).

Promoting and protecting worker participation and the interests of HDPs

The Tribunal extended the compliance period for one of the conditions imposed in the merger whereby ***PepsiCo*** indirectly acquired ***Pioneer Food Group*** through its subsidiary, ***Simba***. The condition related to a B-BBEE ownership plan to be implemented by 22 March 2021. Delays in implementing the condition were caused by, among others, COVID-19. The B-BBEE condition involved employees being issued with shares in PepsiCo worth R1,6 billion. This condition had to be implemented within 12 months of the transaction closing date (23 March 2020). The Tribunal granted a six-month extension. In addition to employees being issued with shares worth R1.6 billion, the merged firm would provide an additional R55 million as compensation for any potential economic prejudice to workers during the extension period.

The Tribunal granted a variation to conditions imposed in two ***Coca-Cola*** mergers, including two new substantive public interest obligations relating to localisation and procurement commitments to benefit black sugarcane farmers. The merger parties had to increase B-BBEE ownership of CCBSA to a specific percentage by 11 May 2021, however this could not be achieved in time due to the COVID-19 pandemic. The Tribunal agreed to vary the condition. The B-BBEE ownership would be required to be increased to approximately 20% and benefit employees, creating a wider spread of ownership.

The Tribunal approved the merger involving ***Thabong Coal*** and ***South32***, two of South Africa's largest coal suppliers, subject to conditions relating to employment, the exchange of competitively sensitive information, the establishment of an Employee Trust, a Community Trust and the divestiture by ***SAEC*** (South32's controlling shareholder) of certain (pending) mining rights. Post-merger SAEC would be owned by a black-owned and controlled South African company. The merger would advance greater black ownership since Seriti was an approximately 90% black-owned South African company. The transaction would also enable employees and communities

in the affected areas to benefit from the transaction by providing employees and communities with free and unencumbered shareholding in SAEC, as well as benefit junior miners through the divestiture condition. The merging parties' undertakings included that Seriti would continue to provide an opportunity to historically disadvantaged suppliers to continue to supply to it and that SAEC would comply with its statutory duties relating to social and labour plans.

The Tribunal approved the merger whereby ***Devland Cash and Carry*** would acquire certain stores owned by ***Masscash***, which is controlled by ***Massmart***, with conditions that would promote a greater spread of ownership. Devland is owned and controlled by two historically disadvantaged persons while the target stores are not owned by HDPs. As such, the merger would have a positive effect on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by HDPs and workers in the grocery market.

Badger through its wholly owned subsidiary ***Dotsure*** acquired the direct personal lines insurance business underwritten by ***The Hollard Insurance Company***, a subsidiary of ***Hollard Holdings***. A condition imposed by the Tribunal obligated the merger parties to consider setting up an employee share scheme within five years after the merger's implementation date, that will give workers an opportunity to benefit and participate in the ultimate ownership of the merged entity.

In the ***Senwesbel, Senwes*** and ***Suidwes*** merger, the Commission initially recommended conditional approval then changed its recommendation to one of prohibition. The merging parties submitted that the target firm was in financial distress and would exit the market absent the transaction. They tendered a set of conditions which formed the basis for further iterations. The conditions were amended during the course of the Tribunal hearing, resulting in the final tender which included a pricing condition, the divestiture of certain grain silos, and public interest conditions related to employment as well as the provision of production loans to black farmers. The Tribunal approved the proposed merger, subject to the conditions tendered.

Saving and/or creating jobs

5200 jobs were saved when clothing apparel retailer, ***Retailability*** acquired parts of the ***Edgars*** business conducted by ***Edcon Limited*** in South Africa as a going concern. The merger formed part of a voluntary business rescue processes initiated by Edcon, the seller. The business had been struggling for some time, but COVID-19 had contributed to the decision to enter business rescue. The Tribunal approved the transaction on condition that there would be no merger-related retrenchments for three years. Preference would also be given to any former Edcon employees if vacancies arose within three years of the merger.

640 jobs were saved as a result of the merger through which ***Devland Cash and Carry*** acquired certain stores owned by ***Masscash***, which is controlled by ***Massmart***.

422 jobs were saved as a result of the large merger whereby ***Blue Falcon*** acquired certain portions and assets of ***John Craig***, a Division of ***Pepkor Speciality***.
The transaction took place against the background of several John Craig store closures and staff retrenchments due to financial difficulties faced by the transferring business. Blue Falcon, in terms of the merger conditions, would not retrench any employees as a result of the merger for a period of two years from the merger implementation date.

IRL, in acquiring the ***Mapochs Mine***, committed to supporting the local community, growing and improving the mining operations and creating employment opportunities throughout the supply chain associated with the mine. Through an Ore Supply Agreement, IRL would also ensure a minimum of 200 direct employment opportunities and indirect employment opportunities within the Mapochs Mine and the surrounding area within three years of the merger approval date. This minimum level of employment would be maintained, and where commercially feasible, enhanced throughout the operation of the mine.

Business development, investment and local procurement

The Tribunal granted a variation to conditions imposed in two ***Coca-Cola*** mergers, including two new substantive public interest obligations relating to localisation and procurement commitments to benefit black sugarcane farmers. In terms of this new commitment, CCBSA would contribute a specified amount to localisation initiatives agreed upon by **the dtic** and CCBSA. CCBSA would also collaborate with its sugar suppliers in South Africa to increase the volume of sugar procured by CCBSA from black sugarcane farmers, subject to such arrangements being commercially reasonable and practical.

In the international merger involving ***Alstom Société Anonyme*** and ***Bombardier Transportation (Investment) UK***, the merger parties confirmed that, post-merger, they would continue their existing enterprise and supplier development programmes in South Africa and would not reduce or discontinue these initiatives as a result of the transaction.

As part of its commitments in relation to the merger, ***IRL*** committed to investing in the ***Mapochs Mine*** to ensure fast refurbishment so that the mine could become fully operational. IRL also committed to developing resources associated with the mine. IRL would invest an additional amount of R160 million into the mine and associated infrastructure within three years from the merger approval date. This is in addition to any purchase price or consideration paid and any amounts already paid or expended by IRL relating to the mine.

In ***Foschini***'s acquisition of ***Edgars' Jet Division***, the Tribunal imposed a local procurement condition whereby the merged entity would ensure that Jet stores maintain at least the same ratio of procurement of apparel products from South African manufacturers and suppliers as it did at the end of its preceding financial year. In addition, the merged entity would endeavour to increase the target firm's ratio of procurement of apparel products from South African manufacturers and suppliers as at the end of its preceding financial year.

In the ***Blue Falcon*** and ***John Craig*** merger, Blue Falcon agreed to a condition that it would use its best efforts to procure the labels it intends to offer at the John Craig stores from local manufacturers. The merger parties would be required to provide the Commission with detailed reports annually, for a period of two years, regarding their compliance.

The Tribunal approved ***Mr Price***'s acquisition of ***Otto Brothers Distributors*** and its subsidiaries, trading as Power Fashion, with conditions to promote local procurement within the Mr Price Group post-merger. The merged entity would need to ensure that Power Fashion maintained or improved its current level of locally procured goods and services. In addition, Power Fashion would have to participate in **the dtic's** *Retail, Clothing, Textile, Footwear and Leather (R-CTFL) Masterplan* initiative along with the rest of the Mr Price Group. **This dtic** initiative seeks to, among others, increase the share of local retail sales of locally manufactured clothing and footwear to 65% by 2030.

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RP152/2021
ISBN: 978-0-621-49445-7

competitiontribunal
SOUTH AFRICA

RP152/2021
2020/21 Financial Years

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2020/2021 CASE HIGHLIGHTS

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