



competition commission
south africa

ANNUAL REPORT 2021-22

a growing, deconcentrated and inclusive economy

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RP251/2022
ISBN: 978-0-621-50567-2



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LIST OF ABBREVIATIONS

AVE	Advertising Value Equivalent	GDP	Gross domestic product
ACF	African Competition Forum	HDPs	Historically Disadvantaged Persons
AG	Auditor General	HMI	Private Healthcare Market Inquiry
CD	Cartels Division	HR	Human resources
CRESSE	The Competition and Regulation Summer School and Conference	IRC	Information Resource Centre
The Competition Act	Competition Act No. 89 of 1998, as amended	IT	Information Technology
Competition Bill	Competition Amendment Bill 2017	ICN	International Competition Network
CAC	Competition Appeal Court	ISPs	Internet Service Providers
Commission	Competition Commission of South Africa	LSD	Legal Services Division
Tribunal	Competition Tribunal	MCD	Market Conduct Division
ConCourt	Constitutional Court of South Africa	M&A	Mergers and Acquisitions Division
CLP	Corporate Leniency Policy	NDP	National Development Plan
CSD	Corporate Services Division	NEDLAC	National Economic Development and Labour Council
Data Inquiry	Data Services Market Inquiry	NHI	National Health Insurance
DAFF	Department of Agriculture Forestry and Fisheries	OTC	Office of The Commissioner
DMRE	Department of Mineral Resources	PFMA	Public Finance Management Act No. 1 of 1999, as amended
DTIC	Department of Trade, Industry and Competition	PPTMI	Public Passenger Transport Market Inquiry
EAP	Economically active population	SME's	Small and Medium Sized Enterprises
EEA	The Employment Equity Act	SARS	South African Revenue Service
ERB	Economic Research Bureau	SADC	Southern African Development Community
FEDSAS	Federation of Associations of Governing Bodies of South African Schools	SCA	Supreme Court of Appeal
GRMI	Grocery Retail Sector Market Inquiry	ToR's	Terms of Reference

GLOSSARY OF TERMS

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

“Abuse of dominance” means engaging in prohibited practices as provided in sections 8 and 9 of the Act.

“Advisory Opinion” refers to a non-binding written opinion provided by the Commission to a requester, who may be an individual or a firm, setting out the Commission’s likely view on the subject matter of the opinion.

“Advocacy” refers to activities aimed at the promotion of voluntary compliance to the Act, through non-enforcement mechanisms.

“Consent Agreement” refers to an agreement concluded between the Commission and a respondent, and which is confirmed as an order of the Competition Tribunal in terms of section 49D of the Act, setting out: (i) the alleged contravention, (ii) where appropriate, an admission by the respondent, (iii) a penalty where applicable and (iv) where applicable, a remedy addressing the harm occasioned by the alleged contravention of the Act.

“Enforcement” refers to the investigation and/or prosecution of anti-competitive conduct.

“Exemptions” refers to the granting of exemption from prosecution to firms for engaging in anti-competitive conduct for a specific period of time, through the process and criteria prescribed in Section 10 of the Competition Act.

“Market Inquiry” refers to a formal inquiry in respect of the general state of competition, the levels of concentration in and structure of a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm.

“Non-referral” means that, after conducting an investigation, the Commission has decided not to refer a particular case to the Competition Tribunal for prosecution.

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

“Referral” refers to the submission by the Commission of a complaint to the Tribunal for prosecution, upon completion of its investigation.



PART A

ABOUT THE ANNUAL REPORT

1 ABOUT THE **ANNUAL REPORT**

This document constitutes the Annual Report of the Competition Commission of South Africa (“the Commission”) for the 2021/22 financial year. It is premised on the commission’s strategic plan for 2020/21 – 2024/25.

This annual report has been prepared in line with the Annual Report Guide for Schedule 3A and 3C Public Entities, published by the National Treasury. It captures the key performance outputs, outcomes and impact of the Competition Commission during the reporting period. It also articulates how the Commission fared in the management of its resources, and in complying with corporate governance principles.

This report is organised as follows:

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



2 THE EXECUTIVE

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

The Commission’s enforcement function can be defined as the investigation of vertical restrictive practices, horizontal restrictive

practices – including cartels – and the investigation of abuse of dominance by firms. Advocacy refers to the Commission’s authority to promote voluntary compliance with the Act. A market inquiry is a broad investigation into the cause of market failure in an identified market, without focusing on the conduct of any particular firm in that market. Finally, the regulation of mergers and acquisitions entails the assessment of corporate consolidations in order to determine their likely impact on competition and the public interest.



Tembinkosi Bonakele
 Commissioner



Hardin Ratshisusu
 Deputy Commissioner



James Hodge
 Chief Economist



Bukhosibakhe Majenge
 Chief Legal Counsel



Andile Gwabeni
 Manager:
 Office of the Commissioner



Tamara Paremoer
 Manager:
 Mergers and Acquisitions Division

COMMISSIONER
 Tembinkosi Bonakele

DEPUTY COMMISSIONER
 (Vacant)

DEPUTY COMMISSIONER
 Hardin Ratshisusu

CHIEF ECONOMIST James Hodge	CHIEF LEGAL COUNSEL Bukhosibakhe Majenge	MANAGER: OFFICE OF THE COMMISSIONER Andile Gwabeni	MANAGER: MERGERS AND ACQUISITIONS DIVISION Tamara Paremoer	CHIEF FINANCIAL OFFICER Amos Moledi
MANAGER: CARTELS DIVISION Makgale Mohlala	MANAGER: ADVOCACY DIVISION Khanyisa Qobo	MANAGER: MARKET CONDUCT Mapato Ramokgopa	MANAGER: CORPORATE SERVICES Mandla George	COMPANY SECRETARY Mduduzi Msibi



Amos Moledi
 Chief Financial Officer



Makgale Mohlala
 Manager:
 Cartels Division



Khanyisa Qobo
 Manager:
 Advocacy Division



Mapato Ramokgopa
 Manager:
 Market Conduct



Mandla George
 Manager:
 Corporate Services



Mduduzi Msibi
 Company Secretary

3 MINISTER'S FOREWORD



Ebrahim Patel
Minister of Trade, Industry and Competition

It is my pleasure to table the Annual Report of the Competition Commission for the 2021/22 financial year. The Covid-19 pandemic continued to shape the work of the Commission, dealing with excessive pricing practices during the early days of the pandemic to facilitating greater collaboration in sectors responding to the health challenges. The work of the Commission resulted in the substantial reduction of Covid-19 pathology testing prices, demonstrating that competition policy and law used effectively, results in direct, immediate and positive change for society.

Over the period covered in the Report, 295 mergers were notified, including 89 large mergers. The Commission recommended and/or imposed conditions on 74 merger cases. The Commission's intervention in mergers resulted in a net saving of 1 618 jobs.

This Report contains details of the work done by the Commission on cartels: 35 cartel investigations were completed of which 14 were referred to the Competition Tribunal for prosecution.

The Commission's work on market inquiries has been significant; and it published a ground-breaking Report on economic concentration in South Africa. It continued to implement recommendations made in the Grocery Retail Market Inquiry resulting in for instance, a settlement agreement with Pick 'n Pay to eliminate exclusivity against small and independent grocery retailers owned and controlled by historically disadvantaged persons and to not sign any new exclusive lease agreement. These interventions in the grocery retail market will improve market access for SMMEs.

In the new financial year, the work of **the dtic** and its entities will be evaluated in relation to three over-arching Outcomes namely:

- industrialisation;
- transformation; and
- building state capability.

I express my gratitude to Commissioner Bonakele for his passion and dedicated service to the agency and to the country over the nine years since his appointment and his contribution to building an exceptional agency. New Commissioner Doris Tshepe was appointed after the period covered in this Report and I welcome her to the Commission.

I thank the Deputy Commissioners Hardin Ratshisusu, Bukhosibakhe Majenge and James Hodge, members of the Executive Committee who steered the ship during 2021/22, as well as the entire team of the Commission.

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

Ebrahim Patel
Minister of Trade, Industry and Competition

4 THE COMMISSIONER'S FOREWORD



Tembinkosi Bonakele
Commissioner

It is my pleasure to write the opening words of the Competition Commission's (the Commission) 2021/2022 annual report. This is quite an important year for the Commission in a few respects. Firstly, it marks the year we sought to 'return to normal' following the Covid 19 disruption. The economy itself was set to recover. Secondly, it's the year the Constitutional Court set a very important precedent asserting Constitutional Bill of Rights as a normative framework for the interpretation of competition law. Thirdly, it marked the last full financial year that I was heading the agency, and at the time of writing I have had the pleasure of welcoming my successor, Commissioner Doris Tshepe. All these have implications for how I have structured this foreword and annual report, alongside our strategy, which constitutes the departure point for our reporting

With respect to the macro-economic point of view the Commission sought to support the recovery following the shutdown as well as the long-standing lackluster performance of the economy. Our economy has had very low growth and is not projected to grow at much higher levels even as it recovers from the pandemic. The result of this is that our economy is unlikely to create the much needed jobs in the context of rising poverty and high levels of inequality. Much of the Commission's interventions have been aimed at ensuring that our interventions promote and support inclusive competitive markets. Our case and advocacy

work reflect this goal, which is meant to support economic recovery and inclusivity. To better understand the levels and trends of concentration across the economy, the Commission produced a report Measuring Concentration and Participation in the South African Economy. This comprehensive mapping of the economy from a concentration point of view provides the Commission with an invaluable data point for prioritisation and provides insights to policy makers on areas requiring interventions. It confirms that the South African economy is highly concentrated, with over 70% of markets found to be concentrated, and that concentration is getting worse, not better. This report is available on our website: www.compcom.co.za.

As the economy recovers, it has also been critical to keep a watchful eye on the emergence and entrenchment of "crisis cartels", that recovery does not entrench monopolisation through further concentration, and that space is opened for SMMEs to enter and grow in various markets. Below I discuss some of the interventions that were aimed at protecting consumers and opening the economy to greater participation through enforcement, and of course much more is in the body of the report.

Following amendments in 2019 that are aimed at strengthening the market inquiry tool by making its remedies binding and providing for the possibility of divestiture to deal with problems of monopolisation, we launched a market inquiry into Online Intermediation Platforms. It will, among other things make findings and impose remedies to deal with any possible distortion of competition by online intermediation platforms, including their impact on SMMEs. This is in the context of exponential growth of ecommerce because of the lockdown, a trend that has fast tracked the digitalisation of the economy, following global trends and concerns. This inquiry is ongoing.

As we were concluding the online intermediary platforms inquiry, the Commission – in March 2022 – launched a market inquiry into the fresh produce market to examine whether there were any features in its value chain which lessen, prevent or distort competition. The draft terms of reference of the Fresh Produce Market Inquiry were published in the Government Gazette No. 46093 on 25 March 2022 with public comments invited until 25 April 2022. The scope of the inquiry will specifically cover aspects from the sale of fresh produce by the farmer to the customer (the retailer, processor, or

export market). The Commission has identified four broad themes (efficiency of value chain; market dynamics and impact of key inputs for growers; small and HDP growers and participation; and barriers to entry in relation to the regulatory environment) which cover the features that may impede, restrict, or distort competition and market outcomes. In the context of extremely high levels of concentration in agricultural markets as per our Concentration Report, as well as alarmingly high food prices, this intervention is crucial. We also monitor food prices and produce a quarterly report, which is important for transparency

and understanding of the drivers of price increases.

As a reminder, part of the Commission's response to Covid-19 was to investigate and prosecute price gouging on items such as essential food, personal protective equipment (PPE) for Covid-19, including through public procurement. These cases continued to be a significant part of our work, and the highlight was without a doubt our swift investigations and settlements with pathology service providers, which resulted in an immediate and significant reduction in the prices charged for Covid-19 testing. By way of background, on 8 October 2021, the Commission received a complaint from the Council for Medical Schemes (CMS) against private pathology

As the economy recovers, it has also been critical to keep a watchful eye on the emergence and entrenchment of "crisis cartels", that recovery does not entrench monopolisation through further concentration, and that space is opened for SMMEs to enter and grow in various markets.

laboratories alleging that the price for supplying PCR tests for Covid-19 was unfairly inflated, exorbitant and unjustifiable. Between September and October 2021, the Commission was also alerted, through a number of meetings and telephonic discussions, of possible pricing abuse for Covid-19 PCR tests, to the detriment of consumers and customers. The complainants alleged that private pathology laboratories had experienced substantial cost reductions in conducting Covid-19 PCR tests and were processing significantly high volumes of tests, yet the prices charged by the private pathology laboratories for Covid-19 PCR tests remained persistently high and unchanged at about R850. The Commission's investigation focused on the three largest private pathology laboratories in South Africa as respondents, namely Ampath, Lancet and PathCare. The Commission's investigation revealed that costs for private laboratory firms had in fact reduced on average, thereby increasing their absolute margins. The Commission's investigation also revealed that the pathology groups had been earning significant profits since March 2020. The Commission's view was that the failure to reduce prices for essential services - in the context of material cost reductions - led to the exploitation of consumers in contravention of the Competition Act. Following our investigations, the pathology laboratories concluded settlement agreements with the Commission in which they agreed to reduce the price of Covid-19 PCR tests to R500 from R850. Furthermore, in a separate matter, the same respondents agreed to significantly decrease prices for the rapid antigen testing. Both settlements were a major victory for consumers during a very difficult period.

This enforcement work was complemented by very strong advocacy work. A webinar titled "Price Gouging During the Covid-19 Pandemic" was held to inform stakeholders of the Commission's role and mandate in response to Covid-19 induced price gouging, as well as to share information on interventions undertaken by the Commission to curb anti-competitive conduct.

The Commission also had several settlements of Covid-19 investigations in key markets including raw ginger and face masks. The settlements have seen a reduction in the prices of Covid-19 essential products. During this financial year, the Commission collaborated with counterparts in the criminal justice system to enforce price gouging regulations. Several complaints related to excessive pricing allegations in the procurement of PPE by organs of state during the pandemic were referred through a coordinating forum, which included entities such as the Special Investigative Unit (SIU), the South African Police Service (SAPS) and the National Health Laboratories Services.

The Commission's past inquiries, though concluded, continue to have a ripple effect and positive impact on the market. In this regard the Commission made further progress with the implementation of the Grocery Retail Market Inquiry recommendations by concluding settlement agreements with Pick 'n Pay. Pick 'n Pay agreed to eliminate exclusivity against small and independent grocery retailers and supermarkets owned and controlled by historically disadvantaged persons and to not sign any new lease agreements that contain exclusivity clauses, in compliance with the recommendations of the Grocery Retail Market Inquiry.

Another such past inquiry, concluded in December 2019, was the Data Services Market Inquiry or DSMI. In this financial year, the Commission conducted a study to determine the impact of this inquiry on the market since its conclusion. In March 2020, the Commission concluded consent agreements with MTN and Vodacom and signed Memorandums of Agreement with Telkom and Cell C wherein the operators made commitments to implement the recommendations of the DSMI in order to reduce the cost of data and to promote greater internet access for the poor. The operators implemented the recommendations as of 1 April 2020.

The study found that the operators complied with the undertakings, and this culminated in the achievement of the objectives of the DSMI, namely increased access and affordability of data in South Africa. This was achieved through direct price reductions by Vodacom and MTN in compliance with the undertakings, but also through intensified price competition between operators. For example, Vodacom's second price change in April 2021 resulted in MTN also responding to that price change by reducing the price of its 1GB monthly bundle in April 2021, something it had not committed to do. Other operators responded to Vodacom and MTN's price reductions by implementing their own price reductions on certain bundles and additions of data to bundles at certain price points or a complete replacement of bundles. The study also found that the reduction in headline prices of certain prepaid monthly bundles by MTN and Vodacom, accompanied by the zero-rating of many websites of educational and government institutions, prepaid data traffic increased by up to 37% in the period after the settlements compared in the period. The study estimated that the inquiry saved consumers of mobile data approximately R2,1 billion in the first thirteen months since the agreements were concluded (from April 2020 to April 2021). In the fixed-fixed line side of the market, the study found that the agreement between the Commission and Telkom resulted in Openserve introducing a new wholesale connect product to replace IP Connect called Broadband Connect. The changes in the fixed-line side of the market resulted in substantial savings for internet service providers of approximately R500 million. This in turn resulted in pass-through to end consumers who benefitted from fibre price reductions of between 11% and 19% across all line speeds.

The work of eradicating cartel conduct from the South African economy involves both enforcement and advocacy initiatives. On the advocacy front, the Commission trained 470 Auditor-General staff from the Eastern Cape, Kwa-Zulu Natal, and Mpumalanga to detect and report collusion during their bid evaluation processes. The Commission also trained 12 supply chain officials in the Gauteng Department of Roads and Transport. These activities form part of a long list of targeted efforts aimed at equipping various government departments with the tools to join the fight against this pervasive and damaging form of corruption over the past 10 years.

In the section covering abuse of dominance prosecutions, we highlight a number of high impact cases that were investigated during the financial year. The Commission's case against Roche Holding AG and its subsidiaries promises to be an important case for the assessment of excessive pricing, particularly in the pharmaceutical field. The alleged contravention relates to the sale of the breast-cancer drug Trastuzumab, sold as Herceptin or Herclon in South Africa. The Commission's investigation revealed that over 10 000 patients (nearly 50% of the total number of newly infected patients in the private and public healthcare sectors) were unable to receive treatment with Trastuzumab between 2011 and 2019 because of the excessive prices Roche AG charged for the medicine. The Commission's findings revealed that the impact of excessive pricing of Trastuzumab falls heavily on women, particularly poor women, who cannot access essential treatment because they cannot afford to pay for it. This is so, even for the minority of women who belong to medical schemes. The Commission referred this case to the Competition Tribunal (the Tribunal) for prosecution during this financial year and will continue proceedings in the 2022/23 financial year.

The Commission's referral against Facebook Inc. WhatsApp Inc. and Facebook South Africa (Pty) Ltd also bears mention. While this case is yet to be heard by the Competition Tribunal – as a complaint referral – it will be an important case for the assessment of digital markets. The complaint centres on the respondent's threat to terminate GovChat's access to the WhatsApp Business Application Programming Interface (WhatsApp Business API) due to the alleged violation of WhatsApp terms and conditions. We initiated a further complaint against the respondents. The Commission's complaint essentially alleged that certain terms and conditions imposed by the respondents on market participants operating on the WhatsApp Business API value chain result amounted to anti-competitive conduct and in breach of sections 8(1)(b), 8(1)(c) and/or 8(1)(d)(ii) of the Competition Act.

Following its investigation, the Commission found that the harm caused by the respondents to the competitive process is clear because the decision to off-board GovChat from the WhatsApp Business API and the exclusionary terms for access to the WhatsApp

“The Commission’s past inquiries, though concluded, continue to have a ripple effect and positive impact on the market.”

Business API, including restrictions on the use of data, limits innovation and the development of new products and services. We have since referred the matter to the Tribunal for prosecution.

There has also been an increased focus on imposing conditions in mergers and acquisitions that promote public interests. Perhaps two issues are worth highlighting in these pages. The first one is that we have asserted that, in accordance with the law, that the competition authorities can block a merger based on adverse impact on public interest, and in the year, we did block a merger based on its negative impact on BEE. The second issue has been growing number of cases where conditions have been imposed Employee Share Schemes in transactions. It is clear to me that these will continue to be a subject of much debate in South Africa, and I agree with the need for guidelines by the Commission to promote more certainty in this area.

On the constitutional front, we have entered a new era of transformative jurisprudence following the Mediclinic/Matlosana Constitutional Court precedent. In this case the court found that, among other things, the merger would lead to price increases that will negatively impact on the uninsured patients. The Court found that this will lead to the restriction of the right of access to healthcare enshrined in the Constitution, and accordingly, blocked the merger. This approach is already finding expression in judgments from the CAC and the Tribunal and bodes well for our system.

Lastly, this being my last report, I am immensely proud that my colleagues and I have placed the Commission at the centre of economic policy in South Africa. We have become a trusted protector of consumers, SMMEs, workers, a trusted advisor to policy makers, and a reliable friend to sector regulators. Over the past nine years I have enjoyed the thrill of the intellectual rigour of competition enforcement, and the fulfilment of making a difference. I would like to take more space than I normally do then to personally thank the most significant contributors to my leadership during this period.

In the first place, I would like to thank Minister Ebrahim Patel who not only supported my personal development in this role but truly partnered with the Competition Commission to elevate its status and broaden its influence over these years. To the executive management

of the Competition Commission, I want to extend sincere gratitude and respect. It's been a remarkably stable management team. We poured over many documents, files, agendas, minutes and robust debates over the years and I am proud of the outcomes from all these efforts – outcomes which are now plain for everyone to see. Together we enlarged the Competition Commission's influence, proposed new ways of thinking, developed new approaches and stood our ground on matters we firmly believed in. Your tireless contribution set the Competition Commission on a trailblazing path both here and abroad. I wish you all the very best for the future and I thank you for your contribution to both my personal and my professional development.

To the staff of the Competition Commission, I wish I could address every individual contributor with a personal message. Suffice it to say that together you wrote the most fulfilling chapter of my professional life and you are the real hero of this endeavour. While above I have highlighted the work pertaining to the mandate of the Competition Commission, this work would not have been possible without the support of staff and divisions, who together with core divisions make the Competition Commission a high performing agency. Thank you.

I wish all the Competition Commission's stakeholders all the very best in your collective efforts to achieve inclusive economic growth. I will always be cheering you on.

Lastly, I wish Commissioner Tshepe all the best as she leads the Competition Commission into the future.



Tembinkosi Bonakele
Commissioner



5 ESTABLISHMENT AND MANDATE OF THE COMPETITION COMMISSION

5.1 ESTABLISHMENT OF THE COMPETITION AUTHORITIES

With the advent of democracy in 1994, the new South African government initiated a process of reviewing South Africa's competition laws. The purpose of this process was to address the historical economic imbalances resulting from excessive economic concentration and ownership, collusive practices, and the abuse of economic power by firms in dominant positions. The 1994 White Paper on Reconstruction and Development¹ sought to establish a series of immediate measures to address the structural deficiencies in the South African economy. This included the development of a competition regime aimed at reforming markets with anti-competitive practices, and ensuring an inclusive and transformative economy.

Policy-makers recognised early on that competition policy would be one of several economic tools which would be used to achieve transformation. It was thus considered important that the new competition policy framework be flexible enough to accommodate other economic instruments of the state, even where there were perceived or inherent conflicts, including trade and industrial policy.²

From 1995 the DTI embarked on a consultative process to develop a new policy, which culminated in a National Economic Development and Labour Council (NEDLAC)³ agreement on the competition policy principles. The result of this process was the Competition Act no. 89, which was adopted in 1998 and became effective as of

1 September 1999 (hereafter "Competition Act" or "Act"). The Act established the Competition Commission, the Competition Tribunal and the Competition Appeal Court. The Competition Commission is an investigative and prosecutorial authority, the Tribunal is an adjudicative authority, and the Competition Appeal Court is an appeal body over competition matters.

5.2 LEGISLATIVE MANDATE

In terms of the Act, the Commission is empowered to investigate and prosecute restrictive horizontal and vertical practices; investigate and prosecute abuse of dominant positions; review exemption applications; review mergers and acquisitions applications; conduct market inquiries; develop and communicate advocacy positions on competition issues. Its mandate is to promote and maintain competition in South Africa in order to:

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

- promote a greater spread of ownership, specifically increasing the ownership stakes of historically disadvantaged persons.

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

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

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

¹ Notice 1954 Gazette 16085 of 23 November 1994

² Guidelines for Competition Policy, 1997

³ NEDLAC comprises government, business and labour



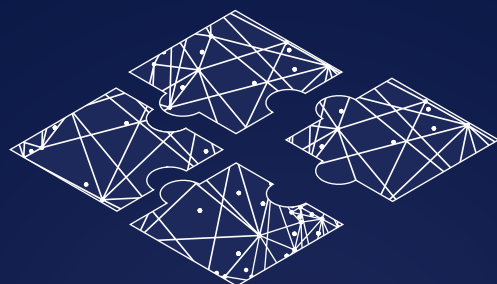
6 STRATEGIC OVERVIEW



VISION:

A growing, deconcentrated, and inclusive economy

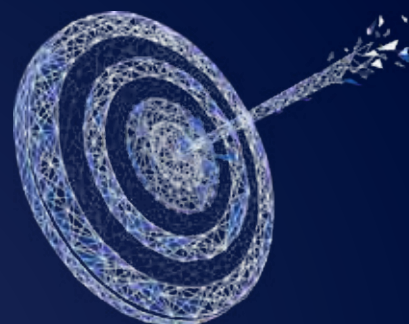
Our vision is for the realisation of a growing, deconcentrated and inclusive economy. Economic growth remains a particularly compelling vision to aspire towards in the context of the Covid-19 pandemic, where there are prospects of an economic downturn. The Commission will play its role to ensure that there is healthy competition between firms, new businesses can emerge, existing businesses can expand, concentration levels in markets are lowered and wherein all citizens are able to participate in the economy.



MISSION:

To promote a regeneration of the economy and maintain competition whilst advancing public interest objectives to enhance economic participation for all South Africans.

In a depressed economic environment, the Commission will support efforts by Government aimed at economic regeneration. The Commission will use its tools to ensure that viable, competitive businesses can remain in the market. The Commission will advance public interest objectives through its work, with a particular consideration for small and black-owned businesses. Our efforts will be aimed at fostering job-creation, industrialisation and export promotion, whilst expanding opportunities for SMMEs and the participation of blacks, young people and women in the economy.



STRATEGIC GOALS:

The Commission has identified three strategic goals which it aims to achieve in order to realize its vision of contributing to the attainment of a growing and inclusive economy. These are:

STRATEGIC GOAL 1:

Enforcing and regulating towards economic growth and enhanced economic participation.

- In Goal 1, the Commission effectively uses the instruments of merger regulation, market inquiries and enforcement, in order to address market concentration and public interest outcomes. The Commission also uses these tools to respond to firms in distress and markets which may be collapsing due to the economic impact of the Covid-19 pandemic.
- Furthermore, the goal also applies to the investigation and prosecution of instances of abuse-of-dominance and restrictive conduct and the unmasking and dismantling of cartels, with the creative use of remedies to promote market entry and participation.

STRATEGIC GOAL 2:

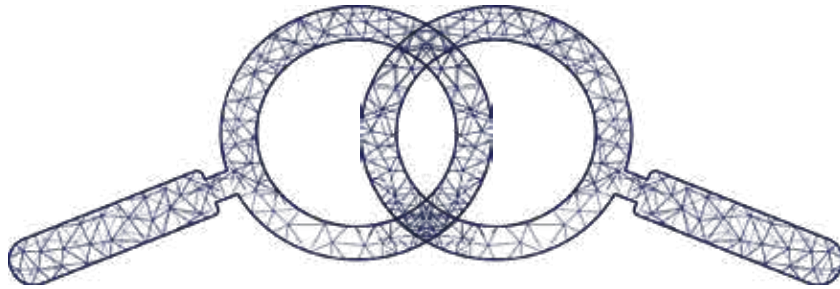
Advocating for improved compliance and pro-competitive public policy outcomes.

- Under Goal 2, the Commission will promote compliance to the Competition Act through education and awareness initiatives with its key stakeholders—the public, big business, small business, labour, government and consumers.
- Co-ordination with government and other regulators is crucial in promoting the development of pro-competitive public policy outcomes, particularly through the policy-making process.
- For this goal, the Commission seeks to be a thought-leader on competition and economic issues, both domestically and internationally. This includes contributing to the national economic discourse and policymaking.

STRATEGIC GOAL 3:

A People-Centric, High-Performance Organisation

- Through Goal 3, the Commission successfully delivers on its objectives through a cohesive, well-structured organisation in which people, processes and systems perform optimally.
- The Commission provides human capital, information communication technology, facilities and security solutions that enable the optimal performance of staff—supporting their well-being and performance through the “new normal” working conditions brought about by the Covid-19 pandemic.



OUTCOMES:

In line with strategic outcome-oriented goals, the Commission has developed a set of key outcomes which it seeks to realise. “Outcomes” in this context refers to the change (in status, behaviour, attitudes, commitment or practices) that arises to the Commission’s target stakeholders because of the achievement of its strategic goals. Outcomes for the 2020 – 2025 strategic period are captured in the table below.

STRATEGIC GOAL 1:	STRATEGIC GOAL 2:	STRATEGIC GOAL 3:
Enforcing and regulating towards economic growth and enhanced economic participation.	Advocating for improved compliance and pro-competitive public policy outcomes.	A People-Centric, High-Performance Organisation
• Efficient and effective merger regulation and enforcement; • Competitive, contestable and deconcentrated markets; • Improved public interest outcomes; • Improved compliance and awareness; • Existing competitive small and large businesses remain in the market.	• Improved public interest outcomes; • Improved compliance and awareness; • Improved understanding of market dynamics in priority sectors; • Improved co-ordination on the application of economic policy and competition policy; • Increased importance of developmental perspectives in domestic and international competition law discourse.	• Sound corporate governance; • Secure, harmonious, and conducive working environment; • Responsive corporate services systems to support workforce during Covid-19 pandemic; • Highly motivated, engaged and productive workforce.



VALUES:

For the 2020 – 2025 planning period, the Commission has decided to retain its values as developed through an extensive consultative process which began during the 2015/16 financial year. Its vision and strategic plan are supported by seven core values namely: Communication, Ownership, Making a Difference, Professionalism, Employee Welfare, Teamwork and Efficiency, abbreviated as

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

COMMUNICATION

The ability to effectively convey information and express thoughts and facts. Demonstrates effective use of listening skills and displays openness to other people’s ideas and thoughts.

OWNERSHIP

The ability to commit self to task(s) at hand, accepts responsibility for own actions, decisions and demonstrates commitment to accomplish work in an ethical and cost-effective manner.

MAKING A DIFFERENCE

The ability to consistently deliver required business results; sets and achieves realistic, yet aggressive goals; consistently complies with quality, service and productivity standards and meets deadlines; maintains focus on commission’s goals.

PROFESSIONALISM

An ability to demonstrate good work ethic, respect, integrity, and empathy.

EMPLOYEE WELFARE

The ability for employees to achieve full potential whilst maintaining a healthy work-life balance.

TEAMWORK

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

EFFICIENCY

The ability to measure how well resources are utilised (i.e. means and manner) in pursuit of quality results.



PART B

ECONOMIC IMPACT

7

2021/2022 HIGHLIGHTS

The Commission focuses its work in the priority sectors and has achieved impact in several areas, as discussed in detail below:

7.1 IMPACT OF THE COMMISSION'S WORK RELATED TO THE COVID-19 PANDEMIC

The Commission completed more than 250 price gouging cases during the 2021/22 financial year. Overall, the number of Covid-19-related complaints decreased significantly in the 2021/22 financial year, compared to the previous year. However, the July 2021 unrests in Kwa-Zulu Natal and Gauteng led to a temporary spike in complaints received. Many of these complaints related to price hikes on basic food products, which were the result of disruptions in the supply chains of major retailers. These complaints were dealt with expeditiously in collaboration with the Kwa-Zulu Natal Department of Economic Development, Tourism and Environmental Affairs and the National Consumer Commission.

With the shift in pandemic dynamics, the Commission's focus in the 2021/22 financial year shifted to investigating Covid-19 testing practices by pharmaceutical companies and on price gouging allegations in public procurement.

Notable for the 2021/22 financial year are the settlement agreements on Covid-19 PCR tests and rapid antigen tests which resulted in a significant price reduction for Covid-19 tests. The commission concluded settlement agreements with three private laboratories: Pathcare, Lancet and Ampath. The laboratories agreed to reduce the price of Covid-19 PCR tests from about R850 to no more than R500 per test, inclusive of VAT and to reduce the price of Covid-19 rapid antigen tests from about R350 to no more than R150, inclusive of VAT.

The Commission also continued with its advocacy work in respect to Covid-19 regulations. A webinar titled "Price Gouging During the Covid-19 Pandemic" was held to inform stakeholders of the commission's role/mandate in response to Covid-19 induced price gouging, as well as to share information on interventions undertaken by the Commission to curb anti-competitive conduct.

The Commission also had several settlements of Covid-19 investigations in key markets including raw ginger and face masks. The settlements have seen a reduction in the prices of Covid-19 essential products.

Through its successful advocacy and investigative outcomes, the Commission saw a significant reduction in Covid-19 complaints.

During the financial year, the Commission also joined efforts with counterparts in the criminal justice system to enforce price gouging regulations. Several complaints related to excessive pricing allegations in the procurement of Personal Protective Equipment (PPE) by organs of state during the pandemic were referred through a coordinating forum, which included entities such as the Special Investigative Unit (SIU), the South African Police Service (SAPS) and the National Health Laboratories Services. These investigations were at an advanced stage at the end of the reporting period.

7.2 THE COMMISSION LAUNCHES THE FRESH PRODUCE MARKET INQUIRY

The Commission launched a public market inquiry into the fresh produce market to examine whether there were any features in its value chain which lessened, prevented or distorted competition. The draft terms of reference of the Fresh Produce Market Inquiry ("FPMI")

were published in the Government Gazette No. 46093 on 25 March 2022 with public comments invited until 25 April 2022. The scope of the inquiry will specifically cover aspects from the sale of fresh produce by the farmer to the customer (the retailer, processor, or export market). The Commission has identified four broad themes (efficiency of value chain; market dynamics and impact of key inputs for growers; small and HDP growers and participation; and barriers to entry in relation to the regulatory environment) which cover the features that may impede, restrict, or distort competition and market outcomes.

7.3 BID-RIGGING DETECTION AND TRAINING OF GOVERNMENT OFFICIALS ON PUBLIC PROCUREMENT

The Commission’s work on bid-rigging detection spans over a decade, with several interventions made over the years. Some of the Commission’s earlier interventions include, among others, the inclusion of the Certificate of Independent Bid Determination in all state procurement documents.

Training of government officials has also been an important pillar in this advocacy work; officials who are trained in bid-rigging detection refer complaints of suspicious tenders to the Commission. During the financial year, the Commission trained 470 Auditor-General staff from the Eastern Cape, Kwa-Zulu Natal and Mpumalanga. The Commission also trained 12 supply chain officials in the Gauteng Department of Roads and Transport.

7.4 GUIDELINES ON COLLABORATION BETWEEN COMPETITORS ON LOCALISATION INITIATIVES

The guidelines were issued in terms of section 79(1) of the Competition Act, given the potential for collaboration between competitors which may amount to prohibited conduct in terms of section 4(1) of the Competition Act.

The guidelines are aimed at providing guidance to industry, government, trade unions, NGOs and other interested entities as to how localisation initiatives may be appropriately identified

and implemented, in a manner that does not raise competition concerns. The guidelines cover any form of localisation initiative, including but not limited to the DTIC’s CEO Localisation Initiative, the DTIC’s Master Plan processes, localisation initiatives initiated by a government entity and industry-led localisation initiatives. The intention is to promote inclusion and encourage competition through increased participation of small and medium enterprises as well as historically disadvantaged groups.

7.5 GUIDELINES ON LOCAL PROCUREMENT IN THE IMPLEMENTATION OF THE SOUTH AFRICAN VALUE CHAIN SUGARCANE MASTER PLAN TO 2030

The Commission, in terms of section 79(3) of Competition Act No. 89 of 1998 (as amended) (“Act”), issued draft guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030 for public comment.

The purpose of the draft guidelines is to provide guidance to the sugar industry on collaboration in the implementation of industry commitments to increasing sourcing of local sugar as contemplated in the South African Sugarcane Value Chain Master Plan to 2030 (“the Sugar Master Plan”). On 23 June 2020, the Minister of Trade, Industry and Competition, after consultation with the Minister of Agriculture, Land Reform and Rural Development, granted a designation to the sugar industry in terms of section 10(3)(b)(iv) of the Competition Act for a period of 12 months, commencing on 1 July 2020. The designation is aimed at providing support to the economic development, growth, transformation and stability of the sugar industry in line with the objectives of Sugar Master Plan.

Subsequently, on 16 October 2020, the Commission granted an exemption to the South African Sugar Association (“SASA”), a statutory body established in terms of section 2(1) of the Sugar Act No.9 of 1978, as amended, to enable its members to collaborate in the implementation of the Sugar Master Plan, subject to certain conditions. SASA’s members comprise of the South African Sugar Millers’ Association, the South African Cane Growers Association and the South African Farmers Development Association. As a result, the

exemption granted by the Commission only covers the production and milling value chains of the sugar industry.

A key element of the social compact in respect of the commitment to restore the local market and off-take commitments in the Sugar Master Plan is that retail, wholesale and industrial sugar customers in support of the goals of stabilising and restructuring the sugar industry, will commit to increased sourcing of locally produced sugar for a period of three years.

However, collaboration by retail, wholesale and industrial sugar customers in the implementation of the Sugar Master Plan did not form part of SASA’s exemption application to the Commission. Consequently, these draft guidelines seek to provide guidance to the sugar industry on collaboration in delivering on industry commitments to increasing sourcing of locally produced sugar in the implementation of the Sugar Master Plan.

The draft guidelines are aimed at providing guidance to the sugar industry and government on how the industry can collaborate in implementing the local procurement commitments contained in the Sugar Master Plan in a manner that does not raise competition concerns.

The draft guidelines set out a framework for collaboration on local sugar procurement. This framework includes guidance on the process of setting industry local procurement targets; the process of setting individual firm local procurement targets and demand forecasting.

7.6 SMALL RETAILERS GAIN ACCESS TO SHOPPING MALLS

The Commission made further progress with the implementation of the Grocery Retail Market Inquiry recommendations by concluding settlement agreements with Pick ‘n Pay. Pick ‘n Pay agreed to eliminate exclusivity against small and independent grocery retailers and supermarkets owned and controlled by historically disadvantaged persons and to not sign any new lease

agreements that contain exclusivity clauses, in compliance with the recommendations of the Grocery Retail Market Inquiry.

7.7 PROMOTING ACCESS AND LOWER PRICES OF SCHOOL UNIFORM AND LEARNING MATERIAL

In the 2021/22 financial year, the Commission issued a guideline on the procurement of school uniform and learning materials. This was an output of many investigations conducted over the years, following several complaints from parents and guardians against schools and suppliers of school uniform. The complaints centred mainly on the high prices of school uniform; and that some schools compelled parents to buy uniform and learning-related material from only one supplier. The guideline aims to help schools, parents and SBGs understand the benefits of competition in the sale of school uniform and learning material; help schools foster competition between school uniform and learning materials suppliers; encourage parents to get involved and to exercise their right to choose value for money; and encourage SBGs to develop policies that promote pro-competitive procurement practices. Working together, schools, parents and SGBs can lower the price of school uniform and learning material.

7.8 ADVOCACY IN THE AUTOMOTIVE AFTERMARKET

Following publication of the Guidelines for Competition in the South African Automotive Aftermarket, the Commission hosted a series of five online workshops in an effort to promote awareness and provide public education on what the guidelines mean for stakeholders and to answer their questions. Four workshops were held with independent service providers (ISPs) and independent repairer associations from regions across the country. Over 100 ISPs participated in the workshops representing associations including the Automotive Industry Development Centre (Eastern Cape and Gauteng), African Panelbeaters Motor Mechanics Association (APMMA) and Right to Repair SA, among others.

The Commission also hosted an online workshop for consumers and consumer interest groups in June 2021 with over 100 participants joining the workshop. The commission took the stakeholders through the process for developing the guidelines, what the guidelines mean to various stakeholders and what is required for the implementation of the guidelines. The Commission also engaged directly with the National Consumer Commission, the Motor Industry Ombuds of South Africa, the South African Insurers Association and the Automotive Business Council on the guidelines.

The ongoing advocacy work in the automotive sector is to ensure that all stakeholders have a uniform understanding of the guidelines and are compliant with them.

7.9 PRECEDENT SETTING JUDGMENTS

A) COMPETITION TRIBUNAL DEALS WITH COLLUSIVE TENDERING

The Tribunal delivered a significant judgement for purposes of assessing allegations of collusive tendering, where characterisation is disputed. The judgement was against Tourvest Holdings (Pty) Ltd and the Siyazisiza Trust. The parties were found guilty of collusive tendering or price fixing, in contravention of section 4(1)(b)(iii) of the Competition Act 89 of 1998 as amended. The judgment also provides guidance on characterisation, where the colluding parties contested their horizontal relationship.

B) INTERLOCUTORY CASE CLARIFIES APPLICATION OF RULE 15(2) OF THE COMPETITION ACT

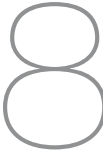
The Commission made a sufficient breakthrough with Interaction Market Services Holdings (Pty) Ltd where the Constitutional Court of South Africa (“CAC”) upheld the Commission’s appeal that the Commission had substantially complied with Rule 15(2) of the Competition Act. In this regard, the Commission need not in respect of section 4(1)(b) allege market definition or geographic market and the manner and extent of the contravention when referring a complaint to the Tribunal.

7.10 POSITION PAPER ON OPEN BANKING

The Commission conducted research focused on open banking and the importance of consumer data in fostering innovation and competition. Drawing from international experiences, the research assisted in highlighting key issues where regulatory supervision is required for open banking to be implemented successfully in South Africa. The focus on open banking is aligned to the Commission’s contribution to the Intergovernmental Fintech Working Group (“IFWG”). The IFWG is a platform for engagement with relevant industry market players and regulators on selected subjects including open banking.

Taking other jurisdictions’ experiences, the research further explored whether a market-led, or regulatory-led approach may be adopted in South Africa. Findings of the research found that the key pillars that have a bearing on open banking implementation include: the type of data involved, data ownership, payment for data, opening of APIs and data privacy and security. For open banking implementation to be a success in South Africa, a regulatory guidance is needed on these aspects.

Another key feature of open banking explored in this research pertains to data privacy and security. Notwithstanding the regulatory framework which empowers consumers to give consent for their personal data to be shared, data privacy and security considerations may pose difficulties to compel dominant players such as the larger banks to provide data access to SMEs (i.e. Fintechs). Therefore, supervision is required on how data can be shared without compromising data privacy and security.



COMMISSION’S INTERVENTIONS IN PRIORITY SECTORS

The Commission conducts its work in eight priority sectors, namely food and agro-processing; intermediate industrial input products; construction and infrastructure; healthcare, energy, banking and financial services, information and communication technology; and transport.

Below is a synopsis of the Commission’s work in the sectors over the reporting period.

Table 3: Commission’s enforcement work in priority sectors 2021/22

Priority sector	Parties to the investigation	Type of intervention
Agriculture, Food and Agro-processing	South African Sugar Association exemption	The Commission granted the South African Sugar Association and its members an extended exemption until June 30, 2023. The extended exemption has been granted considering the Minister’s extension of the designation of the sugar industry to 30 June 2030 as published in Government Gazette No. 44653 on 3 June 2021. The conditions and monitoring mechanisms will remain the same as those gazetted on 6 November 2020.
	Draft guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030	The Commission, in terms of section 79(3) of the Competition Act, issued draft guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030 for public comment. The purpose of the draft guidelines is to provide guidance to the sugar industry on collaboration in the implementation of industry commitments to increase sourcing of local sugar as contemplated in the South African Sugarcane Value Chain Master Plan to 2030 (“the Sugar Master Plan”).

Priority sector	Parties to the investigation	Type of intervention
<i>Agriculture, Food and Agro-processing</i>	Fresh Produce Market Inquiry	On 30 March 2021, the Commission launched a market inquiry into the fresh produce market to examine whether there were any features in its value chain which lessened, prevented, or distorted competition. The scope of the inquiry will specifically cover aspects from the sale of fresh produce by the farmer to the customer (the retailer, processor or export market). The Commission has identified four broad themes (efficiency of value chain; market dynamics and impact of key inputs for growers; small and HDP growers and participation; and barriers to entry in relation to the regulatory environment) which cover the features that may impede, restrict, or distort competition and market outcomes.
ICT & and Digital Markets	Competition Commission and Meta Platforms Inc. (previously known as Facebook Inc.)	The Commission also referred for prosecution the social media giant, Meta Platforms Inc. (previously known as Facebook Inc.) and its subsidiaries, WhatsApp Inc. and Facebook South Africa to the Tribunal for abuse of dominance in contravention of sections 8(1)(d)(ii), alternatively 8(1)(c) and in the further alternative 8(1)(b). The Commission found that Facebook had decided in or about July 2020 and expressed an ongoing intention to offboard Gov Chat and #LetsTalk, a technology start-up that connects government and citizens, from the WhatsApp Business Application Programming Interface. Facebook also imposed and/or selectively enforced exclusionary terms and conditions regulating access to the WhatsApp Business API, mainly restrictions on the use of data.
Healthcare	Competition Commission and Vertex Pharmaceutical Incorporated	The Commission initiated a complaint against Vertex Pharmaceutical Incorporated for alleged excessive pricing, refusal to give a competitor or potential competitor access to an essential facility, refusal to supply scarce goods, and/or exclusionary conduct in the provision of Kalydeco, Orkambi, Symdeco, and Trikafta which are drugs used in the treatment of cystic fibrosis. The alleged conduct may be in contravention of sections 8(1)(b), 8(1)(c), 8(d)(ii) and 8(1)(a) of the Competition Act. The investigation is ongoing.

Priority sector	Parties to the investigation	Type of intervention
<i>Healthcare</i>	Competition Commission and Roche Holdings AG and Others	The Commission referred Roche Holding AG and its subsidiaries, F Hoffman La Roche AG and Roche Products (Pty) Ltd, to the Tribunal for prosecution of alleged excessive pricing of breast cancer treatment drug, Trastuzumab, in contravention of sections 8(a) and 8(1)(a), of the Competition Act. The Commission believes that the excessive price of Trastuzumab constitutes a violation of basic human rights including the right of access to healthcare enshrined in the Bill of Rights, as it denies access to life saving medicine for women living with breast cancer. The alleged excessive pricing of Trastuzumab by Roche took place in both the private and public healthcare sector in South Africa. The Commission asked the Tribunal to impose a maximum penalty against Roche for its alleged harmful and life-denying pricing conduct.
	Day Hospital Association	The Commission granted the Day Hospital Association (DHA) a conditional exemption for collective bargaining, centralised procurement and ARM for a period of five years.
Construction services, Property and Infrastructure	Various complainants vs the South African Council for the Architectural Profession and the Council for the Built Environment	The Commission received various complaints against the South African Council for the Architectural Profession (“SACAP”) and the Council for the Built Environment companies (“CBE”) from 2019 to 2020. The complainants alleged that the Scope of Work Policy, in its current form, would restrict professional architectural draughts persons and technologists from undertaking certain projects reserved solely for professional architects. The complainants further alleged that the categorisation of work in terms of SACAP’s scope of work policy did not take into consideration the experience of professionals and excluded those professionals from doing certain work in the market solely based on qualifications. The alleged conduct relates to a contravention of sections 4(1) and 8(c) of the Competition Act. The Commission investigated the complaint and concluded that the matter should not be referred to the Tribunal for the following reasons:

Priority sector	Parties to the investigation	Type of intervention
<i>Construction services, Property and Infrastructure</i>		a. The Commission concluded that SACAP's submission and proposals addressed the concerns raised by the professionals. The Memorandum of Understanding between the Commission and SACAP will enable the Commission to track the commitments by SACAP and to monitor the impact of the revised scope of work on competition in the market. b. The Commission and SACAP also agreed to maintain an open line of communication where the parties will express and exchange ideas. There is also an agreement to jointly run awareness campaigns targeted at all registered professionals with SACAP, residential estates and customers on the workings of the Scope of Work Policy guidelines. In line with the MOU, the Commission and SACAP agreed to meet quarterly to engage on developments in the industry and to ensure quick response and resolve to issues as they arose.
Manufacturing	Competition Commission vs NGK Spark Plug Company Limited and Others	The Commissioner initiated a complaint in terms of section 49B(1) of the Competition Act against the NGK Spark Plug Company Ltd ("NGK Ltd"), together with its South African subsidiary, NGK Spark Plugs SA (Pty) Ltd ("NGK SA") and DENSO Corporation ("DENSO") for alleged price fixing, market division and collusive tendering in the market for the manufacture, supply and/or sale of spark plugs to OEMs, in contravention of section 4(1)(b)(i), (ii) and (iii) of the Competition Act. The complaint was initiated as part of investigations into price fixing, market division and collusive tendering in the market for the manufacture and supply of automotive components supplied to OEMs.

Priority sector	Parties to the investigation	Type of intervention
Banking and Financial Services	Banks, insurers and the other financial sector stakeholders	The Commission hosted external stakeholders from banks, insurers and the financial sector. The focus of the workshop was to receive input from market participants on competition principles aimed at ensuring that they reform their practices when appointing suppliers onto panels. The competition principles include: (i) establishing fair evaluation criteria and processes for panel appointments (ii) fair allocation of work to suppliers, (iii) eliminating exclusive long-term agreements and reducing the contract periods to five years or less, (iv) increasing the participation of SMEs and HDIs on supplier panels, (v) increasing transparency on the application and selection criteria by publishing it on websites; (vi) increasing consumer choice to select suppliers from the approved list and; (vii) monitoring the performance of a supplier panel and fair allocation of work to suppliers.
Transport and Automotive	Competition Commission vs Robert Bosch GMBH; Bosch Electrical Drives Co. Limited	Robert Bosch GMBH and Bosch Electrical Drives ("Robert Bosch and Bosch Electrical") was one of the firms implicated in the automotive investigations. The investigation revealed that Robert Bosch and Bosch Electrical and Denso concluded a general agreement and/or were party to concerted practice to fix prices that would quote to original equipment manufacturers ("OEM"), divide markets and tender collusively in respect of request for quotations ("RFQs") in the market for the manufacture and supply of automotive components to OEMs, both within and outside of South Africa. Robert Bosch was implicated in one component namely starter motors and Bosch Electrical was implicated in one component namely windshield wipers, in contravention of section 4(1)(b)(i), (ii) and (iii) of the Competition Act. Robert Bosch agreed to pay an administrative penalty of R1 211 908 (one million two hundred and eleven thousand nine hundred and eight rand) and Bosch Electrical agreed to pay an administrative penalty of R1 190 015 (one million hundred and ninety thousand and fifteen rand) which does not exceed 10% of its annual turnover.

Table 4: Noteworthy M&A cases in priority sectors

Priority sector	Parties to the investigation	Type of intervention
Agriculture, Food and Agro-processing	African Pioneer Foods (Pty) Ltd/Sun Orange Farms (Pty) Ltd	The Commission approved the merger subject to the parties agreeing to set up a bursary fund, developing a community-based enterprise development programme and establishing an Employee Share Ownership Programme (ESOP).
Healthcare	The Commission recommends conditional approval of Dis-chem Pharmacies Ltd and Pure Pharmacy Holdings (Pty) Ltd merger	The Commission recommended that the Tribunal approve the proposed acquisition of Pure Pharmacy Holdings (Pty) Ltd (“PPH”) by Dis-Chem Pharmacies Ltd (“Dis-Chem”) subject to various competition and public interest conditions.
	Acino AG/certain assets of Aspen Pharmacare Holdings Limited	The Commission approved this merger subject to the parties using their commercially reasonable endeavours to localise the manufacture of certain pharmaceutical products.
Construction services, Property and Infrastructure	AIH Ltd/Kwikspace Modular	The Commission approved the merger subject to the parties agreeing to conclude a transaction transferring shareholding to one or more historically disadvantaged persons.
Manufacturing	South African Industrial Group Proprietary Limited/Paul Bayvel Eyethu Sales Pty Ltd	Approved subject to amongst others, removal of a restraint of trade.
	Corruseal Group Pty Ltd/Neopak Holdings Pty Ltd	The merger was prohibited because the merged entity would be able to exercise unilateral effects in an already highly concentrated recycled containerboard paper manufacturing market and foreclose inputs to downstream players. The relevant markets also have a history of cartel investigations.
	Cargotec Corporation/Konecranes Plc	The Commission approved this merger subject to the parties globally divesting certain lines of their container handling equipment namely: forklifts, empty container handlers and reach stackers. The parties subsequently abandoned the merger.



PART C

PERFORMANCE INFORMATION

9 PROGRAMMES AND FUNCTIONS

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

The Commission's enforcement function can be defined as *"the investigation of vertical restrictive practices, horizontal restrictive practices—including cartels—and the investigation of abuse of dominance by firms"*. Advocacy refers to "the Commission's authority to promote voluntary compliance with the Competition Act". A market inquiry is a broad investigation into the cause of market failure in an identified market, without focusing on the conduct of any particular firm in that market. Finally, the regulation of mergers and acquisitions entails the assessment of corporate consolidations, in order to determine their likely impact on competition and the public interest.

The divisions that carried out the Commission's work during the reporting period were:

1. **Market Conduct Division (MCD):** investigates abuse of dominance, vertical restrictive practices, assesses exemption applications and conducts market inquiries;
2. **Cartels Division (CD):** investigates and prosecutes cartel conduct;
3. **Mergers and Acquisitions Division (M&A):** analyses and evaluates applications for corporate consolidations;
4. **Legal Services Division (LSD):** provides litigation services and legal expertise to the Commission and advisory opinions to the public;
5. **Economic Research Bureau (ERB):** provides economic expertise to the organisation and enhances the Commission's knowledge and understanding of market dynamics.
6. **Advocacy:** conducts preliminary investigations of complaints received; provides policy responses to government and other regulators; and advocates for voluntary compliance with the Competition Act;
7. **Corporate Services Division (CSD):** provides corporate support services, including human resource management, registry, security and facilities management, as well as the management of Information Technology (IT);
8. **Finance Division:** responsible for finance management;
9. **Office of the Commissioner (OTC)** carries out the strategic planning, communication and corporate governance functions. The division is also responsible for managing the Commission's relations with international stakeholders.

Table 5: Strategic goals, outcomes and responsible divisions

Strategic goal	Intended outcomes	Responsible divisions
Enforcing and regulating towards economic growth and enhanced economic participation	• Efficient and effective merger regulation and enforcement • Competitive, contestable and deconcentrated markets • Improved public interest outcomes • Improved compliance and awareness • Existing competitive small and large businesses remain in the market	• Advocacy Division • Cartels Division • ERB Division • Market Conduct Division • Legal Services Division • M&A Division
Advocating for improved compliance and pro-competitive public policy outcomes	• Improved public interest outcomes • Improved compliance and awareness • Improved understanding of market dynamics in priority sectors • Improved co-ordination on the application of economic policy and competition policy • Increased importance of developmental perspectives in domestic and international competition law discourse	• Office of the Commissioner • Advocacy Division • Cartels Division • ERB Division • Market Conduct Division • Legal Services Division • M&A Division
A people-centric, high-performance organisation	• Sound corporate governance • Secure, harmonious and conducive working environment • Responsive corporate services systems to support workforce during Covid-19 pandemic • Highly motivated, engaged and productive workforce	• Corporate Services Division • Finance Division • All other divisions

10

MARKET CONDUCT
DIVISION

The Market Conduct division (MCD) investigates and together with LSD, prosecutes restrictive vertical practices and abuse of dominance cases. The division also evaluates exemption applications when these are brought to the commission; and conducts market inquiries. The investigative work of the MCD comes from two main sources - complaints and exemption applications filed by the public and investigations and market inquiries proactively initiated by the Commissioner.

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

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

The Competition Act prohibits the abuse of a dominant position by firms in a market but does not prohibit firms from holding a

dominant position. Proving abuse of dominance requires extensive evidence and analysis. Firstly, it must be proven that the respondent is dominant in a specific market. The Competition Act uses both market share and market power to define dominance. Secondly, there must be evidence that the respondent is abusing their dominance. This evidence relates to substantial foreclosure or consumer welfare (harm).

Exemption applications are granted to firms that wish to engage in anti-competitive conduct, if the conduct and their motivation meet the requirements set out in the Competition Act. The MCD also conducts market inquiries, which are formal inquiries into the general state of competition in a market for goods or services, without necessarily referring to the conduct or activities of any firm.

10.1 SUMMARY OF PERFORMANCE VS TARGETS

The MCD was responsible for eight performance targets in the 2021/22 financial year - two targets were met, four were not met and two were not applicable.

10.2 PERFORMANCE HIGHLIGHTS

In this financial year the MCD had eighty-eight complaints under investigation. Market conduct completed thirty-nine investigations during the financial year, thirty-six complaints were non-referred and three complaints were referred to the Tribunal for prosecution.

Below, we discuss some of the complaints completed/ referred to the Tribunal during the financial year:

a. Council for Medical Schemes vs Private Laboratories (PCR Test)

On 8 October 2021, the Council for Medical Schemes (“CMS”) lodged a complaint in terms of section 49B of the Competition Act. The complaint alleged that private (pathology) laboratories were charging between R850 and R900 for a Covid-19 test. It is alleged that the prices were reached on an agreed tariff mechanism between private laboratories and industry associations and that such agreement may be as a result of collusion and unfair inflation of COVID-19 test prices. The CMS also believes that these prices were exorbitant and unjustifiable.

The Commission identified three respondents, namely the three largest pathology laboratories in the private sector. They were The Ampath Trust, as management agent to Du Buisson Kramer Swart Bouwer Incorporated (“Ampath”); Drs Mauff AC & Partners t/a Lancet Laboratories (“Lancet”) and Drs Dietrich, Voigt, Mia & Partners t/a PathCare (“PathCare”).

PCR-tests (which had presented at price points of between R80 and R900) have consistently been the most widely used test in detecting and diagnosing COVID-19. The investigation characterised the conduct as a possible contravention of the Price Gouging Regulations, alternatively Section 8(1)(a) of the Competition Act.

The Commission’s investigation revealed that costs for the respondents had decreased across pathology suppliers, i.e. the suppliers who supply the respondents have lower prices, thus reducing the respondents’ costs. A basic average of the costs (i.e. not accounting for differences in volume) from individual COVID-19 PCR test kit suppliers, showed that these costs have decreased on average by between 30 – 35% between March 2020 and September 2021.

The Commission’s investigation also revealed that the pathology groups have had been earning significant profits since March 2020, especially in the current financial year to date. The above significant increases in profitability indicated to the Commission that excessive pricing on COVID-19 PCR tests may be present. As a result, the Commission found prima facie evidence that the respondents had

contravened Section 8(1)(a) of the Competition Act. On 8 December 2021, the Commission sent letters of demand to the pathology groups to immediately reduce the cost of COVID-19 PCR tests to no more than R 500 inclusive of VAT, failing which, the Commission indicated that it would launch an urgent application in the Tribunal for appropriate relief aimed at the reduction of COVID-19 PCR tests to R500 inclusive of VAT.

In the consequent days, each of the respondents agreed to a reduction in the price for COVID-19 PCR tests to a price of no more than R500 inclusive of VAT and consent agreements were confirmed by the Tribunal in respective of each of the respondents.



b. COVID-19 Antigen Investigation

On 13 December 2021, Dr Barry Kistnasamy of the Department of Health lodged a complaint in terms of section 49B of the Competition Act against service providers delivering COVID-19 rapid antigen tests in South Africa to consumers. Dr Kistnasamy alleged that COVID-19 rapid antigen test prices were around R350 in the private sector, whereas COVID-19 rapid antigen tests were R150 in the public sector as charged by the National Health Laboratory Service to public hospitals/clinics. Dr Kistnasamy alleged that prices charged in the private sector for Covid-19 Rapid Antigen tests exceeding R150, may be excessive.

The Commission decided to pursue the investigation on an expedited basis, to determine whether the pricing of Covid-19 rapid antigen tests may amount to an excessive price in contravention of Section 8(1)(a) of the Competition Act read with paragraph 4 of the Price Gouging Regulations.

The Commission initially identified five respondents: The Ampath Trust, as management agent to Du Buisson Kramer Swart Bouwer Incorporated (“Ampath”); Drs Mauff AC & Partners t/a Lancet Laboratories (“Lancet”); and Drs Dietrich, Voigt, Mia & Partners t/a PathCare (“PathCare”, DisChem Pharmacies Ltd (“DisChem”) and Clicks Group Ltd (“Clicks”).

It was established that Clicks did not provide COVID-19 rapid antigen testing, but rather antibody testing (which has no diagnostic value). The case against Clicks was, as a result, not pursued.

Following an investigation into the costs incurred relative to the prices, the Commission found that prima facie pathology groups had engaged in a contravention of Section 8(1)(a) of the Competition Act.

Accordingly, Ampath, Lancet and PathCare entered into consent agreements with the Commission wherein they agreed to reduce the price for COVID-19 rapid antigen testing to no more than R150 (VAT inclusive).

c. Competition Commission vs Mine Africa Safety Solutions

The Tribunal confirmed as an order, the settlement agreement between the Commission and Mine Africa Safety Solutions (“Mine Africa”).

In terms of the order Mine Africa undertook to:

- reduce its gross profit margin on face masks to a maximum of 30% with immediate effect and for the duration of the State of the National Disaster;
- donate essential goods to Empilweni—New Life Community Project (013-499 NPO) situated at 152 Nkanyamba Street, Mqantsa Section, Tembisa, 1632 totaling a cost price value of R116 672,02 (One hundred and sixteen thousand, six hundred and seventy-two Rand and two cents) within seven calendar days of signature by both parties; and
- pay a cash contribution in the amount of R116 672,02 to the Solidarity Fund within seven calendar days from the date of confirmation of the Consent Agreement as an order by the Tribunal.

This settlement agreement follows a third-party complaint received in March 2020 indicating Mine Africa inflated prices it was charging its customers for the FFP1 and FFP2 face masks for the period March and April 2020.

The Commission’s investigation established that since the outbreak of Covid-19, Mine Africa significantly increased prices of FFP1 and FFP2 face masks in respect of sales to end-users and retailers.

Thus, given the high gross profit margins realised by Mine Africa, the Commission was of the view that the conduct accordingly constitutes a contravention of Section 8(1)(a) of the Competition Act read together with Regulation 4 of the Consumer Protection Regulations.

ABUSE OF DOMINANCE PROSECUTIONS

d. *Competition Commission South Africa vs Roche Holding AG and its Subsidiaries*

On 13 June 2017, the Competition Commissioner (“the Commissioner”) initiated a complaint against Roche Holding AG (“Roche AG”), and Genentech Incorporated (a wholly-owned subsidiary of Roche AG) in terms of section 49B(1) of the Competition Act for alleged excessive pricing in contravention of sections 8(a) of the Competition Act. On 6 December 2021, the Commissioner amended the complaint initiation to include two subsidiaries of Roche AG, namely F. Hoffman La Roche AG (“Roche Basel”) and Roche Products (Pty) Ltd (“Roche SA”) for the same conduct of excessive pricing.

The alleged contravention relates to the sale and supply of the drug called Trastuzumab. Trastuzumab sold in South Africa by Roche SA under Roche’s brand names Herceptin (in the private healthcare sector) and Herclon (in the public healthcare sector). Trastuzumab is a first-line treatment life-saving drug which stops the development of an aggressive type of breast cancer called Human Epidermal Growth Factor Receptor 2 Positive (“HER2+”) breast cancer. Trastuzumab is used to stop the development of tumour cells to prevent the cancer from spreading and death.

Trastuzumab is produced by Roche Basel in Switzerland and is distributed, sold and marketed in South Africa by Roche SA in terms of an exclusive distribution arrangement between the parties. Roche SA is a wholly owned South African subsidiary of Roche AG and is an exclusive distributor of healthcare products for Roche Basel and other Roche AG companies in South Africa.

The Commission undertook the investigation of the alleged conduct in terms of the provision of Section 8(a) and 8(1)(a) of the Competition Act (which came into effect in 2020).

The Commission’s investigation revealed that over 10 000 HER2+ patients (nearly 50% of the total number of newly infected patients in the private and public healthcare sectors) were unable to receive

treatment with Trastuzumab between 2011 and 2019 because of the excessive prices Roche AG charged for the medicine. The Commission’s findings revealed that the impact of excessive pricing of Trastuzumab falls heavily on women, particularly poor women, who cannot access essential treatment because they cannot afford to pay for it. This is so, even for the minority of women who belong to medical schemes.

In addition to the above, the Commission’s findings revealed that the conduct of Roche AG and its subsidiaries was not only prohibited under the Competition Act, but it also infringed on several constitutional rights of South African citizens. These rights include:

- the right to equality under Section 9 of the South African Constitution;
- the right of access to health care services under Section 27 of the South African Constitution;
- the right to dignity under Section 10 of the South African Constitution; and
- the right to life under Section 11 of the South African Constitution.

On 08 February 2022, the Commission filed a complaint referral with the Tribunal in terms of section 50(1) of the Competition Act for prosecution of Roche AG and its subsidiaries.

e. *Referral of GovChat (Pty) Ltd & and Hashtag LetsTalk (Pty) Ltd and Facebook Inc. WhatsApp Inc. and Facebook South Africa (Pty) Ltd*

On 20 November 2020, GovChat and #LetsTalk filed a complaint with the Commission against Facebook alleging, among other things, that the respondents threatened to terminate the complainants’ access to the WhatsApp Business Application Programming Interface (WhatsApp Business API) due to alleged violation of the terms and conditions.

GovChat alleged that the termination from the WhatsApp Business API would inhibit its ability to continue offering WhatsApp messaging services to its customers such as government departments.



On 8 October 2021 the Commissioner initiated a further complaint against the respondents. The Commission’s complaint, essentially, alleged that certain terms and conditions imposed by the respondents on market participants operating on the WhatsApp Business API value chain result amounted to anti-competitive conduct and in breach of the sections 8(1)(b), 8(1)(c) and/or 8(1)(d)(ii) of the Competition Act.

Facebook operates in the social media market through the Facebook App, and a photo and video-sharing platform and social networking app called Instagram (Instagram App). In 2014, Facebook acquired and obtained sole control of WhatsApp, the firm that provides the WhatsApp Messenger messaging app.

WhatsApp Messenger provides increasingly essential channels for users to communicate and for businesses and government to access customers and citizens respectively. WhatsApp Messenger provides these services using data over the internet which goes over-the-top of normal telecommunication services (OTT). It allows users on different mobile network operators, handset operating systems and devices to interact seamlessly on one platform that is essentially free outside of any data costs.

GovChat provides South African citizens with a solution for engagement with the South African national government, government departments, and local government. GovChat integrated government communications to provide online real-time escalation and reporting services, creating a platform which allows government and citizens to connect and engage, with a view to improving service delivery and active citizenry.

Through the GovChat service, citizens can report civic issues (e.g. potholes) and the complainants are able to compile and provide insights in real time to the relevant government department or municipality.

In addition, by utilising the GovChat, government can disseminate critical information to citizens en masse. COVID-19 symptom tracking and testing, as well as the provision of related information, is illustrative of this function. Among other things, during the 2020 COVID-19 related lockdown, to date, GovChat has enabled citizens to digitally apply for social relief and distress grants. GovChat relies on the WhatsApp Business API to provide these services.

On 14 November 2020, GovChat applied to the Tribunal for interim relief in terms of Section 49C of the Competition Act. On 11 March 2021, the Tribunal granted the interim order in favour of GovChat interdicting Facebook from offboarding GovChat from the WhatsApp Business API pending the Commission’s investigation of the GovChat complaint.

The interim order lapsed on 11 March 2022, and on the same date the Commission filed its referral against Facebook for abuse of dominance.

This is in contravention of the Competition Act, sections 8(1)(d)(ii), alternatively 8(1)(c) and in the further alternative Section 8(1)(b).

GovChat is dependent on its continued access to the WhatsApp Business API. The intended offboarding of GovChat from the WhatsApp Business API will harm consumer welfare by removing the efficiency of the GovChat, which allows the public to communicate with multiple government bodies through a single platform and will also deprive government of the current services (and future services such as mobile payment solutions) offered by the GovChat.

The Commission found that the harm to the competitive process is also clear because the decision to off-board GovChat from the WhatsApp Business API and the exclusionary terms for access to the WhatsApp Business API, including restrictions on the use of data, limits innovation and the development of new products and services.

This is in a context in which WhatsApp Messenger enjoys significant economies of scale and network effects advantages. Consequently, the Commission also found that the terms and conditions governing access to the WhatsApp Business API are were designed to shield and insulate Facebook from potential competition, such as the potential competition presented by GovChat and enormous data it has been able to harvest, which enabled it to develop new services and products.

The Commission asked the Tribunal to impose a maximum penalty against Meta Platforms, WhatsApp and Facebook South Africa which is 10% of their collective turnover. In addition, the Commission requested the Tribunal to interdict Facebook from offboarding GovChat from the WhatsApp Business API and to declare void certain exclusionary terms and conditions for access to the WhatsApp Business API.

SCHOOL UNIFORMS SETTLEMENT

f. *Competition Commission vs McCullagh and Bowell*

The Commission welcomed the decision by the Tribunal, to confirm as an order, a consent agreement with a Gauteng based school

uniform supplier McCullagh and Bothwell (Hyde Park) (Pty) Ltd. The consent order is a culmination of the Commission's advocacy work and years of investigations following complaints received from parents who were forced to buy school uniform from exclusive selected suppliers. The order effectively terminates all exclusive supply agreements on the procurement of school uniform while guaranteeing parents and learners choice and an opportunity to shop around for competitive prices for school uniform and other learning materials.

In terms of the consent agreement, McCullagh and Bothwell has undertaken the following:

- to enter into any evergreen supply agreement with any school;
- to amend all its existing supply agreements with schools to remove any exclusivity or clause recognising McCullagh and Bothwell as a "sole stockist" of uniform for a particular school;
- to ensure that all supply agreements have a termination date not exceeding five years; and
- to provide the Commission with a list if schools that have not effected the changes by May 2022.

The Commission will be monitoring compliance by McCullagh and Bothwell and will also, through its partnership with the School Governing Body (SGB) associations, monitor general compliance by all schools in the country to ensure that they adhere to the Guidelines on School Uniform and comply with the principles that promote pro-competitive sourcing of school uniform.

The Commission will also continue to create awareness around anti-competitive practices in the procurement of school uniform and other learning-related material. The Commission has produced an educational pamphlet for schools, parents and SGBs on the importance of competition in the procurement of school uniform and other learning-related material. The educational pamphlet also provides a guide on the role that schools, parents and SGBs can play to help lower the price of school uniform and other learning-related material. The pamphlet is available in English, Afrikaans, Sesotho and IsiZulu.



10.3 INITIATIONS

The Commission initiated three complaints in the 2021/22 financial year. Some initiated complaints are summarised below:

a. *Competition Commission vs Sanofi Industries South Africa and/or Sanofi – Aventis South Africa and Abbott Laboratories SA (Pty) Ltd*

The Commission initiated a complaint in terms of Section 49B (1)

of the Competition Act, against Sanofi Industries South Africa and/or Sanofi-Aventis South Africa and Abbott Laboratories SA (Pty) Ltd for alleged contravention of sections 8(1)(a) and 4(1)(b)(i) of the Competition Act. The Commission is in possession of information that gives rise to a reasonable suspicion that Sanofi Industries South Africa (Pty) Ltd and/or Sanofi-Aventis South Africa (Pty) Ltd and Abbott Laboratories SA (Pty) Ltd have and continue to engage in anti-competitive practices in the provision of the quadrivalent flu vaccine. The quadrivalent flu vaccine includes two sub-types of influenza A viruses [an A(H1n1) pdm09 and an A(H3N2) virus] and two lineages of influenza B viruses (a B/Victoria lineage virus and a B/Yamagata lineage virus)⁴. A quadrivalent flu vaccine differs from a trivalent flu vaccination, which includes two subtypes of influenza A viruses [an A(H1n1) pdm09 and an A(H3N2)] virus and one type B virus⁵. The Commission is in possession of information which suggests that for the upcoming flu season, the World Health Organisation (WHO) does not provide a preferential recommendation between the trivalent and quadrivalent flu vaccines and notes that a country may review the respective costs, benefits and context-specific evidence to inform their decisions on which type of vaccine to choose. In so far, as the section 8(1)(a) allegations are concerned the information in the Commission's possession suggests that despite the WHO's advice, the respondents are only making their quadrivalent flu vaccine available to the South African market for the upcoming flu season, effectively withdrawing their trivalent flu vaccine.

b. *Competition Commission vs Facebook Inc, WhatsApp Inc. and Facebook South Africa (Pty) Ltd*

The Commissioner initiated a complaint in terms of Section 49B (1) of the Competition Act for possible contravention of 8(1)(b), 8(1)(d) (ii) and, alternatively 8(1)(c) of the Competition Act. The Commission has information that the Facebook Inc. (and Facebook South Africa Proprietary) through its subsidiary, WhatsApp Inc. threatened to terminate (or "off-board") GovChat's access to its WhatsApp message platform, the so called the WhatsApp Business Application

⁴ https://www.who.int/influenza/vaccines/virus/recommendations/202009_qanda_recommendation.pdf?ua=1

⁵ Ibid.

Programming Interface (“WhatsApp Business API”), thereby stopping GovChat from offering services through the WhatsApp platform.

During the course of the investigation of the GovChat complaint, the Commission obtained information that gave rise to a reasonable suspicion that Facebook Inc., WhatsApp Inc. and Facebook South Africa Proprietary Limited (WhatsApp) (collectively referred to “Respondents”) have and continue to engage in additional exclusionary conduct in the imposition of exclusionary terms in the suite of WhatsApp terms and conditions, and enforcement thereof in contravention of Section 8(1)(c) of the Competition Act. In addition, the Commission is in possession of information that gives rise to a reasonable suspicion that the suite of Facebook/WhatsApp terms and conditions, and the enforcement thereof may further amount to refusal to supply and/or refusal to provide access to an essential facility. The refusal to supply conduct may be in contravention of sections 8(1)(d)(ii) of the Competition Act. The refusal to provide access conduct may be in contravention of Section 8(1)(b).

The first respondent is Facebook Inc. - a limited liability company registered under the laws of the United States of America, with its registered head office at 1 Hacker Way, Menlo Park, California and which offers a social networking application/platform called Facebook”, a consumer communications app, named “Facebook Messenger” and a photo and video-sharing platform called “Instagram”.

The second respondent is WhatsApp Inc, a limited liability corporation incorporated and registered under the laws of the United States of America, with principal place of business being 1601, Willow Road, Menlo Park, California and a firm that operates an instant messaging application called WhatsApp. The WhatsApp application was launched in 2009 and is an instant messaging application which provides a simple interface, allowing users to communicate with other WhatsApp users either in groups or individually. WhatsApp uses the internet to send and receive text messages, images, audio or video content from one user to another. It further offers features like group chatting, voice messages and location sharing. WhatsApp Inc.’s principal place of business is at number 1601 Willow Road, Menlo Park, California, in the United States of America.

The third respondent is Facebook South Africa (Pty) Ltd (“Facebook SA”), a company duly registered and incorporated in accordance with the laws of the Republic of South Africa. Facebook SA is a wholly owned subsidiary of Facebook Inc. and provides the same services as Facebook Inc.

In addition, Facebook SA acts on the instructions of Facebook Inc. in giving effect to Facebook’s decisions in South Africa. Facebook SA’s registered address is at 32 Culrose Road, Bryanston in Johannesburg.

The complaint was subsequently referred to the Tribunal for prosecution.

c. Competition Commission vs Vertex Pharmaceutical Incorporated

The Commission initiated a case against Vertex Pharmaceutical Incorporated (“Vertex”), alleging that Vertex has and continues to engage in excessive pricing, refusal to give a competitor or potential competitor access to an essential facility, refusal to supply scarce goods, and/or exclusionary conduct in the provision of Kalydeco, Orkambi, Symdeco, and Trikafta which are drugs used in the treatment of cystic fibrosis. This conduct may be in contravention of sections 8(1)(b), 8(1)(c), 8(d)(ii) and 8(1)(a) of the Competition Act.

Vertex developed Kalydeco, Orkambi, Symdeco, and Trikafta which are approved medicines specifically designed to treat the underlying cause of cystic fibrosis. Cystic fibrosis is a rare, life-threatening genetic disease that causes long-lasting lung infections and persists through childhood and into adult life. Vertex is an incorporated global biotechnology company with corporate headquarters in the United States of America. Vertex invests in scientific innovation to create transformative medicines for people living with serious diseases. Vertex is an incorporated global biotechnology company with corporate headquarters in the United States of America. Vertex invests in scientific innovation to create transformative medicines for people living with serious diseases.

10.4 EXEMPTIONS

During the financial year, the Commission finalised five exemption applications and received five new exemption applications in the financial year. The Commission extended existing exemptions sought by the South African Petroleum Industry Association (SAPIA) for one year, ending December 2020, and Abalone Farmers Association of South Africa (AFASA) for one year ending September 2020. The exemption applications assessed are set out in Table 6.

Table 6: Exemption applications finalised in 2021/22

Applicant	Conduct sought to be exempted	Status of the application at year end
Independent Chrome Ore Producers exemption	Section 4(1)(b)(i)	Exemption refused
Marang Africa Healthcare exemption	Section 4(1)(b)(i)	Conditionally exemption granted
South African Sugar Association	Section 4(1)(b)(i)	Extension of the conditional exemption granted
Day Hospital Association	4(1)(b)(i) 10(3)(b)(ii)	Conditional exemption granted
The Abalone Farmers Association of South Africa (“AFASA”)	Section 10(1)(b)	Conditional Exemption granted

a. South African Sugar Association Exemption

On 17 August 2020, the South African Sugar Association (“SASA”) and its members, hereinafter jointly referred to as (“the Applicants”) filed an application for an exemption in terms of Section 10 of the Competition Act. The exemption was requested for a period of one year from the date of the application up to and including 30 June 2021.

SASA is a statutory body established in terms of Section 2(1) of the Sugar Act No. 9 of 1978 (“the Sugar Act”). SASA provides a variety of services to its members to support the functioning of the regulatory framework within which the industry operates, and acts

as a presentative of the industry in relation to engagements with external stakeholders. SASA’s membership comprises two levels of the value chain, namely growers and millers and are made up of the associations which represent the interests of those levels. These are the South African Sugar Miller’s Association (“SASMA”), the South African Cane Growers Association (“SACGA”) and the South African Farmer’s Development Association (“SAFDA”).

The exemption application was brought in terms of Section 10(1) of the Competition Act which allows a firm to apply to the commission to exempt an agreement, a practice and/or a category of agreements from the provisions of Chapter 2 of the Competition Act. SASA relied on the objective set out in Section 10(3)(b)(iv) of the Competition Act, which allows an exemption of agreements and/or practices that contribute to the economic stability of any industry designated by the Minister of the DTIC. The exemption application covered the following practices by SASA and its members:

- i. restrain producer price increases of sugar in terms of timing, notice and manner of implementing such price increases;
- ii. share competitively sensitive information and in light of that information, engage regarding various options for interventions that could be implemented to support small-scale growers and ensure that they become a sustainable part of the sugar supply chain, in line with the objectives of the Sugar Master Plan;
- iii. share competitively sensitive information of the various sugar industry participants, including growers, millers and refiners and in light of that information engage on the various means by which the industry could implement a restructuring of the nature contemplated in the Sugar Master Plan; and
- iv. share competitively sensitive information with the Eswatini Sugar Association (including in relation to production volumes, local and export sales volumes, notional pricing and identification of diversification opportunities); and considering this information engage with the Eswatini Sugar Association to achieve policy harmonisation to the mutual benefit of each country’s sugar producers.



The Commission's investigation resulted in the following findings:

- i. the conduct of SASA's members would result in a contravention of Section 4 of the Competition Act as the application relates to coordination and information exchange between parties in a horizontal relationship;
- ii. the exemption may contribute to the economic stability of the sugar industry; and
- iii. the exemption can be used as an instrument for transformation and the opening up of the sugar industry to previously disadvantaged individuals, particularly small-scale sugarcane growers, in line with the objectives of the Competition Act.

Based on these findings, the Commission granted the applicants a conditional exemption up to and including 30 June 2021. The exemption was subject to monitoring mechanisms which the Commission put in place to ensure that the objectives set out in the application are met within the scope of the exemption. The decision of the Commission was published in Government Gazette No. 43872 on 6 November 2020.

Subsequently, on 7 June 2021, the applicants submitted an application requesting the Commission to extend their conditional exemption by 24 months (i.e. up to 30 June 2023) in light of the minister's extension of the designation of the sugar industry to 30 June 2023. The scope of the application remains unchanged as set out above and the basis for the request is to accommodate additional time required to achieve the economic stability of the sugar industry.

After due consideration of the above, the Commission decided to grant SASA and its members an extension of the conditional exemption, up to and including 30 June 2023. The conditions and monitoring mechanisms will remain the same as those of the previous exemption.

b. The Day Hospital Association Exemption

On 10 February 2021, the Day Hospital Association ("DHA") and its members, hereinafter jointly referred to as ("the Applicants") filed an application for an exemption ("the Application") in terms of Section 10(3)(b)(ii) of the Competition Act No 89 of 1998, as amended ("the Competition Act"). The exemption was requested for a period of five years.

The DHA is a representative body of independent, registered, and private day hospitals across South Africa. At the time of the application, the DHA members were part of the National Hospitals Network exemption ("NHN exemption"). The DHA independently submitted their exemption application to the Commission for the same conduct exempted under the NHN exemption i.e. (1) collective bargaining, (2) centralised procurement and (3) alternative reimbursement models. According to the DHA, the reason for this separate application was that the NHN exemption which permitted

the NHN to bargain collectively with medical schemes on behalf of its members in relation to tariffs and other matters, was not sufficient for members of the DHA since the business model of a day hospital required a unique approach.

In their application, the applicants relied on the objectives set out in Section 10(3)(b)(ii) of the Competition Act which allows an exemption of agreements and/or practices that promote the effective entry into, participation in or expansion within a market by small and medium businesses or firms controlled or owned by historically disadvantaged persons.

The scope of the application for exemption is in terms of a commercial agreement and/or practices in the industry as they relate to:

COLLECTIVE BARGAINING

- According to the DHA, should the exemption be granted, it will be able to negotiate prices with medical schemes, which will enable its members to collectively implement such prices.

CENTRALISED PROCUREMENT

- The DHA submitted that should the exemption be granted, it would be able to engage in centralised procurement through a 'request for proposal' to suppliers for the surgical cost basket in exchange for participation in the preferred provider list.
- According to the DHA, suppliers adding value will be instrumental to the success of the DHA. This will ensure the highest standards of goods, at the lowest possible prices and will essentially support its' objective to deliver the highest quality of care, at the most cost-efficient price.

ALTERNATIVE REIMBURSEMENT MODELS

- The DHA is of the view that alternative reimbursement model ("ARM"), which is a form of payment restructuring that incorporates quality and total cost of care into reimbursement rather than a traditional fee-for-service structure, could pertain to a specific clinical condition, a care episode, or a population group. If allowed, the DHA will also be able to engage in global fee negotiations with medical schemes and the state.

The exemption application was brought in terms of Section 10(1) in conjunction with sub-sections 10(2) and 10(3) of the Competition Act. Section 10(1) of the Competition Act allows a firm to apply to the Commission to exempt an agreement, a practice and a category of agreements from the provisions of Chapter 2 of the Competition Act. The DHA relied on the objective set out in Section 10(3)(b)(ii) of the Competition Act, which allows an exemption of agreements and/or practices that promote the effective entry into, participation in or expansion within a market by small and medium businesses or firms controlled or owned by historically disadvantaged persons.

The Commission's investigation revealed that:

- i. the conduct of DHA's members would result in contravention of Section 4 of the Competition Act, as the application relates to information exchange agreements and/or practices between parties in a horizontal relationship; and
- ii. the sought conduct would contribute to *"the promotion of the effective entry into, participation in or expansion within a market by small and medium businesses or firms controlled or owned by historically disadvantaged persons"* within the private healthcare sector.

After consideration of the exemption application, the Commission decided to grant DHA a conditional exemption for a period of five years, commencing on 12 April 2022 up to and including 11 April 2027.

c. Abalone Farmers Association of South Africa Exemption

On 13 June 2016, the Abalone Farmers Association of South Africa ("AFASA") and its members, hereafter jointly referred to as ("the Applicants") filed an application for exemption ("the application") in terms of Section 10(1)(b) of the Competition Act No 89 of 1998, as amended ("the Competition Act") to be exempted from certain provisions of Chapter 2 of the Competition Act for a period of 10 years commencing on the date of approval of the application by the Commission .

The exemption application concerns the applicants' intentions

to engage in meetings and communicate on prices and market conditions as competitors in the abalone industry. The engagements will involve the applicants coordinating their efforts in respect of sales into certain international markets through sharing information on prevailing prices, feedback regarding information received from agents on prices, estimates of abalone stock available, volumes of abalone product exported and the volumes of abalone stockholding of the international competitors.

The application was based on the premise that the proposed exemption is required in order to obtain the objectives contained in sub-section 10(3)(b)(i) and (iii) of the Competition Act, namely the maintenance or promotion of exports and change in the productive capacity in order to stop a decline in the industry.

The Commission's preliminary findings revealed that the exemption is likely to achieve the objectives of the Competition Act. However, the Commission's investigation also revealed that there is was no meaningful transformation in the abalone industry. To address this, the Commission requested AFASA to develop an industry plan to facilitate transformation in the abalone industry, through partnering with government and other relevant stakeholders.

In light of the above, the Commission decided to grant AFASA a conditional exemption in terms of Section 10(2)(a) of the Competition Act for a period six months starting from 4 December 2018 and ending on 30 June 2019. Following the expiry of this short-term conditional exemption and upon request by AFASA, the Commission extended AFASA's exemption several times with the last one ending on 31 March 2022. This was done to allow for the development of an industry plan which would facilitate transformation in the abalone sector and ultimately achieve the outcomes or objectives of the Competition Act.

The Commission considered AFASA's submissions and the inputs by other industry stakeholders pertaining to transformation of the abalone industry. After consideration of the exemption application and all undertakings made by AFASA pertaining to transformation of the abalone industry, the Commission decided to grant AFASA a conditional exemption for a period of five years, from 1 April 2022 to 31 March 2027.

d. Independent Chrome Ore Exemption

On 21 September 2020, various Independent Chrome Ore Producers ("ICOP") hereinafter referred to as the applicants ("the Applicants"), filed an exemption application (the "Application") in terms of Section 10(1)(b) of the Competition Act. The applicants sought an exemption for a period of two years. The applicants to the exemption are not members of any association.⁶

The applicants are non-integrated firms involved in the mining and production of chrome ore for both the local and international market. The exemption application was filed against the background of government's intention to impose an export tax (in the form of a levy or duty) on the outbound chrome ore to be exported from South Africa. The proposed export tax is meant to stabilise and support the declining ferrochrome market in South Africa by ensuring that adequate chrome ore is utilised by local downstream ferrochrome producers.

The applicants submitted that the proposed export tax on chrome ore producers might have dire consequences on the chrome ore industry and sought to find alternative mechanisms to support the ferrochrome industry. In this regard, the applicants sought an exemption to ensure that the chrome ore producers can coordinate and engage with each other and consolidate their responses and

make proposals to the government on mechanisms to assist the ferrochrome industry.

The applicants requested to undertake engagements with government and industry participants to facilitate research on viable interventions to support the deteriorating ferrochrome industry in South Africa. For this purpose, the applicants identified the following potential broad areas of coordination in a bid to find alternative interventions to the proposed export tax:

- a. palatable and non-destructive form of chrome ore export tax;
- b. appropriate off-take arrangements in terms of which the chrome ore sector obtains assurance that it will not be left with unsold volumes of, or reduced prices for chrome ore, as a result of any export tax; and
- c. appropriate energy production or purchasing arrangements to improve the cost-effectiveness for the production of both chrome ore and ferrochrome.

The Commission considered the exemption request and concluded that the broad areas envisaged for coordination may still be achieved without an exemption. As a result, on 25 May 2021, the Commission decided to refuse granting the exemption. During its investigation, the Commission became aware that there were ongoing and parallel processes led by government to find viable interventions and/or mechanism in support of the declining ferrochrome industry. For instance, the Commission understood that the Cabinet and Trade and Industry Portfolio Committee took a decision on some viable mechanisms to be considered to support the ferrochrome industry.⁷

The Department of Trade, Industry and Competition (DTIC) also indicated during engagements with the Commission, there were ongoing engagements with the industry across the value chain to discuss proposed support measures that can balance the interest of chrome miners and ferrochrome.⁸ The applicants further indicated that they had ongoing engagements with government (Department of Mineral Resources and Energy and Department of Trade Industry and



Competition) regarding the proposed export tax. In this regard, the Commission believed that this was an appropriate forum to facilitate discussions to explore other possible interventions that government could take to support both the chrome ore and ferrochrome sectors. In addition, the commission believed that the exploration process could be achieved utilising that forum without the need for an exemption.

However, when an agreement or arrangement is reached, the applicants can then file an exemption with the Commission for

⁶ The applicants included Rustenburg Platinum Mines Limited and Atomic Trading Proprietary Limited (both entities being subsidiaries, alternatively, affiliates of Anglo-American Platinum Limited); Assore Limited and its subsidiaries, including but not limited to: Dwarsrivier Chrome Mine Proprietary Limited and Ore and Metal Company (collectively, "Assore"); Bauba Resources Limited and the firms controlled thereby whether directly or indirectly; Chrometco Limited and the firms controlled thereby whether directly or indirectly; Chrometco Limited and the firms controlled thereby whether directly or indirectly; Impala Platinum Holdings Limited and the firms controlled thereby whether directly or indirectly (Impala was initially part of the Application when it was filed but pulled out in March 2021); Northam Platinum Limited and the firms controlled thereby whether directly or indirectly; Sibanye-Stillwater Limited and the firms controlled thereby whether directly or indirectly; Siyanda Resources Proprietary Limited and the firms controlled thereby whether directly or indirectly; and Tharisa plc, including its subsidiaries: Tharisa Minerals Proprietary Limited, Arxo Resources Limited and Arxo Metals Proprietary Limited.

⁷ Portfolio Committee meeting dated 28 October 2020.

⁸ Submission by the DTIC dated 14 January 2021.

consideration. On 18 June 2021, a Gazette Notice for the decision to refuse granting the exemption was published in the National Government Gazette.

d. Marang Africa Healthcare Exemption

On 5 October 2020, Marang Africa Healthcare Pty Ltd (“Marang Health”) filed an exemption application (“the application”) in terms of Section 10(1) of the Competition Act to be exempted from certain provisions (section 4(1)(b)(i)) of the Competition Act) for a period of 10 years.

Marang Health is a wholly-owned subsidiary of Marang Global Capital (Pty) Ltd (“Marang Global”). Marang Global was established in 2015 as a financial advisory firm focusing on health care investments, healthcare infrastructure, finance and healthcare asset finance. The founders of Marang Health are established management consultants, finance and investment banking professionals. Marang Health’s objective is to build a world class African owned healthcare organisation positioned to offer quality care with global standard clinical outcomes, comprehensive care and a sustainable and scalable business model with competitive financial returns.

In 2015, Marang Health was granted four licenses to build hospitals in KwaMashu (Bridge Hospital), Kagiso in Johannesburg (Marang Kagiso Hospital), Nelson Mandela Bay (Motherwell Private Hospital) and Khayelitsha (Khaya Private Hospital). Marang Health made several attempts for over five years to raise capital with no success. This led Marang Health to broaden their approach by tapping into international capital markets. After numerous unsuccessful applications, Marang Health approached CDC UK about two years ago and were in discussions to obtain funding for the OpCo for the sum of R550 million. CDC UK issued a non-binding letter of interest to provide funding on the condition that a) Marang Health secures a strategic hospital operations and management partnership with an established hospital operator group and b) the same hospital group invests in the operating company (OpCo) and holds equity.

It is under such circumstances that Marang Health wished to establish an OpCo and enter into two agreements with Mediclinic

Southern Africa Pty Ltd. (“Mediclinic”). The first, involves Mediclinic acquiring 25% of the OpCo. The second, a management and operations agreement where Mediclinic is responsible for the management, operation, determination, and negotiation of tariffs on behalf of Marang Health for 10 years.

Marang Health submitted that the envisaged arrangement with Mediclinic was required to promote the ability of effective entry into, participation in or expansion within a market of small business or medium businesses or firms controlled or owned by historically disadvantaged persons, to become competitive as per section 10(3) (b)(ii) of the Competition Act.

The Commission found the conduct outlined by Marang Health in the application to be a plausible mechanism to achieve the objectives relied upon. However, the proposed period of 10 years was problematic because a) there was no firm agreement between Marang Health and Mediclinic b) there was no clear plan to facilitate Mediclinic’s exit after the exemption period at its disposal and c) a skills transfer strategy was still to be developed to facilitate Marang Health in taking over the hospital operations when the exemption expires.

On 25 May 2021, a decision to conditionally grant the exemption for 18 months to facilitate the finalisation of all the agreements between Marang Health and Mediclinic would then be required to file the agreements with the Commission through an exemption for further evaluation. On 18 June 2021, a Gazette notice for the decision to conditionally grant the exemption was published in the National Government Gazette.

11

CARTELS DIVISION

The Cartels Division (CD) is responsible for investigating and prosecuting cartel conduct. This comprises price fixing, market allocation and collusive tendering, all of which are prohibited by Section 4(1)(b) of the Competition Act. The division is also responsible for administering the commission’s Corporate Leniency Programme (CLP), through which a self-confessing cartel member may report a cartel in exchange for immunity from prosecution.

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

11.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Cartels Division was responsible for five performance targets in 2021/22 financial year, met two targets - KPI 6 and 16 and exceeded one target KPI 15. KPI 17 was not met and KPI 10 was not applicable during the 2021/2022 financial year.

11.2 PERFORMANCE HIGHLIGHTS

During the 2021/22 financial year, the Commission received 29 cartel complaints from third parties and initiated five cartel investigations. A total of 35 cartel investigations were completed during the 2021/22 financial year. Of these, 14 were referred to the tribunal for prosecution, while 21 were non-referred. The division received 21 CLP applications in 2021/22 financial year and did not conduct any dawn raids in the 2021/22 financial year due to limited financial resources.

Table 7: Cartels case statistics

CARTEL CASES RECEIVED, INVESTIGATED AND FINALISED	2018/19	2019/20	2020/21	2021/22
CASES RECEIVED FROM THIRD PARTIES	13	6	23	29
CASES INITIATED BY THE COMMISSION	22	2	5	5
COMPLETED INVESTIGATIONS	30	25	28	35
REFERRALS TO THE TRIBUNAL	18	9	6	14
CASES NON-REFERRED	12	12	22	21

11.3 SIGNIFICANT CARTEL CASES

a. Competition Commission vs Beefcor (Pty) Ltd and Cape Fruit Processors (Pty) Ltd

Beefcor (Pty) Ltd and Cape Fruit Processors (Pty) Ltd, collectively (“Respondents”) are processors of wet peels and citrus peel pulp. These are by-products of fruit juice production and are also used as inputs in the production of livestock feed. The Commission’s case was that the respondents entered into an agreement, to not compete in the market for the processing of wet peels and citrus peel pulp. This conduct is in contravention of Section 4(1)(b)(ii) of the Competition Act. The matter was referred to the Tribunal for prosecution and it was later withdrawn in terms of Tribunal Rule 50(1) by the Commission, to allow parties an opportunity to enter into settlement discussions. The settlement discussions fell through, and the matter was referred back to the Tribunal.

The Tribunal requested the Commission to make an application to have the matter enrolled back, an application which was opposed by the respondents. The Tribunal dismissed the application citing that the Commission had to postpone the matter instead of unilaterally deciding to withdraw. The legal effect being that once you withdraw, the matter is withdrawn in its entirety and can no longer be brought back unless new evidence exists.

The Commission appealed the decision at the Competition Appeal Court (CAC) and the Commission lost the appeal. CAC concurred with the Tribunal’s decision but further held that a withdrawn matter could never be enrolled back under any circumstances because it amounted to completed proceedings i.e res judicata in terms of Section 67(2) of the Competition Act.

The Commission appealed the Tribunal and CAC’s decision at the Constitutional Court. The Constitutional Court considered whether the Commission could reinstate a complaint which was withdrawn during the Competition Tribunal proceedings. The Constitutional Court considered the proper interpretation of Section 67(2) of the Competition Act and whether the Tribunal exercised its discretion improperly by disallowing reinstatement of the complaint.

Competition Tribunal

Before the Competition Tribunal, the respondents argued that Section 67(2) precluded the Commission from reinstating a complaint. The Tribunal held that a withdrawal did not have the effect of a settlement in law and as such, could not amount to “completed proceedings” as contemplated in Section 67(2) of the Competition Act. Thus, the Tribunal held that although reinstatement was allowed, it was not convinced that the Commission made out a case for reinstatement.

Competition Appeal Court

The CAC rejected the notion that completed proceedings can only occur once the Tribunal has made a decision on the merits of the case. Instead it held that completed proceedings may occur through settlement, merits and the withdrawal of a complaint.



Constitutional Court

The Constitutional Court noted that Section 67 of the Competition Act invoked the right to access to the Tribunal, which is entrenched in Section 34 of the Constitution. The Constitutional Court held that this right can be enjoyed by the Commission and private parties. It noted that the CAC’s interpretation was not in line with the Bill of Rights.

The Constitutional Court held that for proceedings to be completed there must be some kind of finality. The Constitutional Court said it was not enough to just reject the second referral if a decision was not made on the first referral. This interpretation promotes the right to access to the Tribunal by restricting the prohibition to finalised cases. The Constitutional Court held that the power to reinstate a complaint was implied in the Competition Act, namely in section 27(1) and 52(1) of the Competition Act.

b. Competition Commission vs Contractors Plant Hire Association and 22 of its Members

On 21 February 2017 the Competition Commissioner initiated a complaint against the Contractors Plant Hire Association (“CPHA”) and its members in terms of Section 49(B)(1) of the Competition Act. The Commission referred the complaint against CPHA and its members to the Tribunal for fixing rental rates for earthmoving machinery and plant equipment.

The Commission’s investigation found that as far back as 1970 to date, members of the CPHA agreed under the auspices CPHA to fix the minimum hourly and daily rate charged for the rental of their machinery and plant equipment and/or fixed trading conditions relating to the renting of their machinery and plant equipment. The Commission’s investigation found that CPHA and 22 of its members engaged in this conduct and therefore contravened Section 4(1)(b)(i) of the Competition Act.

The cartel conduct manifested itself in the form a rate guide which was published in the CPHA magazine and distributed to members. The CPHA continued to update the rate guide, publishing the rate guide on its website and distributing the magazine to its members even after the coming into operation of the Competition Act.

Members held regular meetings under the auspices of CPHA to discuss the rates guide.

The Commission sought an order from the Tribunal to levy an administrative penalty equivalent to 10% of the respective annual turnover of the CPHA and each of its 22 members.

c. Competition Commission vs Wesbank and Toyota Financial Services

On 6 January 2021, the Commission received a complaint from Ms Nerine Koch in terms of ection 49B(2)(b) of the Competition Act against WesBank, a division of FirstRand Bank (“Wesbank”), Toyota Financial Services (“TFS”) and ROLA Motor Group (“ROLA”) for allegedly dividing the market by allocating customers in the market for the provision of vehicle finance in contravention of Section 4(1)(b) (ii) of the Competition Act.

The allegations were that all vehicle finance applications made directly to WesBank by customers seeking to purchase vehicles from Toyota dealerships were referred to TFS for processing. WesBank had referred Ms Koch’s application to TFS.

The Commission’s investigation revealed that from at least April 2000 to date, WesBank and TFS entered into an agreement to divide markets by allocating customers or suppliers in the market for the provision of vehicle finance in contravention of Section 4(1)(b)(ii) of the Competition Act. The motor vehicle finance market includes offering vehicle finance, leases and dealerships financing.

WesBank and TFS are involved in the provision of vehicle finance services. They are therefore supposed to compete. They however, concluded a shareholder’s agreement which contained clauses that prevented them from competing.

The investigation further revealed that the parties to the agreement concluded a shareholder’s agreement which contained a clause that prohibited WesBank from offering vehicle finance to customers seeking to purchase vehicles at authorised Toyota dealerships.

Furthermore, the agreement identified the vehicle that WesBank was prohibited from financing—the “new” TOYOTA, LEXUS and HINO vehicles and any “used” vehicles sold through any authorised Toyota dealerships, except for Toyota vehicles sold under the McCarthy Group. This arrangement constitutes market division by allocating customers or suppliers in contravention of Section 4(1)(b)(ii) of the Competition Act. This type of collusive conduct is harmful to competition as it reduces consumer choice.

The Commission referred the matter to the Tribunal and seeks sought an order for administrative penalties amounting to 10% of the respondents’ respective annual turnover. The respondents filed their answering affidavits denying the allegations.

d. Competition Commission vs Interaction Market Services Holdings (Pty) Ltd

On 25 March 2022, the CAC handed down its judgement in the appeal against the Tribunal order in the interlocutory application. The contention on appeal was whether the Commission must elect and provide details of the facts supporting each of the impugned practices and whether the Commission referral complies with Tribunal Rule 15(2) of the Competition Act.

The appeal by the Commission arises from a complaint referred to the Tribunal in October 2017, in respect of which Interaction Market Services Holding (“IMSH”) raised an exception and the Tribunal issued a decision on 27 November 2019 ordering the Commission to amend its referral and supplementary affidavit to reflect the following:

- a. the manner in which section 4(1)(b)(i) of the Competition Act had been contravened;
- b. the relevant markets/geographical markets;
- c. full details of the agreement and how it was enforced; and
- d. the manner and extent of the contravention.

The CAC held that the Tribunal erred in directing the Commission to plead upfront facts supporting either of the two forms of the prohibited practices, in particular the order to state what inferences the Commission relied on, before evidence was led. The CAC held that the Commission sufficiently pleaded its case in the referral complaint read with the supplementary affidavit and has substantially

complied with Rule 15(2) of the Competition Act. As a result, there was no prejudice to the respondents.

The CAC upheld the appeal, and the Tribunal order was set aside. In this regard, the Commission need not in respect of Section 4(1)(b) allege market definition or geographic market and the manner and extent of the contravention when referring a complaint to the Tribunal.

e. Competition Commission vs Tourvest Holdings (Pty) Ltd and Siyazisiza Trust

On 25 April 2014, the Commission received a collusive tendering complaint against Tourvest Holdings (Pty) Ltd (“Tourvest”) and the Siyazisiza Trust for allegedly colluding when bidding tender for “Opportunity 3”. The Commission’s investigation found that the Memorandum of Understanding (MOU) concluded by the respondents in respect of the “Opportunity 3” constituted a collusive agreement which contravened Section 4(1)(b)(iii) of the Competition Act.

On 29 September 2021, the Tribunal delivered judgement in which Tourvest and the Siyazisiza Trust were found guilty of collusive tendering or price fixing, in contravention of Section 4(1)(b)(iii) of the Competition Act. The contravention related to bid rigging in respect of a tender issued by Airports Company South Africa (ACSA) in February 2013, for leasing three opportunities of arts, crafts and curio retail spaces at OR Tambo International Airport for a period of five years. Tourvest and the Siyazisiza Trust concluded a MOU before submitting separate bids for one of the three tenders issued by ACSA. In terms of the MOU, the respondents agreed to cooperate, as opposed to competing, when bidding for one of the three tenders known as “Opportunity 3”.

Tourvest conducts business in the tourism industry and operates five arts, crafts and curio retail stores and two branded homeware stores in the international departures’ terminal section of the OR Tambo International Airport in Johannesburg. Tourvest has been operating at airports since 1993. The Siyazisiza Trust is a broad-based craft enterprise development agency and works with around 400 rural crafters. Siyazisiza Trust sells the crafters’ products to retailers, government entities and corporate clients within and beyond South Africa.



The Tribunal ordered Tourvest to pay an administrative penalty of R9, 181, 073 (nine million one hundred and eighty-one thousand and seventy three rand) within 30 days from the date of issuing the order.

Although the Siyazisiza Trust was also found guilty, no administrative penalty was sanctioned. In this regard, the Tribunal reasoned that the Siyazisiza Trust was too small and that it did not benefit from the cartel conduct as well as that it played a minimal role in the design of the impugned conduct as Tourvest was found to be the mastermind and the leader of this collusive tendering.

f. Competition Commission and ZTE Corporation South Africa (Pty) Ltd

On 5 October 2021, the Tribunal confirmed the consent agreement between the Commission and ZTE Corporation South Africa (Pty) Ltd (“ZTE SA”). This followed a complaint that the Competition Commissioner initiated against ZTE Corporation China, ZTE Hong Kong, ZTE SA and ZTE Mzanzi (Pty) Ltd (“ZTE Mzanzi”). The Commission’s investigation found that ZTE Corporation China, ZTE Hong Kong, ZTE SA and ZTE Mzanzi agreed and/or engaged in a concerted practice to divide the market by allocating customers in the market for the supply of telecommunications equipment and network solutions. This conduct contravened Section 4(1)(b)(ii) of the Competition Act. The Commission then referred the complaint against ZTE SA to the Tribunal for adjudication.

Prior to the hearing of the matter, the Commission and ZTE SA agreed to resolve the matter by way of settlement. In terms of the consent agreement, ZTE SA agreed to pay an administrative penalty of R5 000 000 (five million rand).

g. Competition Commission and Saab Grintek Defence (Pty) Ltd

On 8 December 2021, the Tribunal confirmed two consent agreements between the Commission and SAAB Grintek Defence (Pty) Ltd (“SAAB”) as well as the Commission and K.F Computers CC (“K.F Computers”). These consent agreements related to a complaint in which the State Information Technology Agency (“SITA”) alleged that SAAB and K.F Computers colluded when tendering for the provision of ground command and control systems to the South African Air Force. The Commission investigation found that SAAB and KF Computers contravened Section 4(1)(b)(iii) of the Competition Act and filed the complaint referral for prosecution with the Tribunal.

Prior to the hearing of the matter, the Commission, SAAB, and K.F Computers agreed to resolve the matter by way of settlement. In terms of the consent agreements, SAAB agreed to pay an administrative penalty of R2 000 000 (two million rand). In addition to the administrative penalty, SAAB undertook to grow its Enterprise and Supplier Development Programme in the next financial year and to utilise this increase to procure goods or services from additional firms owned by historically disadvantaged individuals. K.F Computers, being the smaller firm of the two firms, agreed to pay an administrative penalty of R32 135 (thirty-two thousand one hundred and thirty-five rand) for its participation in the cartel conduct.



h. **Competition Commission vs Jasco Security And Fire Solutions (Pty) Ltd**

On 5 July 2017, the Commissioner initiated a complaint in terms of Section 49B of the Competition Act against ASIB and all sprinkler installers registered with ASIB (“Listed Installers”), for alleged market division in contravention of Section 4(1)(b)(ii) of the Competition Act.

On 3 August 2017, the Commission conducted a search and seizure operation at the premises of ASIB and 22 of its listed installers, including the premises of Jasco Security and seized documents and electronic data from these premises.

The Commission investigation found, among others, that:

- i. on becoming a listed installer of ASIB, each of the listed installers agreed to adhere to ASIB rules which dictated that inspection services would be performed by ASIB only while installation services would be provided by the listed installers only; and
- ii. the ASIB rules enabled listed installers to divide the market geographically by allocating territories i.e. the area of registration or listing determined the area of operation.

The Commission concluded that this conduct between ASIB and the listed installers amounted to market division by allocation of specific types of services and territories in contravention of Section 4(1)(b)(ii) of the Competition Act. On 16 August 2019, the commission referred a case against certain listed installers to the Tribunal for adjudication.

Jasco Security was the first firm among the 17 respondents to settle the alleged service and geographic market division with the Commission. In terms of the settlement agreement between Commission and Jasco Security that was confirmed as an order of the Tribunal, Jasco Security agreed to pay a R 300 000 (three hundred thousand rand) administrative penalty.

In addition, Jasco Security undertook not to agree or adhere to any ASIB rules that amounted to cartel conduct in contravention of the Competition Act. This includes Jasco Security not agreeing or adhering to any ASIB rule that precludes it from operating in any geographic region in South Africa, as well as not restricting its sourcing of inspection services from only ASIB, provided it is commercially viable to do so.

Jasco Security settled with the Commission without admitting to contravening the Competition Act. The Commission agreed to the no admission of liability based on, *inter alia*, that Jasco Security is a small player in the affected market and has not been found to have contravened the Competition Act before.

The hearing of this case is ongoing before the Tribunal with some of the respondents contesting the allegations.

12 MERGERS AND ACQUISITIONS DIVISION

The Mergers and Acquisitions (M&A) Division assesses mergers filed with the Commission, to determine whether the merger is likely to substantially prevent or lessen competition in a market and whether the merger can or cannot be justified on public interest grounds. Mergers are classified as small, intermediate or large, depending on the turnover or asset values of the merging firms. The Commission receives a filing fee for every intermediate or large merger filed.

According to the Competition Act, it is not compulsory for small mergers to be notified and no filing fee is prescribed. However, the

Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds. In terms of the guidelines on small merger notifications, the Commission requires any party to a small merger to inform it of that merger if either party is under investigation by the Commission for a contravention of the Competition Act, or if there is an ongoing investigation in the relevant market. The merger thresholds were last revised in October 2017 and are set out in the table below.

Table 8: Mergers and acquisitions thresholds applicable in the 2021/22 financial year

Threshold	Combined turnover or asset value	Target turnover or asset value	Size of the merger	Filing fee
Lower threshold	R 600mn	R 100mn	Intermediate	R 165 000
Higher threshold	R 6,6bn	R 190mn	Large	R 550 000

12.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Mergers and Acquisitions (M&A) Division was responsible for five performance targets in 2021/22 financial year. Four targets were met, and one target not met.

12.2 PERFORMANCE HIGHLIGHTS

For operational efficiency, the Commission classifies notified mergers as either phase 1 (non-complex), phase 2 (complex) or phase 3 (very complex) mergers, depending on the complexity of the competition or

public interest issues it raises. The Commission has published service standards for merger investigations, particularly the time periods it takes to complete an investigation. These service standards are necessary as the Competition Act has set out timeframes for merger investigations, regardless of their level of complexity. Therefore, the service standards assist in managing internal deadlines and stakeholders’ expectations when notifying mergers with varying levels of complexity. The table below gives a complete picture of the timeframes set out in the Commission’s service standards, and the maximum allowable timeframes set for merger assessments in the Competition Act.

Table 9: Time frames set for assessing mergers of varying complexities

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

Table 10: Average turn-around times in 2021/22 against service standards

Phase	Service standard	Total number of transactions (excluding withdrawn and no jurisdiction cases)	Average turnaround time
Phase 1	20	50	17
Phase 2	45	228	40
Phase 3 (small and intermediate)	60	8	57
90% of Phase 3 (large merger investigations)	120	9	137

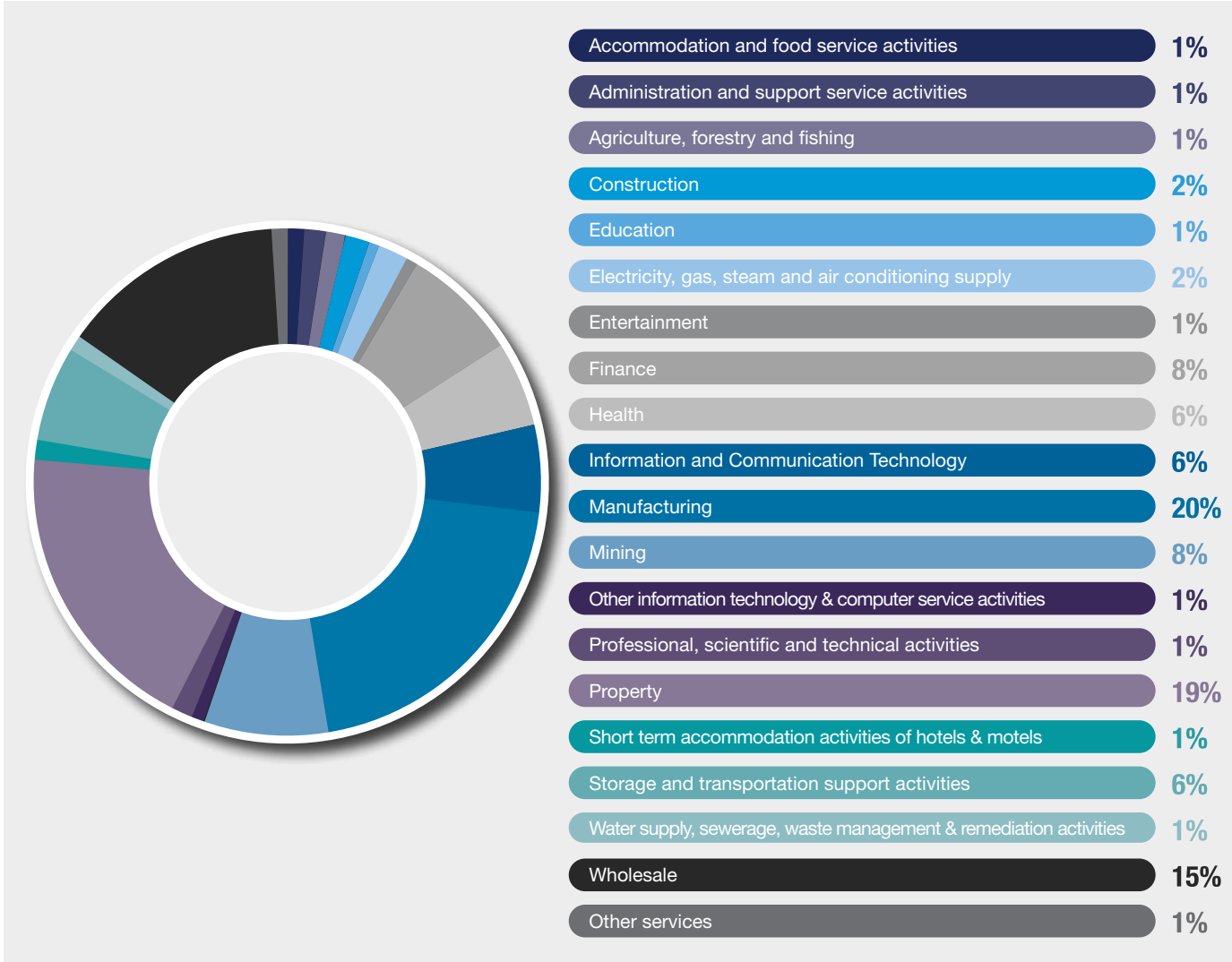
Table 11: Mergers notified and reviewed over five years

L: Large | I: Intermediate | S: Small

	2017/18			2018/19			2019/20			2020/21			2021/22		
	L	I	S	L	I	S	L	I	S	L	I	S	L	I	S
Notified	377			348			302			242			295		
	119	249	9	104	235	9	82	217	3	72	161	9	89	197	9
Finalised	388			336			318			225			297		
	120	261	7	106	221	9	84	230	4	67	150	8	92	200	5
Approved without conditions	325			287			278			189			216		
	94	226	5	85	196	6	69	206	3	50	132	7	60	152	4
Approved with conditions	52			41			33			34			74		
	23	27	2	18	21	2	13	19	1	16	17	1	30	44	0
Prohibited	12			4			7			2			5		
	24	7	1	41	2	1	2	5	0	1	1	0	2	3	0
Withdrawn / No jurisdiction	7			4			3			2			2		
	1	9	0	2	2	0	1	2	0	0	1	1	0	1	1

Most of the cases that the Commission assessed in the 2021/2022 financial year were in the manufacturing sector (20%), followed by the property sector (19%). Other sectors in which there was a significant number of notifications were wholesale trade (15%), mining (8%), finance (8%), storage and transportation sector (6%), health (6%) and information and communication technology (6%). Figure 1 below depicts the sectors in which mergers took place in 2021/2022 financial year.

Figure 1: M&A 2021/22 sectoral analysis



Some of the significant M&A matters finalised by the Commission in this financial year are discussed below:

a. Africa Forestry Fund II Ltd and Vuka Timbers (Pty) Ltd

The primary acquiring firm was Africa Forestry Fund II Ltd (“AFF”), a company incorporated in Mauritius. AFF is controlled by Criterion Africa Sustainable Forestry Management II LLC owned by Criterion Africa Partners (“CAP”), which has its principal place of business in the United States of America. CAP is a private equity fund advisor which is not controlled by any firm. CAP controls ASF Holdings MU (“ASF”) and GEF Africa Sustainable Forestry Fund. CAP controls several companies in South Africa, but relevant for this merger were MTO Forestry (Pty) Ltd (“MTO”) and Ramanas Farms (Pty) Ltd (“Ramanas”). The primary target firms are two holding companies that hold shares in Vuka Timbers (Pty) Ltd (“Vuka”).

MTO is primarily involved in managing and operating eucalyptus (hardwood) plantations situated in Mpumalanga. Vuka, the target firm, is a treated pole manufacturer operating from a single-site facility in Comondale, Mpumalanga. Vuka’s pole treatment facility produces transmission poles (for use in electricity transmission and distribution), building and fencing poles (for use in agriculture, conservation and building). Vuka does not own any forestry assets and therefore has to procure pole logs from external parties.

The merger was previously considered by the Commission in 2019, and was prohibited because the merger was likely to result in anti-competitive input foreclosure in transmission pole logs. At the time of the previous transaction, the acquiring firm owned both the MTO plantations and Peak Timber Plantations which collectively accounted for approximately 37% to 45% of annual transmission pole log volumes in 2017 and approximately 41% to 47% in 2018.

In August 2020, the Peak Timber Plantations were sold to Shiselweni Forestry Company Ltd (SFC), a subsidiary of TWK. The present transaction is essentially the 2019 transaction that was prohibited, which has now been re-filed on the basis that the AFF has disposed of some of its upstream plantations (peak) and therefore had reduced its market shares upstream, with only the MTO plantations remaining.



Markets Share Assessment

The Commission focused on market shares in the upstream market for untreated transmission pole logs. The Commission found that the market was characterised by a long tail, with a few large and reputable suppliers as well as numerous small independent growers which supplied small, scattered volumes. These independent private growers act as supplementary source of supply and do not supply large volumes required by the pole treaters on a regular basis. The Commission also considered the market shares excluding the private growers.

- a. In both instances, the Commission found that MTO had market shares of less than 35%.

- b. The Commission also found that these market shares were not reflective of future supply conditions as other large vertically integrated suppliers’ self-supply. After this proposed transaction, MTO would be vertically integrated and SAFCOL would be the main unintegrated supplier of untreated transmission pole logs.
- c. In the downstream market for treated transmission poles, Vuka’s estimated national market shares are approximately between 13% and 24% in terms of volumes produced and in terms of volume supplied.

Input foreclosure assessment

The Commission noted that market shares may not be fully reflective of market power in this instance. Market power in this market is not only derived from the relative market share positions, but also from the ability of a supplier to provide a continuous and consistent supply of pole logs.

The Commission found that, although the merging parties had a relatively low share of the market for the supply of untreated transmission logs, they occupied a crucial position as the largest and sometimes second largest supplier to Vuka’s competitors in the downstream market. The Commission found that market shares alone did not reflect the relative strengths and importance of upstream suppliers, and that it was the ability of downstream players to switch untreated transmission pole log suppliers that was important for the assessment of market power upstream. Virtually, all the main upstream alternatives to MTO Lowveld did not have the capacity to absorb additional demand for untreated transmission pole logs should downstream players effectively be foreclosed from accessing MTO Lowveld’s untreated transmission pole logs post-merger. In addition, there are some competing downstream treaters of transmission poles for whom MTO is an important supplier. The Commission found that there were limited credible alternatives that those downstream treaters could turn to for the supply of untreated transmission poles. Notably, those downstream treaters competed with, and some were awarded, along with Vuka, portions to supply Eskom’s requirements for treated transmission poles. For the above reasons, MTO Lowveld had the market power to pursue an input foreclosure strategy.

The Commission also found that the merged entity would likely have the incentives to profitably internalise its pole log supply post-merger. An input foreclosure strategy would be profitable considering Vuka’s downstream capacity and large upstream and downstream margins). In addition, although the diversion of pole logs from rivals was not costless, a self-dealing strategy through diversion of volumes would likely still remain profitable even if MTO would generate margins slightly lower than the current margins earned by Vuka.

In terms of effects, a foreclosure strategy does not necessarily require the exit of rivals from the downstream market, it only requires the weakening of such rivals through the raising of rivals’ costs, if for example, they cannot meet the Eskom volume requirements. In all, the merged entity will likely implement a partial foreclosure strategy which will inevitably weaken the ability of Vuka’s downstream rivals to access reliable transmission pole log supply.

Remedies

The Commission took the view that a supply condition, would be appropriate to remedy the harm to competition that may arise. One of the key questions that arose related to the duration of such a condition and the terms to supply downstream rivals. There was no consensus between the Commission and the parties to remedy the input foreclosure concerns arising. The parties eventually abandoned the merger.

b. *Corruseal Group Proprietary Limited and Neopak Holdings (Pty) Ltd*

The Commission prohibited the proposed merger whereby Corruseal Group (Pty) Ltd (Corruseal) intended to acquire Neopak (Pty) Ltd (Neopak) because the merger was likely to result in a substantial prevention and lessening of competition.

Neopak and Corruseal are both active in the recycled paper value chain. In particular, the supply chain of Corruseal is integrated. Its South African activities include:

- the collection and recycling of wastepaper;



- the manufacture and supply of recycled containerboard paper (the “upstream” market); and
- the manufacture of corrugated sheets/box packaging products using recycled containerboard paper as an input (the “downstream” market”).

Neopak is a manufacturer and supplier of recycled containerboard paper. Neopak is only active in the upstream market for the manufacture and supply of recycled containerboard paper and does not have its own downstream operations. Prior to the merger, Neopak supplies recycled containerboard paper to third parties that are vertically integrated such as Corruseal and smaller firms that are not vertically integrated. The Commission found that Neopak was considered an important independent (non-integrated) supplier of

recycled containerboard paper to firms that manufacture packaging products. The merger would thus result in the loss of Neopak as a non-integrated firm.

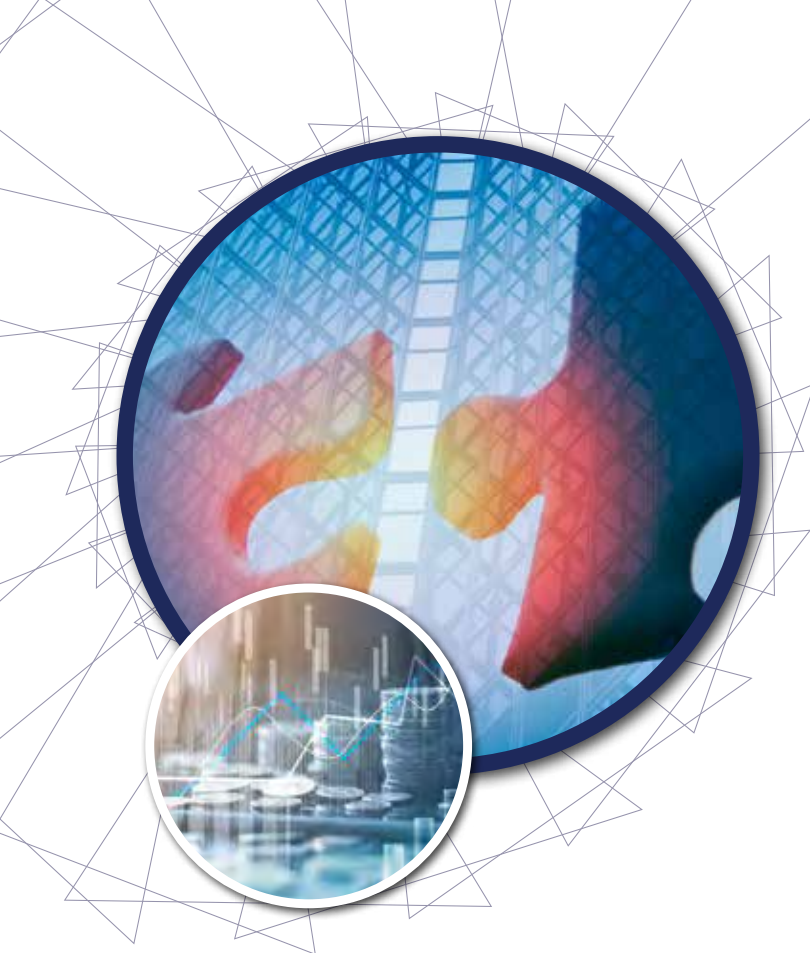
The investigation revealed that the merger would result in the merged entity having high market shares irrespective of whether production capacity, production volumes or domestic sales volumes were used to measure their size. The Commission found that the merged entity would have the ability to act unilaterally by, for example, raising the prices of recycled containerboard, refusing to supply competitors of Corruseal who also relied on Neopak for recycled containerboard, or supplying downstream competitors on poor terms.

The increase in concentration brought about by the merger is of particular concern given that it would further increase concentration in an already highly concentrated upstream market (at the paper manufacturing level), where there is a history of cartel investigations. The Commission further found that barriers to entry into the upstream market were high. There has been no significant production capacity installed in the upstream market for at least the past five years. Moreover, the Commission found that supply of recycled containerboard paper from the upstream market to the downstream market was tight.

This lack of capacity means that vertically integrated companies such as Corruseal, prioritised supplying their own downstream market activities with inputs, as opposed to supplying external customers (i.e., companies that do not have an integrated value chain). Furthermore, the Commission found that imports of recycled containerboard paper were not a viable alternative for downstream market participants due to the prohibitive price of imports. The current global supply chain constraints add to costs and uncertainty.

The Commission also found that in the event of being denied inputs by the merged entity post-merger, it was likely that some players in the downstream market would likely exit the market, as a result reducing competition and discouraging entry in that market.

Consequently, the Commission found that the merger was likely to result in a substantial prevention and lessening of competition in



the upstream and downstream markets. It also found that neither the efficiencies raised, nor the remedies offered by the merging parties, countervailed the anti-competitive effects of the merger and that the merger could not otherwise be justified on public interest grounds.

12.3 PUBLIC INTEREST CONSIDERATIONS IN MERGERS 2021/22

When assessing a merger, the Competition Act requires the Commission to consider both the impact that the merger will have on competition, and whether the merger can or cannot be justified on public interest grounds. What this means is that a pro-competitive merger and a merger without any competition implications can be prohibited by the Commission solely on the basis of its negative effect on the public interest. Similarly, an anti-competitive merger can be approved if it is in the public interest to do so. As such, the public interest provisions in the Competition Act have far-reaching implications. However, the concept is limited to the five public interest grounds set out in the Competition Act, namely employment; impact on a particular sector or region; the ability of small businesses, or firms controlled by HDPs to become competitive; 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.

The Commission has the authority to approve or prohibit a merger solely on the basis of its effect on public interest. In most instances where public interest concerns have been raised, the Commission and/or Tribunal have imposed conditions on the merger which aim to mitigate or eliminate the public interest concern, therefore allowing the merger but minimising its negative effect on public interest.

During the 2021/22 financial year, the Commission recommended and/or imposed conditions on 74 merger cases. Most of these merger cases raised a combination of public interest issues including employment, impact on HDPs, maintenance of local production, SME development, and BEE ownership levels. The Commission's intervention in mergers resulted in a net saving of 1 618 jobs. The table below sets out mergers with conditions:

Table 12: Mergers approved with conditions

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Mar0001	JAS Worldwide Omni-Channel LLC	Tigers Limited	National	Transport	Employment Moratorium on retrenchment for a period of two years from implementation date of the merger.
2021Feb0014	CMH Holdings (Pty) Ltd	Ballito Motor Holdings (Pty) Ltd	KZN	Motor vehicle dealership	Termination of an agreement before implementation The target firm shall terminate the JLR Dealership⁹ before the implementation date of the merger.
2020Dec0040	Alviva Holdings Ltd	Tarsus Technology Group (Pty) Ltd	National	ICT	Employment The merging parties shall not retrench any employees as a result of the merger for a period of two years from implementation date.
2020Dec0013	DSV SA (Pty) Ltd	Globeflight Worldwide Express SA (Pty) Ltd	National	Courier	Employment - For a period of three years from implementation, the merged entity will: (i) not retrench any semi-skilled employees, (ii) limit the number of retrenchments of skilled employees to no more than 140, (iii) limit the number of retrenchments of professionally qualified employees to no more than 59. - DSV will establish a fund to reskill or retrain the eligible employees which fund shall be governed by agreed principles.¹⁰
2021Feb0012	Epiroc Canada MineRP Holding Inc or its nominee	MineRP Holdings Inc	National	Mining	Employment The merging parties shall not retrench any employees as a result of the merger for a period of two years.
2020Oct0003	Trade Retail HoldCo and Agrifin	Trade retail fuel and financial services business of BKB and VKB	National	Agriculture	Cross directorships For as long as BKB and VKB can appoint or nominate individuals to the board of directors of the acquiring firm, they shall ensure that their nominees are not directly involved in the day-to-day activities in the BKB and VKB grain and oilseed storage and trading activities.

9 This the Jaguar Land Rover motor vehicle dealership.

10 The total number of jobs lost was 205 while 317 jobs were saved.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					Confidentiality of information - The merged entity shall ensure, through various interventions, that there shall be no exchange of competitively sensitive information between the acquiring firm and the grain and oilseed storage and trading activities of VKB and BKB. Transformation initiative - Within two years of implementation date, BKB will implement the Transformation Initiative.¹¹
2021Feb0024	NMI Durban South Motors (Pty) Ltd	The Barloworld motor retail business	KZN	Motor vehicle dealership	Supplier Development The merged entity shall ensure that it continues to participate in the Barloworld Supplier Development Programme for a period of two years after implementation date in accordance with the agreed targets.
2021Feb0016	Seche Holdings SA (Pty) Ltd	Spill Tech Holdings (Pty) Ltd	National	Waste management	Ownership and transformation Acquiring firm will execute a BEE transaction in relation to the target business.
2021Mar0057	Sandvik Aktiebolag Plc	DSI Underground Holdings S.a.r.l.	National	Mining	Employment Moratorium on retrenchments for a period of 24 months.
2021Mar0021	NCR Corporation	Cardtronics Plc	National	ICT	Supply conditions (for a period of two years following implementation date) - NCR shall continue to supply ATM products and solutions to the traditional participants¹² on commercially reasonable and non-discriminatory terms. - NCR shall not disadvantage a traditional participant as compared to other traditional participants in a manner that means that the traditional participants are unable to remain competitive. - NCR will continue to honour the existing traditional participants' contracts, on terms and conditions as they exist upon implementation date of the merger. Employment - The merged entity shall not retrench any employee for a period of two years following implementation date.

¹¹ This Transformation Initiative will lead to participation by historically disadvantaged persons in the BKB Fuel Retail SubCo.

¹² Means a service provider in the Traditional ATM market

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2020Sep0020	Airliquide Large Industries SA (Pty) Ltd	16 air separation units of Sasol SA Ltd	National	Manufacturing	Carbon emission reductions - ALLISA¹³ commits to a reduction of carbon emissions by an agreed target over a period of time. Employment and skills development - Should there be future retrenchments unrelated to the merger, ALLISA and Sasol shall cooperate in order to identify employment opportunities for the affected employees. - ALLISA commits to training and upskilling employees transferred from SASOL within two years from the implementation date. Supply of spare liquid oxygen produced by the Assets¹⁴ - In the event that surplus liquid oxygen produced by the assets becomes available in future and is required in an emergency for supply to the healthcare sector, then ALLISA undertakes to make that excess liquid oxygen available to customers in the public healthcare sector subject to agreed principles. Ownership and transformation - ALLISA commits to achieving B-BBEE rating of level 4 within three years in accordance with the agreed principles. Enterprise Supplier Development - ALLISA commits to establish programme/s aimed at supporting and developing SMMEs and firms owned and controlled by the HDPs in Secunda in accordance with the agreed mechanisms.

¹³ Air Liquide Large Industries South Africa (Pty) Ltd

¹⁴ Means the 16 air separation Units of SASOL that will be acquired by ALLISA

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021May0007	K2021511200 (SA)(Pty) Ltd	Consolidated Steel Industries (Pty) Ltd	National	Wholesale trade	Employment¹⁵ For the duration of the moratorium period, the merged entity shall give first preference to the affected employees over other potential employees for any vacancies at the merged entity, provided the affected employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.
2021Apr0037	The Capital Apartments and Hotel Groups (Pty) Ltd	IFA Fair - Zim Hotel and Resort (Pty) Ltd	KZN	Accommodation	Employment Other than the affected employees¹⁶, the merging parties shall not retrench any employee as a result of the merger for a period of two years from the implementation date as well as the period between the approval and implementation dates.
2021Apr0022	Herens Holdco AG	Lonza Speciality Ingredients Business	KZN	Manufacturing	Employment - The merging parties shall not retrench any employees in South Africa as a result of the merger for a period of two years following the implementation date. Local manufacturing - The merging parties shall not relocate the target firm's factory in KZN or relocate it outside of the KZN as a result of the merger during the two-year period.
2021Apr0019	Texmex 57 (Pty) Ltd	Bidvest Car Rental (Pty) Ltd	National	Transport	Employment The target firm shall establish a database of affected employees and if any employment opportunities arise in future, the target firm shall notify such employees about the opportunities.
2021Apr0010	One and Only Cape Town FZE	One and Only Cape Town Holdings (RF) (Pty) Ltd	Western Cape	Accommodation	Employment For a period of two years following implementation date, the merging parties shall give first preference to the affected employees for any vacancies at OOC¹⁷, provided the affected employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.

¹⁵ A total number of 310 jobs were saved while 80 jobs were lost.

¹⁶ Affected employees are 30 in total.

¹⁷ One and Only Cape Town.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Apr0004	FFS Refiners (Pty) Ltd	OTGC Terminals (Pty) Ltd	Western Cape	Refinery	Employment The merging parties shall not retrench any employees because of the merger for a period of two years.
2020Oct0011	AON PLC	Willis Towers Watson Public Ltd	National	Insurance	Divestiture - The merged entity shall dispose of the divestiture business¹⁸ to the purchaser within a divestiture period. Employee Non-solicitation clause - The merging parties undertake not to solicit, hire, employ or engage and procure that their affiliated undertakings do not solicit, hire, employ from the purchaser, the key employees transferred with the divested business for a period of 30 months. Customer non-compete and non-solicitation clause. - The merging parties commit and will procure that their affiliated undertakings undertake to comply with the non-compete and non-solicitation clauses in accordance with the agreed principles.
2021Jan0027	Premier FMCG (Pty) Ltd	Lodestone Brands (Pty) Ltd	National	Manufacturing	Employment - Retrenchment cap of six employees for affected employees in executive or senior positions. - Moratorium on retrenchment for 19 potentially affected employees for a period of two years.
2021May0027	DSV Panalpina A/S	Global Integrated Logistics business of Agility Public Warehousing Company K.S.C.P.	National	Freight	Employment The merging parties shall not retrench any employees because of the merger for a period of two years.
2021May0021	Bright Minerals (Pty) Ltd	Afarak Mogale (Pty) Ltd (In business rescue)	National	Chrome	Management of database For a period of two years, from the implementation date, if any employment opportunity arises within the target firm, the merged entity is required to notify all affected employees about the new positions.

¹⁸ This includes the Reinsurance Divestiture Business and South African CRB Divestiture Business.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Jul0045	AIH	Kwikspace Modular Buildings (Pty) Ltd	National	Private equity	Transformation initiative The acquiring group shall implement an HDP transaction wherein a certain percentage of the issued share capital of the target firm will be transferred to one or more historically disadvantaged persons
2021Apr0047	Altron Group (Pty) Ltd	Law Trusted Third Party Services (Pty) Ltd	National	ICT	Cross directorships - For as long as merging parties can appoint or nominate directors to the board of eDNA Joint Venture, they shall ensure that their nominees: are not employed in an operational role by or serve on or are nominated and/or appointed on any board of the holding companies and/or affiliate companies of Altron Group that are active in ICT solutions markets with the exception of the Altron security business division. Confidentiality of information - No competitively sensitive information in relation to the ICT solutions markets and related markets will be discussed, disclosed nor shared in any form or means by the merging parties' nominees on the board of eDNA Joint Venture. Supply of Advanced Electronic Signature Certificates - From the implementation date, the merging parties shall supply advanced electronic signature certificates to all South African entities that require these products, including the merging parties' downstream rivals, on fair, reasonable and non-discriminatory commercial and pricing terms. This shall apply for a period of three years. Pricing condition - The merging parties shall limit the increase in prices of advanced electronic signature certificates to a yearly price increase linked to the consumer price index. - The base price upon which the consumer price index increases are applied shall be a reference price linked to a more competitive period wherein the supply price was significantly lower than the prevailing price at the time of merger approval.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Jun0041	Saint Gobain	Chryso Group	National	Waterproofing	Employment Moratorium on retrenchment for a period of two years from implementation date of the merger.
2020Dec0043	Dis-Chem Pharmacies Ltd	Pure Pharmacy Holdings (Pty) Ltd	National	Pharmaceuticals	COMPETITION CONDITIONS Open access condition - For a period of five years from the implementation date, the merged entity shall grant third-party pharmacies open access to the Healthforce Video Telemedicine Platform on fair, reasonable and non-discriminatory commercial and pricing terms. Inter-operability of Healthforce condition - The merged entity shall ensure that the Healthforce Video Telemedicine Platform has the ability to be implemented in any Third-Party Retail Pharmacy (subject to the third-party retail pharmacy meeting the minimum system requirements in terms of physical infrastructure and connectivity) and that electronic patient health records and telemedicine functionality is readily available. - Furthermore, the merged entity shall not preclude any patient, having consulted via the Healthforce Video Telemedicine Platform at any of the merged entity's pharmacy stores, from filling their prescription at any other pharmacy store unaffiliated to the merged entity. Creeping mergers - The acquiring firm undertakes to inform the commission in writing for a five-year period from the implementation date, of any small merger in terms of which it may acquire control over another entity in the pharmaceutical market.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					PUBLIC INTEREST CONDITIONS Employment - Other than the affected employees and the loss-making store employees, the merging parties shall not retrench any employees as a result of the merger for a period of two years from the implementation date as well as the period between the approval and the implementation dates. Potential store closure - The acquiring firm shall use its reasonable endeavours to limit the closure of the target firm's stores. With the exception of the already identified 14 loss-making stores, the acquiring firm shall allow at least a 12-month period from implementation date to implement a turnaround plan before the closure of those target firm stores which may subsequently be identified as loss making. Local Inputs - The acquiring firm shall use its reasonable endeavours to ensure that it maintains, and if possible, improves its current level of procurement of products made in South Africa, including from small, medium and micro enterprises (SMMEs) and historically disadvantaged persons (HDPs), to develop its South African supplier base and promote local manufacturing. - Furthermore, the acquiring firm shall ensure that it increases this figure by a minimum of 50% over a cumulative period of five years from the implementation date. Supplier development - The acquiring firm shall use its reasonable endeavours to procure locally manufactured products from its current and/or new SMME and HDP suppliers on reasonable commercial terms including credit terms,

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					price, quality, provided that such products meet the requisite industry norms and standards and/or comply with any regulatory requirements imposed on the specific products by law. Training The acquiring firm shall for a five-year period from the implementation date, commit to: (i) to provide up to 150 learnership opportunities to qualifying Pharmacist Assistants; (ii) to provide two bursaries for every new Greenfield Pharmacy store (newly opened stores) opened by the merged entity after the implementation date; and (iii) to provide internship opportunities to graduating pharmacists and full-time employment as fully qualified pharmacists' post-community service.
2021Jul0023	South African Industrial Group (Pty) Ltd	Paul Bayvel Eyethu Sales (Pty) Ltd	National	Copper	Restraint of trade - The restraint would be amended to limit its scope to SADC and that its duration would be for five years post the termination of the lock-in period. - The restraint to be concluded by the merging parties shall be limited to the restrained shareholders.
2021Jul0007	Curro Holdings Limited	The independent school business of Heronbridge College and Heronbridge Estate (Pty) Ltd	National	Education	Employment The merging parties shall not retrench any employees as a result of the merger for a period of 36 months.
2021Jul0046	Volaris Group Inc.	Adapt IT Holdings Limited	National	ICT	Transformation initiative - Within 12 months of the implementation date, the merged entity will establish a B-BBEE Education Trust. - The B-BBEE Education Trust will have approximately 5% black ownership of Adapt IT's issued ordinary shares. The funding provided by the B-BBEE Education Trust will be ring-fenced for education use, in the form of educational and skills development bursaries. - Between 85% and 100% of funding provided by the B-BBEE Education Trust will be ring-fenced for only Adapt IT employees and their dependants or close family members, who will be the beneficiaries of the

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					B-BBEE Education Trust. All Adapt IT employees will be able to apply for educational funding, in terms of transparent and fair criteria. B-BBEE COMMITMENT - Within 12 months of the implementation date, the merged entity shall ensure that the derived black shareholding in Adapt IT (calculated in terms of the current B-BBEE ICT Sector Code and by excluding shareholding attributable to foreign operations), in terms of economic interest. - Within a period of two years, the merged entity shall ensure that the derived Black shareholding in Adapt IT. - This B-BBEE commitment is subject, at all times, to Volaris maintaining control over Adapt IT, as contemplated by the Competition Act and a shareholding in Adapt IT of at least 50,1%. B-BBEE RATING COMMITMENT - The merged entity shall use all reasonable endeavours to ensure that Adapt IT and its main operating subsidiary will maintain their 2021 B-BBEE ratings or only one level lower for a period of five years after the implementation date, as measured in terms of the current B-BBEE Act and B-BBEE ICT Sector Code. - To the extent that the B-BBEE rating of Adapt IT or its main operating subsidiary falls by one level vis-à-vis the level immediately prior to the receipt of 2021 Certificate, the merged entity commits to rectify same within a 12 month period, until expiry of this B-BBEE rating commitment. - This B-BBEE rating commitment is subject, at all times, to Volaris maintaining control over Adapt IT as contemplated by the Competition Act and a shareholding in Adapt IT of at least 50,1%, and is subject to the B-BBEE rating being measured in terms of the current B-BBEE Act read with the B-BBEE ICT Sector Code.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Jul0009	RFG Foods (Pty) Ltd	The frozen food business of Pioneer Foods Wellingtons	National	Food	Employment - The merging parties shall not retrench any employees as a result of the merger, save for the affected employees who (i) cannot be redeployed by the acquiring firm or the Pioneer Food Group or (ii) do not wish to take up the redeployment opportunities offered as or (iii) do not accept voluntary severance packages. - Furthermore, the acquiring firm undertakes the following: (i) 50 new positions will be created within the acquiring firm's bakery business in Gauteng to accommodate the affected employees who opt to be redeployed. Affected employees who opt to be redeployed to Gauteng will qualify to receive benefits in accordance with the acquiring firm's relocation policy. For the avoidance of doubt, the acquiring firm will seek to fill such positions within two years from the implementation date irrespective of whether any of the affected employees opt to be redeployed to Gauteng; and (ii) the acquiring firm will accommodate another 50 affected employees who opt to be redeployed at its Groot Drakenstein site in the Western Cape in its various production facilities. Affected employees who opt to be redeployed to the acquiring firm's Groot Drakenstein site will qualify to be paid a traveling allowance in the amount of R1,200 (one thousand two hundred rand) per month for a period of two years. - Pioneer Food Group undertakes to accommodate 80 affected employees who opt to be redeployed at various sites within the greater Atlantis, Malmesbury and Cape Town regions where the Pioneer Food Group operates. Training and skills development - The acquiring firm will source a reputable third-party reskilling service provider and is willing to fund the reskilling of affected employees, who cannot or elect not to be redeployed, up to a maximum amount equal to R15,000 (fifteen thousand rand) per employee.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					Favourable packages - Where any affected employees choose to enter into VSPs, the acquiring firm will pay favourable severance packages of three months' severance pay over and above the statutory severance of one week for every year of service and the standard one month's notice pay. Preferential employment - The acquiring firm will assist any affected employees who may be retrenched with offers of preferential employment, for a period of two years from the implementation date to the extent that job opportunities become available and provided that the applicants are suitably qualified and experienced for such roles. - The Pioneer Food Group will assist any affected employees who may be retrenched with offers of preferential employment, for a period of two years from the implementation date to the extent that job opportunities become available and provided that the applicants are suitably qualified and experienced for such roles. Counselling and Wellness - The affected employees will be provided with group as well as individual counselling sessions through the acquiring firm's employee wellness programme. Distribution of CVs - The acquiring firm will distribute the CVs of retrenched affected employees to appropriate customers, suppliers, third parties and facilitate assistance for such employees through recruitment agencies.
2021Jul0054	K2021544474 (South Africa) (Pty) Ltd	Kwatani Global (Pty) Ltd	National	Mining	Ownership and transformation The acquiring firm shall ensure that within 12 months from the implementation date, a shareholding of at least 25% plus one share in Sandvik SRP will be transferred, on mutually acceptable commercial terms, to one or more B-BEEE shareholder/s.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021May0040	Dis-Chem Pharmacies Ltd	Kaelo Holdings (Pty) Ltd	National	Healthcare services	Ownership Should the acquiring firm acquire a 50% plus 1 share interest or sole unfettered control in the target firm after the approval date, the acquiring firm shall notify the acquisition of the 50% plus 1 share interest or sole unfettered control in the target firm as a merger in terms of section 13A of the Competition Act.
2021Jul0018	Clicks Retailers (Pty) Ltd.	The retail pharmacy business carried on by Pick 'n Pay Retailers (Pty) Ltd	National	Retail pharmacy	- Moratorium on retrenchment for a period of three years from implementation date of the merger. Commitment to inform the commission of future pharmacy acquisitions - The acquiring firm undertakes to inform the commission in writing for a five-year period from the implementation date, of any small merger in terms of which it may directly or indirectly acquire another entity in the pharmaceutical market. No restraint - The merging parties shall not enter into any agreements between them which limit Clicks from selling any products in the pharmacies which Clicks acquired from Pick 'n Pay in terms of this merger; including front shop items such as unscheduled medicines. This condition shall apply as long as Clicks leases dispensary space within a Pick 'n Pay store.
2021Jul0039	Bridgestone Mining Solutions Australia (Pty) Ltd	Otraco International (Pty) Ltd	National	Tyre manufacturing and tyre management solutions	Confidentiality obligations - For as long as the Bridgestone Group directly or indirectly controls Otraco, Otraco and Otraco, SA shall not directly or indirectly share data concerning OTR tyre brands of manufacturers other than the Bridgestone Group with the Bridgestone Group in South Africa, unless the customer who owns the data directs Otraco and/or Otraco SA to do so. - Otraco and Otraco SA employees who may be associated with, or seconded to, the Bridgestone Group in future, shall be prohibited from disclosing any data within the Bridgestone Group in South Africa

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					- The merging parties shall ensure that data will not be available to any representative of the Bridgestone Group that is also a director at Otraco or Otraco SA. - The merging parties shall establish suitable and appropriate information barriers to regulate the flow of data between Otraco or Otraco SA (or those individuals for whom access to such information is necessary in the course of conducting the business currently held by Otraco or Otraco SA) and Bridgestone Group employees in South Africa, accordingly.
2021Jul0022	African Pioneer Foods (Pty) Ltd	Sun Orange Farms (Pty) Ltd	National	Agriculture (citrus production)	Educational funding and skills development - Within two months of the implementation date, APG shall set up a bursary fund, the purpose of which is to assist with the provision of funding for education for the children or dependents of the beneficiaries of the trust or nominated needy children in the local community in which the farm/s of Sun Orange Farms is located. - APG shall ensure that the bursary fund makes available an annual contribution of R800 000,00 (eight hundred thousand rand) each year for a five-year period from the implementation date towards the objectives set out above. - Within one month of the implementation date, APG shall appoint at its own expense, an independent financial consultant/advisor for the purpose of offering financial advisory services to the beneficiaries of the trust. - Within two months of the implementation date, APG shall ensure that the appointed independent financial consultant/advisor provides financial advisory services to the beneficiaries of the trust. - For a period of five years from the implementation date, APG shall ensure that it offers corporate governance training to the new trustee directors of the trust. This training shall include among others, ensuring that the trustee directors of the trust spend time with senior executives (including auditors and legal counsel), attend all group board committee meetings and attend training on how to interpret financial statements.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					Community-based Enterprise Development Programme - Within three months of the implementation date, the merged entity shall develop a Community-based Enterprise Development Programme in order to help and offer training and start-up funding to local SMMEs and black-owned businesses. This programme shall be aimed at developing and providing support to SMMEs and black-owned businesses and other initiatives aimed at supporting and developing particularly small-scale businesses of historically disadvantaged persons in the local community of the Eastern Cape. - APG shall set aside R 4 000 000,00 (four million rand) for purposes of the Community-based Enterprise Development Programme. - In order to achieve the objectives, set out in clauses 2.7 and 2.8, APG shall ensure that R800 000,00 (eight hundred thousand rand) is spent for its intended purpose each year for a period of five years following the implementation date. The administration and management of this programme shall vest with APG. APG shall design and implement projects and identify beneficiaries in line with the objectives of this programme and consistent with the principles of this condition. Employee Share Ownership Programme - Within 12 months of the implementation date, APG shall at its own cost convert the beneficiaries' 10% (ten percent) post-merger shareholding in Sun Orange Farms into an ESOP for an effective 10% (ten percent) direct shareholding into Sun Orange Farms, in accordance with the design principles set out in the conditions. It is specifically noted the beneficiaries of the trust must approve in favour of same. - Within 20 days of the approval date, APG must appoint an independent advisor who will represent the trust and trustees to protect their interest in the conversion process. The advisor must be independent of APG and agreed to by the trustees. - If APG fails to conclude and implement the conversion within the APG conversion period, APG shall appoint a trustee at its own cost to oversee the conversion process.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Aug0013	Hatfield Holdings (Pty) Ltd	The business of Summit Auto Trading South Africa (Pty) Ltd; Summit Auto Investments and Triumph South Africa (Pty) Ltd	National	Motor vehicle dealership	Employment - For a period of 24 months from the implementation date, Hatfield Holdings will maintain a database of all the retrenched employees and their contact details and should any vacancies arise within the acquiring or target firms, undertake to inform such employees of relevant vacancies through their last known contact details via an SMS and/or email communication. - For a period of 24 months from the implementation date, each time a job opportunity arises at any firm controlled by Hatfield Holdings, including the target firms, Hatfield Holdings shall send an SMS to the retrenched employees and/or email communication to inform them of the opportunity. This communication shall be sent out simultaneously with the position being advertised internally. It shall remain the responsibility of any retrenched employee to notify Hatfield Holdings in writing of any change in their contact details. - Under all circumstances the onus shall rest on the retrenched employee to apply for a vacant position. - Should a retrenched employee meet the relevant criteria and job requirements in terms of qualification, experience and skills required, the application shall be processed by the HR department of Hatfield Holdings. If two qualified and skilled individuals apply for the same position, one being a retrenched employee and the other one being an external applicant, Hatfield Holdings shall give preference to the Retrenched employee, subject to employment legislation and the existing labour law practices of that firm. If there are two retrenched employees who apply for the same position, Hatfield Holdings may select one of them in its sole discretion, subject to employment legislation and the existing labour law practices of Hatfield Holdings.
2021Aug0009	Thermo Fisher Scientific Inc.	PPD Inc	National	Human health activities	Employment Moratorium on retrenchment for a period of two years from implementation date of the merger.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Jul0064	DPD Laser Express Logistics (Pty) Ltd	Fast and Furious Distribution (Pty) Ltd	National	Freight logistics	Employment - Except for the affected employees and temporary employees, the merged entity shall not retrench any employees as a result of the merger subject to certain provisions. - The merged entity shall not retrench any affected employees in South Africa as a result of the merger during the 24-mnths period. - The merged entity shall not retrench any temporary employees in South Africa as a result of the merger, for a period of six months following the implementation date. - Upon the expiry of a period of 24-months, the merged entity shall: » In the first instance offer voluntary severance packages to all affected employees. In the event that the affected employee does not accept a voluntary severance package, the merged entity shall offer an alternative position in lieu of retrenchment in the form of transfers to an alternative role at the merged entity. » In the event that the affected employee accepts the alternative position, ensure that the affected employee is transferred on a permanent basis with uninterrupted service and assume the terms and responsibilities of the new role. » In the event the affected employee elects not to redeployed, offer a skills development award of R 25 000 to each of the affected employees in addition to any other benefits that may accrue to the affected employees in terms of the LRA such as severance packages. » Establish a fund to re-skill or re-train the affected employees. The fund shall be applied in accordance with the principles and conditions set out in Annexure A1 of these conditions - Maintain a database of the names and contact details of all affected employees and should any vacancies arise within the broader DPD Laser business, undertake to inform such employees of relevant vacancies through their last known contact details such an email and/or cellphone numbers, among others.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Sep0011	Plennegy (Pty) Ltd and The Hildsheim Trust	Triton Express (Pty) Ltd	National	Freight logistics	Control (notifiability pending exercise of control within a specific period) - Should the Plennegy Group acquire sole control over the target firm within 24 months of the implementation date, the Plennegy Group shall inform the commission of its acquisition within 20 business days of establishing sole control. - Should the Plennegy Group not establish sole control over the target firm within 24 months of the implementation date, the Plennegy Group shall notify the acquisition of sole control as a separate merger in terms of Section 13A of the Competition Act, to the extent that the thresholds for an intermediate or large merger are met.
2021Sep0009	Deutsche Post AG	JF Hillebrand Group AG	National	Freight logistics	Employment - Should a vacancy arise at the relevant South African subsidiaries for a period of two years from the approval date, the relevant South African subsidiary shall use its commercially reasonable endeavours to inform the retrenched employees and the voluntary separation package employees of the vacancy using the contact details on its records for the retrenched employees. - In the event that the employees likely to be retrenched have been retrenched by the implementation date, the provisions of above condition shall apply to such employees mutatis mutandis. - For the duration of a period of two years, and where a retrenched employee applies for a vacant position in South Africa and the relevant South African subsidiary is reasonably satisfied that the retrenched employee is suitable for that position, the relevant South African subsidiary shall give preference to such retrenched employee and voluntary separation package employees in the recruitment process.
2021Aug0033	Sun Valley Estates (Pty) Ltd	Ascendis Vet (Pty) Ltd, Ascendis Animal Health (Pty) Ltd, Kyron Laboratories (Pty) Ltd, and Kyron Prescriptions (Pty) Ltd	National	Animal health care	Transformation initiative The acquiring group shall, within 12 months of the implementation date, implement a transformation initiative.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Aug0007	Corruseal Group (Pty) Ltd	CanSmart (Pty) Ltd	National	Packaging of corrugated boxes and food cans	Confidentiality obligations - For as long as Sachi Holdings can appoint or nominate individuals to the board of CanSmart as directors, they shall ensure that their nominees to the board of CanSmart are not the same individuals serving, nominated and/or appointed on any board or management committees or sub-committee of the competing businesses. - Corruseal shall ensure that its representative/s appointed to the board of the CanSmart signs a confidentiality undertaking confirming that he or she will keep confidential and not disclose, the competitively sensitive Information of Corruseal to any individual/s or representatives of Sachi Holdings. - Sachi Holdings shall ensure that its representative/s appointed to the board of the CanSmart signs a confidentiality undertaking confirming that he or she will keep confidential and not disclose, the competitively sensitive information of Sachi Holdings with any individual/s or representatives of Corruseal. - No Person from Corruseal shall disclose, share, or exchange any of Corruseal's competitively sensitive information with any person from Sachi Holdings. - No person from Sachi Holdings shall disclose, share, or exchange any of Sachi Holdings' competitively sensitive information with any person from Corruseal. Employment - The merging parties shall not retrench any of the employees in South Africa as a result of the merger for a period of three years from approval date. - The merging parties shall not alter the employment terms and conditions of the any of the employees as a result of the merger.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Oct0037	A2 Investment Partners (Pty) Ltd	Novus Holdings Ltd	National	Investments	Control - Should the acquiring firm acquire de facto and/or de jure control over the target firm within 24 months of the approval date, the acquiring firm shall inform the commission of its acquisition within 20 business days of establishing control clearly indicating whether the acquiring firm acquired de facto or de jure control. For the sake of clarity, the acquiring firm is entitled to acquire both de facto and de jure control over the target firm within 24 (twenty-four) months after the approval date. - Should the acquiring firm fail to establish de jure and/or de facto control over the target firm within 24 (twenty-four) months of the approval date, the acquiring firm shall notify the acquisition of any subsequent acquisition of control as separate mergers in terms of Section 13A of the Competition Act, to the extent that the thresholds for an intermediate or large merger are met.
2021Oct0010	Atlantica Sustainable Infrastructure Plc	Employees of Abengoa South Africa (Pty) Ltd and the assets of Kaxu CSP O&M Company (Pty) Ltd	National	Electric power generation, transmission and distribution	Ownership and transformation - Atlantica South Africa Operations must implement a B-BBEE ownership transaction within a certain time frame. It must ensure that a minimum of 8% of its issued share capital is held by Black persons/ People including employees of Atlantica South Africa Operations. - Atlantica South Africa Operations shall have full latitude to design appropriate transaction/s to give effect to the above, it being agreed that the B-BBEE ownership transaction shall include at least an employee participation element. - The design and implementation of the B-BBEE ownership transaction will be at the cost of Atlantica South Africa Operations. This includes the issue of the requisite shares to the persons or entity which Atlantica South Africa Operations selects in order to comply with the conditions.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Sep0037	Shoprite Checkers (Pty) Ltd	The various retail brand trademarks owned by Mr Basil Synodinos	Regional	Intellectual property	Contractual options - The merger parties shall notify the commission as a merger the exercise of the contractual options, in respect of which they contemplate which may result in Shoprite acquiring the president outlets in the future. If the contractual options are not exercised (resulting in Shoprite not acquiring the president outlets) Shoprite will be required to inform the commission as well. Expansion plans - Shoprite must endeavour (in line with its proposed expansion plans for the trademarks) to open outlets operated by a franchisee under the trademarks' name over the next five years, subject to South Africa's economic conditions. To the extent that Shoprite believes the economic conditions do not warrant the opening of additional outlets, the merger parties will have to apply to the tribunal for a waiver or variation of this condition.
2021Sep0035	SMG Toyota Gauteng (Pty) Ltd, Sean McCarthy Properties Proprietary Limited and the McCarthy Family Trading Holdco (Pty) Ltd	Motor vehicle dealership under the name Fury Toyota Darrenwood carried on by Summit Auto Trading South Africa	National	Motor vehicle dealership	Employment - For a period of 24 months, SMG Toyota will maintain a database of all the retrenched employees and their contact details and should any vacancies arise within SMG Toyota, undertake to inform retrenched employees of relevant vacancies through their last known contact details via an SMS and/or email communication. - For a period of 24 months, each time a job opportunity arises at any firm controlled by SMG Toyota, including the target firm, SMG Toyota shall send to the retrenched employees an SMS and/or email communication to inform them of the opportunity. This communication shall be sent out simultaneously with the position being advertised internally. It shall remain the responsibility of any retrenched employee to notify SMG Toyota in writing of any change in their contact details.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					- Under all circumstances the onus shall rest on the retrenched employee to apply for a vacant position. - Should a retrenched employee meet the relevant criteria and job requirements in terms of qualification, experience, and skills required, the application shall be processed by the HR department of SMG Toyota. If two qualified and skilled individuals apply for the same position, one being a retrenched employee and the other one being an external applicant, SMG Toyota shall give preference to the retrenched employee, subject to employment legislation and the existing labour law practices of SMG Toyota. If there are two retrenched employees who apply for the same position, SMG Toyota may select one of them at its sole discretion, subject to employment legislation and the existing labour law practices of SMG Toyota.
2021Sep0006	Dis-Chem Pharmacies Ltd	Superstrike Investments 56 (Pty) Ltd t/a “Baby Boom”	National	Retail (baby products)	Employment - The merged entity commits for a period of two years after the implementation date, to give preference to the affected employees and other category of employees provided they have the requisite qualifications, skills, know-how and experience should there be available vacancies at the merged entity. - The merged entity shall use its reasonable endeavours to communicate available vacancies at the merged entity to the affected employees and other category of employees for a period of two years after the implementation date.
2021Oct0033	Orkila South Africa (Pty) Ltd	Umongo Petroleum (Pty) Ltd	National	Petroleum-related products	B-BBEE - The parties shall implement the transfer (i.e. disposal of a certain percentage shareholding in the merged entity to a B-BBEE investor) within the transfer period. - If it is necessary in order to ensure that the transfer contemplated herein is achievable, the parties shall provide reasonable financial support to assist the selected B-BBEE investor(s) to finance the acquisition of the shareholding contemplated. - If the merged entity fails to conclude the transfer within the transfer period, the trustee shall implement the transfer to the B-BBEE investor in accordance with these conditions.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Sep0050	Capital Propfund Proprietary Limited and Inospace (Pty) Ltd	Knoxco 10 Properties (Pty) Ltd	National	Real estate	Confidentiality obligations - For as long as the acquiring firms can appoint or nominate individuals to the board of Inofort as directors, they shall ensure that their nominees to the board of Inofort are not the same individuals serving, nominated and/or appointed on any board of the competing businesses. - Capital Propfund shall ensure that its representative/s appointed to the board of Inofort signs a confidentiality undertaking confirming that he or she will keep confidential and not disclose competitively sensitive information of Inofort. - Inospace shall ensure that its representative/s appointed to the board of the Inofort signs a confidentiality undertaking confirming that he or she will keep confidential and not disclose, the competitively sensitive information of Inofort.
2021Sep0030	SMG Western Cape Proprietary Limited and the McCarthy Family Trading Holdco (Pty) Ltd	Auric Auto (Pty) Ltd	National	Automotive	Ownership - The primary acquiring firm will ensure that within 36 months from the implementation date, a shareholding of at least 25,1% in the primary acquiring firm is transferred on mutually acceptable commercial terms to one or more B-BEEE shareholder/s. - In furtherance of the objectives of the B-BBEE transaction, the primary acquiring firm shall ensure that B-BBEE Shareholder/s shall be entitled to nominate for election to the primary acquiring firm's board of directors, in accordance with BBBEE shareholdings in the primary acquiring firm. - If the primary acquiring firm fails to transfer the 25,1% shareholding to one or more B-BEEE shareholder/s within the transfer period, the trustee shall implement the transfer to one or more B-BEEE shareholder/s in accordance with these conditions.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					Procurement of non-OEM products from HDPs That for 24 months from the implementation date the primary acquiring firm will ensure that it does not reduce procurement of non-OEM products from historically disadvantaged persons below the level achieved by the target firms in its scorecard which expired during September 2021.
2021Oct0012	Obaro Handel Proprietary Limited and Newco 123 Investments (Pty) Ltd	K2021701599 S.A Proprietary Limited and Afrifert (Pty) Ltd	National	Agriculture	Supply - The acquiring firm will not use Obaro Handel as its sole and exclusive retailer, wholesaler and/or distributor. - The acquiring firm to continue its dealings with all of the target business' current, and possible future, retailers, wholesalers and distributors on commercially reasonable and non-discriminatory terms taking into consideration tonnages, pricing, rebates and discounts.
2021Sep0057	Izimbiwa Handling Systems (Pty) Ltd	Izimbiwa Coal (Pty) Ltd	National	Mining	Liability - The seller will be jointly and severally liable with the target firm for any potential administrative penalty which may be imposed on the target firm pursuant to the investigation and referral in relation to the target firm's conduct up to and including the implementation date. Employment - With respect to the affected Penumbra employees and the affected Vunene employees, the acquiring firm undertakes to procure that Penumbra and Vunene will, and with respect to the affected IC employees, the target firm undertakes that it will, within 25 days of the implementation date – » establish separate databases of the affected IC employees, affected Penumbra employees and affected Vunene employees with such employees' contact details (to the extent that any one or more of the target firm, Penumbra and/or Vunene do not already have some form of database in place); and » procure that communication is dispatched to all affected employees forming part of the databases. - For a period of 12 months from the implementation date, if any employment opportunity arises at the target firm, Penumbra or Vunene –

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					» in respect of employment opportunities arising at the target firm, it will, simultaneously with internal notification of such opportunity to existing employees (where relevant), send a batch notification to all affected IC employees informing them of the position as well as any eligibility criteria and application requirements; » in respect of employment opportunities arising at Penumbra, the acquiring firm shall procure that Penumbra will, simultaneously with internal notification of such opportunity to existing employees (where relevant), send a batch notification to all affected Penumbra employees informing them of the position as well as any eligibility criteria and application requirements; and - In respect of employment opportunities arising at Vunene, the acquiring firm shall procure that Vunene will, simultaneously with internal notification of such opportunity to existing employees (where relevant), send a batch notification to all affected Vunene employees informing them of the position as well as any eligibility criteria and application requirements.
2021Dec0006	Firstmile Properties JHB CBD Mines (Pty) Ltd and Firstmile Properties Georgian Crescent (Pty) Ltd	Elite Star Properties 3 (Pty) Ltd and others	National	Property	HDP Transaction - The acquiring firms shall implement the HDP transaction. - Prior to the implementation of the HDP transaction, the acquiring firms will provide the commission with details of the HDP transaction in writing.
2021Nov0029	Wisium SA (Pty) Ltd	Comhan Products (Pty) Ltd	National	Food ingredients	Training and mentorship programme - The merged entity shall, from the implementation date, use its best commercial endeavours to ensure that of all future hires are suitably qualified HDPs. - The merged entity shall establish a training and mentorship programme for a number of HDP students per calendar year. - The merged entity shall provide appropriate training and upskilling for the target firms' transferring employees for the duration of these conditions.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					B-BBEE - Within one year of the implementation date, the merged entity shall ensure that most of its third-party suppliers have a minimum B-BBEE Level 3 score, subject to fulfilling the acquiring firm's compliance due diligence requirements. If a potential supplier fails to meet such requirements, the merged entity undertakes to provide feedback to the potential supplier on the reasons for the failure and guidance in relation to meeting the requirements. - The merged entity shall engage the services of a 100% black-owned and controlled B-BBEE consultancy firm to formulate a strategy around optimising the merged entity's black economic empowerment initiatives. - The merged entity shall use its reasonable commercial endeavours to identify at least two entities with a minimum Level 2 B-BBEE rating that are seeking to enter the South African food and beverage industry to participate in a technical advisory opportunity. In terms of this opportunity, the merged entity shall provide technical assistance and product development support to the identified entities for a period of six months.
2021Nov0027	Acino Pharma AG	Certain pharmaceutical products under the brands Altosec, Aspen Graniseton, Ciavor, Grantryl, Trustan and Zuvamor	National	Pharmaceutical	Employment commitment - The acquiring group committed to creating and filling new full time employment positions in South Africa by no later than 31 December 2022. Local manufacturing - The target firms commit to local manufacturing, where possible.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Nov0019	Bravo Group Manufacturing (Pty) Ltd	L&P Springs South Africa (Pty) Ltd	National	Manufacturing	Supply condition - For the duration of the monitoring period, Bravo shall not refuse to supply mattress innersprings on commercially reasonable terms and conditions for a period of 2 years. - Bravo shall continue to purchase a specified proportion of its mattress innersprings from a third-party supplier provided that the terms and conditions are not less favorable to Bravo than those that applied at the approval date.
2021Aug0044	DP World Logistics FZE	Imperial Logistics Limited	National	Logistics	Enterprise and supplier development initiatives - Imperial shall, for a period of 3 (three) years following the Implementation Date: - Increase its enterprise and supplier development in South Africa; - Increase its spend on corporate social responsibility initiatives by not less than 10% per annum over and above the current ZAR 16.5 million; and - Spend an additional ZAR 15 million in total over that 3 (three) year period on training and development of Black persons. - Imperial's annual targeted procurement expenditure with: - Black-owned businesses is 25%; - Black women- owned businesses is 7%; and - QSEs and EMEs is 20%. Employee Share Ownership Program (ESOP) - The merged entity shall establish an ESOP, at no cost to employees, through which Imperial employees (excluding top and senior management) will benefit from an effective 5% interest through an employee trust.
2021Dec0021	TLG MidCo (Pty) Ltd	The Logistics Group (Pty) Ltd	National	Logistics	HDP Transaction The Acquiring firm shall implement an HDP transaction within a specified period.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Nov0052	Reatile Solar Power 2 (Pty) Ltd	Hulisani Limited	National	Renewable energy	Training and skills development - The Acquiring Firm will establish a R50 000 Fund to re-skill Affected Employees - Any Affected Employee wishing to make use of the designated Fund shall apply to the Fund Manager within 12 (twelve) months from the Implementation Date, for the allocation of all or a portion of the fees payable for the training. Preferential employment - The Acquiring Firm shall assist any Affected Employees who may be retrenched with offers of preferential employment, for a period of 2 (two) years from the Implementation Date, to the extent that suitable job opportunities become available.
2021Nov0042	CFAO Holdings South Africa (Pty) Ltd	EIE Group (Pty) Ltd	National	Industrial handling equipment	HPD Transaction The Acquiring Firm shall, within a specified period, implement an HDP Transaction.
2021Nov0041	Air Products South Africa (Pty) Ltd	Weldamax (Pty) Ltd	National	Gas	Establishment of an SME participation fund - The Parties shall allocate an amount of R10 million (in total) over a five-year period to establish a fund that will be used to increase the ability of SMEs, HDPs and firms owned by HDPs to effectively enter into, participate in and expand within the value chain of the Parties' business operations. - The Parties shall ensure that the R10 million fund will be disbursed in approximately equal proportions of R2 million per annum over the five-year period. B-BBEE - The Parties shall increase their HDP or B-BBEE ownership interest in the Merged Entity by implementing the Disposal within the Disposal Period.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Nov0018	Net1 Applied Technologies South Africa (Pty) Ltd	Ovibix (RF) Proprietary Limited and Luxanio 227 (Pty) Ltd	National	Billing payment/prepaid airtime	Employment - Preferential employment for previously retrenched employees for 2 years ESOP - Net1 Inc shall establish an ESOP for the benefit of Workers of the Merged Entity, - Net1 will set increase the size (value) of the ESOP if, within 24 (twenty-four) months of the Implementation Date, Net1 Inc generates a positive net profit for 3 (three) consecutive quarters Development initiative - Net1 Inc will make a combined contribution equivalent to R12 million in Net1 Inc's current financial year, to supplier and enterprise development initiatives, together with socio-economic development investments.
2021Nov0053	Bakers Transport (Pty) Ltd	Barloworld Specialised Transport (Pty) Ltd	National	Logistics	Employment The merged entity will give preference to Affected Employees for suitable employment opportunities that become available for a period of 2 (two) years after the Implementation Date
2021Dec0004	IHS Holding Limited	Certain passive tower infrastructure assets and associated business operations ("target business") owned by Mobile Telephone Networks (Pty) Limited ("MTN SA").	National	Telecommunications	Employment - MTN SA shall not retrench any of its current employees in South Africa as a result of the Merger for a period of 24 (twenty-four) months from the Implementation Date. B-BBEE - IHS SA shall conclude a B-BBEE transaction within a specified period post implementation of the merger. Procurement - IHS SA and MTN have committed to procuring a substantial proportion of the goods and services required for (1) the construction of its tower sites and (2) the management, maintenance, and security of tower sites from SME and HDP Tower Vendors in South Africa (either directly or indirectly) - The Procurement conditions shall endure for a period of 10 years from the implementation date.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					- For each contract awarded to SME and HDP Tower Vendors in terms of the procurement condition, MTN SA and IHS SA shall provide preferential payment terms to support the working capital requirements of the SME and HDP Tower Vendors. ROLLING OUT OF NEW TOWERS Supplier development - MTN SA shall spend R60 000 000 (sixty million rand) per annum for 10 years from the implementation date to support SME and HDP owned vendors in the telecommunications sector. The annual spend shall escalate by CPI in each year for 10 years. Site access - In relation to the sites that are to be acquired and transferred to the IHS Towers as part of the merger, IHS Towers will continue to make electronic communications facilities available to all existing users on the same terms and conditions as are currently applicable in terms of the agreements between MTN SA and those users. - The site access conditions set out above will endure for as long as the IHS Towers is a site owner in South Africa.
2021Dec0056	Seatrade Shipping Services (Pty) Ltd	DCP Cape Town (Pty) Ltd	National	Container sale services	ESOP The Merged Entity shall establish an ESOP for an effective 5% (five percent) interest in each Target Firm, through an Employee trust or other similar vehicle for the benefit of relevant Target Firm's Employees.
2021Dec0034	Puccini Bidco B.V.	Ekaterra B.V.	National	Distribution of tea	Employment The merging parties shall not retrench any of its employees in South Africa as a result of the merger for a period of 24 (twenty-four) months from the implementation date.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2021Nov0026	Sinosteel Group Corporation Ltd	Deen Holdings Corporation Limited	National	Mining	HDP Transaction - Samancor shall at its own expense, effect and implement a BEE/worker ownership transaction in respect of the Mineral Right Holding Entity. Employment - The Merging Parties shall not retrench any employees in South Africa as a result of the Merger, for a period of 2 (two) years from the Implementation Date.
2021Nov0006	ETG Chem FZE LLC	Cure-Chem South Africa (Pty) Ltd	National	Agriculture	The acquiring group shall increase its expenditure towards the following existing public interest initiatives.
2021Dec0013	Magister Investments Ltd	Tongaat Hulett Ltd	National	Agriculture	ESOP - Within a period of 3 (three) years of the Implementation Date, the Merging Parties shall establish a new ESOP, in terms of which South African Employees of the Target Firm will benefit and participate in the direct ownership in the Target Firm or a South African operating subsidiary of the Target Firm, as appropriate. Employment - The Merging Parties shall not retrench any employees in South Africa as a result of the Merger. - The Target Firm shall maintain the same headcount as at the Approval Date for a period of 1 (one) year from the Implementation Date. - For a period of 3 (three) years from the Implementation Date, the Target Firm shall inform the Commission of its intention to undertake retrenchments prior to undertaking the retrenchments. For the avoidance of doubt, this clause applies to retrenchments undertaken for operational reasons. B-BBEE - Within a period of 3 years, the Target Firm shall ensure that its BEE shareholding will be the same as it was at the date of approval of the merger.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					Capital expenditure The Target Firm commits to capital expenditure in support of its South African operations subject to necessary governance
2021Dec0048	FLS Germany Holding GmbH	Thyssenkrupp Mining Technologies GmbH	National	Mining equipment	Employment - Preferential employment to Affected Employees for a period of 24 (twenty-four) months after the Implementation Date - If employees are retrenched, the Merged Entity undertakes to: - Make offers of voluntary separation packages or early retirement, where this is permissible - Offer assistance in the form of providing certificates of service, UIF claim assistance, permitting reasonable time off for job interviews and CV preparation; and - Provide career guidance consultation sessions through a third-party outplacement service and financial advice services to a maximum amount of ZAR 5 000 (excluding VAT) per Affected Employee. - The Merged Entity shall afford the Affected Employees identical benefits to those set above for a 24 (twenty-four) month period following the conclusion of the retrenchment process under section 189 of the LRA. For avoidance of doubt, any Affected Employees that are not retrenched in terms of section 189 of the LRA shall not be afforded such benefits.
2022Jan0046	Magnesium Bidco Ltd	Mimecast Ltd	National	Information technology services	- For a period of at least three years following the implementation date, the merging parties will ensure that the target group will continue contributing (at a minimum) to the following initiatives per annum: Skills development: - External bursaries to underprivileged individuals (including stipends) in the amount of R830 000; - External bursaries for students with disabilities in the amount of R723 000; - Training (including bursaries) for RSA Mimecasters in the amount of R681 000; - Youth Employment Services (YES) programme in the amount of R1 850 000; - Partners for Possibilities (mentoring programme) in the amount of R130 000.

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
					- Supplier Development in the amount of R500 000. - Enterprise Development in the amount of R750 000. - Socio-Economic Development in the amount of R375 000.
2021Dec0054	Cargotec Corporation	Konecranes Plc	National	Handling equipment.	Ringfencing - The Target Firm commits to ensuring that the Divestment Business will be ringfenced and operated separately from the Target Firm's retained businesses globally. - A Hold Separate Manager shall be appointed and shall, every 60 days from appointment, report to the Commission on the progress made as regards ensuring that the Divestment Business (as it relates to South Africa) Divestiture - The Parties shall divest of the Divestment Business to the Purchaser within the Divestiture Period. - The Parties shall notify the Divestiture to the Commission as a merger, prior to its implementation, in the prescribed manner and form, irrespective of whether the thresholds for mandatory notification pursuant to the Act are met. Employment - The Parties shall not retrench any employees in South Africa as a result of the Merger, during the Moratorium. Vacancies - Retrenched employees shall be given first preference for suitable vacancies that arise. These obligations shall apply to any successor entity of the merged entity in South Africa Fund - The Merged Entity shall establish the Fund within 6 (six) months of the Implementation Date in order to make available to each Retrenched Employee the amount of R25 000 (twenty-five thousand Rands) (the "Individual Fund Amount"). The purpose of the Fund is to: - Finance the re-skilling or re-training of the Retrenched Employees; or - Fund any small business ventures or educational opportunities for the Retrenched Employees

CASE NUMBER	PRIMARY ACQUIRING FIRM	PRIMARY TARGET FIRM	LOCATION	SECTOR	CONDITIONS
2022Jan0031	Mezzanine Fund II Partnership	Cedar Park Properties (Pty) Ltd	National	Property	In the event that Cedar Park and/ or Kgoro Central is disposed of to a third-party purchaser, the acquiring firm undertakes to inform the commission in writing of the disposal of Cedar Park and/ or Kgoro Central to a third-party within 10 days of the sale.
2022Jan0016	Den Braven (SA) Pty Ltd	Permoseal (Pty) Ltd	National	Sealants and adhesives	Employment - The merging parties shall not retrench any employees in South Africa as a result of the merger during the moratorium period. - The merging parties shall maintain the current combined headcount. This obligation does not apply where the reduction in headcount is as a result of resignations, retirements or terminations in the ordinary course of business. - For a period of three years from the implementation date, the merging parties shall inform the commission of their intention to undertake retrenchments prior to undertaking the retrenchments. For the avoidance of doubt, this clause applies to retrenchments undertaken for operational reasons. ESOP - At the latest, in 2023 subject to the final approval of Arkema's shareholders, board of directors and the French securities regulator (Autorité des Marchés Financiers) Arkema will establish an Employee Share Ownership Plan. Training and skills development - The merging parties shall increase their annual spend on training and skills development to its employees by 15% for a period of three years from the implementation date. Enterprise development - The merged entity shall increase its annual spend on enterprise development by 15% for a period of three years from the implementation date.

13

LEGAL SERVICES DIVISION

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

Furthermore, LSD negotiates and concludes settlement agreements, with the input of other divisions. A settlement takes place when the respondent undertakes to remedy their wrongdoing without going through a hearing. The Commission and the respondent negotiate the terms of the settlement agreement, after which the agreement is referred to the Tribunal for confirmation. The settlement process enables the Commission to conclude cases speedily and cost-effectively.

13.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Legal Services Division had eight performance targets applicable for the 2021/22 financial year. Seven targets were met, and one target was not met.

Table 13: Commission's litigation load at the end of 2021/22

Category	Number of cases
Number of cartel cases in litigation at the Tribunal and the courts	80
Number of abuse of dominance cases in litigation at the Tribunal and the courts	6
Number of minimum resale price maintenance cases in litigation at the Tribunal	7
Number of contested large mergers in the Tribunal	0
Number of reconsiderations ¹⁹ in litigation	5
Number of prior implementation cases in litigation	3
Number of appeals, review and variation application	15
Total cases	116

¹⁹ A reconsideration application is an application brought by the merging parties to the Tribunal to reconsider a decision of the Commission, either prohibiting a small or intermediate merger, or approving such a merger with conditions

Table 14: Cartel decisions won/lost at the Tribunal

Parties	Date of decision	Decision
Competition Commission vs Media Credit Coordinators NPC	22/04/2021	In favour of CC
Competition Commission vs M Meyer Surgical Sales CC T/A Intermed	16/09/2021	In favour of CC
Competition Commission vs Jasco Security and Fire Solutions (Pty) Ltd	16/09/2021	In favour of CC
Competition Commission vs Tourvest Holdings (Pty) Ltd and Siyasizisa Trust	29/09/2021	In favour of CC
Competition Commission vs Mokgatshelwa Trading AD Projects CC		In favour of CC
Competition Commission v Robert Bosch GMBH and Bosch Corporation	28/01/2022	In favour of CC
Competition Commission vs Monnye and Khomo Construction and Supply	27/01/2022	In favour of CC
Competition Commission vs AGS Frasers International (Pty) Ltd & JH Retief Transport CC	24/02/2022	In favour of CC
Competition Commission vs ZTE SA and Another	05/10/2021	In favour of CC
Competition Commission vs Insight Outdoor (Pty) Ltd/Tractor Outdoor/Relativ Media	18/10/2021	In favour of CC
Competition Commission and PNM Shorthauliers (Pty) Ltd	12/10/2021	In favour of CC
Competition Commission and BMS Medical CC	12/10/2021	In favour of CC
Competition Commission and Afriworld 142 (Pty) Ltd	12/10/2021	In favour of CC
Competition Commission and Maziya General Services CC	14/10/2021	In favour of CC
Competition Commission and K.F Computers CC/ SAAB Grintek Defence (Pty) Ltd	08/12/2021	In favour of CC
Competition Commission and Denso	22/12/2021	In favour of CC
Competition Commission and Aludar Holdings Pty Ltd/ Ikemele Egg Production CC	23/12/2021	In favour of CC

Table 15: Cartel decisions won/lost at the courts

Parties	Date of decision	Decision
Competition Commission vs Interaction Market Services Holdings (Pty) Ltd	25/03/2022	In favour of CC
Competition Commission vs Cross Fire Management (Pty) Ltd	10/02/2022	Not in favour of CC
Steinhoff International Holdings (Pty) Ltd v CC	26/01/2022	Not in favour of CC
Competition Commission vs Aranda Textile Mills (Pty) Ltd & Another	17/12/2021	Not in favour of CC
Competition Commission vs Beefcor (Pty) Ltd	13/05/2021	In favour of CC

Table 16: Covid-19 cases won/lost at the Tribunal

Parties	Date of decision	Decision
Competition Commission vs Mine Africa Safety Solutions	14/04/2021	In favour of CC
Competition Commission vs Fruit Stop CC	16/07/2021	In favour of CC
Competition Commission vs Lancet Laboratories (Rapid Antigen Tests)	2021-12-23	In favour of CC
Competition Commission vs AMPATH (Rapid Antigen Tests)	2021-12-23	In favour of CC
Competition Commission vs PathCare (Rapid Antigen Tests)	2021-12-23	In favour of CC
Competition Commission vs PathCare (Covid-19 PCR tests)	2021-12-15	In favour of CC
Competition Commission vs AMPATH (Covid-19 PCR tests)	2021-12-12	In favour of CC
Competition Commission and Lancet Laboratories (Covid-19 PCR tests)	2021-12-12	In favour of CC

Table 17: Market Conduct cases won/lost at the Tribunal

Parties	Date of decision	Decision
Competition Commission and McCullagh and Bothwell	10/11/2021	In favour of CC

Table 18: Merger cases won at the Tribunal

Parties	Date of decision	Decision
Competition Commission vs ETG Agro Products (Pty) Ltd and Rand Agri (Pty) Ltd	05/07/2021	In favour
Competition Commission vs Overlooked Colliery Alpha (Pty) Ltd and Sudor Coal (Pty) Ltd	26/8/2021	In favour

Table 19: Merger cases won at the courts

Parties	Date of decision	Decision
Competition Commission of South Africa vs Mediclinic Southern Africa (Pty) Ltd	15/10/2021	In favour of CC

13.2 PERFORMANCE HIGHLIGHTS

a. Competition Commission of South Africa vs Mediclinic Southern Africa (Pty) Ltd

On 15 October 2021, the Constitutional Court handed down its decision in the matter of the proposed large merger in terms of which Mediclinic Southern Africa (Pty) Ltd (Mediclinic) intended to acquire a majority share interest in Matlosana Medical Health Services (Pty) Ltd. (MMHS). This is the first Constitutional Court decision to uphold a prohibition of a merger by the Tribunal and the Commission and to assert the centrality of the Constitution in the interpretation of the Competition Act. The majority judgment upheld the decision of the Tribunal to prohibit the proposed merger transaction because it would result in a significant lessening of competition as well as significant public interest concerns impacting the healthcare costs of insured patients and uninsured patients resulting.

On the issue of whether the CAC was entitled, in law, to interfere with the findings and remedy of the Tribunal, the majority found that interference with factual findings by appellate courts can only be justified in the event of misdirection or a clearly wrong decision by the Tribunal. The Court held that the reversal of the Tribunal’s factual findings and decision on remedy was not because of “a rigorous test and examination of its justifications with due deference to the expertise of its members demanded of the Competition Appeal Court by its Imerys South Africa (Pty) Ltd v The Competition Commission [2017] ZACAC 1 and Schumann Sasol (SA) (Pty) Ltd v Price’s Daelite (Pty) Ltd [2002] ZACAC 2 decisions,” rather the reversal is “an imposition of that Court’s conception of what is right and a consequential replacement of the Tribunal’s factual findings and discretionary decision on remedy with its own preference.” The Court ultimately found that the CAC was not entitled in law to interfere with the Tribunal’s findings.

Regarding the interpretation of Section 12A of the Competition Act, the Court found that the CAC had failed to give proper effect to the purpose of the Competition Act as set out in Section 2(b), in relation to its assessment of the likely substantial prevention or lessening of competition and public interest considerations. The Court found

that the CAC had misdirected itself by construing Section 12A to require that a price increase post-merger be shown to be the result of the market share changes, which it termed ‘enhancement of market power’. The Court found no basis to follow the new test and held that all Section 12A required was a determination of whether there was a substantial prevention or lessening of competition and this is ordinarily measured with reference to a potential increase in price. The Court concluded that the interpretation and application of Section 12A required a consideration of the constitutional provisions, the most significant being Section 27(1) of the Constitution - the right to health care.



The court emphasised that Section 39(2) of the Constitution required all courts, including those enforcing the Competition Act, to interpret legislation in a manner which promoted the spirit, purport, and objects of the Bill of Rights, and noted that the Tribunal and CAC have had an added responsibility to do so, imposed on them by the preamble to the Competition Act and its purpose.

13.3 SETTLEMENT AGREEMENTS AND ADMINISTRATIVE PENALTIES

During this financial year, the Commission levied a total of approximately R24 464 826 penalties and approximately R 139 772 donations from price-gouging cases.

Table 20: Penalties Settlement Agreements confirmed at Tribunal Courts in 2021/22

Date of decision	Parties	Section Transgressed	Penalty levied	Donation value (Price-gouging cases only)
16/09/2021	Competition Commission vs Jasco Security and Fire Solutions (Pty) Ltd	4(1)(b)(ii)	R300 000,00	R0
05/10/2021	Competition Commission v ZTE SA and Another	4(1)(b)(ii)	R5 000 000,00	R0
18/10/2021	Competition Commission vs Insight Outdoor (Pty) Ltd	4 (1) (b) (i)	R65 017,62	R0
18/10/2021	Competition Commission vs Tractor Outdoor (Pty) Ltd	4 (1) (b) (i)	R38,585,10	R0
18/10/2021	Competition Commission vs Relativ Media (Pty) Ltd	4 (1) (b) (i)	R24 145,68	R0
12/10/2021	Competition Commission and PNM Shorthauliers (Pty) Ltd	4(1)(b)(ii) and (iii)	R80 000,00	R0
12/10/2021	Competition Commission and BMS Medical CC	4(1)(b)(iii)	R20 000,00	R0
12/10/2021	Competition Commission and Afriworld 142 (Pty) Ltd	4(1)(b)(ii)	R188 936,00	R0
14/10/2021	Competition Commission and Maziya General Services CC	4(1)(b)(i) & (iii)	R300 000,00	R0
08/12/2021	Competition Commission and K.F Computers CC	4(1)(b)(iii)	R32 135,00	R0
08/12/2021	Competition Commission and SAAB Grintek Defence (Pty) Ltd	4(1)(b)(iii)	R2 000 000,00	R0
22/12/2022	Competition Commission and Denso	4(1)(b)(ii)	R447 258,00	R0
23/12/2021	Competition Commission and Ikemele Egg Production CC	4(1)(b)(iii)	R50 000,00	R0
23/12/2021	Competition Commission and Aludar Holdings Pty Ltd	4(1)(b)(iii)	R30 000,00	R0
27/01/2022	CC vs Mokgatshelwa Projects and Trading CC	4(1)(b)(iii)	R499 669	R0
27/01/2022	CC vs Monnye and Khomo Construction CC	4(1)(b)(iii)	R71 225	R0
28/01/2022	CC vs Robert Bosch GMBH; Bosch Electrical Drives Co Ltd	4(1)(b) (ii)	R2 401 923	R0
14/10/2021	Competition Commission and Maziya General Services CC	4(1)(b)(i) & (iii)	R300 000,00	R0
08/12/2021	Competition Commission and K.F Computers CC	4(1)(b)(iii)	R32 135,00	R0

Date of decision	Parties	Section Transgressed	Penalty levied	Donation value (Price-gouging cases only)
08/12/2021	Competition Commission and SAAB Grintek Defence (Pty) Ltd	4(1)(b)(iii)	R2 000 000,00	R0
22/12/2022	Competition Commission and Denso	4(1)(b)(ii)	R447 258,00	R0
23/12/2021	Competition Commission and Ikemele Egg Production CC	4(1)(b)(iii)	R50 000,00	R0
23/12/2021	Competition Commission and Aludar Holdings Pty Ltd	4(1)(b)(iii)	R30 000,00	R0
27/01/2022	CC vs Mokgatshelwa Projects and Trading CC	4(1)(b)(iii)	R499 669	R0
27/01/2022	CC vs Monnye and Khomo Construction CC	4(1)(b)(iii)	R71 225	R0
28/01/2022	CC vs Robert Bosch GMBH; Bosch Electrical Drives Co Ltd	4(1)(b) (ii)	R2 401 923	R0
		R24 464 826,40	R139 772,02	

Table 21: Total administrative penalties levied over the last ten years

Year	Administrative penalty
2021/22	R24,4 million
2020/21	R 23 million
2019/20	R 70 million
2018/19	R333 million
2017/18	R354 million
2016/17	R1,628 billion
2015/16	R338 million
2014/15	R191 million
2013/14	R1,7 billion
2012/11	R225 million

14 THE ADVOCACY DIVISION

The Advocacy division comprises three functions namely stakeholder relations, policy and screening.

Through the advocacy function, the Commission engages with key stakeholders to promote voluntary compliance with the Competition Act, both in the public and the private sector. It is a responsive function, which determines its strategy based on the Commission's priorities in a given period. As such, the Advocacy function focuses on all eight priority sectors of the Commission.

14.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Advocacy division was responsible for nine performance targets in the 2021/22 financial year and met all its targets.

14.2 PERFORMANCE HIGHLIGHTS

a. Screening

The screening department is responsible for undertaking preliminary investigations on the complaints received. Based on these preliminary investigations, the commission will make the decision to investigate the complaints further or decide not to investigate further (non-referral).

The Commission non-refers matters during the screening period if (i) the complaint does not raise competition concerns (ii) the allegation does not amount to a contravention of the Act and (iii) the parties resolve the complaint during the preliminary investigation phase. Where there are no competition concerns arising and complaints are non-referred, parties are advised of alternative routes to resolve the matters.

The Commission received a total of four hundred and ninety-eight (498) complaints from the public during the 2021/22 financial year, of which three hundred and sixty-seven (367) were ordinary enforcement complaints, and one hundred and thirty-one (131) complaints were related to price gouging of essential products for Covid-19 pandemic.

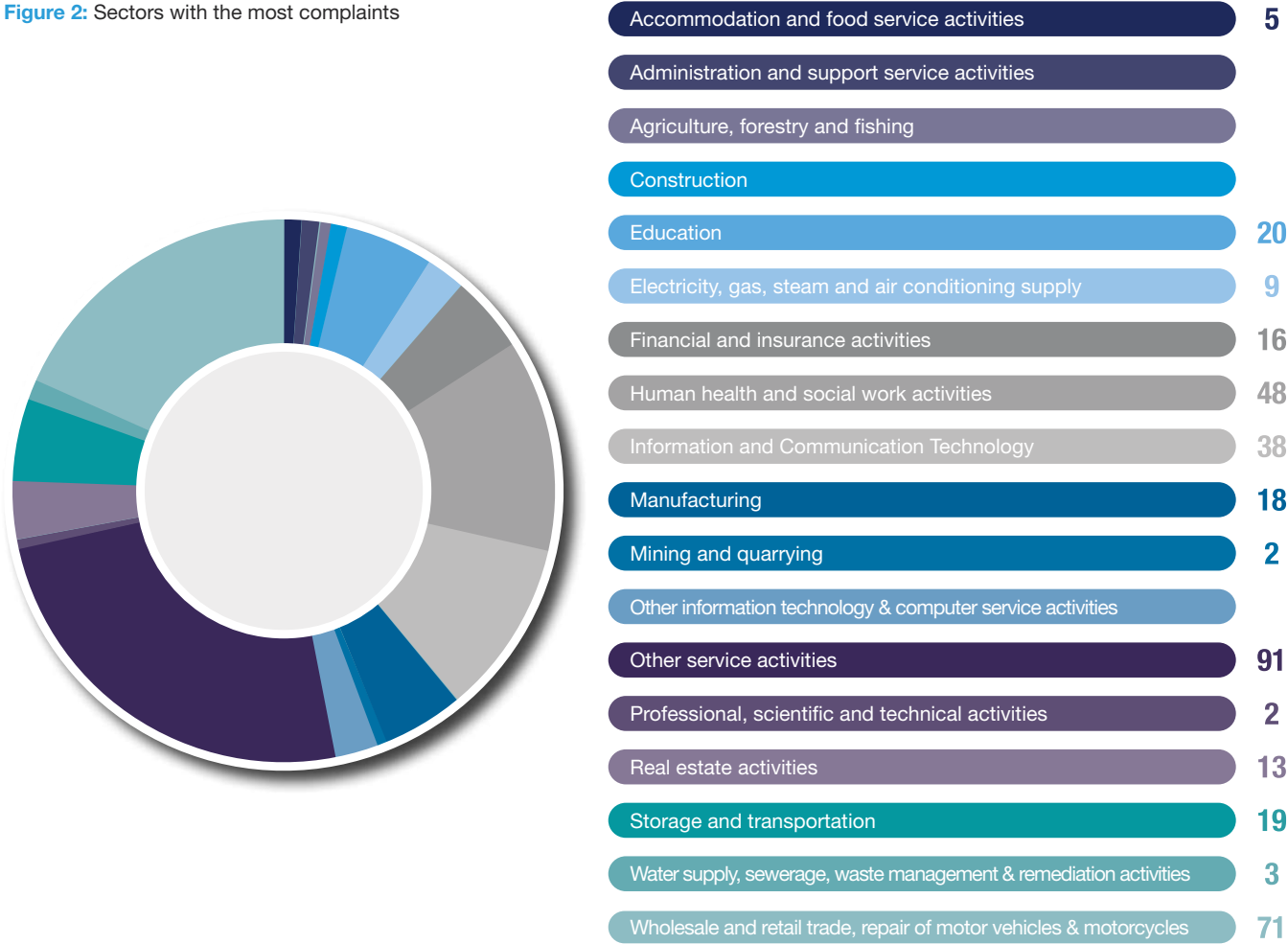
The Commission completed preliminary investigation (covid-19 and non-covid-19) of five hundred and fifty (550) complaints, of which four hundred and seventy (470) were non-referred, twelve (12) were withdrawn and, the remaining complaints were recommended for further investigation. The table below provides a summary of screening statistics:

Table 22: 2021/22 Screening statistics

Complaints	Numbers
Total complaints received (covid-19 and non-covid-19)	498
Total Covid-19 complaints received	131
Total ordinary enforcement complaints received	367
Total Covid-19 complaints completed	267
Total Covid-19 complaints referred	6
Total Covid-19 complaints non-referred	267
Total ordinary enforcement complaints completed	283
Total ordinary enforcement complaints non-referred	204
Total complaints withdrawn	12

The sector that received most of the complaints was wholesale and retail trade, at just over 18% of the complaints. This was followed by human health and social work activities as well as information and communication at just over 12% and 10% respectively. Figure 2 below provides a summary of the sectors.

Figure 2: Sectors with the most complaints



Although several complaints were non-referred at the preliminary investigation (screening) stage, the Commission attempted to resolve the issues arising in some of the complaints. Below is a table which contain some of the complaints resolved during 2021/22 financial year.

Although several complaints were non-referred at the preliminary investigation (screening) stage, the Commission attempted to resolve the issues arising in some of the complaints. Below is a table which contain some of the complaints resolved during 2021/22 financial year.

Table 23: Screening cases resolved in 2021/22

Parties to the investigation	Complaint	Type of intervention
Leah Joubert on behalf of LJ Remotes and Batteries (Pty) Ltd v John Lessing, National Sales Manager at Centurion Systems	LJ Remotes alleged that Centurion Systems refused to appoint her company as a distributor for diverse range of access control products on the basis that the area in which she operates is already saturated. LJ Remotes had attempted several times to negotiate with Centurion Systems and engagements were unsuccessful. They decided to file a complaint with the Commission.	The Commission decided to engage with Centurion System. It was following our engagement that Centurion Systems appointed LJ Remotes as a distributor for its access control products.
Pillay's Computer & Careers (Pty) Ltd. (C&C) vs The Institute of Certified Bookkeepers (Pty) Ltd	C&C Ltd. alleged that the Institute of Bookkeepers refused to give them access to its online booking and study materials (which included its examination).	Following our intervention, the Institute of Bookkeepers decided to grant C&C Ltd access to its online booking despite the monies owed to them. It converted C&C Ltd.'s account into a COD account.
Inoxico (Pty) Ltd vs Standard Bank of South Africa	Inoxico Ltd. wanted access to Standard Bank's Bank Code, which is used by credit check service providers. Inoxico Ltd alleged that SBSA had communicated that it would no longer supply the Bank Code.	Following our engagement, the SBSA indicated that they were not aware that Inoxico Ltd required that service as well. The parties eventually agreed that SBSA would continue to give Inoxico Ltd access to the Bank Code.
Kate Elliot vs Ford Claremont	Ms Elliot alleged that Ford Claremont did not afford consumers the choice to purchase new motor vehicles separately from the bundled service and/or maintenance plan as required in terms of the Guidelines for Competition in the South African Automotive Aftermarket ("Automotive Guidelines").	Following our engagements, Ford Motor Company of Southern Africa Proprietary Limited decided to send communication to its dealer network requesting them to start complying with the provisions of the Automotive Guidelines.
Loriphon (Pty) Ltd vs Pick 'n Pay Retailers (Pty) Ltd. and the Pick 'n Pay Group	Loriphon alleged that the conduct of Pick 'n Pay had resulted in it being indebted to it with approximately R35 million. It was further alleged that Pick 'n Pay was forcing Loriphon, as a black owned enterprise, to sell their store at near to nothing and exit the market.	The Commission engaged with Pick 'n Pay on the matter and Pick 'n Pay agreed to reduce Loriphon's debt by a significant amount. The parties also concluded a sale of business agreement, which was satisfactory to Loriphon. It was following the conclusion of the sale agreement that Loriphon decided to withdraw the complaint.

Parties to the investigation	Complaint	Type of intervention
Owen Ndlovu and Quentin Stewart and Afstereo (Pty) Ltd	Mr Ndlovu alleged that Afstereo (Pty) Ltd performed exclusionary conduct by refusing to supply data essential to his operation. Furthermore, he alleged that he approached Afstereo requesting the supply of data used by South African musicians and/or artists as proof to broadcasters for purposes of claiming their royalties, in instances where broadcasters played their songs on radio stations. Mr Ndlovu decided to approach the Commission after his engagements with Afstereo proved fruitless.	The Commission engaged with Afstereo to make the data available to Mr Ndlovu. The commission then proposed that the parties engage directly with each other regarding the transaction. Afstereo agreed to quote Mr Ndlovu for three months for specified music data, which quotation was duly accepted by Mr Ndlovu.

b. Guidelines for Competition in the South African Automotive Aftermarket

On 29 January 2021, the Commission published the guidelines for Competition in the South African Automotive Aftermarket in the Government Gazette. The Commission hosted a series of five online workshops in its effort to promote awareness and provide public education on what the guidelines mean for stakeholders and to answer their questions. Four workshops were held with independent service providers (ISPs) and independent repairer associations from regions across the country on 5, 7, 12 and 14 May 2021. Over 100 ISPs participated in these workshops representing associations

including the Automotive Industry Development Centre (Eastern Cape and Gauteng), African Panelbeaters Motor Mechanics Association (APMMA) and Right to Repair SA, among others.

c. Policy Responses

The Commission provides responses and comments to key policies as part of advocacy its activities, to ensure policies and laws are aligned with the Competition Act. The Commission submitted five policy responses in the 2021/22 financial year. The table below provides the policies where the Commission submitted responses, and the purpose of the Commission's submission.

Table 24: Policy Responses in 2021/22

Relevant Policy	Purpose of intervention
Draft National Policy on Data and Cloud ("the Policy"), more specifically to the chapter titled 'Policy Issues in Competition'	The policy seeks to establish a High-Performance Computing and Data Processing Centre (HPCDPC) for public data processing and storage and provide cloud services to state entities. The objective is to create a single integrated data processing centre to store data that State entities can tap into for their use.
National Energy Regulator of South Africa ("NERSA")	The Commission provided a non-binding advisory opinion regarding the challenges NERSA was facing in obtaining information from its Joint Venture ("JV") licensees.
Draft General Policy on the Allocation of Commercial Fishing Rights: 2021/2022" (General Policy 2021/2022) and the "Draft Policy for the Transfer of Commercial Fishing Rights: 2021" (Transfer Policy 2021)	The Commission's submission focused on the management of fishing rights applications.

Relevant Policy	Purpose of intervention
Comments on reviewing the Public Finance Management Act (PFMA) and Municipal Financial Management Act (MFMA),	The Commission provided comments on the process pf reviewing the two Acts including the associated regulations, instructions, practice notes and circulars.
Draft Financial Sector Conduct Authority (FSCA) Strategy for Supporting Financial Sector Transformation	The Commission provided additional comments on the constraints to competition and transformation that the Commission identified in investigated practices of financial institutions that may provide guidance to the FSCA in its development of transformation targets and market conduct standards.
Owen Ndlovu and Quentin Stewart and Afstereo (Pty) Ltd	The Commission engaged with Afstereo to make the data available to Mr Ndlovu. The commission then proposed that the parties engage directly with each other regarding the transaction. Afstereo agreed to quote Mr Ndlovu for three months for specified music data, which quotation was duly accepted by Mr Ndlovu.

Below are the details of the submissions on the Draft National Policy on Data and Cloud ("the Policy"), more specifically to the chapter titled 'Policy Issues in Competition'; the National Energy Regulator of South Africa ("NERSA") Joint Venture Livensees and the Draft FSCA Strategy for Supporting Financial Sector Transformation.

i. Draft National Policy on Data and Cloud ("the Policy"), more specifically to the chapter titled 'Policy Issues in Competition'

The Commission provided a policy response related to the Draft National Policy on Data and Cloud ("the Policy"), more specifically to the chapter titled 'Policy Issues in Competition. The policy seeks to establish a High-Performance Computing and Data Processing Centre (HPCDPC) for public data processing and storage and provide cloud services to state entities²⁰. The objective is to create a single integrated data processing centre to store data that state entities can use. This would include but is not limited to individual data, data in respect of public resources (such as education, disease management, healthcare and crime prevention) and data that would come into the hands of government entities through its interactions with citizens and the private sector²¹. This data can be used to ensure equitable allocation of available public resources, informed

decision making and planning and create value for consumers in the form of innovative digital products and improved service delivery²². This requires collaboration with public and private players in cloud computing in the long term²³.

The chapter on 'Policy Issues in Competition' as was provided to the Commission highlighted theories of harm as they refer to privately-owned data centres and cloud computing centres, controlled by large digital firms such as Google, Apple, Amazon, Microsoft and others. It explained that the concentration or consolidation of big data could give them market power and the tendency towards concentration in markets arising from first-mover advantages, data accumulation and network effects. However, on the understanding that the rationale for the policy is to establish a state-owned integrated data processing centre, therefore the policy issues related to the development of the HPCDPC would be slightly different than when considering these privately-owned data centres.

The Commission therefore, recommended that the chapter should focus less on the theories of harm arising out of the private use of data, but focus on the potential competition policy aspects that arise from introducing state-owned capacity. There are some benefits

²⁰ Stats SA would oversee the central collection, storage, digitisation and analytics of all government data in South Africa. The Draft National Policy on Data and Cloud Page 30.

²¹ Meeting with the DCDT on 21 May 2021.

²² Meeting with the DCDT on 21 May 2021. The Draft National Policy on Data and Cloud Page 23

²³ Ibid.

within this context: firstly, it secures data sovereignty which has benefits for the South African economy and secondly can be used to introduce open data access principles for government to extract data in the hands of state entities, research institutions and private companies that have socio-economic value. These are in line with the very objectives of the Competition Act, including promoting efficiency of the economy, consumer choice, advancing the socio-economic welfare of South Africans and ensuring that small and medium enterprises have an equitable opportunity to participate in the economy.

The Commission also sought to expand on the competition principles for the DCDT to consider for its chapter on ‘Policy Issues in Competition,’ drawing from its recent paper entitled ‘Competition in the Digital Economy’²⁴. The submission focused on the following themes: data sovereignty, digitising government services, an open data strategy and policy interventions.

ii. National Energy Regulator of South Africa (“NERSA”)

The Commission provided a non-binding advisory opinion to NERSA.

The general objective of the opinion was to provide NERSA with an advisory regarding the challenges it was facing in obtaining information from its Joint Venture (“JV”) licensees. In order to fulfil its mandate in terms of the Petroleum Pipelines Act (Act No. 60 of 2003) and the Petroleum Products Amendment Act (Act No. 58 of 2005), NERSA is required to gather information from its licensees including audited financials for the JV and clarity on Weighted Average Cost of Capital (WACC), asset registers and book value of assets pertaining to the JV, consolidated volume information of the JV, title deeds, JV agreements, tariff application information, as well as BBBEE details.

NERSA indicated that it was facing challenges in gathering this information due to the lack of cooperation by the JVs. The JVs were refusing to provide the information requested by NERSA, citing the Commission’s findings in the Sasol Oil/BP South Africa merger which they state, prevents direct communication on financial and operational matters between JV partners.

In its advice, the Commission indicated that JVs may be a platform for anti-competitive behavior particularly where they are made up of firms that compete at any level. The petroleum companies that make up the JVs compete in the same market, therefore there would be certain information, particularly confidential and competitively sensitive information that the JVs cannot share directly among each other as this may potentially lead to collusive conduct or other anti-competitive conduct.

The Commission indicated that in collating the information from the JVs, NERSA should consider how information such as financial information, asset registers, book value of assets and tariff information, which is critical for competitive rivalry of firms, ought to be dealt with in a way that is unlikely to lead to a contravention of the Competition Act.

The Commission referred to the Sasol/BP merger as a relevant case for the JVs in terms of what information may or may not be shared directly among them. In this matter the Commission found that any exchange of information must be within the ambit specified in the exemption. Information only relating to the co-ownership is allowed to be shared between the JVs. It was specified that the following information may not be shared among the JVs:

- a. customer information;
- b. pricing information;
- c. volumes; and
- d. other competitively sensitive information.

The Commission however, emphasised that the Sasol/BP merger decision did not amount to a blanket prohibition of information-sharing between the JVs and therefore the decision cannot be used as a blanket excuse for the JVs’ lack of co-operation to NERSA’s information request.

v. Draft FSCA Strategy for Supporting Financial Sector Transformation

The Commission submitted one policy response in Q4. On 25 March 2022, the Commission provided written input on a draft

strategy for promoting transformation of the financial sector in South Africa entitled “FSCA Strategy for Supporting Financial Sector Transformation” published by the Financial Sector Conduct Authority (FSCA). The draft transformation strategy outlines the FSCA’s approach to promoting financial sector transformation. These approaches include:

- a. Promoting transformation will be made an explicit function of the FSCA and it aims to issue market conduct standards in this regard;
- b. Financial sector institutions will be required to promote transformation in a manner consistent with a transformation plan, which must be aligned to the achievement of targets informed by the Financial Sector Code; and
- c. The FSCA may issue directives and use its other supervisory and enforcement powers to ensure that financial institutions adhere to commitments made in transformation plans, and that governance frameworks in relation to transformation are adhered to.

The policy response supports the FSCA’s strategy and provides additional comments on the constraints to competition and transformation that the Commission has identified in investigated practices of financial institutions that may provide guidance to the FSCA in its development of transformation targets and market conduct standards. These include the need to transform the evaluation criteria for licensing and panel appointments (including the elimination of high investment criteria that raises barriers to entry for SMEs and HDPs), the elimination of exclusive agreements to allow for rotation of panel appointments and a monitoring tool to ensure a fair distribution of work to transformed entities.

d. Workshops on Competition Policy

The Commission hosted six workshops and/or seminars on competition, trade, industrial policy and/or regulatory matters. Below we discuss some of these workshops/seminars:

i. Bilateral Workshop with the Information Regulator of South Africa

On 19 August 2021, the Commission held a workshop with the Information Regulator of South Africa (“IRSA”). The purpose of the engagement was to discuss issues related to data regulation in the country and in particular, the concurrent jurisdiction shared by the two regulators on these issues. The two regulators engaged extensively on the Commission’s investigation into the complaint by GovChat against WhatsApp/Facebook as well as the IRSA’s investigation of WhatsApp sharing of data with Facebook. The Commission and IRSA also intend to enter into a Memorandum of Understanding (“MoU”) that will govern the manner in which the two regulators will work together in future.

ii. Webinar on Price Gouging During the Covid-19 Pandemic

On 10 September 2021, the Commission held a virtual webinar via Microsoft Teams and was streamed over the Commission’s social media platforms (YouTube and Facebook). The Teams platform hosted over 80 attendees while the social media platforms hosted over 100 attendees representing various stakeholders. The purpose of the webinar was to inform stakeholders of the Commission’s role/mandate in response to the Covid-19 induced price gouging as well as share information on interventions the Commission has undertaken to curb anti-competitive conduct.

iii. Promoting Competition and Inclusion on Supplier Panels of Banks and Insurers

On 12 November 2021, the Commission hosted external stakeholders from banks, insurers and the financial sector in a closed online workshop. Over 100 attendees from the financial sector participated. The focus of the workshop was to receive input from the market participants on competition principles aimed at ensuring that they reformed their practices when appointing suppliers onto panels. The competition principles include: (i) establishing fair evaluation criteria and processes for panel appointments (ii) fair allocation of work to suppliers (iii) eliminating exclusive long-term agreements and reducing the contract periods to five years or less, (iv) increasing the participation of SMEs and HDIs on supplier panels, (v) increasing transparency on the application and selection criteria by publishing it on websites; (vi) increasing consumer choice to select suppliers from the approved list and (vii) monitoring the performance of a supplier panel and fair allocation of work to suppliers.

²⁴ The Commission’s paper on ‘Competition in the Digital Economy’ (Version 2, February 2021) is accessible at www.compcom.co.za/wp-content/uploads/2021/03/Digital-Markets-Paper-2021-002-1.pdf last accessed on 1 June 2021.

iv. Dialogue on Understanding the Strategies Adopted by Women

Entrepreneurs to Overcome Barriers to Entry and Participation
The Commission hosted a dialogue with women entrepreneurs titled “Understanding the Strategies Adopted by Women Entrepreneurs to Overcome Barriers to Entry and Participation”. The workshop was held virtually on 10 December 2021 on Microsoft Teams.

The purpose of the dialogue was to engage women entrepreneurs on their personal experiences and the strategies they have undertaken to overcome barriers to entry and in particular:

- a. access to business knowledge, education and training programmes;
- b. access to finance for new business start-up or expansion;
- c. access to (profitable) markets;
- d. compliance requirements, bureaucracy and administration;

- e. access to women networks (support structures); and social factors including safety, security and domestic responsibilities.

The dialogue formed part of the Commission’s overall research on understanding the barriers inhibiting the effective entry and participation of women entrepreneurs in various sectors. The Commission will use the lessons from the dialogue to engage with the relevant stakeholders including financial institutions and government on possible solutions and measures necessary to support women entrepreneurs.

e. 2021/22 Memorandums of Understanding

The Commission concluded the following Memorandum of Understanding during the 2021/22 financial year:

Table 25: 2021/22 Memorandum of Understanding

Institution	Purpose of the MOU
South African Council for the Architectural Profession (“SACAP”)	- Strengthen competition law enforcement within South Africa. - Provide a mechanism to ensure that the Commission and SACAP work together to promote competition within the architectural profession. - Enable institutions to consult with each other annually on any proposed changes to the IDOW to ensure that its provisions are pro-competitive and that nothing in the policy contravenes any section or objectives of the Competition Act.
National Empowerment Fund (“NEF”).	The Commission and the NEF entered into specific co-operation for scoping and creating development funds for increased market competitiveness of historically disadvantaged persons and enterprise development.
National Energy Regulator of South Africa (“NERSA”)	- The Commission initially entered into an MOU with the regulator’s predecessor, the National Electricity Regulator in 2002. The MOU was entered into to establish the manner in which the parties will interact with each other in respect of the investigation, evaluation and analysis of mergers and acquisition transactions and complaints involving electricity licensees, other licensees, consumers and persons who are subject to the regulation and control of the National Electricity Regulator. - The current MOU acts as a strengthening mechanism to ensure that there is continued cooperation and collaboration between the Commission and NERSA in respect of the regulation of electricity, piped-gas and petroleum pipeline industries. - The MOU will, amongst other things, help effectively coordinate the exercise of the Commission’s jurisdiction and powers when taking decisions on competition matters within the energy sector; ensure the application of a consistent interpretation and treatment of the principles of competition in the exercise of powers of the Commission and NERSA and their respective functions in terms of their enabling legislation.

Institution	Purpose of the MOU
National Agricultural Marketing Council (“NAMC”)	- Strengthen cooperation and sharing of information between the Commission and the National Agricultural Marketing Council (“NAMC”) particularly on competition and marketing of agricultural products. - The MoU was published in the Government Gazette on 13 August 2021. - Establish the manner in which the two agencies will interact and cooperate with each other to enable them to (a) conduct research on areas of mutual interest, including joint research studies, sharing of data and market information that will inform their policy work; (b) consult and coordinate their activities on policy and regulation in the agriculture, food, and agro-processing sectors, applying a consistent interpretation and application of competition and agricultural marketing policy principles in the exercise of their respective powers and functions; (c) partner on non-enforcement activities such as advocacy projects; and (d) provide each other with the necessary information, advice and inputs during case investigations, review of merger transactions and exemption applications.
Information Regulator of South Africa (“Information Regulator”).	Establish the manner in which the Commission and Information Regulator will interact with each other to enable them to: (i) effectively coordinate the exercise of their jurisdictional powers when taking decisions; (ii) apply a consistent interpretation and application of the principles of competition law and personal information or privacy law when exercising their powers and their respective functions in terms of their enabling legislation; (iii) promote co-operation between the Commission and the Information Regulator in general, including in respect of setting of standards or conditions that affect matters of common interest, any joint investigations, market inquiries and or research studies that the parties may agree to undertake; and (iv) consult each other and timeously provide each other with necessary information in respect of the investigation of anti-competitive practices, regulation of mergers and acquisitions, as well as investigation of non-compliance with the provisions of the POPIA and PAIA, research developments or studies relating to the protection and processing of personal information.

f. Education and Awareness Initiatives

The Commission conducted several education and awareness initiatives including publications, training and workshops on the Competition Act targeted at the general public/consumers, government departments/entities and industry players from several sectors in an attempt to promote compliance with the Competition Act. Below we summarise some of the initiatives.

Table 26: Education and Awareness Publication

Publication	Purpose of the publication
Automotive Aftermarket Guidelines: Frequently Asked Questions (FAQ)	Following the publication of the Guidelines for Competition in the Automotive Aftermarket, the Commission published this FAQ to provide clarity and respond to questions frequently asked by stakeholders.

Publication	Purpose of the publication
Advertorial on the Automotive Aftermarket Guidelines for Stakeholders	Following the publication of the Guidelines for Competition in the Automotive Aftermarket, the Commission published an advertorial for consumers and other stakeholders in the automotive aftermarket aimed at raising awareness about the guidelines. The advertorial also sought to explain what the guidelines meant for consumers, insurers, independent service providers, approved dealers and OEMs.
School Uniform brochure	The purpose of the brochure is to educate and raise awareness to schools, parents and SGBs on the importance of competition in the procurement of school uniform and other learning-related material. The brochure also provides a guide on the role that schools, parents and SGBs can play to help lower the price of school uniform and other learning-related material. The brochure is available in English, Afrikaans, Sesotho and IsiZulu.
Practice Note on Promoting Competition and Inclusion in Supplier Panels of Banks and Insurers	The purpose of the practice note is to provide guidance to banks and insurers on pro-competitive principles that can be applied when appointing suppliers onto panels or any register of prequalified suppliers and allocate contract opportunities in a manner that increases consumer choice, the inclusion of small and SMEs, HDIs and market competition.
Circular on the Anti-Competitive Effects of the Rules and Regulations by Homeowner Associations and/or Body Corporates on Architectural Services Rendered in Residential Estates	The purpose of the circular is to raise awareness about the anti-competitive impact of the rules and regulations of Homeowner Associations and/or Body Corporates that prevent certain categories of registered Architectural Professionals from operating in certain residential estates. The circular sought to advise Homeowner Associations and/or Body Corporates to (i) comply with provisions of the Competition Act and to refrain from engaging in conduct that has the effect to significantly preventing or lessening competition in the market (ii) ensure that their rules and regulations comply with the provisions of the Competition Act and encourage equitable and fair competition (iii) apply the SACAP's IDoW policy as is prescribed (iv) ensure that they follow a competitive process if they wish to select a pool of Architectural Professionals to provide architectural services in the residential estates and (v) limit the duration of the contractual period of Architectural Professionals to a period between 1 and 2 years, and to resume new competitive process at the end of each contractual period.
A Guide on Promoting Competition in Public Procurement	The purpose of this guidance is to support public procurement officials in South Africa, highlighting the most common errors frequently arising in public procurement and provide pro-competitive options that can be identified and selected to reflect best practice. It is intended to contribute to public procurement procedures and promote effective competition, advance the development of SMEs and support the local product for the benefit of public entities and users of public services.
Educational video on bid rigging	The objective of the video is to educate the general public and bidders on bid-rigging and why it is prohibited in terms of the Competition Act. The video also seeks to articulate the process to be followed when reporting alleged bid-rigging to the Commission.

Table 27: Education and Awareness Training and Workshops on Competition Policy

Education and Awareness Training	
Training on the Guidelines for Competition in the South African Automotive Aftermarket	The Commission hosted a series of training workshops in its effort to promote awareness and provide public education on what the guidelines meant for stakeholders and to answer their questions. The training workshops were attended by independent service providers (ISPs), independent repairer associations from different regions across the country and consumers and consumer interest groups.
Training to the Standards Division of the South African Bureau of Standards (SABS)	The purpose of the training was to raise awareness about competition concerns related to standard setting and in particular the harmful effect of having industry players who are competitors serving in the working groups and technical committees of the SABS which are tasked with developing industry standards.
Training of the auditors at the Auditor-General of South Africa (AGSA)	The purpose of the training was raise awareness about competition issues that are detectable in public procurement and the types of competition concerns that are likely to arise in the procurement process. The training focused on the warning signs” that auditors must be aware of when conducting their audits and how they can go about setting competitive tenders.
Training of students at the University of Mpumalanga	The Commission provided training to students in the Agricultural Department at a Student Exposure Workshop hosted by the University of Mpumalanga and the Department of Trade, Industry and Competition. The Commission’s presentation focused on the scope of its work in the agro-processing and agricultural sectors, including research into the barriers to entry facing black emerging farmers in agriculture (access to finance, inputs and infrastructure and routes to market), development funds established through merger conditions, and examples of cartel conduct and abuse of dominance investigated by the Commission.
Training of students at the Owen Sithole College	The Commission provided training to students at a Student Exposure Workshop hosted by the Owen Sithole College (Kwa-Zulu Natal) and The Department of Trade, Industry and Competition. The Commission’s presentation focused on the scope of its work in the agro-processing and agricultural sectors, including research into the barriers to entry facing black emerging farmers in agriculture (access to finance, inputs and infrastructure and routes to market), development funds established through merger conditions and examples of cartel conduct and abuse of dominance investigated by the Commission. The Commission also engaged the students on career opportunities that are available at the Commission.
Training to the Gauteng Provincial Department of Roads and Transport	The purpose of the training was raise awareness about competition issues that are detectable in public procurement and the types of competition concerns that are likely to arise. The training focused on the warning signs that auditors had to be aware of when conducting their audits and how they could go about setting competitive tenders.
Educational video on bid rigging	The objective of the video is to educate the general public and bidders on bid-rigging and why it is prohibited in terms of the Competition Act. The video also seeks to articulate the process to be followed when reporting alleged bid-rigging to the Commission.

Workshops on Competition Policy	
Bilateral between the Commission and the Information Regulator of South Africa	The purpose of the engagement was to discuss issues relating to data regulation in the country and in particular the concurrent jurisdiction shared by the two regulators on these issues.
Webinar on Price Gouging During the Covid-19 Pandemic	The purpose of the webinar was to inform stakeholders of the Commission's role/mandate in response to the Covid-19 induced price gouging as well as share information on interventions the Commission has undertaken to curb the anti-competitive conduct.
Promoting Competition and Inclusion in Supplier Panels of Banks and Insurers	The purpose of the workshop was to receive input from market participants on competition principles aimed at ensuring that they reformed their practices when appointing suppliers onto panels. The competition principles include: (i) establishing fair evaluation criteria and processes for panel appointments (ii) fair allocation of work to suppliers, (iii) eliminating exclusive long-term agreements and reducing the contract periods to five years or less, (iv) increasing participation of SMEs and HDIs on supplier panels, (v) increasing transparency on the application and selection criteria by publishing it on websites; (vi) increasing consumer choice to select suppliers from the approved list and; (vii) monitoring the performance of a supplier panel and fair allocation of work to suppliers. The workshop formed part of the Commission's advocacy initiatives aimed at promoting competition and inclusion on supplier panels of banks and insurers.
Workshop with Labour Unions on the New Public Interest Provisions in Merger Regulation	The purpose of the workshop was to engage labour unions on the new public interest provisions in merger regulation and in particular the challenges and areas of collaboration that could be addressed in future such as compliance with merger conditions.
Workshop with women in business on understanding the strategies adopted by women entrepreneurs to overcome barriers to entry and participation	The purpose of the dialogue was to engage women entrepreneurs on their personal experiences and the strategies they have undertaken to overcome barriers to entry and in particular (i) access to business knowledge, education and training programmes; (ii) access to finance for new business start-up or expansion, (iii) access to (profitable) markets; (iv) compliance requirements, bureaucracy and administration; (iv) access to women networks (support structures); and social factors including safety, security and domestic responsibilities. The dialogue formed part of the Commission's overall research on understanding the barriers that are inhibiting the effective entry and participation of women entrepreneurs in various sectors.
Workshop on Promoting Pro-competitive Rules and Regulations in Residential Estates	The purpose of the workshop was to educate and raise awareness among, Homeowner Associations ("HOA"), body corporates and players who exercise control and influence in residential estates, residents, independent service providers, professional bodies and the relevant regulators about the importance of pro-competitive rules and regulations as they relate to the appointment of services providers in residential estates.

15

ECONOMIC
RESEARCH
BUREAU DIVISION

The Economic Research Bureau division (ERB) is composed of economists and provides leadership on the Commission's research and strategic approach to core economic issues in competition law and its enforcement. The ERB is also closely involved with the day-to-day work of case teams, providing economic guidance and methodological assistance in complex cases and competition policy issues. The ERB also provides economic expert testimony to the Tribunal on behalf of the Commission, on a case-by-case basis, and has led a number of the Commission's Market Inquiries.

15.1

SUMMARY OF PERFORMANCE AGAINST TARGETS

ERB had six performance targets for the 2021/22 financial year, all six targets were met.

15.2

PERFORMANCE HIGHLIGHTS

Below we discuss some of the ERB highlights from the 2021/22 financial year.

a.

Measurement of Concentration and Participation in South Africa Study

The research project aims to consistently measure concentration and participation in the economy over time using predominately data collected by industry organisations, regulators and government departments. More than 80 industry bodies, regulatory bodies and government departments belonging to various sectors and sub-sectors were contacted. These data sources are complemented by annual reports which are also consistently produced and merger investigations where gaps exist.



The study seeks to deepen an understanding of the patterns of concentration and participation in the South African economy. It does so through a detailed assessment of both the levels and trends in concentration and participation over the past five to ten years across 120 industries. Moreover, the methodology used in the study provides the basis for future updates using the same consistent measures, enabling the Commission to continue to track changes to concentration and participation going forward.

The study's detailed sectoral analysis is complemented by national data sets to provide broader insights around the level of concentration at a broader sectoral level, the distribution of firm income across firm sizes, the level and trend in the participation of SMEs, the evolving entry/exit of firms across firm size categories

and the transitioning between firm size categories. Specifically, the study has made use of the administrative tax data based on the South African Revenue Services (“SARS”) database, which provides turnover by broad sector for tax-paying registered firms, and the Statistics South Africa’s industry survey data that provides concentration ratios against the Standard Industrial Classification codes.

The main cross-cutting themes emerging from the study include:

- i. **Persistence of high concentration**—the team used the US DOJ HHI thresholds converted to CR equivalents to categorise sectors into unconcentrated, moderately concentrated and highly concentrated (with and without a dominant firm). The finding is that 70% of sectors analysed were highly concentrated and 40% with a dominant firm.
- ii. **Highly concentrated sectors were more likely to become more concentrated than not**—by correlating the level and trends in concentration, the study found that 60% of highly concentrated sectors with dominant firms were seeing increasing concentration and 36% for highly concentrated sectors without a dominant firm. The trend of more concentrated sectors being more likely to see increases in concentration is confirmed by the StatsSA CR data.
- iii. **Merger activity has not contributed materially to highly concentrated sectors but does impact licensed sectors**—the study examined the 39 sectors which were highly concentrated and which saw an increase in concentration in the period. Of these, only 14 had mergers by the top three to five firms. This included instances where divestures were required. In fishing, gambling and IPPs there has been consolidation subsequent to licenses being issued which has shaped these sectors.
- iv. **SME numbers are growing but face increasing exit rates**—using the SARS tax database to identify all registered firms by size, shows that SME numbers are increasing over time and a percentage of these are transitioning to medium and ultimately large firms. However, the trend shows that exit rates have been climbing over time to the point where in 2015 these exceeded entry rates, which would point to future declines.

- v. **A high degree of inequity in the distribution of firm income**—the SARS database also allows us to examine the distribution of firm income (turnover) within broad sectors. These have been converted into Gini Coefficients to provide a comparator to household income inequality. The results show consistently high inequity at an average of 0.84 relative to 0.63 for household wealth inequality.
- vi. **Participation remains a challenge in highly concentrated sectors**—as may be expected, highly concentrated sectors have fewer participants. The study found in most cases these sectors had fewer than 20 participants and increasing participation does result in lower levels of concentration.
- vii. **The commercial agricultural value chain has concerning reductions in growers and increasing concentration elsewhere**—over the past five years we have seen 30% reductions in commercial growers and livestock farmers across all categories. This is coupled with very few suppliers for inputs (often global firms) and concentrated processing despite broader participation. This suggests smaller scale commercial farming is being affected by an adverse market structure.
- viii. **Global trends show increasing concentration and a role for competition policy**—recent studies of the US economy show growing concentration mirrored in studies of Japan, Australia and Latin America. The results are more mixed for the EU and the UK leading to the conclusion that the more stringent application of competition law and proactive regulation of digital markets may prevent increasing concentration.

b. Essential Food Pricing Monitoring Report

The Essential Food Pricing Monitoring (EFPM) reports began with the onset of the Covid-19 pandemic and the enforcement action on price gouging behaviour. The Commission began to monitoring essential food prices more broadly—including upstream food commodity and fresh produce markets—in order to understand the effect of the pandemic, the preventative measures of government and the economic crisis on food markets.

During this financial year the fifth and sixth editions of the essential food price monitoring report were published. The fifth report covered two broad areas, namely the broader structural issues in South Africa’s food market system and the initiative to develop small-



scale, localised farming and secondly the report tracks essential food pricing through the third wave of the pandemic to monitor price movements and inflation for essential food products.

In terms of the two broad areas covered, the following aspects were covered as part of the broader structural issues:

- i. The structure of agriculture in South Africa is considered by highlighting that the agricultural value chain is highly industrialised and characterised by super commercialisation of production via large-scale farming as well as concentrated upstream inputs and processing.
- ii. The trends and benefits of local, small-scale farming which centre around socio-economic benefits such as improving

- small farmer participation in the food value chain, especially for historically disadvantages farmers, and also address rural poverty and the lack of access to affordable and healthy food.
- iii. The decline of small-scale farming in South Africa as well as its challenges and what initiatives there have been to try to address these challenges.

In terms of the second broad area covered in this report, it looked at the tracked pricing of essential food products through the different waves of the pandemic (especially the third wave) to see what is happening with these prices and whether events such as panic buying or other global events are impacting negatively on food prices, security and nutrition.

- i. The updated food price data covering the third wave does not show any panic buying behaviour that has driven price changes.
- ii. We are seeing some general seasonality shifts in pricing and global or weather-related changes, but no obvious effect of the third wave per se on the tracked essential foods, and not even a strong price effect on ginger and garlic (as seen before in the second wave).
- iii. There has been price inflation for certain commodities over the last while, such as cooking oil and meat markets are also showing steady increases in retail prices since the first wave of the pandemic.
- iv. Consumers remain under enormous financial pressure due to impact on livelihoods and third wave closures and riots, which highlights the importance of ongoing tracking of essential food products.

The sixth edition of the EFPM report covering the following aspects:

- i. Firstly, a trend that can be observed globally is that food is becoming increasingly traded, which arguably might exacerbate the potential impact of some of the international events and market disruptions experienced in the last two years. The report considers the extent to which essential food products in South Africa may be increasingly traded and thus further exposed to international shocks.
- ii. Secondly, a common theme throughout the Commission and others’ work in the food space over the last two years is the impact of price increases and market volatility for the poorest consumers. The report looks back across a longer period

- to understand the changes in food prices, relative to other products, and the impact on the poor.
- iii. Thirdly, it looks at pricing over the longer term to understand the broader impact of these market events and disruptions and identifies any other concerning recent trends in pricing and margins for essential food products.

The results from the study over the past two years clearly show that there are numerous events and disruptions occurring within South Africa's food markets and beyond just the Covid-19 pandemic itself.

c. **Scoping Study Report on Fresh Produce and Livestock Value Chains**

Agriculture and agro-processing are two of the seven sectors prioritised by the Commission. Of the seven priority sectors, three have not been subject to market inquiries thus far—food and agro-processing, manufacturing and automotive. This scoping study was planned to focus on fresh produce; however, the team also considered the livestock value chain, given that some of the issues around access to markets and the conduct of processors and retail may be common across the two value chains.

Ultimately, the purpose of the scoping study is to identify certain market features such as market structure, market outcomes and market conduct that may form the basis for initiating a market inquiry into fresh produce and livestock markets.

This scoping study follows the publication of five essential food pricing monitoring reports which focused on these markets primarily as well as a variety of enforcement actions.

The study finds several concerns across the various layers of the value chain, particularly with respect to the high levels of concentration, which affect input costs for farmers and confer buying power on processors and retailers. The behaviour of retailers in terms of price gouging and margins revealed through the pandemic and initial lockdown period are brought into focus, as well as the level of vertical integration in these markets, especially the livestock value chain. There are also a number of findings that relate to the barriers facing smaller and emerging farmers and growers, their sustainability and their ability to grow.

The study finds that a market inquiry in the fresh produce value chain has a high potential for impact for several reasons:

- Firstly, this sector is important for every consumer, and especially the poor, and this means that those interventions may be far reaching and beneficial. The impact on employment across the economy is also key.
- Secondly, there is no regulator in the sector, unlike with the LPG and Data Services market inquiries where the presence of a regulator created additional challenges.
- Thirdly, the lessons from the inquiry into a value chain may be useful for actions in other value chains.
- Lastly, there are clear areas in the value chain whether there is concentration leading to concern of market power and/or buyer power.

The report also identifies possible themes for a market inquiry. Should an inquiry into fresh produce be initiated, the ToR would draw on these themes and the scoping study more broadly. These themes are expanded on in the report but include a) the market dynamics and impact of key inputs for growers, b) the barriers to growth and participation of small and emerging farmers and growers, c) efficiency and resilience of the value chains, and d) the future of fresh produce in South Africa.

d. **The Impact of the Data Services Market Inquiry Recommendations**

This study assesses the impact of the settlement agreements ("agreements") between the Competition Commission of South Africa ("Commission") and mobile network operators ("MNOs") as well

as Telkom Openserve, collectively referred to as operators. These agreements were concluded following the Data Services Market Inquiry ("DSMI"). The purpose of the DSMI was broadly to understand if there are any features of the data market(s) and value chain that may cause or lead to high prices for data services, and to make recommendations that would result in lower prices for data services.

The final report of the DSMI was released on 2 December 2019. The report concluded that data prices in South Africa were high and anti-poor. As such, the DSMI made recommendations aimed at (i) reducing data prices and (ii) promoting greater internet access for consumers, including a recommendation for operators to provide subscribers (the poor in particular) with zero-rated access to internet services of public benefit organisations ("PBOs").

In March 2020, the Commission concluded consent agreements with MTN and Vodacom and signed Memorandums of Agreement with Telkom and Cell C ("settlement agreements") wherein the operators made commitments to implement the recommendations of the DSMI in order to reduce the cost of data and to promote greater internet access for the poor. The operators implemented the recommendations as of 1 April 2020.

The study found that the operators complied with the undertakings, and this culminated in the achievement of the objectives of the DSMI, namely increased access and affordability of data in South Africa. This was achieved through direct price reductions by Vodacom and MTN in compliance with the undertakings, but also through intensified price competition between operators. For example, Vodacom's second price change in April 2021 resulted in MTN also responding to that price change by reducing the price of its 1GB monthly bundle in April 2021, something it had not committed to do. Other operators responded to Vodacom and MTN's price reductions by implementing their own price reductions on certain bundles and additions of data to bundles at certain price points or a complete replacement of bundles. The study also has found that the reduction in headline prices of certain prepaid monthly bundles by MTN and Vodacom, accompanied by the zero-rating of many websites of educational and government institutions, prepaid data traffic increased by up to 37% in the period after the settlements compared in the period. This suggests that the initiatives by the operators to reduce headline prices and promote awareness of zero-rated content had a positive influence in the usage of zero-rated services.



The study estimated that the inquiry saved consumers of mobile data approximately R2,1 billion in the first thirteen months since the agreements were concluded (from April 2020 to April 2021).

In the fixed-fixed line side of the market, the study found that the agreement between the Commission and Telkom resulted in Openserve introducing a new wholesale connect product to replace IP Connect called Broadband Connect. This new offering from Openserve reduced wholesale charges to ISPs for fibre broadband wholesale customers. In addition, Broadband Connect also brought a structural change in the pricing of access fees in that the fixed component fees increased, while there was also a substantial decrease in the variable component for access fees. The changes in the fixed-line side of the market resulted substantial savings for ISPs of approximately R500 million. This in turn resulted in pass-through to end consumers who benefitted from fibre price reductions of between 11% and 19% across all line speeds.

The settlement agreements between the Commission and operators were concluded just before the declaration of Covid-19 as a national state of disaster. Hence, the agreements were concluded just in time before the shift online by vast numbers of consumers and businesses during lockdown conditions to have an impact when affordable data was needed the most.

e. Guidelines on Collaboration between Competitors on Localisation Initiatives

On 18 March 2022, the Commission, in terms of section 79(1) of the Competition Act, issued final guidelines on collaboration between competitors on localisation initiatives. Section 79(1) of the Competition Act authorises the Commission to prepare and issue guidelines to indicate its policy approach on any matter falling within its jurisdiction in terms of the Competition Act. In response to the economic consequences of the Covid-19 pandemic, government developed the Economic Reconstruction and Recovery Plan (ERRP) which maps out interventions aimed at promoting inclusive growth and employment in the domestic economy. One of the key objectives of the ERRP is localisation—increasing the level of local production or services.

Localisation will stimulate economic growth and lead to greater economies of scale for local producers, greater investment locally and ultimately improved competitiveness in export markets in the longer term. For the purposes of the guideline, a “Localisation Initiative” is any project or effort to achieve greater levels of localisation through increasing the share of total procurement of an identified input from local suppliers. Localisation initiatives may be initiated by any government department, industry, trade union or non-governmental organisation (NGO). The guidelines are applicable to firms, trade unions or NGOs that have voluntarily chosen to participate in a localisation initiative.

Government-initiated localisation initiatives may include initiatives such as the Department of Trade, Industry and Competition’s (DTIC) ’s CEO Localisation Initiative or localisation initiatives that arise out of the DTIC’s Master Plan processes. Outside of government, the Commission recognizes that industry participants, market players and other entities may also wish to engage in initiatives to increase localisation in terms of the ERRP and in line with government policy.

Given the potential for collaboration between competitors to amount to prohibited conduct in terms of Section 4(1) of the Competition Act, the guidelines are aimed at providing guidance to industry, government, trade unions, NGO and other interested entities as to how localisation initiatives may be appropriately identified and implemented, in a manner that does not raise competition concerns. The guidelines cover any form of localisation initiative, including but not limited to the DTIC’s CEO Localisation Initiative, the DTIC’s Master Plan processes, localisation initiatives initiated by a government entity and industry-led localisation initiatives.

f. Position Paper on Open Banking

This research focused on Open Banking and the importance of consumer data in fostering innovation and competition. Drawing from international experiences, this research assists in highlighting key issues where regulatory supervision is required for Open Banking to be implemented successfully in South Africa. The focus on Open Banking is aligned to the Commission’s contribution to the Intergovernmental Fintech Working Group (IFWG). The IFWG is a platform for engagement with relevant industry market players and regulators on selected areas including Open Banking.

The research examined the approaches to Open Banking adopted globally. Considering experiences in other jurisdictions, the research further explored whether a market-led, or regulatory-led approach may be adopted in South Africa. It found that the key pillars that have a bearing on Open Banking implementation include: the type of data involved, data ownership, payment for data, opening of APIs and data privacy and security. As such, for Open Banking implementation to be a success in South Africa, regulatory guidance is needed on these aspects. Furthermore, international experiences also show that whichever approach is pursued in South Africa, i.e. whether a market-led or regulatory-led approach, relevant regulators including the Information Regulator must provide direction on the main pillars of Open Banking identified. This is where multi-stakeholder forums such as the IFWG which includes the Commission, can serve a useful purpose of advancing discourse in this field.

Another key feature of Open Banking explored in this research pertains to data privacy and security. Notwithstanding the regulatory framework which empowers consumers to give consent in order for their personal data to be shared, data privacy and security considerations may pose difficulties to compel dominant players such as the larger banks to provide data access to SMEs (i.e. Fintechs). In the context of Open Banking, targeted legislation on data privacy and security may be necessary establish acceptable data privacy and security standards. Therefore, supervision is required on how data can be shared without compromising data privacy and security.

This research has also observed that while not yet an imminent threat, the Open Banking initiative does invite the entry of big tech firms and not just Fintech start-ups into the financial system, which, while increasing competition and the penetration of financial services in the short run, may create a long-term risk of monopolisation or gatekeeping by big tech firms. Furthermore, as big tech firms become more pervasive in the financial system without regulatory oversight, systemic risk in the system will likely escalate. A pre-emptive decision must be made regarding their involvement in the South African financial market if registration will be compulsory. For example, it may be necessary that bespoke regulation be developed for big tech firms with limitations on the allowable penetration by these firms into the financial system before systemic risk exposure requires regulatory oversight.

Table 28: 2021/22 Screening statistics

Title	Publication
Regulating Data Markets through Open Banking: Lessons for South Africa	Conference Book Chapter
Rapidly increasing concentration in the South African retail pharmacy sector, a point of no return?	Conference Book Chapter Paper
Block Exemptions as a tool for economic recovery and reconstruction: Lessons from the Covid-19 Block Exemptions	Conference Book Chapter
Regulation of Network Industries in South Africa (Oxford Handbook of the South African Economy, Chapter 26)	Conference Book Chapter
Labour market concerns under competition law	ERB Brief
Rapidly increasing concentration in retail pharmacy	ERB Brief
Rethinking the theory of coordination in merger control	ERB Brief
The effects of different cost allocation methods in excessive pricing investigation	ERB Brief

16 MARKET INQUIRIES

The Commission is empowered to conduct market inquiries into the general state of competition in any industry. Market inquiries are different from investigations in that, while investigations target specified firms engaged in specified anti-competitive conduct, market inquiries look into any feature or combination of features in a market which may have the effect of distorting or restricting competition without targeting any one firm.

During the 2021/22 financial year the Commission initiated one market inquiry. Below is a detailed discussion of each of the market inquiry.

16.1 LAUNCH OF A MARKET INQUIRY INTO THE FRESH PRODUCE MARKET

On 30 March 2022, the Commission initiated a public market inquiry into the fresh produce market to examine whether there were any features in its value chain which lessened, prevented or distorted competition. The draft terms of reference of the Fresh Produce Market Inquiry ("FPMI") were published in the Government Gazette No. 46093 on 25 March 2022.

The Commission is of the view that the FPMI is essential to understand the state of competition within the industry, the market features affecting price outcomes and the challenges currently faced by farmers (especially small-scale and emerging farmers). More broadly, the importance of the sector to both the economy and employment and the nutrition and welfare of its citizens gives further weight to the need for such an inquiry.

Agriculture plays a significant role in the South African economy as it contributes to food production, job creation, raw material supply to agro-industrial and manufacturing sectors, as well as export-driven foreign exchange income. The Commission has prioritised the food and agro-processing sector since 2008 due to the sector being a source of staple food and the potential of the sector to create significant employment opportunities, thereby serving as a driver of inclusive growth in the South African economy.

The scope of the FPMI will cover aspects from the sale of fresh produce by the farmer to the customer (the retailer, processor or export market). The interaction of retailers and end consumers will not be considered.

The Commission identified four broad themes which cover the features that may impede, restrict or distort competition and market outcomes. The themes are as follows:

- i. **Efficiency of value chain**—this theme is focused on determining how the value chain and differing levels of concentration at various levels and route to market impact prices and efficiency with a focus on the fresh produce market.
- ii. **Market dynamics and impact of key inputs for growers**—the key inputs for growers include seeds, fertilisers, agrochemicals (herbicides, fungicides and pesticides) and farm equipment. Many of these inputs are imported or priced based on international bases and can lead to significant cost effects at the grower. This theme is focused on the upper end of the production value chain.

- iii. **Small and HDP growers and participation**—this theme centres on the lower end of the production value chain. Specifically, the inquiry will consider the barriers to entry specifically facing small and HDP growers and issues around access to fresh produce markets or retailers through contract farming.
- iv. **Barriers to entry in relation to the regulatory environment**—this theme would focus on the broader regulatory environment which prevails in the fresh produce industry.



**FRESH
PRODUCE**
MARKET INQUIRY

The Office of the Commissioner (OTC) is responsible for providing strategic leadership and oversight in the organisation. Corporate Governance, International Relations, Learning and Development, and Communications units are situated in the OTC. Corporate governance functions are discussed in detail under Part D.

17.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The OTC was responsible for five performance targets in the 2021/22 financial year. All five targets were met.

17.2 COMMUNICATING THE WORK OF THE COMMISSION

The advent of Covid-19 accentuated the critical importance of effective communication rooted on content that is easily digestible, accurate, timely, and disseminated frequently to all stakeholders.

Undoubtedly, the quality of information must ensure high impact and that means we have to use cutting edge messaging techniques and platforms. Thus, the choice of appropriate communication platforms becomes key in order to ensure that information reaches the targeted audiences.

For the Commission strategic communication is critical because the domain of competition is a speciality with a particular niche that can be well conversant in the language and jargon of the subject. The mission to position the subject and the brand, Competition Commission SA, demands that we must present our information in a strategic and compelling matter that should grab attention, be understood easily, and encourage recipients to act.

The Commission's website, with a look and feel designed for impact, remains the gateway into the world of competition regulation and enforcement in South Africa. It is also not just the centre of our online presence; it is also the most economical advertising method and the most credible source of our information.

Critically, the communications function plays a central role in taking the events of the Commission to the public. This includes most of the logistical planning and execution, as well as media arrangements.

There is an inevitable reciprocity in the relationship between the Commission and the media. In setting its media agenda, the Commission proactively communicates its decisions and disseminates topical information while the media depends on the Commission for the latest, important, and accurate information. It is noteworthy to mention that the media plays a significant role in disseminating the Commission's information and remains the most effective tool for public education and awareness. During the period under review, the Commission issued a total of 48 media statements. These solicited 75 interviews, resulting in extensive media coverage on various platforms. The coverage means a comparable commercial worth, called advertising value equivalent (AVE) amount of at least R 404 182 397. This coverage comprises an AVE value of at least R 89 071 025 for print media coverage, R 23 643 300 for broadcast coverage, and at least R 197 567 036 for online media coverage. This value is calculated by taking the inches, in the case of written word-based platforms, or seconds in the case of broadcast media and multiplying these figures by the respective platform's advertising rates. The resulting number is the equivalent of what you would have paid for an advertisement on the platform.

The Commission continues to strive to keep up with the latest trends in cyberspace to optimally utilise new forms of media, particularly social media.

During the period under review, the Commission continued to make significant strides with regard to social or new media, which is still one of the fastest growing media platforms worldwide. This means that we are effectively penetrating the youth audience, and we reach internet and social media users timeously. The Commission live-

streamed all its major external events like the annual conference. More importantly, all this footage is recorded and available on the Commission's YouTube channel.

Below is a list of the Commission's social media platforms and the number of followers or subscribers as of 31 March 2022. Non-subscribers frequently view and participate in the Commission's online events as well. The table below provides the Commission's social media footprint:.

Table 29: Commission mentions and impressions in online media for 2021/22

Type of Media	Q1	Q2	Q3	Q4	Total Impressions/Reach
Twitter	369 700	538 300	54 200	423 500	1 873 500
Facebook	70 039	56 264	57 517	19 305	203 125
LinkedIn	183 007	113 607	215 274	192 667	602 555
Instagram	9 964	7 746	7 393	3 734	28 837

17.3 INTERNATIONAL RELATIONS

The Commission mainly participated, attended and hosted events relating to engagements with other African countries under the African Competition Forum (ACF), Brazil, Russia, India, China and South Africa (BRICS), the Organisation for Economic Co-operation and Development (OECD) and International Competition Network

(ICN); with a high rate of engagements and collaboration being in Africa and the ICN. The aim of these engagements was to influence international discourse in collaborative research and/or projects on competition policy and draw learnings from other authorities.

Below, we highlight some of the Commission's participation in international relations during 2021/22 financial year:

Table 30: Engagements with international and foreign bodies in 2021/22 financial year

Competition body	Nature of engagement
Africa (ACF, Afcfta, SADC)	1. ACF Steering Committee meeting was held on 12 April 2021 2. Tripartite Technical Working Group meeting took place from 27 – 29 April 2021 3. SADC 55th Trade Negotiation Forum took place from 17 – 19 May 2021 4. ACF Mergers training on Assessing Digital Markets took place on 29 June 2021 hosted by CCSA 5. ACF-SADC Cartels technical working group workshop took place on 29 July 2021 6. SADC Cartel Working Group meeting took place on 10 September 2021 7. AFCFTA 1st meeting on competition policy took place on 11 – 13 August 2021 8. ACF Cross country study on Aviation book launch took place 21 October 2021 9. ACF Roaming Cross country study technical workshop hosted by CCSA 10. ACF Pharmaceutical Cross country study technical workshop hosted by CCSA 11. SADC Cartel and Mergers technical meeting took place 8 October and 29 October 2021, respectively.

Competition body	Nature of engagement
	- AfCFTA 1st Competition workshop took place on 12 – 14 October 2021 - AfCFTA 2nd meeting of the Committee on Competition Policy took place 29 – 2 December 2021 - Joint African Authorities workshop—South Africa, Egypt, Kenya, Nigeria and Mauritius held on 20 October 2021 - SADC Mergers working group meeting held on 28 January 2022 - Heads of African Competition Authorities meeting on digital markets held on 17 – 18 February 2021 2nd Capacity Building workshop and the 3rd Meeting of the Competition Policy held on 21 – 25 March 2022
OECD	- OECD – Competition Committee meetings took place on 07 – 11 June 2021. CCSA has contributed to two written contributions on Competition Enforcement and Regulatory Alternatives and The Concept of Potential Competition. - Contribution to the Draft report on the Implementation of the Recommendation and Concerning International Co-operation on Competition Investigations and proceedings - Tunisia Peer review at the OECD Global Forum workshop on regulatory barriers to Competition Professional services on 18-19 November 2021 - Contributed to the OECD contribution on Potential Competition for the working groups roundtables - OECD Competition Committee meetings took place December 2021
BRICS	- VII BRICS Competition Conference held on 16 – 17 November 2021 - BRICS International school held from 29 – 03 December 2021 - Submitted a questionnaire on Antitrust Analysis of Digital Markets - BRICS Automotive technical working meeting was held on 12 May 2021 - Meeting of the Heads of BRICS Competition Authorities was held on 27 May 2021. - BRICS Research center alignment meeting was held on 24 June 2021
ICN	- Written contribution for the OECD/ICN report on international cooperation in competition enforcement on 28 October 2021 - Contributed to the ICN notification and procedures draft report of the 2021 template on 12 October 2021 - Participated in the ICN Advocacy Workshop, CCSA participated in Session 3:” Enabling effective international enforcement cooperation through collaborated advocacy initiatives” held on 9-10 February 2022. - Participated in the ICN MWG Webinar “Ex Post Merger Evaluation” held on 22 February 2022 - Submitted ICN Competition Agency Procedures (CAP) held on 17 March 2022 - Presented in the ICN Merger Workshop took place on 29 March -01 April 2022 - UCWG suggestions from CCSA, contribution towards ICN UCWG workplan in June 2021 - Participated in over 15 teleconferences, webinars and calls for working groups
UNCTAD	- Written contribution to the UNCTAD research on “Competition Advocacy during and in the aftermath of COVID” - CCSA participated in the Second Cross Border Cartel Working Group, session was held on 13 April 2021 - Participated in UNCTAD – regional dialogue: the role of competition policy in facilitating market access for MSMES was held on 8 April 2021 - Participated in UNCTAD 3rd Cross Border Cartel Working Group meeting was held on 01 June 2021 - Participated in the Intergovernmental Group of Experts on Competition and Consumer protection meetings took place 5 – 9 July 2021

Competition body	Nature of engagement
	- Participated in Technical Assistance to South Africa to address the impact of COVID-19 on micro, small and medium-sized enterprises, 2 November 2021. - Contributed to the “Ad-hoc” Expert Group Meeting on Competition Law and Policy: Cross-border Cartels, 23 November 2021. - Participated in the UNCTAD Research Partnership Platform, 9 December 2021. - Participated in the UNCTAD kick off meeting of the Cross-border cartels working group - Submitted a questionnaire on 24 January 2022
Other	- CCSA—Nigeria Bilateral meeting took place on 27 July 2021 - CCSA—Egypt digital markets workshop took place on 20 August 2021 - Information exchange with OECD, Embassy of Spain and Mauritius, The Gambia, Eswatini, Australia, London, COMESA, Europe - MOU between South Africa and Barbados - CCSA—Egypt Bilateral meeting was held on 15 June 2021 - G7 Digital Competition Enforcers summit held on 29 – 30 November 2021 - CCSA and Nigeria MOU signed on 18 February 2022

17.4 LEARNING AND DEVELOPMENT

The Commission places great emphasis on developing its people. A considerable amount (R1 851 464, 57) was spent on learning and development initiatives during the reporting period. The training budget includes local training, overseas training, conferences and study loans.

Through the learning academy, the Commission moved towards a Learning and Development Programme that relies heavily on its internal expertise and information resources in the development and delivery of learning programmes, whilst continuing to draw from best practices and innovation from outside the Commission. The Commission has invested a significant amount of effort in the development of learning content and encouraging senior employees to participate in the development of other employees. Some of our senior employees have been involved in either providing content or running training and development programmes for international competition authorities.

In line with its aspiration to support the development of its staff, the Commission supports its staff to not only do their jobs, but to also grow as individuals. In the 2021/22 financial year, at least 60% of employees were trained through the academy.

a. *The Cadets Programme*

The sustainability of the Commission hinges on a stable pipeline of talent in the areas of competition law, economics and other disciplines. The Commission revamped the programme from the old Graduate Development Programme by enhancing the training component and enhancing the experiential learning aspects of the programme. Through the Cadet Programme, law graduates can complete their articles through the established partnerships with private law firms. Two law graduates completed their articles in the financial year. The Commission enrolled sixteen graduates in the revamped programme. The Commission will be looking at continuously updating the programme to accommodate new domains of talent required to execute its mandate.

18 THE CORPORATE SERVICES DIVISION

The Corporate Services Division (CSD) provides the following corporate support functions to the Commission: human capital management, security and facilities, records management, information resources services and information and communications technology.

18.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Corporate Services Division (CSD) was responsible for six performance targets in the 2021/22 financial year—five targets were met and one target was not met.

18.2 PERFORMANCE HIGHLIGHTS

a. Supporting our Human Capital

The Commission is a fast-paced environment driven primarily by dynamic specialists in the areas of law and economics. The Human Capital (HC) function at the Commission provides strategic and administrative support to the organisation in general and to line managers in the areas of talent management, talent acquisition, employee relations management, organisational development support and human capital development. The Commission continues to benefit from the Business Partner Model adopted when the HC function moved from administrative support to strategic management of talent, for the realisation of the High-Performance Agency goal.

During the reporting period the HC function focused on driving the following initiatives:

- Improvements were made in talent acquisition processes and policies, to improve both the quality of talent sourced and the turnaround times for talent acquisition at the Commission;
- The institutionalisation of the employment equity committee, with particular focus on setting achievable employment equity targets;
- All Human Capital Management policies were reviewed during the financial year, to ensure they are in line with best practices and are in line with the changes in legislation; and
- Limited implementation of some aspects of the new organisational structure; Implementation of the Litigators development programme with a view to build internal litigation capacity;
- Developing a new working model framework beyond remote working as a result of the pandemic.

b. Performance Management

The performance management system of the Commission continues to be the cornerstone of the realisation of a high-performance agency goal, with individual performance linked to organisational performance. The new Performance Management Policy has seen its second year of implementation, with minor adjustments made to improve the management of performance at the Commission. This year saw the introduction of new tools in performance moderation, as the Commission seeks to boost the reliability and objectivity of performance moderation. The Commission continues to embed the culture of high-performance and plans to continue making improvements in this area by building a paperless performance management system that is integrated to its Human Capital Management System.

c. Employment Equity

The Commission has made a deliberate effort to comply with the Employment Equity Act (EEA) (Act No. 55 of 1998) as amended. In terms of the applicable provisions of the EEA, the Commission's 2019 employment equity report was submitted to the Department of Labour. Diagram 1 shows the equity breakdown for the past years, including the year under review. From a gender and national economically active population (EAP) perspective, the Commission is doing very well. The EAP includes people between the ages of 15 and 64 who are either employed or unemployed and those seeking employment.

Although the Commission is above the 95% compliant on EE a significant milestone has been reached, in that, the Commission now stands at 45% female representation and at 55% male representation at Senior management level as of end of March 2022 which is a decline from the previous 50/50 representation in 2021. Although this is a drop from the previous 50% female representation, females remain equitably represented at this level as they now meet the EAP demographic target required. The Over-all representation stands at 59% females and 41% males. People with disabilities represented 2% of the Commission staff, therefore achieving the legislated target of 2%. However, the Commission will continue increasing efforts in the recruitment of disabled employees by giving priority to qualifying disabled applicants for vacant positions, as well as for development opportunities. The Commission's 2021/22 race and gender profile is as follows:

Table 31: Commission 2021/22 Race Profile

FEMALE (59%)

AFRICAN

107

COLOURED

5

INDIAN

10

WHITE

5

MALE (41%)

AFRICAN

76

COLOURED

1

INDIAN

2

WHITE

8



d. *Staff turnover*

As at end of the 2021/22 financial year, the Commission's staff complement stood at 225 employees.



There were eight terminations of employment during the 2021/22 financial year. The Commission's current annual termination rate is significantly lower compared to previous years. The main reasons cited for resignations were career change/development.

e. *Employee Retention*

To ensure optimal employee retention, the Commission embarked on two initiatives: Employee Development and Performance Recognition and Incentivisation.

Employee Development: In the last financial year, the Commission has a significant amount towards the development of employees. This includes study loans, domestic and international travel for developmental purposes. The Commission established a learning academy which facilitates and delivers training and discussions on competition-related topics for employees at all levels.

The Commission also formed partnerships with law firms to facilitate the admission of employees who not yet admitted as attorneys. This initiative facilitates career growth, in that once admitted, such employees can grow into senior levels within the Commission.

Performance Recognition and Incentivisation: The Commission uses the performance management system to make decisions on performance related incentives. To ensure that high performers are incentivised and retained, the Performance Management Policy was enhanced to differentiate performance levels more distinctly. According to the new policy, continuous performance discussions are encouraged to ensure that optimal employee engagement is achieved.

f. *Employee Relations*

In the year under review, the majority of the Commission's employees were members of the National Education Health and Allied Workers Union (NEHAWU). By year-end, the union's representation was 62%, which gave them majority rights, in terms of the amended Chapter III of the Labour Relations Act (Act No. 66 of 1998).

Throughout the financial year concerted efforts have been made to ingrain a culture of continuous engagement between the union and the employer. These efforts have seen a decrease in the number of disputes, such that we have managed to reach agreements in a more meaningful manner by way of consensus and mutual respect.

g. *Security and Facilities Management*

The security and facilities section is responsible for ensuring the safety of staff and visitors, assets and information of the Commission. The section oversees physical security services, Occupational Health and Safety, facilities and maintenance, information resources and other services guided by the legislative framework, policies of the Commission and its mandate to ensure a safe and secure environment.

The Competition Commission has prioritised the Occupational Health and Safety compliance by making sure that resources are made available to achieve the set priorities. The implementation of the Commission's Occupational Health and Safety (OHS) plan that encompasses systematic identification of hazards, the assessment the risks and the implementation of necessary control measures aimed at addressing these risks within the work environment, is ongoing on a quarterly basis.

This section has been involved in planning and preparation for investments in fit-for-purpose space that is effectively managed, complies with occupation health and safety requirements and supports the conduct of the Commission's functions. These preparations will inform investments planned over the next three years, to improve the effectiveness and efficiency.

h. *Information and Communications Technology*

The Information and Communication Technology (ICT) function is responsible for the provision of enabling technology to facilitate efficiencies in the work of the Commission, securing information resources and ensuring continuity of the operations. The Commission's ICT network is partly hosted by the Department of Trade and Industry (DTIC) as some infrastructure of the Commission are located on the DTI campus.

Improvements in ICT governance and better focus in research for relevant solutions were a central focus during this financial year. In the improved ICT governance area, the Commission focused on better disaster recovery management and cyber security areas.

Several improvements were made on combating cyber-attacks and improving identity and access management. Security systems to guard against leaked passwords were also implemented. Revised IT policies were consolidated into an IT policy and procedure manual. Terms of reference for the ICT Committee were also developed during the financial year.

The Commission moved to deepen collaboration among teams and with stakeholders and acquired better storage capacity through the implementation of Office 365. The focus is now on better collaboration, to improve the effectiveness of the Commission and unlock the collective wisdom of our teams.

i. *Records Management*

The Commission's Records Management function continued to provide an efficient service to external clients and internal clients and to support the core and support functions of the Commission. The focus area during the year under review was on the improvement of policies to improve alignment, meet business requirements and compliance with regulatory framework affecting information at the Commission's disposal. Central to the compliance effort was the Protection of Personal Information Act 4 of 2013. The Commission has put in place plans to improve the effectiveness and efficiency of this function in the next few years, through investment in capacity and improving the technology supporting this function.

j. *Information Resources Centre (IRC)*

The Commission derives its existence from the Competition Act and conducts its work in line with the South African legal framework and international developments and jurisprudence, given the convergence of competition law worldwide. The IRC provides and maintains access to a rich set of databases (including international and local legal databases), various business and marketing resources that are well-used, and more recently expanded its e-book collection which it is actively growing. Employees were kept abreast of new information resources through bulletins (with plenty circulated during the financial year).

PERFORMANCE AGAINST TARGETS: 2021/22

Table 32: Performance Against Targets Set

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNTABLE PROGRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
1. Efficient and effective merger regulation & enforcement	a) Mergers and Acquisitions decisions	M&A	1	Average turnaround time for Phase 1 merger investigations	≤ 20 days	17 days	Target met
		M&A	2	Average turnaround time for Phase 2 merger investigations	≤ 45 days	40 days	Target met
		M&A	3	Average turnaround time for Phase 3 intermediate and small merger investigations	≤ 60 days	57 days	Target met
		M&A	4	Average turnaround time for 90% of Phase 3 large merger investigations.	≤ 120 days	137 days	Target Not Met. The Commission investigated several complex Phase 3 (L) Mergers, including ALLISA/Sasol, RusselStone Protein, Cashbuild/TBC and Dischem/PPH. These cases required extensive investigation, extensive public interest deliberations.
		M&A	5	% of imposed merger remedies and conditions monitored.	100%	100%	Target met
	b) Covid-19 investigations	Advocacy, Cartels & MCD	6	% of Covid-19 investigations completed within 12 months.	100%	91%	Target Not Met. The Commission took a strategic decision to suspend completion of certain cases pending the Tribunal judgement which would give guidance on how to deal with the suspended matters.
		LSD	7	% of Covid-19 cases won at the Tribunal.	90%	100%	Target Met.
		LSD	8	% of Covid-19 cases won at the courts.	90%	N/A	Target Not Applicable. No decisions granted in the period under review.
		MCD	9	Number of abuse of dominance and restrictive cases initiated related to Covid-19	10	0	Target Not Met. The Commission only received third party cases, available information did not warrant an initiation.
		MCD & Cartels	10	% of Covid-19 exemption applications completed within 3 months.	100%	N/A	Target Not Applicable. The Commission did not receive any Covid-19 exemption application.
		ERB	11	No. of Reports on Food Prices.	2	2	Target Met.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNTABLE PROGRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
2. Competitive, Contestable and Deconcentrated Markets + 3. Improved public interest outcome	a) Investigation of Abuse of dominance and restrictive practices	MCD	12	No. of abuse of dominance and restrictive cases initiated in prioritized sectors.	5	3	Target Not Met. The available information did not warrant the required initiations.
		MCD & Advocacy	13	% of market conduct investigations completed within 18 months.	≥75%	98%	Target met
	b) Exemption application decisions	MCD	14	% of exemption applications completed within 12 months.	≥100%	75%	Target Not Met. The Commission had one complex exemption application (AFASA exemption) which required extensive consultations on the implementation of the transformation plan with stakeholders.
	c) Cartel investigations	Cartels	15	No. of cartel investigations completed.	10	35	Target Exceeded. The Commission expedited completion of cartel investigations, as there were few trials.
	d) Cartel prosecution	Cartels & LSD	16	% of cartel cases won at the Tribunal.	≥75%	100%	Target Met.
		Cartels & LSD	17	% of cartel cases won at the courts.	≥75%	40%	Target Not Met. The Commission won five cases and lost three.
	e) Prosecution of Abuse of dominance and restrictive practices	LSD	18	% of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation.	≥70%	100%	Target met
		LSD	19	% of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation.	≥70%	N/A	Target Not Applicable. No decisions granted in the period under review.
	f) Merger litigation	LSD	20	% of merger decisions upheld by the Tribunal.	≥75%	100%	Target Met
		LSD	21	% of merger decisions upheld by the courts.	≥75%	100%	Target Met

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNTABLE PROGRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
4. Improved compliance & awareness	a) Domestic outreach initiatives	Advocacy	22	No. of education, training and outreach conducted on Competition Act.	2	8	Target Exceeded. The Commission received training requests from the stakeholders which were not planned for. The Commission also had to conduct workshops on Automotive Guidelines to promote awareness and provide public education on the Guidelines ahead of July effective date.
		Advocacy & OTC	23	Number of awareness publications on the Competition Act.	6	7	Target Exceeded. The Commission had to publish a Frequently Asked Question pamphlet to guide stakeholders on implementation of the Automotive Guidelines, in addition to the newsletter.
	b) External Guidelines on the application of the Act	LSD & ERB	24	No. of Guidelines on the application of the Act issued to stakeholders.	2	2	Target met
	c) Advisory Opinions	LSD	25	% of advisory opinions issued within 60 days.	90%	N/A	Target Not Applicable. The Commission is awaiting publication of final regulations on advisory opinions.
5. Improved understanding of market dynamics in priority sectors	a) Market inquiries	MCD	26	No. of market inquiries initiated.	1	1	Target Met.
		MCD	27	No. of market inquiries completed.	0	N/A	Target Not Applicable. No target set.
	b) Industry Scoping Studies	ERB	28	No. of industry scoping studies conducted in prioritized sectors.	1	1	Target met
	c) Impact assessments on Commission decisions or competition policy	ERB	29	No. of impact assessment studies completed.	1	1	Target met
	d) Advocacy in priority sectors	Advocacy	30	No. of advocacy cases completed in priority sectors.	2	3	Target Exceeded. Opportunity arose to jointly undertake work with SACAP on residential estates, in addition to advocacy in financial services.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNTABLE PROGRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
6. Improved co-ordination on the application of economic policy and competition policy	a) Strategic Partnerships with relevant stakeholders	Advocacy	31	No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted.	2	4	Target Exceeded. Given the continued state of Covid-19 pandemic, the Commission was required to conduct more awareness initiatives with business and consumers on the Commission's response to Covid 19.
		Advocacy	32	No. of outreach activities undertaken in collaboration with Black Business & Women Associations.	1	1	Target Met.
		OTC & ERB	33	No. of Annual Conferences hosted.	1	1	Target Met.
	b) Policy responses	Advocacy	34	No. of submissions or responses to policy or regulation.	4	4	Target Met.
	c) Thought leadership	ERB	35	No. of research and thought leadership insights published.	4	7	Target Exceeded. The Commission had several conference papers accepted for Competition Commission Conference.
7. Increased importance of developmental perspectives in domestic and international competition law discourse	a) Collaboration with Regional & International partners	OTC	36	No. of research projects and/or publications undertaken with African, BRICS and international partners.	8	13	Target Exceeded. The Commission was invited to participate/contribute to strategic international forums/projects above what was planned.
8. Sound Corporate Governance	a) Audit Outcome	Finance	37	Audit Opinion.	Clean Audit	1	Target Met.
9. Secure, harmonious and conducive working environment	a) Organizational Structure Review	Advocacy, CSD & Finance	38	Review of Organizational Structure.	Report on Organizational Structure.	Final Report	Target Met.
		CSD & Finance	39	Implementation of Phase 1 of integrated business system.	Report on completed implementation.	0	Target Not Met. The project was moved to 2022/2023 APP to ensure compliance with all supply chain processes.
	b) Conducive Facilities & Efficient Security	CSD & Finance	40	Relocate staff to appropriate office space.	Report on completed implementation.	Report	Target Met.
		CSD	41	Reports on implementation of the OHS compliance plan.	4	4	Target Met.
10. Highly engaged, motivated and productive workforce	a) Talent management	CSD & OTC	42	% of HR spend in learning and development	1%	1.05	Target Met.
		CSD	43	% retention rate of staff complement.	≥90%	99%	Target Met.
		OTC	44	% of staff reached through training academy initiatives.	≥60%	≥60%	Target Met.

PART D

CORPORATE
GOVERNANCE

19 CORPORATE GOVERNANCE

Corporate governance is about processes and rules an organisation employs to achieve sound management, compliance and integrity. The Office of the Commissioner (OTC) oversees the corporate governance function and has established systems and practices described below to ensure transparency and accountability throughout the organisation.

19.1 DECISION-MAKING STRUCTURES

The Competition Commissioner, Mr Tembinkosi Bonakele, is the accounting authority of the Commission and is appointed by the Minister of the Department of Trade, Industry and Competition (DTIC). The Commissioner is responsible for general administration, managing and directing the activities of the Commission, supervising staff and performing any functions assigned to him in terms of the Competition Act and the Public Finance Management Act (Act No. 1 of 1999) (PFMA).

a) *Commission Meeting*

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

work. During the reporting period, the Commissioners consisted of the Commissioner, Deputy Commissioner, and two acting Deputy Commissioners.

The Commission held 32 Commission Meetings during the period under review. The core functions of the Commission Meeting are to receive recommendations, and to make decisions on cases, as well as provide guidance and direction in the conduct of investigations.

The Commissioners receive updates on important cases, adopt policies and procedures regarding the conduct of cases, and receive reports and give direction on advocacy and communication relating to the work of the Commission as prescribed by the Competition Act.

b) *The Executive Committee and Sub-Committees*

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

The EXCO held 11 meetings during the period under review. The key functions of the EXCO are to undertake strategic and business planning, monitor the implementation of strategic and business plans and to mobilise and allocate financial and human resources. The EXCO also plays an oversight role over the management of human resources, information technology, security and facilities management and risk management. It is responsible for approving policies relating to operations and provides leadership and sets the

tone for the overall operations of the Commission. The company secretary advises the EXCO on compliance with relevant legislation and regulations.

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

c) The Management Committee

The EXCO is assisted by the Management Committee, chaired by the Deputy Commissioner and meets on a biannual basis. The Management Committee comprises all management of the Commission, including members of EXCO and a layer of management below EXCO, which is representative of all functions including heads of departments. The management committee held 4 meetings during the financial year.

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

d) Technology and Information (T&I) Committee

The T&I Committee comprises select EXCO members and is tasked with overseeing the delivery of strategic IT projects that support the business. It is also responsible for developing and reviewing IT policies and ensuring that these are effectively implemented. The committee held 4 meetings during the financial year.

e) Finance Committee

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

- recommending the annual organisational budget to EXCO for adoption;
- ensuring the organisational budget is aligned with the Commission's strategic plan and government priorities;
- monitoring and reporting on the Commission's financial performance against organisational and divisional priorities and approved budgets;
- formulating strategies for improving the Commission's financial position, including the approval and monitoring of organisational budget processes;
- reviewing the interim and annual financial statements for recommendation to the audit and risk committee; and
- monitoring and reviewing under-expenditure and over-expenditure.

The finance committee held 4 meetings during the period under review.

f) Human Capital Committee

The Human Capital (HC) Committee comprises select EXCO members and is tasked with oversight over the implementation of the HC strategy and ensuring that policies are developed, implemented and reviewed. The HC committee met 8 times during the period under review.

g) Employment Equity Committee

The Employment Equity Committee comprises Commission employees who represent all levels in the organisation, who are selected in line with the provisions of the Employment Equity Act. The committee oversees the transformational agenda of the Commission. Its objectives are to do an analysis of the employee profile, play a consultative role in setting targets for transformation and identify and resolve barriers to transformation. The committee held 6 meetings during the financial year.

h) Risk and Governance Committee

The Risk and Governance Committee comprises select EXCO members and representatives from respective functions. It is tasked with oversight over governance and risk management and is chaired

by the Chief Financial Officer. The Committee met 4 times during the period under review.

19.2 OVERSIGHT COMMITTEES

a) Audit and Risk Committee

Details on the constitution and work of this committee appear under the Annual Financial Statements section.

b) Remuneration Committee

This committee consists of three independent non-executive members. The committee plays an oversight role and makes recommendations to the commissioner in his capacity as the accounting authority, on matters relating to remuneration of employees at all employee levels. The committee held a total of 4 meetings during the period under review.

19.3 COMPLIANCE WITH LEGISLATION

a) Public Finance Management Act, 1999 and National Treasury Regulations

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

- quarterly reports on the Commission's expenditure, budget variance, activities and performance against set targets;
- monthly expenditure reports;
- annual performance plan for the period 2021/2022; and
- annual report.

b) Skills Development Act, 1998

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

c) Skills Development Levies Act, 1999

A skills development levy equal to 1% of the total payroll is paid to the South African Revenue Service (SARS) monthly. This is distributed

to the relevant Sector Education and Training Authorities (SETAs), which promote training in various disciplines. Employers are able to claim back part of the skills levies, paid as a skills grant.

d) Employment Equity Act, 1998

The Commission submitted its employment equity report.

e) Unemployment Insurance Act, 2001

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

f) Occupational Health and Safety Act, 1993

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

g) Income Tax Act, 1962

SARS exempted the Commission in terms of section 10(1)(A)(i) of the Income Tax Act, 1962.

h) Levies and taxes

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

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



PART E

ANNUAL FINANCIAL STATEMENTS

ACCOUNTING AUTHORITY RESPONSIBILITY AND APPROVAL

The Commissioner is required by the Public Finance Management Act (Act 1 of 1999), to maintain adequate accounting records and is responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is the responsibility of the Commissioner to ensure that the annual financial statements fairly present the state of affairs of the commission as at the end of the financial year and the results of its operations and cash flows for the period then ended. The external auditors are engaged to express an independent opinion on the annual financial statements and were given unrestricted access to all financial records and related data.

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

The annual financial statements are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgments and estimates.

The Commissioner acknowledges that he is ultimately responsible for the system of internal financial control established by the

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

The Commissioner is of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or deficit.

The Commissioner has reviewed the commission's cash flow forecast for the year to 31 March 2023 and, in the light of this review and the current financial position, he is satisfied that the commission has or has access to adequate resources to continue in operational existence for the foreseeable future.

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

The external auditors are responsible for independently reviewing and reporting on the commission’s annual financial statements. The annual financial statements have been examined by the commission’s external auditors and their report is presented on page 149.

The Annual Financial Statements set out on page 156 - 193, which have been prepared on the going concern basis, were approved by the accounting authority on 31 May 2022 and were signed on its behalf by:



Mr T. Bonakele
Commissioner

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

REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

Opinion

1. I have audited the financial statements of the Competition Commission set out on pages 156 to 193, which comprise the statement of financial position as at 31 March 2022, statement of financial performance, statement of changes in net assets, cash flow statement and the statement of comparison of budget information with actual information for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission as at 31 March 2022, and its financial performance and cash flows for the year then ended in accordance with Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA).

Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of my report.
4. I am independent of the Competition Commission in accordance with the International Ethics Standards Board for Accountants' *International code of ethics for professional accountants (including International Independence Standards)* (IESBA

code) as well as 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 code.

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

Responsibilities of 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 the Standards of GRAP and the requirements of the PFMA and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
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 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 strategic goal 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 public entity's approved performance planning documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the public entity enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or 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 strategic goal presented in the public entity's annual performance report for the year ended 31 March 2022:

Strategic goal	Pages in the annual performance report
Strategic goal 1 - Enforcing and regulating towards economic growth and greater economic participation	138 - 141

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 this strategic goal:
- Strategic Goal 1: Enforcing and regulating towards economic growth and greater economic participation

Other matter

15. I draw attention to the matter below.

Achievement of planned targets

16. Refer to the annual performance report on pages 138 to 141 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 other information does not include the financial statements, the auditor's report and those selected strategic goal presented in the annual performance report that have 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 on it.
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 strategic 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
29 July 2022



ANNEXURE

AUDITOR-GENERAL’S RESPONSIBILITY FOR THE AUDIT

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

Financial statements

- 2. In addition to my responsibility for the audit of the financial statements as described in this auditor’s report, I also:
 - identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control
 - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the public entity’s internal control
 - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority
 - conclude on the appropriateness of the accounting authority’s use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit

evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the Competition Commission to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor’s report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor’s report. However, future events or conditions may cause a public entity to cease operating as a going concern

- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation

Communication with those charged with governance

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

AUDIT AND RISK COMMITTEE REPORT

The Audit and Risk Committee (“The Committee”) is pleased to present its report for the financial year ended March 31, 2022, in compliance with Treasury Regulations 3.1.9 and 27.1.7 issued in terms of the PFMA, 1999, and King IV Code of good governance.

The Committee is established as an independent statutory committee in terms of the PFMA. The committee functions within approved terms of reference, which are reviewed annually to ensure their continued relevance, and complies with relevant legislation, regulation and best practice codes.

AUDIT AND RISK COMMITTEE MEMBERS AND ATTENDANCE

During the year under review, the Committee consisted of three (3) independent Non-Executive Members appointed by the Commissioner. The Committee attended 6 meetings, which were also attended by the Auditor General South Africa, Outsourced Internal Auditors and members of Executive Management in an Ex-officio capacity, led by the Commissioner. The Membership is constituted as follows: -

Name of member	Number of meetings attended	Number of meetings held
Ms. M Ramataboe	6	6
Mr. N Mhlongo	6	6
Ms. R Kalidass	6	6

AUDIT AND RISK COMMITTEE RESPONSIBILITY

The Committee reports that it has adopted a formal Terms of Reference and that it has complied with its responsibilities as set out in the Terms of Reference and has discharged all its duties as contained therein.

The primary role of the Committee is to assist the Commissioner and Management in discharging oversight responsibilities of the financial reporting process and related audit activities, the system of internal controls, risk management process and systems, and compliance with laws and regulations.

In the current reporting period, the committee’s work included amongst other, reviewing the financial planning process, quarterly and in-year financial reporting from management, the audit process and related audit findings, Risk Management processes and activities including business continuity. This included recommending appropriate accounting policies for the Commission; reviewing any significant assumptions and judgements made by management; reviewing annual and quarterly financial reports prior to approval by the Commissioner and reviewing filings of quarterly reports to the relevant authorities; reviewing internal audit reports and tracking

all audit findings; approving audit fees as well as reviewing internal audit and external audit mandates for independence, objectivity and effectiveness.

The Committee ensured that co-operation between the internal audit function and the external auditors is improving in relation to: the external auditors relying on work done by the internal auditor as may be relevant for purposes of work set out in the audit plan; we are of the view that combined assurance can add demonstrable value; and the adequacy, reliability and accuracy of financial information provided by management to such other users of the information. The Commission has also embarked on a process of ensuring that Combined assurance is enhanced at the first level in order to increase collaboration between both external and internal assurances to promote an effective internal control environment and for executing risk management on a day-to-day basis. In this regard the Risk Management Unit has been strengthened with the appointment of a Risk Expert, in the ensuing period.

THE EFFECTIVENESS OF INTERNAL CONTROL

During the year under review the internal control environment of the Commission continued to improve increasing the probability of achievement of strategic objectives. The out-sourced Internal Audit function conducted audit reviews in line with approved Internal Audit Plan, and audit findings from previous years were resolved.

Based on the work of Internal Audit the Committee was able to provide the internal control assurances and to engage with the Commissioner on recommended enhancements. In-Committee meetings were held with the

Commissioner to advise on further improvements, for these to be executed proactively before there can be any negative impact on the Commission's performance and clean audit record.

It is important to note that the National Treasury condoned all previous Irregular Expenditure and that the Commission had no current irregular expenditure, Unauthorised or Fruitless and wasteful expenditure.

MANAGEMENT AND MONTHLY / QUARTERLY REPORTS

We can confirm that quarterly reports were submitted to the National Treasury and that we are satisfied with the content and quality of monthly and quarterly reports during the year under review as required by the PFMA.

EVALUATION OF ANNUAL FINANCIAL STATEMENTS

The Committee has:

- reviewed and discussed the audited Annual Financial Statements to be included in the annual report, with the AGSA and the Accounting Authority
- reviewed the Auditor-General of South Africa's management report and management's responses thereto;
- reviewed significant assumptions and judgements made by management;
- reviewed the entity's compliance with legal and regulatory provisions; and
- reviewed the information on predetermined objectives to be included in the annual report.

The Committee is pleased to report that there were no material findings in the Annual Financial Statements and the Committee concurs fully with the AGSA report (the clean audit opinion) on the Annual Financial Statements. The Committee further recognizes the importance of maintaining the clean audit outcome, and the responsibility required of management to be consistent in the next period.

INTERNAL AUDIT FUNCTION

The Committee is responsible for ensuring that the internal audit function is independent and has the necessary resources, skills, standing and authority within the Commission to enable it to discharge its responsibilities effectively. The Internal Auditors have unrestricted access to the Committee.

The Committee reviews and approves the Internal Audit Plan annually. Internal audit's activities are measured against the approved internal audit plan and the out-sourced Internal Audit tables progress reports in this regard to the Committee.

The outsourced Internal Audit service provider is responsible for the delivery of an Annual Audit Plan. The annual Audit Plan for the current reporting period was executed satisfactorily.

Internal Audit also performed a wide range of operational, financial, compliance and information-technology audits including follow-up. In addition to these planned audits, the unit also attended to ad hoc management and Committee requests.

ENTERPRISE RISK MANAGEMENT (ERM)

The Committee is also responsible for the oversight of the Commission's risk management systems and activities. In the current reporting period, the Committee reviewed the ERM policies and strategy. Business Continuity reports were submitted, and it was noted that some areas were not completed due to demand of the Covid-19 investigations on the Commission. Significant work was done by the Commission on Covid-19. The number of investigations increased and the outcomes were also successful.

The Committee has reviewed the risk registers on a quarterly basis and has made recommendations for the improvement of the registers. Moreover, a culture of risk management needs to be embedded in the daily activities of the Commission to ensure effective enterprise wide risk management. The Committee will monitor progress regarding this, in the following reporting period.

AUDITOR-GENERAL OF SOUTH AFRICA

The Committee, in consultation with the management, agreed to the terms of the Auditor General South Africa's engagement letter, audit strategy and audit fees in respect of the 2021/2022 financial year.

The Committee also monitored the implementation of the action plans to address matters arising from the Management Report issued by the Auditor-General South Africa (AGSA) for the 2020/2021 Financial Year.

The Committee has also had in committee meetings with the Auditor-General of South Africa.

The Committee has reviewed the Annual Report and is satisfied that it is aligned to the annual financial statements.

The Committee concurs and accepts the conclusions of the Auditor-General on the annual financial statements and is of the opinion that the audited annual financial statements and annual performance information report be accepted and read together with the report of the Auditor-General South Africa.



Maemili Ramataboe
Chairperson of the Audit and Risk Committee
Competition Commission

STATEMENT OF FINANCIAL POSITION

AS AT MARCH 31, 2022

	Note(s)	2022	2021
		R'000	R'000
ASSETS			
Current Assets			
Inventories	5	1 039	1 256
Receivables from exchange transactions	6	4 375	3 188
Cash and cash equivalents held on behalf of DTIC	10	10 296	13 911
Cash and cash equivalents	7	271 844	106 367
		287 554	124 722
Non-Current Assets			
Property, plant and equipment	3	19 944	19 351
Intangible assets	4	925	1 384
		20 869	20 735
Total Assets		308 423	145 457
LIABILITIES			
Current Liabilities			
Finance lease obligation	8	993	866
Payables from exchange transactions	11	36 744	25 432
Provisions	9	38 146	30 820
Penalties payable to DTIC	10	10 296	13 911
		86 179	71 029
Non-Current Liabilities			
Finance lease obligation	8	179	1 172
Total Liabilities		86 358	72 201
Net Assets		222 065	73 256
Accumulated surplus		222 065	73 256

STATEMENT OF FINANCIAL PERFORMANCE

AS AT MARCH 31, 2022

	Note(s)	2022	2021
		R'000	R'000
REVENUE			
REVENUE FROM EXCHANGE TRANSACTIONS			
Fees earned	13	65 260	53 377
Other income	14	425	1 210
Interest received	15	13 159	7 284
Total revenue from exchange transactions		78 844	61 871
REVENUE FROM NON-EXCHANGE TRANSACTIONS			
Transfer revenue			
Government grants & subsidies	16	439 550	302 586
Total revenue		518 394	364 457
EXPENDITURE			
Employee related costs	17	(260 290)	(234 504)
Administrative expenses	18	(3 617)	(5 066)
Depreciation and amortisation	3 & 4	(5 023)	(4 187)
Finance costs	19	(227)	(273)
Lease rentals on operating lease	12	(13 751)	(18 258)
Loss on disposal of assets	3	(165)	(1 334)
Operating expenses	20	(86 944)	(55 803)
Total expenditure		(370 017)	(319 425)
Surplus for the year		148 377	45 032

STATEMENT OF CHANGES IN **NET ASSETS**

AS AT MARCH 31, 2022

	R'000	R'000
	Accumulated surplus	Total net assets
Balance at 1 April 2020	28 225	28 225
Changes in net assets		
Surplus for the year	45 032	45 032
Balance at 1 April 2021	73 256	73 256
Surplus for the year	148 377	148 377
Adjustments	432	432
Total changes	148 809	148 809
Balance at March 31, 2022	222 065	222 065

CASH FLOW STATEMENT

AS AT MARCH 31, 2022

	Note(s)	2022	2021
		R'000	R'000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Rendering of services		65 260	54 161
Grants		439 550	302 586
Interest received		13 159	7 284
Other income		425	1 210
		518 394	365 241
Payments			
Employee costs		(232 307)	(218 687)
Suppliers		(113 131)	(78 715)
Finance costs		(227)	(273)
		(345 665)	(297 675)
Net cash flows from operating activities	21	172 729	67 566
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	3	(5 322)	(3 406)
CASH FLOWS FROM FINANCING ACTIVITIES			
Finance lease payments		(1 930)	2 564
Net increase in cash and cash equivalents		165 477	66 724
Cash and cash equivalents at the beginning of the year		106 367	39 643
Cash and cash equivalents at the end of the year	7	271 844	106 367

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

AS AT MARCH 31, 2022

Budget on Accrual Basis

	R'000	R'000	R'000	R'000	R'000	
	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
Statement of Financial Performance						
REVENUE						
Revenue from exchange transactions						
Fees earned	38 288	-	38 28	65 260	26 972	Note 29
Other income	-	-	-	425	425	
Interest received	2 000	-	2 000	13 159	11 159	Note 29
Total revenue from exchange transactions	40 288	-	40 288	78 844	38 556	
Revenue from non-exchange transactions						
Transfer revenue						
Government grants & subsidies	439 550	-	439 550	439 550	-	
Total revenue	479 838	-	479 838	518 394	38 556	
EXPENDITURE						
Employee related costs	(299 974)	-	(299 974)	(260 290)	39 684	Note 29
Administrative expenses	(41 450)	-	(41 450)	(3 617)	37 833	Note 29
Depreciation and amortisation	(7 500)	-	(7 500)	(5 023)	2 477	
Finance costs	-	-	-	(227)	(227)	
Lease rentals on operating lease	(13 709)	-	(13 709)	(13 751)	(42)	
Loss on disposal of assets	-	-	-	(165)	(165)	
Operating expenses	(117 205)	-	(117 205)	(86 944)	30 261	Note 29
Total expenditure	(479 838)	-	(479 838)	(370 017)	109 821	
Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement	-	-	-	148 377	148 377	

ACCOUNTING POLICIES

1. BASIS OF PREPARATION

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

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

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

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

1.1 Going concern assumption

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

1.2 Materiality

Material omissions or misstatements of items are material if they could, individually or collectively, influence the decisions or

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

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

1.3 Significant judgments and sources of estimation uncertainty

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

Trade receivables

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

Determination of impairment of non-financial assets

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

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

Impairment of non-cash generating assets

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

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

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

If the recoverable amount of an asset is less than its carrying amount,

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

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

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

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

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

Provisions

Provisions were raised and management determined an estimate based on the information available. Additional disclosure of these estimates of provisions are included in note 9 - Provisions.

Contingent liabilities

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

Lease classification

Management uses judgement in assessing whether an arrangement is or contains a lease based on the substance of the arrangement

at the inception date of whether the fulfillment of the arrangement is dependent on the use of the specific asset or the arrangement conveys a right to use the asset. Management assess the following in each lease contract (using GRAP 13) to classify a lease as a finance lease or operating lease.

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

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

Depreciation and amortisation

The Commission’s management determines the estimated useful lives and related depreciation charges for the Commission’s property, plant and equipment and intangible assets. This estimate is based on industry norm. Management will increase the depreciation charge where useful lives are less than previously estimated useful lives.

Trade receivables (impairment of financial assets)

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

Performance bonus

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

Impairment of cash generating assets

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

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

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

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

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

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

1.4 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, 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 Commission; and
- the cost of the item 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 date of acquisition.

Where an item of property, plant and equipment is acquired in exchange for a non-monetary asset or monetary assets, or a combination of monetary and non-monetary assets, the asset acquired is initially measured at fair value (the cost). If the acquired item’s fair value was not determinable, it’s deemed cost is the carrying amount of the asset(s) given up.

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 follows:

Item	Depreciation method	Average useful life
Furniture and fittings	Straight line	12 - 21 years
Motor vehicles	Straight line	5 - 8 years
Office equipment	Straight line	8 - 20 years
IT equipment	Straight line	
- Computer equipment		3 - 17 years
- Servers		5 - 9 years
- GPS		3 - 14 years
Leasehold Improvements	Straight line	3 years
Cellphone	Straight line	2 - 6 years
Leased assets	Straight line	Period of lease

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

The Commission assesses at each reporting date whether there is any indication that the Commission 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 Commission revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

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

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

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

The Commission separately discloses expenditure to repair and maintain property, plant and equipment in the notes to the financial statements (see note 3).

1.5 Intangible assets

An intangible asset is recognised when:

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

The Commission assesses the probability of expected future economic benefits or service potential using reasonable and supportable assumptions that represent management’s best estimate of the set of economic conditions that will exist over the useful life of the asset.

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.

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

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

Item	Depreciation method	Useful life
Computer software	Straight line	3 - 21 years

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).

1.6 Financial instruments

Initial recognition and measurement

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.

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

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation.

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates.

Derecognition is the removal of a previously recognised financial asset or financial liability from an Commission’s Statement of Financial Position.

The effective interest method is a method of calculating the amortised cost of a financial asset or a financial liability (or group of financial assets or financial liabilities) and of allocating the interest income or interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the financial asset or financial liability. When calculating the effective interest rate, an Commission shall estimate cash flows considering all contractual terms of the financial instrument (for example,

prepayment, call and similar options) but shall not consider future credit losses. The calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest rate (see the Standard of GRAP on Revenue from Exchange Transactions), transaction costs, and all other premiums or discounts. There is a presumption that the cash flows and the expected life of a group of similar financial instruments can be estimated reliably. However, in those rare cases when it is not possible to reliably estimate the cash flows or the expected life of a financial instrument (or group of financial instruments), the Commission shall use contractual cash flows over the full contractual term of the financial instrument (or group of financial instruments).

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.

A financial asset is:

- cash;
- a residual interest of another entity; or
- 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 Commission.

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

Liquidity risk is the risk encountered by the Commission in the event of difficulty in meeting obligations associated with financial liabilities that are settled by delivering cash or another financial asset.

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

Loans payable are financial liabilities, other than short-term payables on normal credit terms.

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. Market risk comprises three types of risk: currency risk, interest rate risk and other price risk.

Other price risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices (other than those arising from interest rate risk or currency risk), whether those changes are caused by factors specific to the individual financial instrument or its issuer, or factors affecting all similar financial instruments traded in the market.

A financial asset is past due when a counterparty has failed to make a payment when contractually due.

A residual interest is any contract that manifests an interest in the assets of the Commission after deducting all of its liabilities. A residual interest includes contributions from owners, which may be shown as:

- equity instruments or similar forms of unitised capital;
- a formal designation of a transfer of resources (or a class of such transfers) by the parties to the transaction as forming part of the Commission's net assets, either before the contribution occurs or at the time of the contribution; or
- a formal agreement, in relation to the contribution, establishing or increasing an existing financial interest in the net assets of the Commission.

Transaction costs are incremental costs that are directly attributable to the acquisition, issue or disposal of a financial asset or financial liability. An incremental cost is one that would not have been incurred if the Commission had not acquired, issued or disposed of the financial instrument.

Subsequent measurement of financial assets and financial liabilities

The subsequent measurement of financial instruments is stated below:

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

Receivables from exchange transactions

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

Cash and cash equivalents

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

Payables from exchange transactions

Trade and other payables are classified as liabilities at amortised cost and are measured at amortised cost using the effective interest rate method.

Offsetting

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

Impairment of financial assets

Financial assets are assessed for indicators of impairment at each end of the reporting period. The financial assets are impaired where there is objective evidence that, as a result of one or more events that have occurred after the initial recognition of the financial asset, the estimated future cash flows of the asset have been impacted. Impairment losses are recognised in profit or loss.

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

Derecognition

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

1.7 Leases

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

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

Finance leases - lessee

Finance leases are recognised as assets and liabilities in the Statement of Financial Position at amounts equal to the fair value

of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the Statement of Financial Position as a finance lease obligation.

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

Minimum lease payments are apportioned between the finance charge and reduction of the outstanding liability. The finance charge is allocated to each period during the lease term so as to produce a constant periodic rate of on the remaining balance of the liability.

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

Operating leases - Lessee

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

1.8 Inventories

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

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

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

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

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

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

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

1.9 Impairment of cash-generating assets

Cash-generating assets are assets used with the objective of generating a commercial return. Commercial return means that positive cash flows are expected to be significantly higher than the cost of the asset.

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).

Carrying amount is the amount at which an asset is recognised in the Statement of Financial Position after deducting any accumulated depreciation and accumulated impairment losses thereon.

A cash-generating unit is the smallest identifiable group of assets used with the objective of generating a commercial return that generates cash inflows from continuing use that are largely independent of the cash inflows from other assets or groups of assets.

Costs of disposal are incremental costs directly attributable to the disposal of an asset, excluding finance costs and income tax expense.

Depreciation (Amortisation) is the systematic allocation of the depreciable amount of an asset over its useful life.

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

Useful life is either:

- the period of time over which an asset is expected to be used by the Commission; or
- the number of production or similar units expected to be obtained from the asset by the Commission.

Judgments made by management in applying the criteria to designate assets as cash-generating assets or non-cash- generating assets, are as follows:

1.10 Employee benefits

Employee benefits are all forms of consideration given by an Commission in exchange for service rendered by employees. Termination benefits are employee benefits payable as a result of either:

- the Commission's decision to terminate an employee's employment before the normal retirement date; or
- an employee's decision to accept voluntary redundancy in exchange for those benefits.

Other long-term employee benefits are employee benefits (other than post-employment benefits and termination benefits) that are not 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

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:

- wages, 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;
- bonus, incentive and performance related payments payable within twelve months after the end of the reporting period in which the employees render the related service; and
- non-monetary benefits (for example, medical care, and free or subsidised goods or services such as housing, cars and cellphones) for current employees.

When an employee has rendered service to the entity during a reporting period, the entity 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 Commission 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 Commission measures the expected cost of

accumulating compensated absences as the additional amount that the Commission expects to pay as a result of the unused entitlement that has accumulated at the reporting date.

The Commission recognises the expected cost of bonus, incentive and performance related payments when the Commission 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 Commission has no realistic alternative but to make the payments.

1.11 Provisions and contingencies

Provisions are recognised when:

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

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

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

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

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

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

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

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

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

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note 30.

1.12 Commitments

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

Disclosures are required in respect of unrecognised contractual commitments.

Commitments represent goods/services that have been ordered, but no delivery has taken place at the reporting date. These amounts are not recognised in the Statement of Financial Position as a liability or as expenditure in the Statement of Financial Performance as the Annual Financial Statement are prepared on an accrual basis of accounting, but are however disclosed in the Notes to the Annual Financial Statements.

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

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

Measurement

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

1.14 Revenue from non-exchange transactions

Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, the Commission 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.

Transfers are inflows of future economic benefits or service potential from non-exchange transactions, other than taxes.

Recognition

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

As the Commission satisfies a present obligation recognised as a liability in respect of an inflow of resources from a non- exchange transaction recognised as an asset, it reduces the carrying amount of

the liability recognised and recognises an amount of revenue equal to that reduction.

Measurement

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

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

Receivables that arise from statutory (non-contractual) arrangements are initially measured in accordance with this accounting policy, as well as the accounting policy on Statutory Receivables. The entity applies the accounting policy on Statutory Receivables for the subsequent measurement, derecognition, presentation and disclosure of statutory receivables.

Interest is recognised using the effective interest rate method for financial instruments, and using the nominal interest rate method for statutory receivables. Interest levied on transactions arising from exchange or non-exchange transactions is classified based on the nature of the underlying transaction.

1.15 Borrowing costs

Borrowing costs are interest and other expenses incurred by the Commission in connection with the borrowing of funds.

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

1.16 Accounting by principals and agents Identification

Identification

An agent is an entity that has been directed by another entity (a principal), through a binding arrangement, to undertake transactions with third parties on behalf of the principal and for the benefit of the principal.

A principal is an entity that directs another entity (an agent), through a binding arrangement, to undertake transactions with third parties on its behalf and for its own benefit.

A principal-agent arrangement results from a binding arrangement in which one entity (an agent), undertakes transactions with third parties on behalf, and for the benefit of, another entity (the principal).

Identifying whether an entity is a principal or an agent

When the Commission is party to a principal-agent arrangement, it assesses whether it is the principal or the agent in accounting for revenue, expenses, assets and/or liabilities that result from transactions with third parties undertaken in terms of the arrangement.

The assessment of whether the Commission is a principal or an agent requires the Commission to assess whether the transactions it undertakes with third parties are for the benefit of another entity or for its own benefit.

Recognition

The DTIC, as a principal, recognises revenue and expenses that arise from transactions with third parties in a principal-agent arrangement in accordance with the requirements of the relevant Standards of GRAP.

The Commission, as an agent, recognises only that portion of the revenue and expenses it receives or incurs in executing the transactions on behalf of the principal in accordance with the requirements of the relevant Standards of GRAP.

The Commission recognises assets and liabilities arising from principal-agent arrangements in accordance with the requirements of the relevant Standards of GRAP.

1.17 Comparative figures

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

1.18 Fruitless and wasteful expenditure

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised. All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the Statement of Financial Performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.

1.19 Irregular expenditure

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

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

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

Irregular expenditure that was incurred and identified during the current financial and which was condoned before year end and/or before finalisation of the financial statements must also be recorded

appropriately in the irregular expenditure register. In such an instance, no further action is also required with the exception of updating the note to the financial statements.

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end must be recorded in the irregular expenditure register. Where no losses were incurred and value for money was achieved and the transgression was free of fraudulent, corrupt or other criminal conduct, the Commission must disclose the amount of irregular expenditure to be condoned in the note to the financial statements.

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

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority must be recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps must thereafter be taken to recover the amount from the person concerned. If recovery is not possible, the Commissioner may write off the amount as debt impairment and disclose such in the relevant note to the financial statements. The irregular expenditure register must also be updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto must remain against the relevant programme/ expenditure item, be disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

1.20 Budget information

The Commission 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 similar.

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

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

The approved budget covers the fiscal period from 2021/04/01 to 2022/03/31.

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.

The Statement of comparative and actual information has been included in the Annual Financial Statements as the recommended disclosure when the Annual Financial Statements and the budget are on the same basis of accounting as determined by National Treasury.

1.21 Related parties

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

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

Where the Commission is exempt from the disclosures in accordance with the above, the Commission discloses narrative information about the nature of the transactions and the related outstanding balances, to enable users of the Commission's financial statements

to understand the effect of related party transactions on its Annual Financial Statements.

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

The Commission 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 Penalties and Settlements

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

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

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

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

In terms of Section 40(1) of the Competition Act, the settlement amounts and the administrative penalties are not listed as a source of finance for the Commission nor are the amounts of revenue defined in terms of GRAP 23. As such these amounts are not recognised in the Statement of Financial Performance. Furthermore, the outstanding amounts do not meet the liability definition in terms of GRAP 1 and are therefore not recognised in the Statement of Financial Position of the Commission.

Penalties levied and received

The Statement of Financial Position includes a financial asset and financial liability relating to penalties levied and received. The financial asset and financial liability will be same amount and are shown as “Cash and cash equivalents held on behalf of DTIC” and “Penalties payable to DTIC” respectively in the Statement of Financial Position.

For penalties levied but not yet received

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

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

AS AT MARCH 31, 2022

2. NEW STANDARDS AND INTERPRETATION

2.1 Standards and interpretations issued, but not yet effective

The Commission has not applied the following standards and interpretations, which have been published and are mandatory for the Commission’s accounting periods beginning on or after 01 April 2022 or later periods:

Pronouncements	Effective date:	Expected impact:
• GRAP 104 on Financial Instruments (revised 2019)	1 April 2025	Unlikely there will be a material impact
• GRAP 25 on Employee Benefits (2021)	The effective date is still to be determined by the Minister of Finance.	Unlikely there will be a material impact
• IGRAP 7 on The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction (2021)	The interpretation becomes effective with the amendments to GRAP 25.	Unlikely there will be a material impact
• Improvements to the Standards of GRAP (2020)	1 April 2023	The Guideline is not authoritative but entities are encouraged to consider it when preparing financial statements.
• Amendments to GRAP 1 on Presentation of Financial Statements (2019)	1 April 2023	Earlier application is encouraged and it is unlikely there will be a material impact
• IGRAP 21 on The Effect of Past Decisions on Materiality	1 April 2023	Earlier application is encouraged and it is unlikely there will be a material impact
• Guideline on The Application of Materiality to Financial Statements	The guideline does not have an effective date	Unlikely there will be a material impact. Entities are encouraged to apply it.

3. PROPERTY, PLANT AND EQUIPMENT

	2022			2021		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fittings	6 609	(3 671)	2 938	6 609	(3 315)	3 294
Motor vehicles	4 430	(2 556)	1 874	4 430	(2 156)	2 274
Office equipment	4 223	(2 430)	1 793	3 897	(2 024)	1 873
Computer equipment	21 780	(9 820)	11 960	17 000	(7 558)	9 442
Cellphones	129	(42)	87	101	(26)	75
Leased assets	3 375	(2 083)	1 292	3 375	(982)	2 393
Total	40 546	(20 602)	19 944	35 412	(16 061)	19 351

Reconciliation of property, plant and equipment - 2022

	Opening Balance	Additions	Disposals	Depreciation	Total
Furniture and fittings	3 294	-	-	(356)	2 938
Motor vehicles	2 274	-	-	(400)	1 874
Office equipment	1 873	319	-	(399)	1 793
Computer equipment	9 442	4 975	(165)	(2 292)	11 960
Cellphones	75	28	-	(16)	87
Leased assets	2 393	-	-	(1 101)	1 292
Total	19 351	5 322	(165)	(4 564)	19 944

Reconciliation of property, plant and equipment - 2021

	Opening Balance	Additions	Disposals	Depreciation	Total
Furniture and fittings	3 748	-	(94)	(360)	3 294
Motor vehicles	2 674	-	-	(400)	2 274
Office equipment	2 059	216	(17)	(385)	1 873
Computer equipment	9 249	3 132	(975)	(1 964)	9 442
Leasehold improvements	275	-	(163)	(112)	-
Cellphones	76	58	(42)	(17)	75
Leased assets	89	3 279	(43)	(932)	2 393
Total	18 170	6 685	(1 334)	(4 170)	19 351

2022
R'000

2021
R'000

Pledged as security

None of the property, plant and equipment is pledged as security. There are no future contractual commitments for acquisition of property, plant and equipment.

None of the property, plant and equipment was sold, the assets were scrapped as disposal method during the financial year.

Expenditure incurred to repair and maintain property, plant and equipment included in Statement of Financial Performance

Repairs and maintenance	444	501
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4. INTANGIBLE ASSETS

	2022			2021		
	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer Software	3 183	(2 258)	925	3 183	(1 799)	1 384

Reconciliation of intangible assets - 2022

	Opening Balance	Amortisation	Total
Computer software	1 384	(459)	925

Reconciliation of intangible assets - 2021

	Opening Balance	Amortisation	Total
Computer software	1 401	(17)	1 384

	2022 R'000	2021 R'000
Pledged as security		

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

5. INVENTORIES

Consumable stores	1 039	1 256
Inventories recognised as an expense during the year	217	123

6. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Prepaid expenses	2 188	1 310
Sundry Debtors	2 187	1 878
	4 375	3 188

Sundry debtors is made up of the following.

Accrued interest	979	567
Deposits	535	668
Other	673	643
	2 187	1 878
Total receivables from exchange transactions	4 375	3 188

Trade and other receivables pledged as security

None of the trade and other receivables is pledged as as security.

7. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of:

Bank Balances	271 844	106 357
Cash on hand	-	10
	271 844	106 367

The bank accounts for the Commission are held with the banks approved by the National Treasury in line with Treasury Regulation 31.2.

	2022 R'000	2021 R'000
Credit quality of cash at bank and short term deposits, excluding cash on hand		

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

8. FINANCE LEASE OBLIGATION

Minimum lease payments due		
- within one year	1 093	1 093
- in second to fifth year inclusive	182	1 275
	1 275	2 368
less: future finance charges	(103)	(330)
Present value of minimum lease payments	1 172	2 038
Non-current liabilities	179	1172
Current liabilities	993	866
	1 172	2 038

The Commission is leasing equipment on a finance lease. The lease agreement does not impose any restrictions.

The average lease term is 3 years and the average effective borrowing rate is 13% in 2022.The current lease contract is effective June 2020 until May 2023.

The Commission's obligations under finance leases are secured by the lessor's charge over the leased assets. Refer to note 3.

9. PROVISIONS

Reconciliation of provisions - 2022

	Opening Balance	Additions	Utilised during the year	Total
Leave provision	11 820	11 793	(11 812)	11 801
Performance bonus	19 000	25 000	(17 655)	26 345
Total	30 820	36 793	(29 467)	38 146

	2022 R'000	2021 R'000
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Reconciliation of provisions - 2021

	Opening Balance	Additions	Utilised during the year	Total
Leave provision	10 059	12 649	(10 888)	11 820
Performance bonus	5 000	14 000	-	19 000
Total	15 059	26 649	(10 888)	30 820

Leave provision

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

Performance bonus

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

10. PENALTIES PAYABLE TO DTIC

Penalties received and penalties payable

The Commission collects the penalties imposed by the Tribunal on behalf of the DTIC in terms of section 49D of the Competition Act, therefore the Commission is the acting agent to the DTIC. This is the principal - agent arrangement and is accounted for in terms of GRAP 109: Accounting by Principals and Agents.

Opening balance	13 911	8 675
Penalties collected	80 299	78 307
Less: Amounts paid to DTIC	(83 914)	(73 071)
Total	10 296	13 911

An amount of R80.1 million was collected in the current year and R83.9 million was paid over to the DTIC as at 31 March 2022. The balance of R10.3 million (2021: R13.9 million) is still to be paid to the DTIC in the next financial year. The penalties payable are held in the Commission's bank account and are represented by Cash and Cash Equivalents held on behalf of DTIC disclosed under current assets on the Statement of Financial Position.

	2022 R'000	2021 R'000
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Outstanding penalties amount at the beginning of the year	897 947	948 669
Add: Amounts of settlements and penalties levied by the Competition Tribunal	24 407	23 035
Less: Amounts collected by the Competition Commission	(80 299)	(78 307)
Add: Adjustments and interest levied	4 925	4 550
Total	846 980	897 947

Section 64(3) states that proceedings under subsection (2) may not be initiated more than three (3) years after the imposition of the administrative penalty. A total of R24.4 million (2021: R23.0 million) was levied by the Competition Tribunal in the current financial year.

The opening balance for the prior year has been restated by R4.9 million due to interest levied that was not capitalised in the previous years as well as penalties and identified receipts which were not accounted for.

The closing balance of R847.0 million as at 31 March 2022, included a total amount of R774.5 million of which fined entities are behind the agreed payment terms. This may result in a material loss to the National Revenue Fund. Management has effected collection processes to recover the outstanding amounts in default. Some of the defaulters have requested a deferral payment arrangement due to financial challenges and those requests are being considered by Management.

The penalties collected by the Commission on behalf of the DTIC are disclosed in the Statement of Financial Position under current assets and liabilities as cash and cash equivalents held on behalf of DTIC and penalties payable to DTIC respectively. The Commission does not have additional resources held on behalf of the principal other than the disclosed.

11. PAYABLES FROM EXCHANGE TRANSACTIONS

Trade payables	32 886	19 925
Sundry payables	499	359
Accrued expenses	2 030	3 860
Operating lease payables	1 329	1 288
	36 744	25 432

12. LEASE RENTALS ON OPERATING LEASE

Premises		
Contractual amounts	13 751	18 130
Equipment		
Contractual amounts	-	128
	13 751	18 258

13. FEE INCOME

	2022 R'000	2021 R'000
Fees earned	65 260	53 377

Fee income is made up of fees earned from mergers and acquisitions.

14. OTHER INCOME

Insurance recovered	118	65
Refunds, SETA grant and recoveries	307	1 041
Study bursaries recovered	-	104
	425	1 210

15. INTEREST RECEIVED

Interest received on short term deposits	13 159	7 284
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16. GOVERNMENT GRANTS AND SUBSIDIES

Operating grants

Government grants and subsidies	439 550	302 586
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The Commission receives an operational grant allocation from the DTIC in quarterly instalments of the total allocation. However, in this current financial year the department transferred the total allocation to the Commission in June 2021 in line with the cash flow projections.

17. EMPLOYEE RELATED COSTS

Basic	208 890	194 552
Performance bonus	25 000	14 000
Medical aid	8 423	7 918
Group life and pension administration	4 002	3 519
Cellphone and data allowance	6 653	5 575
Other staff related costs	7 322	8 940
	260 290	234 504

Accounting Authority's emoluments

Basic	2 208	2 215
Medical aid	142	136
Group life and pension administration	46	44
Cell phone and data allowance	67	50
Other staff related costs	25	31
	2 488	2 476

Executive Committee's emoluments

Basic	18 750	18 402
Medical aid	734	647
Performance Bonuses	3 025	-
Group life and pension administration	378	349
Cell phone and data allowance	517	368
Other staff related costs	260	598
	23 664	20 364

Other employees

Basic	187 932	174 376
Medical aid	7 547	7 135
Performance Bonuses	21 975	14 000
Group life and pension administration	3 578	3 126
Cell phone and data allowance	6 069	5 157
Other staff related costs	7 044	7 870
	234 145	211 664

The prior year figures for payroll costs have been reclassified to conform to mapping changes effected to improve presentation.

	2022 R'000	2021 R'000
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18. ADMINISTRATIVE EXPENSES

General and administrative expenses	2 267	3 271
Auditors remuneration - external audit fees	1 350	1 795
	3 617	5 066

19. FINANCE COSTS

Leased assets (Photocopiers)	227	273
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20. OPERATING EXPENSES

Audit and Risk and Remuneration committee fees	473	239
Advertising	528	96
Internal audit fees	711	842
Consulting and professional fees	11 925	4 817
Case related costs - Legal	58 520	37 928
Security	1 273	1 922
Subscriptions and membership fees	1 525	169
Training	43	-
Travel and accommodation	603	131
Education and awareness	2 590	1 772
Maintenance, repairs and running costs	6 915	4 038
Publications	807	406
Meeting refreshments	177	28
Workshops	177	171
Other expenses	677	3 244
	86 944	55 803

21. CASH GENERATED FROM OPERATIONS

Surplus	148 377	45 032
Adjustments for:		
Depreciation and amortisation	5 023	4 187
Loss on disposal of assets	165	1 334
Movements in provisions	7 326	15 761
Other non-cash items - finance leases	1 496	(3 806)
Changes in working capital:		
Inventories	217	16
Receivables from exchange transactions	(1 187)	88
Payables from exchange transactions	11 312	4 954
	172 729	67 566

22. COMMITMENTS

Already contracted for but not provided for

• Existing contracts - goods and services	12 628	5 888
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Not yet contracted for and authorised by Commission

• Other goods and services	7 224	3 037
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TOTAL CAPITAL COMMITMENTS

Already contracted for but not provided for	12 628	5 888
Authorised but not yet contracted for by Commission	7 224	3 037
	19 852	8 925

TOTAL COMMITMENTS

Total commitments		
Authorised capital expenditure	19 852	8 925

This committed expenditure relates to multiple contracts entered into by the Commission and will be financed by the available cash reserves.

OPERATING LEASES - AS LESSEE (EXPENSE)

Minimum lease payments due		
- within one year	15 080	13 709
- in second to fifth year inclusive	-	15 080
- later than five years	-	-
	15 080	28 789

Operating lease payments represent rentals payable by the Commission for leased office space. Leases are negotiated for an average term of three years and rentals are fixed for an average of three years. No contingent rent is payable.

23. RELATED PARTIES

Relationships

The Department of Trade, Industry and Competition	Executive authority
The Competition Tribunal	Public entity in the national sphere
Public Investment Corporation	Public entity in the national sphere
Members of key management	Members of the executive committee

RELATED PARTY BALANCES

Amounts included in Trade Receivable (Trade Payable) regarding related parties

The Competition Tribunal	(888)	(1 515)
The Department of Trade, Industry and Competition	(1 142)	(1 065)
Public Investment Corporation	535	(132)
National Prosecuting Authority	623	311
The Department of Trade, Industry and Competition - Penalties	(10 296)	(13 911)

RELATED PARTY TRANSACTIONS

The Department of Trade, Industry and Competition

Rental expense	13 709	12 463
Telephone and internet costs	105	133
Government grant received	439 550	302 586
Penalties collected on behalf of and transferred to related parties	83 914	73 071

The Competition Tribunal

Filing fees	16 310	13 208
Facility Fee	728	1 516

Public Investment Corporation

Rental expense	-	4 247
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National Prosecuting Authority

Secondment agreement	311	1 038
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Safety and Security Sector Education and Training Authority

Mandatory grant	268	595
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2022
R'000

2021
R'000

REMUNERATION OF EXECUTIVE MANAGEMENT

NAME:

Commisioner Mr T Bonakele
Deputy Commissioner Mr H Ratshisusu
Divisional Manager: Market Conduct Ms M Ramokgopa (started: 06 September 2021)
Divisional Manager: Office of the Commission Mr A Gwabeni (appointed 06 September 2021)
Divisional Manager: Legal Services Mr B Majenge
Divisional Manager: Cartels Mr M Mohlala
Divisional Manager: Advocacy Ms K Qobo
Company Secretary Mr M Msibi
Divisional Manager: Economic Research Bureau Mr J Hodge
Chief Financial Officer Mr A Moledi
Divisional Manager: Mergers and Acquisitions Ms T Paremoer
Divisional Manager: Corporate Service Division Mr M George (appointed 16 August 2021)

2022			
Basic salary	Bonuses and performance related payments	Other benefits received	Total
2 487	-	1	2 488
2 404	-	-	2 404
1 965	164	-	2 129
1 220	281	-	1 501
2 143	450	-	2 593
2 178	450	1	2 629
1 929	434	-	2 363
1 554	53	-	1 607
2 119	450	-	2 569
1 888	339	-	2 227
1 894	404	-	2 298
1 367	-	-	1 367
23 148	3 025	2	26 175

REMUNERATION OF EXECUTIVE MANAGEMENT

NAME:

Commissioner
Mr T Bonakele

Deputy Commissioner
Mr H Ratshisusu

Divisional Manager: Market Conduct
Ms N Nontombana (resigned 28 February 2021)

Divisional Manager: Human Capital
Mr A Gwabeni (resigned 31 May 2020)

Divisional Manager: Legal Services
Mr B Majenge

Divisional Manager: Cartels
Mr M Mohlala

Divisional Manager: Advocacy
Ms K Qobo

Company Secretary
Mr M Msibi

Divisional Manager: Economic Research Bureau
Mr J Hodge

Chief Financial Officer
Mr A Moledi

Divisional Manager: Mergers and Acquisition
Ms T Paremoer

Acting Divisional Manager: Office of the Commissioner
Ms M Ramokgopa

2021		
Basic salary	Other benefits received	Total
2 476	-	2 476
2 392	2	2 394
1 989	120	2 109
356	173	529
2 128	-	2 128
2 163	-	2 163
1 887	-	1 887
1 506	-	1 506
2 104	-	2 104
1 875	-	1 875
1 862	-	1 862
1 806	-	1 806
22 544	295	22 839

24. RISK MANAGEMENT

Financial risk management

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

Liquidity risk

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

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

At March 31, 2022	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Payables from exchange transactions	36 744	36 744	36 744	-
At March 31, 2021	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Payables from exchange transactions	25 432	25 432	25 432	-
At March 31, 2022	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Cash and cash equivalents	271 844	-	-	-
Trade and other receivables	4 375	-	-	-
At March 31, 2021	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Cash and cash equivalents	106 367	-	-	-
Trade and other receivables	3 188	-	-	-

2022
R'000

2021
R'000

Credit risk

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

Financial assets exposed to credit risk at year end were as follows:

Cash and cash equivalents	271 844	106 367
Trade and other receivables	4 375	3 188

Market risk

Market risk is the risk that changes in the market prices, such as the interest rates which will affect the value of the financial assets of the Commission. The Commission is not exposed to market risk.

Interest rate risk

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

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

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

2022
R'000

20121
R'000

25. GOING CONCERN

We draw attention to the fact that at 31 March 2022, the Commission had an accumulated surplus of R222.1 million and that the Commission's total assets exceed its liabilities by R222.1 million.

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

The ability of the Commission to continue as a going concern is dependent on a number of factors. The most significant of these is that the DTIC continue to provide funding for the ongoing operations.

26. EVENTS AFTER THE REPORTING DATE

No events identified to be reported.

27. FRUITLESS AND WASTEFUL EXPENDITURE

Opening balance	263	263
Add: Expenditure identified - current	72	-
Closing balance	335	263

The expenditure identified in the current year relates to traffic fines as a result of various road offences for R70,195 and a transaction relating to publication of SASA exemption which was published with wrong information for R1,765.

The balance of R65,733 has been investigated and is recommended for write off as the nature of the transactions do not qualify as fruitless expenditure.

	2022	2021
	R'000	R'000

28. IRREGULAR EXPENDITURE

Opening balance	-	130 595
Add: Irregular Expenditure - current year	498	10 190
	498	140 785
Less: Amounts condoned - current	-	(140 785)
Closing balance	498	-

The current year irregular expenditure relates to expenditure incurred in contravention with SCM Regulations for R498,832. The SCM contravention relate to an oversight in allocating points to a service provider who submitted an invalid BBBEE certificate. Consequence management has been undertaken against the official involved and internal controls improved to prevent recurrence and the transaction incurred is in the process for condonement at reporting date.

29. BUDGET DIFFERENCES

Material differences between budget and actual amounts

29.1. Fee income

Fee income is below budgeted amount due to more mergers which were filed than it was anticipated.

29.2. Interest received - investment

Investment interest is higher than budgeted amount due to excess funds invested in the banks.

29.3. Employee related costs

The variance is due to vacancies which were not filled during the year due to recruitment challenges experienced in the process of filling in the posts and were deferred to the next financial year.

29.4. Administrative expenses

The Commission has been generally underspending due to the impact COVID has had on its operation, more especially in the 1st half of the financial year and spending slightly picked up due to easing of the lockdown restrictions. The spending was further affected by the National Treasury's guidance on the impact of PPPFA regulations court ruling. National Treasury issued an advisory note stating that entities should hold procurement processes in abeyance while it seeks guidance regarding the suspension period of the judgment from the Constitutional Court.

	2022	20121
	R'000	R'000

29.5. Operating expenses

The Commission has been generally underspending due to the impact COVID has had on its operation, more especially in the 1st half of the financial year and spending slightly picked up due to easing of the lockdown restrictions. The spending was further affected by the National Treasury's guidance on the impact of PPPFA regulations court ruling. National Treasury issued an advisory note stating that entities should hold procurement processes in abeyance while it seeks guidance regarding the suspension period of the judgment from the Constitutional Court.

30. CONTINGENT ASSETS AND LIABILITIES

Cases before the courts in which costs were awarded against the Commission.

Claim amount	800	800
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There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded against the Commission. The estimated amount of legal costs incurred and claim amount is R800,000; however, for some of the cases the costs are unknown and were not yet confirmed at the reporting date.

Cases before the courts in which costs were awarded in favour of the Commission.

Claim amount	150	-
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There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded in favour of the Commission. The legal costs incurred and claim amount is estimated at R150,000; for some of the cases the costs are unknown and were not yet confirmed at the reporting date.

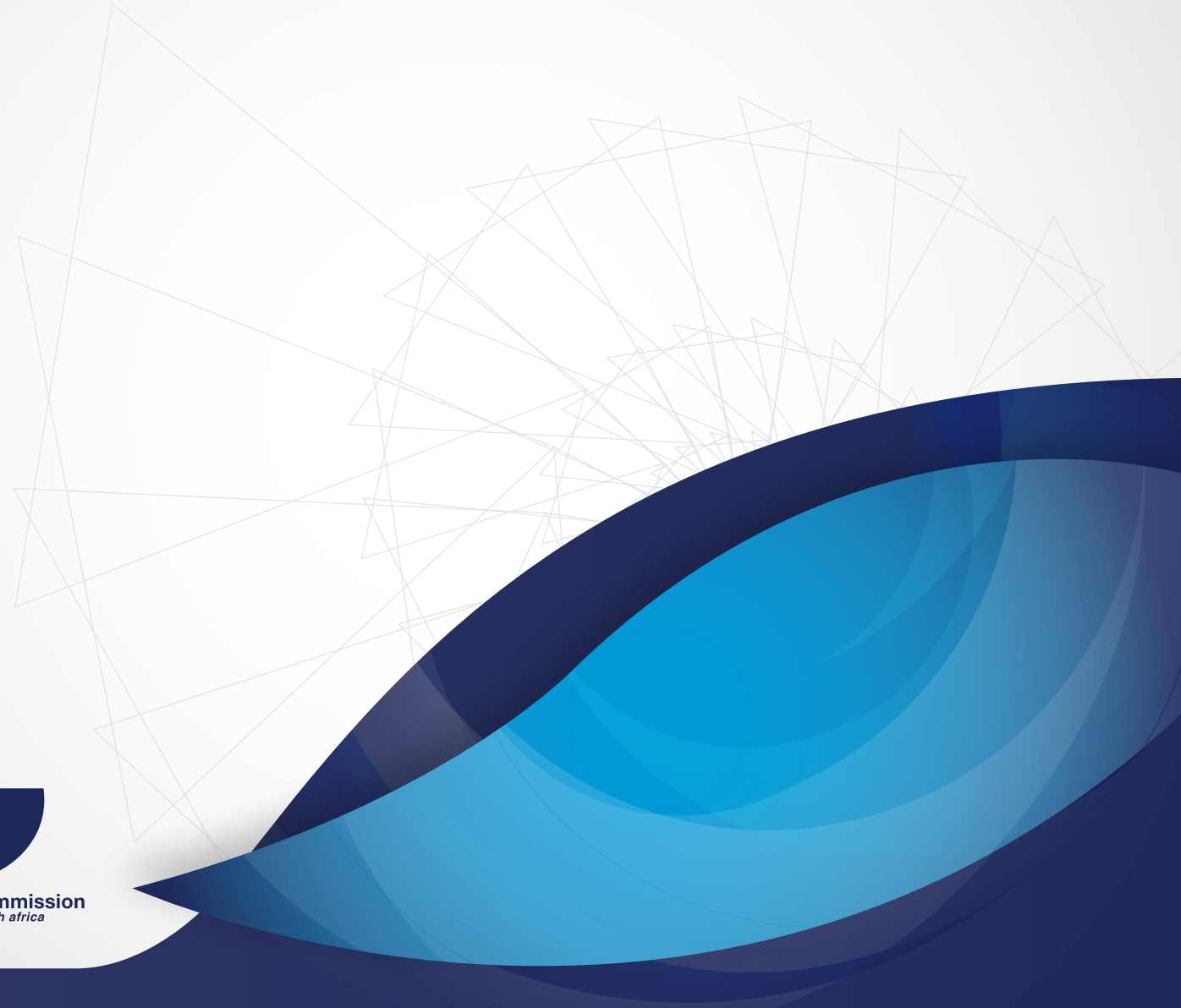
Surplus funds

In terms of Section 53 (3) of the PFMA, public entities listed in Schedule 3A and 3C to the PFMA may not retain cash surpluses that were realized in the previous financial year without obtaining the prior written approval of National Treasury.

National Treasury issued Instruction No.12 of 2020/2021 to repeal the National Treasury Instruction No.6 of 2017/2018 on the retention of cash surpluses. This new Treasury Instruction takes effect from the date of signature for surpluses realized in the 2019/2020 financial year and for all surpluses realised thereafter. According to this Treasury Instruction the surplus is based on cash and cash equivalents plus receivables less current liabilities at the end of the financial year

During the year the Commission submitted the request for retention of surplus funds as determined in terms of the Instruction note for the 2020/2021 financial year and received approval by the National Treasury for an amount of R52.437 million.

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competition commission
south africa

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RP251/2022

ISBN: 978-0-621-50567-2