

ANNUAL REPORT 2022-23



competition commission
south africa

a growing, deconcentrated and inclusive economy



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Internally and externally, the Accounting Authority and Management vow to combat fraud and corruption as part of their duties of ensuring and maintaining effective Risk Management.

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competition commission
south africa

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LIST OF ABBREVIATIONS

AVE	Advertising Value Equivalent
ACF	African Competition Forum
AG	Auditor General
CD	Cartels Division
CRESSE	The Competition and Regulation Summer School and Conference
The Competition Act	Competition Act No. 89 of 1998, as amended
CAC	Competition Appeal Court
Commission	Competition Commission of South Africa
Tribunal	Competition Tribunal
ConCourt	Constitutional Court of South Africa
CLP	Corporate Leniency Policy
CSD	Corporate Services Division
DSMI - Data Inquiry	Data Services Market Inquiry
DMRE	Department of Mineral Resources and Energy
dtic	Department of Trade, Industry and Competition
EAP	Economically active population
EEA	The Employment Equity Act
ERB	Economic Research Bureau
HDPs	Historically Disadvantaged Persons

HR	Human resources
ICT	Information and Communication Technology
IRC	Information Resource Centre
ICN	International Competition Network
ISPs	Internet Service Providers
LSD	Legal Services Division
MCD	Market Conduct Division
M&A	Mergers and Acquisitions Division
NDP	National Development Plan
NEDLAC	National Economic Development and Labour Council
OTC	Office of the Commissioner
PFMA	Public Finance Management Act 1 of 1999, as amended
SME's	Small and Medium Sized Enterprises
SARS	South African Revenue Service
SADC	Southern African Development Community
SCA	Supreme Court of Appeal
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 Competition 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 Competition 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 Competition 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 Competition Act.

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

“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.

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

PART
A

GENERAL OVERVIEW



1 ABOUT THE ANNUAL REPORT

This document constitutes the Annual Report of the Competition Commission of South Africa (Commission) for the 2022/23 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, which is published by the National Treasury. It captures the key performance outputs, outcomes, and impact of the Commission during the reporting period. It also articulates how the Commission fared in the management of its resources, and in complying with corporate governance principles.

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 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.



Doris Tshepe
Commissioner



Hardin Ratshisusu
Deputy Commissioner



James Hodge
Chief Economist



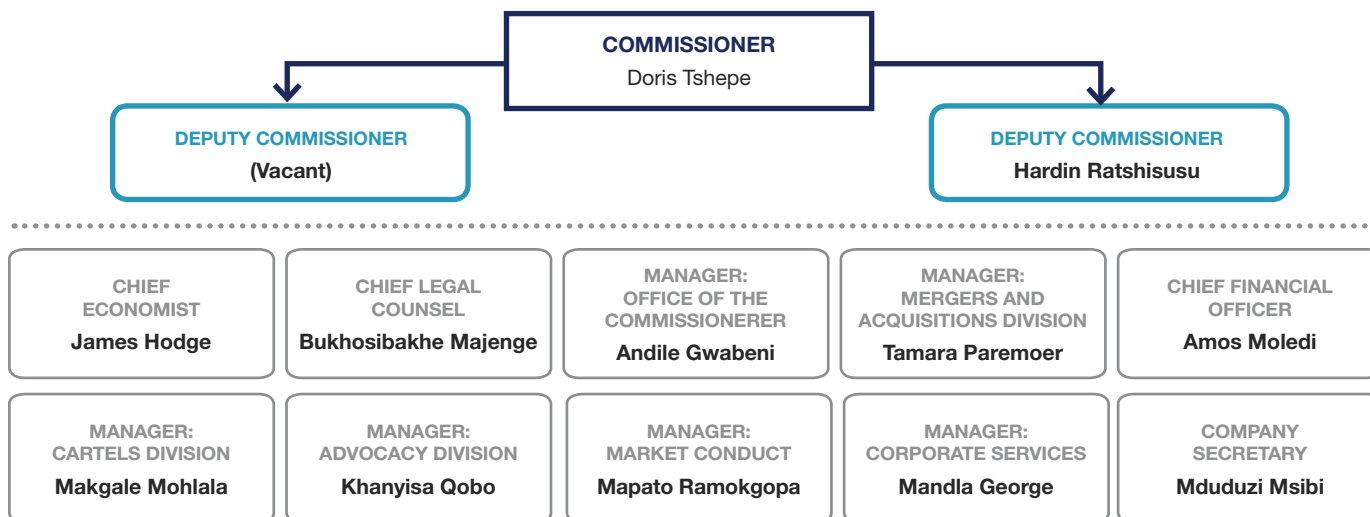
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Amos Moledi
Chief Financial
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Manager:
Cartels Division

Khanyisa Qobo
Manager:
Advocacy Division

Mapato Ramokgopa
Manager:
Market Conduct

Mandla George
Manager:
Corporate Services

Mduduzi Msibi
Company
Secretary

**Ebrahim Patel**

Minister of Trade, Industry and Competition

It is my pleasure to table the Annual Report of the Competition Commission for the 2022/23 financial year.

Competition policy has been elevated in the past four years as a central pillar in pursuit of deeper levels of industrialisation, greater economic inclusion and more job creation. Legislative reforms have provided the competition authorities with new tools and mandates to advance public interest criteria in mergers, abuse of dominance investigations and market inquiries. These amendments placed a greater emphasis on promoting small and medium businesses, and the participation of black South Africans and workers in the economy.

The Commission has focused on quantifying and addressing high levels of economic concentration, promoting competitive markets and responding to shocks in the economy.

Over the period covered in the Report, 273 mergers were notified, including 105 large mergers. The Commission recommended and/or imposed conditions on 68 merger cases. This Report contains details of the work done by the Commission on cartels: 28 cartel investigations were completed, of which 7 were referred to the Competition Tribunal for prosecution.

Particularly significant was the conclusion of large mergers that empowered more than 100 000 workers with shareholding in the companies they work in; and investment commitments made by merger parties equalling more than R28 billion. Supplier development funds directed mainly at SMMEs were contained in merger conditions. These measures help with the structural transformation of the economy and the promotion of inclusive growth.

Market inquiries also contribute significantly to the Commission's efforts to promote inclusive economic growth. One such inquiry was the Data Services Market Inquiry (DSMI) which was concluded in 2019. During this financial year, the Commission conducted an impact study on the outcomes of the DSMI. 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.

The report also reflects both the work of the Commission in implementing their core mandate, and the outcome of joint efforts to align work of the dtic's 18 entities towards a set of three shared outcomes:

- Increased industrialisation
- Strengthened transformation in the economy; and
- Building a capable state.

Focusing around these central outcomes allows the combined impact of the dtic-group – comprising regulators, financiers and technical institutions – to best deliver for the South African people.

In the 2023/24 financial year, the Commission will continue to improve its core mandate and to align its work around a common set of outcomes defined for the dtic-group, including the forty-five central outcomes. These outcomes are focused on measuring performance in terms of real impact; defined through key measures like the number of jobs supported, investment unlocked, and output generated by the work of public entities.

I wish to express my gratitude to Commissioner Doris Tsepe, assisted by Deputy Commissioners Hardin Ratshisusu, Bukhosibakhe Majenge and James Hodge, members of the Executive Committee who steered the ship during 2022/23 final year, as well as the entire team of the Commission who continue to deliver exceptional results often in difficult circumstances. Tembinkosi Bonakele was head of the Commission for part of the period covered by the Report and I express my appreciation for the work he undertook.



Ebrahim Patel
Minister of Trade, Industry and Competition





Doris Tshepe
Commissioner

The Competition Commission continues to be inspired by its vision of the attainment of a growing and inclusive economy that serves all South Africans. This annual report is an account of the progress we have made towards the realisation of our strategic goals and a reflection on the challenges that drive our work and shape our priorities.

My tenure as Commissioner began on 1 September 2022 when I took over from the former Commissioner, Mr Tembinkosi Bonakele. Prior to joining the Commission, I followed the work of the Commission closely, both as a practitioner in the field but also as an ordinary citizen, encouraged by the work the institution does to make markets work better for all South Africans. I look forward to the journey ahead as we rededicate ourselves to ensuring that our work is meaningful and impactful, responding, within our limited resources, to the challenges faced by consumers, workers and firms in the sustainable development of our economy.

As we celebrate the successes of the Commission, I am mindful of the significant economic challenges facing South Africans. The economy remains constrained by low growth and high levels of unemployment. “Loadshedding” places a constraint on growth and both consumers and firms are faced with high and rising inflation, particularly in food and energy costs. Competition authorities the world over are increasingly concerned about the challenges associated with climate change and its disruptive effects on markets, prices and consumers. Historically Disadvantaged Persons (HDPs) particular women and young people, remain marginalised and excluded from participating fully in markets.

The Commission remains focused on responding to these challenges,

aware of the fact that we must be judged by the impact of our work on the development of a fair, efficient and globally competitive economy. In the sections that follow, I will reflect on the work the Commission has done in the past financial year to respond to these challenges.

REGULATING FOR MORE COMPETITIVE AND CONTESTABLE MARKETS

The 2019 amendments to the Competition Act gave the competition authorities more power and tools to address market-wide impediments to competitive and contestable markets. The amendments encourage both critical self-reflection in the conduct of studies evaluating the impact of the decisions of the competition authorities and broader powers to understand the constraints to competition in market inquiries.

The Commission continues to use its investigative tools to focus on opening concentrated markets to greater participation both through specific interventions (such as enforcement of cartel and single firm conduct) and market-wide interventions (such as remedial actions flowing from market inquiries). The Commission also reached a significant milestone in the conduct of market inquiries, releasing its Draft Report in the Online Intermediation and Platform Market Inquiry (OIPMI); this was subsequently completing after year-end and is the first inquiry to be conducted under the new amendments to the Competition Act. Platform markets are known to be prone to ‘tipping’ owing to network effects and first-mover advantage. The OIPMI Draft Report provided evidence-based remedies to promote contestability between and on important platforms, ensuring that fast-growing digital markets remain open to participation by small and emerging firms, and encouraging competition between platforms based on innovation and responsiveness to consumers and competitors,

rather than the extension or entrenchment of incumbency and first-mover advantages.

The Commission also initiated two further market inquiries during the 2022/23 financial year, the Media and Digital Platforms Market Inquiry (MDPMI) and the Market Inquiry into the Steel Industry. The MDPMI will focus on understanding the impediments to competition in relation to the distribution of news content on digital platforms, extending the Commission’s work in and understanding of competition in digital markets.

The Steel Industry Inquiry was initiated against the backdrop of a notable decline in the global competitiveness of the South African steel industry, recognising the pivotal role of a competitive steel industry in the development of the economy and its extensive linkages with strategic sectors in the economy such as construction, energy, infrastructure and transportation.

This year the Commission conducted an impact study on the transaction involving Monsanto Corporation (Monsanto) and Bayer

Aktiengesellschaft (Bayer) which was approved by the Competition Tribunal in 2018. The divestiture conditions imposed in this merger resulted in the successful establishment of an independent South African and majority black-owned seed company, showing that merger conditions, responsibly crafted, can provide opportunities for entry into concentrated markets. However, the study emphasised that divestiture conditions in technology- and IP-driven industries such as seeds, should be carefully designed to take into account the changing nature of the market and the need for the purchaser to have ongoing access to new technologies and developments. Divestiture conditions should also consider the full extent of support required to improve the chances of success of the purchaser, a process requiring extensive consultation within

“The Commission continues to use its investigative tools to focus on opening concentrated markets to greater participation both through specific interventions and market-wide interventions”

the limited timeframes for merger assessment. Importantly, the public interest conditions requiring a 25% discount on maize sales to emerging farmers imposed in the merger appear to have been successful, with Grain SA noting these discounts have supported small emerging farmers.

ENCOURAGING FULL AND FREE PARTICIPATION IN THE ECONOMY BY ALL SOUTH AFRICANS

The Competition Act recognises that any credible competition law must deal decisively with excessive concentration and the racially skewed spread of ownership in the economy that is a legacy of apartheid laws and policies. This is not only a question of equity but is also critical in ensuring greater participation by a larger pool of entrepreneurs and firms in the interest of sustainable and inclusive economic growth.

During the last financial year, the Commission has made a meaningful impact on broadening participation by workers and HDPs, particularly through merger control. The Commission recommended and/or imposed conditions in 68 mergers resulting in a net saving of 2 243 jobs. We also reached agreements with firms to:

- implement employee share ownership programs in 22 cases,
- implement transactions aimed at promoting ownership by HDPs in 12 cases (noting that some cases had both ESOP and HDP ownership conditions), and
- establish funds or other initiatives to promote participation by small and HDPs firms in 22 cases.

Increasingly, merger parties recognise the economic benefits of worker involvement in the ownership of firms and of supporting the entry and sustainable growth of new and small firms in their value chains.

ADVOCATING FOR IMPROVED COMPLIANCE AND COLLABORATION

The Commission continues to work to promote compliance with the Competition Act through education and awareness initiatives with its key stakeholders. In 2022/23, one of the Commission's key focus areas was to better understand the barriers that inhibit women entrepreneurs from participating in the South African economy. The project encompassed several initiatives, including a series of workshops with 144 stakeholders and a survey rolled out nationally to women entrepreneurs.

This year, the Commission completed its research paper on Barriers to Entry and Participation Faced by Women Entrepreneurs.

The paper forms part of the Commission's strategic efforts to mainstream gender considerations in competition policy and to promote broader participation of women entrepreneurs in the economy. These contributions were featured at the Organisation for Economic Co-operation and Development (OECD), contributing to the global debate about "Incorporating Equity: A Global Perspective". The Commission's focus was on public interest provisions, and its work on gender.

"In 2022/23, one of the Commission's key focus areas was to better understand the barriers that inhibit women entrepreneurs from participating in the South African economy.."

STRENGTHENING PARTNERSHIPS ACROSS AFRICA AND THE WORLD

The last financial year saw significant advancements in deepening cooperation and collaboration across the continent. In an important step towards the implementation of the African Continental Free Trade Agreement, the AU Assembly of Heads of State and Government adopted the Protocol on Competition Policy in February 2023. The Protocol on Competition lays the groundwork for the establishment of a continental competition authority and recognises the importance of competition policy in ensuring that

the gains from free trade are not undermined by anticompetitive conduct.

South Africa also contributed to global debates on competition and inflation, competition enforcement in digital markets, inter-agency collaboration and effective competition advocacy. We also worked closely with authorities across the continent on studies in the Generic Pharmaceutical Industry and on International Roaming charges across Africa, as part of the work of the African Competition Forum in identifying common and cross-border competition challenges. The Commission is committed to collaboration between African competition authorities to strengthen enforcement across the continent.

THE ROAD AHEAD

As we are looking ahead, the Commission is adopting a deliberate prioritisation strategy to ensure that the work of the Commission has maximum impact in promoting competition and increasing participation in the economy as set out in the purpose of the Competition Act. During the next financial year, we will review our impact on the priority sector adopted in 2020-2025 Strategic Plan and look at a new prioritisation framework that will look at sector prioritisation and thematic prioritisation which is responsive to the changing economic environment and government priorities. We intend to continue implementing the amendments to the Competition Act and hope to regain the momentum of the implementation that was slowed by the Covid-19 pandemic in our country. In line with the amendments of the Competition Act, the Commission will implement the tool of market inquires in priority markets where the removal of features adversely affecting competition can unlock growth, achieve greater participation, and benefit consumers. In this regard, the Commission will adopt a deliberate strategy to investigate and prosecute cases in orders to develop the jurisprudence and where possible provide greater legal certainty on the interpretation of the amendments to the Competition Act.

The focus in the period ahead will be on ensuring that the Commission achieves much greater impact and outcomes to improve participation in particular participation of HDPs, SMEs,

contestability of markets and inclusive growth of the South African economy. The intention is to improve the effectiveness of the organisation in delivering on its mandate whilst improving efficiency on turnaround times for stakeholders and resourcing required to generate the outputs that produce the outcomes articulated in our Strategic Plan.

In closing, I would like to thank the staff of the Commission, the Deputy Commissioners and Executive Committee Members for the good work they continue to do as outlined in this report, I am particularly excited that we have been able to retain our fourth consecutive clean audit. I would also like to thank my family for the support they have given me, this has made it easier to navigate the huge responsibility that comes with the role of being Commissioner. In addition, I would like to thank the former Commissioner Tembinkosi Bonakele for enabling my smooth transition into the Commission. I would like to thank the Honourable Minister of Trade, Industry and Competition, Mr Ebrahim Patel for his continued support for the work of the Commission.



Doris Tshepe
Commissioner

ESTABLISHMENT AND MANDATE OF THE COMPETITION COMMISSION

5.1 ESTABLISHMENT OF THE COMPETITION AUTHORITIES

The Commission was established with the objective of fostering fair competition, preventing anti-competitive practices, and ensuring consumer protection within the country's economic landscape. Empowered by the Competition Act, this regulatory authority is tasked with promoting a level playing field for businesses, encouraging innovation, and safeguarding consumer interests. Through its vigilant enforcement of competition laws and collaborative engagement with various stakeholders, the Commission aims to create a robust and equitable economy that benefits all South Africans.

5.2 LEGISLATIVE MANDATE

In terms of the Competition 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 Competition 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 Competition Act;
- conduct legislative reviews; and
- develop and communicate advocacy positions on specific competition issues.

In addition, the Commission promotes voluntary compliance with the Competition Act by providing education and advice on the application of the Competition 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 Competition Act. The Commission can also participate in the proceedings of any regulatory authority, and advise or receive advice from them.




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OUR VISION

A growing, de-concentrated, and inclusive economy

Our vision is for the realization of a growing and inclusive economy. The country faces several pressing economic challenges including high food inflation, slow economic growth, high unemployment, and an electricity crisis. During challenging economic times, strong competition law enforcement must pivot to give priority to the immediate challenges whilst laying the foundation for a competitive economy. The Commission will continue to prioritise its work and resources in recognition of the most pressing economic challenges and to ensure that there is healthy competition between firms, that new businesses can emerge and grow, and that existing businesses can expand in the interest of decreasing concentration and ensuring that all citizens are able to participate in the economy.



OUR MISSION

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

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 the participation of Historically Disadvantaged Persons (HDP). Our efforts will be aimed at fostering job-creation, industrialisation and export promotion whilst expanding the opportunities for SMMEs and the participation of HDPs, youth, and women in the economy.



OUR OUTCOME-ORIENTATED GOALS

The Commission has identified three strategic goals that aim to realise 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 this goal, the Commission effectively uses the instruments of merger regulation, market inquiries and enforcement, with considerations of addressing market concentration and public interest outcomes.
- Further, 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 with the Competition Act through education and awareness initiatives with its key stakeholders: the public, big and 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.
- In this goal, the Commission also 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 this goal, the Commission successfully delivers on its objectives through a cohesive, well-structured organization 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.



OUTCOMES:

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

STRATEGIC GOAL 1:

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.

STRATEGIC GOAL 2:

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.

STRATEGIC GOAL 3:

A people-centric, high-performance organisation

- Sound corporate governance;
- Secure, harmonious, and conducive working environment;
- Responsive corporate services systems to support workforce;
- 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 2022/2023 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

After the announcement of the national lockdown in March 2020, South Africa saw unprecedented spikes in demand for hygiene and healthcare products, needed to mitigate the spread of the virus. The Commission was then called upon to respond to price gouging to protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national state of disaster. The Commission responded through advocacy initiatives as well as investigation and prosecution of price gouging allegations. The Commission played a significant role, not only in the framing of the anti-price gouging regulations, but also in enforcing them through advocacy work and investigations of price gouging allegations.

The Commission won the following Covid-19 case at the Tribunal:

Tsutsumani Business Enterprises was found guilty by the Tribunal for excessive pricing for face masks supplied to the South African Police Service during hard lockdown. The Tribunal found that Tsutsumani charged the SAPS an excessive price per mask. The Tribunal found that Tsutsumani earned a total of 87% mark-up and 46% gross margin per mask. Tsutsumani was fined an administrative penalty of R3 441 689.10 (three million four hundred and forty-one thousand six hundred and eighty-nine rand and ten cents) rand, being the maximum permissible amount (10% of turnover). The matter was heard at CAC we are awaiting judgment.

7.2 THE COMMISSION VS. GROUP FIVE CONSTRUCTION LIMITED

On 27 October 2022, the Constitutional Court (ConCourt) issued a judgment dismissing the Commission's appeal of the judgment of the Supreme Court of Appeal (SCA) wherein the Commission challenged the jurisdiction of the High Court to hear a review application brought by Group Five against a decision of the Commission to refer a complaint against it to the Tribunal for adjudication. In dismissing the Commission's appeal, the ConCourt had ruled that the High Court has concurrent jurisdiction with the CAC to hear the review application brought by Group Five in terms of the Promotion of Administrative Justice Act 3 of 2000 or based on the principle of legality or vires even if such review application relates to the interpretation and application of Chapter 2, 3 and 5 of the Competition Act 89.

In a dissenting judgment penned by Mlambo AJ, the minority of the ConCourt held as follows:

That based on the appellate power conferred on the Tribunal over the Commission by Section 27(1)(c) of the Competition Act, the Tribunal has the required powers to hear Group Five's review since the impugned conduct of the Commission related to the interpretation and application of the chapters that in terms of Section 62(1) of the Competition Act falls within the exclusive jurisdiction of the Tribunal. That the vires review does not arise since the Commission did not act outside the enabling provisions, instead, that the issues are about whether the Commission properly exercised powers within its jurisdiction.

That the SCA interpreted Section 62(2) of the Competition Act widely, which identifies constitutional matters, such that almost all decisions

of the Commission, which invariably involve the exercise of public power will fall into the Section 62(2) carve out, thus undermine the Tribunal's review powers and foster forum shopping.

Finally, that by characterising the impugned conduct of the Commission as implicating PAJA or the principle of legality, this would undermine the legislative policy choice to create a specialist competition review regime to ensure efficient and appropriate application of the Competition Act in solving competition disputes.

In dismissing the Commission's appeal in the majority judgment, the court emphasised the high standard required to oust the jurisdiction of the high court in PAJA reviews and issues giving rise to constitutional matters. The ConCourt held that the ouster is required to be stated in unambiguous terms and that there is a strong presumption against it. In this regard, the majority went on to hold that as a creature of statute, the Tribunal has no jurisdiction in vires and legality reviews and most importantly that such issues can arise in matters falling within chapters in respect of which the Tribunal has exclusive jurisdiction. In circumstances where they arise, as in this case, only the CAC and the High Court will have concurrent jurisdiction in terms of Section 62(2) and 62(3) of the Competition Act. The decision of the ConCourt has serious implications for the Commission and the Tribunal. Provided a review is couched as implicating PAJA, vires or legality, it is not material whether it relates to a matter falling within the Chapters 2, 3 and 5 in respect of which the Tribunal has exclusive jurisdiction; a review application cannot be brought before the Tribunal. In this regard, the manner in which the review is framed by a party can oust the jurisdiction of the Tribunal.

7.3 IT HAS BEEN 20 YEARS SINCE THE GROUNDBREAKING "HAZEL TAU" CASE FOR FAIR PRICING OF HIV/AIDS DRUGS

On the 1 December 2022, the Commission and Health Justice Initiative (HJI) jointly hosted a seminar to commemorate 20 years since the ground-breaking case for fair pricing of HIV/AIDS drugs, now known as the Hazel Tau case. The seminar coincided with World AIDS Day which is commemorated worldwide to show support for people living with HIV and to remember those who have died from AIDS-related illnesses.

Speakers, including the Commissioner Ms. Doris Tshepe, Ms. Hazel Tau, lawyers, academics, medical professionals and representatives of civil society. The seminar delved into the lessons learnt in taking on global pharmaceutical giants to arrive at a successful outcome, not only for South Africa but also for all sub-Saharan Africa. They also discussed why the Hazel Tau case remains relevant today and what measures can be undertaken to accelerate broader access to medicines at fair prices, in a timely manner, to give effect to the rights enshrined in the Constitution of SA.

In 2002, Tau, the Treatment Action Campaign and other complainants represented by the AIDS Law Project brought a complaint to the Commission alleging that first-line antiretrovirals (ARVs) used to treat HIV/AIDS were excessively priced. At the time, these drugs were only available to the private sector and were largely unaffordable. As an example, at the time, the South African price for ARV drug AZT was 665% higher than the best-priced generic for AZT available elsewhere in the world. Following an investigation, the complainants and the Commission concluded settlement agreements with the two multi-national pharmaceutical companies, GlaxoSmithKline SA (Pty) Ltd and Boehringer Ingelheim (Pty) Ltd, which in turn granted the market immediate access to generics and led to a major decrease in the prices charged for first-line ARVs in sub-Saharan Africa.

Twenty years on, the issues between competition law and the exercise of intellectual property rights by pharmaceutical companies, in a Constitutional democracy, persist. These issues were heightened by the global battle for equitable access to Covid-19 vaccines during the pandemic.

7.4 GUIDELINES ON SMALL MERGER NOTIFICATION

The Commission's revised small merger guidelines became effective on 1 December 2022. The guidelines reflected concerns that potentially anti-competitive acquisitions in digital or technology markets are escaping regulatory scrutiny. This was due to the acquisitions taking place at an early stage in the life of the target firm and before these firms have generated sufficient turnover or accumulated the required capital and physical assets that would trigger mandatory merger

notification as set by the turnover or asset thresholds. The new small merger guidelines seek to address this gap. These stipulate that the Commission must be informed of all mergers involving an acquiring firm whose turnover/asset value alone exceeds the combined turnover/asset value for a large merger (currently R6.6bn) and where the consideration for the transaction either exceeds the target firm's asset/turnover threshold for large mergers (currently R190 million) or effectively values the target firm at the asset/turnover threshold for large mergers. The Commission will determine within 30 days whether the transaction needs to be notified.

7.5 GUIDELINES ON THE EXCHANGE OF COMPETITIVELY SENSITIVE INFORMATION BETWEEN COMPETITORS UNDER THE COMPETITION ACT NO.89 OF 1998 (AS AMENDED)

The Commission identified a need to provide guidance to trade associations and both public and private stakeholders on the sharing of information between competitors. From time-to-time trade associations and other stakeholders request advisory opinions from the Commission on setting up information exchange systems. It is apparent that there is some uncertainty on what constitutes permissible and impermissible information exchange within the framework of the provisions of Section 4 of the Competition Act. In these circumstances there is clearly a need for the Commission to provide guidance to relevant stakeholders on the type of information exchange that may potentially be harmful to competition and the type that may enhance efficiencies.

The guidelines present the general approach that the Commission will follow in determining whether information exchange between firms that are competitors amounts to a contravention of Section 4 of the Competition Act. The principles set out in the guidelines are not intended to be applied mechanically, as information exchange cases are evaluated on a case-by-case basis, depending on - amongst other things - the nature of the information sought to be exchanged and the purpose for which the information is being exchanged.

The guidelines present the general approach that the Commission

will follow in assessing the exchange of competitively sensitive information between competitors. The guidelines are not exhaustive and will not affect the discretion of the Commission and/or the Tribunal and courts to consider the exchange of information issues on a case-by-case basis, taking into account, amongst other criteria, the nature of the information exchanged and the market characteristics and dynamics.

7.6 IMPLEMENTING THE AMENDMENTS TO THE COMPETITION ACT

The Competition Act was amended in 2019 to, amongst other things, introduce provisions that clarify and improve the determination of prohibited practices relating to (1) restrictive horizontal and vertical practices, (2) abuse of dominance and price discrimination, (3) strengthening the penalty regime, (4) introducing greater flexibility in the granting of exemptions that promote transformation and growth, (5) strengthening the role of market inquiries and merger processes in the promotion of competition and economic transformation – through addressing the structure and de-concentration of markets, and (6) protecting and stimulating the growth of small and medium-sized businesses and firms owned and controlled by historically disadvantaged persons, while at the same time protecting and promoting employment and employment security. Most amendments to the Competition Act came into operation on 12 July 2019.

7.7 COMMISSION'S SCHOOL UNIFORM PROCUREMENT GUIDELINES CHANGES LIVES

Two years ago, a Tshwane-based entrepreneur, Pamela Luthuli sold school uniforms from the boot of her car for two days a week. On a good day, she would sell up to five items per day. Some days she would return home without a single sale. Today, Luthuli runs a thriving business producing and supplying school uniforms, tunics, golf shirts, blazers, tracksuits, and related clothing items to 10 schools in and around Tshwane. Luthuli is the owner of one of many Small and Medium Enterprises (SMEs) that benefitted from the Commission's school uniform procurement guidelines. She used the National Guidelines on School Uniform issued by the Department of Basic Education (DBE) in 2006 and the Circular on the Procurement of

School Uniforms and other Learning-Related Material jointly issued by the DBE and the Commission in 2020 (Circular No. 11 of 2020) as a stepping stone to participate meaningfully in the value chain of the school uniform manufacturing industry. “The school uniform industry was in my family’s DNA. I know the business in and out but could never get to supply schools directly with my products. I would hit a brick wall and be told that they [schools] already have their preferred supplier,” said Luthuli. But her fortunes gradually changed when she learned of the guidelines and read about the Commission’s awareness campaigns encouraging more schools to adhere to the guidelines and to practice pro-competitive procurement that supports SMEs and enables parents and guardians to exercise choice when buying school uniforms. “The guidelines opened doors for me and many others. In approaching schools, I would also refer them to the guidelines and inform them about the importance of opening opportunities for entrepreneurs,” said Luthuli, who now also employs five workers at Panda Uniforms and Projects to help keep up with the demand for her products.

Luthuli’s success underpins the objective of the guidelines. The Commission conducted a survey in October 2022 to evaluate compliance with the guidelines. The results showed that many respondents (schools, parents, and suppliers) were now aware of the guidelines – a completely different result from 2016 when there

wasn’t much awareness about their existence. The survey found that contracts between schools and suppliers have been limited. It also found that schools have now largely reconfigured their uniforms to allow for a greater mix of generic and unique items, and there were improved levels of compliance with the guidelines. The 2022 survey found that many schools follow procurement processes where exclusivity clauses are removed, and more competitive bidding practices are adopted. A large number of schools have taken steps to adopt the national guidelines as part of the school’s governance. Importantly, the guidelines and the work of the Commission have compelled all stakeholders along the school uniform value chain to promote greater levels of competition in the market.

7.8 LITIGATION SUMMARY

7.8.1 LITIGATION LOAD

The Commission’s litigation is undertaken by the Legal Services Division (LSD) as well as the Cartels Division. The Commission has observed that cases are becoming more complex, with respondents contesting Tribunal judgments and the application of the Competition Act in various proceedings. The Commission deals with high volumes of cases in litigation.

Table 3: Commission’s litigation load at the end of 2022/23

Category	Number of cases
Number of cartel cases in litigation at the Tribunal and the courts	84
Number of abuse of dominance cases in litigation at the Tribunal and the courts	7
Number of minimum resale price maintenance cases in litigation at the Tribunal	1
Number of contested large mergers in the Tribunal	0
Number of reconsiderations ¹ in litigation	6
Number of prior implementation cases in litigation	3
Number of appeals, review and variation application	25
Total cases	121

1 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 4: Covid-19 cases won/lost at the Tribunal

Parties	Date of decision	Decision
The Commission vs. Tsutsumani Business Enterprises	28 April 2022	In favour of CC

Table 5: Merger cases won/lost at the Tribunal

Parties	Date of decision	Decision
I Group Consolidated Holdings and Others (iCollins)	2 June 2022	In favour of CC
The Commission vs. QCP1	22 August 2022	Finalised through settlement
The Commission vs. Nedbank and Erf 7 Sandown Pty Ltd	17 August 2022	Finalised through settlement

Table 6: Merger cases won/lost at the Courts

Parties	Date of decision	Decision
The Commission vs. Coca Cola (CAC)	17 June 2022	In favour of CC

Table 7: Abuse of dominance cases won at the Tribunal and courts

Case name	Date of Order / confirmed settlement	Decision	Tribunal/Courts
The Commission vs. Shoprite Checkers and Computicket	2 June 2022	In favour of CC	Tribunal

Table 8: Interlocutory won/lost at the Tribunal

Complainant	Respondent	Date of Order / confirmed settlement	Decision
The Commission	Bank of America Merrill Lynch and 27 Others	30 March 2023	In favour of CC

Table 9: Interlocutory won/lost at the Courts

Complainant	Respondent	Date of Order / confirmed settlement	Decision
The Commission	Group Five Construction Limited	27/10/2022	Against the CC
The Commission	Standard Bank of South Africa Limited	24 March 2023	In favour of CC

Table 10: Cartel cases won/lost in the Tribunal and courts

Complainant	Respondent	Date of Order / confirmed settlement	Decision	Tribunal/ Courts
The Commission	Belfa Solutions (Pty) Ltd	20-May-22	In favour	Tribunal
The Commission	Sylvester Fire and Piping Services (Pty) Ltd	20-May-22	In favour	Tribunal
The Commission	Country Contracts	23-May-22	In favour	Tribunal
The Commission	East Coast Distributors CC t/a Fire King	20-May-22	In favour	Tribunal
The Commission	Bhubesi Fire Projects (Pty) Ltd	20-May-22	In favour	Tribunal
The Commission	Centa KZN Sprinklers CC	20-May-22	In favour	Tribunal
The Commission	Cross Fire Management (Pty) Ltd	20-May-22	In favour	Tribunal
The Commission	Fire Check CC	20-May-22	In favour	Tribunal
The Commission	Whip Fire Projects (Pty) Ltd	20-May-22	In favour	Tribunal
The Commission	QQQ Trading Enterprise (Pty) Ltd	21-Jun-22	In favour	Tribunal
The Commission	Cross Fire & Others	11-May-22	Not in favour	Constitutional Court
The Commission	Tourvest Holdings (Pty) Ltd (Siyasiza Trust)	30-Jun-22	Not in favour	CAC
The Commission	Group Five	27-Oct-22	Not in favour	Constitutional Court
The Commission	JC Decaux South Africa Holdings (Pty) Ltd CC	14-Nov-22	In favour	The Commission

7.8.2 SETTLEMENT AGREEMENTS AND ADMINISTRATIVE PENALTIES

A settlement agreement is an agreement between the Commission and a respondent settling a complaint, which is confirmed by the Tribunal as an order of the Tribunal. The Commission negotiates the terms of the settlement agreement, which are then confirmed by the Tribunal.

Penalties are imposed by the Tribunal after it has heard a case to its conclusion and made a finding. Should the respondent/s be found guilty, the Tribunal has the option to impose a financial penalty.

From the two litigating divisions (Cartels & LSD), the Tribunal imposed two (2) administrative penalties and confirmed eighteen (18) settlement agreements in the 2022/23 financial year. The Tribunal levied a total of approximately R40 441 341.51 penalties, and approximately R500 198 in donations from price-gouging cases which were referred by the Commission. The cases that were settled are summarised in the table below.

Table 11: Penalties & Settlement Agreements Confirmed at Tribunal & Courts in 2022/23

Decision Date	Case Name	Section Transgressed	Penalty levied	Donation value (Price-gouging cases only)
12-Apr-22	The Commission vs. Belfa Solutions (Pty) Ltd	4(1) (b) (ii)	R315,857.95	R0
12-Apr-22	The Commission vs. Sylvester Fire and Piping Services (Pty) Ltd	4(1) (b) (ii)	R15,440.22	R0
24-May-22	The Commission vs. Country Contracts	4(1) (b) (ii)	R130,000.00	R0
24-May-22	The Commission vs. East Coast Distributors CC t/a Fire King	4(1)(b)(ii)	R12,000.00	R0
24-May-22	The Commission vs. Bhubesi Fire Projects (Pty) Ltd	4(1)(b)(ii)	R300,000.00	R0
24-May-22	The Commission vs. Centa KZN Sprinklers CC	4(1)(b)(ii)	R1,675.56	R0
24-May-22	The Commission vs. Cross Fire Management (Pty) Ltd	4(1)(b)(ii)	R750,000.00	R0
24-May-22	The Commission vs. Fire Check CC	4(1)(b)(ii)	R320,058.15	R0
18-Mar-22	The Commission vs. Whip Fire Projects (Pty) Ltd	4(1)(b)(ii)	R378,182.53	R0
21-Jun-22	The Commission vs. QQQ Trading Enterprise (Pty) Ltd	4(1)(b)(i) & (iii)	R30,000.00	R0
02-Jun-22	The Commission vs. Computicket and Shoprite	8(c) and 8(d)(i)	R11 317 000.00	R0
22-Jun-22	The Commission vs. IGroup consolidated and 3 others	13A(3)	R1 485 000.00	R0
28/04/2022	The Commission vs. Tsutsumani Business Enterprises cc	8(1)(a)	R3 441 689.10	R0
5/6/2022	The Commission vs. Esorfranki Construction (Pty) Ltd	4(1)(b)(i), (ii) and (iii)	R15 700 000.00	R0
17/08/2022	The Commission and Nedbank Limited Group / ERF 7 Sandown Pty Ltd	13A (3)	R2 000 000.00	R0
22/08/2022	The Commission and QCP1 Investments (Pty) Ltd and Cape Trans Pty Ltd	13A (3)	R2 000 000.00	R0
29/11/2022	The Commission v HWC Pistorius & FSSA 2009Dec4847	4(b)(1)	R855 000	R0
14/11/2022	The Commission v JC Decaux South Africa Holdings (Pty) Ltd	4(1)(b)(i)	R1 389 438	R500 198.00
Total:			R40 441 341.51	R500 198.00

Table 12: Total administrative penalties levied over the last ten years

Year	Administrative penalty
2022/23	R40,4 million
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

8

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 13: Commission's enforcement work in priority sectors 2022/23

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 Sugarcane Value Chain Master Plan to 2030 for public comment. The purpose of the draft guidelines are 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.

Priority sector	Parties to the investigation	Type of intervention
<i>Agriculture, Food and Agro-processing</i>	Fresh Produce Market Inquiry	On 23 March 2023, 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; participation of small and HDP growers; 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 has referred to the Tribunal for prosecution the social media giant, Meta Platforms Inc (previously known as Facebook Inc), and its subsidiaries, WhatsApp Inc and Facebook South Africa 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 has 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 has also imposed and/or selectively enforced exclusionary terms and conditions regulating access to the WhatsApp Business API, mainly restricting on the use of data.
Healthcare	The Commission vs. Hoffman-La Roche AG Products (Pty) Ltd, Roche Products (Pty) Ltd and Catalent Pharma Solutions (Roche II)	On 19 July 2022, the Commission initiated a complaint in terms of Section 49B (1) of the Competition Act against Hoffman-La Roche AG (“Roche AG”), Roche Products (Pty) Ltd (“Roche SA”) and Catalent Pharma Inc (“Catalent Pharma”) for the alleged contravention of Section 8(1)(a) of the Competition Act. This matter will be referred to as “Roche II” to distinguish it from a matter which was previously referred to the Tribunal against Roche AG and Roche SA, and which currently remains in litigation. The Commission is in possession of information that gave rise to a reasonable suspicion that Roche AG, Roche SA, and Catalent Pharma may have contravened the Competition Act by engaging in excessive pricing regarding a pharmaceutical drug labelled “Esbriet” (with main active ingredient of Pirfenidone), which is

Priority sector	Parties to the investigation	Type of intervention
Healthcare		supplied by Roche AG in South Africa through Roche SA. Esbriet (Pirfenidone). It is an anti-fibrotic and anti-inflammatory drug used to treat idiopathic pulmonary fibrosis ("IPF"). It is alleged that Roche AG charges excessive prices for its Pirfenidone drug in that at some point Esbriet costs more than R20 000 (twenty thousand rands) for a month's supply. In contrast, an alternative Pirfenidone product was sold at the cost of around R2000 (two thousand rands) for a month's supply, until Roche AG registered its Esbriet brand with the South African Health Product Regulatory Authority ("SAHPRA") in 2019. Since the registration of Esbriet, patients could no longer access the cheaper alternative Pirfenidone drug through importation into the country. The investigation is on-going.
	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 the 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 development and use of alternative reimbursement models for a period of five (5) years.

Priority sector	Parties to the investigation	Type of intervention
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: - 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. - 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 arise.

Priority sector	Parties to the investigation	Type of intervention
Energy	Sunrise Energy (Pty) Ltd v Vita Gas (Pty) Ltd	The Commission received a complaint against Vita Gas (Pty) Ltd (“Vita Gas”), lodged by Sunrise Energy (Pty) Ltd (“Sunrise”) on 9 June 2020. The complaint relates to the LPG Handling and Throughput agreement concluded between Vita Gas and Sunrise in 2018 (“the throughput agreement”). Sunrise owns and operates an import and storage liquefied petroleum gas loading and storage (“LPG Terminal”) in Saldanha Bay in the Western Cape. Sunrise does not import and trade LPG but operates the terminal. Sunrise was granted an open-access terminal licence by NERSA, meaning that the terminal should be accessible to all potential importers. Vita Gas is an LPG Aggregator/Importer, and it imports LPG through Sunrise’s terminal and on-sells to wholesalers. Vita Gas and Sunrise are thus in a vertical relationship through a lessor-lessee arrangement. The Commission investigated the complaint and concluded that the matter should be referred to the Tribunal.
Transport & Automotive	Ntonga Holdings (Pty) Ltd v Richards Bay Grindrod Terminals (Pty) Ltd & Transnet SOC Ltd	On 2 July 2021, the Commission received a complaint from Ntonga Group Holdings (Pty) Ltd (“Ntonga”) against Richards’ Bay Grindrod Terminals (“RBGT”) and Transnet SOC Ltd (“Transnet”), in relation to two of its’ operating divisions namely, Transnet Freight Rail (“TFR”) and Transnet Port Terminals (“TPT”). Ntonga set out the allegations in relation to Sections 8(1)(b) and/or 8(1)(c) of the Competition Act as follows: • Ntonga’s ability to secure rail allocation with TFR is dependent on RBGT’s port services allocation. For the period between 1 July 2021 to 31 March 2022, TFR presented Ntonga with a term sheet that proposed an initial rail capacity provision of 172 800 MT. • After receiving the term sheet from TFR, Ntonga had requested RBGT to afford it back of port capacity for the equivalent amount of 172 800 MT, for the same period- at the Kusasa / Navitrade facility, to which Ntonga is accustomed.

Priority sector	Parties to the investigation	Type of intervention
Transport & Automotive		On 21 June 2021, RBGT advised Ntonga that it would no longer be able to provide back-of-port capacity at the Kusasa / Navitrade facility but would be able to provide such at the Seamunye facility. Ntonga found this to be unsatisfactory since the handling costs at the Seamunye facility are higher and the facility is inferior, as it is located at the back of the port.
	Melissa Samuels v BMW SA	On 02 February 2022, the Commission received four (4) complaints against BMW South Africa for possible anticompetitive conduct in the automotive aftermarket sector. The complaints can be summed up into two categories. The first category pertains to exclusion with respect to selection of Approved Repair Centres (“ARC”). The second category of allegations pertains to the bundling of service plans with the purchase price of new motor vehicles. The complaint by Melissa Samuels (“the Complainant”) against BMW SA (“Respondent”) pertains to the bundling of service plans with the purchase price of new motor vehicles. The Complainant alleges that when she visited BMW Durban Central on 05 November 2021 to enquire about purchasing a vehicle, she was shown a demo BMW 1-series with a price inclusive of the service plan. The Complainant alleges that she enquired whether she could purchase the vehicle without the service plan. The salesperson indicated that the sale of the vehicle was on the condition that the buyer purchases the service plan and that she could not purchase the vehicle without the service plan.

Table 14: Noteworthy M&A cases in priority sectors

Priority sector	Parties to the investigation	Type of intervention
Agriculture, Food & Agro-processing	Karan Beef Feedlot & Karan Beef (Pty) Ltd and SK Caine Farming Caine Farming (Pty) Ltd & Triple A Meat (Pty) Ltd	- Both merger parties are involved in feedlotting cattle and operating slaughterhouses to supply beef products to wholesale and retail customers. - Although the Commission found that the merger is unlikely to result in a substantial lessening or prevention of competition in any relevant market, the merger raised public interest concerns. - These included concerns relating to employment and (lack of) transformation. To remedy these concerns, several conditions were imposed which included a moratorium on retrenchments and supplier development initiatives aimed at facilitating the entry and participation of HDP farmers in the beef value chain.
	Al Mabroor Projects (Pty) Ltd (Al Mabroor) and Beefcor (Pty) Ltd (Beefcor)	- The merger parties are both involved in the production of cattle for slaughter. - Although the Commission found that the merger is unlikely to result in a substantial lessening or prevention of competition in any relevant market, the merger raised public interest concerns. - To remedy these concerns, conditions imposed included a moratorium on retrenchments, supplier development initiatives aimed at facilitating the entry and participation of HDP farmers and worker ownership in Beefcor.
	The Shadow Capital (Pty) Ltd & Shadow Capital Agri (Pty) Ltd And Blue Ocean Mussels (Pty) Ltd & Gallo Group (Pty) Ltd	- This transaction raised competition concerns as the merger would create a dominant supplier of frozen mussel post-merger. However, as the target was failing, the Commission found that the merger would not result in a substantial lessening of competition and would also have a positive effect on the public interest, particularly employment. - The Commission also imposed conditions to create an ESOP which will own 5% of the merged entity (subject to the merged entity meeting certain production / output targets), a wage freeze for 1-year as well as continuation of the procurement of fresh/ live mussels from black farmers as well as commitments related to job creation.

Priority sector	Parties to the investigation	Type of intervention
Healthcare	Manta Bidco Ltd (“Bidco”) and Mediclinic International (Pty) Ltd. Bidco is a 50/50 joint venture formed by Remgro Ltd (“Remgro”) and Mediterranean Shipping Company Holding S.A. (“MSC Group”).	• In the large merger between Bidco (a JV of Remgro and the MSC group) and Mediclinic, the Commission received several vertical and conglomerate concerns with respect to Remgro’s cross-shareholding and cross directorship in the healthcare sector. • The Commission however found that Remgro’s substantial interests which existed in several firms when the Health Market Inquiry (“HMI”) was conducted have reduced leaving Remgro without any right that can confer it some strategic influence in these companies. • The Commission recommended that the merger be approved subject to several conditions which include: (i) setting up partnerships with practitioners and specialists to collaborate with the public health sector to reduce surgical backlogs by performing 1 000 pro bono surgeries in Mediclinic health facilities, (ii) training of 1 700 nurses over 5 years, (iii) establishment of suppliers development fund of approximately R5 billion, (iv) allocation of funds for medical training at Wits Donald Gordon Medical College, (vii) provision of grants and loans to support Unjani Clinics.
Construction services, Property and Infrastructure	Strategic Fuel Fund Association NPC and Avedia Energy Proprietary Limited (in Business Rescue)	• The transaction occurred in the LPG sector. The Acquiring Group is a producer of LPG whereas the target firm is an importer, wholesaler, and retailer of LPG. • The Commission found that the merger would result in the integration of the import of LPG and the wholesale distribution of LPG. To address concerns regarding access to LPG terminals and infrastructure by LPG wholesalers, the merger was approved subject to a condition allowing competitors (i.e. LPG wholesalers) to access the merged entity’s LPG import terminals and storage facilities on an open access basis

Priority sector	Parties to the investigation	Type of intervention
Energy	Energy Solutions and Analytics (“ESA”) Business. Enerweb is majority owned by Remgro Ltd (“Remgro”), partnered by the Public Investment Corporation (“PIC”) as the main minority shareholder. ESA Business was owned by EOH Holdings Ltd.	- On 21 June 2023, the Commission approved a small merger whereby Enerweb acquired the ESA Business. Enerweb is ultimately controlled by Remgro. - The matter raised a notional vertical overlap as ESA provides technical services such as software licensing and tools used in energy trading, while a Remgro’s subsidiary, Energy Exchange, intended to be licenced and become active in the energy trading space once it became operational. The Commission assessed whether the creation of such an integrated offering will result in the foreclosure of rivals. - The Commission found that ESA Business accounts for a small size of the upstream markets utilised by downstream energy traders. The Commission further found that the merged entity faces competition from several multinationals. Further, the Commission found that although Eskom relied on the ESA Business for most of its power measurement and management software, there were alternative suppliers competing with ESA. - The Commission found that the proposed transaction was unlikely to raise input foreclosure concerns as ESA Business is a small player within the upstream markets for the provision of energy trading systems. Importantly, the downstream energy traders submitted that they are currently not utilising any energy trading software licenced by the ESA Business, hence none of them raised concerns. Further, Energy Exchange, was not yet operational and was thus not procuring any services from any upstream licenced energy trading software services providers. - Although Eskom raised some concerns relating to information flows relating to access to critical metering information, the incumbent energy traders submitted that there is no economically sensitive information that can be compromised as municipalities publish data on tariffs. Nevertheless, to address information exchange concerns, the Commission imposed conditions whereby the employees of the ESA Business shall not share confidential information with any employee of Energy Exchange

PART
C

PERFORMANCE INFORMATION

9 PROGRAMS & 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 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. 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 15: 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	• 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 Commission.

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, and further assess 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

In the 2022/23 financial year, the MCD had seven performance targets. Out of these, two targets were met, two targets were not met, and one target was exceeded. Additionally, two targets became not applicable as they were not triggered due to the absence of completed exemptions during the review period.

10.2 PERFORMANCE HIGHLIGHTS

In the financial year 2022/23, the MCD had forty-nine (49) complaints under investigation. The division completed twenty-five (25) investigations during the financial year: twenty-three (23) complaints were non-referred, and two (2) complaints were referred to the Tribunal for prosecution.

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

a. *Challenging Dominance in the LPG Market: Sunrise Energy (Pty) Ltd v Vita Gas (Pty) Ltd*

The Commission received a complaint against Vita Gas (Pty) Ltd ("Vita Gas"), lodged by Sunrise Energy (Pty) Ltd ("Sunrise") on 9 June 2020. The complaint relates to the LPG Handling and Throughput agreement concluded between Vita Gas and Sunrise in 2018 ("the throughput agreement"). Sunrise owns and operates an import and storage liquefied petroleum gas loading and storage facility ("LPG Terminal") in Saldanha Bay in the Western Cape. Sunrise does not import and trade LPG but operates the terminal. Sunrise was granted an open-access terminal licence by NERSA, meaning that the terminal should be accessible to all potential importers. The facility has five bullets, each with a storage capacity of 1 100 Metric Tonne (MT), making a total of 5 500 MT. Vita Gas is an LPG Aggregator/Importer, and it imports LPG through Sunrise's terminal and on-sells to wholesalers. Vita Gas and Sunrise are thus in a vertical relationship through a lessor-lessee arrangement.

The Commission investigated the complaint and concluded that the matter should be referred to the Tribunal. The Commission established that the Throughput agreement, inter alia, contains the following anti-competitive terms and features:

In terms of the agreement, Vita Gas is entitled to use all five bullets at the terminal exclusively with the provision that effectively only one bullet may be made available to other LPG importers or aggregators in certain circumstances. The available amount in a single bullet is not economically viable, and this, together with the terms of use, renders the allocation meaningless. In terms of the agreement, comingling with the product of Vita Gas is not permitted unless Vita Gas has provided its prior written consent thereto. As a result, third party customers of Sunrise can only utilise the storage facility if there is at least one bullet available with no Vita Gas product. Vita Gas has not previously consented to comingling and is unlikely to consent in future. The restriction on comingling is not justified in the circumstances.



In terms of the agreement, the incoming customer clauses impose penalty fees (such as demurrage fees) on Sunrise in instances where third party customers of Sunrise do not remove their stored LPG after the lapse of dwelling time of ten days. As a result, Sunrise only affords third party customers a ten-day dwelling time which further contributes to the capacity available to third party LPG importers or aggregators being meaningless and insufficient.

The duration of the agreement is for a period of five years but Sunrise grants Vita Gas the right to extend the agreement on the same terms and conditions for up to a maximum of three additional periods, each of five (5) calendar years. The maximum duration of the agreement is accordingly twenty (20) years and six (6) months.

This exclusive agreement covers almost 100% of the market for LPG import terminal services and facilities in the Western Cape, as Sunrise is the only LPG terminal operator in the Western Cape during the period of the Commission's investigation. The remaining throughput capacity at the Sunrise terminal which is available to third parties is rendered meaningless by the terms of the Throughput agreement.

The terms of the Throughput agreement ensure that at any given point in time, competitors (including potential competitors) of Vita Gas are unable to gain access to LPG import terminal services to import LPG in quantities and at prices that would afford them sufficient scale to enter, participate in, or expand in the market for the supply of LPG from import terminals and refineries in the Western Cape.

The Commission also found no refineries in the Western Cape producing LPG, with the Western Cape entirely relying on imported LPG, which comes through the Sunrise terminal. Consequently, the exclusive Throughput Agreement covers a substantial portion of the downstream market.

Further, the Commission's investigation revealed that the provisions of the Throughput Agreement were exclusive, onerous, restrictive, and favoured Vita Gas. They created, enhanced, and preserved Vita Gas' dominance in the market for the supply of LPG in the Western Cape, with likely significant foreclosure of Vita Gas' competitors and consumer harm.

As a result, the above conduct by Vita Gas constitutes anti-competitive conduct in contravention of Section 8(d)(i) and 8(1)(d) (i), alternatively 8(c) and 8(1)(c) of the Competition Act and has been referred to the Tribunal for prosecution.

b. *Ntonga Holdings (Pty) Ltd v Richards Bay Grindrod Terminals (Pty) Ltd & Transnet SOC Ltd*

On 2 July 2021, the Commission received a complaint from Ntonga Group Holdings (Pty) Ltd ("Ntonga") against Richards' Bay Grindrod Terminals ("RBGT") and Transnet SOC Ltd ("Transnet"), in relation to

two of its operating divisions namely, Transnet Freight Rail ("TFR") and Transnet Port Terminals ("TPT").

Ntonga set out the allegations in relation to Sections 8(1) (b) and/or 8(1) (c) of the Competition Act as follows:

Ntonga's ability to secure rail allocation with TFR is dependent on RBGT's port services allocation. For the period between 1 July 2021 to 31 March 2022, TFR presented Ntonga with a term sheet that proposed an initial rail capacity provision of 172 800 MT. After receiving the term sheet from TFR, Ntonga had requested RBGT to afford it back of port capacity for the equivalent amount of 172 800 MT, for the same period - at the Kusasa / Navitrade facility, to which Ntonga is accustomed.

On 21 June 2021, RBGT advised Ntonga that it would no longer be able to provide back-of-port capacity at the Kusasa / Navitrade facility but would be able to provide such at the Seamunye facility. Ntonga found this to be unsatisfactory since the handling costs at the Seamunye facility are higher and the facility is inferior, as it is located at the back of the port.

According to Ntonga, whilst it had agreed upon the rail term sheet with TFR, it alleged to have found itself at a disadvantage as it is not able to secure sufficient port facilities via the Kusasa / Navitrade terminal. As such, it will not be able to fulfill its obligations to TFR in terms of the term sheet which it had agreed upon, nor will it be able to fulfill its obligations to its' customers which may result in claims for damages.

Ntonga submits that Transnet and RBGT have colluded and restricted its capacity in relation to the allocation of rail and port services, in favour of multi-national companies. After investigation of the complaint, the Commission has decided not to refer the matter to the Tribunal for prosecution. The Commission did not find any evidence indicating that the respondents were colluding, or they have abused dominance as alleged by Ntonga. Although the complaint was non-referred, the Commission notes the following positive outcomes achieved through the investigation:

Ntonga has secured stockpiling capacity at TPTs' Multi- Purpose Terminal where it has been able to export 500 000 tons in merely six months of this calendar year. In addition, TPT has offered to increase Ntonga's stockpiling capacity to over 100 000 tons per month. The Commission obtained a concession from RBGT of allowing capacity sharing if some emerging players experience the minimum capacity requirement as being too onerous. In this regard, RBGT has agreed to allow smaller players to conclude volume sharing arrangements to achieve their capacity requirements. Ntonga is currently in the process of securing rail capacity from TFR, despite TFRs' capacity constraints. Ntonga has not been able to do this since 2021.

Transnet is in the process of developing a Rail Capacity Management Policy to enable emerging miners to secure rail capacity on the bulk export corridors. The policy is in response to various engagements raised by the Commission in this matter, and other matters wherein capacity constraints on rail were identified as a potential barrier to emerging miners.

Considering the above outcomes, the Commission notes the positive outcome which resulted from its investigation specifically in relation to small and medium enterprises.

c. Complaints in relation to the Automotives Aftermarkets, against BMW SA and Jaguar Land Rover Cape Town

The Commission received the complaints against BMW SA and Jaguar Land Rover Cape Town in February 2021 and August 2021, respectively, in relation to bundling of the purchase price of new vehicles and service and/or maintenance plans. The respective Complainants against BMW SA and Jaguar Land Rover Cape Town are Ms. Melissa Samuels (a Marketing Manager for Samuels Service Centre) and Ms. Kate Elliot (the CEO of Right to Repair South Africa).

The alleged conduct of BMW SA and Jaguar Land Rover Cape Town is in non-compliance of Sections 11.6.1.4 and 11.6.4.1 of the Guidelines for Competition in the South African Automotives Aftermarkets (the "Guidelines"). In terms of Section 11.6.1.4 of the Guidelines, OEMs will not hinder consumer choice to not purchase



value-added products (such as maintenance plans, services plans and extended warranties) when purchasing a motor vehicle. In terms of Section 11.6.4.1 of the Guidelines, approved dealers are required to provide consumers with complete disclosure of the purchase price of the motor vehicle and the purchase prices of the value-added products. The Commission assessed the complaints against BMW SA and Jaguar Land Rover Cape Town under Section 8(1)(d) (iii) and alternatively 8(1)(c) of the Competition Act. Section 8(1)(d)(iii) of the Competition Act prohibits a dominant firm from engaging in 'tying' and 'bundling'. Section 8(c) of the Competition Act prohibits a dominant firm from engaging in an exclusionary act if the anti-competitive effect of that act outweighs its technological, efficiency, or other pro-competitive gain.

In conducting the investigations, the Commission undertook several engagements with the Respondents. The Commission non-referred both complaints as the respondents took steps to unbundle the purchase price of new vehicles and service and/or maintenance

plans. On 31 August 2022, BMW SA indicated that on 01 July 2022 it implemented the unbundling of service plan and/or maintenance plan from vehicle sales for all new purchases of motor vehicles. This was confirmed in writing by the legal representative of BMW SA on 31 August 2022.

On 15 February 2023, Jaguar Land Rover Cape Town indicated that progress was made to comply with the Automotive Guidelines. The Jaguar Land Rover Cape Town representatives submitted that communication was made with its retailer partners through a bulletin regarding customers having the option to unbundle the service and/or maintenance plan from the purchase price of new Jaguar Land Rover vehicles at the point of sale. Jaguar Land Rover Cape Town indicated that further communication in respect of the appropriate point of sale material will follow before 01 April 2023.

The Commission was satisfied with the steps taken by the BMW SA and Jaguar Land Rover Cape Town to ensure compliance with Section 11 of the Automotive Guidelines by unbundling the service plan and/or maintenance plan from vehicle sales for all new purchases of motor vehicles. Considering the unbundling of the service plan and/or maintenance plan from vehicle sales for all new purchases of motor vehicles, the Commission non-referred the complaints in relation to the Automotives Aftermarkets, against BMW SA and Jaguar Land Rover Cape Town.

d. *The Commissioner vs. Sanofi Industries South Africa (Pty) Ltd, Sanofi Aventis South Africa (Pty) Ltd and Abbott Laboratories SA (Pty) Ltd*

On 30 March 2021, the Commissioner initiated a complaint in terms of Section 49B(1) of the Competition Act, against Sanofi Industries South Africa (Pty) Ltd (“Sanofi Industries”), Sanofi Aventis South Africa (Pty) Ltd (“Sanofi-Aventis”) and Abbott Laboratories SA (Pty) Ltd (“Abbott Laboratories”) for an alleged contravention of Sections 8(1)(a) and 4(1)(b)(i) 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:

- i. The Commission is of the view that, based on the price-cost test results, there is no prima facie evidence indicating that Sanofi has engaged in excessive pricing for its Vaxigrip Tetra (QIV) in South Africa and thus contravened Section 8(1)(a) of the Competition Act;
- ii. Similarly, the Commission is of the view that there is no prima facie evidence indicating that Abbott has engaged in excessive pricing for its Influvac Tetra (QIV) in South Africa and thus contravened Section 8(1)(a) of the Competition Act;
- iii. Using the price comparator approach, the Commission found that the prices, charged by both Abbott and Sanofi for their respective quadrivalent flu vaccines in South Africa, were among the lowest in the countries they supplied. As such, it is concluded that it is unlikely that Sanofi and Abbott may be excessively pricing in South Africa when comparing the price charged locally to other comparative countries;
- iv. The review of academic literature largely concludes that transitioning from the trivalent (TIV) to quadrivalent (QIV) is associated with positive outcomes for a public health policy particularly in instances when there is no mismatch between the vaccine and the flu lineage virus circulating in the country. The Commission concludes that from the cost effectiveness analysis, it is unlikely that an outcome of excessive pricing can be sustained for the price of the QIV (charged by Abbott or Sanofi); and
- v. Lastly, the Commission is of the view that Sanofi and Abbott did not engage in price fixing and/or were party to a concerted practice to increase prices for the annual flu vaccine by simultaneously removing the trivalent vaccine from supply in contravention of Section 4(1)(b)(i) of the Competition Act.

10.3 INITIATIONS

The Commission initiated seventeen (17) complaints in the 2022/23 financial year. Some initiated complaints are summarised below:

a. *The Commission vs. Pailpac (Pty) Ltd, Kansai Plascon (Pty) Ltd, AkzoNobel South Africa (Pty) Ltd and Prominent Paints (Pty) Ltd (“Pailpac I”) and The Commission vs. Pailpac (Pty) Ltd (“Pailpac II”)*

On 26 May 2022, the Commissioner initiated two complaints against Pailpac and shall be respectively known for ease of reference hereafter as the “Pailpac I” and “Pailpac II”. In terms of the Pailpac I, the Commissioner initiated the complaint for alleged contravention(s) of Section 8(1)(c) and/or 8(1)(d)(i) of the Competition Act; alternatively, Section 5(1) of the Competition Act. For purposes of Section 5(1) of the Competition Act, the co-respondents are Pailpac and its customers i.e. Kansai Plascon, AkzoNobel (Dulux) and Prominent Paints. Information in the Commission’s possession gave rise to a reasonable suspicion that Pailpac did, and continues to; engage in exclusionary and/or vertically restrictive conduct by imposing terms and conditions that are exclusive in nature to its customers. Further, it is alleged that Pailpac requires its customers to purchase most (if not all) of their container requirements from Pailpac.

In terms of the Pailpac II, the complaint was initiated against Pailpac (only). The Commission also had in its possession information indicating that Pailpac may have engaged in predatory pricing and/or price discrimination. It is alleged that Pailpac has engaged in the conduct of charging low volume customers of plastic paint containers prices that are below cost, as well as charging substantially higher prices to very large volume plastic container customers. This conduct may amount to a potential contravention of Sections 8(1) (d) (iv) and/or 9(1) of the Competition Act; respectively. The investigations against Pailpac are on-going.



10.4 EXEMPTIONS

During the financial year, the Commission did not finalise any exemption application. The Commission received three (3) new exemption applications in the financial year. These exemption applications are still under investigation, and they were filed by the following parties:

- i. Independent Practitioners Association Foundation – filed on 07 April 2022
- ii. The South African Orthopaedic Association – filed on 15 December 2022
- iii. The South African Guild of Actors and the Personal Managers Association- filed on 17 October 2022.

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 CD is also responsible for administering the Commission's CLP, through which a self-confessing cartel member may report a cartel in exchange for immunity from prosecution.

One of the investigation tools available to the Commission is the use of dawn raids. A dawn raid, which the 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 had six (6) performance targets applicable in the 2022/23 financial year. The Cartels Division met two (2) targets, exceeded one (1) target and did not meet three (3) targets.

11.2 PERFORMANCE HIGHLIGHTS

During the 2022/23 financial year, the Commission received sixteen (16) cartel complaints from third parties and initiated five (5) cartel investigations. A total of twenty-eight (28) cartel investigations were completed during financial year 2022/23. Of these, seven (7) were referred to the Tribunal for prosecution, while twenty-one (21) were non-referred. The Cartels Division received seven (7) CLP applications in 2022/23 financial year. The Cartels Division conducted one (1) dawn raid in the 2022/23 financial year.

Table 16: Cartels case statistics

CARTEL CASES RECEIVED, INVESTIGATED AND FINALISED	2019/20	2020/21	2021/22	2022/23
CASES RECEIVED FROM THIRD PARTIES	6	23	29	16
CASES INITIATED BY THE COMMISSION	2	5	5	5
COMPLETED INVESTIGATIONS	25	28	35	28
REFERRALS TO THE TRIBUNAL	9	6	11	7
CASES NON-REFERRED	12	22	23	21

Key cartel investigations are discussed below:

a. *Sdumo Housing Trust vs. Ngangalala Trading CC and GS United Holdings (Pty) Ltd*

On 10 June 2021, the Commission received a complaint from Sdumo Housing Trust alleging that Ngangalala Trading CC (“Ngangalala Trading”) and GS United Holdings Pty (Ltd) (“GS United”), may have entered into an agreement and / or have engaged in a concerted practice to tender collusively in contravention of Section 4(1)(b)(i) and (iii) of the Competition Act when bidding for tender number: SCM U11-20/21-062. The tender was issued by the Eastern Cape Department of Human Settlements for the construction of 362 RDP housing units in Cabazana, Eastern Cape. The Complainant in this case alleged that Ngangalala Trading and GS United came up with a scheme in terms of which either of them would be awarded the tender. As result of this arrangement, when GS United was eventually awarded the tender, it surrendered it to Ngangalala Trading.

The investigation found that the bids submitted by the respondents contained similarities in relation to prices of several line items. There were also corresponding mistakes in the two firms’ bid documents. This is evidence of coordination in the preparation of bids in response to the above-mentioned tender which amounts to price fixing and collusive tendering in contravention of Section 4(1)(b)(i) and (iii) of the Competition Act. The Commission took a decision to refer the matter to the Tribunal for adjudication.

b. *The Commission vs. Brian Pienaar (Pty) Ltd, Brian Pienaar North (Pty) Ltd and Pienaar Brothers (Pty) Ltd*

On 16 August 2022, the Commission referred a complaint against Brian Pienaar (Pty) Ltd, Brian Pienaar North (Pty) Ltd (both referred to as “Pienaar North”) and Pienaar Brothers (Pty) Ltd (“Pienaar Brothers”) to the Tribunal for adjudication. The complaint referral arises from a complaint that was initiated by the Commissioner on 17 February 2022 in terms of Section 49B(1) of the Competition Act against Pienaar North and Pienaar Brothers for allegedly entering into an agreement and / or engaging in a concerted practice to divide markets in contravention of Section 4(1)(b)(ii) of the Competition Act.

The investigation found that the above-mentioned companies divided markets by allocating territories and/or customers when they agreed that Pienaar North would not sell safety and PPE products to the coastal regions of the country where Pienaar Brothers operates. Likewise, Pienaar Brothers agreed that it would refrain from selling safety and PPE products to the northern regions of the country, the region where Pienaar North Group operates.

c. *The Commission vs. Takealot online (RF) (Pty) Ltd and Medmart and BabyBug*

On 17 February 2022, the Commission initiated a complaint against Medmart Health (Pty) Ltd (Medmart) and Mr Alon Lever t/a Babybug (Babybug), collectively referred to as “the respondents”, in terms of



Section 49b(1) of the Competition Act for contravening Section 4(1)(b) (i) and (ii) of the Competition Act.

The investigation found that Medmart and Babybug, as competitors in the market for the supply of personal protective equipment (PPE), agreed to fix prices and divide markets. The respondents sell PPE products, specifically 3PLYL2 and 3PLYL3 masks, on the Takealot platform. In December 2020, the respondents agreed to manipulate the prices of 3PLYL2 and 3PLYL3 masks to make profit. This was achieved by allocating to each other days on which they would adjust prices (R79.00 to R90.00 per pack of 50 3-ply face masks) and limit stock availability of these masks to reduce competition amongst them. This agreement also included that each respondent would alternate on which day their advertised prices would be higher than the other respondent on the Takealot platform.

The Commission's investigation of the matter found that the respondents have contravened Section 4(1)(b)(i) & (ii) of the Competition Act and referred the matter to the Tribunal for prosecution.

d. *The Commission vs. ASIB and Sprinkler Installers*

On 16 May 2022, the Tribunal partly heard a complaint referral against Automatic Sprinkler Installation Bureau (ASIB) and all sprinkler installers listed with ASIB (Listed Installers). On 19 September 2022, the Tribunal resumed the hearing of the matter. At the resumption of the hearing, out of the 17 respondents that were referred to the Tribunal for prosecution, only 7 respondents faced prosecution and the balance of 10 settled with the Commission. The Tribunal heard the matter and reserved judgment.

The allegations against ASIB and its Listed Installers are that they agreed to allocate to each other specific services in terms of which ASIB would provide inspection services while the Listed Installers would provide automatic sprinkler installation services, and that Listed Installers will not conduct business in territories (provinces/regions) where they are not listed (registered with ASIB) and that they should only conduct business in territories (provinces/regions) where they are listed.



The listed installers that have settled with the Commission are as follows:

Jasco Security; Belfa Solutions; Sylvester Fire; Whip Fire; Cross Fire Management (Pty) Ltd; Fire Check CC; Centa KZN Sprinklers CC; East Coast Distributors CC t/a Fire King CC; Bhubesi Fire Projects (Pty) Ltd; and Country Contracts CC.

These firms have, in addition to each paying an administrative penalty, undertaken to cease adhering to ASIB rules that divide markets.

Dawn raid conducted in the financial year is discussed below:

a. *The Commission vs. Liberty Group and Others (Long-term insurance):*

On 25 August 2022, the Commission conducted a search and seizure operation at the premises of 8 major insurance companies operating in Gauteng, KwaZulu-Natal, and Western Cape provinces. The companies that were raided are Brightrock, Discovery, FMIM, Hollard, Momentum/Metropolitan Holdings, Old Mutual, PPS and Sanlam, collectively the respondents.

The Commission obtained information that indicates that long term insurers have been sharing price information, which they allegedly use to price and adjust prices of their respective existing

and new long-term insurance products. The information they share includes premium rates for risk-related products and fees for investment products. Premium rates for risk related products and fees for investment are prices for these products. In addition to price information, long term insurers have shared technical product information, which they allegedly used in product designs and reviews.

The investment and risk related insurance products that are affected are retirement annuity and life insurance cover such as dread disease cover / chronic medical condition cover, disability cover, life cover and funeral assistance benefits. The respondents sell these products to their customers, which are natural persons as well as grouped lives such as retirement funds.

According to the information at the disposal of the Commission, the sharing of this information enables the respondents to check their premiums for risk related insurance products and fees for investments products against those charged by their competitors and adjust them accordingly, if necessary. The sharing of this information also enables the respondents to align with their competitors in the development and pricing of new insurance products. For example, both product price and technical information may be considered in the design and review of products, such that product features and pricing is altered to achieve alignment with competitors.

The sharing of this kind of information on a reciprocal basis therefore results in the respondents coordinating pricing. This kind of coordination in pricing and product development amounts to price fixing and/or fixing of the trading conditions which is prohibited by Section 4(1)(b)(i) of the Competition Act. The Commission seized hard copies of documents and electronic data during this operation which will be used to further investigate the matter.



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 either small, intermediate, or large, depending on the turnover or asset values of the merging firms. The Commission receives a filing fee for every intermediate and 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. Further, the small merger guidelines were revised from 1 December 2022 to account for concerns that potentially anti-competitive acquisitions in digital or technology markets are escaping regulatory scrutiny. This was due to the acquisitions taking place at an early stage in the life of the target firm before these firms have generated sufficient turnover or accumulated the required capital and physical assets that would

trigger mandatory merger notification as set by the turnover or asset thresholds.

Therefore, the Commission now 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, if there is an ongoing investigation in the relevant market, or in cases where the acquiring firm's turnover or asset value alone exceeds the large merger combined asset/turnover threshold (currently R6.6 billion) and at least one of the following criteria is met for the target firm:

- the consideration for the acquisition or investment exceeds the target firm asset/turnover threshold for large mergers (currently R190 million).
- the consideration for the acquisition of a part of the target firm is less than the R190 million threshold but effectively values the target firm at R190 million or more.

The merger thresholds were last revised in October 2017 and are set out in the table below.

Table 17: Mergers and acquisitions thresholds applicable in the 2022/23 financial year

Threshold	Combined turnover or asset value	Target turnover or asset value	Size of the merger	Filing fee
Lower threshold	R600 000 000	R 100 000 000	Intermediate	R 165,000.00
Higher threshold	R6 600 000 000	R 190 000 000	Large	R 550,000.00

12.1 PERFORMANCE AGAINST TARGETS

For operational efficiency, the Commission classifies 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 raised. The Commission has published service standards for the time periods it takes to complete a merger 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. Table 18 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 while table 19 sets out the Commission’s performance against the targets it sets for the completion of mergers.

Table 18: 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

The Commission met all its turnaround time targets in the 2022/23 financial year. Phase 1 (non-complex) cases should be completed within 20 days and the Commission achieved an average turnaround time of 16 days. Phase 2 (complex) cases have a turnaround time target of 45 days and the Commission completed 205 Phase 2 cases with an average turnaround time of 41 days. Phase 3 (highly complex) intermediate and small mergers have a turnaround time target of 60 while the target for the completion of 90% of Phase 3 large mergers is 120 days. The Commission met both of these targets, completing Phase 3 intermediate and small mergers in an average of 58 days and completing 90% of Phase 3 large mergers in an average of 99 days.

Table 19: Average turn-around times in 2022/23 against service standards

Phase	Service standard	Total number of transactions (excluding withdrawn and no jurisdiction cases)	Average turnaround time
Phase 1	20	35	16
Phase 2	45	205	41
Phase 3 (small and intermediate)	60	6	58
90% of Phase 3 (large merger investigations)	120	13	99

12.2 TRENDS IN NOTIFICATION AND APPROVAL OVER THE PAST FIVE YEARS

Table 20 sets out the trends in merger notification and completion over the five years from 2018/19 to 2022/23. Two notable trends are apparent from the data. Firstly, the Commission saw a marked decline in the number of merger notifications in 2020/21, likely due to the decline in economic activity during the global Covid-19 lockdowns in the 2020 calendar year. Merger notifications declined by approximately 30.5% between 2018/19 and 2020/21 before increasing at a moderate rate of 12.8% between 2020/21 and 2022/23.

Secondly, there has been a notable increase in the number of conditional approvals over the five-year period. This coincides with greater focus on the implementation of the amendments to the public interest provisions from the 2020/21 financial year.

The amendments introduced two significant changes. Firstly, to address concerns around a lack of transformation and participation in markets, the amendments imposed a positive obligation, in all mergers, to promote a greater spread of ownership in firms in the market, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms. To address entry, participation and competitive dynamism, the amendments also specify that the Commission should assess the effect of a merger on the ability of SMEs, or firms controlled or owned by HDPs to effectively enter into, participate in or expand within a market.

To illustrate the trend in conditional approvals, we note that conditional approvals accounted for about 12.2% of cases finalised in the 2018/19 financial year. This declined to 10.4% of all approvals in 2019/20 before increasing to 15.1% of cases finalised in the 2020/21 financial year, 24.9% of cases finalised in the 2021/22 financial year and 26.4% of cases finalised in the 2022/23 financial year.

Many of the conditions imposed in the 2022/23 financial year relate to remedies that address the promotion of a greater spread of ownership in firms in the market. In this regard, the Commission notes that merger parties agreed to implement employee share ownership plans in 28% of mergers that raised concerns related to this public interest factor.

The Commission has also seen an increasing number of conditions relating to initiatives aimed at promoting the entry, participation and growth of small firms and firms owned and controlled by HDPs in value chains affected by mergers. In this regard, the Commission had a 32% conditional approvals. The impact of the remedies imposed in mergers in the 2022/23 financial is estimated below.

Table 20: Mergers notified and reviewed over five years

L: Large | **I:** Intermediate | **S:** Small

	2018/19			2019/20			2020/21			2021/22			2022/23		
	L	I	S	L	I	S	L	I	S	L	I	S	L	I	S
Notified	348			302			242			295			273		
	104	235	9	82	217	3	72	161	9	89	197	9	105	165	6
Finalised	336			318			225			297			258		
	106	221	9	84	230	4	67	150	8	92	200	5	94	154	10
Approved without conditions	287			278			189			216			189		
	85	196	6	69	206	3	50	132	4	60	152	4	62	122	5
Approved with conditions	41			33			34			74			68		
	18	21	2	13	19	1	16	17	1	30	44	0	32	31	5
Prohibited	4			7			2			5			1		
	1	2	1	2	5	0	1	1	0	2	3	0	0	1	0
Withdrawn / No jurisdiction	4			3			2			2			6		
	2	2	0	1	2	0	0	1	1	0	1	1	2	4	0

12.3 THE IMPACT OF PUBLIC INTEREST CONDITIONS IMPOSED IN MERGERS IN 2022/23

During the financial year 2022/23, the Commission recommended and/or imposed conditions on sixty-eight (68) merger cases.

Employment conditions imposed in mergers

The Commission's intervention in mergers resulted in a net saving of 2 243 jobs in nine cases (see table 21 below). The table does not depict the full extent of the impact of merger control on employment as it does not include the impact of moratoria on retrenchments imposed as conditions to mergers but only focuses on the

quantitative aspects of the employment conditions imposed.

Moratorias on merger-specific retrenchments of between 2 and 5 years were imposed in 23 transactions during the 2022/23 financial year and commitments for the preferential re-employment of previously retrenched employees were imposed in a further 2 cases. The protection provided to workers thus extends beyond the net effect on employment set out in the table below.

Table 21: Impact of Mergers on Jobs in the 2022/23 FY

Month	Jobs lost	Jobs saved	Intended job creation	No. of cases	Net effect
April	0	0	330	1	330
May	0	0	0	0	0
June	0	0	0	0	0
July	0	307	0	1	307
August	0	860	0	1	860
September	0	155	73	1	228
October	0	0	0	0	0
November	0	91	30	2	121
December	0	187	300	2	487
January	0	0	0	0	0
February	0	0	10	1	10
March	0	0	0	0	0
Total	0	1600	743	9	2 243

Source: M&A database

Impact of mergers on 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

During the 2022/23 financial year, the Commission imposed conditions that promote ownership by workers and HDPs in 34

cases, with ESOPs imposed in 22 cases and HDP transactions in 12 cases (noting that some cases had both ESOP and HDP ownership conditions). The total value of ESOPs imposed in 2022/23 is estimated at R22.9bn, although three large mergers (Shoprite/Massmart, Heineken/Distell and Manta/Mediclinic) accounted for about 70% of this value.

The HDP transactions imposed in mergers created about R5.1bn in value across 11 cases. These values are indicative of an increasing commitment by firms to ensure that workers and HDPs participate meaningfully in economic activity.

In designing ESOP commitments, the Commission considers whether the ESOP covers a broad base of workers, and that ESOPs are established at no cost to workers. Where vendor financing is required, merger parties are requested to provide this funding on preferential terms. Firms are also required to consider that workers form part of the ownership/control structures of ESOPs. Increasingly, merger parties have also agreed to conditions that workers be included on the boards of the merged entity to ensure that workers can participate in the strategic and operational decisions of firms.

In terms of HDP transactions, the Commission believes that it is beneficial for these stakes to be substantial enough to ensure that HDPs participate meaningfully in the management of firms, ensuring that HDPs develop the capabilities and skills required to participate in the economy. This also ensures that conditions are responsive to the requirement to promote ownership and control in firms in the market.

Table 22: Mergers approved with conditions that promote transformation

Quarter	Number of HDP transactions	Value of HDP transactions	Number of ESOPs	Value of ESOPs
Q1 (Apr – Jun)	3	R37 million	5	R10.4 billion
Q2 (Jul – Sep)	1	R4.8 billion	3	R3.5 billion
Q3 (Oct – Dec)	3	R25.3 million	6	R1.1 billion
Q4 (Jan – Mar)	5	R199.6 million	8	R8 billion

Impact of mergers on the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the market

In assessing the impact of mergers on the entry, participation and expansion of SME and HDP-owned firms, the Commission considered the number of mergers in which supplier/enterprise development funds were established to promote participation by small and black-owned firms, as well as procurement commitments explicitly aimed at either maintaining or increasing procurement from small/HDP-owned firms. These commitments are an important mechanism to ensure that small and HDP-owned firms develop the capabilities they require to improve competitiveness and expand within the relevant market.

In crafting conditions that are responsive to this public interest factor, the Commission pays particular attention to the sustainability of the commitments, favouring commitments that ensure that the firms intended to benefit from these commitments are incorporated into the value chains of the merger parties.

Where a merger may result in precarity for small/HDP-owned firms, such as where the procurement practices of the acquiring firm differ from those of the target firm, the Commission will usually request that the acquiring firm commits to maintaining supply agreements with small and HDP-owned firms. This aligns incentives between the merged entity and small/HDP-owned firms and ensures that mergers are more likely to translate into the longer-time growth for small firms.

In total, the conditions imposed to promote participation by small and HDP-owned firms in 2022/23 amounted to approximately R36.8 billion in supplier development and procurement commitments. However, the majority of this spend is attributable to substantial procurement commitments made pursuant to the Heineken/Distell transaction.

12.4 SIGNIFICANT M&A MATTERS FINALISED BY THE COMMISSION IN 2022/23

This section discussed three complex mergers assessed in the 2022/23 financial year. The first is the Akzo/Kansai merger which the Commission recommended that it be prohibited based on substantial competition concerns. The second, GIL/John Menzies, raised substantial competition and public interest concerns which were addressed through a divestiture remedy. The final merger discussed is the Heineken (Sunside)/Distell transaction which raised substantial competition concerns in the market for flavoured alcoholic beverages (and cider in particular). The merger was approved subject to a divestiture remedy as well as a comprehensive package of public interest commitments including the establishment of an employee share ownership scheme, employment protection and commitments to promote entry and participation by small/HDP-owned firms.

a. **Akzo Nobel N.V. (Akzonobel) and Kansai Plascon**

On 8 August 2022, the Competition Commission (Commission) received notice of an intermediate merger in terms of which Akzo Nobel N.V. (AkzoNobel) intends to acquire (i) Kansai Plascon Africa Ltd (KPAL), and (ii) Kansai Plascon East Africa (Pty) Ltd (KPEA). AkzoNobel and its subsidiaries are collectively referred to as the “acquiring group” whereas KPAL and KPEA will collectively be referred to as “target firms”.

The acquiring group manufactures decorative and industrial (or “performance”) coatings and has three manufacturing plants in South Africa – two located in Gauteng (in Alberton and Vanderbijlpark) and one, its largest, in Kwa-Zulu Natal (in Umbogintwini). The acquiring group’s South African manufacturing plants produce decorative coatings and industrial coatings products sold in South Africa, as well as a number of products that are exported to other countries in Africa.

In South Africa, the target firms operate through KPAL which manufactures decorative coatings and industrial coatings. KPAL supplies its coating in South Africa, Zimbabwe, Botswana, Namibia, Malawi, Zambia, Eswatini, and Mauritius amongst others. In South Africa, KPAL has four manufacturing plants – two located in Gauteng

(Krugersdorp and Clayville), one in Kwa-Zulu Natal (Mobenji), and one in the Eastern Cape (Gqeberha). KPAL also manufactures colourants. Colourants are substances used to add colour to, or change colour of, a factory-produced base paint utilizing paint tinting equipment.

Relevant market

The Commission assessed the effect of the proposed merger in the following markets:

- a. The broad market for the manufacture and supply of decorative coating products nationally;
- b. The manufacture and supply of decorative coating products, nationally, based on the following segments of the broader market:
 - i. Product tiers (i.e., (i) premium, (ii) mid-tier and (iii) economy); and
 - ii. Customer segment (i.e., (i) retail and (ii) specified trade customers).
- c. The manufacture and supply of colourants and tints nationally; and
- d. The manufacture and supply of industrial coating products based on intended use and application.

Market share assessment and the levels of concentration

Broad market for the manufacture and supply of decorative paint

In the broad market for the manufacture and supply of decorative paint, the merger parties’ analysis shows that they are the first and second largest decorative paint manufacturers in the market and will, post-merger, be the single largest manufacturer and supplier of decorative coatings.

To estimate market shares, the Commission relied on two sources: the parties’ internal documents and the volume and value data submitted by market participants. Based on the merger parties’ internal marketing documents, the merged entity has an estimated combined market

share of above 50% in decorative coatings, well above the market share submitted in the merger parties' expert economic report. The next largest competitor is Duram.

The Commission finds that the merger parties are close competitors in the broad market and that they are the top two firms, by market share, in this broad market. The merger will thus remove competitive rivalry between the top two firms in the market for the manufacture and supply of decorative coatings.

Narrow markets based on product tiers (i.e., (i) premium, (ii) mid-tier and (iii) economy) of decorative coating products

In the premium segment, the merger parties' combined post-merger market share is above 70% based on both value and volume. The proposed merger would thus create a dominant manufacturer and supplier of premium decorative coatings. This was also confirmed by several customers and competitors contacted by the Commission who indicated that the merged entity will be dominant in the premium tier.

In the mid-tier and economy segments, the Commission found that the merger parties' market shares will remain relatively low. This accords with the views of customers and competitors.

Narrow markets based on customer segment (i.e., (i) retail and (ii) specified trade customers)

In the mass retail segment, the merged entity will have an estimated market share above 30% with Promac following in second place and Duram in third place. In the independent retail segment, the merged entity will have an estimated market share of above 40% with Duram following in second place. In the specified trade segment, the merged entity will have an estimated market share above 50%. The Commission notes that merger parties are significant suppliers across all segments.

Market share relating to the manufacture and supply of colourants and tints nationally.

The Commission found that the merged entity would have a combined market share above 40% of the in-store colour tinting market by value. Market share relating to the manufacture and supply of industrial coating products based on intended use and application.

The Commission engaged with the customers and competitors of the merger parties to understand whether there are competition concerns in the market for the manufacture and supply of industrial coatings. None of the customers raised concerns relating to industrial coatings.

Due to a lack of concerns from customers relating to the industrial coatings market, as well as the fact that the merger parties are not considered close competitors in this market, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the manufacture and supply of industrial coating. Thus, the Commission did not investigate this market any further.

Unilateral effects assessment for decorative paint (both broad and narrow markets)

The Commission considered the merger parties' internal strategic documents which clearly show that the merger parties both monitor and track each other's marketing strategies, brand equity and marketing spend. More importantly, these documents show that the merger parties are typically viewed in a similar fashion by consumers, that there is a clear link between their brand equity and that this equity is distinct from other players in the market. Lastly, these documents indicate that the parties view each other as close competitors in the manufacture and supply of decorative coatings in South Africa.

Industry participants indicate that competitors of the merger parties tend to focus on the mid-tier and economy coatings segments as they are unable to compete with the heritage brands of the merger parties at the premium level. This is because the merger parties' brands have strong equity in the market and thus enjoy significant customer loyalty. Price analysis and strategic documents.

The Commission undertook a pricing analysis on a select number of KPAL and AkzoNobel brands that are viewed as comparator products. The assessment confirmed that the merger parties tend to price close



to each other and that there is a distinct gap between their pricing and that of the rest of the market. Cumulatively, the merger parties' internal strategic documents, the Commission's pricing analysis and the views of customers and competitors indicate that the merger parties are close competitors, particularly in the premium segment while they face some competition in the lower quality tiers of the market.

Assessment of potential foreclosure effects relating to colourants as inputs in the manufacturing of decorative coatings

The Commission found that the merger parties have both the ability and incentives to foreclose its competitors access to colourants.

Conclusion on competition assessment

The Commission concluded that the proposed transaction is likely to result in a substantial prevention or lessening of competition. The merger parties have not provided evidence of merger-specific technological, efficiency or other procompetitive gain which will be greater than, and offset, the effects of the prevention or lessening of competition arising from the proposed transaction.

Public interest assessment

The Commission received concerns from trade unions that the proposed transaction will lead to massive job losses, among other concerns.

The merger parties were willing to commit that, for a certain number of years following the closing date, there will be no merger-related retrenchments for employees falling below certain grades. Further, AkzoNobel will invest in several projects unless material and substantial changes to the macro-economic and/or regulatory conditions in South Africa occur which prevent the planned growth strategy of the merged entity.

The merged entity also committed to procuring inputs locally and to at least maintain (and where possible, grow) the level of annual procurement of its inputs from suppliers in South Africa, provided that the inputs are able to be procured locally on commercially reasonable and practical terms.

The merger parties submit that the merged entity aims to support around 2,500 South African painters by providing training and materials to support these painters to obtain the necessary qualifications to become accredited tradesmen.

Do the public interest commitments outweigh the concerns resulting from the proposed merger?

The Commission considered whether the commitments made by the parties regarding planned investments, localisation and training outweigh the competition and public interest concerns arising from the merger. Regarding the investment commitments, the Commission found no evidence of substantial merger-specific increases in pre-merger plans. With respect to localisation, there is similarly no commitment to increasing the existing spend on local firms but only to continue with existing/pre-merger spend on local firms. With respect to the development of 2500 South African painters, it is not clear if the merger parties anticipate continued investment to ensure sustainability and growth of these enterprises. Therefore, the Commission took the view that the conditions / commitments proposed by the merger parties are unlikely to adequately remedy the significant competition concerns that arise from the merger.

Conclusion

The Commission prohibited the proposed transaction.

b. GIL International Holdings V Limited, a subsidiary of Agility Public Warehousing Company K.S.C.P and John Menzies Plc

On 14 July 2022, the Commission approved - with conditions - an intermediate merger whereby GIL International Holdings V Limited ("GIL") intends to acquire 100% of the issued share capital of John Menzies Plc ("Menzies"). This is an international transaction notified to the Commission by virtue of the merging parties' activities in South Africa. Apart from South Africa, the proposed merger has been notified in the United States of America (US) and Pakistan. Both the US and Pakistan have cleared the proposed merger unconditionally.

The primary acquiring firm is GIL, a private company incorporated in accordance with the laws of the United Arab Emirates. GIL is a subsidiary of Agility Public Warehousing Company K.S.C.P ("Agility"), a public company listed on the Boursa Kuwait and the Dubai Stock Exchange. In South Africa, Agility controls NAS Colossal Aviation Services (Pty) Ltd ("NAS Colossal"). GIL and its controller (Agility) do not

have any HDP shareholding. However, NAS Colossal (a South African subsidiary of Agility) has a substantial HDP shareholding. Agility and all its subsidiaries are collectively referred to as the "acquiring group".

The Acquiring Group provides ground handling and airport services across Africa, South Asia, and the Middle East. Ground handling and airport services include ramp handling and passenger handling services, baggage handling services, cargo handling, lounge management, airport technologies, aviation training, travel solutions, meet-and-assist packages, and other airport services. The Acquiring Group has a presence in more than 30 airports across the Middle East, Africa, and South Asia.

In South Africa, the acquiring group is active through NAS Colossal (previously known as BidAir Services (Pty) Ltd ("BidAir") which is involved in providing ground handling services to airlines. NAS Colossal provides ground handling services in several airports managed by the Airports Company of South Africa SOC Limited ("ACSA").

The primary target firm is Menzies, a public company incorporated in accordance with the laws of Scotland. Menzies is listed on the London Stock Exchange and no single firm or shareholder controls it. Menzies has several subsidiaries globally. Menzies does not have any HDP shareholding. However, Menzies Aviation Handling, a South African subsidiary of Menzies, has a substantial HDP shareholding. Menzies and its subsidiaries will be referred to as the "target group". The target group is a global aviation services business providing ground handling, cargo handling, cargo forwarding and fuel services. In South Africa, the target group provides ground handling services at ACSA Managed Airports through its South African subsidiaries.

Competition assessment

The Commission found that there was an overlap between the Competition Activities of the merger parties in that they are both active in the provision of ground handling services at ACSA Managed Airports. The Commission found that to be able to provide ground handling services at ACSA Managed Airports, service providers require a license from ACSA. That is, ground handlers are appointed by ACSA through a competitive tender process to provide ground

handling services at ACSA Managed Airports for a period of five (5) years. Pursuant to a 2008 tender process and prior to the recent tender concluded in May 2022, ACSA had appointed three (3) ground handlers, NAS Colossal (part of the Acquiring Group), Menzies (target group) and Swissport. Customers (i.e., airlines) then have the option of selecting and contracting with any one of these licensed service providers.

However, following the finalization of the recent tender by ACSA, Menzies (target group) and NAS Colossal (part of the acquiring group) will be the only firms appointed to provide ground handling services at ACSA Managed Airports. That is, the parties will have a 100% market share in the provision of ground handling services for the period 1 October 2022 to 1 October 2027, meaning that this is a merger to monopoly.

Since this is a tender market where prices are determined at the bidding stage, the Commission assessed whether the parties would have the ability to increase prices to airlines post-merger. The Commission has also considered (i) the closeness of competition between the merger parties; (ii) barriers to entry; (iii) countervailing power; and (iv) removal of an effective competitor in its unilateral effects assessment.

The Commission undertook a tender analysis to assess the closeness of competition between the merger parties. The Commission relied on bidding information provided by ACSA for the period 2008-2021. The analysis shows that since 2008, only three (3) ground handlers (i.e., Swissport, NAS Colossal and Menzies) participated in tenders and were appointed to provide ground handling services at ACSA Managed Airports. Given this, the Commission found that the proposed transaction will remove a significant competitive constraint from the market by reducing the number of firms that can compete for ACSA contracts from 3 to 2.

In addition to the above, the Commission thus assessed the effect of the proposed merger on the market in its current state where the merger parties are the only ACSA-appointed ground handlers. A pricing analysis shows that the merger parties are close competitors. Therefore, the Commission found that the merger is likely to result in unilateral price effects in that the merger parties will be able to significantly raise their prices post-merger. Regarding countervailing power, the proposed merger weakens the ability of airlines to bargain against the merged entity and places the merged entity in a very strong negotiation position with airlines. The Commission also found that the main barrier to entry is the license requirements imposed by ACSA. Importantly, there is no indication of a new entrant in the market since 2008.

Considering the above, the Commission was of the view that the proposed merger was likely to substantially prevent or lessen competition as it significantly reduces competition in the market for the provision of ground handling services at ACSA Managed Airports. The Commission also received several concerns from industry participants indicating that the merger will substantially prevent or lessen competition as it is a merger to monopoly. Airlines were also concerned



that the merger will affect their bargaining power in that they will not be able to play the merger parties' prices against each other.

Public Interest Analysis

The Commission found that the merger was likely to have a substantial negative effect on the ability of firms owned/controlled by HDPs to participate in and expand within the market for the provision of ground handling and related services at ACSA managed airport. Specifically, the merger raised the risk of NAS Colossal losing its ACSA license for ground handling services if the sale of the business is not effected promptly. To remedy both the competition concerns and the public interest concerns arising from the merger, the merger parties proposed a divestiture condition in terms of which Agility agreed to divest its shareholding interest in NAS Colossal to the existing shareholders during a specified period. Should the existing shareholders on NAS Colossal fail to acquire the Agility's shareholdings in NAS Colossal, Agility shall dispose of its shareholdings in NAS Colossal during the specified period.

In terms of the divestiture business, the merger parties are required to put in place hold-separate arrangements in respect of their South African Business to ensure that no Competitively Sensitive Information is shared between the businesses of the respective South African ground handling businesses during the divestiture period. The Condition also requires Agility to continue providing technical support to NAS Colossal during the divestiture period to ensure that the business remain competitive.

c. *Merger Between Sunside Acquisitions Proprietary Limited (NEWCO) and Namibian Breweries Investment Holdings Limited (NIH)*

On 9 September 2022 the Commission recommended that the Tribunal approve with conditions the proposed transaction whereby the Heineken Group through Sunside Acquisitions Proprietary Limited (Newco) intends to acquire a controlling interest in Namibian Breweries Investment Holdings Limited (NIH) and the flavoured alcoholic beverages (FABs), wine, and spirits operations of Distell Group Holdings Limited (the "In-Scope Assets"). The primary

acquiring firm is Newco, a special purpose vehicle controlled by the Heineken Group.

In South Africa, the Heineken Group operates the Sedibeng brewery, producing a range of beers including, amongst others, Heineken, Amstel, and Windhoek. Prior to the merger, Heineken entered into various agreements with Namibian Breweries Limited (NBL) to manufacture, market, and distribute NBL's products, such as Windhoek, in South Africa. Heineken also owns and operates a network of distribution depots and undertakes its own primary and secondary distribution to supply its products across South Africa. Heineken launched Strongbow (a cider brand) in South Africa in 2016 and also manufactures and supplies several South African craft beer brands including Jack Black and Stellenbrau. Further, Heineken also owns Fox, a cider brand introduced in 2020. Aside from Distell, Heineken is the only significant manufacturer of ciders in South Africa.

The primary target firms are NIH, and the In-Scope Assets of Distell. NIH is controlled by Ohlthaver & List Beverage Company (Pty) (O&L) and the Heineken Group. The In-Scope Assets comprise of the FABs, and spirits and wine business of Distell. In the FABs segment, the transaction includes the two largest cider brands in South Africa, Hunter's, and Savanna. The Distell brands that will be excluded from the transaction include Black Bottle, Bunnahabhain, Burn McKenzie, Deanston, Gordons Gin, Scottish Leader, and Tobermory Gin (Out-Of-Scope Assets). Post-merger, the Out-Of-Scope Assets will be owned by Capevin Holdings Proprietary Limited (Capevin).

The Commission found that the merger results in a horizontal overlap in the broad market for FABs and in the narrow market for ciders. The evidence collected by the Commission shows that there is stronger competition between cider brands than between ciders and other FABs. This distinction is material because, although Distell owns several FABs, it also owns the two largest cider brands in the country (Savanna and Hunter's) while Heineken owns the Strongbow and Fox brands in South Africa. There are other manufacturers within the FABs market, but the merging parties are the largest manufacturers of cider in South Africa. Taken as a whole, the Commission found that the proposed transaction is likely to substantially prevent or lessen

competition in the market for FABs and ciders as the merged entity will be a dominant supplier of FABs with a market share above 65% and would be the largest supplier of cider in South Africa.

To address the competition concerns arising from the transaction, Heineken has committed to divest its Strongbow business in South Africa and other SACU countries (Strongbow Divestiture). The Strongbow Divestiture will be implemented in a manner that promotes transformation in the industry. The Commission and the merging parties have also agreed to a number of public interest commitments in South Africa. In this regard, the merged entity committed to:

- Invest more than R10 billion over a period of five years to maintain and grow the aggregate productive capacity of its operations and related facilities in South Africa,
- Implement an Employee Share Ownership Scheme that will transfer more than R3bn of equity to workers of the merged entity's South African operations,
- Establish a R400mn Supplier Development Fund to invest in SMEs and HDP-controlled suppliers,
- Contribute R200mn to promote localisation and growth initiatives within South Africa,
- Invest R175mn in a tavern transformation programme to create safe, responsible and sustainable businesses with a positive impact for consumers and society, and
- Establishing an Innovation, Research and Development Hub for the Africa region based in South Africa within five years.

To address employment concerns in South Africa, the merging parties have agreed to maintain aggregate employee headcount for a period of five years following the merger and not to retrench any employees below management level. The merged entity has also committed to considering retrenched employees for suitable vacancies in Newco for a period of three years following the merger.





The Legal Services Division (LSD) is the main division 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 seven (7) performance targets applicable for the 2022/23 financial year and met all seven (7) targets.

13.2 PERFORMANCE HIGHLIGHTS

a. *The Commission vs. Tsutsumani Business Enterprises*

On 28 April 2022, the Tribunal confirmed the settlement agreement between the Commission and Tsutsumani Business Enterprises ("Tsutsumani") on an excessive pricing case referred to the Tribunal. Tsutsumani, a face mask supplier to the South African Police Service (SAPS) was found to be in contravention of Section 8(1)(a) of the Competition Act, read with Regulation 4 of the Consumer Protection Regulations.

This settlement agreement follows a complaint lodged with the Commission by the SAPS on 05 May 2020 relating to price-gouging in the supply of face masks required by the SAPS during the period of the hard lockdown. The Tribunal found that during the hard lockdown, SAPS was in desperate need of face masks for its 197 000 members who were in the frontlines of efforts aimed at containing the escalation of the pandemic and, as a result, SAPS required nine million masks per month to protect its members from contracting the Corona virus. At the time, there was an unprecedented surge in the demand for surgical face masks and SAPS had to secure supply of face masks on an emergency basis.

The Tribunal found that Tsutsumani charged the SAPS an excessive price for the masks. Tsutsumani was given an administrative penalty in the amount of R3 441 689.10 (three million four hundred and forty-one thousand six hundred and eighty-nine rand and ten cents), being the maximum permissible amount (10% of turnover). Tsutsumani later lodged an appeal at the CAC.

b. *The Commission vs. Shoprite Checkers and Computicket*

On 2 June 2022, the Tribunal confirmed, in terms of Section 49D of the Competition Act, a consent agreement between Computicket (Pty) Ltd (“Computicket”), Shoprite Checkers’ (Pty) Ltd (“Shoprite”) and the Commission. The confirmed consent agreement settles the matter in respect of the Commission’s 2018 referral against both Computicket and Shoprite for anti-competitive conduct under Sections 8(d)(i) and 8(c) of the Competition Act.

The Commission had found that Computicket entered into before and had been enforcing exclusive agreements with a large majority of inventory providers (such as theatre owners, promoters, and other event organisers) in terms of which Computicket is appointed as the sole provider of ticketing services to inventory providers. The Commission found that the effect of the exclusive agreements concluded between Computicket, and inventory providers was to exclude competitors of Computicket from the market.

The Commission found that this was in contravention of Section 8(d)(i) and 8(c) of the Competition Act and accordingly referred the matter to the Tribunal for prosecution. The Commission sought to prosecute, and hold accountable, both the parent (Shoprite) and its wholly-owned subsidiary (Computicket) for the conduct. In terms of the consent agreement, Computicket and Shoprite have agreed to pay, in full and final settlement, an administrative penalty totaling R11 317 000 (eleven million three hundred seventeen thousand rand). Furthermore, Computicket agrees and undertakes to develop and implement a competition law compliance programme designed to ensure that its employees, management, and directors do not contravene the Competition Act.

The consent agreement records that the exclusivity provisions in Computicket’s agreements have, from 23 October 2019, been removed, and takes cognizance of the changes in the events sector and market generally, giving rise to the settlement.



c. *The Commission vs. Coca-Cola Beverages Africa (Pty)Ltd*

On 17 June 2022, the Competition Appeal Court (CAC) upheld an appeal brought by the Commission and found that there was an apparent breach of merger conditions by Coca-Cola Beverages Africa (CCBA) when its subsidiary, Coca-Cola Beverages South Africa (Pty) Ltd (CCBSA), retrenched 368 bargaining unit employees in 2019.

The decision dealt with important legal questions: firstly, about the nature and standard of review in Section 27(1)(c) of the Competition Act read with Commission Rule 39(2)(b), and secondly, the correct test that the Tribunal should apply to decide whether retrenchments

are merger-specific as opposed to retrenchments for operational reasons.

The Commission lodged the appeal following a ruling by the Tribunal in September 2021 setting aside a notice of apparent breach issued by the Commission and finding that CCBA had substantially complied with its obligations with respect to merger conditions. The matter ultimately relates to two mergers involving Coca-Cola which were approved with conditions in May 2016 and September 2017, which conditions sought to provide protection to employees who are members of the bargaining unit, from being retrenched as a result of the mergers. The consequences of an issue of a notice of breach could result in the revocation of merger approval, an administrative penalty, or an order of divestiture in the event of the firm and the Commission inter alia being unable to agree a plan to remedy the breach.



The CAC found that the Tribunal erred in concluding that Section 27(1) confers anything other than ordinary review powers. When issuing a notice of breach, the Commission acts as a specialist regulator utilising investigative and prosecutorial powers conferred by the Competition Act. The duties and powers the Commission is enjoined to perform in this instance dictate that it must act in a manner that is lawful, reasonable, and procedurally fair and this is the appropriate standard of review in this case.

CCBA argued that retrenchments were necessary, at the time, as a result of the macro-economic climate, the imposition of the sugar tax, and the large raw material price increases, in particular the price of sugar. CCBA stated that the retrenchments were required in order to mitigate the losses attributable to the sugar tax, and to ensure CCBSA's continued profitability. The Tribunal considered these factors to be the principal reason for the retrenchments even though it accepted that the retrenchments involved duplications of positions of bargaining unit employees.

In considering whether the Commission acted reasonably in issuing the notice of apparent breach, the CAC confirmed that before issuing a notice of apparent breach, there must “appear” to have been a breach of the merger conditions which is a threshold which is indicative of something less than conclusive proof of a breach. However, a burden is placed on the merging party seeking the review to show that the applicant has substantially complied with the merger conditions. It is not for the Commission to convince the Tribunal that there has been a breach, or compliance or a lack thereof. Only a party to a merger will have the full facts and only it can justify its decision and show it has substantially complied with the merger conditions.

The CAC accepted that the adoption of the “causal connection” or “the principal reason” test advanced by CCBA and the Tribunal respectively could be prejudicial and would significantly erode the safeguards afforded to employees by Section 12A(3) of the Competition Act through merger conditions against merger specific retrenchments. That is so because - in reality - the Commission can never prove a lack of a cause or reason, predominant or otherwise. The CAC endorsed the test in BB Investment Company (Pty) Ltd

vs. Adcock Ingram Holdings [2014] 2 CPLR 451 (CT), which states that “merger specific” means conceptually “an outcome that can be shown, as a matter of probability, to have some nexus associated with the incentives of the new controller”, as being an objective and sound test, because the focus is on demonstrable outcomes rather than the subjective attitude or intention of the merging parties.

The CAC ruled that there was an apparent breach of the merger conditions, the notice was correctly and reasonably issued, and the retrenchments were merger specific. A cost order was granted against CCBA. On 8 July 2022, CCBA brought an application for leave to appeal the CAC’s judgement to the ConCourt. The ConCourt will adjudicate whether leave to appeal is granted, and determine the issues on appeal in due course.

d. *Corruseal Group (PTY) LTD & Neopak Holdings (PTY) LTD vs. the Commission & Others*

On 9 March 2022, the Commission prohibited the proposed acquisition of all issued shares in Neopak (Pty) Ltd (Neopak) by Corruseal Group (Pty) Ltd (Corruseal). Corruseal is a vertically integrated firm whose South African activities include the collection and recycling of wastepaper; the manufacture and supply of recycled containerboard paper (using recycled wastepaper); and the manufacture of corrugated sheets/box packaging products. Neopak is a non-vertically integrated manufacturer and supplier of recycled containerboard paper. The merger, if approved, would result in a permanent structural change in the market.

The Commission identified substantial anti-competitive effects (i.e. unilateral effects, foreclosure, and co-ordinated effects) and concluded that the proposed merger was likely to lead to substantial prevention or lessening of competition in both the upstream and downstream markets. These concerns were not countervailed by any efficiencies, remedies, or public interest benefits.

On 23 March 2022 the merging parties applied to the Tribunal for consideration of the proposed intermediate merger. Mpact Operations (Pty) Ltd (a competitor of the merging parties) and APL Cartons (Pty) Ltd (a Neopak customer) were subsequently granted

leave to intervene in the proceedings. The matter was set down for hearing of factual witnesses from 7 to 18 November 2022, and for expert witnesses from 13 to 14 December 2022. The Tribunal is still to indicate suitable dates for final argument.



The Economic Research Bureau Division (ERB) is staffed by economists and provides internal leadership on the Commission's research and strategic approach to core economic issues in competition law and its enforcement. 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. 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.

14.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The ERB had six (6) performance targets for financial year 2022/23, and met all six (6) targets.

14.2 PERFORMANCE HIGHLIGHTS

Below we discuss some of the ERB highlights from the 2022/23 financial year.

a. *Insights into Consumer Behaviour: What can behavioural biases mean for Competition Policy?*

The research paper explores literature and studies cases conducted by various competition authorities across the globe to gather insight into consumer decision-making heuristics and behavioural biases, with a particular focus on how they have been incorporated in past competition law cases and how they can be incorporated in future cases.

The research study identified several behavioural biases that are relevant for competition law enforcement. These biases are typically



the cause of consumers acting in irrational ways and turning to heuristics in decision making.

- Framing effects - refers to the idea that consumers typically form a reference point about certain attributes of a product such as price or quality and tend to compare other offers against this reference point and may not be willing to consider alternatives.
- Anchoring effects - a particular type of framing effect wherein

consumers' preferences, and hence their appraisal of different available options, are affected by what is presented as an initial reference point or 'anchor'.

- The status quo bias (or default bias) - occurs when consumers tend to stick with their current supplier if the supplier continues to offer acceptable quality at an acceptable price, without reviewing whether a better deal could be available in the market.
- Loss aversion (or endowment effects) - is the tendency for people to be more averse to losses than they are attracted to gains of equal value. The consumers tend to be biased towards keeping products that they already have (i.e., endowed with) or being averse to buying those products which they feel they already own (e.g., because they are already in an advanced phase of the buying process). These consumers are willing to pay an extra price to not lose what they think they already own.
- Time inconsistency bias - when faced with a decision to purchase a product that requires them to make a long-term commitment, consumers may sometimes exaggerate their immediate utility of the product and under-estimate the future costs associated with owning the product. Put differently, consumers can face a conflict between their short-term desires and what would be best for them in the long term, i.e., their preferences can be 'present-biased'.
- Other behavioural biases and decision-making heuristics – biases and heuristics may also occur under certain circumstances, such as during a pandemic. For instance, during the pandemic there were sometimes psychological reasons that drove consumer behaviour out of fear, or thoughts of undesirable possibilities occurring. Such may trigger negative emotions on consumers and lead them to making choices in a way that is inconsistent with rational behaviour, such as making a purchase of a product without comparing with alternatives for fear of missing out on the product or postponing a purchase with the belief that market conditions would be more favourable at some future time.

Many competition authorities around the world have considered consumer biases in their investigations, including the Commission. In previous decisions, competition authorities have considered the role that consumer biases play in influencing market outcomes and how

they are exploited by firms in their attempts to restrict competition. These include the MIH//WeBuy Cars Merger, and the Covid-19 (particularly, Dischem, Tsutsumani) investigated by the Commission as well as the Google Shopping, the Google Android, and the Microsoft cases investigated by the European Commission.

b. The potential for a Broader Application of the Substantial Lessening of Competition Standard: A South African Perspective

This research paper considers the bar for intervention in competition matters, in particular the substantial lessening of competition (SLC) standard, used in merger control in many jurisdictions and the anti-competitive effects requirement more generally. In the context of research which strongly suggests that there has been systemic under-enforcement of competition policy across the globe, this paper considers, firstly, how the SLC and/or competitive effect test has been interpreted more broadly in certain instances and how this may further inform the assessment of competition. The paper finds that the distributive impact of mergers or other conduct is already considered by authorities and public policy must justifiably inform what may ultimately be considered substantial.

Secondly, it considers the clear gap in enforcement created by the SLC standard (or the practical consideration thereof by competition authorities) whereby only consumer effects that result directly from a change in competition are considered, rather than consequences of the transaction. The paper finds that any competition legislation with provisions for public interest concerns because of the transaction itself, should also provide for the consideration of consumer effects or an SLC that results from the transaction itself.

c. Food Monitoring Report

Following the onset of the COVID-19 pandemic in March 2020, the Commission began monitoring essential food prices to understand the effects of the pandemic and ensuing economic crisis on the food value chain and food markets. This continues to be a priority given the high food inflation in the first half of 2022.



The report briefly highlights some of the drivers of food inflation. It expands on previous analysis by focusing on the sunflower oil value chain from seed to the price of cooking oil at the wholesale and retail levels. This analysis of the sunflower value chain is done for the period 2020 to date. To ensure consistency, some analysis of key fruit and vegetables pricing to supplement the previous versions of our report is also made.

Inflation and particularly food price inflation has emerged as a cause for concern among policymakers and consumers around the world. The Food and Agricultural Organization's (FAO's) Food Prices Index reached its highest level ever in March 2022 with an index of 156 before slightly declining in April to June 2022. In line with global developments, South African food prices increased by 9% from June 2021 (98 points) to June 2022 (107 points) and are increasing at a rate last seen during the 2016 drought. Some of the drivers of food inflation include the Russia/Ukraine conflict; rising fertilizer

prices; surging energy prices and concentration levels and lack of competition across the value chain.

In seeking to understand whether wholesalers and retailers have not taken advantage of the global factors identified above, an advanced method is used by agricultural economists to understand the relationship between end product prices and grain prices. Adjustments are also made to cater for lagging effects to better mimic the purchasing patterns of processors, that is, retail and producer prices in March are assumed to be a function of sunflower seed prices in January. This analysis accounts for the fact that some processors often purchase seeds in advance of processing and keep the seeds in storage until processing or purchase seeds using futures contracts in advance to hedge against price changes.

Based on this analysis, we find that wholesale margins for cooking oil increased significantly from March to June 2022, whereas retail margins declined. The analysis justifies the Commission's continued scrutiny of the oil and fats industry, including the current investigation into the margin changes in the value chain for edible oils and other basic foodstuffs.

d. Guidelines on Small Merger Notification

There are concerns that potentially anti-competitive acquisitions in digital or technology markets are escaping regulatory scrutiny due to the acquisitions taking place at an early stage in the life of the target firm before they have generated sufficient turnover or accumulated capital and physical assets that would trigger mandatory merger notification as set by the turnover or asset thresholds.

The new small merger guidelines seek to address this gap through stipulating that where a merger involves an acquiring firm that fulfils the turnover or asset value for a large merger and the target has a transaction value that is also above the thresholds used for assets, then the merging parties need to inform the Commission of the transaction. The Commission will then determine within 30 days whether the transaction needs to be notified or not.

e. **Research Reports**

The Commission produced two conference papers presented at the ACER conference in Malawi in September 2022. A summary of each is provided below.

Competition Regulation for Digital Markets in Africa: Lessons from South Africa

The paper discusses the growth of the digital economy and its impact on both the African continent and world at large. The aim of the paper is to propose a pragmatic approach to the regulation of competition concerns that are brought about by digital markets in Africa. Questions have been raised globally about the adequacy of traditional competition tools to regulate digital markets. By examining some of the recent developments in South Africa regarding digital markets and the current inquiry underway in this space, ideas can be borrowed and used throughout the continent to provide for an effective competition regulatory framework. This article further suggests important legislative changes which may need to be made to ensure that competition regulation effectively regulates digital markets.

Market Power and Price Discrimination in the Market for the Trading of Piped Gas in South Africa

The Gas Act No. 48 of 2001 makes provision for the differentiation of prices between customers based on quantities purchased. The Competition Act, on the other hand, aims to prevent anti-competitive conduct which includes, among others, price discrimination – especially if such discrimination is likely to impede the effective participation of SMEs and/ or firms owned by HDPs. To this end, this study examined the extent to which Sasol Gas’ price discrimination conduct is likely to fall foul of Section 9(1)(a)(ii) of the Competition Act during the period 2015 to 2018. To conduct this examination, this study followed the price discrimination assessment guidelines proposed by the Commission.

The results show that Sasol Gas had market power in the market for the trading of piped gas to traders, during the period 2015 to



2018. Further, the study found that Sasol Gas practiced second-degree price discrimination, and this may have impeded the effective participation of SMEs and/ or firms owned by HDPs – operating at the retail level of the piped gas supply chain. As such, although Sasol Gas’ conduct may well be within the parameters of the Gas Act, it is likely to contravene the amended Competition Act. Based on these findings, this study recommends that the Department of Energy, in conjunction with NERSA, must consider amending the Gas Act in line with the amendments made to the Competition Act to ensure policy coherence.

f. Scoping Study into Ad Tech Stack and Online Advertising Markets

This scoping study emanates from the Terms of Reference for the Online Intermediation Platforms Market Inquiry (OIPMI) which identified that the Adtech industry contained features which may warrant a market inquiry, but which required further investigation. In addition, submissions by the Publishers Support Services (PSS) to the OIPMI indicated that the transition to digital news consumption and advertising had resulted in news publishers seeing a massive decline in advertising revenue, and this posed a threat to, among others the quality and diversity of online news content available to consumers in South Africa. The OIPMI noted the concerns raised and indicated that while there may be validity to the potential competition concerns, this would not be addressed in the OIPMI inquiry and may be the subject of a subsequent inquiry.



The scoping study sought to evaluate the factors in this market that give rise to potential concerns for news publishers but also to all advertisers and advertising stack companies. The scoping into the issues raised by the PSS led to the identification of further competition concerns that may arise from the broader market for digital advertising mainly around the ad tech services provided by dominant digital platforms and their gatekeeper positions in these markets. This impacts not only publishers (of news and other content), but also advertisers and other players within the provision of online advertising intermediary services. This also has an impact on the ultimate consumers of this content.

The scoping study established that there have been several market inquiries undertaken by various other competition authorities dealing with these markets (broadly digital advertising and news media) to deal with the competition issues that arise as a result of the conduct by the large digital platforms. In addition, the team also found several investigations initiated by competition authorities, covering multiple jurisdictions, against the largest digital platforms, namely Google and Meta (formerly Facebook), which mainly relate to the abuse of their dominant positions within the online digital advertising market and online news media.

Common issues and concerns arising from market inquiries and investigations initiated in other jurisdictions stemming from this market(s) include:

- market power, market consolidation and vertical integration through the extraction, processing and the ultimate monetization of valuable consumer data by large digital platforms to the detriment of numerous actors in the market;
- leveraging of this valuable consumer data and technological capabilities as a competitive advantage across these markets;
- self-preferencing by large digital platforms of their own ecosystems in the provision of online advertising services;
- creation of high barriers to entry, not only for direct competitors but also content providers; and
- lack of transparency which brings about challenges for various actors to successfully operate across the various levels of the value chain.

Outside of the issues and concerns raised through market inquiries and investigations initiated in other jurisdictions, not much is known about the extent to which players in South Africa may be impacted by the same or similar issues and concerns. However, the concerns raised by the PSS point to the likelihood that the conduct by the digital platforms already has an impact in South Africa and this may further increase if not dealt with.

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

This study assesses the impact of the settlement agreements ('agreements') between the 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 02 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 have 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 has 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 to the period prior. This suggests that the initiatives by the operators to reduce headline prices and promote awareness of zero-rated content had a positive influence on 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 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 and 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 have 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 in 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. The agreements were concluded just in time for the shift to online work and transactions by vast numbers of consumers and businesses during lockdown conditions to have an impact when affordable data was needed the most.

h. *Guidelines on the Exchange of Competitively Sensitive Information between Competitors under the Competition Act No.89 of 1998 (as Amended)*

The Commission identified a need to provide guidance to trade associations and both public and private stakeholders on the sharing of information between competitors. From time-to-time trade associations and other stakeholders request advisory opinions from the Commission on setting up information exchange systems and it is apparent that there is some uncertainty on what constitutes permissible and impermissible information exchange within the framework of the provisions of Section 4 of the Competition Act. In these circumstances there is clearly a need for the Commission to provide guidance to relevant stakeholders on the type of information exchange that may potentially be harmful to competition and the type that may enhance efficiencies.



The guidelines present the general approach that the Commission will follow in determining whether information exchange between firms that are competitors amounts to a contravention of Section 4 of the Competition Act. The principles set out in the guidelines are not intended to be applied mechanically, as information exchange cases are evaluated on a case-by-case basis, depending on, amongst other things, the nature of the information sought to be exchanged as well as the purpose for which the information is being exchanged.

The guidelines present the general approach that the Commission will follow in assessing the exchange of competitively sensitive information between competitors. The guidelines are not exhaustive and will not affect the discretion of the Commission and/or the Tribunal and courts to consider the exchange of information issues on a case-by-case basis, taking into account, amongst other criteria, the nature of the information exchanged and the market characteristics and dynamics.

i. Research Publications

1. Enforcement tools and approach in a new era

Published in Competition Law International November 2022 Issue (Journal of the International Bar Association), the paper by James Hodge and Nonkululeko Moeketsi unpacks how increased economic volatility, healthcare emergencies and the rise of digital markets have all challenged the enforcement tools and approach of competition authorities globally. Successive economic shocks have required greater speed in responding and finding solutions to protect consumers. The paper notes how the Commission has used the Competition Active monitoring of critical markets, firm-level advocacy, and guidance on the boundaries of acceptable conduct, accelerated investigations and consent agreements to correct behaviour rather than through litigation. Examples are provided in price gouging, food markets, polymerase chain reaction (PCR) testing and airline exits. Speed is also considered important in digital markets, and given the ecosystems that characterize many digital markets, market inquiries are increasingly seen as a more effective tool to address features that adversely affect competition, along with tackling value chains in traditional markets.

2. A Glimpse into Common Ownership in South Africa

Published in the Working Paper series of the Center for Competition Law and Economics (University of Stellenbosch), the paper by Samantha Kee and Yongama Njisane notes that there has been a growing interest by competition authorities and anti-trust scholars on common ownership linkages by institutional investors which may be leading to a softening of competition in markets. This paper offers a glimpse into the potential extent and nature of common ownership in South Africa based on a select number of large institutional investors. From our limited observations on common ownership, it finds that common ownership tends to occur with rival incumbent firms in markets. It also observes that the selected large institutional investors, as a group (including the holding firm and subsidiaries), tend to hold minority shares in parent firms with several diversified product portfolios of their own. The main purpose of this paper is to stimulate further research on whether common ownership by large investors may potentially result in softer competition in industries. As a natural starting point, research should also consider further

determination of the extent to which common ownership occurs in South African industries. Economic literature would also benefit from an exploration of whether there is any relationship between firm behaviour and common ownership and the nature of such a relationship, especially in the context of South Africa.

The paper focuses mainly on literature pertaining to the mapping of common ownership. It also briefly discusses the general literature on common ownership and competition. The methodology used for the research is the use of data description and limitations, as well selected institutional investors.

The paper offers a preliminary view of common ownership in South Africa based on a select number of some of the largest institutional investors and within certain industries, namely grocery retail sector , insurance and property sectors. The observations indicate that the selected institutional investors generally hold minority stakes in a number of rival incumbent firms in the economy. It is also observed that the selected large institutional investors, as a group (including the holding firm and subsidiaries), tend to hold minority shares in holding firms with several diversified product portfolios of their own.

The preliminary picture of common ownership presented in the paper raises further research questions. The paper notes it would be useful to assess whether the observations and findings made in it would still be held using a broader database of beneficial ownership. A more comprehensive dataset would also allow for more conclusive observations on the nature of common ownership in the economy. Further, to establish the competition implications of common ownership, there is a need for a contextualized (and not a one-size-fits-all) approach to dealing with issues of common shareholding, specifically in less competitive markets.

j. Impact assessment report on the Bayer- Monsanto merger

This impact assessment considers aspects of the transaction involving Monsanto Corporation (Monsanto) and Bayer Aktiengesellschaft (Bayer) which was approved by the Tribunal in 2018 and implemented on 21 August 2018, and in particular the divestiture conditions applied to the merger.

The Bayer-Monsanto merger offers a unique opportunity to assess the impact of divestiture conditions on post-merger competitive dynamics and the resulting market structure. The assessment focuses on the impact of the following conditions applied by the Tribunal:

1. the divestiture of Bayer's GM cotton seed business in South Africa to a majority-black-owned, local business (Cotton Seed Enterprises Pty Ltd),
2. the divestiture of Bayer's traited seed and herbicide business under its LibertyLink operations to BASF, and
3. the public interest condition of the provision of a 25% discount of the maize seed and Poncho ® value offering to small emerging farmers in South Africa.

The study shows that the conditions attached to the merger approval by the Tribunal resulted in positive outcomes.

- Firstly, the divestiture conditions applied in this merger resulted in the successful creation and success of an independent South African and majority black-owned seed company. The assessment suggests that such conditions could provide opportunities for de-concentration and transformation more broadly.
- Secondly, the public interest conditions encompassing a 25% discount of maize sales to emerging farmers appears to have been successful, with Grain SA noting these discounts have supported small emerging farmers.

The impact assessment also shows a number of lessons for merger conditions, in particular divestiture conditions.

- Firstly, as a broad point, there is perhaps room for a more considered and detailed design of conditions for mergers. While the conditions here have largely been successful, there are specific aspects that could have been done differently (discussed in the report). It is also acknowledged that the legislated timelines in intermediate mergers such as the Bayer-Monsanto mean that conditions may not be fully canvassed with stakeholders.
- Secondly, where there are mergers in technology- and IP-driven industries such as seeds, any divestiture remedies must consider the changing nature of the market and the need for



the purchaser to have ongoing access to new technologies and developments in the future, as these types of industries evolve.

- Thirdly, any divestiture condition must take consideration of what support is needed for the success of the purchaser, and importantly the full extent of support required. This is a lesson which has already been adopted by the Commission in recent transactions where divestitures have included much more detailed and extensive specifications around support for the new player in the market.

Table 23: Publications produced during 2022/23

Title	Publication
A Glimpse into Common Ownership in South Africa	Published in the Working Paper series of the Centre for Competition Law and Economics (University of Stellenbosch).
Enforcement tools and approach in a new era	Published in Competition Law International November 2022 Issue (Journal of the International Bar Association).

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 investigate any feature or combination of features in a market which may have the effect of impending, or distorting or restricting competition – without targeting any one firm.

During the 2022/23 financial year the Commission initiated two market inquiries. Below is a detailed discussion of each of the market inquiries.

15.1 LAUNCH OF A MARKET INQUIRY INTO THE MEDIA AND DIGITAL PLATFORMS

On 20 March 2023, the Commission initiated a market inquiry into the distribution of media content on digital platforms, including search, social media, and news aggregation platforms, the Media, and Digital Platforms Market Inquiry (“MDPMI”).

The inquiry is initiated in terms of Section 43b(1)(a) of the Competition Act given that the Commission has reason to believe that there exist market features in digital platforms that distribute news media content which impede, distort, or restrict competition in the news media sector of South Africa. The MDPMI issued its draft terms of reference on 20 March 2023 inviting public comments by 20 April 2023 in the Government Gazette No. 48252.



15.2 LAUNCH OF A MARKET INQUIRY INTO THE STEEL INDUSTRY

The Commission has initiated a market inquiry into the South African steel industry (“the Steel Industry Inquiry”) to examine whether or not there are any features in its value chain which impede, distort, or restrict competition. A market inquiry is a general investigation into the state, nature, and form of competition in a market, rather than a narrow investigation of specific conduct by any particular firm.

The draft terms of reference of the Steel Industry Inquiry, established in terms of Chapter 4A of the Competition Act, were published for public comments in the Government Gazette No. 48407 on the 7 April 2023. Public comments were invited on the scope of the inquiry on or before Friday, 5 May 2023.

Steel is an essential input into many strategic and core segments of the economy. As such, the South African steel value chain, and the competitive dynamics therein, are among the Commission’s key focus areas for competition intervention and enforcement. The Commission has prioritised the Intermediate and Industrial Sector since 2008 due to the sector being linked to production of various consumer goods and the potential of the sector to create significant employment opportunities – thereby serving as a driver of inclusive growth in the South African economy.

In 2014, the South African steel industry was ranked nineteenth in terms of global crude steel production and is the largest producer on the African continent, producing more than half of the continent’s steel output. In 2021, South Africa was ranked as the 32nd largest crude steel producer in the world, with an output of 5.0Mt. This clearly indicates that South Africa’s competitiveness in the production and supply of steel has been declining. The Commission has in the past intervened in this industry through merger control and enforcement investigations.

The Steel Industry Inquiry thus seeks to identify any feature and/or combination of features in the domestic market that impede, distort or restrict competition and/or may be contributing to the decline in the competitiveness of the South African steel industry. The objective of the Steel Industry Inquiry is to identify such features.

The Steel Industry Inquiry will be confined to only two levels of the steel value chain; namely: (i) the raw materials and inputs; and (ii) the upstream steel production level. In addition, the inquiry will focus on the impact of these levels of the value chain on the domestic downstream steel market.



The Advocacy Division comprises of three (3) functions, namely (1) stakeholder relations; (2) policy; and (3) screening.

Through the advocacy function, the Commission engages with key stakeholders in order to promote voluntary compliance with the Competition Act, both in the public and the private sectors. It is a responsive function, which determines strategy based on the Commission’s priorities in a given period. As such, the Advocacy function focuses on all eight (8) priority sectors of the Commission.

14.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Advocacy Division was responsible for nine (9) performance targets in the 2022/23 financial year. Advocacy Division met seven (7) performance targets and did not meet two (2) targets.

14.2 PERFORMANCE HIGHLIGHTS

a. Screening

The Screening department is responsible for undertaking preliminary investigations on complaints received. Based on these preliminary investigations, the Commission will make a determination to investigate the complaints further or opt 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 Competition 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 three hundred and forty-seven (347) complaints from the public during the 2022/23 financial year; all complaints received were ordinary enforcement complaints. There were no complaints that related to price gouging of essential products for the Covid-19 pandemic.

The Commission completed preliminary investigations (screening) of three hundred and eight (308) complaints, of which two hundred and thirty-six (236) were non-referred, nine (9) were withdrawn, and the remaining cases recommended for further investigation. The tables below provide a summary of screening statistics:

Table 24: 2022/23 Screening statistics

Complaints	Numbers
Total complaints received (covid + non-covid)	347
Total Covid-19 complaints received	0
Total ordinary enforcement complaints received	347
Total Covid-19 complaints completed	23
Total Covid-19 complaints referred	0
Total Covid-19 complaints non-referred	23
Total ordinary enforcement complaints completed	308
Total ordinary enforcement complaints referred	0
Total ordinary enforcement complaints non-referred	236
Total complaints withdrawn	9

The Commission non-refers several complaints at preliminary investigation (screening) stage, however, the Commission attempts to resolve the issues arising in some of the complaints. Below are some of the complaints resolved during the 2022/23 financial year:

Table 25: Screening cases resolved in 2022/23

Parties to the investigation	Complaint	Type of intervention
Kate Elliott vs. Honda Cape Town, case number: 2022Mar0028	Ms Kate Elliot alleges that Honda SA has failed to comply with Sections 11.6.1.4 and 11.6.4.1 of the Guidelines for Competition in the South African Automotive Aftermarket ("Automotive Guidelines"). In particular, Ms. Elliot alleges that Honda Cape Town continues to sell the service and/or maintenance plans as bundled product together with the purchase price of new motor vehicles.	The Commission engaged with Honda SA to ensure it is familiar with the Automotive Guidelines and the requirement to unbundle the sale of service plans from the retail price of their new motor vehicles. After the engagements Honda SA decided to issue out a circular to its dealer network to request them to offer to consumers an option to unbundle service plans from the retail selling price of the motor vehicle.
Junaid Paruk Kruger O.B.O Pk Assessing and Administration vs. Renasa Insurance, case number: 2022Jan0034	Ms Kruger alleges that Renasa Insurance ("Renasa") has denied her the opportunity to join their panel of motor vehicle and non-motor vehicle assessors and that Renasa's refusal to add her company to its panel of assessors is anti-competitive and contravenes the Competition Act.	The Commission engaged with Renasa on the matter and Renasa decided to conduct their own internal investigation, which found that the refusal to allow Ms Kruger an opportunity to become part of the panel was an oversight and was also not in line with the Commission's Automotive Guidelines. Renasa has since taken a decision to appoint Ms Kruger onto its panel of assessors.
Mr. Faghmie Fransman vs. Plumbing Registration Board (PIRB) And Institute of Plumbing Sa (IOPSA) Non-Statutory Body, case number: 2022Apr0019	Mr Fransman alleges that the South African Bureau of Standards ("SABS") has included in its regulations a requirement that all plumbers in South Africa who conduct plumbing work are required to issue out PIRB Certificates of Compliance ("COCs") for all geyser installation work prior to advancing payment to the service provider. Mr Fransman alleges that the requirement by SABS to issue out COCs from entities that are voluntary creates barriers to entry for plumbers who are not members of IOPSA.	The Commission engaged with SABS, SABS has since removed this requirement from its regulations.

Parties to the investigation	Complaint	Type of intervention
Kate Elliot V Thorp Plumstead Haval and CMH Haval and GWM Cape Town, case number: 2022Mar0027	Ms Kate Elliot (Ms Elliot) alleges that Haval Motors South Africa (Haval) has failed to comply with Sections 11.6.1.4 and 11.6.4.1 of the Guidelines for Competition in the South African Automotive Aftermarket ("Automotive Guidelines"). In particular, Ms Elliot alleges that Haval continues to sell the service and/or maintenance plans as bundled product together with the purchase price of new motor vehicles. According to Ms Elliot, Haval does not afford consumers the choice to purchase their new motor vehicles separate from the bundled service and/or maintenance plans as required in terms of the Automotive Guidelines.	The Commission decided to engage with Haval, which subsequently agreed to unbundle its service and/or maintenance plans from the sale of new motor vehicles.
Kate Elliot v Volvo Cars South Africa, case number:2021Aug0020	Ms Kate Elliot (Ms Elliot) alleges that Volvo Cars South Africa (Volvo) has failed to comply with Sections 11.6.1.4 and 11.6.4.1 of the Guidelines for Competition in the South African Automotive Aftermarket ("Automotive Guidelines"). In particular, Ms Elliot alleges that Volvo continues to sell the service and/or maintenance plans as bundled products together with the purchase price of new motor vehicles. According to Ms Elliot, Volvo does not afford consumers the choice to purchase their new motor vehicles separate from the bundled service and/or maintenance plans as required in terms of the Automotive Guidelines.	The Commission decided to engage with Volvo, which subsequently agreed to unbundle its service and/or maintenance plans from the sale of new motor vehicles.
Molala Peter v Pharma Valu, case number: 2022Jan0008	Mr Peter Molala (Mr. Molala) filed a complaint with the Competition Commission alleging that Pharma Valuis charges customers excessive prices for Covid antigen tests. According to Mr. Molala, Pharma Valu was aware that it was charging high prices since he registered his complaint, he was told that he could go somewhere else if he was not happy with the price. Although it initially justified its price on the basis of high cost of consumables, Pharma Valu agreed to decrease its prices for antigen tests following our engagement. The parties concluded a consent agreement, which will be made the order of the Competition Tribunal.	The Commission has referred to the Competition Tribunal a complaint against Pharma Valu for a confirmation of settlement agreement that was reached with the Commission.

i. Guidelines for Competition in the South African Automotive Aftermarket

On the 29 January 2021, the Commission published in the Government Gazette the Guidelines for Competition in the South African Automotive Aftermarket. In February 2022, the Commission, the Motor Industry Ombudsman of South Africa (MIOSA) and the National Consumer Commission (NCC) jointly signed a Complaints Management Procedure protocol to guide the entities on their responsibilities for handling complaints arising from the implementation of the Guidelines. The mandates of the Commission, NCC and MIOSA are mutually reinforcing to promote consumer rights in South Africa. Each of these institutions has powers to investigate complaints received from consumers and suppliers of goods and services in the automotive aftermarket industry.

Since the effective date of the Guidelines was 01 July 2021, the Commission has evaluated compliance and implementation by the industry, through the investigation of complaints, stakeholder engagements and outreach initiatives. The Commission addressed value chain players on the intended objectives and the evaluation phase of the Guidelines at the Auto Franchise and Aftermarket Indaba organised by the Automotive Industry Development Centre Eastern Cape in October 2022.

The Commission conducted an outreach event targeting SMEs on 29 and 30 November 2022. As part of the outreach, the Commission representatives visited ISP hubs and workshops in the Eastern Cape and Gauteng to promote the objectives of the Guidelines and to hand out educational pamphlets and posters. The targeted areas included Gqeberha, Kariega, Mthatha, Johannesburg and Pretoria. The Commission also engaged with ISPs on their obligations to advise customers of the option to use ISPs for in-warranty repairs, recording work done on in-warranty vehicles in service books or digital media and retaining insurance cover to do the work. ISPs shared their experiences; both positive outcomes and challenges, including that customers are still hesitant to take their vehicles for a service at an ISP due to fear of having their warranties voided, but ISPs have generally not had issues getting onto insurance panels. Some ISPs however experienced difficulties in accessing technical information from OEMs.

As part of this evaluation process, the Commission convened

stakeholder engagements with industry automotive associations from July 2022 to November 2022. The purpose of the engagements was to evaluate positive changes made and challenges facing their members since the implementation of the Guidelines. The Commission also conducted a review of the complaints investigated by the Commission since the Guidelines became effective on 01 July 2021. Complaints were generally raised against car manufacturers, dealerships and insurers. Reforms were rolled out through circulars and training initiatives to the OEMs network of dealers and assessors. Stakeholder associations indicated initiatives, such as databases of qualifying suppliers and minimum requirements for on-boarding suppliers that support the Guidelines by removing barriers to entry. In addition, most of the OEMs have unbundled service plans from new vehicles at the point of sale, and allowed access by ISPs to technical information. These initiatives reveal positive developments in the automotive aftermarket industry since the effective date of the Guidelines. However competition concerns were identified in the investigations concerning the allocation of work to ISPs in government fleet tenders, alleged price-fixing of spare parts and the appointment of motor-body repair centres with common owners by OEMs, which may reduce consumer choice and price competition in the industry. The industry has also been slow to implement standards for non-original spare parts. The Commission will issue a survey in 2023 to assess the level of compliance by OEMs, Dealers, ISPs and Insurers with the Guidelines.

ii. Promoting Competition and Inclusion on supplier panels of banks and insurers

The Commission issued a Practice Note on Promoting Competition and Inclusion on Supplier Panels of Banks and Insurers (Practice Note) on 28 February 2022. The Commission received and investigated complaints alleging unfair appointments and allocation of work to suppliers on panels of Banks and Insurers. The cases investigated by the Commission relate to the provision of services to customers of Banks and Insurers ranging from the appointment of attorneys to various household repairs and product suppliers. From these complaints the Commission found that certain aspects of these supplier panels raise competition concerns to the detriment of consumers, such as long-term exclusive agreements as well as barriers preventing the entry and participation of SME and companies owned by HDIs. The Practice Note outlines recommended measures for Banks and Insurers to implement for promoting competition and

inclusion of SME and HDIs on supplier panels. Prior to publishing the Practice Note, the Commission engaged numerous stakeholders bilaterally and through a workshop held on 12 November 2021. These engagements were an attempt by the Commission to propose an industry-driven initiative or social compact. One of the stakeholders engaged was the South African Insurance Association (SAIA). The Commission proposed that SAIA facilitate supplier panel reforms with its members in collaboration with the Commission. In June 2022, the Commission and SAIA jointly identified the scope and metrics for a survey to establish the measures that banks and insurers have implemented to promote competition and inclusion of SMEs and HDIs on supplier panels, the extent of participation of SME and HDI suppliers at present, the criteria of banks and insurers for appointing suppliers onto panels, the contract periods of service level agreements with suppliers (including exclusive contracts), the system used by banks and insurers to allocate work to suppliers on their panels and their impact on the participation of SME and HDI suppliers, among other metrics.

b. Policy Responses

The Commission provides responses and comments to key policies as part of advocating its activities, to ensure policies and laws are aligned with the Competition Act. The Commission submitted seven (7) policy responses in the 2022/23 financial year. The policy submissions on the Draft Oceans Economy Master Plan and Sub-sector Implementation Plans are highlighted below while the other policies where the Commission submitted responses are provided in Table 25: Policy Responses in 2022/23.

The Draft Oceans Economy Master Plan and Sub-sector Implementation Plans

The Commission submitted a policy response on the Draft Oceans Economy Master Plan and four (4) Draft Oceans Economy sub-sector implementation plans, namely: 1) the “Marine Manufacturing and Repair Sub-Sector Implementation Plan,” 2) the “Marine Transport Sub-Sector Implementation Plan,” 3) the “Offshore Oil and Gas Implementation Plan” and 4) the “Aquaculture Sub-Sector Implementation Plan,” issued by the Department of Forestry, Fisheries and the Environment (“DFFE”).

The plans aim to give effect to the Government’s Economic Reconstruction and Recovery Plan and grow key sub-sectors of South Africa’s Oceans Economy through to 2035. The main purpose of the plans is to establish action commitments for stakeholders to implement and address structural challenges in the Oceans Economy, such as infrastructure inefficiencies, market share for local enterprises, market access, funding and production inputs, transformation, and environmental sustainability. The plans set out action commitments for stakeholders in five sub-sectors: (1) Marine Manufacturing and Repairs, (2) Marine Transport, (3) Offshore Oil and Gas, (4) Fisheries and (5) Aquaculture.

The Commission found the plans to be effective for addressing structural challenges in the Oceans Economy and are aligned with the National Development Goals for transformation, industrialisation and building a capable state. The Commission supports the objectives of the plans to promote localisation, industrialisation, effective market entry and sustainability of small businesses and HDPs in the sub-sectors and transform the Oceans Economy at large.

The Commission identified a few important considerations for the DFFE’s development of commitment actions for the Commission and other stakeholders including:

- a. Proposed commitment actions that involve the Commission must be drawn from its mandated instruments as set out in the Competition Act. The Commission is not mandated by the Competition Act to conduct audits of licensed recycled metal dealers for the purpose of establishing non-compliance with export regulations. However, the International Trade and Administration Commission (“ITAC”), has a mandate to oversee import and export control in South Africa. The Commission does not have a mandate in terms of the Competition Act to shut down unlicensed recycled merchants. However, as part of its mandate, the Commission can investigate anti-competitive conduct in the steel and scrap metal markets.
- b. The Commission provided examples of investigations that reveal anti-competitive conduct in the form of price fixing, market division, collusive tendering, and excessive pricing. The Commission submitted that the investigations and merger assessments assist to eliminate concentration and barriers to entry. The Commission therefore committed to continue its enforcement processes to investigate and prosecute firms

(including metal dealers) that contravene the Competition Act and provide awareness training to stakeholders.

- c. The Commission committed to participate with the DFFE, dtic and industry associations in collective efforts to achieve meaningful participation of local companies and eradicate the negative effect of market concentration in the marine transport and offshore oil and gas value chains on an ongoing basis. The Commission shall continue to investigate complaints received regarding these value chains and implement remedies to address competition issues identified through its investigations, as prescribed by the Competition Act.
- d. The Commission also committed to provide education and awareness training for SMEs on the application of the Competition Act, including the exemption framework that

provides opportunities to SMEs to pool resources and compete effectively in the Oceans Economy.

- e. The Commission recommended that the DFFE should prioritise allocation of fishing rights to new entrants and SMEs in certain fisheries to ensure greater economic participation, and that SME support programmes should include access to vessels and fishing equipment.
- f. Finally, the Commission committed to impose conditions to merger transactions and exemption applications, when justified by effects on competition and the public interest, to support SME development and accelerate transformation in the sub-sectors identified.

Table 26: Policy Responses in 2022/23

Relevant Policy	Purpose of intervention
Draft End User and Subscriber Service Charter Amendment Regulations of 2022	The Regulations serve to protect consumers from losing unused voice minutes, SMS, and data, without leaving it to licensees to prescribe their own terms and conditions, which may be unfair to consumers. The Commission supported the principles underlying the data expiry regulations insofar as they are consistent with the Data Market Inquiry recommendations.
The Draft Electricity Regulation Amendment Bill of 2022	The Bill aims to restructure the Electricity Supply Industry (“ESI”) of South Africa by separating the generation, transmission, and distribution parts of the ESI. The establishment of a separate Transmission System Operator (“TSO”) is a focus of the Bill. The Commission identified competition issues related to unbundling that need to be addressed in any reform on the ESI. These are (i) the importance of ensuring that the TSO does not have the incentive (full independence of the TSO) or ability (strong regulatory oversight, fair rules and procedures, full transparency) to preference certain entities at the generation and distribution level to the detriment of others, (ii) avoiding licensing requirements that may raise barriers to entry especially for small firms, (iii) limiting contract lengths to the shortest periods necessary for encouraging investment, (iv) considering the impact that low electricity tariffs can have on future investments in generation capacity and the country’s security of supply, (v) in considering the participation of embedded generators in electricity distribution, weighing the financial interests of Eskom against the sustainability and affordability of supply of the entire country and finally, and (vi) ensuring that post-unbundling, reforms must continue to ensure that IPPs may compete effectively with a future Eskom.

Relevant Policy	Purpose of intervention
The Draft Broad-Based Black Economic Empowerment Legal Sector Code 2022	The Code aims to address inequities resulting from the systematic exclusion of women and black people (as defined in the B-BBEE Act) from meaningful participation in the legal profession in South Africa. The Commission identified that the Code imposes the duty to transform the legal sector on the state alone and does not include private sector involvement, which is problematic. The Commission was of the view that the discretion afforded to private entities to comply with the Code is insufficient to address the issue of transformation on their briefing patterns for both black senior and junior advocates including black firms and therefore recommended that measures be put in place to incentivise them to comply
The Draft Oceans Economy Master Plan and Sub-sector Implementation Plans	The Commission submitted a policy response on the Draft Oceans Economy Master Plan and four (4) Draft Oceans Economy sub-sector implementation plans, namely: 1) the “Marine Manufacturing and Repair Sub-Sector Implementation Plan,” 2) the “Marine Transport Sub-Sector Implementation Plan,” 3) the “Offshore Oil and Gas Implementation Plan” and 4) the “Aquaculture Sub-Sector Implementation Plan,” issued by the Department of Forestry, Fisheries and the Environment (“DFFE”).
The Motor Repairers Minimum Standard Guidelines Checklist for Out-of-Warranty Vehicles	The Commission submitted a policy response on the Motor Repairers Minimum Standard Guidelines Checklist for Out-of-Warranty Vehicles (“Checklist”), issued by the South African Insurance Association (“SAIA”). The Commission found that the Checklist supports the objectives of the Commission’s ‘Guidelines for Competition in the South African Automotive Aftermarket’ (“Guidelines”) issued on 01 July 2021 and its ‘Practice Note on competition and inclusion on supplier panels of banks and insurers’ issued in February 2022, with the aim to promote transformation and inclusivity in the automotive aftermarket.
The Electricity Pricing Policy	The policy addresses the challenges associated with regulation of electricity prices. These include: (i) implementing a central government national framework for a standardized electricity pricing approach for tariff determination in order to promote cost-reflexivity; (ii) requiring all utilities to undertake Cost of Supply (“CoS”) studies to propose new tariffs, special pricing and products or tariff structure changes to the National Energy Regulator of South Africa (“NERSA”); (iii) enabling licensed distributors to adjudicate disputes that arise from resellers not complying with tariff charges and other resale conditions (e.g. quality of service); (iv) setting out a national framework for cross-subsidies so that there is more uniformity in the application of these thereby making customer bills more transparent and understandable.

c. Workshops on Competition Policy

The Commission hosted four (4) workshops and/or seminars on competition, trade, industrial policy and/or regulatory matters. Below we discuss two key workshops/seminars.

1. Breakfast with the Big Business Community

The Commission hosted an in-person breakfast meeting with the South African business community at Houghton Hotel, Johannesburg. The audience was composed of representatives from the various business community organisations including the Black Management Forum, Business Unity South Africa, Business Leadership South Africa, South African Chamber of Commerce and Industry, Black Business Council, AgriSA, Businesswomen's Association of South Africa, the Association of Black Securities and Investment Professionals, Association of Competition Law Practitioners South Africa, Steel and Engineering Industries Federation of South Africa, and the Consumer Goods Council of South Africa.

The objective of the event was to engage the business community on the Commission's focus areas and priorities for the year ahead, following the implementation of the recent amendments to the Competition Act and their implications for big business. The event formed part of the Commission's continuous efforts to maintain healthy relations with its stakeholders, with the business community being one such important stakeholder.

2. Youth in Business Exhibition

The Commission hosted the *Youth in Business* exhibition on 9 September 2022. The exhibition was informed by the outcomes of the workshop on *Barriers Affecting the Entry, Participation and Sustainability of Young Entrepreneurs* in the economy. The workshop highlighted that one of the biggest barriers faced by the youth was a lack of access to information on funding, business skills and development and lack of understanding of the process of registering their business and other compliance requirements. The main objective of the exhibition was to assist young entrepreneurs and aspiring entrepreneurs to overcome barriers by facilitating exchange of key information from key stakeholders.

The Commission invited 14 stakeholders including the Department of Trade Industry and Competition ("dtic"), the South African Bureau of Standards ("SABS"); the Broad Based Black Economic Empowerment Commission ("B-BBEE Commission"); the Companies and Intellectual Property Commission ("CIPC"); the South African Revenues Service ("SARS"); the National Youth Development Agency ("NYDA"); the Department of Small Business Development ("DSBD"); the Small Enterprise Finance Agency ("SEFA"); the Industrial Development Corporation ("IDC"); the Gauteng Department of Economic Development ("GDED"); the Johannesburg Chamber of Commerce and Industry ("JCCI"); the Gauteng Enterprise Propeller ("GEP"); the South African Youth Chamber of Commerce ("SAYCC"); and the Small Enterprise Development Agency ("SEDA") to share information about their services and funding, mentorship, business skills and development programmes that are specifically designed to support young entrepreneurs. The stakeholders also provide on-site services such as business registrations, submitting annual returns and practical guidance on how the youth can navigate their websites and complete applications.

The event attracted youth from various locations in Gauteng, as well as the Western Cape and KwaZulu-Natal provinces, who all benefited from the services offered by the exhibitors.

d. Education & Awareness Initiatives on the Competition Act

The Commission has conducted four (4) workshops and/or seminars on competition, trade, industrial policy and/or regulatory matters. Below we discuss two key workshops/seminars. The other initiatives are provided in Table 26: Education & Awareness Initiatives on the Competition Act.

1. Exhibition at the Rand Show

In the financial year 2022/23, the Commission exhibited at the Rand Show at the Nasrec Showgrounds in Johannesburg. The Rand Show is an annual entertainment event that hosts various exhibitors from the private and public sectors. The Commission utilised the exhibition as a platform to raise public awareness about the work of the Commission, to showcase some of its cases and projects that have had an impact on general consumer welfare as well as on the entry and participation of Small Medium and Micro Enterprises (SMME) in the South African economy.

The exhibition enabled the Commission to have face-to-face engagements with consumers and to interact with them in their home languages. Throughout the duration of the Rand Show, the Commission engaged with various stakeholders including consumers of varying ages, from learners in primary school to elderly citizens, entrepreneurs and individuals from the private and public sector. The Commission attracted in excess of 1000 notable consumers at its exhibition stand who were interested in learning about the work of the Commission.

The Commission was also awarded the “Best Stand Award” Certificate in recognition of the Commission’s “outstanding efforts” and its great showing at the 2022 Rand Show exhibition.

2. Roadshow to Raise Awareness about the Automotive Aftermarkets Guideline

On 29 and 30 November 2022, the Commission embarked on a two day educational roadshow targeted at SMEs and Independent Service Providers (ISPs) in the training and outreach initiatives on the Competition Act. The objective of the outreach was to raise awareness about guidelines in the Automotive Aftermarkets such as panelbeaters and motor body repairers in Gauteng and Eastern Cape provinces.

The objective of the outreach was to raise awareness about the Guidelines for Competition in the South African Automotive

Aftermarket (“Guidelines”) that came into effect on 1 July 2021 and to seek feedback from ISPs on challenges relating to implementation of the Guidelines. The outreach came about as a result of a flood of complaints alleging anti-competitive conduct by some of the Original Equipment Manufacturers (“OEMs”) and large car dealerships.

The outreach revealed that ISPs face a number of issues including:

- a. ISPs experience difficulties in accessing technical information from OEMs such as Mercedes Benz and BMW.
- b. Some dealerships such as Renault refuse to cover warranties for vehicles previously serviced by ISPs.
- c. Insurers dictate prices to be charged by ISPs for repair work done on vehicles.
- d. ISPs highlighted that prices charged by OEMs on spare parts are excessive.
- e. Original equipment manufacturers such as Toyota purchase non-original parts from Midas and package them as original parts and sell them at excessive prices.
- f. Independent service providers struggle to onboard the panel of repairers of Wesbank even where they are of the view that they comply with all the requirements set by Wesbank.
- g. Banking institutions such as Wesbank are contracted by various companies and government to manage the repair of their fleet and the allocation of work is not transparent as certain repairers are preferred over others.

Table 27: Education & Awareness Initiatives On The Competition Act

Publication	Purpose of the publication
Students	In the 2022/23 financial year, the Department of Trade, Industry and Competition in collaboration with the University of Limpopo, Waterberg TVET College Limpopo and Potchefstroom Agricultural College hosted three (3) Student Exposure workshops. The workshops aimed to inform Agricultural Economics students about the opportunities available in the food and agro-processing sector, and promote opportunities for self-employment and innovation. The Commission engaged the students on the mandate of the Commission, its enforcement and advocacy work in the food and agro- processing sector, food price monitoring activities, the market inquiries (grocery, retail and fresh produce markets) initiated by the Commission and career opportunities at the Commission.

Publication	Purpose of the publication
Government Entities	In the 2022/23 financial year, the Commission provided training to over 1500 public procurement officials “Competition in Public Procurement Practices”. The entities that the Commission trained in the year include; Eskom, Limpopo Provincial Treasury, the Western Cape Provincial Government, Transnet, KwaZulu-Natal Treasury and the Auditor General of South Africa. The training sessions focused on issues related to procurement including (i) the importance of competition in procurement and its role for driving economic growth, securing the best value for money and inclusion of SMEs and HDIs and (ii) competition issues that may arise in public procurement such as bid rigging, collusion by spouses, family members, common directors/ shareholders, joint ventures, excessive pricing and predatory pricing strategies. The session also provided attendees with practical methods for (iii) increasing competition in procurement processes and identifying and reporting anti-competitive conduct.
Tertiary Institutions	The Commission provided training to Universities South Africa’s (USAF) Finance and Executive Forum on the provisions of the Competition Act including Bid Rigging and other forms of anti-competitive conduct that occur in procurement processes. The training covered the basic concepts about competition in procurement such as competition issues that may arise in public procurement and practical guidance on how to identify anti-competitive conduct. The participants were also informed about how to set up a competitive public procurement process and what steps to take when anti-competitive conduct is suspected.

e. Awareness Publications

The Commission issued four (4) educational publications. These are discussed below.

1. Educational Pamphlet on Promoting Pro-competitive Rules and Regulations in Residential Estates

The Commission published an educational pamphlet on Promoting Pro-Competitive Rules and Regulations in Residential Estates. The publication was prompted by the high number of complaints against Homeowner Associations and/or Body Corporates of residential estates which centred around the rules of Homeowner Associations and/or Body Corporates which (i) limit the choice of residents insofar as it relates to choosing their preferred service providers for various services including amongst others, services such as architectural design services, plumbers, builders, estate agents, security services and fibre and (ii) prohibit or stifle competition by excluding other service providers, particularly small and medium sized enterprises (SMEs) and firms owned by historically disadvantaged individuals (HDIs) from participating in the market.

The purpose of the pamphlet is to create awareness about competition principles to all role players within residential estates. In particular, the pamphlet seeks to educate consumers and service providers about their rights and responsibilities, increase consumer choice in the number of service providers available within residential estates and increase the participation of SMEs and HDIs who provide services within residential estates.

2. Information Publication on the State of Competition in School Uniform Procurement

The Commission published an information publication on the State of Competition in School Uniform Procurement. The purpose of the publication is to inform parents, schools, school governing bodies and government on the outcomes of the Commission’s intervention in the procurement of school uniforms. The publication provides a timeline of the Commission’s interventions including the issuance of the guidelines on school uniform and first circular; the survey on compliance to the guidelines; the Commission’s investigation against various schools and school groups; the settlement agreements

concluded with certain schools and their exclusively appointed school uniform suppliers; the issuance of the second circular to now include other learning-related material following numerous complaints by parents during the pandemic that schools were requiring learners to procure school-branded or brand-specific Covid-19 related items – including face masks, hand sanitizers, technological devices for learning and other items. The publication also highlights the collaborative efforts undertaken with the Department of Basic Education throughout this period as well as the co-operation with various school governing bodies governed by Memorandums of Understanding. The co-operation with the school governing bodies is aimed at further increasing education and awareness amongst schools, parents and the schooling community, addressing anti-competitive procurement processes, monitoring of compliance by schools to the guidelines and the efficient resolution of complaints.

3. Educational Pamphlet on the Buyer Power Enforcement Guidelines

The Commission published the Buyer Power pamphlet for Small and Medium Enterprises (“SMEs”) and Big Business. The two separate, user-friendly pamphlets cover the salient parts of the Buyer Power Enforcement Guidelines to promote education and awareness for small businesses and dominant buyers in the designated sectors. In terms of promoting education and awareness, the pamphlets will be distributed to affected parties (big business, small business, and relevant Government Departments such as the Department of Small Business Development) and on the Commission’s social media in this financial year.

4. Multimedia Video on Guidelines on the Exchange of Competitively Sensitive Information

The Commission published a multimedia video on the exchange of competitively sensitive information in line with the Competition Commission’s guidelines (“Guidelines”) on 24 February 2023. The video is targeted at industry associations, regulatory bodies, market players and the public and has been published on all the Commission’s social media platforms. The video highlights what is meant by the exchange of competitively sensitive information and what information is considered commercially sensitive information. The video also provides guidance to competitors on how they can best safeguard themselves against conduct that is in contravention

to the Competition Act. The video will be used in future training workshops on Information Exchange for stakeholders such as trade unions and industry associations.

f. Initiatives Aimed at Promoting Entry and Participation of Historically Disadvantaged Individuals

In December 2021, the Commission launched the Women in Business project to better understand the barriers that inhibit women entrepreneurs from meaningful participation in the South African economy as well as the strategies they are adopting to overcome these barriers. The project encompassed several initiatives, including a series of workshops with stakeholders and a survey rolled out nationally to women entrepreneurs. In the reporting period, the Commission completed a research paper on Barriers to Entry and Participation Faced by Women Entrepreneurs. The paper forms part of the Commission’s strategic efforts to understand the dynamics of gender and competition policy in order to promote broader participation by women entrepreneurs in the economy.

The research study reports on the findings from the workshops and the survey to understand barriers to entry and participation faced by women entrepreneurs in business and the strategies they have adopted to overcome these barriers. The research study also makes considerations based on the findings of the workshops and the survey. These are considerations for the Commission, Government and non-Government Entities and are focused on how these entities can empower women and promote an inclusive economy.

g. Advocacy initiatives focused on priority sectors

The Commission undertook three (3) advocacy initiatives focused on cases in the Commission’s priority sectors. The review into the implementation of the Guidelines for Competition in the South African Automotive Aftermarket is discussed below.

The Commission conducted a review into the implementation of the Guidelines for Competition in the South African Automotive Aftermarket’ (“Guidelines”) by the automotive aftermarket industry since the effective date of 1 July 2021. The Commission relied on information received from stakeholder engagements, and through the investigation of complaints and outreach initiatives. The review sought to determine the extent to which stakeholders have

implemented the guidelines, and to evaluate their challenges for implementation.

The review revealed competition concerns about allocation of work to independent service providers (“ISPs”), and that the industry has also been slow to implement standards for non-original spare parts. The Commission will issue a survey in 2023 to assess the level of compliance by OEMs, Dealers, ISPs and Insurers with the guidelines and the focus areas for potential further advocacy interventions.



The Office of the Commissioner (OTC) is responsible for providing strategic leadership and oversight in the organisation. The Strategy and Planning, Corporate Governance, International Relations, Learning & Development, and Communications functions are located 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 2022/23 financial year, all five targets were met.

17.2 INTERNATIONAL RELATIONS

The objectives of the international relations unit are to strengthen and leverage strategic bilateral and multilateral relations including BRICS, Africa and rest of the world. They also seek to collaborate through research and participating in international forums to influence international discourse on competition policy and law with a developmental perspective.

The Commission participated in various regional and international engagements. Regionally, the Commission participated in the African

Competition Forum ("ACF"), African Continental Free Trade Area ("AfCFTA") and Southern African Developing Countries ("SADC") and the Common Market for Eastern and Southern Africa ("COMESA").

Internationally, CCSA participated and contributed to engagements in International Competition Network ("ICN"), Organisation for Economic Cooperation and Development ("OECD"), United Nations Conference on Trade and Development ("UNCTAD"), and Brazil, Russia, India, China, and South Africa ("BRICS") engagements during the financial year.

The impact and outcome of international relations evolves continuously and is strategically influential when considered from a developmental perspective in the competition law sphere. In the period under review, high level engagements and collaborations were hosted across Africa specifically on work done in the AfCFTA Competition Protocol and the International Competition Network (ICN). The aim of these engagements is to influence international discourse in collaborative research and/or projects on competition policy and glean learnings from other authorities.

Below, we highlight significant developments in the Commission's international relations during the 2022/23 financial year:

Table 28: Engagements with international and foreign bodies in 2021/22 financial year

Competition body	Nature of engagement
African Competition Forum (ACF)	Significant ACF activities that took place under period of review: 1. Managed the ACF- SADC Cartel technical training workshop held virtually on 15 June 2022. South Africa was represented by Mfundo Ngobese, a Principal investigator of CCSA. 2. Attended the 4th AfCFTA Competition Meeting as Chair to lead the discussions of the AfCFTA competition protocol was convened in a hybrid format from Accra, Ghana from 11 - 14 April 2022. 3. Attended the 5th AfCFTA Competition Meeting as chair for the advancement of the Competition Protocol was convened in a hybrid format from Accra, Ghana from 30 May – 02 June 2022.
<i>African Competition Forum (ACF)</i>	4. Hosted and managed the 2nd ACF Generic Pharmaceutical industry and International Roaming charges studies Workshop held in Johannesburg on 01-02 August 2022. 5. Attended and coordinated with the SADC Secretariat the SADC Mergers Working Group discussion which was held virtually on 12 August 2022. South Africa was represented by Mergers & Acquisitions Divisional Manager, who presented on Merger assessment and enforcement in the midst of Covid 6. Coordinated the ACF - AfCFTA Competition Protocol Discussion held virtually on 30 August 2022. 7. Coordinated the ACF/SADC Cartels Workshop held in a hybrid format in Zambia on 12– 13 September 2022. CCSA was represented by the Cartels division. 8. CCSA was represented at the 12th Meeting of The AfCFTA Committee of Senior Trade Officials (STOs) held in a hybrid format in Accra, Ghana on 3-8 October 2022 for the advancement of the AfCFTA protocol. 9. Coordinated the Egypt and CCSA aviation technical meeting discussion held virtually on 18 October 2022. Meeting was led by Principal Economist in CCSA from the Economic Research Bureau division 10. CCSA contributed to the Competition Protocol for the advancement of the 13th Meeting of the African Continental Free Trade Area (AfCFTA) Committee of Senior Trade Officials (STOs), 25 October 2022. 11. Coordinated and managed the ACF Merger technical training workshop held in Malawi on 08-09 November 2022. 12. Consultative Meeting: Department of Trade, Industry & Competition (dtic), Competition Commission of South Africa and the Seychelles High Commission held in Welcome Centre, Boardroom 13 on 18 November 2022. The discussion was about the MOU implementation between CCSA and Seychelles Fair Trade Commission. 13. IBA FCCPC Competition in Africa, 24 November 2022. Deputy Commissioner represented CCSA. 14. Managed and hosted the ACF side-line meetings at OECD Competition Committee Meetings & Global Forum Meetings in Paris, 30 November 2022. 15. The Egyptian Competition Authority hosted the Heads of Africa competition agencies meeting in Cairo, Egypt on 01 – 02 February 2023. The meeting discussed CCSA concept note on digital markets which was developed by CCSA. 16. CCSA supported the second Africa-EU Competition Week held at the College of Europe in Bruges, from 13 to 16 February 2023. A bilateral meeting was held on the side-lines of the Competition Week with counterparts from DG Comp 17. CCSA as the Chair, led a project to develop a questionnaire for collection of data which was initiated by the SADC region submitted on the 6th of February 2023. 18. Coordinated and hosted the ACF Steering Committee meeting held in Johannesburg, South Africa on 08 - 09 March 2023

Competition body	Nature of engagement
OECD	Significant activities took place under period of review: 1. The CCSA has made written submissions from the Market Conduct, Economic Research Bureau and Legal Service Division for the OECD competition meeting that was convened on 20 – 24 June 2022 in France, Paris. The CCSA participated virtually and made the following three written contributions in the Roundtable sessions: Competition and Regulation in the Provision of Local Transportation Services (Working Party No. 2); Interim Measures in Antitrust Investigations (Working Party No. 3); and on Integrating Consumer Behaviour Insights in Competition Enforcement. 2. CCSA submitted a questionnaire on “Disqualification of Directors in Competition Enforcement,” 11 October 2022. 3. CCSA participated in “The goals of competition policy” at the OECD Global Forum on Competition Meetings held in Paris on 28 November-02 December 2022. 4. CCSA submitted a written contribution which was discussed under Roundtable on Competition and Inflation on 30 November 2022 in Paris. 5. CCSA submitted a response on the digital markets for the OECD’s Product Market Regulation Survey, 16 March 2023.
BRICS	Nine activities took place under period of review: participation through presentations and attendance. 1. CCSA submitted a written contribution to the Draft Document on Leniency programs in the BRICS countries prior to the due date of 10 June 2022. 2. CCSA signed the BRICS Joint Statement under the theme: “Foster High-quality BRICS Partnership, Usher in a New Era for Global Development” on 23-24 June 2022. The leaders reiterated the importance of further enhancing BRICS solidarity and cooperation based on their common interests and key priorities to further strengthen their strategic partnership. 3. CCSA submitted a written contribution in the form of a questionnaire to the Brazilian Competition Authority on 29 July 2022. The focus of the questionnaire is ex-post assessments of the effects of competition advocacy actions. 4. The VII International Conference “Anti-monopoly Policy: Science, Practice, Education”- Meeting of the BRICS Working Group for the Research of Competition Issues in Pharmaceutical Markets. The Economic division of CCSA contributed to the discussions and sharing experience of South Africa on “protecting competition in the pharmaceutical markets and taking measures aimed at stabilizing and supporting the competitive environment in this industry”, 9-10 November 2022. 5. CCSA participated and contributed to the Meeting of the Heads of the BRICS Competition Authorities held virtually on 15 November 2022 on the following topics, amongst others: “Updates on anti-monopoly legislation and enforcement in BRICS countries” and “Challenges of anti-monopoly in digital markets (proposed by Brazil and India) “ 6. BRICS Working Group on Digital Economy, CCSA participated in the session “Advancements and commonalities in BRICS approaches to digital markets”, 24-25 November 2022. 7. CCSA submitted a written contribution for the BRICS Leniency Joint Report and the 2nd Expert meeting was held virtually on 07 December 2022. 8. A follow up call on the BRICS Leniency Joint Report experts was held virtually on 02 March 2023. 9. Meeting of the BRICS Working Group for the Research of Competition Issues in Food Markets was held virtually on 28-30 March 2023. Deputy Commissioner presented on the topic: “Volatility in global food markets: challenges and solutions”.

Competition body	Nature of engagement
ICN (International Competition Network)	Fourteen ICN activities including tele-seminars, meetings, tele-conference calls and webinars took place in the period under review: 1. The ICN 21st Annual Conference, Berlin Germany, hybrid: 4-6 May 2022 attended by Commissioner Bonakele and Deputy Commissioners Hardin Ratshisusu and James Hodge. They all participated in one plenary session, three break-out sessions, and one Steering Group dinner. Topics: 1. “Competition law enforcement at the intersection between competition, consumer protection, and privacy”, 2. Sustainability and 3. “Digital platforms: thinking about theories of harm through incentives and business models”. 2. ICN Agency Effectiveness Working Group survey on “Gathering and Using Information for Effective Strategic Planning” submitted by CCSA Human Capital on 02 August 2022. 3. CCSA contributed to the ICN Anti-Cartel Enforcement template on enforcement techniques on 30 September 2022 by Cartels Division. 4. ICN Mergers Working Group, CCSA commented on a survey: barriers to entry and participation in the form of a written contribution on 28 September 2022. 5. Commissioner participated in the ICN Steering Group Meeting held on 26 October 2022. 6. ICN Steering Committee Meeting took place in Paris on the side-lines of the OECD on the 30th of November 2022, Commissioner participated. 7. ICN Cartels Workshop was held in Auckland on 06 – 08 December 2022 and the Cartels division presented on the “<i>Latest developments in class actions and how should agencies respond.</i>” 8. Commissioner participated in the ICN Steering Group Meeting held virtually on 18 January 2023. 9. ICN MWG webinar on Empirical Evidence in digital mergers held on 26 January 2023. The Mergers and Acquisitions unit moderated the session. 10. ICN Training on Demand Video conference held on 31 January 2023. The training unit of CCSA participated and contributed to the training. 11. ICN UCWG Webinar on “Abuse of Dominance in the Pharmaceutical Sector”, 01 February 2023. The CCSA made a contribution through Market Conduct Division. 12. CCSA participated in the ICN ACPC/ Working Group Chairs Meeting held on 15 February 2023. 13. ICN Unilateral Conduct Workshop held on 07 - 08 March 2023, Market Conduct Division contributed to the session. 14. Commissioner participated in the ICN Steering Group meeting held on 15 March 2023 15. ICN Toolkit-CCSA Contributed through Advocacy Division, 23 March 2023.
UNCTAD (The United Nations Conference on Trade and Development)	Five activities took place in the period under review: 1. UNCTAD Eighth meeting of Working Group on modalities of UNCTAD voluntary peer review exercises. CCSA made a written contribution on 3 May 2022 2. Inter-governmental Group of Experts on Competition Law and Policy, twentieth session. CCSA participated on the topic: Rethinking competition law enforcement: Lessons learnt from the COVID-19 pandemic on the 21 July 2022. 3. CCSA submitted questions for the <i>Voluntary Peer Review of Competition Law and Policy: Bangladesh</i>, 22 July 2022. 4. CCSA completed the UNCTAD Questionnaire on Competition Authorities’ training needs on 04 August 2022. First substantive meeting of UNCTAD Working Group on Cross-Border Cartels, 28 February 2023 was attended by Cartels Division.

Competition body	Nature of engagement
Other	Twenty nine activities took place in the period under review: 1. Case exchange: COMESA Competition Commission Inquiry into the Sugar Sector 19 April 2022. 2. Competition Commission Project on Cartel Detection in Government e-Tender Markets; 20 April 2022. 3. Memorandum of Understanding proposed by Hellenic Competition Commission was signed on the 29 June 2022. 4. CCSA had a bilateral meeting with FAS Russia to prepare for the 20th IGE UNCTAD, 12 July 2022. 5. CCSA and EGYPT Competition Authority sign a Memorandum of Understanding on the 31 August 2022. 6. Case Exchange: US FTC/CCSA Question on labour-focused cases/experience; 12 September 2022. 7. Concurrence: 9th Anti-trust in Developing & Emerging Economies, the Commissioner participated on the session named: <i>"Public interest: Food, Workers, Sustainability"</i>, 25 October 2022. 8. Case Exchange: New complaint request from CCM Website, 7 October 2022. 9. US FTC statement on US law banning unfair methods of competition, 10 October 2022. 10. Competition Authority of Kenya 9th Annual Symposium on Competition Law and Policy attended by Cartels, 28 October 2022. 11. FTC/CCSA Meeting: Discussion of digital markets experience and initiatives, 11 November 2022. 12. Embassy of South Africa Meet and Greet between Commissioner & Ambassador Seokolo, 28 November 2022. 13. Bilateral meeting with Angola Competition Authority with CEO Dr Eugenia Chela Pontes Pereira, 29 November 2022. 14. Bilateral meeting with CMA with Sam Scott, Director for Policy and International, 29 November 2022. 15. Inter-Departmental Virtual Meeting Burundi, Uganda, Kenya and Seychelles, 30 November 2022. 16. The Heads of Authorities meeting was held on the side-lines of the OECD in Paris, 30 November 2022. 17. Bilateral meeting between FTC Lina Khan and CCSA, 01 December 2022. 18. Case exchange between EU and CCSA on prioritisation of work; 09 January 2023 19. Case Exchange: Merger Query, Transfer of Shares vs. Internal Restructuring; 09 January 2023. 20. Case exchange: Competition Commission South Africa and Namibian Competition Commission; 17 February 2023. 21. Case exchange: Competition and Consumer Protection and SADC Mergers WG; 08 February 2023. 22. Seychelles: Request to update list of MoU Agreements, 9 March 2023. 23. South Africa - EU Dialogue Facility, 15 March 2023. 24. GCR (Global Competition Review) Rating Enforcement Questionnaire 2023 submitted on 17 March 2023. 25. Equity Across the World: A Comparative Discussion of Equity & Enforcement, 20 March 2023; CCSA was represented by Nandi Mokoena. 26. Bilateral meeting: Commissioner Doris Tshepe and FTC Chair Lina M. Khan, 27 March 2023. 27. The Federal Trade Commission and Justice Department's Anti-trust Division co-hosted a Spring Enforcers Summit, 27 March 2023. 28. Commissioner Doris Tshepe participated in a panel discussion at the ABA Spring Meeting, 30 March 2023. 29. The 2023 ABA Anti-trust Law Section Spring Meetings was convened from the 29 to the 31 of March 2023.

17.3 COMMUNICATING THE WORK OF THE COMMISSION

The Commission is a regulatory body responsible for regulating and promotion of competition in markets in South Africa. The realisation of the mandate of the Commission hinges on effective communication of its mandate, policies, activities and decisions to a wide range of stakeholders, including businesses, consumers, policymakers and the media. The communication strategy and output cover the following:

- **Outreach and education:** During the year under review, the Commission has sought to reach out to businesses and consumers to promote and educate stakeholders on the work of the Commission in general and on specific programs of the Commission. The outreach and education programs are aimed at improving awareness, understanding, compliance and firm behaviour that supports the objectives of the Competition Act.

IMPACT

- **Rand Easter Show:** The Commission exhibited at the Rand Easter Show, an annual event held at Nasrec near Soweto. The event, through various platforms and physical attendance, exposes the Commission to over 800 000 people. The Commission stand, which won The Best Stand Award, attracted immense interest from the 60 000 physical exhibition visitors who were briefed on the mandate of the Commission and its work. This had incredible impact on our education and awareness efforts.
- **Stakeholder engagement:** The Commission engages with a wide range of stakeholders, including industry associations, consumer groups, and other regulatory bodies on broad issues related to Competition and on specific issues and projects. During the year under review, the Commission has engaged with various stakeholders during some of the economic shocks experienced in the airline and food industries with outcomes that have ameliorated the impact of these shocks to the consumers and the economy.

- **Reputation management:** The Commission's reputation is critical to its effectiveness. The communication unit helps to manage the Commission's reputation by developing and implementing communication strategies that respond to issues and concerns raised by stakeholders, and by proactively communicating the Commission's achievements and successes.
- **Crisis management:** In the event of a crisis, such as a major investigation or enforcement action, the Commission needs to communicate effectively with stakeholders to minimize the impact on the economy and public confidence in the Commission. Thus, our communication helps with development of crisis communication plans and coordinate communication activities during a crisis. In the execution of the above, we utilise effective communication tools which are part of our communication strategy.
- **Social media:** Social media platforms such as Twitter, Facebook, and LinkedIn amplify our efforts of reaching out to a broad audience and engaging with stakeholders. We develop and utilise social media strategies and content that are tailored to different platforms and audiences. Further, we utilise livestreaming for real time audience participation and to connect with wider audiences throughout the digital universe through live broadcasting of our events and established broadcasters tap into our resource to capture our events. More importantly, all this footage is recorded and available on our YouTube channel available on our website.

IMPACT

- The increased social media analytics have resulted in more people interacting with the Commission's social media platforms. This has resulted in increased brand awareness; boosted the Commission's credibility and increased stakeholder insights into its work and activities. The social media platforms serve as customer service channels with more stakeholders submitting inquiries, concerns, and feedback.
- **Speaking Engagements:** Commission officials embark on a wide range of public speaking engagements like conferences,

industry events, and other forums which are an effective way to communicate the Commission's message to key stakeholders. We make use of these speaking opportunities and publish the messages and presentations.

- **Publications:** The Commission publishes reports, newsletters, and other materials that provide information about its activities and decisions. We package and develop the content and design of these publications, and ensure that they are easily digestible, and distributed effectively to stakeholders.

IMPACT

Quarterly Newsletter

- The Commission publishes a quarterly newsletter that educates and informs stakeholders and the public about its mandate and efforts. The publication targets specialists in competition law and economics as well as leaders in business and policy makers, school and university libraries, competition entities and the public at large. The publication is emailed to recipients and uploaded on our social media platforms. We estimate a readership of about 100 000 readers worldwide.
- Website: The Commission's website is an important source of information for stakeholders, and we ensure that it is up-to-date, user-friendly, and accessible to all.

Annual Conference

- The objective of the Annual Competition Conference is to bring together renowned specialists in competition law and economics as well as key figures in business and government more broadly to debate and develop the understanding of key issues. The Annual Competition Conference is targeted at academics with an interest in competition enforcement and policy, policy makers and practitioners in the competition law and regulation space as well as competition and industrial policy makers more broadly.

IMPACT

- The Commission, together with the Competition Tribunal (Tribunal), hosted the Annual Conference on Competition

Law, Economics and Policy . The Conference assumes various themes every year based on the policy, legislative and strategic questions of the year, guided by the research of the Economic Research Bureau and other strategic inputs from the Commission and the Tribunal.

The Conference is an important forum for the Commission and the Tribunal to shape and influence the intellectual discourse on Competition Regulation and Economic Policy. The 16th iteration of the Conference took place from 31 August to 1 September 2022 at a time when South Africa and the world were emerging from two years of the Covid-19 pandemic.

The advent of the disaster had forced a reorganisation and reprioritisation by all entities with a post pandemic world that was fundamentally different from the pre-Covid-19 world. The political, economic and social challenges faced by the world have also been compounded by the geopolitical environment, particularly the Russia/Ukraine war and other factors.

The 16th Annual Conference offered an opportunity to reflect on achievements and setbacks in competition policy and practice as well as to consider and chart the future. The Conference also took place at a time of transition for the Commission with the smooth change of leadership from the then Commissioner Tembinkosi Bonakele to the incoming Commissioner, Doris Tshepe.

The theme of the conference was *“Effective competition law enforcement and policy development for sustainable, growth and inclusive markets”*. The theme, which informed the panel discussion topics, was motivated by the current challenges in the South African economy which is emerging from a bruising Covid-19 slump in economic growth including: generating higher levels of investment and growth and ensuring that growth is more inclusive, whilst also relieving the immediate pressure on low-income households.

The theme was based on the premise that competition policy needs to be responsive to these challenges in terms of the approach to enforcement, the prioritisation of enforcement areas and the speed of enforcement. This year's annual conference

aimed to stimulate debate around how best competition law and policy may fulfil this role. Specifically, the proceedings of the Conference covered seven plenary sessions with interactive panel discussions, a keynote address from the Minister of Trade, Industry and Competition, a book launch and the Competition hourglass. A broad overview is given below.

Media relations

The media is an important channel for communicating with a wide range of stakeholders, including the public, policymakers, and industry associations. The work of media liaison also helps to establish and maintain symbiotic relationships with journalists and their outlets and provide them with timely and accurate information about the Commission’s activities and decisions.

During the period under review, the Commission issued 44 media statements. These generated numerous follow-up interviews, resulting in extensive media coverage. This has and continues to place the Commission as a notable newsmaker in the public discourse on socio-economic affairs.

The coverage also translates into quantifiable commercial worth, called advertising value equivalent (AVE) which cumulatively amounts

to about R378 724 676. This coverage comprises an AVE value of at least R130 889 110 for print media coverage; an AVE value of at least R75 773 242 for broadcast coverage; and at least R172 062 325 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 if you placed an advertisement, the equivalent value.

IMPACT

The media statements are used to convey important information and announcements by the Commission. The media relations activities have helped influence the messaging of the Commission’s work, its brand imaging, and reputation, and ensured effective communication with stakeholders.

Below is a list of the Commission’s social media platforms, and the number of followers or subscribers as of 31 March 2023. 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	788.5K	658.6K	548.7K	187.8k	2183.6K
Facebook	9193	15816	4097	128 509	157 615
LinkedIn	148935	254628	176102	6716	586 381
Instagram	2570	12823	6091	9750	31234

17.4 LEARNING AND DEVELOPMENT

The Commission places great importance on developing its personnel. R4 906 526, 50 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 has moved towards a Learning and Development Program that relies heavily on its internal expertise and information resources in the development and delivery of learning programs, 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 programs for international competition authorities.

In line with its aspiration to support the holistic development of its staff, the Commission supports staff to not only do their jobs, but also to grow as individuals. In the 2022/23 financial year, over 65% of employees were trained through the academy.

Outcomes and impact of learning and development initiatives

In addition to the various training sessions attended by staff, the learning academy facilitated 32 training sessions initiated and developed internally.

The Commission considers it important to develop local content because it recognises that the South African economy faces unique economic constraints; namely high levels of poverty, inequality and unemployment. These constraints require an approach to competition law enforcement that may not apply equally in other jurisdictions. Therefore, the learning and development function is crucial to developing local knowledge and approaches to competition law enforcement so as to enable case outcomes and remedies that are relevant to South Africa's developmental context.

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 program from the old Graduate Development Program by enhancing the training component and experiential learning aspects of the program. Through the new Cadet programme, the law graduates can complete their articles through established partnerships with private law firms. The Commission has enrolled fifteen (15) graduates in the revamped Cadet program. The Commission will be looking at continuously updating the program, to accommodate new domains of talent required to execute the mandate of the Commission.

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 (6) KPIs and met four (4) and did not meet two (2).

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 it adopted four years ago, 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 with changes in legislation; and
- Limited implementation of some aspects of the new organisational structure whilst awaiting consulting with the Minister of Trade, Industry and Competition.
- Implementation of the Commission's talent management framework in refinement of the competency framework

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 Performance Management Policy has seen its third 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.

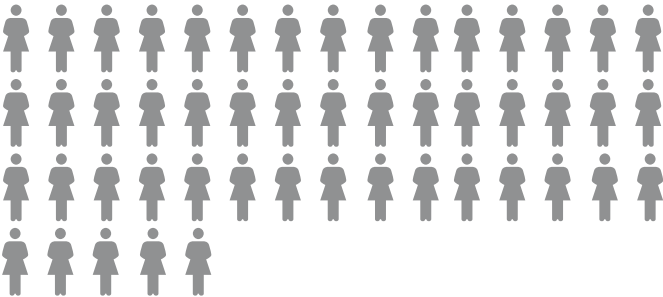
c. **Employment Equity**

The Commission has made a deliberate effort to comply with the Employment Equity Act (EEA) (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 who are seeking employment.

Table 30: Commission 2022/23 Race Profile

FEMALE (59.35%)

AFRICAN FEMALE: 50%



INDIAN FEMALE: 4.67%



COLOURED FEMALE: 2.34%

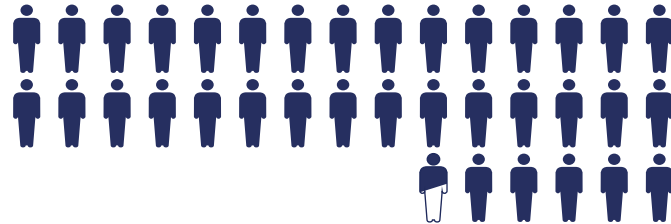


WHITE FEMALE: 2.34%



MALE (40.65%)

AFRICAN MALE: 35.51%



WHITE MALE: 3.74%



INDIAN MALE: 0.93%



COLOURED MALE: 0.47%



In the 2022/23 financial year, the equity ratio for female and male representation is 57% and 43%, respectively. People with disabilities represented 2.3% of Commission staff, thereby achieving the legislated target of 2%. Notwithstanding the attainment of the legislated target, the Commission will continue to increase efforts in the recruitment of people living with disabilities by giving priority to qualifying applicants for vacant positions, as well as for development opportunities. The Commission has for the first time managed to reach a critical milestone at senior management level by striking a balance of a 50% male and 50% female representation at top management. The Commission's 2022/23 race and gender profile is as follows:

d. *Staff turnover*

As at end of the 2022/23 financial year, the Commission's staff complement stood at 230 employees. There were 19 terminations of employment during 2022/23 financial year. The Commission's current annual termination rate is significantly lower compared to the previous years. The main reasons cited for resignations were career change/development. There was 1 dismissal in the financial year.



e. *Employee Retention*

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

Employee Development: In the financial year under review, the Commission has spent R4 906 526,50 million towards the development of employees. This includes study loans, domestic and international travel for developmental purposes. The Commission also has an established Learning Academy, which facilitates and delivers training and discussions on competition-related topics for employees at all levels.

The Commission has also formed partnerships with law firms to facilitate the admission of employees who are not yet admitted as attorneys. This initiative facilitates career growth, in that once admitted, such employees can grow into senior levels within the Commission. Since the inception of the program, 6 individuals have been placed with law firms to complete their articles.

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.

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. By year-end, the union's representation was 61%, which gave it majority rights, in terms of the amended Chapter III of the Labour Relations Act (No. 66 of 1998).

g. *Facilities management*

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

This section has been involved in planning and preparation for investments in fit-for-purpose space that is effectively managed, complies with occupational 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 of the Commission.

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 of the Commission. The Commission's ICT network is partly hosted by the Department of Trade, Industry and Competition (dtic) as some operations of the Commission are located on the dtic campus.

Improvements in ICT governance and better focus in research for relevant solutions were a central focus during the financial year. In the improved ICT governance area, the Commission has focused on cybersecurity, ICT governance framework and collaboration.

The Commission has moved to strengthen ICT security through various security measures like document management, vulnerability and patch management and Data Leak Prevention systems.

i. Records Management

The Commission's Records Management function continued to provide an efficient service to both external and internal clients; to support the core and support functions of the Commission. The two focus areas during the year under review were the risk-based approach and the improvement of policies to align and comply with the regulatory framework affecting information at the Commission's disposal. 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 (about 15-odd databases, which include international and local legal databases), various business and

marketing resources that are well-used, and a well-maintained print collection (that includes a respectable and current book collection that has been augmented with eighteen (18) new titles during the year under review). The IRC issues resources to employees (with one hundred and sixteen publications issued during the year) and provides support to employees conducting research (with approximately two hundred and thirty eight requests for information finalised during the year under review). Employees were kept abreast of new information resources through bulletins circulated during the financial year. The IRC also circulated weekly policy and regulatory overviews to select staff. Seventy two people received training on various databases during the course of the year.

Table 31: 2022/23 Performance Against Targets Set

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND ENHANCED ECONOMIC PARTICIPATION							
1. Efficient and effective merger regulation & enforcement	a. Mergers and Acquisitions decisions	M&A	1	Average turnaround time for Phase b 1 merger investigations.	≤ 20 days	16 days	Target met.
		M&A	2	Average turnaround time for Phase 2 merger investigations.	≤ 45 days	41 days	Target met.
		M&A	3	Average turnaround time for Phase 3 intermediate and small merger investigations.	≤ 60 days	58 days	Target met.
		M&A	4	Average turnaround time for 90% of Phase 3 large merger investigations.	≤ 120 days	90 days	Target met.
	b. Compliance monitoring for merger conditions	M&A	5	% of imposed merger remedies and conditions monitored.	100%	100%	Target met.
	c. Merger regulation and conditions	M&A	6	% cases in which ESOP or BEE Deals are implemented to remedy merger-specific public interest concerns.	5%	28%	Target exceeded. The Commission implemented more than 5% ESOP or BEE deals to remedy merger-specific public interest concerns.
	d. Covid-19 investigations	Advocacy, Cartels & MCD	7.	% of Covid-19 investigations completed within 12 months.	100%	74%	Target not met. The Commission had a number of Covid-19 cases that required more time to complete the investigations.
		LSD	8.	% of Covid-19 cases won at the Tribunal.	≥90%	100%	Target met.
		LSD	9.	% of Covid-19 cases won at the courts.	≥90%	N/A	Target not applicable. No decisions were granted.
		MCD	10.	No. of abuse of dominance and restrictive cases initiated related to Covid-19.	N/A	N/A	Target not applicable. No target set.
		MCD & Cartels	11.	% of Covid-19 exemption applications completed within 3 months.	100%	N/A	Target not applicable. The Commission did not receive any Covid-19 exemption applications.
		ERB	12.	Report on essential food products.	2	2	Target met.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	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	13	No. of abuse of dominance and restrictive cases initiated in prioritized sectors.	5	17	Target exceeded. The Commission has been highlighting concerns with the rising prices of essential food since 2020 in the Essential Food Price Monitoring Reports. Given the persistence of the price increases, the Commission decided to initiate complaints against the major retailers and manufacturers of certain essential foods.
		MCD & Advocacy	14	% of market conduct investigations completed within 18 months.	≥75%	97.4%	Target met
	b) Exemption application decisions	MCD	15	% of exemption applications completed within 12 months.	≥100%	N/A	Target not applicable. The Commission did not complete any exemption applications.
	c) Cartel investigations	Cartels	16	No. of cartel investigations completed.	10	28	Target exceeded The Commission expedited completion of Cartel investigations, as there were few trials.
	d) Cartel prosecution	Cartels & LSD	17	% of cartel cases won at the Tribunal.	≥75%	100%	Target met.
		Cartels & LSD	18	% of cartel cases won at the courts.	≥75%	0%	Target not met. The cases were lost as the court found that there was not enough evidence of the contravention of the Competition Act.
	e) Prosecution of Abuse of dominance and restrictive practices	LSD	19	% of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation.	≥70%	100%	Target met.
		LSD	20	% 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	21	% of merger decisions upheld by the Tribunal.	≥75%	100%	Target met.
		LSD	22	% of merger decisions upheld by the courts.	≥75%	100%	Target met.
	g) Merger litigation	LSD & Cartels	23	% of interlocutory decisions upheld by the Tribunal.	≥60%	100%	Target met.
		LSD & Cartels	24	% of interlocutory decisions upheld by the courts.	≥60%	50%	Target not met. The court found that the Tribunal did not have jurisdiction to hear review applications.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES							
4. Improved compliance & awareness	a) Domestic outreach initiatives	Advocacy	25	No. of education, training and outreach conducted on Competition Act.	4	5	Target exceeded. The Commission received more training requests from stakeholders than planned.
		Advocacy & OTC	26	Number of awareness publications on the Competition Act.	4	8	Target exceeded. There were more stakeholder educational requirements than anticipated.
	b) External Guidelines on the application of the Competition Act	LSD & ERB	27	No. of Guidelines on the application of the Competition Act issued to stakeholders.	2	2	Target met
	c) Advisory Opinions	LSD	28	% 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	29	No. of market inquiries initiated.	2	2	Target met.
		MCD	30	No. of market inquiries completed.	1	0	Target not met. After receiving comments from stakeholders on the provisional report, the Commission required more time to further engage and consult with affected stakeholders.
	b) Industry Scoping Studies	ERB	31	No. of industry scoping studies conducted in prioritized sectors.	1	1	Target met.
	c) Impact assessments on Commission decisions or competition policy	ERB	32	No. of impact assessment studies completed.	1	1	Target met.
	d) Advocacy in priority sectors	Advocacy	33	No. of advocacy cases completed in priority sectors.	4	4	Target met.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	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	34	No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted.	2	3	Target exceeded. The Commission received more training requests than anticipated.
		Advocacy	35	No. of initiatives to promote entry & participation of HDIs.	2	2	Target met.
		OTC & ERB	36	No. of Annual Conferences hosted.	1	1	Target met.
	b) Policy responses	Advocacy	37	No. of submissions or responses to policy or regulation.	4	5	Target exceeded. The Commission received more requests from stakeholders to review and comment on their legislations over and above what was planned.
	c) Research & Thought Leadership	ERB	38	No. of research and thought leadership insights published.	4	5	Target exceeded. The Commission took advantage of the timing of external publication and published an extra paper.
7. Increased importance of developmental perspectives in domestic and international competition law discourse	a) Collaboration with Regional & International partners	OTC	39	No. of research projects and/or publications undertaken with African, BRICS and international partners.	8	21	Target Exceeded The Commission got invited to participate/contribute to strategic international forums/projects above what was planned.
STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION							
8. Sound Corporate Governance	a) Audit Outcome	Finance	40	Audit Opinion.	Clean Audit	Clean Audit	Target met.
9. Secure, harmonious and conducive working environment	a) Organizational Structure Review	OTC, CSD & Finance	41	Review of Organizational Structure.	N/A	N/A	Target not applicable. No target set.
	b) Conducive Facilities & Efficient Security	CSD & Finance	42	Implementation of Phase 1 and initiation of phase 2 of integrated business system.	Report on implementation	0	Target not met. The Commission identified risks with the project and decided to further refine the scope and phasing of implementation.
		CSD & Finance	43	Relocate staff to appropriate office space.	Report on completed implementation.	0	Target not met. After following a procurement process for purchasing property, the Commission changed to a lease option because the outright purchase was not affordable. The rental procurement process could not be completed within the financial year.
		CSD	44	Reports on implementation of the OHS compliance plan.	4	4	Target met.

PERFORMANCE MEASURE						ACHIEVEMENT AGAINST TARGETS	
OUTCOME	OUTPUT	ACCOUNT- ABLE PRO- GRAMME	KPI No.	KEY PERFORMANCE INDICATORS (KPI)	ANNUAL TARGET	ANNUAL RESULTS	REASON FOR VARIANCE
10.Highly engaged, motivated and productive workforce	a) Talent management	CSD & OTC	45	% of HR spend in learning and development	1%	2.16%	Target exceeded. The Commission had a higher than anticipated uptake in international courses and the number of participants that were approved to attend courses. This was further contributed by the fact that this is the first year after Covid-19 that staff at the Commission could travel overseas to attend courses.
		CSD	46	% retention rate of staff complement.	≥90%	98.48%	Target met.
		OTC	47	% of staff reached through training academy initiatives.	≥65%	68.6%	Target met.
11.Business Process Improvement	a. Review and redesign of business processes to improve efficiency and organizational agility	LSD	48.	Review the CC Forms for complaints/ merger filing.	2	2	Target met.
12.Effective collaboration with other state entities	a. Coordinated initiatives	CSD	49.	Established initiative/workshop/ seminar/online platform on transversal programmes, learning and development and employee wellness.	1	1	Target met.
	b. Partnerships with other Regulators and state entities.	Advocacy	50.	Report on collaboration with MOU partners, Gov and Sector Regulators	2	1	Target not met. The Commission had unanticipated delays with stakeholder consultation process.
	c. Efficient supply chain process.	Finance	51.	% of suppliers paid within 30 days.	80%	82.19%	Target met.

PART D



CORPORATE GOVERNANCE

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

19.1 DECISION-MAKING STRUCTURES

The Commissioner, Ms Doris Tshepe¹, 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 for performing any functions assigned to her in terms of the Competition Act and the Public Finance Management 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 2 acting Deputy Commissioners.

The Commission held forty-three (43) 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 Commissioners and Divisional Managers, including the Chief Financial Officer. The EXCO advises the Commissioners in decision-making on the administrative and operational aspects of their functions.

The EXCO held twelve (12) 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

¹ Mr Tembinkosi Bonakele's terms of office ended on 31 August 2022 and Ms Doris Tshepe's started on 1 September 2022.

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 EXCO meetings, in order to monitor expenditure, activities and progress. The Commission submits quarterly reports to the dtic, in terms of the PFMA. EXCO has established five committees to assist it in performing its oversight function, and to provide it with guidance on matters falling within the terms of reference of the respective committees. The five committees are referred to below.

c) The Management Committee

EXCO is assisted by the Management Committee which meets a minimum of two times a financial year. 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 convened three (3) meetings during the financial year.

The role of the Management Committee is to review and recommend 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 is comprised of select EXCO members who are 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 four (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 four (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 six (6) times during the period under review.

g) Employment Equity Committee

The Employment Equity Committee comprises of Commission employees who represent all levels in the organisation, who are selected in line with the provisions of the Employment Equity Act. The Committee oversees the transformational agenda of the Commission. Its objectives are to do an analysis of the employee profile, play a consultative role in setting targets for transformation, and identify and resolve barriers to transformation. The Committee held four (4) 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. The Committee met three (3) 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 3 independent non-executive members. The Committee plays an advisory role, and makes recommendations to the Commissioner, in her capacity as Accounting Authority, on matters relating to remuneration of employees at all employee levels. The committee held a total of four (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 2022/2023; 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 for the period under review.

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



FINANCIAL INFORMATION

GENERAL INFORMATION

Country of incorporation and domicile

South Africa

Nature of business and principal activities

The Competition Commission is a statutory body constituted in terms of the Competition Act, No 89 of 1998 by the Government of South Africa empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy.

Executive Committee

Ms. D. Tshepe - Commissioner (appointed 01 September 2022)

Mr. T. Bonakele - Commissioner (term ended 31 August 2022)

Mr. H. Ratshisusu

Mr. A. Gwabeni

Ms. T. Paremoer

Ms. M. Ramokgopa

Mr. J. Hodge

Ms. K. Qobo

Mr. M. Mohlala

Mr. M. George

Mr. A. Moledi

Mr. B. Majenge

Mr. M. Msibi

Registered office

Competition Commission of South Africa

The DTI Campus, Block C Mulayo, 77 Meintjies Street, Sunnyside Pretoria, 0002

Economic entity

The Competition Commission is a competition authority of South Africa and the Minister of the Department of Trade, Industry and Competition (DTIC) is the Executive Authority.

Bankers

ABSA Business Bank

South African Reserve Bank

Auditor

The Auditor General of South Africa

PROCUREMENT BY “OTHER MEANS” (DEVIATIONS), VARIATIONS AND EXTENSION OF CONTRACT

Supply Chain Management (SCM) is responsible for effective and efficient Demand, Acquisition, Disposal, Logistics, Risk, Contract Management and Compliance Management aligned to the Supply Chain Management Regulatory Framework as prescribed by National Treasury. SCM ensures processes that are fair, transparent, equitable, cost-effective and competitive.

During the 2022/23 financial year, the Commission Supply Chain Management process achieved the delivery of effective and efficient procurement processes, good governance, compliance reporting and monitoring of Fruitless, Wasteful, and Irregular Expenditure. The Commission achieved finalisation of strategic acquisitions against an approved procurement plan in compliance with effective collaborative compliance processes such as bid specification, bid evaluation and bid adjudication committees. The table below reflects the Reporting of Procurement by Other Means, Variations and Expansions of Contracts as required in National Treasury Instruction Note 3 of 2021/2022 Sections 4.7 and 5.5.

Table 31: Reporting of procurement by other means, variations and expansions of contracts

Total value Variations	R455 141,25
Total Value Deviations	R4 417 635,76

IRREGULAR EXPENDITURE

	2022/23 R'000	2021/22 R'000
Reconciliation for irregular expenditure		
Opening balance	498 382	-
Add: Irregular expenditure confirmed	539 500	498 382
Less: Irregular expenditure condoned	-	-
Less: Irregular expenditure not condoned and removed	-	-
Less: Irregular expenditure recoverable	-	-
Less: Irregular expenditure not recovered and written off	-	-
Closing balance	1 037 882	498 382

Reconciling notes to the annual financial statements disclosure

Irregular expenditure that was under assessment in 2021/2022	-	-
Irregular expenditure that relates to 2021/2022 and identified in 2022/2023	-	-
Irregular expenditure for the current year	539 500	498 382
Total	539 500	498 382

Details of current and previous year irregular expenditure (under assessment, determination, and investigation)

Irregular expenditure under assessment	539 500	-
Irregular expenditure under determination	-	-
Irregular expenditure under investigation	-	-
Total	539 500	-

Details of current and previous year irregular expenditure condoned

Irregular expenditure condoned	-	-
Total	-	-

	2022/23 R'000	2021/22 R'000
Details of current and previous year irregular expenditure not condoned		
Irregular expenditure NOT condoned and removed	-	498 382
Total	-	498 382
Details of current and previous year irregular expenditure recovered		
Irregular expenditure recovered	-	-
Total	-	-
Details of current and previous year irregular expenditure written off (irrecoverable)		
Irregular expenditure written off	-	-
Total	-	-
Details of current and previous year disciplinary or criminal steps taken as result of irregular expenditure		
	-	498 382
Total	-	498 382

From a consequence management perspective, the Commission's disciplinary process was applied and in line with the seriousness of the transgression, the employee concerned was issued with a final written warning.

FRUITLESS AND WASTEFUL EXPENDITURE

	2022/23 R'000	2021/22 R'000
Reconciliation of Fruitless and Wasteful Expenditure		
Opening balance	71 960	-
Add: Fruitless and wasteful expenditure confirmed	-	71 960
Less: Fruitless and wasteful expenditure condoned	-	-
Less: Fruitless and wasteful expenditure not condoned and removed	-	-
Less: Fruitless and wasteful expenditure recoverable	-	-
Less: Fruitless and wasteful expenditure not recovered and written off	-	-
Closing balance	71 960	71 960
Reconciling notes to the annual financial statements disclosure		
Fruitless and wasteful expenditure that was under assessment in 2021/2022	-	-
Fruitless and wasteful expenditure that relates to 2021/2022 and identified in 2022/2023	-	-
Fruitless and wasteful expenditure for the current year	-	71 960
Total	-	71 960
Details of current and previous year Fruitless and wasteful expenditure (under assessment, determination, and investigation)		
Fruitless and wasteful expenditure that was under assessment	-	-
Fruitless and wasteful expenditure that was under determination	-	-
Fruitless and wasteful expenditure that was under investigation	-	71 960
Total	-	71 960
Details of current and previous year Fruitless and wasteful expenditure condoned		
Fruitless and wasteful expenditure condoned	-	-
Total	-	-

	2022/23 R'000	2021/22 R'000
Details of current and previous year Fruitless and wasteful expenditure not condoned		
Fruitless and wasteful expenditure NOT condoned and removed	-	-
Total	-	-
Details of current and previous year Fruitless and wasteful expenditure recovered		
Fruitless and wasteful expenditure recovered	-	-
Total	-	-
Details of current and previous year Fruitless and wasteful expenditure written off (irrecoverable)		
Fruitless and wasteful expenditure written off	-	-
Total	-	-
Details of current and previous year disciplinary or criminal steps taken as result of Fruitless and wasteful expenditure		
	-	-
Total	-	-

ACCOUNTING AUTHORITY'S RESPONSIBILITIES 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 she is ultimately responsible for the system of internal financial control established by the

Commission and place considerable importance on maintaining a strong control environment. To enable the Commissioner to meet these responsibilities, the Accounting Authority (AA) sets standards for internal controls 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 are above reproach. The focus of risk management in the Commission is on identifying, assessing, managing and monitoring all known forms of risks across the Commission. While operating risks 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 controls 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 controls 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 March 31, 2024 and, in the light of this review and the current financial position, she is satisfied that the Commission has access to adequate resources to continue in operational existence for the foreseeable future.

The Commission is largely dependent on the fiscus or government 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 its activities.

Although the Accounting Authority is primarily responsible for the financial affairs of the Commission, she is supported by the Commission's external auditors.

The external auditors are responsible for independently reviewing and reporting on the Commission's annual financial statements. The annual financial statements will be examined by the Auditor General of South Africa (AGSA) as the Commission's external auditors and their report is presented in the annual report.

The annual financial statements set out on page 4 to 42, which have been prepared on the going concern basis, were approved by the Accounting Authority on 31 July 2023 and were signed on its behalf by:



Ms. Doris Tshepe
Commissioner

REPORT OF THE **AUDITOR-GENERAL**

TO PARLIAMENT ON THE COMPETITION COMMISSION OF SOUTH AFRICA

REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

Opinion

1. I have audited the financial statements of the Competition Commission of South Africa set out on pages 137 to 201, which comprise the statement of financial position as at 31 March 2023, statement of financial performance, statement of changes in net assets and cash flow statement and statement of comparison of budget and actual amounts for the year then ended, as well as 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 of South Africa as at 31 March 2023, and its financial performance and cash flows for the year then ended in accordance with the Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act 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 responsibilities of the auditor-general for the audit of the financial statements section of my report.
4. I am independent of the 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.

Other matter

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

National Treasury Instruction Note No. 4 of 2022-23: PFMA Compliance and Reporting Framework

7. On 23 December 2022 National Treasury issued Instruction Note No. 4: PFMA Compliance and Reporting Framework of 2022-23 in terms of section 76(1)(b), (e) and (f), 2(e) and (4)(a) and (c) of the PFMA, which came into effect on 3 January 2023. The PFMA Compliance and Reporting Framework also addresses the disclosure of unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure. Among the effects of this framework. is that irregular and fruitless and wasteful expenditure incurred in previous financial years and not addressed is no longer disclosed in the disclosure notes of the annual financial statements, only the current year and prior year figures are disclosed in note 28 to the financial statements. The movements in respect of irregular expenditure and fruitless and wastefui expenditure are no longer disclosed in the notes to the annual financial statements of Competition Commission of South Africa. The disclosure of these movements (e.g. condoned, recoverable, removed, written off, under assessment, under determination and under investigation) are now required to be included as part of other information in the annual report of the auditees.

8. I do not express an opinion on the disclosure of irregular expenditure and fruitless and wasteful expenditure in the annual report.

Responsibilities of accounting authority for the financial statements

9. 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.
10. 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.

Responsibilities of the auditor-general for the audit of the financial statements

11. 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.
12. A further description of my responsibilities for the audit of the public entity's financial statements is included in the annexure to this auditor's report.

REPORT ON THE AUDIT OF THE ANNUAL PERFORMANCE REPORT

13. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I must audit and report on the usefulness and reliability of the reported performance against predetermined objectives for selected strategic goal presented in the annual performance report. The accounting authority is responsible for the preparation of the annual performance report.
14. I selected the following strategic goal presented in the annual performance report for the year ended 31 March 2023 for auditing. I selected strategic goal that measure the public entity's performance on its primary mandated functions and that are of significant national, community or public interest.

Strategic goal	Page numbers	Page numbers
Enforcing and regulating towards economic growth and enhanced economic participation	107 - 108	The purpose of this process is 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. This includes the development of a competition regime aimed at reforming markets with anti-competitive practices and ensuring an inclusive and transformative economy.

15. I evaluated the reported performance information for the selected strategic goal against the criteria developed from the performance management and reporting framework, as defined in the general notice. When an annual performance report is prepared using these criteria, it provides useful and reliable information and insights to users on the public entity's planning and delivery on its mandate and objectives.

16. I performed procedures to test whether:

- the indicators used for planning and reporting on performance can be linked directly to the public entity's mandate and the achievement of its planned objectives
- the indicators are well defined and verifiable to ensure that they are easy to understand and apply consistently and that I can confirm the methods and processes to be used for measuring achievements
- the targets can be linked directly to the achievement of the indicators and are specific, time bound and measurable to ensure that it is easy to understand what should be delivered and by when, the required level of performance as well as how performance will be evaluated
- the indicators and targets reported on in the annual performance report are the same as what was committed to in the approved initial or revised planning documents
- the reported performance information is presented in the annual performance report in the prescribed manner
- there are adequate supporting evidence for the achievements reported and for the reasons provided for any over- or underachievement of targets.

17. I performed the procedures for the purpose of reporting material findings only; and not to express an assurance opinion.

18. I did not identify any material findings on the reported performance information of Strategic Goal 1: Enforcing and regulating towards economic growth and enhanced economic participation.

Other matters

19. I draw attention to the matters below.

Achievement of planned targets

20. The annual performance report includes information on reported achievements against planned targets and provides explanations for over- and under-achievements

Material misstatements

21. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information of Strategic goal 1: Enforcing and regulating towards economic growth and greater economic participation. Management subsequently corrected all the misstatements and I did not include any material findings in this report.

REPORT ON COMPLIANCE WITH LEGISLATION

22. In accordance with the PAA and the general notice issued in terms thereof, I must audit and report on compliance with applicable legislation relating to financial matters, financial management and other related matters. The accounting authority is responsible for the public entity's compliance with legislation.

23. I performed procedures to test compliance with selected requirements in key legislation in accordance with the findings engagement methodology of the Auditor-General of South Africa (AGSA). This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.

24. Through an established AGSA process, I selected requirements in key legislation for compliance testing that are relevant to the financial and performance management of the public entity, clear to allow consistent measurement and evaluation, while also sufficiently detailed and readily available to report in an understandable manner. The selected legislative requirements are included in the annexure to this auditor's report.

25. I did not identify any material non-compliance with the selected legislative requirements

OTHER INFORMATION IN THE ANNUAL REPORT

26. The accounting authority is responsible for the other information included in the annual report. The other information referred to 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 on in this auditor's report

27. My opinion on the financial statements, the report on the audit of the annual performance report and the report on compliance with legislation, do not cover the other information included in the annual report and I do not express an audit opinion or any form of assurance conclusion on it.
28. My responsibility is to read this other information and, in doing so, consider whether it 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.
29. The other information I obtained prior to the date of this auditor's report is the information on irregular and fruitless and wasteful expenditure, and the general information (including a report of the accounting officer), governance information (including the audit committee report in terms of treasury regulations) and human resource management information are expected to be made available to us after 31 July 2023.
30. If, based on the work I have performed on the other information that I obtained prior to the date of this auditor's report, I conclude that there is a material misstatement of this other information, I am required to report that fact. I have nothing to report in this regard.
31. When I do receive and read the general information (including a report of the accounting officer), governance information (including the audit committee in terms of treasury regulations) and human resource management 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

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

Auditor - General

Pretoria

31 July 2023



ANNEXURE TO THE AUDITOR'S REPORT

The annexure includes the following:

- the auditor-general's responsibility for the audit
- the selected legislative requirements for compliance testing.

AUDITOR-GENERAL'S RESPONSIBILITY FOR THE AUDIT

Professional judgement and professional scepticism

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

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 's internal control
 - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made

- conclude on the appropriateness of the 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 public entity 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 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 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.

COMPLIANCE WITH LEGISLATION - SELECTED LEGISLATIVE REQUIREMENTS

The selected legislative requirements are as follows:

Legislation	Sections or regulations
Public Finance Management Act 1 of 1999 (PFMA)	Sections 51(1)(a)(iv); 51(1)(b)(ii); 51(1)(e)(iii); 53(4); 54(2)(c); 54(2)(d); 55(1)(a); 55(1)(b); 55(1)(c)(i); 56(1); 56(2); 57(b)
Treasury Regulations for departments, trading entities, constitutional institutions and public entities (TR)	Treasury Regulations 8.2.1; 8.2.2; 16A3.1; 16A3.2; 16A3.2(a); 16A6.1; 16A6.2(a) & (b); 16A6.2(e); 16A6.3(a); 16A3.3(a)(i); 16A6.3(b); 16A6.3(c); 16A6.3(d); 16A6.3(e); 16A6.4; 16A6.5; 16A6.6; 16A7.1; 16A7.3; 16A7.6; 16A7.7; 16A8.2(1); 16A8.2(2); 16A8.3; 16A8.3(d); 16A8.4; 16A9.1; 16A9; 16A9.1(b)(ii); 16A9.1(c); 16A9.1(d); 16A9.1(e); 16A9.1(f); 16A9.2; 16A9.2(a)(ii); 16A9.2(a)(iii); 30.1.1; 30.1.3(a); 30.1.3(b); 30.1.3(d); 30.2.1; 31.1.2(c); 31.2.1; 31.3.3; 33.1.1; 33.1.3
Prevention and Combating of Corrupt Activities Act No.12 of 2004 (PRECCA)	Section 29; 34(1)
Construction Industry Development Board Act No.38 of 2000 (CIDB)	Section 18(1)
Construction Industry Development Board Regulations	Regulations 17; 25(1); 25(5) & 25(7A)
Preferential Procurement Policy Framework Act 5 of 2005 (PPPFA)	Sections 1(i); 2.1(a); 2.1(b); 2.1(f)
Preferential Procurement Regulations 2017 (PPR)	Regulations 4.1; 4.2; 5.1; 5.3; 5.6; 5.7; 6.1; 6.2; 6.3; 6.5; 6.6; 7.1; 7.2; 7.3; 7.5; 7.6; 7.8; 8.2; 8.5; 9.1; 9.2; 10.1; 10.2; 11.1; 11.2; 12.1 and 12.2
Preferential Procurement Regulations (PPR) 2022	Regulations 3.1; 4.1; 4.2; 4.3; 4.4; 5.1; 5.2; 5.3; 5.4
PFMA SCM Instruction no. 09 of 2022/2023	Paragraphs 3.1; 3.3 (b); 3.3 (c); 3.3 (e); 3.6
National Treasury Instruction (NTI) No.1 of 2015/16	Paragraphs 3.1; 4.1; 4.2
NT SCM Instruction Note 03 2021/22	Paragraphs 4.1; 4.2(b); 4.3; 4.4; 4.4(a); 4.4 (c)-(d); 4.6; 5.4; 7.2; 7.6
NT SCM Instruction 4A of 2016/17	Paragraph 6
NT SCM Instruction Note 03 2019/20	Paragraphs 5.5.1(vi); 5.5.1(x)
NT SCM Instruction Note 11 2020/21	Paragraphs 3.1; 3.4(a) and (b); 3.9; 6.1; 6.2; 6.7
NT SCM Instruction Note 2 of 2021/22	Paragraphs 3.2.1; 3.2.2; 3.2.4(a)&(b); 3.3.1; 3.2.2; 4.1
PFMA SCM Instruction 04 of 2022/23	Paragraphs 4(1); 4(2); 4(4)
Practice Note 5 of 2009/10	Paragraph 3.3
PFMA SCM instruction 08 of 2022/23	Paragraphs 3.2; 4.3.2; 4.3.3
NT instruction note 4 of 2015/16	Paragraph 3.4
Second amendment of NTI 05 of 2020/21	Paragraphs 4.8; 4.9 ; 5.1 ; 5.3
Erratum NTI 5 of 202/21	Paragraphs 1; Paragraphs 2
Practice note 7 of 2009/10	Paragraph 4.1.2
Practice note 11 of 2008/09	Paragraphs 3.1; 3.1 (b)
NT instruction note 1 of 2021/22	Paragraph 4.1

AUDIT AND RISK COMMITTEE REPORT

The Audit and Risk Committee is pleased to present its report for the financial year ended March 31, 2023, 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 governance 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 six (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 of the financial reporting process, the annual financial statements and the audit process; 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 including Business Continuity Management, and Fraud Prevention activities. The Financial management and reporting oversight 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, both internal and external; approving audit fees as well as reviewing internal audit and external audit mandates for independence, objectivity and effectiveness.

The Committee ensured co-operation between the internal audit function and the external auditors in relation to the external auditors relying on work done by the internal auditor for purposes of work set out in the audit plan. We are of the view that the Combined Assurance adds demonstrable value; and improves the adequacy, reliability and accuracy of financial information provided by management to such other users of the information.

The Commission once again, and for the third consecutive reporting period, obtained a clean audit.

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. Regular In-Committee meetings were held with the Commissioner to advise on matters relating to its role, and any identified internal control weaknesses, for these to be closed proactively before they can have negative impact on the Commission's performance.

It is important to note that the National Treasury had 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 and the clean audit opinion of the Auditor General South Africa on the Annual Financial Statements. The Committee further recognizes the commitment and consistency of Management effort of maintaining the clean audit.

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 Service Provider tables progress reports in this regard to the Committee. The Internal Auditor is also held responsible for the delivery of an Annual Audit Plan and for the current reporting period the plan was executed satisfactorily.

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

ENTERPRISE RISK MANAGEMENT (ERM)

The Committee is 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 policies and reports were submitted and duly approved.

The Committee has reviewed the risk registers on a quarterly basis and has made some recommendations for the improvement of the registers. Moreover, improvement was noted on the culture of risk management, which still needs to be improved further and 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 2022/2023 financial year. The Committee also monitored the implementation of the Competition Action plans to address matters arising from the Management Report issued by the Auditor-General South Africa (AGSA) for the 2021/2022 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 aligned to the annual financial statements.

The Committee concurs and accepts the conclusions of the Auditor-General on the annual financial statements including a clean audit opinion and is of the view 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, 2023

	Note(s)	2023 R'000	2022 Restated* R'000
ASSETS			
Current Assets			
Inventories	5	1,070	1,039
Receivables from exchange transactions	6	3,158	4,375
Cash and cash equivalents held on behalf of dtic	10	11,977	10,296
Cash and cash equivalents	7	264,125	271,844
		280,330	287,554
Non-Current Assets			
Property, plant and equipment	3	17,048	19,944
Intangible assets	4	3,261	925
		20,309	20,869
Total Assets		300,639	308,423
LIABILITIES			
Current Liabilities			
Finance lease obligation	9	179	993
Payables from exchange transactions	11	34,136	37,038
Provisions	8	40,681	38,146
Penalties payable to dtic	10	11,977	10,296
		86,973	86,473
Non-Current Liabilities			
Finance lease obligation	9	-	179
Total Liabilities		86,973	86,652
Net Assets		213,666	221,771
Accumulated surplus		213,666	221,771

STATEMENT OF FINANCIAL PERFORMANCE

AS AT MARCH 31, 2023

	Note(s)	2023 R'000	2022 Restated* R'000
REVENUE			
Revenue from exchange transactions			
Fees earned	13	65,345	65,260
Other income	14	1,653	425
Interest received	15	25,184	13,159
Total revenue from exchange transactions		92,182	78,844
Revenue from non-exchange transactions			
Transfer revenue			
Government grants & subsidies	16	449,518	439,550
Total revenue		541,700	518,394
EXPENDITURE			
Employee related costs	17	(301,121)	(260,290)
Administrative expenses	18	(4,188)	(3,617)
Depreciation and amortisation	3 & 4	(5,314)	(5,023)
Finance costs	19	(100)	(227)
Lease rentals on operating lease	12	(13,751)	(13,751)
Loss on disposal of assets	3	(3,897)	(165)
Operating expenses	20	(131,394)	(87,238)
Total expenditure		(459,765)	(370,311)
Surplus for the year		81,935	148,083

STATEMENT OF CHANGES IN **NET ASSETS**

AS AT MARCH 31, 2023

	R'000	R'000
	Accumulated surplus	Total net assets
Balance at 1 April 2021	73,256	73,256
Surplus for the year	148,377	148,377
Prior year adjustments	432	432
Balance at 01 April 2022 as previously reported	222,065	222,065
Less: Surplus as previously reported	(148,377)	(148,377)
Restated surplus for the year	148,083	148,083
Total changes in surplus for the year - note 27	(294)	(294)
Restated balance at 01 April 2022	221,771	221,771
Surplus for the year	81,935	81,935
Transfer of surplus reserves to National Treasury - note 31	(89,982)	(89,982)
Correction of errors - note 27	(58)	(58)
Balance at March 31, 2023	213,666	213,666

CASH FLOW STATEMENT

AS AT MARCH 31, 2023

	Note(s)	2023 R'000	2022 Restated* R'000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Sale of goods and services		66,330	65,260
Grants		449,518	439,550
Interest income		25,184	13,159
Other income		1,653	425
		542,685	518,394
Payments			
Employee costs		(272,429)	(232,307)
Suppliers		(178,247)	(113,131)
Finance costs		(100)	(227)
		(450,776)	(345,665)
Net cash flows from operating activities	21	91,909	172,729
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	3	(6,717)	(5,322)
Proceeds from sale of property, plant and equipment	3	1,012	-
Purchase of other intangible assets	4	(2,948)	-
Net cash flows from investing activities		(8,653)	(5,322)
CASH FLOWS FROM FINANCING ACTIVITIES			
Finance lease payments		(993)	(1,930)
Transfer of surplus reserves to National Treasury	31	(89,982)	-
Net cash flows from financing activities		(90,975)	(1,930)
Net increase/(decrease) in cash and cash equivalents		(7,719)	165,477
Cash and cash equivalents at the beginning of the year		271,844	106,367
Cash and cash equivalents at the end of the year	7	264,125	271,844

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS AS AT MARCH 31, 2023

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	71,810	-	71,810	65,345	(6,465)	Note 29
Other income	-	-	-	1,653	1,653	Note 29
Interest received	7,593	-	7,593	25,184	17,591	Note 29
Total revenue from exchange transactions	79,403	-	79,403	92,182	12,779	
Revenue from non-exchange transactions						
Transfer revenue						
Government grants & subsidies	449,518	-	449,518	449,518	-	
Total revenue	528,921	-	528,921	541,700	12,779	
EXPENDITURE						
Employee related costs	(321 549)	5,500	(316,049)	(301,121)	14,928	Note 29
Administrative expenses	(37 342)	(103,154)	(140,496)	(4,188)	136,308	Note 29
Depreciation and amortisation	(5 529)	-	(5,529)	(5,314)	215	
Finance costs	-	-	-	(100)	(100)	
Lease rentals on operating lease	(16 383)	-	(16,383)	(13,751)	2,632	
Operating expenses	(148 118)	(12,700)	(160,818)	(131,394)	29,424	Note 29
Total expenditure	(528 921)	(110,354)	(639,275)	(455,868)	183,407	
Operating surplus		(110,354)	(110,354)	85,832	196,186	
Loss on disposal of assets	-	-	-	(3,897)	(3,897)	
Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement	-	(110,354)	(110,354)	81,935	192,289	

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.

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 assets 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 Presentation currency

These annual financial statements are presented in South African Rand, which is the functional currency of the Commission. All figures presented are rounded off to the nearest thousand.

1.2 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.

1.3 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.

1.4 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 judgment 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 receivable;

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 judgments 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 judgment 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 arms 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 maybe 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 amount of those assets is 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 8 - Provisions.

Contingent liabilities

The Commission is involved in a number of legal case proceedings that form part of the nature of 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 legal proceedings can be made.

Lease classification

Management uses judgment in assessing whether an arrangement is or contains a lease based on the substance of the arrangement at 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 assesses the conditions listed below in each lease contract (using GRAP 13) to classify a lease as a finance 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

Useful lives of tangible and intangible assets

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

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.

Trade receivables (impairment of financial assets)

The Commission assesses its trade receivables for impairment at the

end of each reporting period. In determining whether the loss should be recorded in profit or loss, the Commission makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from the financial asset.

Impairment of cash generating assets

The Commission assesses at each reporting date whether there is an 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 the 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 belong is determined.

The best evidence of fair value less costs to sell is the price in a binding agreement in an arms length transaction, adjusted for the incremental costs 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.

1.5 Property, plant and equipment

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

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

- it is probable that future economic benefits or service potential associated with the item will flow to the 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 is 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 - 25 years
Motor vehicles	Straight line	5 - 15 years
Office equipment	Straight line	8 - 20 years
IT equipment	Straight line	
- Computer equipment		3 - 21 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's 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).

1.6 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).

1.7 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 entity’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, the 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 the 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 an 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 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.

1.8 Leases

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

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

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 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.

1.9 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.

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.

1.10 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.

1.11 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 entity 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 entity has no realistic alternative but to make the payments

1.12 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 entity settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

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

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

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

1.13 Commitments

Items are classified as commitments when an entity 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 and services that have been ordered, but no delivery has taken place at the reporting date. These amounts are not recognised in the statement of financial position as a liability or as expenditure in the statement of financial performance as the Annual Financial Statements are prepared on an accrual basis of accounting, but are however disclosed in the Notes to the Annual Financial Statements.

Commitments for which disclosure is necessary to achieve a fair presentation should be disclosed in a note to the financial statements, if both the following criteria are met:

- Contracts should be non-cancellable or only cancellable at significant cost (for example, contracts for computer or building maintenance services); and
- Contracts should relate to something other than the routine, steady, state business of the entity – therefore salary commitments relating to employment contracts or social security benefit commitments are excluded.

1.14 Revenue from exchange transactions

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

The amount of revenue arising on a transaction which is statutory (non-contractual) in nature is usually measured by reference to the relevant legislation, regulation or similar means. The fee structure, tariffs or calculation basis specified in legislation, regulation or similar means is used to determine the amount of revenue that should be recognised. This amount represents the fair value, on initial measurement, of the consideration received or receivable for revenue that arises from a statutory (non-contractual) arrangement (see the accounting policy on Statutory Receivables).

1.15 Revenue from non-exchange transactions

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

Fines are economic benefits or service potential received or receivable by entities, as determined by a court or other law enforcement body, as a consequence of the breach of laws or regulations.

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.

1.16 Investment income

Investment income is recognised on a time-proportion basis using the effective interest method.

1.17 Accounting by principals and agents

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 entity 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.

Binding arrangement

The entity assesses whether it is an agent or a principal by assessing the rights and obligations of the various parties established in the binding arrangement.

Where the terms of a binding arrangement are modified, the parties to the arrangement re-assess whether they act as a principal or an agent.

Assessing which entity benefits from the transactions with third parties

When the entity in a principal-agent arrangement concludes that it undertakes transactions with third parties for the benefit of another entity, then it is the agent. If the entity concludes that it is not the agent, then it is the principal in the transactions.

The entity is an agent when, in relation to transactions with third parties, all three of the following criteria are present:

- It does not have the power to determine the significant terms and conditions of the transaction.
- It does not have the ability to use all, or substantially all, of the resources that result from the transaction for its own benefit.
- It is not exposed to variability in the results of the transaction.

Where the entity has been granted specific powers in terms of legislation to direct the terms and conditions of particular transactions, it is not required to consider the criteria of whether it does not have the power to determine the significant terms and conditions of the transaction, to conclude that it is an agent. The entity applies judgement in determining whether such powers exist and whether they are relevant in assessing whether the entity is an agent.

Recognition

The entity, 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.

1.18 Comparative figures

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

1.19 Fruitless and wasteful expenditure

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

Fruitless and wasteful expenditure is accounted for in line with all relating requirements, including, but not limited to, ruling Legislation, Regulations, Frameworks, Circulars, Instruction Notes, Practice Notes, Guidelines etc (as applicable).

Fruitless and wasteful expenditure when incurred and confirmed is recorded in the annual financial statements disclosure. This relates to fruitless and wasteful expenditure incurred in the current financial year, with a one previous financial year comparative analysis.

Fruitless and wasteful expenditure for previous financial year (comparative amounts) must be recognised in the period in which they occurred as follows:

- a. fruitless and wasteful expenditure incurred and confirmed in the previous financial year;
- b. fruitless and wasteful expenditure that was under assessment in the previous financial year and confirmed in the current financial year; and
- c. fruitless and wasteful expenditure that was not discovered in the previous financial year and identified and confirmed in the current financial year.

Additional information relating to fruitless and wasteful expenditure under assessment, determination, investigations, narratives and a process of dealing with the concerned fruitless and wasteful expenditure must be recorded in the annual report of the Commission.

Fruitless and wasteful expenditure must be recorded in the notes to the financial statements when confirmed after its assessment. The amount recorded is equal to the value of fruitless and wasteful expenditure incurred and confirmed in that current financial year unless it is impractical to determine, in which case reasons must be provided in the annual report.

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.

1.20 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 Competition Act; or
- c. any provincial legislation providing for procurement procedures in that provincial government.

Irregular expenditure is accounted for in line with all relating requirements, including, but not limited to, ruling Legislation, Regulations, Frameworks, Circulars, Instruction Notes, Practice Notes, Guidelines etc (as applicable).

For determining whether irregular expenditure occurred, the following must be present:

- a. expenditure incurred in contravention of, or not in accordance with legislation; and
- b. expenditure must have been recognised in the statement of financial performance or liability recognised in the statement of financial position (where expenditure is not reflected in the statement of financial performance) in a case of institutions that are required to comply with Standards of Generally Recognised

Accounting Practice (GRAP). The earlier of an invoice or payment will trigger irregular expenditure for these transactions.

Irregular expenditure when incurred and confirmed is recorded in the annual financial statements disclosure. This relates to irregular expenditure incurred in the current financial year, with a one financial year comparative analysis.

Irregular expenditure for the previous financial year (comparative amounts) must be recognised in the period in which they occurred as follows:

- a. irregular expenditure incurred and confirmed in the previous financial year;
- b. irregular expenditure that was under assessment in the previous financial year and confirmed in the current financial year; and
- c. irregular expenditure that was not discovered in the previous financial year and identified and confirmed in the current financial year.
- d. irregular expenditure payments relating to multi-year contracts that was not condoned or removed.

Additional information relating to irregular expenditure under assessment, determination, investigation, narratives, and the process of dealing with the irregular expenditure must be recorded in the annual report of the Commission.

Irregular expenditure is recorded in the notes to the financial statements when confirmed after its assessment. The amount recorded is equal to the value of irregular expenditure incurred and confirmed in that current financial year unless it is impractical to determine, in which case reasons must be provided in the annual report.

1.21 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 Commission shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

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

The approved budget covers the fiscal period from 4/1/2022 to 3/31/2023.

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 has 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.

Comparative information is not required.

1.22 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.

Related party transaction is a transfer of resources, services or obligations between the reporting entity and a related party, regardless of whether a price is charged.

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

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

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 entity's financial statements to understand the effect of related party transactions on its annual financial statements.

1.23 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.

1.24 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 dtic 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. The 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

a 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 the DTIC” and “Penalties payable to the 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 April 1, 2023 or later periods:

Standard or pronouncement	Effective date:	Expected impact:
• GRAP 104 - Financial Instruments	1 April 2025	Unlikely there will be a material impact
• GRAP 25 on Employee Benefits	01 April 2023	Unlikely there will be a material impact
• IGRAP 7 on The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction	The interpretation becomes effective with the amendments to GRAP 25.	Unlikely there will be a material impact
• GRAP 1 (amendments related to materiality) - Presentation of Financial Statements	01 April 2023	Unlikely there will be a material impact
• Improvements to the Standards of GRAP (2020)	01 April 2023	Unlikely there will be a material impact. Earlier adoption is encouraged.
• GRAP 1 (amendments related to going concern) - Presentation of Financial Statements	The effective date is yet to be determined by the Minister of Finance.	The Commission is yet to review and assess the impact if any.
• IGRAP 21 - The Effect of Past Decisions on Materiality	01 April 2023	The interpretation is not yet effective however encouraged to consider when preparing the annual financial statements for 2022/23
• Guideline - The Application of Materiality to Financial Statements	The Guideline is not authoritative, but entities are encouraged to consider it when preparing financial statements.	Is likely to have an impact

3. PROPERTY, PLANT AND EQUIPMENT

	2023			2022		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fittings	5,808	(2,901)	2,907	6,609	(3,671)	2,938
Motor vehicles	2,065	(767)	1,298	4,430	(2,556)	1,874
Office equipment	4,032	(2,194)	1,838	4,223	(2,430)	1,793
Computer equipment	16,499	(5,905)	10,594	21,780	(9,820)	11,960
Leasehold improvements	34	(7)	27	-	-	-
Cellphones	237	(46)	191	129	(42)	87
Leased assets	3,334	(3,141)	193	3,375	(2,083)	1,292
Total	32,009	(14,961)	17,048	40,546	(20,602)	19,944

Reconciliation of property, plant and equipment - 2023

	Opening Balance	Additions	Disposals	Depreciation	Total
Furniture and fittings	2,938	551	(204)	(378)	2,907
Motor vehicles	1,874	773	(1,165)	(184)	1,298
Office equipment	1,793	748	(221)	(482)	1,838
Computer equipment	11,960	4,426	(3,270)	(2,522)	10,594
Leasehold improvements	-	34	-	(7)	27
Cellphones	87	185	(50)	(31)	191
Leased assets	1,292	-	-	(1,099)	193
Total	19,944	6,717	(4,910)	(4,703)	17,048

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

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.

Reconciliation of loss on disposal of assets

Disposal of property, plant and equipment	(5,167)
Proceeds on sale of disposed motor vehicles	1,012
	(4,155)

The disposed motor vehicles were auctioned through the SCM process and the proceeds netted off the realised loss on disposal.

The loss on disposal amount includes a realised loss for assets that could not be physically verified and/or located and were subsequently disclosed. The investigation is underway.

Expenditure incurred to repair and maintain property, plant and equipment included in Statement of Financial Performance

Repairs and maintenance	351	444
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4. INTANGIBLE ASSETS

	2023			2022		
	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer Software	6 131	(2 870)	3 261	3 183	(2 258)	925

Reconciliation of intangible assets - 2023

	Opening Balance	Additions	Amortisation	Total
Computer software	925	2,948	(612)	3,261

Reconciliation of intangible assets - 2022

	Opening Balance	Amortisation	Total
Computer software	1,384	(459)	925

2023	2022
R'000	R'000

Pledged as security

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

5. INVENTORIES

Consumable stores	1,070	1,039
Inventories recognised as an expense during the year	31	217

6. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Prepaid expenses	1,151	2,188
Sundry debtors	2,007	2,187
	3,158	4,375

Sundry debtors is made up of the following.

Accrued interest	703	979
Deposits	535	535
Other	769	673
	2,007	2,187
Total receivables from exchange transactions	3,158	4,375

None of the trade and other receivables is pledged as as security.

7. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of:

Cash on hand	264,125	271,844
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8. PROVISIONS

Reconciliation of provisions - 2023

	Opening Balance	Additions	Utilised during the year	Total
Leave provision	11,801	14,081	(11,801)	14,081
Performance bonus	26,345	22,794	(22,539)	26,600
Total	38,146	36,875	(34,340)	40,681

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

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 the individual performance evaluations and it is at the discretion of management, subject to the availability of funds.

2023	2022
R'000	R'000

9. FINANCE LEASE OBLIGATION

Minimum lease payments due

- within one year
- in second to fifth year inclusive

less: future finance charges

Present value of minimum lease payments

Non-current liabilities

Current liabilities

179	1,093
-	182
179	1,275
(3)	(103)
176	1,172
-	179
179	993
179	1,172

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 was 13% at 31 March 2023. 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 note 3.

10. PENALTIES PAYABLE TO DTIC

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	10,296	13,911
Penalties collected	148,371	80,299
Less: Amounts paid to DTIC	(146,690)	(83,914)
Total	11,977	10,296

An amount of R148.4 million was collected in the current year and R146.7 million was paid over to the DTIC as at 31 March 2023. The balance of R10.2 million (2022: R10.3 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.

	2023 R'000	2022 R'000
Outstanding penalties amount at the beginning of the year	846,980	897,947
Add: Amounts of settlements and penalties levied by the Competition Tribunal	40,441	24,407
Less: Amounts collected by the Competition Commission	(148,371)	(80,299)
Add: Adjustments and interest levied	4,066	4,925
	743,116	846,980

Section 64(3) of the Competition Act 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 R40.4 million (2022: R24.4 million) was levied by the Competition Tribunal in the current financial year.

Adjustments and interest levied balance for R4.1 million relates to interest accrued and paid on penalties as well unidentified receipts in prior years confirmed in the current year.

The closing balance of R743.5 million as at 31 March 2023, included a total amount of R720.4 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	19,590	33,180
Sundry payables	549	499
Accrued expenses	13,997	2,030
Operating lease payables	-	1,329
	34,136	37,038

12. LEASE RENTALS ON OPERATING LEASE

Premises

Contractual amounts	13,751	13,751
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2023	2022
R'000	R'000

13. FEES EARNED

Fees earned	65,345	65,260
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Fee income is made up of fees earned from mergers and acquisitions.

14. OTHER INCOME

Insurance recovered	75	118
Refunds, SETA grant and recoveries	1,525	307
Other income	53	-
	1,653	425

15. INTEREST RECEIVED

Interest revenue		
Interest received on short term deposits	25,184	13,159

16. GOVERNMENT GRANTS AND SUBSIDIES

Operating grants		
Government grants and subsidies	449,518	439,550

The Commission receives an operational grant allocation from the DTIC in instalments or as once off amount of the total allocation. The DTIC has however in this financial year paid the grant in two (2) equal instalments in June and September 2022.

17. EMPLOYEE RELATED COSTS

Basic	245,076	208,890
Bonus	22,794	25,000
Medical aid	9,974	8,423
Group life and pension administration	4,583	4,002
Cellphone and data allowance	7,145	6,653
Other staff related costs	11,549	7,322
	301,121	260,290

2023	2022
R'000	R'000

Remuneration of the Accounting Authority

Basic	3,522	2,208
Medical aid	283	142
Group life and pension administration	72	46
Cell phone and data allowance	91	67
Other staff related costs	272	25
	4,240	2,488

The employment term of the former Commissioner Mr T. Bonakele ended on 31 August 2022 and had served his cooling off period from 01 September 2022 until 28 February 2023.

Remuneration of executive committee

Basic	22,281	18,750
Medical aid	856	734
Performance Bonuses	2,771	3,025
Group life and pension administration	421	378
Cell phone and data allowance	507	517
Other staff related costs	179	260
	27,015	23,664

Remuneration of other employees

Basic	219,627	187,932
Medical aid	8,836	7,547
Performance Bonuses	20,023	21,975
Group life and pension administration	4,090	3,578
Cell phone and data allowance	7,320	6,069
Other staff related costs	9,466	7,044
	269,362	234,145

2023	2022
R'000	R'000

18. ADMINISTRATIVE EXPENDITURE

General and administrative expenses	2,286	2,267
Auditors remuneration - external audit fees	1,902	1,350
	4,188	3,617

19. FINANCE COSTS

Leased assets (Photocopiers)	100	227
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20. OPERATING EXPENSES

Audit and risk and remuneration committee fees	380	473
Advertising	426	528
Internal audit fees	690	711
Consulting and professional fees	16,183	11,925
Case related costs - legal fees	80,847	58,814
Research and development costs	180	-
Security	1,191	1,273
Software expenses	3,627	254
Subscriptions and membership fees	1,222	1,525
Training	1,347	43
Travel and accommodation	6,263	603
Education and awareness	8,338	2,590
Maintenance, repairs and running costs	4,513	6,915
Publications	2,523	807
Meeting refreshments	555	177
Workshops	2,429	177
Other expenses	680	423
	131,394	87,238

The prior year figure for other expenses has been reclassified due to the increase or significance of the software expenses balance in the current financial year which has to be disclosed separately.

2023	2022
R'000	R'000

21. CASH GENERATED FROM OPERATIONS

Surplus	81,935	148,083
Adjustments for:		
Depreciation and amortisation	5,314	5,023
Loss on disposal of assets	2,760	165
Movements in provisions	2,535	7,326
Other non-cash items - finance leases	993	1,496
Changes in working capital:		
Inventories	(31)	217
Receivables from exchange transactions	1,217	(1,187)
Payables from exchange transactions	(2,814)	11,606
	91,909	172,729

22. COMMITMENTS

Already contracted for but not provided for

• Existing contracts - goods and services	8,453	12,628
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Authorised by Commission but not yet contracted for

• Other goods and services	34,033	7,224
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TOTAL COMMITMENTS

Already contracted for but not provided for	8,453	12,628
Authorised by the Commission but not yet contracted for	34,033	7,224
Total commitments	42,486	19,852

This committed expenditure relates to multiple service 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	10,559	15,080
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Operating lease payments represent rentals payable by the Commission for its office space. Leases are negotiated for an average term of three (3) years and rentals are fixed for an average of three years. No contingent rent is payable.

The lease ended on 21 March 2023 and has been extended for a period of 12 months ending 21 March 2024.

2023	2022
R'000	R'000

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
Safety and Security Sector Education and Training Authority (SASSETA)	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	(2,354)	(888)
The Department of Trade, Industry and Competition	(2,526)	(1,142)
Public Investment Corporation	535	535
National Prosecuting Authority	-	623
The Department of Trade, Industry and Competition - Penalties	(11,977)	(10,296)

The Department of Trade, Industry and Competition

Rental expense	15,080	13,709
Telephone and internet costs	76	105
Government grant received	449,518	439,550
Penalties collected on behalf of and transferred to related parties	146,690	83,914

The Competition Tribunal

Filing fees	18,472	16,310
Facility Fee	728	728

National Prosecuting Authority

Secondment agreement	-	311
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Safety and Security Sector Education and Training Authority

Mandatory grant	434	268
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Transactions with companies related to EXCO members

D Tshepe Incorporated	602	-
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The services were rendered by D. Tshepe Incorporated before the Commissioner (Ms D Tshepe) joined the Commission.

REMUNERATION OF EXECUTIVE MANAGEMENT

NAME:

Commissioner

Mr D Tshepe (appointed 01 September 2022)

Commissioner

Mr T Bonakele (term ended 31 August 2022)

Deputy Commissioner

Mr H Ratshisusu*

Divisional Manager: Office of the Commissioner

Mr A Gwabeni

Company Secretary:

Mr M Msibi

Divisional Manager: Mergers and Acquisition

Ms T Paremoer

Divisional Manager: Market Conduct

Ms M Ramokgopa

Divisional Manager: Economic Research Bureau

Mr J Hodge

Divisional Manager: Advocacy

Ms K Qobo

Divisional Manager: Cartels

Mr M Mohlala

Divisional Manager: Corporate Service Division

Mr M George

Chief Finance Officer

Mr A Moledi

Divisional Manager: Legal Services

Mr B Majenge

2023			
Basic salary	Bonuses and performance related payments	Other benefits received	Total
1,517	-	18	1,535
2,451	-	253	2,704
2,589	707	101	3,397
2,259	161	-	2,420
1,669	136	-	1,805
2,033	246	-	2,279
2,049	166	-	2,215
2,275	276	24	2,575
2,271	246	2	2,519
2,336	189	17	2,542
2,273	123	-	2,396
2,024	245	20	2,289
2,284	278	14	2,576
28,030	2,773	449	31,252

* The performance bonus paid is for a period of 2 financial years.

REMUNERATION OF EXECUTIVE MANAGEMENT

NAME:

Commissioner

Mr T Bonakele

Deputy Commissioner

Mr H Ratshisusu

Divisional Manager: Market Conduct

Ms M Ramokgopa (Started: 06 September 2021)

Divisional Manager: Office of the Commissioner

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

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.

At March 31, 2023

Payables from exchange transactions

Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
34,136	34,136	34,136	-

At March 31, 2022

Payables from exchange transactions

Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
37,038	37,038	37,038	-

At March 31, 2023

Forward foreign exchange contracts - Cash flow hedges

Cash and cash equivalents

Receivables from exchange transactions

Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
264,125	-	-	-
3,158	-	-	-

At March 31, 2022

Cash and cash equivalents

Receivables from exchange transactions

Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
271,844	-	-	-
4,341	-	-	-

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	264,125	271,844
Receivables from exchange transactions	3,158	4,341

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.

25. GOING CONCERN

We draw attention to the fact that at March 31, 2023, the Commission had an accumulated surplus of R 213,666 and that the Commission's total assets exceed its liabilities by R 213,666.

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 for the Commission.

26. EVENTS AFTER THE REPORTING DATE

The verification of assets was performed before year end and finalised after the reporting date. Assets with a net book value of R 3.033 million could not be physically verified. These assets were reported as missing and subsequently written off. The investigation is underway and anticipated to be finalised before 31 May 2023.

27. PRIOR-YEAR ADJUSTMENTS

Presented below are those items contained in the statement of financial position, statement of financial performance and cash flow statement that have been affected by prior-year adjustments:

Statement of financial position

2022

Payables from exchange transactions

As previously reported	Correction of error	Restated
(36,744)	(294)	(37,038)

2023

Payables from exchange transactions
Receivables from exchange transactions
Net assets

Correction of error	Restated
(30)	(30)
(27)	(27)
57	57
-	-

Statement of financial performance

2022

Operating expenses

As previously reported	Correction of error	Restated
(86,944)	(294)	(87,238)

2023	2022
R'000	R'000

Cash flow statement

2022

Cash flow from operating activities

Payables from exchange transactions

As previously reported	Correction of error	Restated
11,312	294	11,606

Errors

The correction of errors is due to transactions that were not cleared and correctly allocated in the previous years.

28. IRREGULAR EXPENDITURE AND FRUITLESS AND WASTEFUL EXPENDITURE

Irregular expenditure

Fruitless and wasteful expenditure

Closing balance

540	498
-	72
540	570

29. BUDGET DIFFERENCES

Material differences between budget and actual amounts

29.1 Fee income

The variance is mainly due to merger fees collected to date which are slightly less than anticipated as well as withdrawal of filing fees by other companies

29.2 Interest received - investment

The variance is mainly due to excess funds invested in short-term investments yielding better returns. Additional text.

29.3 Other income

Income received year to date is related to awarded legal costs and SASSETA mandatory grant for workplace skills plan. This is normally not budgeted for due to the uncertainty nature of it.

29.4 Employee related costs

Saving is mainly due to vacancies during the year of which some of the major vacancies were filled towards the end of the financial year.

29.5 Administrative expenses

This is mainly due to additional allocation of the approved surplus funds by the National Treasury for multiple capital expenditure projects. Some of these projects are committed as the procurement processes were finalised and concluded by 31 March 2023 in the form of approved purchase orders.

29.6 Depreciation

The variance is mainly due disposal of asset by the end of the financial year

29.5. Operating expenses

The variance is mainly as a result of underspending on legal costs and professional fees for some legal cases that could not be finalised by the end of the financial year.

30. CONTINGENT ASSETS AND LIABILITIES

Cases before the courts in which costs were awarded against the Commission.

Claim amount

521

800

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 R363,449 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

700

150

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 R 700,000; for some of the cases the costs are unknown and were not yet confirmed at the reporting date. Additional text

31. 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 mentioned above for the 2021/2022 financial year and received approval by the National Treasury for an amount of R110.354 million.

In terms of paragraph 6.1(a) of the National Treasury Instruction 12 of 2020/21, the Commission had to surrender R89.982 million to the National Revenue Fund through the Department of Trade, Industry and Competition.

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competition commission
south africa

a growing, deconcentrated and inclusive economy

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