competitiontribunal
SOUTH AFRICA

INTEGRATED
ANNUAL REPORT
2022/2023

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Competition Tribunal of South Africa

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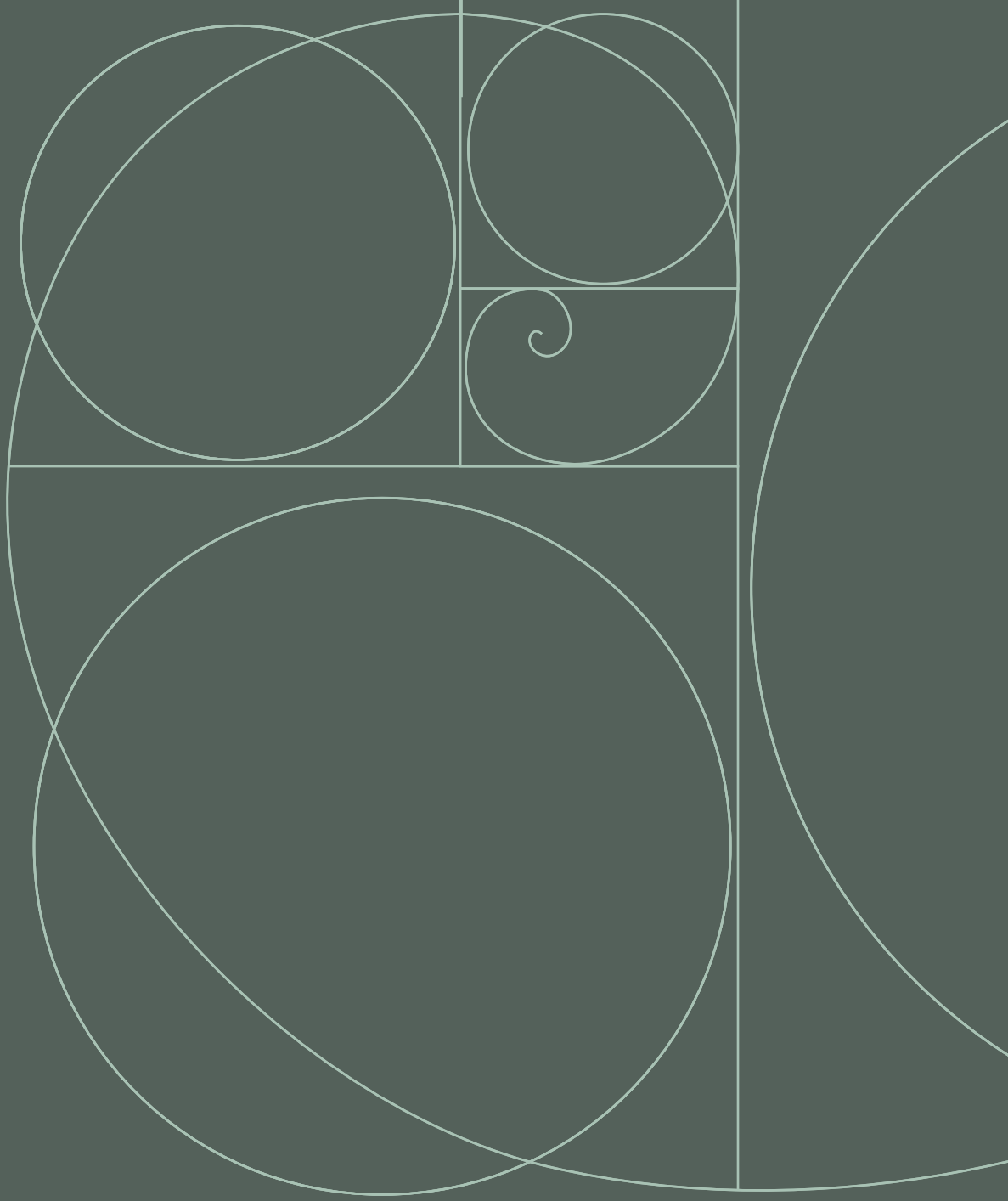
LIST OF ABBREVIATIONS

Acronyms	Description
Accounting Authority	The Chairperson of the Tribunal
the Act	Competition Act 89 of 1998
APP	Annual Performance Plan
ARC	Audit and Risk Committee
B-BBEE	Broad-based black economic empowerment
CAC	Competition Appeal Court
CMS	Case Management System
Commission	The Competition Commission of South Africa
Constitution	The Constitution of the Republic of South Africa, 1996
COO	Chief Operating Officer
COVID-19	Coronavirus disease
the dtic	The Department of Trade, Industry and Competition
ERRP	Economic Reconstruction and Recovery Plan
ESOP	Employee share ownership plan
EXCO	Executive Committee
Executive Authority	The Minister of Trade, Industry and Competition
GRAP	Generally Recognised Accounting Practices
HDPs	Historically disadvantaged persons
KPIs	Key performance indicators
KRIs	Key risk indicators
Minister	The Minister of Trade, Industry and Competition
NDP	National Development Plan 2030, adopted in 2012
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety
OPCOM	Operations Committee
PFMA	Public Finance Management Act 1 of 1999
SAICA	South African Institute of Chartered Accountants
SMMEs	Small, medium and micro enterprises
Tribunal	The Competition Tribunal of South Africa

Accountable, sustainable and transparent entity



PART A

OVERVIEW

STATEMENT OF RESPONSIBILITY

The Chairperson and the Chief Operating Officer (COO) acknowledge their responsibility in terms of ensuring the integrity of this Integrated Annual Report. In their opinion, this report addresses all of the issues that are material to the Tribunal's ability to create value and presents the integrated performance of the Tribunal fairly. This report was approved by the Chairperson on 31 August 2023.

Chairperson
Mondo Mazwai

Chief Operating Officer
Gcinumzi Qotywa

MINISTER'S FOREWORD

Ebrahim Patel
Minister: Trade, Industry and Competition

> *The focus of the Tribunal is to make rulings that safeguard the competitiveness of markets and impose remedies when participation and economic development is impeded, through cartel and abuse of dominance cases, including protecting the public interest during merger applications... The Tribunal continues to play a critical role in helping to create an inclusive and prosperous South African economy.*

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

The focus of the Tribunal is to make rulings that safeguard the competitiveness of markets and impose remedies when participation and economic development is impeded, through cartel and abuse of dominance cases, including protecting the public interest during merger applications.

In the period under review, the Tribunal heard and decided numerous large mergers and approved some with conditions. The conditions imposed by the Tribunal gives full effect to the legislative mandate and played an important role in advancing public interest objectives such as: safeguarding jobs through protecting workers from merger-specific retrenchments and maintaining aggregate employment; advancing greater participation of historically disadvantaged persons in the economy as well as the acquisition of shareholding by B-BBEE shareholders; empowering workers through the establishment of employee share ownership programmes; and financial commitments towards enterprise and supplier development, localisation and socio-economic development. The Tribunal continues to play a critical role in helping to create an inclusive and prosperous South African economy.

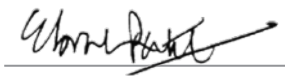
The report also reflects both the work of the Tribunal in implementing its core mandate, and the outcome of joint efforts to align work of **the dtic**'s entities towards a set of three shared outcomes:

- **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 Tribunal will continue to improve work in its core mandate and within its legal mandate to align its work around a common set of outcomes for **the dtic**-group. 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 thank the Tribunal's Chairperson, Ms Mondo Mazwai, and the Deputy Chairperson, Prof Liberty Mncube for their sterling leadership, the Tribunal members and the staff of the Tribunal for their work and contribution towards the development of competition jurisprudence.



Ebrahim Patel
Minister: Trade, Industry and Competition
31 August 2023

CHAIRPERSON'S FOREWORD

Mondo Mazwai
Chairperson

> *The path to transformation is never easy but we are ready to tackle any challenges that lie ahead... We will continue to improve efficiencies, and make decisions that are consistent, transparent and predictable.*

Much has happened in 2022/23 and I am pleased to report on our achievements in the year. To begin with, the Tribunal's staff returned to the office in January 2023 following a year of hybrid working precipitated by the COVID-19 pandemic. Moreover, the Tribunal's workload increased by more than 20%. Despite this increase in workload, we continued to perform well, achieving a significant number of our targets. For the seventh consecutive year, we achieved a clean audit. We constantly aim to improve our performance to ensure that all our work delivers tangible benefits through transparent adjudication. To this end, we undertook and completed an organisational structure review following engagements with various of our stakeholders and are currently in the process of implementing the outcomes. Despite these achievements, there is no time for complacency. We will be addressing areas of improvement contained in Part C of this report.

THE TRIBUNAL'S WORK

We reintroduced in-person hearings, although some cases continued to be heard virtually depending on the nature, scope and complexity of the matter. This has contributed to efficiencies for both us and parties appearing before the Tribunal.

Over the 12-month period, we heard a total of 199 cases compared to 159 in the prior year. These comprised 100 merger cases, four complaint referrals from the Commission, one referral by a complainant, 19 consent orders/settlement agreements, two interim relief applications and 73 procedural matters.

Mergers

Mergers continued to comprise a large part of our work (74% of our reasons issued were in respect of mergers). We decided 99 mergers (out of 100) that we heard. The numbers show that 61% of decided mergers were approved without conditions and all mergers were decided within the 10 business day stipulated time period. 37 mergers were approved subject to conditions. Of the 37 mergers, we imposed conditions relating to public interest issues in 32 mergers. The conditions included, for example, conditions promoting a greater spread of ownership (by empowering workers through employee share schemes and board representation in firms) as well as promoting small businesses and HDPs (for example through supplier development conditions).

While our work can be measured quantitatively (by the number of cases), a significant part of our work involves a qualitative assessment of competition and public interest issues. Public interest considerations in merger control have always formed part of our assessment and jurisprudence on public interest is evolving. Importantly, the recent amendments to the Act requires that when

determining whether a merger can or cannot be justified on public interest grounds, the Commission or the Tribunal must consider the effect that the merger will have on inter alia "*the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market*". The assessment of public interest, and how it is promoted in terms of the amendment, is done on a case-by-case basis as is evident from our decided cases which we discuss in Part C on page 31.

Despite the invigorated interest in public interest issues in merger control, competition effects remain a fundamental part of our merger assessment. During the year, seven mergers were approved subject to *inter alia* conditions aimed at addressing competition concerns. One such notable merger involved the transaction between Heineken and Distell which we approved subject to various conditions. We imposed conditions to remedy competition concerns arising in the flavoured alcoholic beverages/cider market in South Africa, where the merger would have resulted in a consolidation of the Strongbow brand (owned by Heineken) with the Savanna and Hunters brands (owned by Distell). The conditions require Heineken to divest of its local Strongbow business and brand to a licensee having a majority shareholding by historically disadvantaged persons ("HDPs"). The conditions also provide remedies to address certain concerns regarding the post-merger exchange of competitively sensitive information between the Heineken Group and Distell. The public interest conditions included amongst others the establishment of an Employee Share Ownership Plan that introduces shareholding for employees.

Further, allegations were levelled by witnesses who testified during the merger hearing about alleged human rights abuses and ill-treatment of temporary and seasonal farm workers, including women on farms. The Tribunal ultimately imposed conditions tendered by the merger parties to investigate these allegations and to take the necessary remedial steps.

Another merger worth noting is Shoprite's acquisition of select businesses from Massmart. We imposed conditions to remedy competition concerns relating to the retail supply of grocery products, in particular by certain retail stores situated in geographic areas affected by the merger, where the most vulnerable consumers from low LSM groups reside. The conditions included the divestiture of those retail stores by Massmart with the purchaser/s having to be a small or medium sized business/es or HDPs. The public interest conditions we imposed included commitments relating to employment, worker ownership, local procurement, skills development, and the development of retailers and suppliers.

We prohibited one merger involving Corruseal and Neopak on competition grounds. Pre-merger, Neopak is an independent non-integrated upstream manufacturer and supplier of recycled containerboard). We found that post-merger, the merged vertically integrated firm would be able to pursue a number of foreclosure mechanisms, including refusing to supply or reducing its supply or increasing the prices of recycled containerboard. Further, Corruseal's ownership of Neopak would be used to disadvantage rival corrugated board manufacturers and/or favour Corruseal. The merger was prohibited on the grounds that it would substantially prevent or lessen competition.

Prohibited practice matters

While there was an overall increase in cases heard by the Tribunal, we noted fewer prohibited practice matters, in particular cartel cases. We decided 13 cartel cases compared to 21 in the previous year. Notably, 12 of the 13 cartel cases were settled.

Reasons for the decline in cartel cases are speculative but could possibly include factors such as a fewer number of complaints regarding cartels, a decline in leniency applications by firms, characterisation of the conduct, and/or compliance programmes and the deterrent effect of prior Tribunal decisions. It is notable that state tenders continue to be conducive to collusion. Procurement by state owned entities and government departments contribute to economic development. Collusion negates that contribution.

Although not a cartel case, in an abuse of dominance case, the Tribunal decided a complaint of excessive pricing by Tsutsumani Business Enterprises involving a tender for sanitizers issued by the South African Police Services. We found Tsutsumani guilty of excessive pricing and imposed a fine of R3 441 689.10 on the firm. The fine was however far less than the excess profit which was made due to the statutory limit of a maximum fine of 10% of a firm's turnover. However, the state has recourse to civil damages.

PEOPLE AND THE ORGANISATION

Our talented, committed and collaborative staff are the foundation for the Tribunal's success, and I am immensely grateful for their hard work and contribution in achieving our mandate. We have started a process of strengthening the Tribunal's capacity to keep up with the increasing demand for our services and the increased complexity of cases. Following various stakeholder engagements, a review of the organisational structure including job grading and salary benchmarking was conducted and completed. We are currently in the process of implementing the outcomes. I am confident that the steps we are taking will place us in an even stronger position to deliver on our mandate.

We made some significant appointments in the year. Professor Liberty Mncube was appointed as Deputy

Chairperson of the Tribunal. Three pre-eminent senior counsel (Adv. Geoff Budlender SC, Adv. Jerome Wilson SC and Adv. Tembeka Ngcukaitobi SC) were appointed as acting part-time Tribunal members. Capacity in the case management division was bolstered by the appointment of four case managers. We also filled the key positions of Chief Operating Officer and a new position of Chief Financial Officer.

We plan to implement the outcomes of the organisational structure review process in a phased manner over the next three years. The Tribunal staff is its most valued resource. In addition to ongoing training and growth opportunities, we have implemented various measures to ensure a healthy and safe working environment for our people. We contracted a new wellness service provider to provide support to staff and their families when needed.

FINANCES

It is a matter of institutional pride that for the seventh year in a row, we received a clean audit with the Auditor-General reporting that "*the entity demonstrated effective leadership through a culture of honesty, ethical business practices, and good governance, prioritizing the protection and enhancement of its best interests. It exercised oversight responsibility over financial and performance reporting, ensuring compliance and strong internal controls.*" The Auditor-General also reported that "*the public entity has demonstrated a commendable record of maintaining a clean administration across all three areas of audit, namely the review of financial statements, compliance, and the audit of predetermined objectives, for the past three years.*"

Our revenue in the period was R62.6 million. We incurred expenditure of R61.1 million which resulted in a net surplus of R1.5 million during the reporting period. A significant portion of the surplus was a result of filing fee revenue which exceeded the target for the financial year. This is because filing fees fluctuate year-on-year depending on merger activity. Our finances are reflected in Part F of this report.

THE FUTURE

I am writing this report at time when South Africans and businesses in South Africa are grappling with several pressures at the same time, from an ever-rising high cost of living, to an electricity and energy crisis, climate change, and an ongoing technology revolution that is disrupting existing markets and creating new ones. We expect that there will be a continued increase in the demand for the Tribunal's services arising from the 2019 amendments to the Act, coupled with an increase in the complexity of cases. We expect an increase in the number of interim relief applications. We have noted that firms are increasingly seeking reprieve from the Tribunal through interim relief applications because of the competition authorities' transformative and constitutional approach to competition law.

During the reporting period, the Tribunal worked with the Minister in terms of section 21(4) read with section 27(2) of the Act in drafting regulations to govern the procedure for appeals from market inquiries conducted by the Commission (a new power by the Commission under the 2019 amendments). The regulations were finalised by the Minister after comments from stakeholders and became effective on 25 May 2023. We expect to see an increase in activity at the Tribunal arising from the Commission's Online Intermediation Platforms Market Inquiry.

The path to transformation is never easy but we are ready to tackle any challenges that lie ahead. Our expansion plans are on track which will add capacity to assist us in improving our performance. We are mindful of the critical role that the Tribunal plays in upholding the values of our Constitution and adjudicating in the interests of the public and competition in South Africa. We will continue to improve efficiencies, and make decisions that are consistent, transparent and predictable. None of this will be possible without the hard work of the people at the Tribunal. Thank you to the staff and management for their hard work in the past year and for their continued support in the year ahead. I especially thank the Deputy Chairperson for his invaluable insights and assistance in the administration of the Tribunal, as well as Tribunal members for their role in adjudicating for inclusive and competitive markets.

Mondo Mazwai
Chairperson
31 August 2023

CHIEF OPERATING OFFICER'S REPORT

Gcinumzi Qotywa
Chief Operating Officer

> *... we pride ourselves as a leading public entity that is accountable, transparent, sustainable, grounded in institutional integrity, and which performs at a level that positively contributes towards improving our economy and, ultimately, the lives of ordinary South Africans.*

I am pleased to report that the Tribunal continued to maintain a strong track record of a clean administration across the entire organisation in the 2022/2023 financial year. The Tribunal achieved yet another clean audit and we pride ourselves for being a leading public entity that is accountable, transparent, sustainable, grounded in institutional integrity, and which performs at a level that positively contributes towards improving our economy and, ultimately, the lives of ordinary South Africans.

This 2022/2023 report is the Tribunal's 24th Annual Report. It is also the 10th Integrated Annual Report that we have produced. We recognise the value and relevance of reporting to our stakeholders in an integrated way and provide a forward-looking and overarching perspective on our work. The content is in line with the guidelines contained in the National Treasury's Annual Report Guide for Schedule 3A and 3C Public Entities.

Part A of this report provides an overview of the Tribunal's work during the year, in the Minister's Foreword and the Chairperson's Report.

In Part B, we explain the Tribunal's role and introduce the reader to the members and staff of the Tribunal who are responsible for delivering on the Tribunal's mandate.

Part C of this report details the Tribunal's performance and achievements against set targets, that align with our two strategic outcomes, during the reporting period i.e. Reliable and Responsible Adjudication as well as Accountable, Sustainable and Transparent Entity. We provide explanations for targets not achieved as well as where we exceeded targets. We also report on developments around the Tribunal's core function, being adjudication, and highlight several notable cases adjudicated by the Tribunal during the reporting period.

In addition, the cases section provides interesting statistics on and insights into cases. Our electronic case management system enables us to monitor the progress of the adjudicative system at any given time and allows us to extract extensive data relating to our work. In this way, we can obtain an accurate reflection of our performance and can access interesting statistics on the adjudicative process.

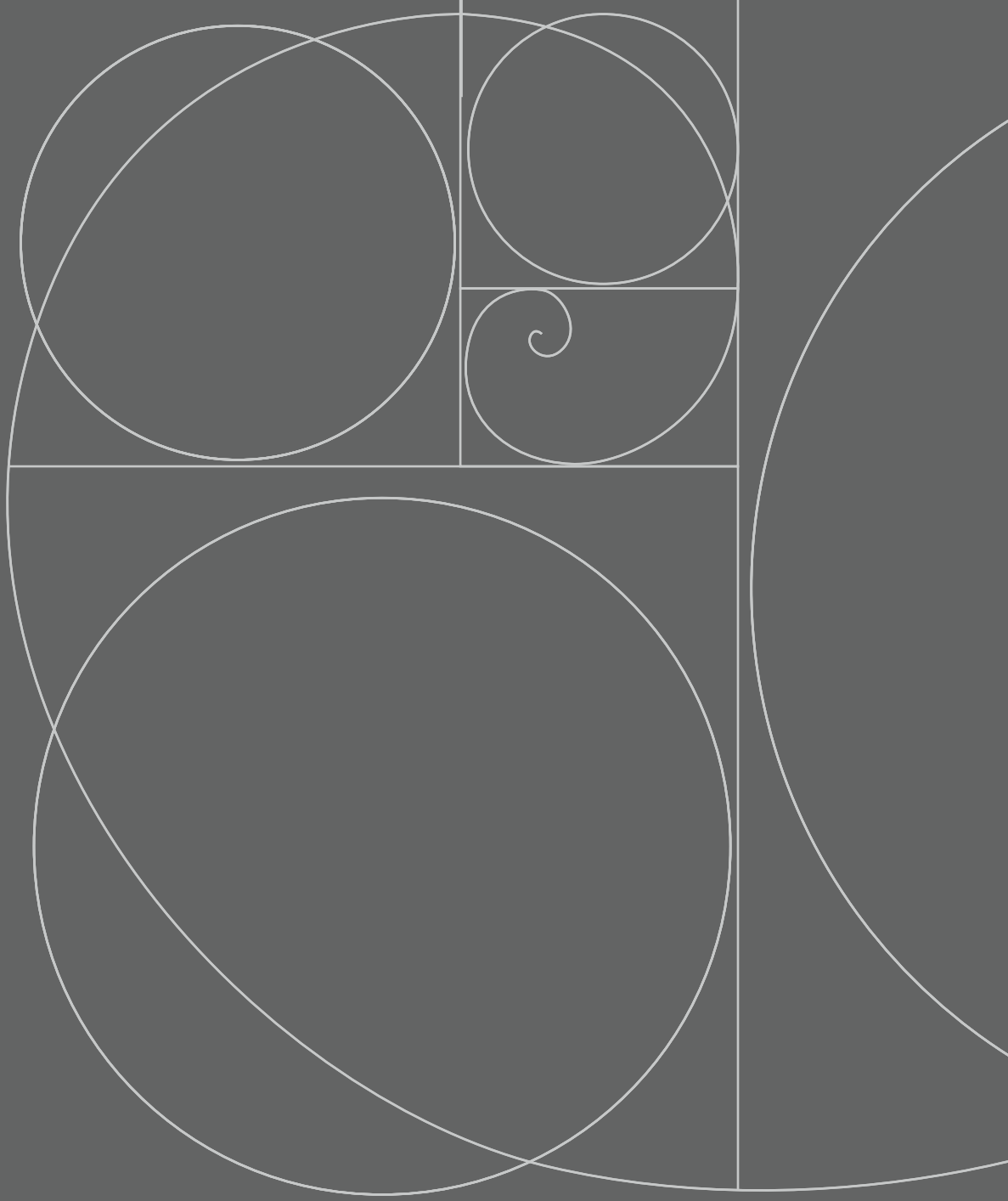
In Part D we report on our oversight structures and how we adhere to effective corporate governance and an ethical culture.

Part E features how we managed our human and financial resources. We are also excited to report on some significant achievements in our effort to strengthen the Tribunal to meet the increasing demand for its services, including a review of the organisational structure, salary benchmarking and job grading, the recruitment of three senior counsel as acting part-time members and the

recruitment of other key Tribunal staff to strengthen and bolster capacity. Part E contains further information on the organisational structure review along with insights into the Tribunal's human resource management division.
We conclude this Integrated Annual Report with the Tribunal's full financial statements prepared in compliance with Generally Recognised Accounting Practice Standards. As reported earlier, we once again received a clean audit. This can be attributed to the hard work and dedication to excellence as demonstrated by every Tribunal employee. I thank all members of staff, the Audit and Risk Committee, and the Operations Committee (OPCOM) team. I also extend my gratitude to the Chairperson and her Executive Committee (EXCO) for their leadership, guidance and support throughout the year.

We trust that the reader of this report will enjoy the read and gain valuable insights into the Tribunal and its vision of a competitive and inclusive economy.

Gcinumzi Qotywa
Chief Operating Officer



PART B

ABOUT THE TRIBUNAL

THE ROLE OF THE TRIBUNAL

The Tribunal is an independent adjudicative body established in terms of section 26 of the Act. It has jurisdiction throughout the Republic of South Africa. It adjudicates on competition matters including mergers and acquisitions, and prohibited practices (anti-competitive conduct). It functions like that of a referee in balancing the interests of various stakeholders (government, business, workers and consumers) when deciding cases before it. It exercises its functions in accordance with the Act and the Constitution without fear, favour or prejudice.

The Tribunal is one of three independent authorities that fulfil their mandate in terms of the Act. These are the Commission, which is the investigative and enforcement authority; this Tribunal which adjudicates on matters referred to it by the Commission or by private parties; and the CAC, which considers appeals or reviews against Tribunal decisions.

The Tribunal can, among others, (a) prohibit or approve (with or without conditions) large mergers after consideration of the Commission's recommendation; (b) prohibit or approve (with or without conditions) intermediate mergers decided by the Commission and brought to it for consideration; (c) adjudicate on matters in relation to any conduct prohibited in terms of chapters 2 or 3 of the Act; (d) determine appeals arising from market inquiries; (e) consider consent agreements; and (f) grant an order for costs in terms of section 57 of the Act. Once the Tribunal arrives at a decision, it is required to publish its reasons.

In all matters, the Tribunal holds hearings which are open to the public. In most cases, apart from certain procedural cases, three Tribunal members must hear a case and make a decision. Members spend significant amounts of time in hearings. During the reporting period, approximately 60% of the working calendar year was spent in hearings. The work of the full-time members extends beyond the courtroom with the balance of their time split between administrative functions, training, attending to the general management of cases in the pre-trial stages of hearings, preparing for hearings as well as writing reasons.

COMPETITION APPEAL COURT

Tribunal decisions can be taken on appeal to the CAC, a special division of the High Court.

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COMPETITION TRIBUNAL

Works like a "court" in the competition system. Decides large mergers and complaints of anti-competitive conduct. Can issue administrative penalties (fines) and impose other remedies. Can consider the Commission's decisions in small and intermediate mergers.

competitioncommission
south africa

COMPETITION COMMISSION

Works like a "prosecutor" in the competition system. Investigates mergers and complaints of anti-competitive conduct. Refers cases to the Tribunal.

STRATEGIC OVERVIEW

Government, through the NDP, has developed a plan to guide government entities' actions and choices required to transform the economy and society.

The dtic has three joint indicators, namely: Transformation, Industrialisation and Building a Capable State, through which it has aligned its objectives to the NDP's transformation goals. The Tribunal has aligned its APP with these objectives, within its statutory mandate.

Through adjudicating for competitive and inclusive markets, the Tribunal plays a critical role in helping to create conditions that contribute to sustainable growth and, ultimately, a vibrant South African economy. For example, the Tribunal's decisions on competition and public interest issues in merger control aim to:

- provide consumers with lower prices and high-quality products;
- promote the participation of SMMEs and black-owned firms;
- promote a greater spread of ownership (including by workers, for example, through merger conditions relating to ESOPs); and
- foster competition to promote innovation, productivity and long-term inclusive growth, among others.

VISION

The Tribunal's vision is a vibrant, competitive and inclusive economy

MISSION

The Tribunal's mission is impartial adjudication to promote competitive and inclusive markets with opportunities for all

VALUES

Ubuntu	• Embracing values and practices that support and promote a sense of humanity towards each other in the workplace. • Acknowledging our interdependence on and responsibility towards each other as members of a team. • Recognising, valuing and supporting each other's unique differences and responsibilities within the organisation.
Professionalism	• Behaving in a manner that brings credibility to the Tribunal and maintaining quality through characteristics such as competence, knowledge, conscientiousness and respect; • Upholding the highest standards in our work, individually and collectively; • Striving for excellence in the work we do; • Displaying the best skills, producing quality work and assisting others in doing the same; and • Ensuring that everyone contributes to the highest level of service to the public and all stakeholders.
Transparency	• Being open and honest about the Tribunal's operations and processes; • Sharing information relating to the Tribunal's performance, finances, and internal processes as well as non-confidential information on cases we adjudicate; and • Communicating our actions and decisions clearly.
Accountability	• Accepting responsibility for our conduct towards our stakeholders, including the public, which we ultimately serve; • Providing accurate reports to all Tribunal accounting structures i.e. **the dtic**, National Treasury, Parliament and the public; and • Maintaining a fair performance management system that encourages growth and accountability.
Integrity	• Maintaining the highest levels of ethical behaviour in all our dealings, internally and externally; and • Making all decisions, administrative and adjudicative, in an ethical manner.
Independence	• Demonstrating the highest levels of independence and objectivity in the performance of our functions; and • Upholding the freedom to make decisions without improper influence.
Impartiality	• Fair, unbiased and non-discriminatory decision-making across all the facets of the Tribunal's work; • Applying the law equally and fairly to all parties; and • Consistent application of internal organisational policies to support a quality workforce.
Efficiency	• Always ensuring the most efficient use of our resources e.g. time, finances, etc.; and • Striving for the best possible outcome in the least wasteful manner.

CONSTITUTIONAL MANDATE

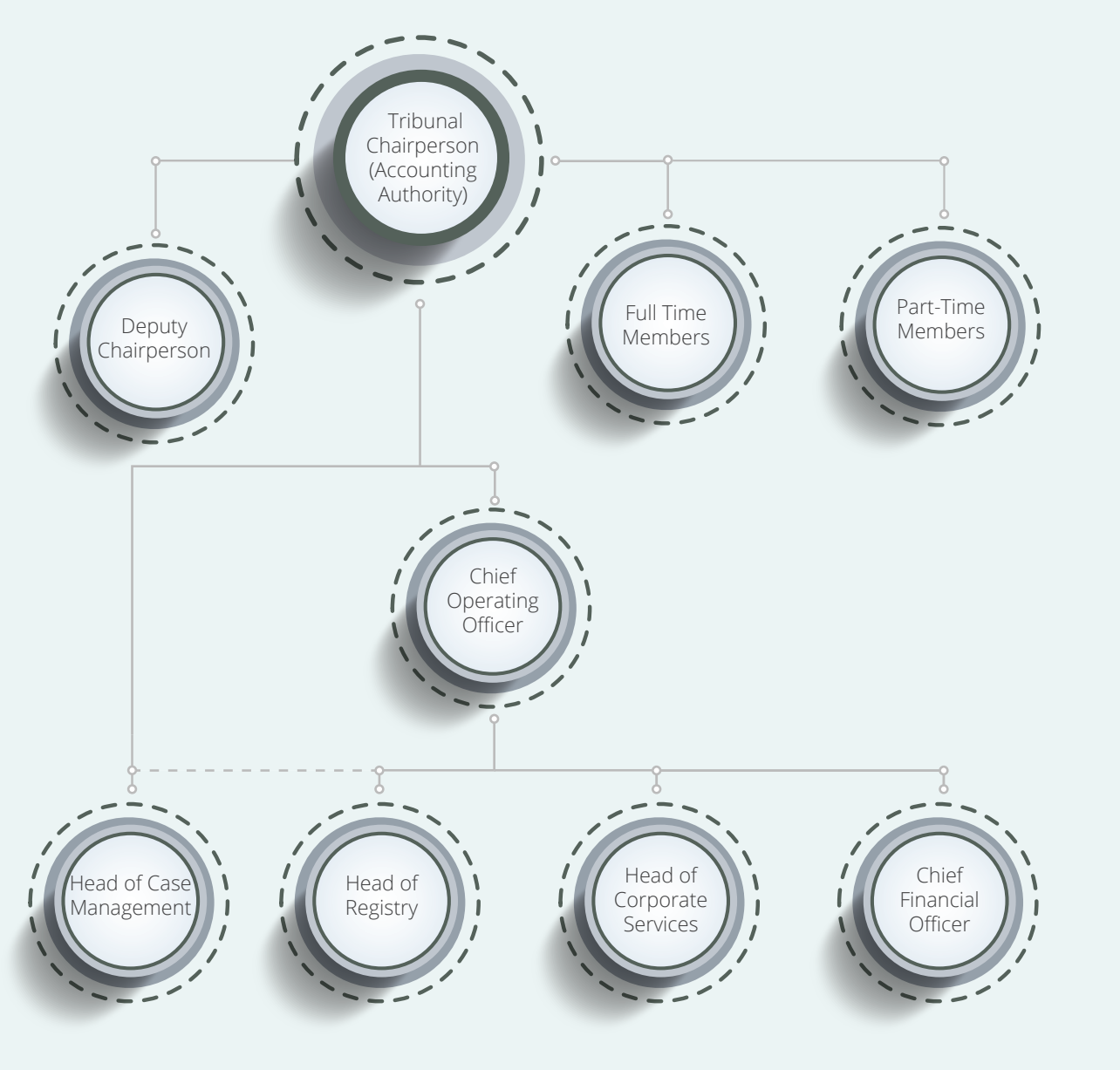
The Tribunal's constitutional mandate is contained in section 34 of the Constitution which states that: "*Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial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

LEGISLATIVE MANDATE

The Tribunal derives its legislative mandate from section 2 of the Act and its purpose is to promote and maintain competition in the Republic in order to:

a. promote the efficiency, adaptability, and development of the economy;
b. provide consumers with competitive prices and product choices;
c. promote employment and advance the social and economic welfare of South Africans;
d. expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
e. ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;
f. promote a greater spread of ownership, in particular to increase the ownership stakes of HDPs; and
g. detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, that tends to impede, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic.

DIAGRAM 1: HIGH LEVEL ILLUSTRATION OF THE TRIBUNAL'S ORGANISATIONAL STRUCTURE



TRIBUNAL MEMBERS

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

Ms Mondo Mazwai
Chairperson

Full-time
Appointed August 2019

Years at the Tribunal: 10

Prof. Liberty Mncube
Deputy Chairperson

Full-time
Appointed February 2023

Years at the Tribunal: 1

Mr Andre Wessels

Full-time
Reappointed August 2019

Years at the Tribunal: 13

Ms Yasmin Carrim

Full-time
Reappointed August 2019
Resigned December 2022

Years at the Tribunal: 18

Prof. Imraan Valodia
Part-time
Reappointed February 2023

Years at the Tribunal: 10

Ms Andiswa Ndoni
Part-time
Reappointed August 2019

Years at the Tribunal: 13

Prof. Fiona Tregenna
Part-time
Reappointed April 2019

Years at the Tribunal: 9

Dr Thando Vilakazi
Part-time
Appointed August 2019

Years at the Tribunal: 3

Ms Sha'ista Goga
Acting Part-time
Reappointed February 2023

Years at the Tribunal: 1

Adv. Geoff Budlender SC
Acting Part-time
Appointed January 2023

Adv. Jerome Wilson SC
Acting Part-time
Appointed February 2023

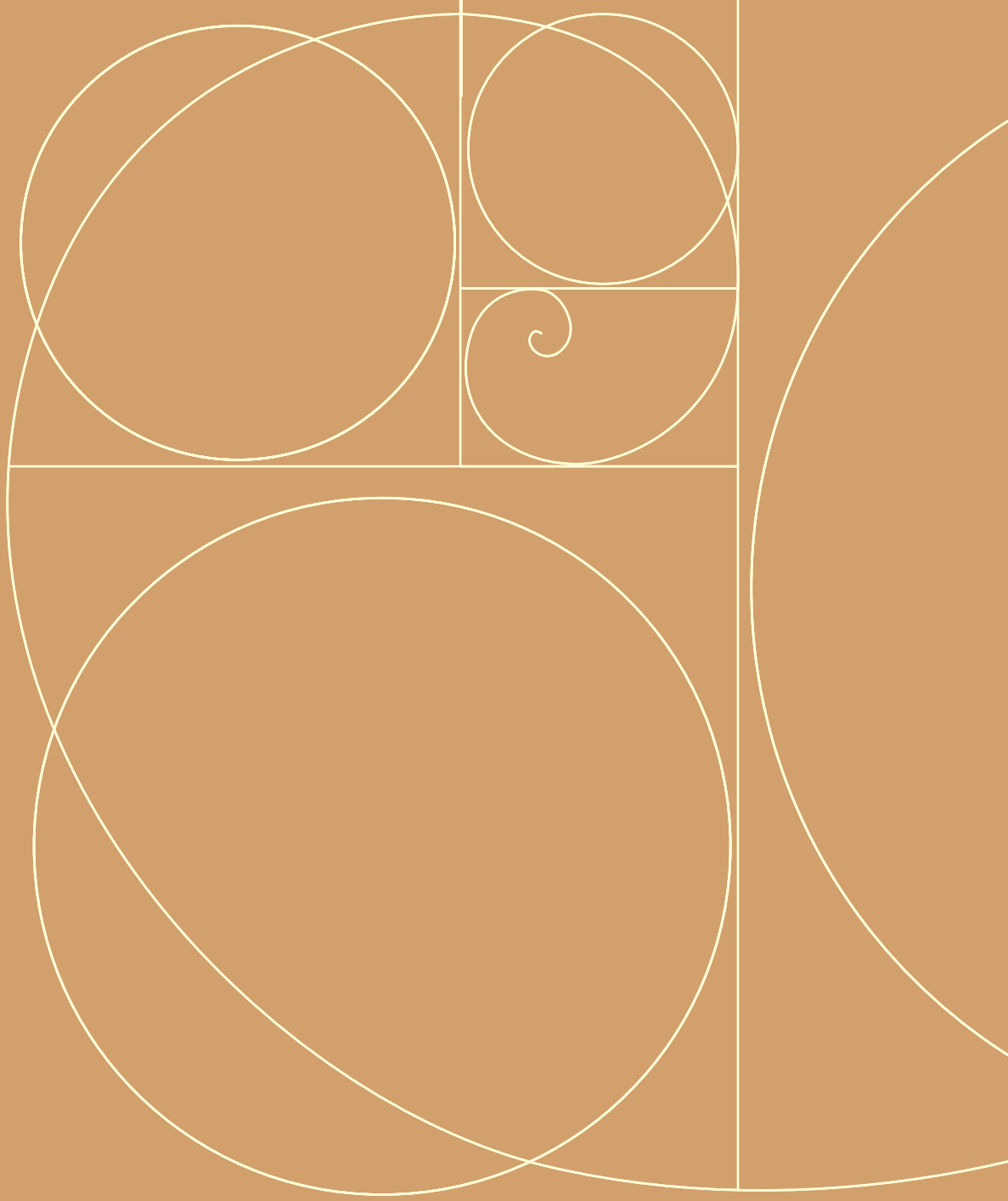
Adv. Tembeka Ngcukaitobi SC
Acting Part-time
Appointed April 2023
(Post financial year-end)

Mr Anton Roskam
Part-time
Reappointed January 2018
Term ended December 2022

Mr Enver Daniels
Acting Part-time
Appointed January 2021
Term ended June 2022

TRIBUNAL STAFF

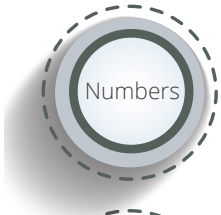
The Tribunal members are supported both logistically and operationally in their work by full-time employees who are referred to as the Secretariat. The Secretariat differs in function from the members as they do not decide cases. The Secretariat is headed by the COO and comprises four divisions, namely: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



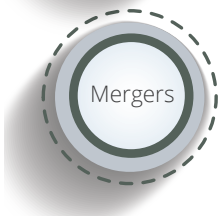
PART C

PERFORMANCE

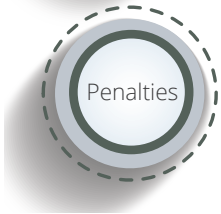
2022/2023 HIGHLIGHTS



- 199 cases heard (25.15% increase compared to 159 in the previous year).
- 165 orders issued (17.86% increase compared to 140 in the previous year).
- 117 reasons issued (24.46% increase compared to 94 in the previous year).



- 99 mergers were decided, 37 were approved with conditions (32 of these with public interest conditions)
- 1 merger was prohibited
- Total transaction value for mergers was R4 063 606 305 025



- Total amount for penalties imposed was R40 441 341
- 50% of penalties imposed was for cartel conduct
- The highest penalty was imposed on ***Esorfranki*** (R15 700 000) for colluding with competitors to fix prices, allocating customers and engaging in bid rigging in the construction sector

CASES

The Tribunal's CMS stores a large amount of data and enables us to extract statistics such as those reflected above and further in this section. Table 1 provides an overview of matters heard and decided by the Tribunal (and the reasons for the decisions) in the last two financial years. The numbers reflect an increase in the Tribunal's case load.

Table 1: Matters heard and decided in the last two financial years

Year	2021/2022	2022/2023	2021/2022	2022/2023	2021/2022	2022/2023
Case Type	Number heard		Orders issued		Reasons issued	
Large Mergers	86	99	86	98	84	86
Small/Intermediate Mergers	1	1	1	1	2	0
Complaints from the Commission	6	4	1	2	1	2
Consent Orders/ Settlement Agreements	30	19	32	15	0	0
Complaints from Complainant/High Court	0	1	0	0	0	0
Interim Relief	2	2	1	2	0	3
Interlocutory/Procedural Matters*	34	73	19	47	7	26
Totals	**159**	**199**	**140**	**165**	**94**	**117**

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

MERGER CONTROL

In merger control, the Tribunal must consider the impact of the proposed transaction on competition as well as public interest grounds such as: the effect of the merger on a particular industrial sector or region; employment; the ability of small and medium-sized businesses and firms owned or controlled by HDPs to *"effectively enter into, participate in or expand within the market"*; and the ability of national industries to compete in international markets. In line with the 2019 amendments to the Act, the Tribunal must also consider shareholding by HDPs i.e. *"the promotion of a greater spread of ownership, in particular to increase the levels of ownership of historically disadvantaged persons and workers in firms in the market"*.

The expanded considerations contained in the 2019 amendments to the Act, both regarding the competition and public interest aspects, have increased the ambit of issues for merger consideration. This has led to longer hearings as the jurisprudence is tested and developed. During the reporting period, the Tribunal imposed conditions on 37 mergers, 32 of which were with public interest conditions. See Table 4 on page 32.

Based on the asset values and turnover of merging firms (merger thresholds), there are three categories of mergers, namely: small, intermediate and large mergers. Only intermediate and large mergers require mandatory notification and approval by the competition authorities. Small and intermediate mergers are decided by the Commission. Prohibitions or conditional approvals by the Commission can be broughtv to the Tribunal for consideration. The Tribunal has jurisdiction to approve, conditionally approve or prohibit large mergers.

MERGERS BY NUMBERS

Through our CMS we are able to extract data and statistics that provide interesting insights into cases and comparisons over different time periods, as illustrated below.

Table 2: Value of large merger transactions decided by the Tribunal

	2021/2022	2022/2023
Total combined turnover	R3 801 515 988 803	R5 414 716 121 759
Minimum combined turnover	R330 535 754	R62 477 334
Maximum combined turnover	R799 000 000 000	R250 278 209 510
Average combined turnover	R44 723 717 515	R55 252 205 324
Total transaction value	R656 203 024 561	R4 063 606 305 025
Number of mergers decided	86	99

Table 3: Comparative figures for all mergers decided in the last two financial years

	2021/2022	%	2022/2023	%
Approved without conditions	56	64%	61	62%
Approved with conditions	31	36%	37	37%
Prohibited	0	0%	1	1%
Total	**87**	**100%**	**99**	**100%**

HIGHLIGHTS OF MERGER CASES

Heineken, and South African alcohol producer, Distell

In one of the most notable transactions in the 2022/2023 financial year, the Tribunal approved the transaction between European brewer, Heineken, and South African alcohol producer, Distell, subject to competition and public interest-related conditions that enhanced and tightened proposed remedies tendered by the merging parties and recommended by the Commission.

In terms of the merger the Heineken Group, through Sunside Acquisitions (Pty) Ltd (Newco), intended to acquire a controlling interest in NBL Investment Holdings Limited (NIH) and the flavoured alcoholic beverages (FABs), wine, and spirits operations of Distell Group Holdings Limited (Distell) in South Africa, Namibia and select markets across sub-Saharan Africa. The new company arising from the merger, Newco, would comprise Heineken and most of Distell's assets and would remain incorporated and headquartered in South Africa. Newco would also remain a tax resident of South Africa.

Tribunal processes and procedural aspects of the merger

The Commission referred the merger to the Tribunal for conditional approval. The Tribunal granted the South African Breweries (Pty) Ltd (SAB), the Casual Workers Advice Office (CWAO) and the Women on Farms Project (WFP) intervenor status in the proceedings. **The dtic**; the National Union of Metalworkers of South Africa; the Inqubelaphambili Trade Union; the Food and Allied Workers Union; and the National Union of Food Beverage Wine Spirits and Allied Workers (who have automatic participation rights in terms of the Act) also participated in the Tribunal proceedings.

After hearing evidence from several factual witnesses and economic experts over five days, the Tribunal considered conditions tendered by the merging parties, which were aimed at addressing competition and public interest-related concerns. **The dtic**, unions, CWAO, WFP and SAB participated in the hearing and the Tribunal approved the merger subject to enhancing conditions tendered by the parties and recommended by the Commission.

Divestiture condition

Heineken owns Strongbow which competes with Savanna and Hunters which are owned by Distell.

To address this product overlap resulting from the merger in the cider and broader FABs market and the associated anti-competitive effects, the merger conditions provided that Heineken must, within a certain period, divest of its Strongbow business in South Africa to an independent licensee which is majority owned by HDPs. The divestiture would take the form of a perpetual, royalty-free licence by Heineken Group to an independent licensee to exclusively produce, market, distribute and sell the Strongbow brand in South Africa, Botswana, eSwatini, Lesotho and Namibia.

The Strongbow business comprises the "STRONGBOW" trademarks for South Africa, Namibia, Botswana, Lesotho and Eswatini, all marketing and other materials relating to the brand held by Heineken SA, and obligations on Heineken SA to support the licensee with sales knowledge transfer and assistance for the re-contracting of distributor and client contracts (if and when required by the licensee). Among others, the Strongbow licence holder will have to be approved by the Commission and the licence acquisition must be notified to the Commission.

In addition, if Heineken is unable to implement the divestiture within a specified period it will appoint an independent trustee approved by the Commission, to divest of the Strongbow business.

The licence holder will, to the extent required, benefit from certain "transitional services" or support services that Newco will provide to the licensee in respect of the

Strongbow Business. These transitional services include cider production and packaging services; warehousing and logistics (primary and secondary logistics) services; sales and marketing support services, including access to fridges within the distribution network; and other transitional services (including services such as returnable bottle tracking, cash collection, IT and knowledge transfer). For the duration of the licence, and to the extent required by the licensee, the Heineken Group will furthermore provide the licensee with global marketing and innovation support services in respect of the Strongbow brand to preserve and maintain the economic and competitive value of the Strongbow brand. Such support services should include written guidelines relating to the marketing of the Strongbow brand from time to time; the specifications and recipes for the Strongbow products that are being made by the Heineken Group in other markets; global designs and production and packaging revisions relating to Strongbow; and any global advertising campaign assets, at the time they are being developed by the Heineken Group.

Information sharing

The conditions also provided remedies to address certain competition concerns regarding the exchange of competitively sensitive information between Newco, Heineken and the licensee given that Newco will compete with the licensee after the merger.

New capital investment and production commitments

As part of the conditions, Newco will spend R10 billion over a period of five years to maintain or grow the aggregate productive capacity and manufacturing operations of the merger parties in South Africa. In addition, Newco will invest R3.8 billion to plan, develop, construct and commission a new greenfield brewery in South Africa within five years of the closing date of the transaction. Furthermore, Newco will also procure that it or suitably qualified and experienced third parties will invest R1.7 billion in South Africa to develop, construct and commission a greenfield maltery in South Africa within five years of the closing date as well as maximise the procurement of services and input materials from SMEs and HDPs in South Africa.

Enterprise and supplier development, localisation and growth

On local procurement and HDP business procurement, Newco will for five years maintain a local procurement benchmark ratio of key inputs from local suppliers, producers and farmers; endeavour to increase local procurement; decrease its imports of finished products and maintain the merging parties' existing ratio of procurement from HDPs in South Africa.

The conditions also provide for Newco to establish a new, ringfenced supplier development fund and contribute R400 million over five years to that fund for investment in SMEs and HDP-controlled suppliers to Newco. It will support HDPs and emerging farmers, Black women-owned and controlled businesses, and female HDPs who are outsourced, temporary or seasonal farm workers. A consultative Board comprising representatives of Newco, the unions and **the dtic** will be established to consult and make recommendations regarding the fund.

In addition, Newco will support the government's economic recovery plan by contributing R200 million over five years to a ringfenced Localisation and Growth Fund to support further localisation initiatives that will drive future economic growth in South Africa and advance the inclusion and expansion of HDPs and SMEs in the market. Newco will also invest R175 million (incremental to the planned expenditure by Distell and Heineken SA prior to entering into the proposed transaction) over five years to support around 1000 tavern owners to create safe, responsible and sustainable businesses with a positive impact for consumers and society. This financial investment will improve facilities and convert them into multi-occasion outlets supporting moderate consumption; introduce non-alcoholic alternatives to support responsible consumption; and ensure that alcohol is not consumed by or sold to under-age individuals at taverns.

In line with the conditions, Newco further committed to establishing an Innovation, Research and Development Hub for the Africa region based in South Africa to focus on, among others, the development of new business opportunities for the region.

To ensure that the merger has a positive impact on the ability of national industries to compete in international markets, Heineken SA also committed to making Newco an export hub in South Africa for Newco's products supplied to ten markets in Africa beyond South Africa and, Namibia and Kenya, thereby benefiting production and procurement in South Africa.

Employee share ownership

The conditions stipulated that the merger parties must establish a new evergreen ESOP within three months after the merger closing date. The ESOP will hold a full voting shareholding of approximately 6% in SA Co, which is the company that will own and control the combined South African businesses of Newco post-merger. This equates to a value of approximately R3.5 billion for the benefit of the South African Employees of SA Co (a majority of which will always be HDPs).

This introduces shareholding for the South African employees, voting rights and Board representation for beneficiaries of the ESOP. Employees of the merging parties, who will be transferred to Capevin pursuant to the Distell restructuring implemented as part of the merger, will benefit from the ESOP and not lose any ESOP benefits by virtue of the transfer to Capevin.

The ESOP shall be structured in accordance with B-BBEE Codes and incorporate principles outlined in the conditions including, among others, that all employees be treated equally in terms of voting and economic participation with no differentiation across employee grades; that no upfront contribution will be required from employees to participate in the ESOP; that a fixed trickle dividend of a specified percentage be paid on an annual basis; that the ESOP be entitled to appoint one person to the board of directors of SA Co; and that the costs of establishing and administering the ESOP and implementing the acquisition of the SA Co shareholding will not be borne by the ESOP but by SA Co/Newco.

Employment

Employment related conditions provided, among others, that the merger parties cannot retrench any employees other than the maximum number of 166 combined employees of Heineken SA and Distell.

The number of retrenchments envisaged initially by the merger parties was 230 but was reduced to 166 following evidence heard by the Tribunal, including from unions. Among others, no unskilled workers or employees of the merger parties whose roles involve working on production lines within the production operations (including machine technicians) could be retrenched as a result of the merger and Newco would be required to implement measures to mitigate the consequences of any potential retrenchments.

On fair wages, Newco would be required to adopt a policy of paying fair wages to its employees and those of its subsidiaries and would conduct an internal assessment to ensure no employees are paid below the Newco fair wage level. In line with specified procedures in the conditions, Newco would also work with outside service providers that supply employment services to Newco to ensure that they meet their obligations of paying their employees a fair wage necessary to constitute a living wage in South Africa.

Regarding workers employed or contracted on farms and cooperatives supplying inputs to Newco, it would work with all direct sourcing farms and cooperatives to share best practice and benefits of paying a fair wage necessary to constitute a living wage in South Africa. It would also update all sourcing agreements, stipulating the expectation that direct sourcing farms and cooperatives strive to pay labour employed directly or indirectly a fair wage necessary to constitute a living wage in South Africa.

Safe and dignified work

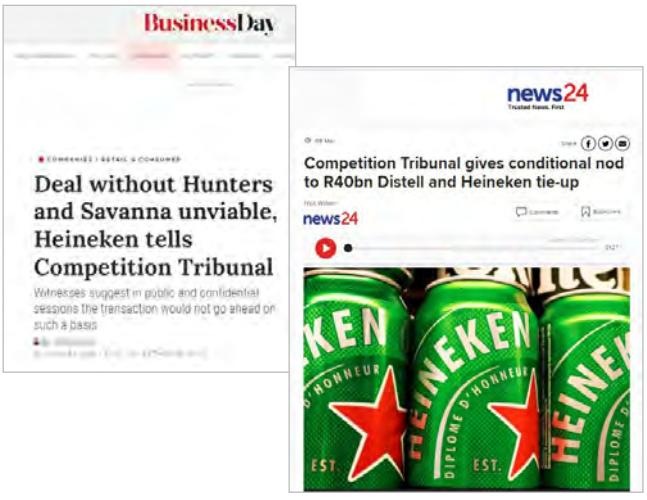
During the Tribunal hearing, witnesses representing the CWAO and WFP alleged ill-treatment and human rights abuses of temporary and seasonal farm workers and other outsourced workers. The Tribunal imposed conditions tendered by the merger parties to address these allegations.

The conditions stipulated that within three months of the merger closing date, Newco would investigate the allegations. Among the conditions, Newco would work with Distell farms and all direct sourcing farms and cooperatives to understand, avoid and address risks associated with human rights; and update all sourcing agreements to reflect a commitment to human rights standards, including providing for adequate sanitation facilities in the vineyards for workers, protection of farm workers from highly hazardous pesticides, adequate personal protective equipment (PPE) and safe transportation.

Among other commitments, Newco was required to, within three months of the merger closing date, provide the Commission with a list of farms it directly and indirectly sources from and, within six months, audit the working conditions of employees (who deliver labour-based services on these sites) and any other temporary or seasonal workers, where applicable, on farms wholly owned by Distell to assess working conditions against legal requirements and international standards. The audit would cover fair wages, reasonable working hours, a safe and dignified working environment, and health and safety standards and will include a representative sample of other farms which directly or indirectly supply products to Newco.

The audits will also be conducted in partnership with a highly respected and independent third-party organisation accredited by the Association for Professional Social Compliance Auditors. Newco will publish its findings and recommendations on its website and will also provide the findings and recommendations to the Commission.

In addition, Newco would be required to assist with educating outsourced, seasonal and temporary workers on their rights and would establish and promote an anonymous communication line for reporting any instances of wrongdoing. Newco committed to taking action to rectify any non-compliance, deficiencies or abuses in respect of payment of fair wages, working conditions and respect for workers' human rights.



Merger involving Shoprite's acquisition of select businesses from Massmart

The Tribunal also imposed an extensive set of conditions on the merger involving Shoprite's acquisition of select businesses from Massmart, following a three-day merger hearing in which the merging parties, **the dtic**, two intervenors (Pick n Pay and Spar) and the South African Commercial Catering and Allied Workers Union (SACCAWU) participated. The hearing was further followed by information requests from the Tribunal and consideration of the numerous responses received from the parties. The conditions imposed by the Tribunal sought to address identified competition and public interest concerns and included the divestiture of certain retail stores by Massmart as well as public interest commitments relating to employment; the spread of ownership; localisation; and retailer, supplier and skills development.

Divestiture conditions aimed at addressing competition concerns

The Commission identified ten grocery retail stores as "Highly Problematic Stores", namely Cambridge Botshabelo; Cambridge Thaba Nchu; Cambridge Nkandla; Cambridge Ladybrand; Cambridge Mitchell's Plain; Rhino Qumbu; Cambridge Nongoma; Cambridge/Savemoor Tembisa; Rhino Ulundi; and Cambridge Evaton. These stores are situated in lower income communities. To address the potential competition harm arising from Shoprite acquiring these stores, the Tribunal ordered a divestiture of the abovementioned stores.

In its recommendation, the Commission recommended franchising (under the Shoprite brand) four of the ten stores and a funding package to facilitate competition from one existing, high potential, black-controlled independent retail competitor for the remaining six. The intervenors argued that this was insufficient and that it did not address the competition concerns raised. They proposed a prohibition of the merger.

After considering the Commission's recommendation and the submissions of the participating parties, the Tribunal ultimately approved the merger on the basis that all ten Highly Problematic Stores must be divested by Massmart to a suitable purchaser/s within a specified period from the Tribunal's approval of the merger (the divestiture period). The conditions provided that the purchaser/s must be an independent third party/ies unrelated to Shoprite; be an SMME or HDP; and must possess the necessary financial resources, proven technical expertise and incentive to develop the Highly Problematic Stores as viable and competitive in the relevant geographic areas.

During the divestiture period, Massmart must:

- preserve and maintain the economic and competitive value, independence and marketability of the Highly Problematic Stores in the ordinary course of business;
- provide the necessary funding including working capital for the Highly Problematic Stores;
- extend any supply arrangements and/or enter into new supply arrangements with suppliers to ensure the continued uninterrupted supply and security of supply to the Highly Problematic Stores;
- extend any lease agreements, and enter into any lease agreements that may be necessary to ensure the continued operation of the Highly Problematic Stores;
- ensure that the Highly Problematic Stores are managed with reasonable care and skill, in line with good business and commercial practices; and
- refrain from doing anything outside of the ordinary course of business that may alter the economic value or competitiveness of the Highly Problematic Stores or which could alter the commercial strategy in a significantly adverse way.

The Trustee

The conditions imposed by the Tribunal provided for the appointment of a Trustee to monitor Massmart's compliance with its obligations in respect of the divestiture, including its obligation to maintain the continued financial and economic viability, competitiveness and marketability of the Highly Problematic Stores. The Trustee must be independent of the merging parties, possess the necessary qualifications and expertise to carry out his/her mandate and not be exposed to any conflict of interest. If Massmart could not divest of the Highly Problematic Stores within the prescribed period or failed to comply with its obligations in respect of the divestiture, the conditions provided for the Trustee to divest of the Highly Problematic Stores.

Employment

There would be no retrenchments as a result of the merger since all employees of the stores being disposed of by Massmart to Shoprite would be transferred to the Shoprite Group in line with the Labour Relations Act on no less favourable terms (including wages, working conditions and benefits) to those which apply pre-merger. In addition, Shoprite Group undertook to create additional permanent employment opportunities at its local operations.

Greater spread of ownership

The Shoprite Group was required, in line with the conditions, to establish and implement the Shoprite ESOP within 60 days of the merger implementation date. The ESOP would hold 40 million shares in Shoprite and employees' participation would be at no cost. Among others, employees from the Highly Problematic Stores would immediately be eligible to join the ESOP following implementation of the merger, provided that they have been employed at the Highly Problematic Stores for a minimum specified period.

Localisation

The Shoprite Group had implemented a policy to only import goods for resale in circumstances where the goods were not produced in South Africa or where there was a shortage of supply at competitive prices. It committed to increasing its procurement of locally produced foods and would endeavour to increase its procurement of locally manufactured general merchandise using Shoprite Group's annual procurement spend (as at the merger implementation date) as the benchmark.

Suppliers and leases

Shoprite would be required to maintain the supply agreements with SMMEs, suppliers owned by HDPs and current suppliers of no-name or in-store brands that supply the Massmart businesses being disposed of. The terms and conditions would be required to be on par with those offered by Massmart and would incorporate additional benefits to SMMEs and suppliers owned by HDPs. The Shoprite Group would also waive any exclusivity provisions in leases that would transfer to it when the merger was implemented.

Retailer and supplier development

Shoprite undertook to further invest in the development of independent retailers, spaza shops, SMME suppliers, and small farmers and caterers and would spend a specified minimum amount on various programmes developed jointly with **the dtic**.

Skills development

In line with the conditions, the Shoprite Group would enrol additional students in its SMMEs mentorship programme and the Government's YES programme which is a joint initiative by the private sector and government that aims to help the youth to gain work experience through employment placements. The Shoprite Group would also contribute a minimum specified amount to the Shoprite Academy annually, to enhance internal training and skills development within the Shoprite Group.

Shoprite gets green light to acquire some Massmart stores

The Citizen

SPORT PHAKAAATHI LIFESTYLE ENTERTAINMENT TRAVEL

BUSINESS

Shoprite's bid to buy some Massmart stores approved with strict conditions

The tribunal's approval follows a three-day merger hearing that included Shoprite's competitors - Pick n Pay and Spar

Tribunal prohibits intermediate merger between Corruseal and Neopak

The Tribunal prohibited an intermediate merger between Corruseal and Neopak. The firms approached the Tribunal with a request for consideration, after the Commission prohibited the merger.

Corruseal is a vertically integrated packaging firm whose activities include the manufacture and supply of recycled containerboard, corrugated board, and corrugated boxes. Neopak is an independent manufacturer and supplier of high-quality recycled containerboard. Unlike Corruseal, Neopak is not vertically integrated into downstream markets for the manufacturing of corrugated board and corrugated boxes, having exited these markets in the past three to five years.

The Tribunal assessed the effects of the proposed merger in the following product markets on a nation-wide basis: (i) supply of 100% recycled containerboard; and (ii) supply of corrugated board.

While the market relationship of the merging parties is both vertical and horizontal, the Tribunal noted that the most likely competitive harm is that the merged firm could foreclose its non-integrated downstream rivals.

The Tribunal assessed the vertical effects of the proposed transaction by reference to the following three questions:

- Ability: Would the merged firm have the ability to harm rivals?
- Incentive: Would it find it profitable to do so?
- Effect: Would the vertical effects give rise to a likely substantial prevention or lessening of competition?

The Tribunal concluded that the merged entity would have the ability to harm non-integrated corrugators downstream. In particular, the Tribunal found that the merged entity would have market power in the upstream market for the supply of recycled containerboard. The Tribunal also found the merged entity's ability to harm its downstream non-integrated rivals would be increased by the following factors:

- Non-integrated corrugators (downstream rivals of the merged entity) require recycled containerboard to compete;
- The re-direction of export volumes to the domestic market is unlikely to constitute a substantial constraint on the merged entity;
- Imports are unlikely to constitute a constraint on the ability of the merged entity;
- Alternatives to recycled containerboard are weak; and
- Barriers to entry and expansion to compete in the supply of recycled containerboard are high.

The Tribunal found that the merged firm would be able to pursue a number of foreclosure mechanisms, including refusing to supply or reducing its supply or increasing the prices of 100% recycled containerboard.

On the incentive to foreclose rival non-integrated corrugators, the Tribunal assessed the benefits and costs that the merged firm would face from implementing foreclosure strategies and found that the benefits were likely to exceed the costs.

Ultimately, the Tribunal found that post-merger Corruseal's ownership of Neopak would be used to disadvantage rival non-integrated corrugators and/or favour Corruseal. This would result in an immediate loss of rivalry with a longer-term effect on competition, including a loss of head-to-head competition between the merged entity and its rival non-integrated corrugators.

Having found that the proposed merger would result in a likely substantial lessening of competition, the Tribunal assessed whether the proposed merger would give rise to efficiencies, so as to enhance rivalry such that the merger does not give rise to a substantial lessening of competition. The Tribunal rejected this possibility.

The merging parties tendered a set of behavioural remedies in an attempt to respond to the competition concerns. The Tribunal considered the conditions and found them to be inadequate in addressing the structural change brought about by the proposed merger. Furthermore, the proposed conditions were of limited duration and would also raise significant concerns from a monitoring and enforcement perspective.

The Tribunal prohibited the proposed merger on grounds that it would likely result in a substantial prevention or lessening of competition.

The Competition Tribunal's work has an impact on all South Africans because it contributes significantly towards, among others, providing consumers with lower prices and high-quality products; promoting the participation of small businesses and black-owned firms; promoting a greater spread of ownership; and fostering competition to promote innovation, productivity and long-term inclusive growth.

PUBLIC INTEREST CONSIDERATIONS IN MERGER CONTROL

During the year under review, the Tribunal approved 37 mergers with conditions. Of these 37 mergers, 32 were approved subject to conditions relating to public interest issues (Table 4, page 32).

The Act requires the Tribunal to consider both competition issues and public interest issues when assessing a merger. In terms of section 12A(1A) of the Act a merger may still be prohibited or approved with conditions on public interest grounds even where the merger does not raise any competition concerns.

Section 12A(3) lists the factors that the Tribunal must take into consideration in determining whether a merger can or cannot be justified on substantial public interest grounds. In weighing up competition and public interest considerations, the Tribunal, in practice, conducts a complete competition analysis (which includes balancing competition harm with efficiencies) first and separately. The competition analysis is then followed by a public interest analysis. This separates the requirements for a competition analysis from what is required for a public interest analysis, and makes it possible for the Tribunal to strike a balance in its assessment.

The Tribunal also has to find the right balance between competing public interest factors listed in section 12A(3). For example, in the *Epiroc and Polkadots* merger (item 33, Table 4) a significant reduction in HDP ownership as a result of the proposed merger was balanced against a condition to establish an ESOP to promote worker ownership, as well as against the positive public interest effects brought about by the merger in relation to the other factors listed in section 12A(3) such as impact on an industry or sector and employment. The merger was ultimately approved with conditions relating to the establishment of an ESOP, a moratorium on retrenchments, and funding for skills, enterprise and supplier development initiatives.

Finding the right balance is not easy and the Tribunal often does this with the cooperation and goodwill of the merging parties who tender conditions during the Commission's investigation and sometimes during Tribunal hearings. Often merging parties tender or agree to novel conditions that are not directly specified in the Act but which contribute to transforming the economy in a broad sense. This may, for example, include conditions such as funding for skills development, funding towards the tertiary education of historically disadvantaged learners (the *Telesure Investments and Renasa Holdings* merger (item 25), and local investment initiatives to benefit local communities (the *Impala Platinum Holdings and Royal Bafokeng Platinum* merger - item 32). In the *Manto Bidco and Mediclinic* merger (item 36), Mediclinic committed to, *inter alia*, performing free surgeries to address surgical backlogs in public hospitals, pay for nurses' tuition fees, and to financially support the upgrade of clinics or mobile health units in underserviced areas.

While merging parties may propose conditions, in some cases conditions are tendered after the intervention of stakeholders such as the Minister, the Commission and trade unions. These stakeholders provide significant input and often participate in the Tribunal hearings, which are public, and where the conditions are tested to ensure that they address the identified public interest concerns and are enforceable. The Tribunal acknowledges the cooperation of all parties in advancing the public interest goals set out in the Act. This has helped to make South Africa's competition law a flagship enterprise for developing economies.

It is not expected that the public interest-related conditions will result in overnight changes to transforming the economy and levels of participation by HDPs in firms in South Africa. However, by ensuring that due consideration is given to public interest factors in merger control, and adopting a context-sensitive, transformative constitutional approach which is consistent with the scheme of the Act, the Tribunal's work in advancing the public interest contributes significantly to South Africa's transformation goals, one merger case at a time.

Table 4: Mergers approved with conditions

	Case type	Parties	Tribunal Panel	
1	Large merger	Magnesium Bidco And Mimecast	Ms Mondo Mazwai; Prof. Imraan Valodia; Prof. Liberty Mncube	
2	Large merger	Swanvest 120 And Indwe Broker Holdings	Ms Mondo Mazwai; Prof. Imraan Valodia; Prof. Liberty Mncube	
3	Large merger	Ardagh Group And Consol Holdings	Ms Sha'ista Goga; Mr Andre Wessels; Ms Yasmin Carrim	
4	Large merger	Hapag-Lloyd Aktiengesellschaft And Dal Deutsche Afrika-Linien	Ms Yasmin Carrim, Mr Enver Daniels; Dr Thando Vilakazi	
5	Large merger	Main Street 1878 And Grindrod Intermodal Business	Prof. Imraan Valodia; Mr Enver Daniels; Ms Yasmin Carrim	
6	Large merger	Growthpoint Healthcare Property And Growthpoint Securitisation Warehouse Trust	Prof. Imraan Valodia; Ms Andiswa Ndoni; Prof. Fiona Tregenna	
7	Large merger	Pharma-Q Holdings And Ascendis Pharma	Prof. Imraan Valodia; Ms Andiswa Ndoni; Prof. Fiona Tregenna	

	Subject matter	Conditions imposed
	The Tribunal approved the merger subject to conditions that will have a positive impact on the public interest i.e. the target group's continued contribution to various B-BBEE initiatives including skills development (involving bursaries for underprivileged individuals and students); training for local Mimecasters; supplier, enterprise and socio-economic development.	• Skills development • Supplier development • Enterprise development
	The proposed transaction was found to have a negative effect on the promotion of a greater spread of ownership with a reduction of HDPs at the target group. However, the Tribunal found that the commitments offered by the merging parties on the development of HDP Brokers has a net positive effect on public interest and offsets any significant public interest concerns raised by the proposed transaction. Accordingly, the Tribunal approved the merger subject to conditions relating to the development of HDP Brokers. In addition to its existing development programme, the acquiring group will (for three years following the merger implementation date) commit to investing at least R6.6 million towards Indwe's development of HDP Brokers.	• Skills development • HDP development
	Following concerns raised by the Chemical, Energy, Paper, Printing, Wood, and Allied Workers' Union (CEPPWAWU), the proposed moratorium on retrenchments was increased from two to three years. Regarding concerns that the merger will have a negative effect on the promotion of a greater spread of ownership as it will dilute the HDP shareholding in Consol, the merging parties committed to implement an additional ESOP post-merger to ensure that Consol maintains its direct B-BBEE shareholding percentage of approximately 11% in aggregate on a flow-through basis. The merging parties agreed to the imposition of a condition in this regard. The proposed transaction will therefore not have any negative effect on ownership by HDPs as it will restore the pre-merger levels. Other conditions imposed by the Tribunal related to investment, glass recycling in favour of HDPs, support for SMMEs, and the continued production of dining glassware and food jars.	• ESOP • Employment - Moratorium on retrenchments
	The employees of the target business raised concerns regarding potential retrenchments. The merging parties indicated that they would be willing to commit to no merger-specific job losses or retrenchments in South Africa for a period of 36 months after closing of the merger. The undertaking by the merging parties was imposed as a condition for the merger's approval and there will, therefore, be no merger-related retrenchments for three years from the merger's implementation date.	• Employment – Moratorium on merger related retrenchments
	Conditions were imposed on the proposed merger to remedy concerns regarding potential information exchange issues that may arise, especially in relation to freight forwarding services and custom clearance services in South Africa. The proposed merger would not have any unfavourable effect on employment in South Africa. On the spread of ownership, the merger would ultimately translate into B-BBEE shareholding in Maersk Inland, an entity which did not have any B-BBEE shareholding pre-transaction; and the B-BBEE shareholders of Grindrod would also benefit from the projected growth of the joint venture likely to result from the transaction.	• Information exchange
	To remedy concerns relating to possible information exchange issues arising from the transaction, the merging parties agreed to enter into a confidentiality and information exchange agreement. Conditions were imposed on the transaction in this regard.	• Information exchange
	A management control condition was imposed on the proposed transaction following concerns raised that the HDP shareholding in the target firms would be diluted as a result of the merger – and that the proposed merger did not promote a greater spread of ownership by HDPs and workers in firms in the market. The condition sought to maintain the HDP representation on the board of the target firms, such that the acquiring firms would have no less than 75% HDP board representation in the target firms as long as they hold shares in the target firms.	• Greater spread of ownership

	Case type	Parties	Tribunal Panel	
8	Large merger	Harthope Moss And Halewood International SA	Prof. Imraan Valodia; Ms Andiswa Ndoni; Prof. Fiona Tregenna	
9	Large merger	Sanlam Investment Holdings And ABSA Group	Prof. Imraan Valodia; Ms Andiswa Ndoni; Prof. Fiona Tregenna	
10	Large merger	K2021134577 And Emerald Safari Resort	Prof. Liberty Mncube; Ms Yasmin Carrim; Dr Thando Vilakazi	
11	Large merger	Digital Titan And TDE Investments	Ms Yasmin Carrim; Prof. Imraan Valodia; Dr Thando Vilakazi	
12	Large merger	Foschini Group And Tapestry Home Brands	Prof. Liberty Mncube; Ms Yasmin Carrim; Dr Thando Vilakazi	
13	Large merger	JF Mouton Familietrust And PSG Group	Prof. Liberty Mncube; Ms. Yasmin Carrim; Dr Thando Vilakazi	
14	Large merger	ARM Bokoni Mining Consortium And Bokoni Platinum Mines	Mr Enver Daniels; Prof. Imraan Valodia; Dr Thando Vilakazi	
15	Large merger	Alexander Forbes Financial Services And Sanlam Life Insurance	Ms Yasmin Carrim; Prof. Imraan Valodia; Dr Thando Vilakazi	
16	Large merger	Sandvik AB And Schenck Process Africa	Ms Yasmin Carrim; Dr Thando Vilakazi; Prof. Fiona Tregenna	
17	Large merger	Sasol Pension Fund And Luvon Investments	Ms Mondo Mazwai; Mr Andre Wessels; Prof. Imraan Valodia	

	Subject matter	Conditions imposed
	The Commission recommended that the proposed merger be approved without conditions. However, following its assessment and after considering submissions from the Commission, the merging parties and trade unions, the Tribunal approved the proposed transaction subject to a condition involving a two-year moratorium on merger-related retrenchments.	• Employment - Moratorium on merger related retrenchments
	The Tribunal had concerns regarding potential job losses for employees below the Patterson Grade D level (middle management who are professionally qualified, including senior professional, senior executive and senior management levels). In response to the Tribunal's questions, the merging parties agreed to a condition incorporating the merger parties' undertaking not to retrench any staff below the senior professional, senior executive, and senior management levels for a period of two years post implementation of the merger.	• Employment - Moratorium on merger related retrenchments
	The Tribunal imposed employment, local procurement and investment related conditions on the proposed merger i.e. a 24-month moratorium on merger related retrenchments; consideration of former Emerald employees, retrenched in 2021, for available positions; continued procurement from local suppliers; investment into Emerald's business operations for five years; and a commitment not to relocate Emerald's casino license from the current site on which its operations are located to another site within the Gauteng province.	• Employment - Moratorium on merger related retrenchments
	The Tribunal approved the proposed merger with conditions relating to B-BBEE shareholding and the establishment of an ESOP as well as behavioural remedies relating to access i.e. that the target firm shall not restrict or prevent any third-party provider of co-location data centres, including the intervenor in the matter, from connecting to, and peering, at NAP Africa located at the target firm's data centres.	• ESOP
	The Tribunal approved the proposed merger subject to conditions including a three-year moratorium on any merger related retrenchments. In addition, the conditions stipulate that there will be no downward variation of wages and conditions of work in relation to employees of the merged entity, as a result of the proposed transaction. Post-merger, a HDP shareholder will be introduced within the Tapestry Group, and this will have a positive effect on the spread of ownership. Furthermore, provided it is economically feasible to do so, the merged entity will (within a specified period) establish new retail stores across the Tapestry Brands and create new positions to service the new stores.	• Employment- Moratorium on merger related retrenchments
	The Tribunal imposed an employment related condition on the proposed merger i.e. no retrenchments of employees (other than the Affected Employees who are highly skilled executives holding top management positions) as a result of the proposed transaction for a period of two years from the merger implementation date.	• Employment- Moratorium on merger related retrenchments
	The Tribunal approved the merger subject to, among others, public-interest related conditions involving B-BBEE and employment i.e. the implementation of an ESOP special purpose vehicle (SPV); a local community SPV; and a SPV which will be owned by Black Industrialists. These structures would be finalised in accordance with various principles outlined in the conditions that will benefit qualifying employees, eligible host communities of the Bokoni Mine and black industrialists. Among others, these structures would each acquire a shareholding of 5% in the acquiring firm for a nominal price. In addition, for 24 months post-merger, the merged entity would give first preference to Bokoni Mine's current fixed-term contract, care and maintenance employees for any vacancies within the merged entity.	• Employment • ESOP
	To remedy employment-related concerns, the Tribunal approved the proposed merger with a moratorium on merger-related retrenchments.	• Employment- Moratorium on merger related retrenchments
	The Tribunal approved the proposed merger subject to a moratorium on merger-related retrenchments in South Africa.	• Employment- Moratorium on merger related retrenchments
	The transaction was approved subject to all exclusivity provisions between the merging parties and Pick n Pay being removed.	• Removal of exclusivity provisions in lease agreement

	Case type	Parties	Tribunal Panel	
18	Large merger	Glacier Financial Solutions And ABSA Lisp Business	Ms Yasmin Carrim; Prof. Imraan Valodia; Ms Andiswa Ndoni	
19	Large merger	Royale Energy And Fuelex	Ms Mondo Mazwai; Ms Shaista Goga; Ms Andiswa Ndoni	
20	Large merger	Foodcorp And Sunshine Bakery Holdings	Ms Yasmin Carrim; Prof. Imraan Valodia; Prof. Fiona Tregenna	
21	Large merger	Clover SA And Dairy Farmers	Ms Yasmin Carrim; Ms Andiswa Ndoni; Prof. Fiona Tregenna	
22	Large merger	FLM SA And Everfresh Market	Ms Mondo Mazwai; Prof. Imraan Valodia; Mr Andre Wessels	
23	Large merger	Karan Beef And Caine Farming	Ms Mondo Mazwai; Mr Andre Wessels; Prof. Liberty Mncube	
24	Large merger	VKB Beleggings And Griekwaland Wes Korporatief	Mr Andre Wessels; Ms Andiswa Ndoni; Prof. Imraan Valodia	
25	Large merger	Telesure Investments Holdings And Renasa Holdings	Mr Andre Wessels; Ms Andiswa Ndoni; Prof. Imraan Valodia	
26	Large merger	Super Group Holdings And RSC Consulting Services	Mr Andre Wessels; Ms Andiswa Ndoni; Prof. Imraan Valodia	
27	Large merger	Commercial Cold Holdings And Commercial Cold Storage (CCS)	Prof. Imraan Valodia, Prof. Liberty Mncube; Ms Mondo Mazwai	

	Subject matter	Conditions imposed
	The Tribunal approved the proposed merger subject to a moratorium on merger-related retrenchments.	• Employment- Moratorium on merger related retrenchments
	The Tribunal approved the proposed merger subject to a two-year moratorium on merger-related retrenchments.	• Employment- Moratorium on merger related retrenchments
	The Tribunal imposed a supply condition on the proposed merger i.e. Sunshine will procure at least 50% of its quarterly bread flour requirements from independent bread flour suppliers for two years, subject to the parties agreeing on reasonable commercial terms for supply of bread flour.	• Supply condition – procurement from independent suppliers
	The Tribunal imposed conditions on the merger relating to employment (a five-year moratorium on merger-related retrenchments and transfer of permanent employees of the Milk Procurement Business to Clover); training and skills development; enterprise development; milk procurement contracts (Clover to maintain existing contracts with relevant suppliers for five years); and raw milk supply (Clover to make available, to its competitors, regular raw milk that is surplus to Clover's own requirements at market-related prices).	• Employment- Moratorium on merger related retrenchments • Training and skills development • Supplier development • Supply conditions
	The Tribunal approved the merger subject to public interest-related conditions, as tendered by the merging parties, aimed at promoting ownership by HDPs in the KwaZulu-Natal (KZN) grocery retail market, as well as supplier development conditions. Among others, FLM SA must ensure that three of the stores that it will open in the KZN region in the next five years will have a significant HDP component i.e. the stores will either be wholly owned and operated by HDP franchisees or co-owned by FLM SA (as to 51%) and a HDP joint venture partner (as to 49%). On supplier development, FLM SA must ensure that the stores it is acquiring in this merger continue to procure from existing small and medium-sized businesses and HDP suppliers for a period of five years from the merger implementation date, provided that these suppliers meet FLH's minimum listing requirements.	• Greater spread of ownership • Supplier development • HDP Participation
	The Tribunal imposed public interest conditions to support cattle farmers classified as HDPs who intend to commercialise their operations, through commitments on public interest provisions. The conditions addressed security of suppy as well as enterprise and supplier development. In addition, socio-economic development commitments involving training and bursaries.	• Supplier development • HDP participation
	The Tribunal imposed conditions to protect jobs and remedy concerns relating to a greater spread of ownership i.e. conditions included a 36-month moratorium on merger-related retrenchments and qualifying workers would become beneficiaries of a pre-existing employee share ownership structure of VKB after the merger. Conditions relating to a Finance Fund for HDPs would also enable HDP farmers and entities to enter into agricultural markets which the merging parties form part of.	• Employment- Moratorium on merger related retrenchments • ESOP • Greater spread of ownership
	The Tribunal imposed conditions to remedy concerns that the proposed merger did not promote a greater spread of ownership to HDPs or workers. The transaction was approved subject to conditions involving an initiative which will provide funding towards the tertiary education of historically disadvantaged learners.	• HDP development – Funding of learners
	The conditions imposed by the Tribunal required Super Group Holdings to announce its new ESOP in March 2023, through which qualifying workers from the stock taking and cleaning target-companies would benefit from shareholding in SGH, thereby promoting B-BBEE.	• ESOP • Greater spread of ownership
	The transaction was approved subject to the implementation of an ESOP condition for the benefit of CCS employees to partially offset the dilution of indirect HDP ownership resulting from the transaction.	• ESOP • Greater spread of ownership

	Case type	Parties	Tribunal Panel	
28	Large merger	Spar Group And Spar Encore	Prof. Liberty Mncube; Ms Mondo Mazwai; Prof. Imraan Valodia	
29	Large merger	Starsight Energy Africa And Solarafrica Energy	Prof. Imraan Valodia; Adv. Jerome Wilson SC; Prof. Fiona Tregenna	
30	Large merger	Ideas Infrastructure I GP And Solarafrica Energy	Prof. Imraan Valodia; Adv. Jerome Wilson SC; Prof. Fiona Tregenna	
31	Large merger	Cape Town Biogas And New Horizons	Adv. Jerome Wilson SC; Prof. Fiona Tregenna; Prof. Imraan Valodia	
32	Large merger	Impala Platinum Holdings And Royal Bafokeng Platinum	Ms Yasmin Carrim; Ms Andiswa Ndoni; Prof. Imraan Valodia	
33	Large merger	Epiroc Holdings SA And K2022596519	Adv. Jerome Wilson SC; Ms Mondo Mazwai; Mr Andre Wessels	
34	Large merger	Shoprite Supermarkets (Pty) Ltd And Retail Supermarket Stores, Retail Liquor Stores, Wholesales Stores And The Massfresh Business Owned By Massmart Holdings Ltd	Ms Mondo Mazwai; Mr Andre Wessels; Prof. Imraan Valodia	

	Subject matter	Conditions imposed
	The Tribunal imposed a condition that when localising the procurement of goods, the merged entity shall use its best endeavours to procure such localised goods from SMMEs or firms controlled or owned by HDPs. The Tribunal further made provision for the merger parties, as part of their monitoring and compliance obligations, to provide the Commission with details of its endeavours to procure localised goods from SMMEs or firms controlled or owned by HDPs.	• HDP participation • Localisation of procurement
	To remedy concerns relating to the exchange of information between competitors, the Tribunal imposed conditions on the proposed merger which serve as firewalls to prevent information sharing between competitors.	• Information exchange
	To remedy concerns relating to the exchange of information between competitors, the Tribunal imposed conditions on the proposed merger which serve as firewalls to prevent information sharing between competitors.	• Information exchange
	The Tribunal approved the merger with conditions that promote a greater spread of ownership i.e. a specified percentage of the acquiring form's shareholding will be held by HDPs by the first anniversary of the merger implementation date. An incentive scheme, aimed at management, operations and maintenance workers, will also be implemented through which the workers will benefit through performance incentives.	• ESOP • Greater spread of ownership
	The Tribunal approved the proposed merger subject to a package of competition and public interest conditions. The conditions related to, among others, Implats honouring its current contracts as well as securing commercial terms for the renewal of contracts. The conditions further sought to promote a greater spread of ownership and involved commitments relating to an ESOP. The conditions also involved commitments towards SMME suppliers and enterprise supplier development empowerment. Further, the conditions made provision for local investment initiatives to benefit local communities as well as local procurement commitments. Provision was also made for employment-related conditions such as a moratorium on any merger-related retrenchments.	• Supplier development • ESOP • Commitment to SMMEs • Investment • Employment-Moratorium on merger related retrenchments
	The Tribunal approved the proposed merger with public interest-related conditions involving the establishment of an ESOP, a moratorium on retrenchments and additional funding allocated to skills development initiatives as well as enterprise and supplier development initiatives.	• Employment-Moratorium on merger related retrenchments • Enterprise and supplier development • ESOP • Greater spread of ownership • Women Empowerment
	The conditions sought to address competition and public interest concerns and included the divestiture of certain retail stores by Massmart as well as public interest commitments relating to employment, the spread of ownership, localisation and retailer, supplier and skills development. To address the competition concerns, the Tribunal imposed a condition that ten retail stores must be divested by Massmart to suitable, independent SMMEs or HDPs.	• Divestiture • Employment-Moratorium on merger related retrenchments • Greater spread of ownership • Skills development • Supplier development programmes

	Case type	Parties	Tribunal Panel	
35	Large merger	Sunside Acquisitions And Namibian Breweries Investment (the Heineken/ Distell merger)	Ms Mondo Mazwai; Mr Andre Wessels; Prof. Liberty Mncube	
36	Large merger	Manta Bidco And Mediclinic International PLC	Prof. Imraan Valodia; Prof. Fiona Tregenna; Adv. Jerome Wilson SC	
37	Large merger	Strategic Fuel Fund Association NPC And Avedia Energy	Ms Mondo Mazwai. Prof. Imraan Valodia; Prof. Liberty Mncube	

	Subject matter	Conditions imposed
	The Tribunal imposed a divestiture condition in terms of which Heineken's Strongbow business in South Africa would be divested to an independent licensee, majority owned by HDPs. The merged entity will spend a cumulative capital expenditure of R10 billion over five years and invest a further R3.8 billion and R1.7 billion respectively in a new greenfield brewery and maltery in South Africa. The conditions also catered for various enterprise and supplier development commitments that support local procurement and growth and involve several hundreds of millions of rands. South African workers also benefit because the conditions introduce shareholding for South African employees, voting rights and Board representation for beneficiaries. To protect jobs, the Tribunal also imposed a cap on potential retrenchments with specified guidelines to mitigate the consequences of any retrenchments. During the merger hearing, witnesses testified about alleged ill-treatment and human rights abuses of farm workers and other outsourced workers. The Tribunal imposed conditions on the merger, tendered by the merger parties, that provide for an investigation into the allegations, while specific actions to promote human rights and safe and dignified work for farm workers were imposed, including an audit on fair wages, working hours, a safe and dignified working environment, and health and safety standards.	• Divestiture • Employment-Moratorium on merger related retrenchments • Supplier development • Greater spread of ownership
	The Tribunal approved this merger subject to a package of public interest-related conditions that will benefit South Africa's public healthcare sector. These include commitments by Mediclinic to, among others, perform free surgeries to help address surgical backlogs in public hospitals; pay for nurses' tuition; financially support the upgrading of clinics or mobile health units in underserviced areas; procure from Black-owned businesses; and establish an employee benefit scheme. The Tribunal has also imposed conditions on the transaction that seek to address the risk of information sharing post-merger.	• Information Exchange • Public interest commitments to benefit the healthcare sector • Procurement from black owned businesses
	To remedy concerns relating to the exchange of information, the Tribunal imposed conditions which serve as firewalls to prevent information sharing between competitors. In addition, conditions relating to access to an essential facility were imposed to remedy competition related concerns.	• Information Exchange • Access to essential facility

PROHIBITED PRACTICES

The Tribunal has no influence over the number and type of prohibited practice cases referred to it and only adjudicates such matters when they are referred. The Tribunal noted fewer cartel cases of this nature i.e. cases falling under section 4 of the Act, referred to it during the reporting period.

Table 5: Prohibited practice matters decided by the Tribunal

	Case type	Parties	Tribunal Panel	Subject matter
1	Complaint referral	CC v Tsutsumani Business Enterprises	Ms Mondo Mazwai; Mr Andre Wessels; Ms Andiswa Ndoni	This was the first excessive pricing case in the context of a tender process during the COVID-19 pandemic and was also the first case that fell to be determined under the Consumer Protection Regulations, read with section 8(1)(a) of the Act. The Tribunal found that Tsutsumani Business Enterprises CC charged the South African Police Service excessive prices for the urgent supply of 500 000 face masks during the pandemic (in April 2020) and ordered the supplier to pay a R3.4 million administrative penalty.
2	Complaint referral	CC v Esorfranki	Ms Yasmin Carrim; Mr Andre Wessels; Ms Medi Mokuena	In a contested cartel case involving construction and engineering firms, the Tribunal found that Esor, Esor Africa and Esor Construction (collectively, Esorfranki) colluded with competitors to fix prices and allocate customers and that they engaged in bid-rigging through cover pricing. The matter related to construction projects in the markets for geotechnical services. The Tribunal ordered the firms to jointly and severally pay a penalty of R15 700 000.
3	Consent/ settlement agreement (filed as a procedural matter)	CC And I Group Consolidated Holdings and Others	Prof. Imraan Valodia; Ms Andiswa Ndoni; Prof. Fiona Tregenna	The Tribunal confirmed, as an order, a consent agreement wherein four firms admitted that they contravened the Act by implementing a transaction prior to the approval of the transaction by the Commission and agreed to jointly pay an administrative penalty of R1 485 000. In addition to the penalty, I Group Consolidated Holdings (Pty) Ltd, U Reit Collins (Pty) Ltd, Tradegro Holdings (Pty) Ltd and Collins Property Projects (Pty) Ltd agreed to notify the Commission of any future transactions that constitute a notifiable merger and to refrain from engaging in prior implementation of notifiable mergers. They also agreed to implement a competition law compliance programme.
4-12	Consent/ settlement agreement	CC And Whip Fire Projects	Ms Yasmin Carrim; Prof. Imraan Valodia; Ms Andiswa Ndoni	Nine installers of automatic fire sprinklers, implicated in a cartel case concluded separate settlement agreements which were confirmed as orders by the Tribunal. Whip Fire Projects agreed to pay a penalty of R378 182.53. Belfa Solutions agreed to pay a penalty of R315 857.95. Sylvester Fire and Piping Services agreed to pay a penalty of R15 440.22. Bhubesi Fire Projects agreed to pay a penalty of R300 000.00. Cross Fire Management agreed to pay a penalty of R750 000.00. Fire Check CC agreed to pay a penalty of R320 058.15. Fire King agreed to pay a penalty of R12 000.00. Centa KZN Sprinklers CC agreed to pay a penalty of R1 675.56. Country Contracts CC agreed to pay a penalty of R130 000.00.

	Case type	Parties	Tribunal Panel	Subject matter
13	Consent/ settlement agreement	CC And Computicket and Shoprite	Ms Yasmin Carrim; Prof. Imraan Valodia; Ms Andiswa Ndoni	The Tribunal confirmed a settlement agreement between the Commission, Computicket and Shoprite, bringing to an end the protracted litigation relating to alleged abuse of dominance for exclusive arrangements with inventory providers regarding outsourced ticket distribution services (OTS) in the entertainment industry. Computicket agreed to pay an administrative penalty of R11 317 000 and to develop and implement a competition law compliance programme.
14	Consent/ settlement agreement	CC And QQQ Trading Enterprise	Ms Andiswa Ndoni; Prof. Imraan Valodia; Ms Yasmin Carrim	A Gauteng company and supplier to the Department of Correctional Services (DCS) agreed to pay an administrative penalty of R30 000, following allegations of collusive tendering. The DCS tenders in question related to the supply, delivery and offloading of coal peas used in correctional facilities for boiling water and cooking. As a further term of settlement, QQQ undertook to refrain from engaging in any anti-competitive conduct, in contravention of the Act, in the future. In addition, it would develop, implement and monitor a competition law compliance programme.
15	Consent/ settlement agreement	CC And Nedbank and ERF 7 Sandown	Prof. Imraan Valodia; Dr Thando Vilakazi; Ms Yasmin Carrim	The Tribunal confirmed, as an order, a consent agreement wherein Nedbank and Erf 7 Sandown admitted that they contravened section 13A(3) of the Act by implementing a transaction prior to obtaining the approval of the competition authorities. The firms accepted that they were jointly and severally liable to pay an administrative penalty, the one paying and the other to be absolved. Nedbank would pay the administrative penalty totalling R2 000 000. Among others, the firms undertook to: notify the Commission of any future transactions that constitute a notifiable merger; refrain from engaging in prior implementation of notifiable mergers in contravention of the Act; and update their corporate governance by enhancing Nedbank's competition law compliance programmes to ensure that its employees, management and executive directors do not engage in future contraventions of the Act.
16	Consent/ settlement agreement	CC And QCP1 Investments and Cape Trans Property Investments	Prof. Imraan Valodia; Dr Thando Vilakazi; Ms Yasmin Carrim	QCP1 and Cape Trans admitted that they implemented a notifiable merger without the prior approval of the Commission. The firms agreed that QCP1 would pay a R2 000 000 penalty. The firms also undertook, among others, to: refrain from engaging in prior implementation of notifiable mergers in contravention of the Act; and develop, implement and monitor a competition law compliance program incorporating corporate governance.

	Case type	Parties	Tribunal Panel	Subject matter
17	Consent/ settlement agreement	CC And Corpcom Outdoor	Prof. Fiona Tregenna; Ms Mondo Mazwai; Ms Shaista Goga	The Tribunal confirmed a settlement agreement wherein a media firm, Corpcom, admitted to price fixing and agreed to pay a R1 389 438 penalty. It also agreed to contribute R500 198 towards the Economic Development Fund to allow for the development of black-owned small media or advertising agencies. Corpcom also agreed to co-operate fully with the Commission until all subsequent proceedings in the Tribunal or CAC are completed. This includes, among others, providing evidence and witnesses regarding this matter. The Tribunal previously confirmed other settlements in the case involving Media Credit Coordinators (MCC); Mail and Guardian Media; Carpe Diem Media; SABC; Primedia; Ster Kinekor Theatres; Trudon; United Stations; Media24; Mediamark; MTV Networks Africa; DStv Media Sales; Provantage; Independent Media; and Caxton & CTP Publishers and Printers. The settlements follow a Commission probe into allegations that media firms, through MCC, agreed to offer similar discounts and payment terms to advertising agencies that place advertisements with MCC members. Accredited advertising agencies were offered a higher percentage discount than non-accredited advertising agencies.
18	Consent/ settlement agreement	CC And PBD Boeredienste (Pty) Ltd	Mr Andre Wessels; Prof. Liberty Mncube; Ms Mondo Mazwai	In this settlement agreement, confirmed as an order by the Tribunal, a firm involved in distributing agricultural lime agreed to pay a R855 000 penalty. The Commission alleged that PBD was involved in fixing rates of agents' commissions payable by themselves to fertilizer companies that employ agents to distribute agricultural lime.

Table 6 shows that 50% of penalties (fines) imposed by the Tribunal during the reporting period were imposed for cartel conduct.

Table 6: Penalties imposed per section of the Act in the last two financial years

		2021/2022			2022/2023		
	Sections of the Act	**Number of cases**	**Amount**	**%**	**Number of cases**	**Amount**	**%**
1.	Restrictive horizontal practices Sections 4(1)(b)(i), (ii) and (iii)	21	R20 779 967	91%	13	R20 197 652	50%
2.	Abuse of dominance Sections 8(1)(a), 8(c), 8(d)(i), 8(d)(iii)	10	R0	0%	2	R14 758 689	36%
3.	Failure to notify - Section13A(3)	2	R3 627 000	9%	3	R5 485 000	14%
4.	Section 5(1)	1	R0	0%		R0	0%
5.	Resale price maintenance - Section 5(2)	1	R0	0%		R0	0%
	TOTAL	**35**	**R24 406 967**	**100%**	**18**	**R40 441 341**	**100%**

Table 7 shows that the highest percentage of penalties (38.83%) was imposed on firms in the construction sector.

Table 7: Penalties issued per sector in the last two financial years

	Sector	**2021/2022**	**%**	**2022/2023**	**%**
1.	Manufacturing	R1 000 000	4.09%	R0	0%
2.	Wholesale and retail trade	R10 348 331	42.40%	R5 664 903	14.00%
3.	Construction	R0	0%	R15 700 000	38.83%
4.	Professional scientific and technical activities	R0	0%	R1 389 438	3.44%
5.	Transportation and storage	R268 936	1.10%	R30 000	0.07%
6.	Information and communication	R8 731 635	35.78%	R11 317 000	27.98%
7.	Accommodation and food services	R570 894	2.34%	R0	0%
8.	Agriculture, forestry, and fishing	R80 000	0.33%	R855 000	2.12%
9.	Other service activities	R2 829 671	11.59%	R0	0%
10.	Mining and quarrying	R577 500	2.37%	R0	0%
11.	Real estate activities	R0	0%	R5 485 000	13.56%
	TOTAL	**R24 406 967**	**100%**	**R40 441 341**	**100%**

Interlocutory applications

There was a significant increase in the number of interlocutory/procedural matters with 73 cases heard and 47 decided during the reporting period.

Interim Relief applications

There was also an increase in interim relief applications as parties sought a reprieve from the Tribunal and as competition jurisprudence is developing. 10 new interim relief applications were filed during the reporting period compared to two in the previous year.

STRATEGIC OUTCOMES

The Tribunal has two strategic outcomes which are *Reliable and Responsive Adjudication* and *Accountable, Sustainable and Transparent Entity.*

Each strategic outcome has identified outputs and indicators which are used to measure the Tribunal's performance against agreed targets aimed at realising the purpose of the Act and the Tribunal's vision of a vibrant, competitive and inclusive economy.

Where applicable, annual targets are cascaded down to quarterly targets. Performance against targets is monitored and reported quarterly to **the dtic** and National Treasury and annually in the Tribunal's Integrated Annual Reports.

Targets are not set at 100% as partial or non-achievement cannot always be attributed to the Tribunal. For example, this may be due to case-specific factors such as the complexity of matters requiring longer hearings and extended deliberations, postponements requested by parties as well as the prioritising of certain matters based on urgency.

Reliable and Responsive Adjudication

The Tribunal's core business and, therefore, its strategic focus is adjudicating mergers and prohibited practice cases (with 8 indicators). It is required to expeditiously decide on matters brought before it i.e. the Act and the Tribunal Rules prescribe time frames for issuing orders and decisions in mergers which must be adhered to.

Table 8: Performance - Reliable and Responsive Adjudication

Adjudication					
Outcome	**Output**	**Output Indicator**	**Audited Actual Performance 2020/2021**	**Audited Actual Performance 2021/2022**	
Reliable and Responsive adjudication	1. Effective Case Management Procedures to Ensure Hearings Set Down Within Legislated Timeframes	% of mergers set down for a hearing or pre-hearing within 10 business days of filing	97% large 0% intermediate	93% large 100% intermediate/ small	
Reliable and Responsive adjudication	2. Effective and Timeous Issuing of Orders, and Reasons	% of merger orders issued to parties within 10 business days of last hearing date	100% large 100% intermediate	100% large 100% intermediate/ small	
Reliable and Responsive adjudication	2. Effective and Timeous Issuing of Orders, and Reasons	% of reasons for mergers issued to parties within 20 business days of order being issued	72% large No reasons issued for intermediate	90% large 0% intermediate/ small	
Reliable and Responsive adjudication	2. Effective and Timeous Issuing of Orders, and Reasons	Ongoing evaluation of competition and public interest considerations in mergers in terms of the Competition Act, in line with **the dtic** three joint/ integrated outputs: Delivery/ Capable State; Economic Transformation; Industrialisation	n/a	New indicator	
Reliable and Responsive adjudication	2. Effective and Timeous Issuing of Orders, and Reasons	Reasons for prohibited practice cases are issued to parties within 140 business days of the last hearing date	No reasons issued (simple) 0% (complex) 67% (very complex)	No reasons issued (simple) 0% (complex) No reasons issued (very complex)	

	Planned Annual Target 2022/2023	****Actual Achievement 2022/2023**	**Deviation from Planned Target to Actual Achievement 2022/2023**	**Reasons for deviations**
	80%	90%	10%	The target has been exceeded for the year. The Tribunal was able to exceed its target due to factors such as the availability of parties and panel members, the appointment of additional panel members and upon consideration of whether a matter is ripe for a pre-hearing or hearing. This target was revised from last year where 3 separate targets of 65% (for small and intermediate mergers), 70% (for complex or very complex mergers) and 80% (for large mergers) were consolidated into one increased annual target of 80%.
	85%	100%	15%	The target has been exceeded for the year. No corrective action is required.
	75%	88%	13%	The target has been exceeded for the year. The Tribunal was able to exceed its target due to the appointment of additional part time members. This target was revised from last year where 2 separate targets of 50% (for small and intermediate mergers) and 70% (for large mergers) were consolidated into one increased annual target of 75%. Case360 alerts case managers sending email reminders of targets.
	Quarterly reports sent to **the dtic**	4 reports	0%	The target has been met for the year. No corrective action is required.
	75%	0%	-75%	Target not met for the year. Reasons were issued in two prohibited practice matters (out of a total of 199 cases which were heard in the current financial year). Both cases were complex and required extensive consultation by panel members. Further exacerbated by capacity constraints due to the panel members being unable to draft while simultaneously sitting in hearings. Increasing the number of full-time Tribunal members (specifically lawyers) would improve turnaround time.

Adjudication					
Outcome	**Output**	**Output Indicator**	**Audited Actual Performance 2020/2021**	**Audited Actual Performance 2021/2022**	
Reliable and Responsive adjudication	2. Effective and Timeous Issuing of Orders, and Reasons	% of procedural matter orders issued to parties within 45 business days of last hearing date.	90%	84%	
Reliable and Responsive adjudication	2. Effective and Timeous Issuing of Orders and Reasons	% orders for consent orders and settlement agreements issued to parties within 10 business days of the last hearing date	92%	97%	
Reliable and Responsive adjudication	2. Effective and Timeous Issuing of Orders and Reasons	% of reasons in interim relief matters issued to parties within 30 business days of last hearing date	0%	No reasons issued	

	Planned Annual Target 2022/2023	****Actual Achievement 2022/2023**	**Deviation from Planned Target to Actual Achievement 2022/2023**	**Reasons for deviations**
	65%	57%	-8%	Target not met for the year. This was due to the forex case which was complex and required extensive consultation by panel members. Further exacerbated by capacity constraints due to the panel members being unable to draft while simultaneously sitting in hearings. The forex case was counted as 18 separate cases but was actually dealt with as one case. Only one order was issued in respect of these 18 forex cases. Counting the forex case as one, the Tribunal exceeds the target in that it issued 27 orders out of a total of 30 orders in procedural matters. In future when there is more than one case dealt with as one matter, the cases will be counted as one for the purpose of reporting. Increasing the number of full-time tribunal members (specifically lawyers) would also improve turnaround time.
	80%	100%	20%	The target has been exceeded for the year. No corrective action is required.
	65%	0%	-65%	Target not met for the year. Reasons were issued in three cases (out of a total of 199 cases which were heard in the current financial year). The three cases were complex and required extensive consultation by panel members. Further exacerbated by capacity constraints due to the panel members being unable to draft while simultaneously sitting in hearings. Increasing the number of full-time Tribunal members (specifically lawyers) would improve turnaround time.

Accountable, Sustainable and Transparent Entity

The Tribunal's second strategic objective, Accountable, Sustainable and Transparent Entity (with15 indicators), requires the organisation to have effective oversight structures in place to ensure efficient operations, financial and risk management, and reporting. This is addressed later in the report. As a public entity, the Tribunal has a responsibility to exercise transparency and accountability in its operations and reporting, in terms of the PFMA.

The Tribunal embraces a culture of transparency and acknowledges the importance of communication and information sharing with stakeholders, particularly in the context of accountability as a public entity. Performance against targets is monitored and reported quarterly to **the dtic** and National Treasury and annually in the Integrated Annual Reports and to Parliament.

DIAGRAM 2: THE TRIBUNAL'S COMMUNICATION WHEEL

The Tribunal believes it is also important to raise awareness of its decisions and activities to encourage compliance with competition law (and to serve as a deterrent for transgressors of the law) particularly for the benefit of consumers and, ultimately, the economy. The Tribunal does this through posting its decisions on its website and issuing press releases, among others.

Table 9: Performance - Accountable, Sustainable and Transparent Entity

Communication					
Outcome	**Output**	**Output Indicator**	**Audited Actual Performance 2020/2021**	**Audited Actual Performance 2021/2022**	
Accountable, sustainable and transparent entity	Effective communication and information sharing	% press releases of final merger decisions communicated within 3 business days of order date and after finalisation of confidentiality claims.	90%	77%	
Accountable, sustainable and transparent entity	Effective communication and information sharing	% press releases of prohibited practice decisions communicated within 3 business days of order date and after the finalisation of confidentiality.	71%	0%	
Accountable, sustainable and transparent entity	Effective communication and information sharing	Biennial update and publication of jurisprudence handbook.	Handbook updated and published on Tribunal website	Handbook updated and published on Tribunal website	

Business Processes					
Outcome	**Output**	**Output Indicator**	**Audited Actual Performance 2020/2021**	**Audited Actual Performance 2021/2022**	
Delivery/Capable State	Improvement in clients using the entities services	The outcomes of the review of processes, including forms and procedures for simplicity and necessity	n/a	1 report	

Governance					
Outcome	**Output**	**Output Indicator**	**Audited Actual Performance 2020/2021**	**Audited Actual Performance 2021/2022**	
Delivery / capable state	Sound governance	Percentage of prior financial year audit (internal and external) findings resolved in terms of agreed timelines with auditors	100%	100%	
Accountable, sustainable and transparent entity	Sound governance	At least one meeting held annually to inform the Tribunal employees of stated APP performance targets	One meeting	One meeting held	

	Planned Annual Target 2022/2023	**Actual Achievement 2022/2023	Deviation from Planned Target to Actual Achievement 2022/2023	Reasons for deviations
	90%	99%	9%	Target exceeded. The Tribunal was able to exceed its target due to there being a few number of cases that required confidentiality claims to be cleared, and/or feedback was received from the parties regarding confidentiality within 3 days of the order.
	90%	100%	10%	Target exceeded. The Tribunal was able to exceed its target due to there being no clearing of confidentiality claims being required.
	n/a	n/a	n/a	This is a biennial target and is not due for measuring. No corrective action is required.

	Planned Annual Target 2022/2023	**Actual Achievement 2022/2023	Deviation from planned target to Actual Achievement 2022/2023	Reasons for deviations
	1 process improvement per quarter	4 process improvements completed	n/a	Target met. No corrective action required.

	Planned Annual Target 2022/2023	**Actual Achievement 2022/2023	Deviation from Planned Target to Actual Achievement 2022/2023	Reasons for deviations
	100%	100%	n/a	Target met. No corrective action required.
	One meeting held	One meeting	n/a	This is an annual target and it was met in quarter 1. No corrective action is required.

Financial Management					
Outcome	**Output**	**Output Indicator**	**Audited Actual Performance 2020/2021**	**Audited Actual Performance 2021/2022**	
Delivery / capable state	Effective financial management	Percentage variance on expenditure against budget	-9%	-10%	
Accountable, sustainable and transparent entity	Effective financial management	Obtain an unqualified audit opinion from the AGSA	No finding	Unqualified audit opinion	
Accountable, sustainable and transparent entity	Transformation in procurement practices	Monitor the levels of B-BBEE suppliers in order to promote transformation in procurement practices	New target	1 report	

Transformation, human capacity development and training					
Outcome	**Output**	**Output Indicator**	**Audited Actual Performance 2020/2021**	**Audited Actual Performance 2021/2022**	
Delivery / capable state	Transformation, Capacity development, retention and training	85% of performance assessments conducted at least twice a year (by end September & end March)	3,7	4,0	
Accountable, sustainable and transparent entity	Transformation, Capacity development, retention and training	Percentage staff retention	12%	27%	
Accountable, sustainable and transparent entity	Transformation, Capacity development, retention and training	Continuous training opportunities to staff and Tribunal Members	Not achieved	5 people attended	
Accountable, sustainable and transparent entity	Transformation, Capacity development, retention and training	Undertake one annual capacity building workshop for Case Managers and Tribunal Members	No target set for the year	100%	
Accountable, sustainable and transparent entity	Transformation, Capacity development, retention and training	Provide access to interns in the Case Management division to work opportunities	2	2	
Accountable, sustainable and transparent entity	Transformation, Capacity development, retention and training	Maintain 75% of employment equity representation of employees from the designated groups	New target	1 report	

	Planned Annual Target 2022/2023	**Actual Achievement 2022/2023	Deviation from Planned Target to Actual Achievement 2022/2023	Reasons for deviations
	-10%	-4%	6%	Target exceeded. The Tribunal was able to exceed its expenditure target and spend most of its operational of budget due to the filling of senior positions, namely, the CFO, Senior Competition Law Counsel and Deputy Chairperson, as well as the appointment of acting part-time members.
	Unqualified audit opinion	Unqualified audit opinion	n/a	Target met. No corrective action is required.
	70% of expenditure spent on suppliers between the B-BBEE levels 1-4, 20% of which will be on women, youth or PWDs	97,15% of expenditure spent on suppliers between the B-BBEE levels 1-4, 22,32% of which was on women, youth or PWDs	27.15% of expenditure spent on suppliers between the B-BBEE levels 1-4, 2.32% of which will be on woman, youth or PWDs	Target exceeded. During the current financial year, the type of expenditure incurred together with the B-BBEE levels of the companies used during the current year, positively contributed to the Tribunal exceeding the target.

	Planned Annual Target 2022/2023	**Actual Achievement 2022/2023	Deviation from Planned Target to Actual Achievement 2022/2023	Reasons for deviations
	85% of performance assessments conducted	65%	-20%	Target not met. The performance assessments are conducted after the end of the financial year i.e. Q1 of the following year for the previous year. Therefore, it was impractical to achieve the target in Q4. The target has been captured in the correct quarter for the next financial year.
	80%	90%	10%	Target exceeded. The Tribunal was able to exceed its target for staff retention due to it undertaking and completing an organisational review which included a review of the structure, job grading and salary benchmarking which positively contributed to the Tribunal exceeding the 80% staff retention target.
	Training on ESOPs; Competition law basic training (Case Managers); Concentration and participation in the South African Economy: levels and trends; Competition for structural transformation in the global south (Case Managers); Writing skills (Case Managers & Tribunal Members)	3 training initiatives held	1 training initiative	Target not met in quarter three due to the unavailability of members and case managers. The Tribunal prioritised cases due to the volume at the time. This training has been rolled over into the new financial year.
	One annual capacity building workshop	One annual capacity building workshop	n/a	Target met. No corrective action is required.
	2 interns	2	n/a	Target met. No corrective action is required.
	75%	85%	10%	Target exceeded. This is a new target. The Tribunal was able to exceed this target due to new and vacant positions being filled by employees from the designated groups which positively contributed to the Tribunal exceeding the 75% employment equity target.

OUR FINANCIAL PERFORMANCE

The Tribunal's 2022/2023 initial budget included in its APP was approved by **the dtic** in April 2022. The annual budget was revised in December 2022 upon approval from the National Treasury, in terms of Section 53(3) of the PFMA, to retain R17.055 million cash surpluses accumulated as at 31 March 2022, to provide for projected budget shortfalls during the 2022/2023 financial year.

The Tribunal had identified to spend the R17.055 million surplus on a few projects approved by the Accounting Authority with the intention to implement before the end of the financial year. As at the 31st of March 2023, R5.4 million (31%) of the retained surplus was spent. The remaining R12.3 million (69%) related to two projects that were out of the control of the Tribunal as they were dependant on the final appointment of additional full-time members and the relocation of the Tribunals offices. As at 31st of March 2023, the Tribunal estimated that the surplus will be R19 million, and the Tribunal will be applying to National Treasury for the retention of this surplus in the 2023/2024 financial year.

For the financial year ended 31st March 2023, the Tribunal had reported total revenue of R62.6 million and total expenditure excluding capital of R61 million, which resulted in a net operating surplus of R1.5 million before capital expenditure.

The major variance in revenue relates to filing fees. In terms of a memorandum of agreement between the Commission and the Tribunal, the Tribunal receives 30% of all large merger filing fees and 5% of all intermediate merger filing fees received by the Commission, which are paid over by the Commission to the Tribunal monthly. Given the anticipated decline in merger activity due to transitioning out of the COVID-19 pandemic during the 2021/2022 financial year, the annual budgeted amount of filing fee income was R16.60 million. However, the Tribunal received 12% more filing fee income than budgeted for, since merger activity increased during the current year.

Our significant areas of expenditure include:

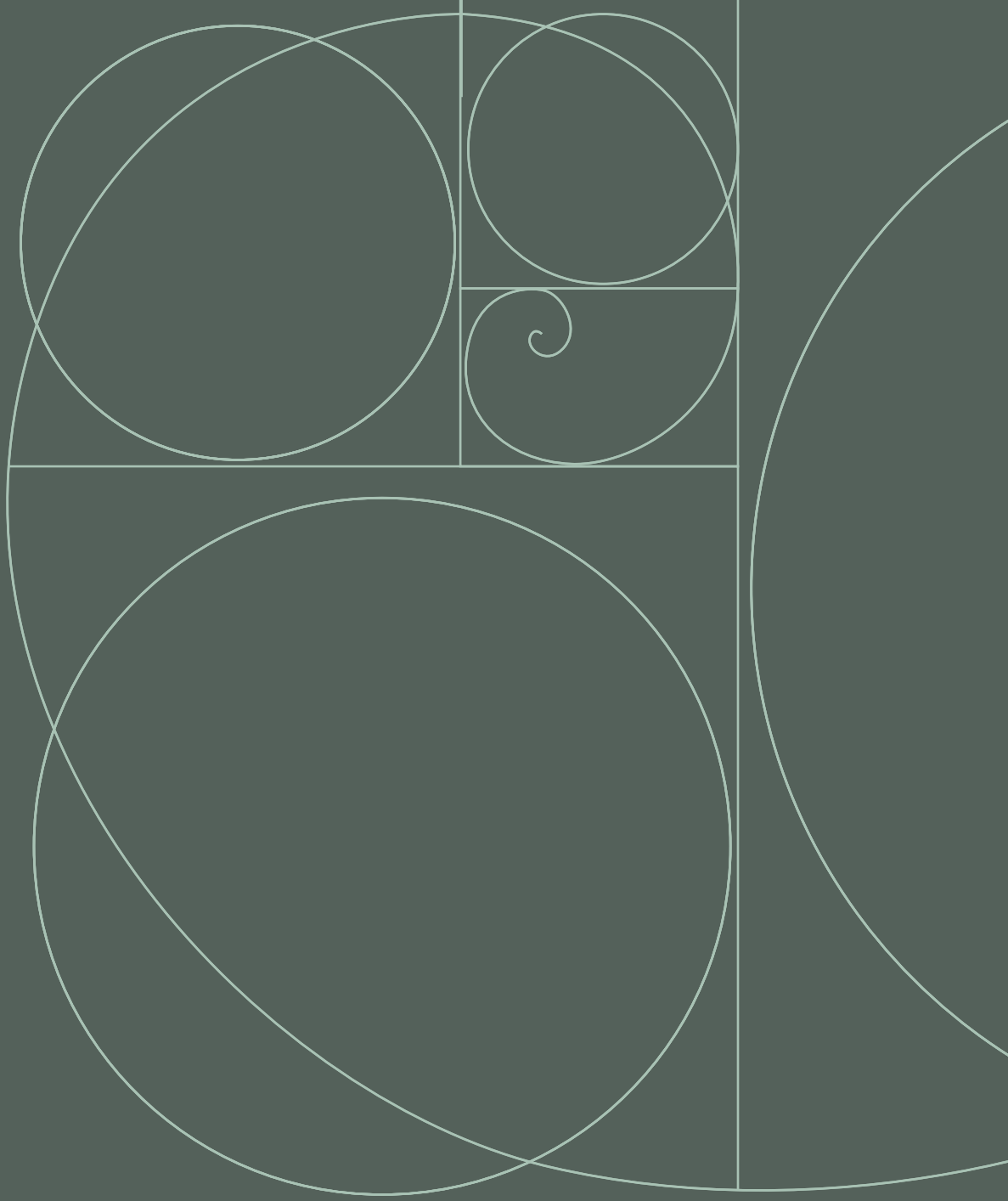
- 31,1 million (51% of total expenditure) on our core objective of Reliable and Responsive Adjudication
- 13,3 million (22% of total expenditure) on our core objective of being an Accountable, Sustainable and Transparent Entity

Table 10 is an illustration of how our budget was allocated and spent across the Tribunal's two strategic objectives. The table is inclusive of capital expenditure. From the results, it is clear that the Tribunal is an efficient organisation, having spent 73% of its total expenditure on its strategic objectives in the financial year.

Personnel costs account for the bulk of the Tribunal's total expenditure. The Tribunal did not spend 7% of the budgeted personnel costs for the year due to two full-time Tribunal member vacancies not being filled throughout the year as well as savings from vacancies due to resignations during the year.

Table 10: Budget across the Tribunal's strategic objectives

2022/2023					
Objectives	**Budget (R)**	**% budget by objective**	**Expenditure (R)**	**% spend of total expenditure**	**% of budget spent**
Objectives 1 - Reliable and Responsive Adjudication	**30,574,674**	51%	**31,069,821**	**51%**	**102%**
Effective Case Management Procedures	10,641,438	18%	14,017,325	23%	132%
Effective and Timeous Issuing of Orders, and Reasons	19,933,236	33%	17,052,496	28%	86%
Objectives - Accountable, Sustainable and Transparent Entity	**14,889,531**	**25%**	**13,308,981**	**22%**	**89%**
Effective Communication and Information Sharing	1,308,261	2%	342,040	1%	26%
Integrated Knowledge Management and Effective Records Management	3,859,560	6%	3,383,889	6%	88%
Sound Governance	4,012,410	7%	3,466,000	6%	86%
Effective financial management	3,469,186	6%	4,292,064	7%	124%
Capacity Development, Retention and Training	2,240,114	4%	1,824,988	3%	81%
Total Strategic objectives	**45,464,205**	**76%**	**44,378,802**	**73%**	**98%**
Total Other Expenditure	**14,221,795**	**24%**	**16,320,258**	**27%**	**115%**
Administration	12,266,071	21%	14,078,739	23%	115%
Depreciation	908,220	2%	906,648	1%	100%
Capital	697,504	1%	1,202,926	2%	172%
Appeal Court	350,000	1%	131,945	0%	38%
Total Expenditure	**59,686,000**	**100%**	**60,699,060**	**100%**	**102%**



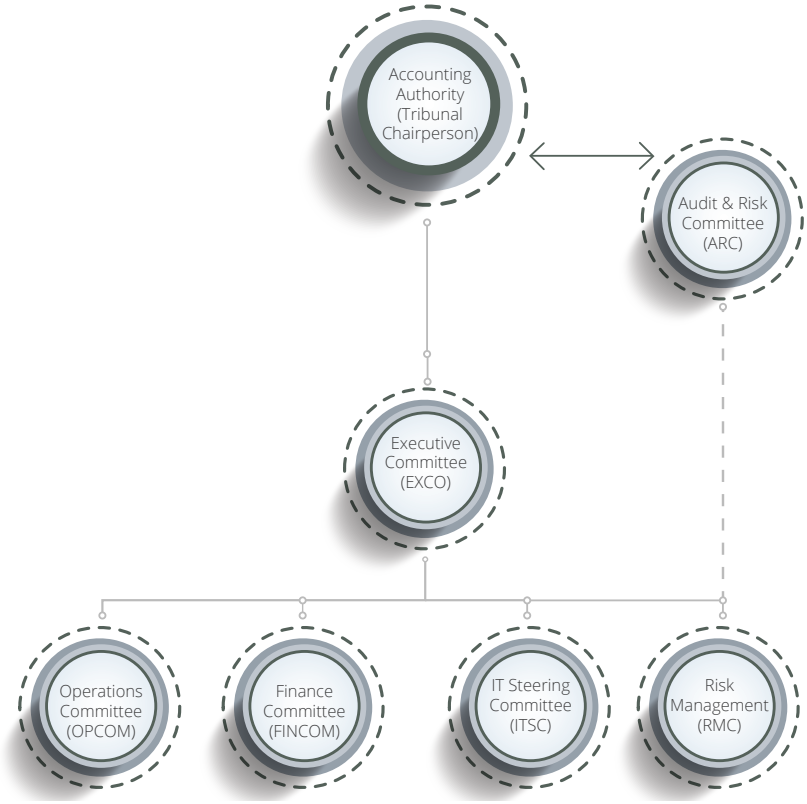
PART D

GOVERNANCE

OUR OVERSIGHT STRUCTURES

Corporate governance involves processes and systems by which public entities are directed, controlled and held to account. In addition to legislative requirements based on a public entity's enabling legislation, and the Companies Act, corporate governance with regard to public entities is applied through the precepts of the PFMA and run in tandem with the principles contained in the King's Report on Corporate Governance. Parliament, the Executive Authority and the Accounting Authority of the public entity are responsible for corporate governance.

Diagram 3: The Tribunal's oversight structures



The Tribunal currently has one independent oversight structure in place, namely, the Audit and Risk Committee (ARC). During the reporting period, the Tribunal's Audit Committee was merged with its Risk Committee in line with corporate governance best practice and in order to ensure alignment. The committee has oversight and provides assurance over the governance of the Tribunal, as set out in its Charter. It is chaired by an independent non-executive member and convenes at least four times per financial year.

The ARC's main role is to assist the Accounting Authority in fulfilling her responsibilities of financial reporting, compliance with the law, accuracy of performance information against pre-determined objectives and governance, implementing an effective Risk Management Framework, monitoring the implementation of risk management and governance and ensuring that the necessary mechanisms are in place to prevent, detect and investigate fraud at the workplace.

The ARC comprises a maximum of five independent non-executive members who collectively must have the requisite skills, experience and qualifications to fulfil their duties. Members' terms are limited to three years and they may serve a second term, subject to a maximum of two terms.

The current Chairperson of the ARC is Ms Abigail Thulare. During the reporting period the following changes took place:

- One member's (Ms Maggie Mofokeng) term of office ended in July 2022;
- One member's (Ms Suzanne Harrop-Allin) term of office ended in September 2022;
- One member (Mr Ryno Pepler) resigned in November 2022 (due to other work commitments); and
- Two new members, Mr Vernon Makaleni and Mr Tshepiso Poho were appointed in November 2022 and February 2023, respectively.

The ARC held four meetings during the reporting period i.e., 25 May, 28 July and 23 November 2022 and 23 February 2023. Members are remunerated on an hourly basis at a rate of R3 028.00 for a Chairperson and R2 458.52 for a member in line with SAICA rates.

Table 11: ARC meeting attendance and remuneration

Name	Qualification	Date of Appointment	End of term	No. of meetings attended	Fees
Maggie Mofokeng	CA	July 2016	July 2022	2/4	R40 114.08
Suzanne Harrop-Allin	Risk and Governance	September 2019	September 2022	2/4	R 36 697.20
Abigail Thulare	Risk	July 2018	Current	4/4	R0.00
Ryno Pepler	CA	February 2021	November 2022	1/4	R 14 751.12
Vernon Makaleni	Risk Management	November 2022	Current	2/4	R 63 740.92
Tshepiso Poho	CA	February 2023	Current	1/4	R 41 794.84

**Ms A Thulare is currently not remunerated as a non-executive member, as she is working for an organ of the state.*

RISK MANAGEMENT

The Tribunal has a robust risk management process in place and a risk culture that permeates the entity with nearly 50% of the full-time staff being directly involved with the risk management process. There has been a continuous improvement in risk management and the level of maturity has improved. A strong internal control environment and effective risk management are essential to achieving our objectives. Risk management has been integrated with internal business processes (governance, planning, operations, management and reporting) within the Tribunal.

This approach to risk management has assisted us to effectively and proactively identify, assess, and mitigate risks, including emerging risks. The Tribunal has an established Risk Management Committee chaired by the CFO. It comprises the COO, and the Head of Registry, Case Management, Corporate Services, Finance, and the IT Administrator.

The Risk Management Committee is a formal operational committee responsible for assisting the Accounting Authority in discharging her responsibilities with respect to risk management. At each of its meetings, the Risk Management Committee reviews the risk reports presented by the Chief Risk Officer and the extent to which risk management has been implemented in terms of the risk implementation plan. The Risk Management Committee submits a report to the ARC, which is included in this Integrated Annual Report, providing assurance that risks are adequately managed in the Tribunal.

A risk is defined as any event that may impact negatively or positively on the Tribunal's ability to achieve its objectives. Table 12 illustrates the Tribunal's strategic risks. The Accounting Authority is responsible and accountable for the overall process of risk management in terms of the PFMA. However, implementation is the responsibility of management and staff. A Combined Assurance Plan is used to optimise assurance coverage from all the different lines of defence (management, risk practitioners, internal auditors, external auditors, oversight committees and other assurance providers).

In terms of the Tribunal's risk register, each risk is categorised according to its origin, inherent and residual exposure and the effectiveness of mitigating controls. A risk owner is assigned to each risk in order to develop action plans to address the risk exposure. On a quarterly basis, assurance providers assess mitigating controls and provide documentary evidence for the conclusions they make on their effectiveness. Early signals of increasing or decreasing risk exposure are obtained from key risk indicators (KRIs) assigned to each risk. Each KRI has a specific tolerance limit or acceptable level of exposure. Risk owners must measure actual exposure against these limits and in instances where these are exceeded, determine an appropriate risk response and corrective action to be implemented. The Risk Management Committee monitors the progress of these actions against set target dates. Quarterly risk meetings are also used by management to identify any risks to be added or removed from the register as well as identify any emerging risk management needs that need to be considered.

Table 12: The Tribunal's strategic risks as at 31 March 2023

Risk Profile							
Risk no.	**Risk name**	**Category and Risk type**	**Link to Strategic Goal (SG)**	**Inherent risk exposure**	**Control effectiveness**	**Residual risk exposure**	**Risk response**
1.	Lack of capacity	Human resources	SG1	Extreme	Unsatisfactory	High	Treat
2.	Poor and ineffective case management	Reputation	SG1	Extreme	Satisfactory	Moderate	Treat
3.	Inability to retain Tribunal members, case manager and other critical positions	Human resources	SG1	Extreme	Satisfactory	High	Treat
4.	Compromised Independence	Reputation	SG1	Extreme	Satisfactory	High	Treat
5.	Lack of Funding	Financial stability	SG2	Extreme	Unsatisfactory	High	Treat
6.	Inadequate Information Security	Information integrity and reliability	SG2	Extreme	Satisfactory	Moderate	Treat
7.	Lack of systems and processes	Operational	SG2	High	Good	Within risk tolerance	Treat
8.	Lack if information sharing	Multiple categories	SG1 & 2	Moderate	Good	Within risk appetite	Tolerate
9.	Business interruption	Business continuity planning	SG1 & 2	High	Satisfactory	Within risk tolerance	Treat
10.	Inadequate financial management and reporting	Strategic	SG2	High	Week	High	Treat
11.	Poor governance ethics and regulatory compliance	Regulatory/ Statutory/ Legal	SG2	High	Good	Within risk tolerance	Treat

REPORT OF THE AUDIT AND RISK COMMITTEE

The Audit and Risk Committee (Committee) is pleased to present its report for the financial year ended 31 March 2023, in compliance with Treasury Regulations 3.1.9 and 27.1.7 issued in terms of the Public Finance Management Act (Act 1 of 1999) and King Code IV Report on Corporate Governance.

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

Audit and Risk Committee members and attendance

The Committee consists of the non-executive members listed hereunder and should meet four times per annum as per its approved terms of reference. During the current year for year ended 31st March 2023 four meetings were held.

Name of member	Term of appointment
A Thulare (Chairperson)	July 2018 - current
M Mofokeng (Chairperson) (Resigned July 2022)	July 2016 - July 2022
S Harrop-Allin (Resigned September 2022)	September 2019 - September 2022
R Pepler (Resigned November 2022)	February 2021 - February 2024
V Makaleni (Appointed November 2022)	November 2022 - current
T Poho (Appointed February 2023)	February 2023 - current

Audit and Risk Committee's responsibility

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

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

In the current reporting period, the Committee's work included amongst others, reviewing the financial planning process, quarterly and in-year financial reporting from management, the audit process and related audit findings, Risk Management processes and activities including business continuity. This included recommending appropriate accounting policies for the Tribunal; reviewing any significant assumptions and judgments made by management; reviewing annual and quarterly reports; reviewing internal audit reports and tracking all audit findings; reviewing audit fees as well as reviewing internal audit and external audit mandates for independence, objectivity and effectiveness.

The Committee ensured that co-operation between the internal audit function and the external auditors is improving in relation to the external auditors relying on work done by the internal auditors as may be relevant for purposes of work set out in the audit plan; the Tribunal are of the view that combined assurance can add demonstrable value; and the adequacy, reliability and accuracy of financial information provided by management other users of the information. The Tribunal has also embarked on a process of ensuring that combined assurance is enhanced at the first level in order to increase collaboration between both external and internal assurances to promote an effective internal control environment and for executing risk management on a day-to-day basis.

The effectiveness of internal controls

The system of internal controls applied by the Tribunal over financial and risk management is effective, efficient and transparent. In line with the PFMA and the King IV Report on Corporate Governance requirements, internal audit provides the Committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the internal auditors, the Committee was able to provide the internal assurances and to engage with the Tribunal on recommended enhancements. Accordingly, we can report that the system of internal control over financial reporting for the period under review was efficient and effective.

The quality of in year management and monthly/quarterly reports submitted in terms of the PFMA and the Division of Revenue Act.

The Committee is satisfied with the content and quality of monthly and quarterly reports prepared and issued by the Accounting Authority of the Tribunal during the year under review.

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 Auditor-General and the Accounting Authority;
- reviewed the Auditor-General of South Africa management report and management's response thereto;
- reviewed changes in accounting policies and practices;
- reviewed the entity's compliance with legal and regulatory provision.

Internal audit

The Committee is responsible for ensuring that the internal audit function is independent and has the necessary resources, skills, standing and authority within the Tribunal 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 outsourced internal audit service provider tables progress reports in this regard to the Committee.

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

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

The Committee is satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the entity and its audits.

Enterprise Risk Management (ERM)

The Committee is also responsible for the oversight of the Tribunal's risk management systems and activities. In the current reporting period, the Committee reviewed the ERM policies and strategy.

The Committee has reviewed the risk registers on a quarterly basis and has made recommendations for the improvement of the registers.

Chairperson of the Committee

Auditing our work, processes and procedures

We maintain an effective internal and external audit function in compliance with section 188 of the Constitution, section 4(3)(a) of the Public Audit Act, 2004, section 5(1)(a)(ii) of the PFMA, Treasury Regulation 27.22.2 and section 40(10) of the Competition Act.

The external audit function is a statutory function performed by the Auditor-General, South Africa and its current focus is on the financial accounts and management, compliance with the law and performance against predetermined objectives. This audit is performed at year-end and an audit opinion is provided as to whether the financial statements present a true reflection of the Tribunal's financial position and financial performance.

The respective responsibilities of the Accounting Authority and the Auditor-General, South Africa with regard to the annual audit are contained in an engagement letter. An Audit Steering Committee comprising the COO, CFO, the Head of Finance and representatives of the Auditor-General, South Africa meet regularly to discuss matters pertaining to the audit and to monitor progress against the plan.

The CFO is responsible for resolving audit findings reported in the management report. In the prior period, a clean audit was obtained and two findings were raised, none of which were significant matters. The audited financial statements, as presented to the Accounting Authority and Audit Committee as well as the audit opinion, are presented in Part F.

We are pleased to report that the Tribunal has once again received a clean audit, being the organisation's 7th consecutive clean audit.

While the external auditors perform a single audit per annum, the internal audit is conducted throughout the year. The internal audit function had been outsourced to Nexia SAB&T. The internal audit team is reflected in Table 13:

Table 13: Internal audit team

Team Management	Qualification/s	Years of experience
Philemon Mawire	CA (SA)	18 years
Herman van der Merwe	CA (SA)	23 years
Busisiwe Tshabalala	B Tech Internal Audit	11 years
Seelan Nayagar	BCom (Hons) (Internal Audit)	15 years
Merlin Naidoo	National Diploma: Internal Auditing	20 years
Marelies du Perez	CISA; CIA	11 years
Donald Mahatlane	B Tech Internal Auditing	3 years
Sinethemba Maphalala	Advanced Diploma in Accounting	2 years
Christopher Lamla	Bachelor of Accounting Science	10 years
Ntebaleng Hlagala	B Tech Internal Auditing	4 years

The Tribunal has implemented and adheres to a combined assurance model and, therefore, where possible the functions of the various assurance providers such as management, risk management, internal and external audit are co-ordinated to ensure proper coverage and reduce duplication where possible. The audit is risk-based and is conducted in accordance with standards of conduct and codes of ethics prescribed by the Institute of Internal Auditors (IIA) while an Internal Audit Charter defines the purpose, authority, terms of reference, objectives, powers, duties and responsibilities of this function. A total of 8 audits were performed by internal audit during the financial year under review and findings are shown in Table 14 below:

Table 14: Internal audits 2022/2023

Audit Area	Major	Significant	Moderate	Low	Total findings
Performance Information Review			3		**3**
Enterprise Risk Management Review	1			1	**2**
Information Technology Review				2	**2**
Registry Review					**0**
Human Resource Management Review		2	1		**3**
Internal Financial Control Review			1		**1**
Supply Chain Management Review		1			**1**
Follow-up Review					**0**
Total	**1**	**3**	**5**	**3**	**12**

Management has, in consultation with the internal auditors, adopted an effective corrective action process for resolving prior year audit findings. We are pleased to report that the internal auditors have concluded their audit and that two (40%) of the prior year's audit findings have been resolved and three (60%) are ready for audit. There are currently 14 internal audit findings outstanding from the 2022/2023 financial year, of which eight are ready for audit and six are not yet due. The diagram below reflects the status of all internal audit findings as at 31 March 2023:

Table 15: Status of all internal audit findings

Status	Prior Years	2022/2023	Total	%
Resolved (R)	2	1	3	18%
Partially Resolved			0	0%
Not Resolved		0	0	0%
Ready for Audit	3	5	8	47%
Not Yet Due		6	6	35%
Total Findings	**5**	**12**	**17**	**100%**

PREVENTING FRAUD

The Tribunal's Fraud Prevention Plan is incorporated into the Risk Management Strategy which complies with the PFMA and National Treasury regulations. The ARC has independent oversight over the implementation of fraud prevention, ensuring the necessary mechanisms are in place to prevent, detect and investigate fraud. In addition, it addresses policy and processes for the reporting, investigation and resolution of fraud matters.

The Fraud Prevention Plan is communicated to all employees. They are required to sign an anti-fraud statement, confirming their commitment to the Tribunal's policy of zero tolerance towards fraud. The functions, authority and responsibilities of the ARC in respect of fraud prevention is detailed in its charter and is a standing item on the agenda of its meetings.

The ARC also ensures that fraud risks are identified, evaluated and assessed as part of the Tribunal's risk management process. The ARC meets on a quarterly basis. During the period under review there have been no alleged incidents of fraud that required investigation or reporting. Owing to COVID-19 restrictions, the Tribunal resorted to online fraud prevention messages and held a virtual staff workshop on fraud prevention, risk and cyber security.

MAINTAINING EFFECTIVE IT GOVERNANCE IN THE TRIBUNAL

During the reporting period, the Tribunal reviewed two of its operational IT policies, the first policy details the protocols and procedures when performing tasks in the website backend and managing its content. The policy also sets out access rights, employee responsibility and website security. The second policy contains the processes and procedures for our information technology disaster recovery plan. The focus is primarily placed on the backup and restoration services of information systems and information technology hardware. The remaining IT policies are reviewed based on a review frequency date captured in the policy life cycle review process. The review life cycle can range from an annual review to one review every third year.

Disaster Recovery

We are required to undertake an annual test to determine if the disaster recovery processes are still valid for the current technology environment. This is to ensure that the Tribunal's information systems can be successfully recovered in the event of a disaster. The test involves an internal disaster recovery team, external backup and system restoration disaster recovery service provider. The annual test was successfully conducted within required timeframes, indicating that the Tribunal's data is safe and secure.

Cyber Security

Cyber security is an area which the Tribunal will continue to focus on in order to maintain data safety and security. Cyber threats are one of the biggest risks for entities globally. To further secure our information systems and network infrastructure, we procured an advanced internal and external network firewall and upgraded our cloud based anti-virus toolset to a version that is more aggressive toward threat detection. Our cyber security tools and practices succeeded in protecting our systems during the reporting period and there were no successful attacks against our information systems.

System Enhancements

We implemented custom enhancements to the CMS to ensuring that case turnaround times are met, documents are completed timeously and to improve the quality and quantity of information extracted from our business intelligence reporting utility. The enhancements also ensure that our system remains in-line with APP turnaround times. We also implemented a number of website enhancements and updates to improve functionality and user experience.

COMPLIANCE WITH LAWS AND REGULATIONS

The Tribunal has to comply with a myriad of legislation and areas of compliance that governs its operations including, but not limited to, the following:

- The Constitution of the Republic of South Africa, 1996
- The Competition Act 89 of 1998
- The Competition Tribunal Rules
- The Public Finance Management Act 1 of 1999 and Treasury Regulations
- The Broad-Based Black Economic Empowerment Act 53 of 2003
- The Income Tax Act 28 of 1997
- The Preferential Procurement Policy Framework Act 5 of 2000
- Prevention and Combating of Corrupt Activities Act 12 of 2004
- The Employment Equity Act 55 of 1998
- The Skills Development Act 97 of 1998
- The Unemployment Insurance Fund Act, 2001
- The Occupational Health and Safety Act 85 of 1993
- The Labour Relations Act 66 of 1995
- The Basic Conditions of Employment Act 75 of 1997

The Tribunal is also mandated to report on its B-BBEE compliance. It does this through a system that allows the organisation to collect data on suppliers it procures from and determines its spend in terms of B-BBEE level and enterprise size. In this way, the Tribunal can measure its contribution towards the national agenda of redressing historical imbalances and to advance SMMEs and women-owned businesses. This is in line with the Tribunal's legislative mandate to ensure that SMMEs and women-owned businesses have an equitable opportunity to participate in the economy and to promote a greater spread of ownership. Our spend by B-BBEE for the year under review is reported below:

Table 16: The Tribunal's spend on B-BBEE

Level	2021/2022		2022/2023	
	Spend	%	Spend	%
Government entities	R6 844 842	54%	R6 997 169	48%
Level 1	R2 698 230	22%	R4 824 371	33%
Level 2	R942 204	7%	R485 853	3%
Level 3	R90 462	1%	R0	0%
Level 4	R1 426 665	11%	R1 987 834	14%
Level 5	R474	0%	R1 719	0%
Level 6	R0	0%	R0	0%
Level 7	R0	0%	R0	0%
Level 8	R8 304	0%	R0	0%
Not defined	R642 903	5%	R214 387	1%
Total	**R12 654 084**	**100%**	**R14 511 333**	**100%**

The Tribunal's ethical culture

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

OPERATIONAL

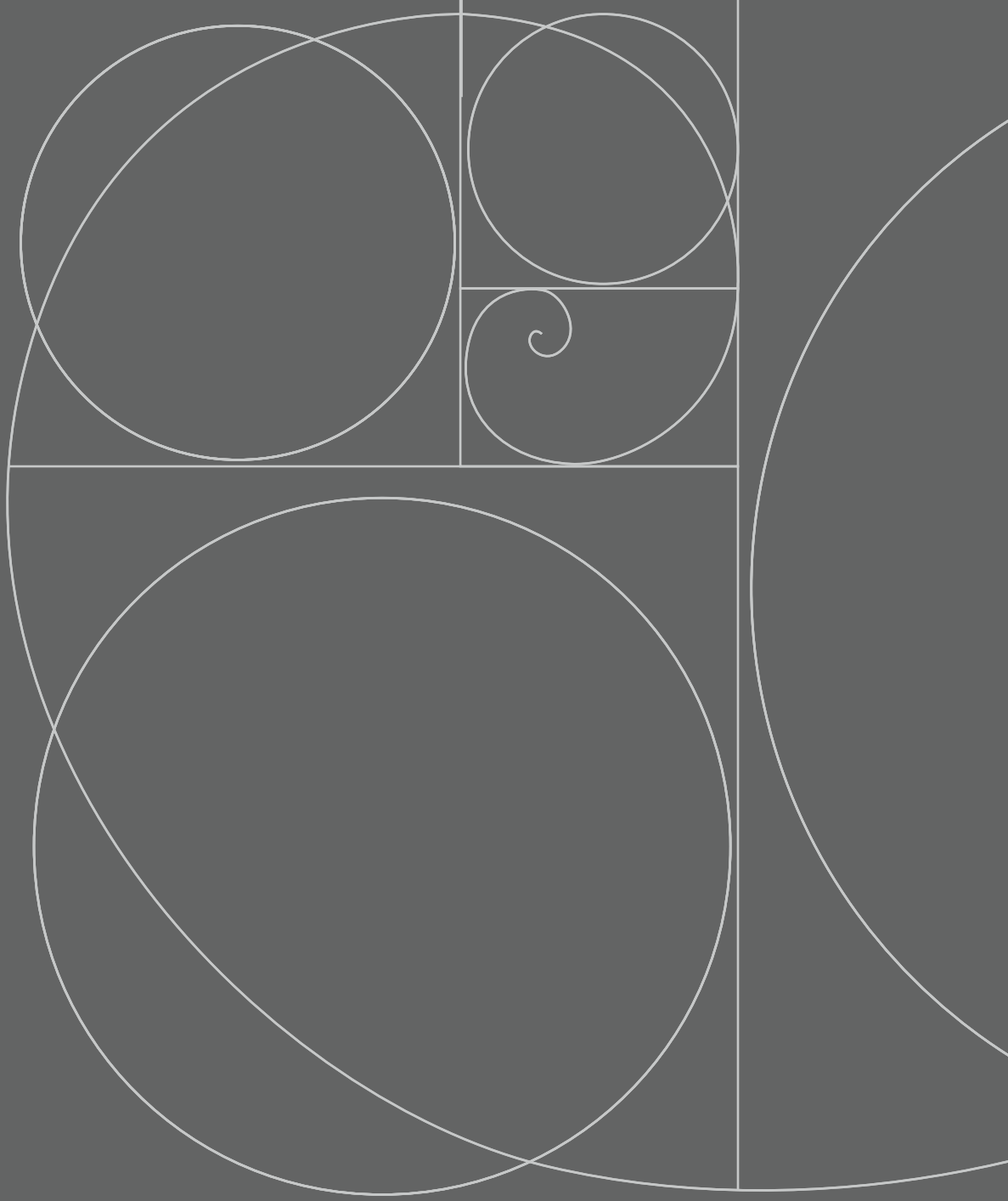
- Any gift to the value of R300 or more has to be declared and recorded in the gift register;
- Mandatory disclosure requirements with regard to conflict of interest and financial interest are in place;
- All contracts of employment impose an obligation of disclosure on the employee;
- All employees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

ADJUDICATIVE

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

GOVERNANCE STRUCTURES

- Declarations of independence are to be signed by all members of interview panels and Bid Adjudication and Bid Evaluation Committees;
- A Charter for the Audit and Risk Committee contains clauses pertaining to ethical conduct; and
- Committee members are required to sign a non-disclosure agreement and an anti-fraud statement.



PART E

HUMAN RESOURCE MANAGEMENT

HUMAN RESOURCE MANAGEMENT

The Tribunal's talented staff is the foundation of its achievements and its most important asset in delivering on its objectives.

Through its Human Resources Division, the Tribunal ensures adherence to best practices in all aspects involving employees. The division focuses on remuneration and benefits, recruitment, training and development, performance management, employee wellness and occupational health and safety.

As at 31 March 2023, the Tribunal comprised of 40 employees (including full-time and part-time members and two case interns). In addition, one acting Tribunal member was appointed during the reporting period with effect from 1 April 2023. This, therefore, brings the total number of part-time members to eight, as at 1 April 2023.

In addition to the appointment of the three acting part-time members during the reporting period, the Tribunal for the first time appointed a CFO to head the Finance Division. The appointment of a Senior Competition Law Counsel further bolstered the Tribunal's capacity and critical vacancies were also filled, including those of the COO, three Case Managers and an Economist. The contracts of two Case Management Interns were also extended.

ORGANISATIONAL REVIEW AND GROWTH

The Tribunal continues to strengthen and improve how it works and is actively seeking to address challenges such as capacity constraints and recruitment in a highly competitive market for professional and specialist skills it requires.

During the reporting year, the Tribunal undertook and successfully completed an organisational structure review. There were two main objectives for this project:

a. To assess the Tribunal's capacity requirements in light of the expanded mandate and increased demand for its services as a result of the 2019 amendments to the Competition Act; and
b. To review Tribunal remuneration programmes and job grading for internal equity and external competitiveness.

To ensure the Tribunal is 'fit for purpose', one of the outcomes of the project was a recommendation to increase the number of staff members from 28 to 60, excluding members. Of the 60 positions in the new organisational structure, 21 are for the Case Management division, The Tribunal has decided to phase-in the implementation of this new organisational structure over a three-year period such that in the 2023/2024 financial year only ten new positions have been prioritised, with the rest to be filled in the outer years.

LEARNING AND DEVELOPMENT

The Tribunal continued to develop and refresh its core learning and development offering with a specific focus to ensure that it continues to deliver on its medium term and annual plan priorities. The Tribunal's capacity building efforts include in-house training which supports the adjudicative function and is undertaken to develop employees' experience and skills in the area of competition law and economics as well as to keep abreast of international trends.

Among numerous local and international training workshops, conferences and seminars, the Tribunal was also able to provide continuous learning opportunities to Tribunal staff and members. These included the OECD competition conference and working group meetings in Paris, France; the 2022 Antitrust Law spring meeting hosted by the American Bar Association in the United States of America; the International Competition Network (ICN) conference in Germany; and a course on abuse of dominance at the School of Economics in Spain.

Other areas of training during the reporting period sought to develop employees' knowledge and skills in the areas of fraud prevention awareness, IT security and risk management training in an effort to support continued good governance practices in the Tribunal.

Furthermore, during the year under review, study loans were awarded to four staff members and a study loan was converted into a bursary. As per the Tribunal's policy, study loans are converted into bursaries when employees pass their registered modules at the end of the study term. Employees are then required to provide services to the Tribunal for a minimum period stipulated in the contractual agreement.

The Tribunal also provides on-the-job training in the form of its internship programme that was launched over a decade ago. We understand the importance of helping to equip South Africa's youth for the workplace while also providing training and mentorship opportunities. We view this as being particularly important given South Africa's unemployment rate and, in particular, youth unemployment. Our internships integrate theory with practical experience and assist in developing the talent pool in competition law enforcement and competition economics.

EMPLOYMENT EQUITY

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

The Tribunal has prioritised women empowerment in its workforce. Below is a table setting out the current distribution of gender within the Tribunal (a staff complement of 40 comprising all Tribunal members, operational staff and interns). This demonstrates that 58% of the Tribunal's workforce constitutes women. 23% of the workforce is made up of women in management positions.

In the 2022/2023 financial year, the equity ratio for female and male representation is 58% and 42%, respectively. The Tribunal's race and gender profile is as follows:

Table 17: The Tribunal's race and gender profile

	Female			Female Total	Male			Male Total	Grand Total
	African	Indian	White		African	Indian	White		
Tribunal Chairperson	1			1					**1**
Tribunal Deputy Chairperson					1			1	**1**
Part-time members	1	1	1	3	2	1	2	5	**8**
Other full-time members							1	1	**1**
Divisional heads	1	2		3	2			2	**5**
Senior Case Managers	1	1		2		1		1	**3**
Case Managers	2		1	3	1			1	**4**
Administration and support staff	8		2	10	4		1	5	**15**
Interns		1		1	1			1	**2**
Grand Total	**14**	**5**	**4**	**23**	**11**	**2**	**4**	**17**	**40**

REMUNERATION

The Tribunal strives to attract and retain the best talent and as such endeavours to maintain market related salaries and remunerates its employees in line with the designated market. The remuneration structure applied in the Tribunal is a Total Cost to Company (TCC) structure, including compulsory medical and retirement contributions. Additional benefits include risk cover, parking, contributions to an employee assistance programme (EAP) and a communication allowance. These benefits are subject to tax.

Annual cost of living adjustments, applicable to and implemented in the public sector, are used as a benchmark for annual adjustments for Tribunal staff, subject to budget availability. During the reporting period all staff, including senior management (but excluding members), received a cost-of-living adjustment. The cost-of-living adjustment for members is benchmarked against the remuneration of High Court judges.

As indicated in the organisational review section, the organisational review project conducted a salary benchmarking and job grading exercise. This involved comparative research of staff salaries against those of comparable public and private entities. An analysis of full-time members' remuneration against that of Judges of the High Court and executives of other entities was also completed. The recommendations of this exercise were implemented and therefore the Members' salary adjustments were implemented following the approval of the benchmarking report in liason with the Minister and National Treasury. Similarly, the salaries of the affected staff members were adjusted accordingly.

PERFORMANCE MANAGEMENT

The Tribunal implements a robust performance management system which recognises and rewards good performance subject to availability of resources. For the period under review the Tribunal fully implemented its performance management policy. Effective performance management within the Tribunal serves to motivate staff and increase productivity so that the Tribunal can execute its mandate optimally and effectively. The performance management system is also used by managers and employees to recognise and build on areas of excellence while identifying areas requiring improvement, training and development.

OCCUPATIONAL HEALTH AND SAFETY

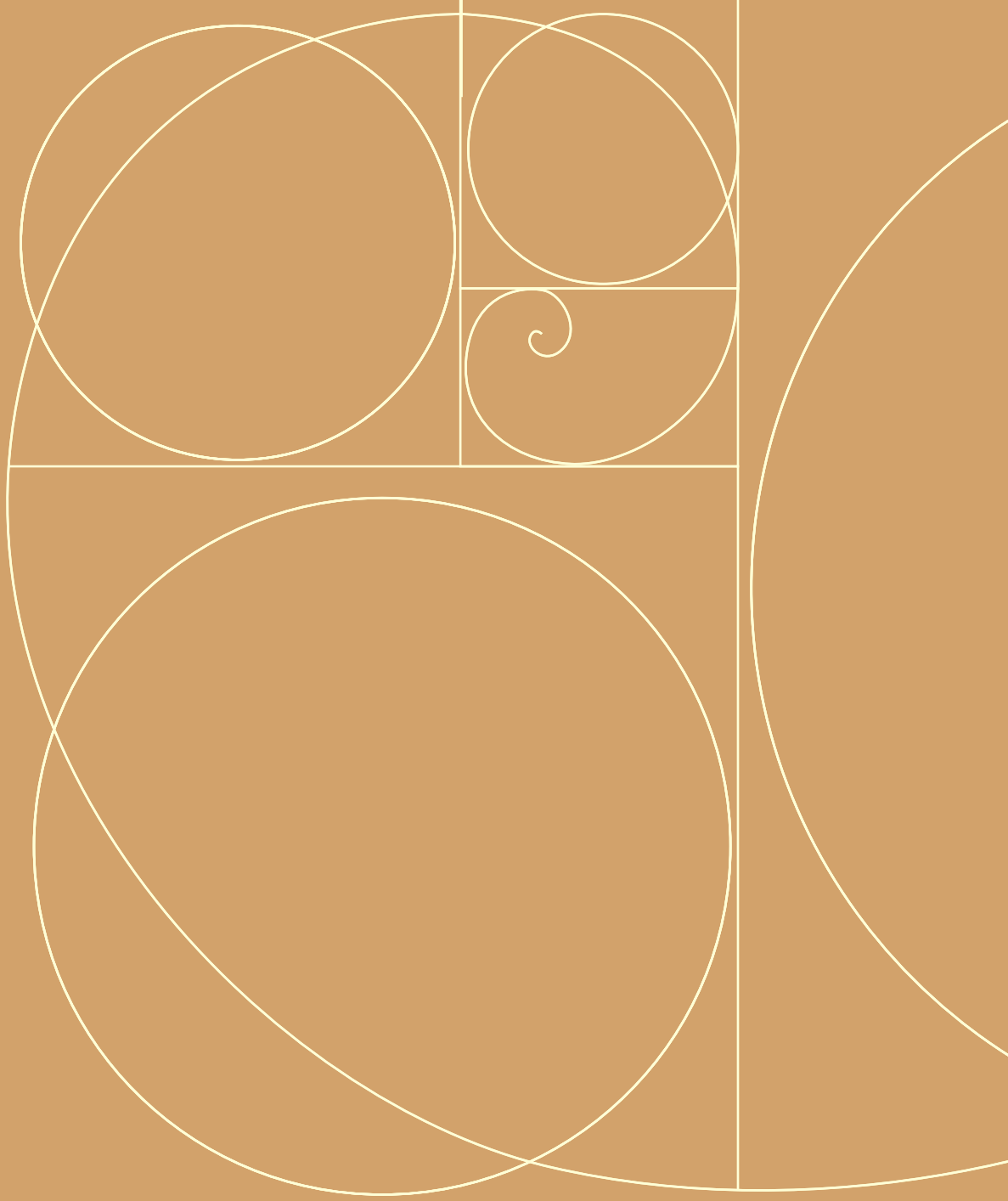
The Tribunal is obliged, in terms of the Occupational Health and Safety Act, to ensure a healthy and safe working environment for its employees. An OHS Committee performs its duties in accordance with legislative requirements. Committee representatives attend continuous training for their respective roles, ensuring effective preparedness during an emergency situation. The representatives also perform monthly and quarterly checklists and report to the ARC.

The HR Manager is responsible for ensuring that the Tribunal complies with OHS standards. OHS risks or potential safety hazards are assessed and included in the Tribunal's risk register. Controls are implemented and monitored to mitigate risks in this regard. A quarterly OHS report is also presented to the ARC for review and discussion.

EMPLOYEE WELLNESS

The Tribunal views its staff as its most valued resource and has, therefore, contracted a wellness company to provide support and guidance to employees (and their family members) at no cost to the employees. The Tribunal's employee wellness programme provides a range of services including, among others: emotional; psychological; legal; and financial counselling and support, thus enabling employees to address personal and work-related challenges. During the reporting period, the Tribunal appointed a new service provider and hosted a workshop in this regard.

In addition, we issue monthly desk drops (electronic information leaflets) to staff to create awareness around a range of issues including the prevention and treatment of medical and other conditions. Annual wellness days also enable employees to participate in selected clinical health screening services on a voluntary basis, such as cholesterol, glucose, blood pressure, and body mass index screening as well as voluntary HIV counselling and testing.



PART F

ANNUAL FINANCIAL STATEMENTS

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE COMPETITION TRIBUNAL

REPORT ON THE FINANCIAL STATEMENTS

1. I have reviewed the financial statements of the Competition Tribunal set out on pages 90 to 120, 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 information with actual information for the year then ended, as well as notes to the financial statements, including a summary of significant accounting policies.

Basis for conclusion

2. Based on my review, nothing has come to my attention that causes me to believe that the financial statements do not present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2023 and its financial performance and cash flows for the year then ended in accordance with the Standards of General Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act 1 of 1999 (PFMA).

Responsibilities of the accounting authority for the financial statements

3. 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.

4. 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

5. My responsibility is to express a conclusion on the accompanying financial statements. I conducted my review in accordance with the International Standard on Review Engagements (ISRE) 2400 (Revised), Engagements to review historical financial statements. The standard requires me to conclude on whether anything has come to my attention that causes me to believe that the financial statements, taken as a whole, are not prepared in all material respects in accordance with the applicable financial reporting framework. This standard also requires me to comply with relevant ethical requirements.

6. A review of financial statements in accordance with ISRE 2400 (Revised) is a limited assurance engagement. I am required to perform procedures, primarily consisting of making inquiries of management and others within the auditee, as appropriate, and applying analytical procedures, and evaluating the evidence obtained.

REPORT ON THE ANNUAL PERFORMANCE REPORT

7. The procedures performed in a review engagement are substantially less than those performed in an audit conducted in accordance with International Standards on Auditing. Accordingly, I do not express an audit opinion on these financial statements.

8. 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 information against predetermined objectives for the selected material performance indicators presented in the annual performance report. The accounting authority is responsible for the preparation of the annual performance report.

9. I selected the following material performance indicators related to Outcome 1: Reliable and Responsive Adjudication presented in the annual performance report for the year ended 31 March 2023. I selected those indicators that measure the public entity's performance on its primary mandated functions and that are of significant national, community or public interest.

   - Percentage of mergers set down for a hearing or pre-hearing within 10 business days of filing
   - Percentage of merger orders issued to parties within 10 business days of last hearing date

- Percentage of reasons for mergers issued to parties within 20 business days of order being issued.
- Ongoing evaluation of competition and public interest considerations in mergers in terms of the Act, in line with **the dtic** three joint/integrated outputs: Delivery/Capable State; economic transformation; industrialisation.
- Reasons for prohibited practice cases are issued to parties within 140 business days of the last hearing date.
- Percentage of procedural matter orders issued to parties within 45 business days of the last hearing date.
- Percentage orders for consent orders and settlement agreements issued to parties within 10 business days of the last hearing date.
- Percentage of reasons in interim relief matters issued to parties within 30 business days of last hearing date.

10. I evaluated the reported performance information for the selected material performance indicators 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.

11. 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 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.

12. I performed the procedures for the purpose of reporting material findings only.

13. I did not identify any material findings on the reported performance information for the selected material performance indicators.

Other matters

14. I draw attention to the matters below.

Achievement of planned targets

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

Material misstatements

16. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information for Outcome 1: Reliable and Responsive Adjudication. Management subsequently corrected all the misstatements and I did not include any material findings in this report.

Report on compliance with legislation

17. 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.

18. I performed procedures to test compliance with selected requirements in key legislation in accordance with the AGSA findings engagement methodology. This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.

19. 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.

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

Internal control deficiencies

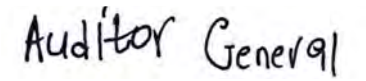
21. I considered internal control relevant to my engagement on the financial statements, annual performance report and compliance with applicable legislation; however, my objective was not to express any form of assurance on it.

22. I did not identify any significant deficiencies in internal control.

Professional ethics and quality control

23. I am independent of the public entity in accordance with the International Ethics Standards Board for Accountants' International code of ethics for professional accountants (including International Independence Standards) (IESBA code) as well as other ethical requirements that are relevant to my engagements in South Africa . I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.

24. In accordance with the International Standard on Quality Management 1, the AGSA maintains a comprehensive system of quality management that includes documented policies and procedures on compliance with ethical requirements and professional standards.



Pretoria
31 July 2023

AUDITOR-GENERAL
SOUTH AFRICA
Auditing to build public confidence

ANNEXURE TO THE AUDITOR'S REPORT

Compliance with legislation - selected legislative requirements

Table 18: The Selected Legislative Requirements are as follows:

Legislation	Sections or regulations
Public Finance Management Act 1 of 1999 (PFMA)	Sections 51(1)(b)(ii); 51(1)(e)(iii); Sections 53(4); 54(2)(c); 54(2)(d); Sections 55(1)(a)-(b); 55(1)(c)(i); Sections 66(3)(c); 66(5)
Preferential Procurement Regulations of 2022 (PPR)	TR 16A3.2(a); 16A 3.2 (fairness); 6.1; TR 16A6.2(a) & (b); TR 16A6.3(a)-(c); 16A6.4; 16A6.5; TR 16A6.6; 16A.7.1 ; 16A.7.3; TR 16A.7.6; 16A.7.7; 16A8.3; I TR 16A9.1(b)(ii); 16A9.1 (d)-(f); TR 16A9.2(a)(ii); TR 30.1 .1; 30.1 .3(a)- (b); 30.1.3(d); TR 30.2.1; 31.2.1: 31 .2.5: 31 .2.?(a): TR 32.1.1 (a)-(c), 33.1.1 , 33.1.3
Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) regulations (PPR), 2017	Sections 2.1 (a), (b) and (f)
Preferential Procurement regulations (PPR), 2017	Regulations 4.1; 4.2; 5.1; 5.3; 5.6; 5.7 Regulations 6.1; 6.2; 6.3; 6.5; 6.6; 6.8 Regulations 7.1; 7.2; 7.3; 7.5; 7.6; 7.8; 8.2; 8.5 Regulations 8.2; 8.5; 9.1; 10.1; 10.2 Regulations 11.1; 11.2
NT SCM Instruction Note 05 of 2009/10	Par 3.3
NT SCM Instruction Note 04 of 2015/16	Par 3.4
NT SCM Instruction Note 03 of 2016/17	Par 8.1: 8.2; 8.3; 8.5
NT SCM Instruction Note 4A of 2016/17	Par 6
NT SCM Instruction Note 07 of 2017/18	Par 4.3
NT SCM instruction note 03 of 2019/20 (Annexure A-FIPDM)	Par 5.5.1 (vi) ; 5.5.1 (x)
NT SCM Instruction Note 08 of 2019/20	Par 3.1.1; 3.6; 3.7.2; 3.7.6 (i) - (iii)
NT SCM instruction Note 03 of 2020/21	Par 3.6; 3.7; 5.1 (i); 6.1: 6.3
NT SCM Instruction Note 05 of 2020/21	Par 3.2; 3.7; 4.3; 4.6; 4.8; 4.9; 5.3
Erratum NT SCM instruction Note 05 of 2020/21	Par 1: 2
Second Amendment to NT SCM instruction Note 05 of 2020121	Par 1
NT Instruction Note 11 of 2020/21	Par 3.1: 3.4(b): 3.9
NT SCM Instruction note 02 of 2021/22	Par 3.2.1: 3.2.4(a): 3.3.1: 4.1
PFMA SCM Instruction 04 of 2022/23	Paragraph 4(1); 4(2); 4(4)
SCM Practice Note 8 of 2007/08	Par 3.3.1; 3.3.3; 3.4.1: 3.5
SCM Practice Note 7 of 2009/10	Par 4.1.2

STATEMENT OF RESPONSIBILITY

The Accounting Authority is responsible for the preparation, integrity and fair presentation of the financial statements of the Tribunal for the year ended 31 March 2023.

The financial statements presented on pages 90 to 120 have been prepared in accordance with the South African Statements of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 55 of the Public Finance Management Act to the extent as indicated in the accounting policies, and include amounts based on judgments and estimates made by management.

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

The Accounting Authority initially approved and submitted the annual financial statements to the Auditor-General South Africa on 31 May 2023.

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

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CHAIRPERSON'S REPORT

1. INTRODUCTION

The Tribunal has continued to exercise prudent financial management on the expenditure side. We have addressed areas of cost containment and savings in response to budget cuts necessitated by the reprioritisation of funds by National Treasury towards relief packages in 2020/21and 2021/22. In the next financial year, 2023/24, we expect that there will be an increase in the demand for the Tribunal's services because of the amendments to the Competition Act. This requires a growth in the Tribunal's resources including capacity in order to strengthen the organisation. Our focus in 2023/24 is to increase capacity in line with this demand. To this end, the organisational structure review proposes an increase in capacity of 30 positions (currently there are 27 positions that are filled and two interns excluding Tribunal members). This will be phased in over a three-year period and it is anticipated that 10 positions will be filled in the following financial year 2023/24.

In January 2023, the Tribunal received approval from the National Treasury to retain an accumulated cash surplus of R17 million to be used for priorities as identified in the 2022/23 financial year. The priorities related mainly to increasing staff capacity. The National Treasury requested the Tribunal to ensure that the positions are funded from its baseline budget and that the positions are aligned to the new organisational structure. During the financial year, the Tribunal appointed a Chief Financial Officer, a Special Competition Law Counsel and three part-time members in alignment with the new organisational structure to increase the capacity of the organisation.

At the end of the financial year 2022/23, the Tribunal reported a surplus of R1.5 million. A significant portion of this was as a result of vacancies which were filled during the year and two Tribunal Member vacancies which are in the process of being filled.

Over the years, the Tribunal's expenditure has increased at a fairly constant rate. The grant from **the dtic** allocated to the Tribunal reflects a lower growth, at a rate based mainly on inflation as opposed to changes in the Tribunal's operational requirements. Filing fees fluctuate significantly year-on-year, and it is difficult to predict these fluctuations or to accurately estimate what they will be in the future. The uncertainty with regards to this revenue source is the main challenge in our budgeting process.

The Tribunal operates a 'lean' budget. Any reduction in expenditure will have a detrimental impact on the achievement of the Tribunal's strategic objectives which include the administration of the Competition Appeal Court.

It is a matter of institutional pride year-on-year that the Tribunal has received a clean audit.

In the period April 2022 to March 2023, the Tribunal heard 199 matters, this included 100 mergers, four contested cartel cases, one abuse of dominance case, 19 consent/settlement agreements, 73 procedural matters and two interim relief applications. 37 of the mergers had conditional approvals, of which 32 related to public interest conditions and seven were on competition grounds. This snapshot of case adjudication illustrates the diverse nature of our work, and the increasing demand for our services. It is important to build the capacity of the competition authorities to tackle the challenges that lie ahead in rebuilding a competitive and inclusive economy.

The Tribunal remains committed to adjudicating for competitive and inclusive markets.

2. NATURE OF BUSINESS

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

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

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

3. MEMBERS

In all matters, the Tribunal holds hearings which are open to the public. In most cases, apart from a certain procedural cases, three Tribunal members (one of which must be a lawyer) hear a case and make a decision. Tribunal members are appointed by the President of the Republic, on recommendation by **the dtic**. These members are appointed on either a full-time or part-time basis for a five-year term. The members holding this office in the period under review areas follows:

Table 19: Members

Name	Full/part-time	Date of appointment
Ms. Mondo Mazwai (Chairperson)	Full-time	Appointed in August 2019
Prof. Liberty Mncube (Deputy Chairperson)	Full-time	Appointed as Deputy Chairperson with effect from 1 February 2023 Appointed as Acting part-time member in January 2022
Mr. Andreas Wessels	Full-time	Reappointed in August 2019
Ms. Andiswa Ndoni	Part-time	Reappointed in August 2019
Mr. Anton Roskam	Part-time	Reappointed in January 2018 *Term ended December 2022
Prof. Fiona Tregenna	Part-time	Reappointed in April 2019
Dr. Thando Vilakazi	Part-time	Appointed in August 2019
Prof. Imraan Valodia	Part-time	Part-time Reappointed in January 2018
Adv. Geoff Budlender SC	Acting Part-time	Appointed in January 2023
Ms. Shaista Goga	Acting Part-time	Appointed in January 2023
Adv. Jerome Wilson SC	Acting Part-time	Appointed February 2023
Adv. Tembeka Ngcukaitobi SC	Acting Part-time	Appointed April 2023 (Post financial year end)
Ms. Yasmin Carrim	Full-time	Reappointed in August 2019 Resigned in December 2022
Mr. Enver Daniels	Acting Part-time	Appointed January 2021 *Term ended June 2022

4. OBJECTIVES AND TARGETS

The year in review is measured against the objectives set in the 2022/23 Annual Performance Plan. This in turn is informed by the 2020 - 2025 Medium Term Expenditure Framework.

The Tribunal has 23 targets split among its two strategic objectives of *Reliable and Responsive Adjudication and Accountable, Sustainable and Transparent Entity*. During the year under review, the Tribunal achieved 17 of its 23 targets.

In respect of the *Reliable and Responsive Adjudication* objective:

- 5 of 8 targets were achieved;
- 3 targets were not achieved. These 3 targets relate to the issuing of reasons in matters involving prohibited practices and interim relief applications, and the issuing of orders in procedural matters, within stipulated time frames. The Tribunal heard a total of 199cases during the year under review and was unable to meet the stipulated time frames on 3 targets due to inter alia the number and complexity of cases, as well as capacity constraints arising from the fact that panel members are unable to draft reasons and orders while simultaneously sitting in hearings.

In respect of the *Accountable, Sustainable and Transparent Entity* objective:

- 12 of 15 targets were achieved.
- 2 targets were not achieved. These targets relate to the conducting of performance assessments and internal training. The performance assessments were to have been conducted in quarter 4. It was impractical to achieve this target as assessments are conducted after the financial year. Further, the Tribunal could not conduct internal training as planned in quarter 3 due to the unavailability of members and case managers. The Tribunal prioritised

cases over internal training due to the volume of cases at that time.

- 1 target was not due for measuring as it is a bi-ennual target.

5. FINANCIAL HIGHLIGHTS AND PERFORMANCE

	2023 '000	2022 '000
Total Revenue	62 645	54 121
Expenditure	(61 155)	(45 241)
Net surplus/(deficit)	**1 490**	**8 880**
Total assets	**29 958**	**25 433**
Total liabilities	**6 780**	**3 745**

The financial objective of the Tribunal is to be sustainable while meeting its adjudicative objectives. The budget was accordingly set to meet operational expenses.

Revenue comprises two major elements. The first component of revenue is a grant from **the dtic**. In 2022/23, the grant received was R42.29 million and was 14% higher than the grant received in the prior year. The second component of revenue is filing fees of which R18.5 million was received in the current year. In terms of a Memorandum of Agreement between the Commission and the Tribunal, the Tribunal is entitled to a set portion of filing fees that the Commission levies for mergers. Filing fees increased by 14% from the previous year because of an increase in merger activity. This resulted in a 16% increase in total revenue year-on-year.

The Tribunal's total expenditure was R61.2 million. Employee related costs, which account for the bulk of the Tribunal's total expenditure, increased by 33% from the prior year.

The net effect is that the Tribunal reported a net surplus of R1.5 million at the end of the financial year.

6. SUBSEQUENT EVENTS

There were no subsequent events identified during the year under review.

7. MANAGEMENT COMMITTEE

In compliance with Treasury Regulation 28.1.1 the annual financial statements disclose remuneration in respect of the persons in charge of the entity, the Chairperson, Deputy Chairperson, Tribunal Members, the Chief Operating Officer and the Chief Financial Officer. These are found in Note 29.

8. NUMBER OF EMPLOYEES

As at 31 March 2023, the Tribunal comprised 40 employees (including full-time and part-time members and two case interns). In addition, one acting Tribunal member was appointed during the reporting period with effect from 1 April 2023. This, therefore, brings the total number of part-time members to eight, as at 1 April 2023.

9. IRREGULAR AND FRUITLESS AND WASTEFUL EXPENDITURE

It is a point of institutional pride that the Tribunal has not incurred any fruitless and wasteful expenditure in the current and prior financial year. There is irregular expenditure incurred in the current year of R92 002, details of which are included in Note 28. The irregular expenditure relates to the Tribunal's previous practice of obtaining three quotations through a single broker instead of quotations from three separate brokers.

10. MANAGEMENT FEE PAID TO THE COMPETITION COMMISSION

The Tribunal and the Commission share premises and therefore certain services. In terms of a Memorandum of Agreement (MOA) signed between the two entities, the Tribunal pays a monthly management fee to the Commission for services related to the use of these premises. The management fee for the period under review was R60 657 per month. The MOA and management fee are reviewed annually.

11. MATERIALITY FRAMEWORK

The Tribunal determined a planning materiality for the current period in terms of a materiality framework.

Any loss or comparable quantifiable fact that exceeds the materiality figure identified must be disclosed in the annual report and financial statements if the disclosure is required by law and/or that fact could influence the decisions of the executive authority or legislature.

For the year under review, there was no material losses of a quantitative nature and nothing that requires disclosure.

12. GOING CONCERN

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

The Tribunal performed a going concern assessment and concluded that the entity is solvent, and the liquidity ratios are favourable. The cash flows are such that the Tribunal can maintain its operations for at least one year of the reporting date of the financial statements. There are no contingent liabilities that may jeopardise the Tribunal's ability to perform its functions and fulfil its mandate in terms of the Act.

STATEMENT OF FINANCIAL POSITION AS AT 31 MARCH 2023

	Note(s)	2023 '000	2022 '000
Assets			
Current Assets			
Cash and cash equivalents	3	22 951	20 386
Inventories	4	23	11
Receivables from exchange transactions	5	2 497	914
Prepayments	6	673	481
		26 144	**21 792**
Non-Current Assets			
Property, plant and equipment	7	2 001	1,300
Intangible assets	8	1 813	2 341
		3 814	**3 641**
Total Assets		**29 958**	**25 433**
Liabilities			
Current Liabilities			
Finance lease obligation	9	138	25
Payables from exchange transactions	10	1 304	2 049
Provisions	11	5 108	1 671
		6 550	**3 745**
Non-Current Liabilities			
Finance lease obligation	9	230	-
Total Liabilities		**6 780**	**3 745**
Net Assets		**23 178**	**21 688**
Accumulated surplus		23 178	21 688

STATEMENT OF FINANCIAL PERFORMANCE

	Note(s)	2023 '000	2022 '000
Revenue			
Revenue from exchange transactions			
Fees earned	12	18 472	16 310
Other income	13	22	1
Interest income	14	1 865	840
Total revenue from exchange transactions		**20 359**	**17 151**
Revenue from non-exchange transactions			
Transfer revenue			
Government grants & subsidies	15	42 286	36 970
Total revenue		**62 645**	**54 121**
Expenditure			
Employee Related costs	16	(37 766)	(29 535)
Depreciation and amortisation	17	(906)	(973)
Finance costs	18	(17)	(11)
Administrative expenses	19	(10 880)	(9 656)
Loss on disposal of assets	20	(137)	(30)
Other operating expenses	21	(11 449)	(5 036)
Total expenditure		**(61 155)**	**(45 241)**
Surplus for the year		**1 490**	**8 880**

STATEMENT OF CHANGES IN NET ASSETS

	Accumulated surplus '000	Total net assets '000
Balance at 01 April 2021	**12 808**	**12 808**
Changes in net assets		
Surplus for the year	8 880	8 880
Total changes	8 880	8 880
Balance at 01 April 2022	**21 688**	**21 688**
Changes in net assets		
Surplus for the year	1 490	1 490
Total changes	1 490	1 490
Balance at 31 March 2023	**23 178**	**23 178**

CASH FLOW STATEMENT

	Note(s)	2023 '000	2022 '000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Grants		42 286	36 970
Interest income		1 865	840
Other income		1	-
Fees received		16 889	16 954
		61 041	**54 764**
Payments			
Employee costs		(34 193)	(29 534)
Suppliers		(23 411)	(14 922)
Finance costs		(17)	(11)
		(57 621)	**(44 467)**
Net cash flows from operating activities	22	**3 420**	**10 297**
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	7	(757)	(28)
Proceeds from sale of property, plant and equipment	7	-	73
Net cash flows from investing activities		**(757)**	**45**
CASH FLOWS FROM FINANCING ACTIVITIES			
Finance lease payments		(98)	(167)
Net increase/(decrease) in cash and cash equivalents		**2 565**	**10 175**
Cash and cash equivalents at the beginning of the year		20 386	10 211
Cash and cash equivalents at the end of the year	3	**22 951**	**20 386**

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

Budget on Accrual Basis

	Approved budget '000	Adjustments '000	Final Budget '000	Actual amount '000	Difference between final budget and actual '000	Reference
STATEMENT OF FINANCIAL PERFORMANCE						
Revenue						
Revenue From Exchange Transactions						
Fees earned	16 600	-	**16 600**	18 472	**1 872**	**Note 33**
Other income	-	-	**-**	22	**22**	**Note 33**
Interest income	800	-	**800**	1 865	**1 065**	**Note 33**
	17 400	**-**	**17 400**	**20 359**	**2 959**	
Revenue From Non-Exchange Transactions						
Transfer Revenue						
Government grant	42 286	-	**42 286**	42 286	**-**	
Total revenue	**59 686**	**-**	**59 686**	**62 645**	**2 959**	
Expenditure		-				
Employee Related Costs	(38 791)	-	**(38 791)**	(37 766)	**1 025**	**Note 33**
Depreciation and amortisation	(983)	-	**(983)**	(906)	**77**	
Finance costs	(48)	-	**(48)**	(17)	**31**	
Administrative expenses	(10 975)	-	**(10 975)**	(10 880)	**95**	
Other operating expenses	(8 081)	-	**(8 081)**	(11 449)	**(3 368)**	**Note 33**
Total expenditure	**(58 878)**	**-**	**(58 878)**	**(61 018)**	**(2 140)**	
Operating surplus	**697**	**-**	**697**	**1 627**	**2 655**	
Loss on disposal of asset	**-**	-	**-**	(137)	**(137)**	
Actual amount on a comparable basis	**697**	-	**697**	**1 490**	**793**	**Note 33**

ACCOUNTING POLICIES

1. BASIS OF PREPARATION

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

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

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

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

1.1. GOING CONCERN ASSUMPTION

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

1.2. MATERIALITY

Material omissions or misstatements of items are material if they could, individually or collectively, influence the decisions or assessments of users made on the basis of the financial statements. Materiality depends on the nature or size of the omission or misstatement judged in the surrounding circumstances. The nature or size of the information item, or a combination of both, could be the determining factor.

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

1.3. SIGNIFICANT JUDGMENTS AND SOURCES OF ESTIMATION UNCERTAINTY

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of 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 judgments include:

Provision for accumulated leave

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

Provision for bonus

Performance bonus reviews are generally concluded for a financial year by the 31st May and are then recognised as an accrual. For the 2022/23 financial year, this process has not been concluded. Based on this, a provision was therefore raised instead of an accrual due to the uncertainty in the value to be raised. The provision estimated was based on the prior year's finalised ratings and the current year packages. For new employees that qualify the estimated rates will be based on the Remuneration Policy and these will be pro-rated for the months employed.

Amortisation of internally generated software

The Tribunal developed an electronic document management software system that was officially signed off in February 2013 and became fully operative from this date. All development costs associated with this software (development costs, legal fees, technical support, project management, etc.) were capitalised and the entire cost is amortised over 15 years from this "go live date".

Useful life of property, plant and equipment and other assets

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

1.4. PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment are tangible non-current assets that are held for use in the production or supply of goods or services, 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 Tribunal; and
- the cost or fair value can be measured reliably.

Property, plant and equipment is initially measured at cost.

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

Where an asset is acquired through a non-exchange transaction, its cost is its fair value as at the date of acquisition. Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses.
Property, plant and equipment are depreciated on the straight line basis over their expected useful lives to their estimated residual value.

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

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

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

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

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

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

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

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

1.5. INTANGIBLE ASSETS

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

An asset is identifiable if it is either:

- separable, i.e. is capable of being separated or divided from an entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, identifiable assets or liability, regardless of whether the entity intends to do so; or
- arises from binding arrangements (including rights from contracts), regardless of whether those rights are transferable or separable from the Tribunal or from other rights and obligations.

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

An intangible asset is recognised when:

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

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

Expenditure on research (or on the research phase of an internal project) is 2 recognised as an expense when it is incurred.

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

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

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

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date. Internally generated software refers to the Tribunal's electronic case management system and a customised reporting tool. It has been estimated to have a useful life of 15 years as the system is very sustainable and does not need to be replaced before this time. Any enhancements to the system are reflected as additions to the value of the asset in the period they occur and are amortised over the remaining useful life of the asset.

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

Item	Useful life
Computer software, internally generated	Between 5 and 15 years
Computer software, other	Between 5 and 15 years

The Tribunal discloses relevant information relating to assets under construction or development, in the notes to the financial statements (see note 8).

Intangible assets are de-recognised:

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

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

1.6. IMPAIRMENT OF NON-CASH GENERATING ASSETS

Non-cash generating assets are assets other than those that are primarily held for service delivery purposes i.e. assets not generating a commercial return.
Impairment is a loss in the future economic benefits or service potential of an asset, over and above the systematic recognition of the loss of the asset's future economic benefits or service potential through depreciation (amortisation).

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

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

IDENTIFICATION

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

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

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

VALUE IN USE

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

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

DEPRECIATED REPLACEMENT COST APPROACH

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

RECOGNITION AND MEASUREMENT

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

An impairment loss is recognised immediately in surplus or deficit.

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

REVERSAL OF AN IMPAIRMENT LOSS

The Tribunal assess at each reporting date whether there is any indication that an impairment loss recognised in prior periods for a non-cash-generating asset may no longer exist or may have decreased. If any such indication exists, the Tribunal estimates the recoverable service amount of that asset.

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

1.6. IMPAIRMENT OF NON-CASH GENERATING ASSETS (CONTINUED)

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

1.7. INVENTORIES

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

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

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

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

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

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

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

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

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

1.8. FINANCIAL INSTRUMENTS

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

A financial asset is:

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

A financial liability is any liability that is a contractual obligation to:

- deliver cash or another financial asset to another entity;or
- exchange financial assets or financial liabilities under conditions that are potentially unfavourable to the entity.

1.8 FINANCIAL INSTRUMENTS(CONTINUED)

CLASSIFICATION

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

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

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

Class	Category
Trade payables	Financial liability measured at fair value

INITIAL RECOGNITION

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

INITIAL MEASUREMENT OF FINANCIAL ASSETS AND FINANCIAL LIABILITIES

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

SUBSEQUENT MEASUREMENT OF FINANCIAL ASSETS AND FINANCIAL LIABILITIES

The Tribunal measures all financial assets and financial liabilities after initial recognition using the following categories:

- Financial instruments at fair value;
- Financial instruments at a mortised cost; and.
- Financial instruments at cost.

FAIR VALUE MEASUREMENT CONSIDERATIONS

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

GAINS AND LOSSES

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

DERECOGNITION

FINANCIAL ASSETS

The Tribunal de recognises a financial asset only when:

- the contractual rights to the cash flows from the financial asset expire, are settled or waived.

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

1.8. FINANCIAL INSTRUMENTS (CONTINUED)

FINANCIAL LIABILITIES

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

IDENTIFICATION

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

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

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

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

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

1.9. ACCUMULATED SURPLUS

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

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

1.10. LEASES

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership.

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

LEASED ASSETS

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

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

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

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

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

OPERATING LEASES–LESSEE

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

1.11. PROVISIONS AND CONTINGENCIES

Provisions are recognised when:

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

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

Where the effect of time value of money is material, the amount of the provision is the present value of the expenditures expected to be required to settle the obligation. The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

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

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

A contingent liability is:

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

1.12. EMPLOYEE BENEFITS

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

SHORT-TERM EMPLOYEE BENEFITS

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

Short-term employee benefits include items such as:

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

When an employee has rendered service to the Tribunal during a reporting period, the Tribunal recognises the undiscounted amount of short-term employee benefits expected to be paid in exchange for that service:

- as a liability (accrued expense), after deducting any amount already paid. If the amount already paid exceeds the undiscounted amount of the benefits, the Tribunal recognises that excess as an asset (prepaid expense) to the extent that the prepayment will lead to, for example, a reduction in future payments or a cash refund; and
- as an expense, unless another Standard requires or permits the inclusion of the benefits in the cost of an asset.

1.12. EMPLOYEE BENEFITS (continued)

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs. The Tribunal measures the expected cost of accumulating compensated absences as the additional amount that the entity expects to pay as a result of the unused entitlement that has accumulated at the reporting date.

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

1.13. REVENUE FROM EXCHANGE TRANSACTIONS

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

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

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

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

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

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

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

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

FILING FEES

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

INTEREST INCOME

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

OTHER INCOME

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

1.14. REVENUE FROM NON-EXCHANGE TRANSACTIONS

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

RECOGNITION

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

As the Tribunal satisfies a present obligation recognised as a liability in respect of an inflow of resources from a 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.

GOVERNMENT GRANTS

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

MEASUREMENT

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

1.15. COMPARATIVE FIGURES

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

1.16. FRUIT LESS AND WASTEFUL EXPENDITURE

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

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

1.17. 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 (ActNo.86 of1968),or any regulations made in terms of the Act;or
c. any provincial legislation providing for procurement procedures in that provincial government.

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

Irregular expenditure that was incurred and identified during the current financial year and which was condoned before year end and/or before finalisation of the financial statements is recorded appropriately in the irregular expenditure register. In such an instance, no further action is required with the exception of updating the note to the financial statements.

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end is recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements.

1.17 IRREGULAR EXPENDITURE (continued)

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements is updated with the amount condoned.

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority is recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps are thereafter taken to recover the amount from the person concerned. If recovery is not possible,the Accounting Officer or Accounting Authority may write off the amount as debt impairment and disclose such in the relevant note to the financial statements. The irregular expenditure register is updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto remains against the relevant programme/expenditure item, is disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

1.18. BUDGET INFORMATION

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

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

The approved budget covers the fiscal period from 1 April 2022 31 March 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 have been included in the Statement of comparison of budget and actual amounts.

1.19. COMMITMENTS

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

Disclosures are required in respect of unrecognised contractual commitments.

Commitments represent goods/services that have been ordered, but no delivery has taken place at the reporting date. These amounts are not recognised in the Statement of Financial Position as a liability or as expenditure in the Statement of Financial Performance as the Annual Financial Statement are prepared on an accrual basis of accounting, but are however disclosed in the Notes to the Annual Financial Statements.

1.20. RELATED PARTIES

A related party is a person or an entity with the ability to control or jointly control the other party, or exercise significant influence over the other party, or vice versa, or an entity that is subject to common control, or joint control.

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

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

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

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

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

The Tribunal 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.

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

2. NEW STANDARDS AND INTERPRETATIONS

2.1. STANDARDS AND INTERPRETATIONS ISSUED, BUT NOT YET EFFECTIVE

The entity has not applied the following standards and interpretations, which are not yet effective. They have been published and are mandatory for the entity's accounting periods beginning on or after 01 April 2023 or later periods:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
• IGRAP 21 - The Effect of Past Decisions on Materiality	Not determined	Unlikely there will be a material impact

3. CASH AND CASH EQUIVALENTS

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

There are no restrictions on the use of cash.

	2023 '000	2022 '000
Cash on hand	7	5
Bank balances	22 944	20 381
	22 951	**20 386**

Cash on hand relates to petty cash held by the Tribunal.

Bank balances relates to cash held in two bank accounts, ABSA used primarily for operation al transactions and Corporation for Public Deposits (CPD) which is an investment fund operated by the Reserve Bank.

4. INVENTORIES

Consumable stores	23	11

Inventories relates to consumable stores such as groceries and stationery used by the Tribunal. In comparison to the prior year, the increase in the consumable stores is due to the Tribunal employees returning full time back to office which had resulted in more consumables being kept on hand towards the last quarter of the financial year.

5. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Trade Receivables	2 497	911
Other debtors	-	3
	2 497	**914**

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

6. PREPAYMENTS

Repayments	673	481

Prepayments relate to IT equipment warranty and licence prepayments that are paid for and expensed on a monthly basis.

7. PROPERTY, PLANT AND EQUIPMENT

	2023 '000			2022 '000		
	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	1 285	(802)	483	1 280	(750)	530
Motor vehicles	205	(24)	181	205	(12)	193
Office equipment	35	(17)	18	56	(46)	10
IT equipment	1 881	(930)	951	1 966	(1 424)	542
Photocopiers(Leased)	439	(71)	368	201	(176)	25
	3 845	**(1 844)**	**2 001**	**3 708**	**(2 408)**	**1 300**

Reconciliation of property, plant and equipment-2022/2023

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	530	44	(4)	(87)	483
Motor vehicles	193	-	-	(12)	181
Office equipment	10	12	(3)	(1)	18
IT equipment	542	721	(14)	(298)	951
Photocopiers(Leased)	25	439	-	(96)	368
	1 300	**1 216**	**(21)**	**(494)**	**2 001**

Reconciliation of property, plant and equipment-2021/2022

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	617	-	-	(87)	530
Motor vehicles	307	-	(103)	(11)	193
Office equipment	15	-	-	(5)	10
IT equipment	815	28	-	(301)	542
Photocopiers(Leased)	178	-	-	(153)	25
	1 932	**28**	**(103)**	**(557)**	**1 300**

Pledged as security and contractual commitments

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

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

Assets subject to finance lease (Net carrying amount)

	2023 '000	2022 '000
Leased assets	368	25

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

General expenses	94	67

8. INTANGIBLE ASSETS

	2023 '000			2022 '000		
	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost / Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer software, internally generated	4 713	(3 115)	1 598	4 713	(2 786)	1927
Computer software, acquired	396	(181)	215	832	(418)	414
	5 109	**(3 296)**	**1 813**	**5 545**	**(3 204)**	**2 341**

Reconciliation of intangible assets - 2022/2023

	Opening balance	Disposals	Amortisation	Total
Computer software, internally generated	1 927	-	(329)	1 598
Computer software, acquired	414	(116)	(83)	215
	2 341	**(116)**	**(412)**	**1 813**

Reconciliation of intangible assets - 2021/2022

	Opening balance	Amortisation	Total
Computer software, internally generated	2 257	(330)	1 927
Computer software, acquired	500	(86)	414
	2 757	**(416)**	**2 341**

Pledged as security and contractual commitments

During the financial year, there was no intangible assets pledged as security.
The Tribunal has not entered into any contractual commitments to acquire new intangible assets.

9. FINANCE LEASE OBLIGATION

	2023 '000	2022 '000
Minimum lease payments due		
- within one year	168	26
- in second to third year inclusive	248	-
	416	26
less: future finance charges	(48)	(1)
Present value of minimum lease payments	**368**	**25**
Present value of minimum lease payments due		
- within one year	138	25
- in second to third year inclusive	230	-
	368	**25**
Non-current liabilities	230	-
Current liabilities	138	25
	368	**25**

The Tribunal is leasing two photocopiers under a finance leases. There are no restrictions imposed on the Tribunal in terms of the leases. There are no escalation clauses reflected in the lease agreements. The obligation under the finance leases are secured by the lessor's title to the leased assets. The leases can be extended for a further period after the initial period has expired. The average lease period is 3 years and the average effective borrowing rate used is 9.75% per annum. The effect of the change in interest rates were considered and the impact was immaterial therefore no adjustments were made.

10. PAYABLES FROM EXCHANGE TRANSACTIONS

Trade Payables	214	87
Accrued performance bonus	-	1 587
Other accruals	1 090	375
	1 304	**2 049**

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

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

The accrued performance bonus for the prior year relates to an accrual raised for both members and employees in relation to the 2021/22 financial year that was paid in the 2022/23 financial year. The performance management processes for the 2022/23 financial year were still underway by 31 May 2023. Therefore, an estimated provision had to be raised instead of an accrual, refer to Note 11 for the current year's provision raised.

11. PROVISIONS

Reconciliation of provisions - 2022/2023

	Opening Balance	Additions	Utilised during the year	Total
Leave provision	1 671	1 062	(764)	1 969
Performance bonus	-	3 139	-	3 139
	1 671	**4 201**	**(764)**	**5 108**

Reconciliation of provisions - 2021/2022

	Opening Balance	Additions	Utilised during the year	Total
Leave provision	1 671	(555)	(1 116)	1 671

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

For the 2022/23 financial year, this process has not been concluded. Based on this, a provision was therefore raised instead of an accrual due to the uncertainty in the value to be raised. The provision estimated was based on the prior year's finalised ratings and the current year packages. For new employees that qualify the estimated rates will be based on the Remuneration Policy and these will be pro-rated for the months employed.

12. FEES EARNED

	2023 '000	2022 '000
Filing fees earned from cases registered	18 472	16 310

Fees earned relates to filing fees earned from mergers filed at the Commission in terms of the MOA with the Commission whereby the Tribunal receives 30% of the fees from large mergers and 5% of intermediate merger fees filed. The increase in fees earned as compared to the prior year is as a result of an increase in cases filed during the current financial year. This is a favourable indication that economic activity is increasing therefore merger activity is increasing.

13. OTHER INCOME

Insurance refund	22	1

Included in other income is the cash-equivalent insurance replacement of a laptop that was stolen during the financial year.

14. INTEREST INCOME

Bank deposits	1 865	840

Interest received relates to interest earned on the two bank accounts of the Tribunal. The increase in interest earned as compared to the prior year, was mainly due to both an increase in rates over the financial year and a higher retention of funds from the prior year.

15. GOVERNMENT GRANT AND SUBSIDIES

	2023 '000	2022 '000
Department of Trade, Industry and Competition	42 286	36 970

An operating grant is received directly from the Department of Trade, Industry and Competition by the first quarter of the financial year. The increase from the prior year is linked to a CPI inflation increase as determined in the Medium-Term Expenditure Framework.

16. EMPLOYEE RELATED COSTS

Basic salaries	18 478	14 001
Performance bonus and service awards	2 596	1 468
Medical aid-company contributions	865	786
Statutory contributions	249	193
Group Life Insurance	356	286
Other salary related costs	415	303
Defined contribution pension plan expense (seeNote23)	1 281	1 022
Executive management	13 526	11 476
	37 766	**29 535**

The variance in employee costs is due to a combination of both annual inflatory increases and two new appointments such as Chief Financial Officer and Senior Competition Law Counsel. There are a number of vacancies that continued into the 2022/23 financial year, however, the recruitment processes for these positions had commenced towards the end of the financial year and should be finalised in the 2023/24 financial year.

17. DEPRECIATION AND AMORTISATION

Depreciation		
Furniture and fittings	87	87
Motor Vehicles	12	11
Office equipment	1	5
IT equipment	298	301
Photocopiers(leases)	96	153
Amortisation		
Computer equipment	412	416
	906	**973**

Overall decrease is as a result of a combination of both the disposal of obsolete equipment and the extended useful lives of some of the electronic equipment.

18. FINANCE COSTS

Finance lease	17	11

The Tribunal is leasing two photocopiers under a finance leases. The average lease period is 3 years and the average effective borrowing rate used is 9.75% per annum. The effect of the change in interest rates during the year were considered and the impact was immaterial therefore no adjustments were made.

19. ADMINISTRATIVE EXPENSES

	2023 '000	2022 '000
Audit and Risk Committee members' fees	201	222
Building occupation	6 830	5 674
COVID-19 expenses	-	29
External audit fees	685	987
General expenses	830	475
IT Expenses	1 811	1 876
Internal audit fees	425	346
Travel and subsistence	98	47
	10 880	**9 656**

Audit and Risk Committee members fees - Variance as compared to the prior year is mainly due to the resignation and retirement of the members during the year. These vacancies were subsequently filled towards the last two quarters of the year.

Building occupation - These costs relate to the occupational rental paid to Department of Trade, Industry and Competition for use of the building. The increase from the prior year is mainly due to the general escalation increase of rental as per the lease agreement.

COVID-19 expenses - Variance due to an overall decrease in protective wear and sanitisers as the restrictions were eased in the previous year.

External audit fees - External audit fees relates to the external audit conducted by the Auditor-General. The decrease from the prior year is mainly due to a change in the method used in the previous year's audit to a limited assurance audit. This resulted in a reduction of the hours used by the audit team which therefore reduced the overall cost.

General expenses - General expenses includes other miscellaneous expenses such as consumables usage, publications, workmen's compensation and vehicle costs. The increase from the prior year is mainly due to the return of employees permanently back to the office and an increase in the number of physical hearings held.

IT Expenses - IT expenses includes the IT related costs such as back-up services and archiving costs. The variance from the prior year is mainly due to a slight decrease in the back-up services offered in the current year. A new service provider was appointed in the current year at a cheaper rate than the previous year.

20. LOSS ON DISPOSAL OF ASSETS

Loss on disposal of asset	137	30

Certain computer equipment and furniture and fittings were disposed of during the year as they were obsolete and no longer in good working condition. Included in the disposals is a laptop that was stolen during the year and replaced through the insurance.

21. OTHER OPERATING EXPENSES

Consultants, contractors and special services	2 571	1 543
Staff training and development	1 110	106
Fees paid to Part-time Tribunal members	7 674	3 320
Maintenance, repairs and running costs	94	67
	11 449	**5 036**

22. CASH GENERATED FROM OPERATIONS

	2023 '000	2022 '000
Surplus	1 490	8 880
Adjustments for:		
Depreciation and amortisation	906	973
Loss on disposal of assets	137	30
Movements in operating lease liability	-	(1 157)
Movements in provisions	3 437	-
Other income-Insurance refund	(22)	-
Changes in working capital:		
Inventories	(12)	-
Receivables from exchange transactions	(1,583)	644
Prepayments	(192)	45
Payables from exchange transactions	(741)	882
	3 420	**10 297**

23. EMPLOYEE BENEFIT OBLIGATIONS

DEFINED CONTRIBUTION PLAN

The Tribunal Pension Fund, which is governed by the Pensions Fund Act of 1956 as amended, is a compulsory defined contribution plan for all employees in the Tribunal. The fund is administered by Sanlam Retirement Fund Administrators. The Tribunal as a participating employer on the Sanlam Umbrella Fund. The scheme offers the members various investment options for their pension fund contributions. As an insured fund, the Sanlam Umbrella Fund and thus the Competition Tribunal as participating employer, complies with regulation28 of the Pension Fund Act of 1956 (see Note 16).

24. INCOME TAX EXEMPTION

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

25. FINANCIAL RISK MANAGEMENT

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

CREDIT RISK

The Tribunal trades only with recognised, creditworthy third parties. It is the Tribunal's policy that all customers who wish to trade on credit terms are subject to credit verification procedures. In addition, receivables balances are monitored on an ongoing basis with the result that the Tribunal's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed in Note 5. There is no significant concentration of credit risk within the Tribunal.

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

EXPOSURE TO CREDIT RISK

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

	2023 '000	2022 '000
Cash equivalents	22 944	20 381
Receivables	2 497	911
Total	**25 441**	**21 292**

25. FINANCIAL RISK MANAGEMENT (CONTINUED)

CONCENTRATION OF CREDIT RISK

The maximum exposure to credit risk for financial assets at the reporting date by credit rating category was as follows: The Tribunal's cash is either held in an ABSA current account or invested with the Corporation for Public Deposits.

2022/2023	Rated and Government '000	Unrated '000
Cash equivalents	22,944	-
2021/2022	**Rated and Government '000**	**Unrated '000**
Cash equivalents	20,381	-

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

2022/2023	Neither past due nor impaired '000	Past due but not impaired - less than 2 months '000	Carrying value '000
Cash equivalents	22 944	-	-
Receivables	2 497	-	-
2021/2022	**Neither past due nor impaired '000**	**Past due but not impaired- less than 2 months '000**	**Carrying value '000**
Cash equivalents	20 381	-	-
Receivables	911	-	-

MARKET RISK

Market risk is the risk in changes of market prices such as the interest rate which will affect the value of the financial assets of the Tribunal.

INTEREST RATE RISK

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

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

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

25. FINANCIAL RISK MANAGEMENT (CONTINUED)

SENSITIVITY ANALYSIS

		Increase/(decrease) in net surplus for the year	
2022/2023	Change in Investments	Upward change	Downward change
Cash equivalents	1.00%	229	(229)
2021/2022			
Cash equivalents	1.00%	203	(203)

LIQUIDITY RISK

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

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

2022/2023	Carrying amount '000	Total cash flow '000	Contractual cash flow within 1 year '000	Contractual cash flow between 1 and 5 year '000
Finance lease obligation	138	138	138	-
Payable from exchange transactions	1 304	1 304	1 304	-

2021/2022	Carrying amount '000	Total cash flow '000	Contractual cash flow within 1 year '000	Contractual cash flow between 1 and 5 year '000
Finance lease obligation	25	25	25	-
Payable from exchange transactions	2 049	2 049	2 049	-

FINANCIAL INSTRUMENTS

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

Financial Instrument		2023 '000	2022 '000
Cash equivalents	Financial asset measured at fair value	22 944	20 381
Trade debtors	Financial asset measured at fair value	2 497	911
Payables from exchange transactions	Financial liabilities measured at fair value	1 304	2 049

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

26. COMPARATIVE FIGURES

There were no significant adjustments to the prior year figures.

27. FRUITLESS AND WASTEFUL EXPENDITURE

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

28. IRREGULAR EXPENDITURE

	2023 '000	2022 '000
Add: Irregular Expenditure - current	92	-

The irregular expenditure incurred in the current year is as a result of using a single broker to obtain three quotes for insurance services. The irregular expenditure relates to the Tribunal's previously accepted practice of obtaining three quotations through a broker instead of three seperate quotations . The broker had no financial interest on the three-quotation process and therefore resulted in no service providers being disadvantaged by the process. The process was classified as and approved as a deviation from normal supply chain processes.

In future, the Tribunal will obtain quotations through a RFQ process which will not result in the reoccurance of the irregular expenditure.

29. RELATED PARTIES

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

RELATED PARTY BALANCES

Amounts included in trade receivables regarding related parties

	2023 '000	2022 '000
Filing fees due from the Commission	2 354	888

RELATED PARTY TRANSACTIONS

The Competition Commission		
Filing fees	18 472	16 310
Facility fees	(728)	(728)
The Department of Trade, Industry and Competition		
Unitary payments	(6 830)	(6 830)
Administrative costs	(11)	(4)
The Department of Trade, Industry and Competition		
Government grant	42 286	36 970

9. RELATED PARTIES (CONTINUED)

REMUNERATION OF EXECUTIVE MANAGEMENT

2022/2023

Name	Basic salary	Performance bonus provided for	Allowances	Leave paid	Statutory benefits	Other Salary benefits	Total
Full-time member/Chairperson: M Mazwai	3 322	227	22	-	31	52	3 654
Full-time member/Deputy Chairperson: L Mncube (Appointed February 2023)	616	200	4	-	9	9	838
Full-time member: Y Carrim (Resigned December 2022)	1 676	-	15	369	20	34	2 114
Full-time member: A Wessels	3 041	197	22	-	29	47	3 336
Chief Operating Officer: O Josie (Resigned August 2022)	937	-	17	335	14	18	1 321
Chief Operating Officer: G Qotywa (Appointed October 2022)	1 179	152	11	-	12	24	1 378
Chief Financial Officer: S Moonsamy (Appointed November 2022)	853	-	8	-	9	16	886
	11 625	**776**	**98**	**704**	**123**	**200**	**13 526**

2021/2022

Name	Basic salary	Performance bonus	Statutory benefits	Other salary benefits	Total
Full-time member/Chairperson: M Mazwai	2 443	-	24	70	2 537
Full-time member/Deputy Chairperson: E Daniels	1 867	-	18	26	1 911
Full-time member: Y Carrim	2 276	-	22	67	2 365
Full-time member: A Wessels	2 212	-	22	64	2 298
Chief Operating Officer: O Josie	2 146	135	21	63	2 365
	10 944	**135**	**107**	**290**	**11 476**

Mr. L Mncube was appointed as the Deputy Chairperson from 01 February 2023.
Included in basic salaries for the Full-Time members is back-pay that was paid in the current year relating to the prior year.
The leave payout expenses incurred in 2022/23 relates to leave balances at the time of exit from the Tribunal.

30. CONTINGENT LIABILITIES

In terms of Section 53(3) of the PFMA, a public entity may not accumulate surplus funds without approval from the National Treasury. Approval will be requested from the National Treasury to retain estimated cash surpluses amounting to R19 million to fund projects in the future financial years. As approval has not yet been granted, this is reflected as a contingent liability.

31. CHANGE IN ESTIMATE

PROPERTY, PLANT AND EQUIPMENT

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

32. COMMITMENTS

	2023 '000	2022 '000
AUTHORISED OPERATIONAL EXPENDITURE		
Already contracted for but not provided for		
• Operational expenditure	2 579	3 168
Not yet contracted for and authorised		
• Operational expenditure	116	500
Total operational commitments		
Already contracted for but not provided for	2 579	3 168
Not yet contracted for and authorised for	116	500
	2 695	**3 668**
Total commitments		
Authorised operational expenditure	**2 695**	**3 668**

Already contracted for but not provided for relates to contracts entered into for operational services through procurement processes. These contracts were still valid as at the 31 March 2023 and are multi-year contracts.

Not yet contracted for and authorised relates to purchase orders that were approved but not yet contracted for as at year end

Operating leases-as lessee (expense)		
Minimum lease payments due		
- within one year	5 259	6 830

Operating lease payments represent rentals payable by the Tribunal for office space rental. The lease agreement entered into with the Department of Trade, Industry and Competition was extended on the 31 March 2023 until 31 March 2024.

33. BUDGET DIFFERENCES

MATERIAL DIFFERENCES BETWEEN BUDGET AND ACTUAL AMOUNTS

Filing fees: The Tribunal's budget estimate for filing fees from the Commission is based on expected merger activity during a particular financial year. Given the anticipated decline in merger activity due to the COVID-19 pandemic, the initial estimate was revised downwards. However, merger activity increased during the year and this resulted in an increase in filing fees received being R1.9 million (11%) of the budgeted amount.

Employee related costs and other operating expenditure: The total budget variance for the year relates to employee related costs and other operating expenses. The variance on employee related costs is mainly the result of the vacancies. The variance on other operating expenditure relates to other projects to be completed by the Tribunal.

Net surplus: The overall difference between the final budget and the actual as at 31 March 2023 is R793,000 which comprises of revenue received that is higher than was budgeted for.

Total expenditure: Incorporated in the operational expenditure is expenditure that was incurred against the approved surplus that was retained from National Treasury from the 2021/22 financial year.

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