



competitiontribunal
south africa

COMPETITION TRIBUNAL ANNUAL REPORT

2012

Promoting competition for the benefit of consumers



WHAT WE DO

The Competition Tribunal (the Tribunal) is an independent statutory body set up to adjudicate mergers and prohibited practices.

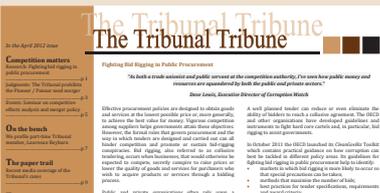


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The past year has seen a marked increase in the number of matters we considered. The most notable was the 47.3% increase in large mergers.

- Norman Manoim, 31 May 2012



part

2011-12

ONE

competition tribunal annual report

Reports



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

REPORT ON THE FINANCIAL STATEMENTS

Introduction

1. I have audited the financial statements of the Tribunal set out on pages 71 to 95, which comprise the statement of financial position as at 31 March 2012, the statement of financial performance, statement of changes in net assets and the cash flow statement for the year then ended and the notes, comprising a summary of significant accounting policies and other explanatory information.

Accounting authority's responsibility for the financial statements

2. The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No.1 of 1999) (PFMA), and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor-General's responsibility

3. My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA), the *General Notice* issued in terms thereof and International Standards on Auditing. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

4. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an

opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

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

Opinion

6. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Tribunal as at 31 March 2012, and its financial performance and cash flows for the year then ended in accordance with SA Standards of GRAP and the requirements of the PFMA.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

7. In accordance with the PAA and the *General Notice* issued in terms thereof, I report the following findings relevant to performance against predetermined objectives, compliance with laws and regulations and internal control, but not for the purpose of expressing an opinion.

Predetermined objectives

I performed procedures to obtain evidence about the usefulness and reliability of the information in the annual performance report as set out on pages 35, 43 and 59 of the annual report.

The reported performance against predetermined objectives was evaluated against the overall criteria of usefulness and reliability. The usefulness of information in the annual performance report relates to whether it is presented in accordance with the National Treasury annual reporting principles and whether the reported performance is consistent with the planned objectives. The usefulness of the information further relates to whether indicators and targets are measurable (i.e. well defined, verifiable, specific, measurable and time bound) and relevant as required by the *National Treasury Framework for managing programme performance information*.

The reliability of the information in respect of the selected objectives is assessed to determine whether it adequately reflects the facts (i.e. whether it is valid, accurate and complete).

There were no material findings on the annual performance report concerning the usefulness and reliability of the information.

Additional matter

8. Although no material findings concerning the usefulness and reliability of the performance information were identified in the annual performance report, I draw attention to the following matter.

Achievement of planned targets

9. Of the total number of planned targets, only seven targets were achieved during the year under review. This represents 50% of total planned targets. This was mainly due to unforeseen delays regarding hearing dates and the complexities of certain cases. Reasons for deviation / non-achievement of targets are detailed in the annual performance report.

Compliance with laws and regulations

10. I performed procedures to obtain evidence that the entity has complied with applicable laws and regulations regarding financial matters, financial management and other related matters. My findings on material non-compliance with specific matters in key applicable laws and regulations as set out in the *General Notice* issued in terms of the PAA are as follows:

Procurement and contract management

11. Certain goods and services with a transaction value between R2 000.00

and R10 000.00 were procured without obtaining the required price quotations, as required by Treasury Regulation 16A6.1.

Expenditure management

12. The accounting authority did not take effective steps to prevent irregular expenditure disclosed in note 32 to the financial statements, as per the requirements of section 51(1)(b)(ii) of the PFMA.

Internal control

13. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with laws and regulations. The matters reported below under the fundamentals of internal control are limited to the significant deficiencies that resulted in the findings on the compliance with laws and regulations included in this report.

Financial and performance management

14. The non-compliance with SCM legislation could have been prevented had compliance been properly reviewed and monitored.

Auditor - General

Pretoria

31 July 2012



**AUDITOR - GENERAL
SOUTH AFRICA**

Auditing to build public confidence

Report of the Audit Committee for the year ended 31 March 2012

We are pleased to present our report for the financial period ended 31 March 2012.

The audit committee of the Tribunal (the committee) consists of the members

listed hereunder and is required to meet at least four times a year as per its approved terms of reference. During the year under review the committee held five meetings.

The committee's meetings have regularly included the internal auditors and representatives from the Office of the Auditor-General South Africa.

Table 1: Members of the audit committee

NAME OF MEMBER	STATUS	MEETINGS HELD	MEETINGS ATTENDED
V. Nondabula (AC chairperson: term ended in September 2011, and renewed in January 2012 for one year)	Non executive	5	5
K. Teixeira (Risk chairperson- January 2011)	Non executive	5	5
M. Ramataboe (appointed - October 2010)	Non executive	5	5
N. Mhlongo (appointed - October 2010)	Non executive	5	4
S. Gounden (appointed - October 2010)	Non executive	5	4

AUDIT COMMITTEE RESPONSIBILITY

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

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

Accordingly, the committee operates in accordance with the terms of the said charter and is satisfied that it has discharged its responsibilities in compliance therewith.

THE QUALITY OF IN-YEAR MANAGEMENT, MONTHLY AND QUARTERLY REPORTS SUBMITTED IN TERMS OF THE PFMA.

The committee is satisfied with the content and quality of the quarterly reports prepared and issued by the

accounting authority of the Tribunal during the year under review.

THE EFFECTIVENESS OF INTERNAL CONTROL

The system of controls is designed to provide cost effective assurance that assets are safeguarded and that liabilities and working capital are efficiently managed. In line with PFMA and the King III Report on Corporate Governance requirements, an internal audit provides the committee and management with assurance that the

internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the internal auditors, the audit report on the annual financial statements any qualification and/or the emphasis of the

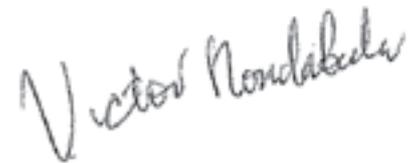
matter and the management letter of the Auditor-General, it was noted that no significant or material non compliance with prescribed policies and procedures have been reported. Accordingly, we can report that the system of internal control for the period under review was efficient and effective.

EVALUATION OF ANNUAL FINANCIAL STATEMENTS

The committee has:

- reviewed and discussed the draft annual financial statements with management before submission to the Auditor-General;
- reviewed and discussed the performance information with management; and
- reviewed the changes in the accounting policies and practices.

The committee would like to highlight that the Tribunal is highly dependent on the approval of the retention of accumulated surplus from the National Treasury, as well as the approval of the annual grants from the Economic Development Department (EDD), in order to maintain its going concern status.



Victor Nondabula

Chairperson of the audit committee

31 July 2012

The committee operates in accordance with the terms of Section 55 (1) of the PFMA and Treasury regulations 27.1.7 and 27.1.10(b) and (c)



Chairperson's Report

1. Introduction

The past year has seen a marked increase in the number of matters we considered. The most notable, was the 47.3% increase in large mergers (from 55 the previous year to 81 this year). In addition, nine intermediate mergers were referred to the Tribunal for consideration. In the previous year only four were referred to us.

This figure is reflective of the increase in merger activity, post the 2008 slump, and hopefully portends an increase in business confidence in the economy.

Of course the more mergers that are notified the greater likelihood they will face challenge. In this year we approved 86.3% of the mergers without conditions. This is a slightly lower figure than the 10 year average of 91.24% for the period ending 2010/2011, but does not suggest that more problematic mergers are being notified. We also saw a slight increase in some other matters we have heard (procedural matters and consent orders in prohibited practice cases) but certainly not as marked as the increase in mergers.

The increase in merger activity hopefully portends an increase in business confidence in the economy

Norman Manoim,
Chairperson

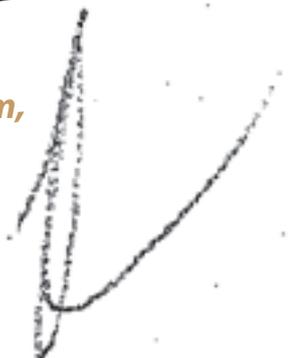


Table 2: Percentage change in the types of cases heard

TYPE OF CASE	2012/2011	% CHANGE	2011/2010
Large mergers	81	47.27	55
Intermediate mergers	6	500	1
Complaint referrals	5	(37.50)	8
Consent orders	27	22.70	22.72
Interim relief applications	1	-	-
Procedural matters	38	26.30	26.67
TOTAL	158	-	116

Administrative penalties associated with the the consent orders and procedural matters issued totalled R549 m. This is slightly down on the figure for last

year which was R787 m. The largest penalty was imposed on Lafarge Industries SA (Pty) Ltd, being R149 m for contravening sections 4(1)(b)(i) and (ii)

of the Competition Act 89 of 1998 (the Competition Act).

Fig 1: Penalties imposed in the year under review



During the current financial year we heard 158 matters over 146 hearing days. This represented an increase of 36.21% in the number of matters and a 36.45% increase in the number of hearing days over the previous financial year.

There has been a decline in our turn-around figures, both as regards getting orders out and the writing of decisions. This is attributable to the increase in our workload as these figures set out above show, but also to a reduction of the number of active Tribunal members available to us to hear matters and write decisions.

At present the Tribunal has three vacancies amongst its Tribunal members. The appointment of members, as opposed to staff, is an

executive prerogative so we cannot appoint new members ourselves. We have approached the EDD to consider recommending further appointments to the Presidency to fill these vacancies and they are treating this request sympathetically.

Two vacancies that came about in the present financial year were due to the resignations of our deputy chairperson, Mbuyiseli Madlanga, and part-time member Thandi Orleyn. Both were serving their second terms as Tribunal members but due to other work commitments have had to resign. We thank both of them for their years of valuable service to the Tribunal. They will be missed.

Important cases we heard during this financial year were the Wal-Mart / Massmart merger: a merger approved subject to public interest conditions, but later appealed to the Competition

Appeal Court (CAC), who have approved some conditions and varied others; the Pioneer / Pannar merger: a merger in the modified seeds industry, which we prohibited but later, on appeal to the CAC, was varied to a conditional approval; the Kansai / Freeworld merger: a merger in the paints industry which we approved, subject to certain conditions agreed between the Commission and merging parties; and the Aon / Glenrand merger: a merger we approved subject to conditions restricting the number of post merger retrenchments.

Several prohibited practice cases heard during this period await our decision so further comment is not yet appropriate. However, we can mention that some of these cases raise questions around the approach to quantification of penalties for alleged cartel activities and, in another, alleged abuse of dominance in a sector of the telecommunications industry.

In April 2012, after the period under review, an important decision was delivered by the Constitutional Court in the Senwes matter which deals with the procedural powers of the Tribunal. This is the first Competition Act case to reach the court. The court interpreted the Tribunal's powers broadly, allowing it to become the master of its own proceedings, subject of course to being fair to all parties concerned.

Although adjudication is our core business, and we have been very active on this front as the statistics above show, we have also been busy on other non-core activities.

We have liaised with other competition authorities and, in particular, would mention that we hosted a study tour of officials of the Fair Competition Tribunal of Tanzania for a week in August 2011 which was highly successful and will lead to future cooperation between us.

We offered vacation internships to 11 students during 2011/2012. While we are not in a position to offer permanent positions to these interns we are looking at developing this programme further by retaining the same students in each vacation period until they graduate or offering 12 month learnerships and simultaneously exposing them to other aspects of public sector work through workshops dealing with a variety of topics such as corporate governance.

Much work this year has been devoted to developing a case management system. The purpose of this system is to place all our case records and financial information onto an integrated IT platform which will be able to both retain records and call up information required. This system will provide management with the kind of information required to improve our knowledge of our performance way beyond the present capacity of our IT

system. We expect this system, which is novel in many respects, to become fully operational in July this year.

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 2012. The financial statements presented in part 6 of this report 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 PFMA to the extent indicated in the accounting policies and include amounts based on judgments and estimates made by management. The accounting authority, in consultation with the executive committee, prepared the other information included in the annual report and is responsible for both its accuracy and its consistency with the financial statements.

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

The financial statements have been audited by an independent auditor, the Auditor-General South Africa. The auditor was given unrestricted access to all financial records and related data, including minutes of all meetings of the executive committee, staff and the case management committee. The accounting authority believes that all representations made to the auditor during the audit are valid and appropriate.

The audit report of the Auditor-General is presented in part 1.

The accounting authority initially approved and submitted the financial statements to the Auditor-General on 31 May 2012.

3. Nature of business

The Tribunal is one of three institutions constituted in 1999 in terms of the Competition Act to promote and maintain competition in the economy and to ensure compliance with the Competition Act's provisions.

Since its inception the Tribunal has been listed as a national public entity in terms of the PFMA.

The Tribunal derives its mandate from the Competition Act and has jurisdiction throughout South Africa. The Tribunal functions independently both of government and of the Commission, which is the investigative and prosecutorial arm of the competition authorities. The Tribunal's decisions are enforceable on a similar basis to those of the High Court, and are subject to appeal or review by the CAC.

Details of the Competition Act and of the Tribunal's rules of procedure can be found on the Tribunal website, on which the decisions in its cases are also posted.

The Tribunal's main functions are to regulate mergers and to adjudicate cases concerning restrictive practices. The ten members of the Tribunal, appointed by the President are as follows:

- Norman Manoim chairperson (full-time);
- Mbuyiseli Madlanga deputy chairperson (part-time: resignation effective March 2012);
- Yasmin Carrim (full-time);
- Andreas Wessels (full-time);

- Andiswa Ndoni (part-time);
- Lawrence Reyburn (part-time);
- Merle Holden (part-time);
- Thandi Orleyn (part-time: resignation effective March 2012);
- Medi Mokuena (part-time);
- Taki Madima (part-time).

These members are appointed on a full-time or part-time basis depending on the needs of the Tribunal. Cases are heard by panels comprising three of its members. Cases are typically brought before the Tribunal by the Commission, but in certain circumstances private parties may engage the Tribunal directly.

When a matter is referred to the Tribunal it holds hearings. In a merger case its decision will be to approve the merger, with or without conditions, or to prohibit the merger. In prohibited practice cases the Tribunal may, if it finds the Competition Act has been contravened, impose any of a wide range of remedies, including the imposition of an administrative penalty or an order of divestiture.

4. Objectives and targets

Because of its quasi judicial nature the Tribunal is precluded from setting proactive objectives or embarking on focused interventions which target any particular sector or emphasise any specific criterion. Complaint referrals and notified mergers are the only determinants of the Tribunal's case load. Each case is adjudicated on its merits and the Tribunal has no control over the number and types of cases brought before it.

In reviewing our reported performance information at the end of parts 2, 3 and 4 of this report, it is recorded that we have failed to meet seven of our 15 identified targets. Reasons for not meeting these targets are given in these tables however a further explanation is required to put this in context. It would be wrong to assume that all the targets are of equal significance.

Of the 15 targets we are required to meet only eight relate to the core function of the Tribunal which is to hold hearings and adjudicate matters. The Tribunal successfully achieved six of these. The two that were not met related to the ten day time period for setting down of large mergers once they had been filed with us and second, the issuing of orders in procedural matters. In the former, delays occur for any of the following reasons:

- i. we tend to hear uncontested mergers on Wednesdays and the earliest Wednesday may fall after the 10 days;
- ii. parties are not ready for a specified date or request the matter be set down on a specific date; and
- iii. the heavy case load and unavailability of Tribunal members to sit on panels.

As regards the latter, in many procedural matters the order and the reasons are issued simultaneously, and as these matters often involve complex points of law and require extensive research, the completion of reasons may be delayed. In addition, the lack of capacity has meant that Tribunal members are sitting on a number of panels and have less time available to them to write reasons.

The remaining five targets we have not met relate to purely operational issues and do not adversely affect any stakeholders. To give one example, the failure to place decisions on our website within 24 hours, does not prejudice the parties to the case, who have the most interest in the outcome, as they receive the decisions directly from us on the day the decision is assented to.

Despite these minor shortcomings I am confident that the Tribunal staff are continuously striving to meet and improve on the set targets as well as make improvements where required.

5. Financial highlights and performance

	2012	2011
	R'000	R'000
Revenue	25 190	20 576
Other income	12	31
Investment income	1 191	1 206
Total revenue	26 393	21 813
Total expenditure	(23 287)	(19 960)
Net surplus	3 106	1 853
Total assets	28 933	25 186
Total liabilities	2 667	2 026

Revenue for the year ended 31 March 2012 increased by 20.99%. Filing fee income increased by 44.08% while there was a 11.38% increase in the grant received from the EDD.

In terms of a memorandum of agreement existing between the two institutions, the Commission pays the Tribunal 30% of the filing fees received by the Commission for large mergers and 5% of the filing fees received for intermediate mergers.

Cases are typically brought before the Tribunal by the Commission, but in certain circumstances private parties may engage the Tribunal directly.

During the current financial year the Tribunal has continued to attempt to contain expenditure. Expenditure (net of capital expenditure) increased by 16.67%. The changes in expenditure are discussed more fully later in the report.

At the beginning of the financial year the Tribunal had accumulated surpluses of approximately R 23.16 m and these have increased by just over R 3.1 m during the current financial year.

In terms of Section 53(3) of the PFMA, entities are not allowed to accumulate surpluses unless approved by National Treasury. The Tribunal will again request permission to retain the surpluses generated during this financial year. The Tribunal in its budget submissions for the MTEF has reflected a drawing down of these surpluses to fund budgeted expenditure.

While the Tribunal can and does receive income based on filing fees received by the Commission, it cannot rely on this as its sole income source and the Tribunal will therefore continue to seek approval from National Treasury to retain its surplus as well as seek grant funding from the government to ensure sustainability of the institution for the foreseeable future.

6. Events subsequent to financial position date

No events took place between the year-end date, 31 March 2012, and the date on which the financial statements were signed that were sufficiently material to warrant disclosure to interested parties.

7. Executive committee members emoluments

The related parties note (note 25) in the annual financial statements reflects the total annual remuneration (cost to company) received by the full-time

members and managers of the Tribunal. The chairperson, one full-time member and all the managers have served on the executive committee at some point during the period under review.

The Tribunal is responsible for its employees' contributions to group life insurance as well as for the administration costs associated with the pension fund. These figures have been included in the stated total remuneration, as has any back pay received. Performance bonuses for staff members are reflected separately. Full-time Tribunal members do not receive performance bonuses.

Full-time Tribunal member's salaries are adjusted annually following adjustments made to the Judge President and Judges of the High Court. During the year under review full-time members were awarded an annual adjustment of five percent bringing the annual package to R1 871 038.81 for the chairperson and R1 625 064.34 for the full-time members. This adjustment was made in October 2011 effective 1 April 2011.

8. Executive committee

The composition of the executive committee was as follows during the period under review:

- Norman Manoim, chairperson
- Yasmin Carrim, full-time Tribunal member
- Janeen de Klerk, head of corporate services
- Lerato Motaung, registrar
- Rietsie Badenhorst, head of research

The executive committee continues to be responsible for the development and formulation of a strategic policy framework, performance strategy and goals for the operational management and administration of the Tribunal. The committee's main finance related

responsibility is to ensure that services are rendered efficiently and economically within the framework of existing operational policies and within the Tribunal's budget and in accordance with a five-year rolling strategic plan.

9. Number of employees

At the year-end the Tribunal's personnel complement consisted of three full-time members and 14 staff members.

10. Irregular and fruitless and wasteful expenditure

In the current financial year we are reflecting an amount of R1 060.00 as fruitless and wasteful expenditure. This relates to traffic fines incurred by a previous employee and sent to the Tribunal after the employee had left the Tribunal as well as to a fine incurred where the Tribunal was unable to establish who had been driving the vehicle on that day.

During the current financial year the Tribunal procured services with a transaction value between R2 000.00 and R10 000.00 without obtaining price quotations as required by Treasury Regulation 16A6.1. These services included travel agents fees (R39 147.00), car hire (R32 950.00), catering (R16 380.00) and accommodation (R72 508.00). Valid reasons for using these services were noted and I signed a deviation in February 2012 condoning this procurement. However a deviation cannot be applied retrospectively and we have therefore reflected R160 985.00 as irregular expenditure.

In each of these instances there was no deliberate intention to circumvent procurement processes but rather a delay in requesting the deviation. I am confident that the corporate services department is giving its full attention to resolving issues pertaining to supply chain management.

11. Management fee paid to the Commission

The Commission and the Tribunal share premises and certain services. In terms of a memorandum of agreement (MOA) signed between the two institutions the Tribunal pays a monthly management fee to the Commission for services related to the use of these premises. The management fee for the period under review was R39 041 per month. The MOA and the management fee are reviewed annually.

A unitary payment, based on amounts raised by the Department of Trade and Industry (the dti) and payable by the Commission, is made on a monthly basis by the Tribunal to the Commission in respect of the premises occupied by

the Tribunal as well as related services provided by the dti. No formal written agreement exists between the dti and the Commission however the amounts raised by the dti are considered to be market related.

There were no substantial changes in the nature of the billing from the Commission for the year under review.

12. Address

BUSINESS ADDRESS

Building C (Mulayo Building)
77 Meintjies Str
Sunnyside
0132

POSTAL ADDRESS

Pvt. Bag X24
Sunnyside
0132

13. Going concern

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

Norman Manoim

Chairperson
31 May 2012



During the current financial year we heard 158 matters over 146 hearing days. This represented an increase of 36.21% in the number of matters and a 36.45% increase in the number of hearing days over the previous financial year.



Aim: To promote and maintain competition within South Africa through the implementation of the Competition Act.



part

2011-12

TWO

competition tribunal annual report



Tribunal Hearings And Decisions



Tribunal Hearings and Decisions

INTRODUCTION

The Competition Act promotes competition primarily by prohibiting and penalising restrictive practices and by regulating merger activity. Assessing restrictive practices requires the competition authority to look back at conduct that has already taken place and take corrective action where the restrictive conduct is proven. However merger regulation requires the authority to look to the future and predict what is likely to take place should a transaction be approved and, in this way, attempt to prevent anti-competitive behaviour before it happens. It was the limitations of this forward-looking assessment that the Tribunal chairperson referred to in the Wal-Mart / Massmart decision when

he stated that the Tribunal's job in merger control was not to make the world a better place, only to prevent it becoming worse as a result of a transaction.

All the cases highlighted in the chairperson's report have been mergers and thus required the Tribunal to make an assessment about likely future events on the basis of the concerns expressed by the Commission (for example the Aon / Glenrand merger), the fears of intervening parties (such as in the Pioneer / Pannar merger and the Wal-Mart / Massmart merger) and potentially false concerns aimed at influencing the competition authority to decide in a particular direction (for example in the Kansai / Freeworld merger). In some cases

the Tribunal found these fears to be well warranted but in other matters it found them to be over stated.

Public interest was a prominent theme the Tribunal faced in the reporting year. While there was much public debate on the subject during the Wal-Mart / Massmart merger, in the end the Tribunal did not have to decide the limits of public interest in merger control because it accepted the undertakings tendered by the merging parties on the assumption that the public interest grounds had been established.

THE PIONEER / PANNAR MERGER

...whilst the proposed merger may be in the best interest of Pannar's shareholders, it would not be in the best interest of South African maize farmers and consumers of maize products since it would result in a likely substantial prevention or lessening of competition in the relevant maize seed market(s).

– **A Wessels**, Tribunal panel member in the Pioneer / Pannar merger



Small-scale farmers protected in maize seed merger decision

On 14 October 2011 the Tribunal prohibited the intermediate merger between Pioneer Hi-Bred International Inc (Pioneer) and Pannar Seed (Pty) Ltd (Pannar) following a three-week hearing into the transaction.

In this merger, Pioneer sought to acquire 80% of the issued share capital of Pannar. The Commission initially prohibited the deal in December 2010 after which the merging parties requested the Tribunal to consider it and approve it. Two NGO's intervened in the Tribunal's proceedings, namely Biowatch South Africa (Biowatch) and The African Centre for Biosafety (ACB).

Pioneer was a developer and supplier of advanced plant genetics to farmers worldwide. It had one of the largest maize germplasm pools in the world and its activities included extensive research and product development using technologies and innovations to develop hybrid maize and other commercial seeds. Pannar was involved in the breeding, development and sale of improved seed varieties including hybrid maize seed adapted to African conditions. According to the merging parties the merger would enable Pioneer to enhance the value and unblock the potential of Pannar's proprietary germplasm and other assets in South Africa and sub-Saharan Africa.

Although both Pioneer and Pannar's activities extended to many seed varieties, the Tribunal's main area of concern in this transaction was the breeding, production and sale of maize seed in South Africa due to the strength of the merging parties positions in this area. There were three significant players in this market, namely, Monsanto South Africa (Pty) Ltd (Monsanto), the largest player, Pioneer, the second largest and Pannar, the third largest. Together these three players accounted for approximately 95% of South Africa's national hybrid maize seed market(s). Therefore after the merger, only two significant players would remain, that is Pioneer and Monsanto.

In the hearing, which ran from 12 – 30 September 2011, the Tribunal heard evidence from several factual and expert witnesses about the potential impact of the merger on the maize seed market in South Africa, including the potential effects on small and subsistence farmers.

The merging parties argued that the proposed merger held significant efficiency benefits and would create a stronger maize seed competitor which was critical to effective competition, given the increasing strength of Monsanto in the market.

THE PIONEER / PANNAR MERGER

They argued that Pioneer and Pannar had complementary germplasm pools and that Pioneer had the advanced breeding technologies that Pannar lacked in its breeding activities. According to the merging parties the dynamic efficiencies resulting from the deal would benefit maize farmers and consumers alike.

The Commission argued that, if approved, the proposed merger would lead to significant unilateral price increases, that the merger would increase the risk of tacit collusion between the merged entity and Monsanto and that the merging parties had overstated the benefits which were likely to arise from the merger. The Commission argued that the benefits would not offset the harm to competition.

ACB argued that an increase in maize seed prices, as a result of the proposed deal, would have a detrimental effect on small-scale commercial and subsistence farmers in South Africa.

During the hearing the merging parties tendered a set of conduct remedies aimed at addressing the Commission's competition concerns. These were, in essence, a three-year price cap on Pannar products and the licensing of certain Pannar plant materials to third parties.

Having considered evidence and arguments from the Commission, the merging parties and the ACB, the Tribunal found that:

- the proposed merger was likely to give rise to very significant anti-competitive unilateral price increases in the overall South African hybrid maize seed market;
- Pioneer and Pannar were significant and close competitors and the proposed transaction would therefore result in the removal of an effective competitor. The merger would bring a significant and permanent change to the market structure by reducing the number of competitors of significant size in the market from three to two players and increasing concentration in an already highly concentrated pre-merger market;
- the efficiencies claimed by the merging parties, namely, cost savings by Pannar from accessing Pioneer's global licensing agreements and dynamic efficiencies from merging their genetic pools and breeding technologies, were overstated. Moreover the claimed efficiencies were, in part, not specific to the merger and the claimed dynamic efficiencies would also not be achieved by the merged company within the next five years;
- the merger would indeed be detrimental to small-scale commercial and subsistence maize farmers. These farmers collectively made an important contribution to meeting South Africa's agricultural needs and it was not realistic to think they could switch to cheaper open pollinated varieties or OPVs since this would decrease the maize yields required to feed them, their families and their communities. Such switching would not be a desirable outcome from a public interest perspective since lower maize yields would not be in the best interest of these small businesses and black farmers. The notion that such potential switching could constrain price increases after the merger was simply not persuasive; and
- the conditions tendered by the merging parties did not address the structural competition concerns created by the proposed merger.

The Tribunal also considered the counter-factual should the transaction not proceed: Pannar could either continue to compete or it could search for a partnership with another international seed company that could grow its competitive position. The Tribunal found the last option to be a viable alternative. It concluded that Pannar would not let its germplasm become obsolete as opportunities existed for it to be commercially exploited through strategic partnerships with one or more other global seed companies.

Accordingly the Tribunal prohibited the transaction. The merging parties appealed the case to the CAC and the CAC has since approved the transaction with conditions.

The panel on the Pioneer / Pannar merger



Yasmin Carrim

(Full-time Tribunal member)

Yasmin Carrim, who presided over the Pioneer / Pannar hearing, has been a full-time Tribunal member since August 2004. Before joining the Tribunal, Yasmin was Group Executive: Regulatory Affairs at MTN. She also served as a councillor at ICASA and as a director at the law firm Cheadle Thompson and Haysom.



Andreas Wessels

(Full-time Tribunal member)

Andreas Wessels wrote the Pioneer / Pannar merger decision. He has been a full-time Tribunal member since August 2009 with more than 14 years experience in regulation. He has held various senior positions in the Competition Board, the Commission and the Netherlands Competition Authority.



Lawrence Reyburn

(Part-time Tribunal member)

Lawrence Reyburn, a part-time member since the Tribunal's inception, was part of the panel that decided the Pioneer / Pannar merger. He is a qualified patent attorney and worked in South Africa and in Europe for several years in the intellectual property and commercial fields.



Ipeleng Selaledi

(Case manager)

Ipeleng Selaledi, was the case manager on the Pioneer / Pannar case.

Communicating the case to the public

The Pioneer / Pannar merger drew both local and international interest from business and agricultural publications. The deal involved an American based firm, Pioneer which formed part of the science and engineering firm, Du Pont, taking over

a South African agricultural company. The Tribunal invited the media to attend the hearings. Locally, Business Day, Sake 24, Business Report and The Sunday Tribune followed the developments in the case closely and regularly updated the public on the arguments put forward in the hearing and the Tribunal's final decision. Internationally, the Wall Street Journal

reported the Tribunal's final decision while Du Pont issued a press statement at the time stating it was disappointed that the deal was not approved. One online comment from an internet user with the name *funfundvierzig*, following Du Pont's press release, read:

“How does semi-monopolisation of the seed industry in the continent of Africa serve customers, most of whom are struggling individual farmers, and don't need, can't afford the super expensive, genetically-engineered seeds of DuPont AG & NUT?”

(funfundvierzig)

THE WAL-MART / MASSMART MERGER

Our job in merger control is not to make the world a better place, only to prevent it becoming worse as a result of a transaction. This narrow construction of our jurisdiction has not always been appreciated by some of the interveners who have sought remedies whose ambition lies beyond our purpose.

– **N Manóim**, presiding member and chairperson of the Tribunal



On 31 May 2011 the Tribunal approved the Wal-Mart Stores Inc (Wal-Mart) and Massmart Holdings Ltd (Massmart) merger with conditions. The merger did not raise any competition concerns as Wal-Mart, a new entrant in the retail sector in South Africa, did not compete with Massmart in South Africa. Its only presence in the country was a small procurement arm that sourced products for its stores globally. The merger did however raise public interest concerns relating to employment, collective bargaining and the procurement of local products. The Commission assessed the transaction and, upon referring the case to the Tribunal, recommended that the Tribunal approve the deal without conditions.

The merging parties had initially argued for an unconditional approval of the merger, a position initially supported by the Commission. Opposed to this view were three government departments: Economic Development, Trade and Industry and the Department of Agriculture, Forestry and Fisheries, who had proposed that the merger be approved, but subject to conditions to protect the public interest. Also intervening were the South African Commercial, Catering and Allied Workers' Union (SACCAWU) which was recognised by Massmart, the South African Clothing & Textile Workers' Union (SACTWU), other unions organising workers in industries which sell products into the retail sector and their federation Congress of South African Trade Unions (COSATU). The unions had proposed that the merger be approved subject to a wide range of public interest conditions, but that if this was not possible, that the merger should be prohibited.

The Tribunal hearing took place from 11 – 16 May 2011 during which the Commission, the merging parties and the interveners all made their submissions. The Tribunal also called Shoprite to the hearing in order for it to elaborate on its likely course of action should the merger be approved. On the final day of this hearing the merging parties offered certain undertakings to the Tribunal which they agreed might be imposed as conditions for the approval of the merger. These undertakings were made to address certain labour and local procurement concerns raised by intervening parties during the course of the hearing. The merging parties made it clear that, in their view, the undertakings were not required legally in order for the merger to be approved, but were offered to meet adverse perceptions about the effect of the merger on the public interest. Having heard the evidence presented in the week, the Commission also changed its initial recommendation and requested the Tribunal to approve the transaction with two conditions. These were: that 503 employees, who were retrenched by Massmart in early 2010, be reinstated and that the new merged entity had to honour existing agreements with trade unions for at least three years.

The approach that the Tribunal followed was to examine the undertakings, on the assumption that the public interest concerns had been established, to see whether the undertakings by the merging parties were adequate to remedy the public interest concerns. The Tribunal concluded that they were adequate.

THE WAL-MART / MASSMART MERGER

First the interveners believed the merger would have a negative impact on employment in that the merger could result in retrenchments by the new merged entity. The Tribunal held that Wal-Mart's expansion plans suggested that retrenchments of the existing work force were unlikely and that increased employment was more likely. Since the merging parties had given an undertaking that there would be no retrenchments at Massmart for two years for merger specific reasons and in light of the fact that post merger retrenchments were not likely the Tribunal found that the undertaking was adequate.

Still related to employment, a hotly contested issue during the merger was whether the retrenchment of approximately 503 Massmart employees, in June 2010, was in anticipation of the merger. The Tribunal concluded that whilst the retrenchments coincided with the commencement of the merger negotiations there was no conclusive evidence that the merger was the cause. Despite this the merging parties agreed, during the proceedings, to give preference to re-employing those retrenched workers if vacancies arose and to recognise past seniority for that purpose. The Tribunal accepted this undertaking.

Another concern of the unions was that the merger would likely lead to a diminution of their collective bargaining rights. The Tribunal found that the merging parties' undertaking to honour existing collective bargaining rights, and to not challenge the status of SACCAWU as the largest representative of workers in its divisions, addressed this issue. The Tribunal stated that the creation of additional rights not enjoyed by the unions at that stage was neither specific to the merger nor appropriately part of the Tribunal's limited public interest mandate. The merging parties invited the Tribunal to determine the appropriate period for which this condition should hold and the Tribunal determined that it should operate for three years.

Finally the parties offered an undertaking to address the local procurement concern raised by the interveners. The interveners were concerned that, as a result of Wal-Mart's global purchasing power which dwarfed that of Massmart, the merged firm would be able to source cheaper imports and hence switch some of Massmart's procurement away from local manufacturers to imports, with adverse effects on those employed in these local sectors. No specific figure could be given to this apprehended substitution by the interveners and the merging parties contested this alleging that, at worst, local importers would be replaced by direct imports and there would not be a significant decrease in net procurement from local manufacturers. Again this concern was the subject of indeterminate evidence from either side. In response to this fear, the merging parties offered to invest R100 m, over a three year period, to make local industry more competitive to meet international competition. The Tribunal concluded that, even if the concern was valid, the undertaking for an investment remedy as suggested by the merging parties was appropriate, proportional and enforceable. It avoided concerns that the conditions, suggested by some interveners, to impose a form of quota of mandatory domestic purchases on the merged entity could violate the country's trade obligations, be anti-competitive or be incapable of practical implementation. Further the remedy sought to engage those very critics of Wal-Mart in the decision making process over the disbursement of the funds, including the unions and representatives of small, medium and micro enterprises.

The Wal-Mart and Massmart merger deciding panel



Norman Manoim

Chairperson and full-time Tribunal member

Norman Manoim joined the Tribunal as a full-time member at its inception in 1999 and has been the Tribunal's chairperson since August 2009. He presided over the Wal-Mart / Massmart merger with Yasmin Carrim and Andreas Wessels, both full-time Tribunal members as explained earlier. Prior to joining the Tribunal, Norman was a director at the law firm Cheadle Thompson and Haysom. He was part of the team that drafted the Competition Act and currently also lectures competition law at Wits on a part-time basis.



Rietsie Badenhorst

Head of research

Rietsie Badenhorst, head of research, was the case manager on the Wal-Mart / Massmart merger. She was assisted by Kasturi Moodaliyar.



Kasturi Moodaliyar

Specialist consultant

Kasturi Moodaliyar, came in as a specialist consultant specifically for the merger and was assistant to Rietsie Badenhorst.

Through the media lens

Of all the Tribunal's cases to date, the Wal-Mart / Massmart merger has undoubtedly received, and continues to receive, the most coverage in print, broadcast and online. To date we have monitored more than 200 articles on the subject, in the print media. During the Tribunal hearing reporters from the print, broadcast and online media covered the proceedings and attended every day of the hearing.

International media houses also covered the proceedings by receiving updates from the Tribunal. Locally the SABC and the e-news channel attended each day of the hearing and ran regular news reports on their respective evening news. In addition, Summit TV and CNBC Africa covered the hearing and its impact on the market. Moneyweb, for SAFM, and Eye Witness News, for 702, also ran regular evening features of the ongoing proceedings.

The Tribunal's decision, on 31 May 2011, was widely reported. On that day, we sent the decision to approximately 130 media houses both nationally and abroad and tracked the media coverage that resulted in the following weeks. According to media reports, interested parties were divided on the Tribunal's decision. The supporters of the unions and the government departments' case received the news with some caution, wanting to assess the extent of the



conditions and finally concluding that the conditions did not go far enough to alleviate their concerns. Economic and business commentators, on the other hand, received the Tribunal's decision positively for the most part, referring to it as a pragmatic decision which had a positive impact on trade. In this regard, Massmart's shares rose by 1.76% following the Tribunal's decision.

Although there was much coverage about the possible negative effect the Wal-Mart hearing could have on investor sentiment, I-Net Bridge (*Citizen 2nd edition, 17 November 2011*) later reported that Alfredo Cuevas, the resident reporter for the International Monetary Fund, believed what was important was that the process had been transparent with all the regulatory authorities involved having played their part.

Nowhere was public participation more evident in this past year than in the Wal-Mart / Massmart merger hearing. Throughout the media's coverage of the case citizens had their say on the various arguments before the Tribunal, Parliament and finally the CAC. They also commented on the potential impact the Tribunal's decision could have on society. Examples are:

- the letter from Zanele Mngadi (*Wal-Mart stereotypes, 27 July 2011*) of the Presidency in which she responded to Peter Bruce of Business Day after he had criticised the President for displaying a lack of leadership in the Wal-Mart appeal process;
- the letter by Suheil Suliman (*Foreign hypocrisy, 06 June 2011*) which featured in the Cape Times. In his letter, Suheil was concerned about

the stance taken in a Cape Times editorial about Wal-Mart investing in South Africa;

- the letter by Sidumo Dlamini, President of COSATU (*Wal-Mart editorial unfair to Tribunal, 17 May 2011*) in which he commented on the Business Day editorial covering a day at the Tribunal hearing of the Wal-Mart / Massmart merger. His letter appeared in Business Day;
- the letter by Michael Rosholt Jnr (*A wasteful challenge, 25 July 2011*) of Rivonia. Michael commented on the appeal of the Tribunal's decision in the Massmart / Wal-Mart case by three government departments.

“The entry of an international company into any domestic market is always controversial. The Competition Tribunal issued a verdict based on its mandate and the most striking thing was not the controversy but that the process has been very transparent and played out properly.”

(Alfredo Cuevas, resident reporter, IMF)

Citizen 2nd edition, 17 November 2011

THE KANSAI / FREEWORLD MERGER

It is an offence under the Act for any person to knowingly provide false information to the Commission. If the Commission has reason to believe that this has occurred, it should not hesitate to report the matter to the appropriate authorities.

– M Holden, part-time Tribunal member



Unjustified condition averted through merger process

This transaction was a hostile take-over in terms of which Kansai Paint Co. Ltd (Kansai) made an unsolicited offer to acquire the remaining issued share capital of Freeworld Coatings (Freeworld), a JSE listed company. Kansai, a Japanese listed company, and Freeworld both produced and marketed automotive coatings and decorative paints. Through a joint venture with Du Pont, Freeworld supplied automotive coatings to several major customers including Toyota, Ford and Mercedes Benz. According to Freeworld, Kansai and Freeworld controlled about 80% of this market.

The Commission initially approved the intermediate merger subject to a number of conditions, including a condition that required the merging parties to sell off Freeworld's entire automotive coatings business. However, after Kansai appealed this decision to the Tribunal, Kansai and the Commission negotiated a set of revised conditions in terms of which the divestiture condition was withdrawn and replaced with an obligation to, amongst other things, manufacture locally. The Tribunal then had to consider the merger in light of the revised conditions. The dti initially applied to intervene in the proceedings but later withdrew its participation.

The Tribunal's merger analysis focused on the automotive coatings market where both Kansai and Freeworld competed. The Commission had based its initial decision, in which it required the divestiture of Freeworld's automotive paints business, partly on its finding of a 30% difference between the domestic price of coatings and the import price. That differential suggested that, were the merged firm to exercise market power, it would be able to raise prices up to import parity. Upon the request by the merging parties for a reconsideration of the merger Econex, the Commission's economic expert firm, obtained new data which showed that the difference between domestic and import prices was no more than 5 – 10%. RBB, the merging parties' economic expert firm suggested that the difference could be attributed to the countervailing power that the original equipment manufacturers (OEMs) exercised in their dealings with the automotive coatings firms and that the countervailing power was reflected in the OEMs power to keep prices below market determined rates. Pricing so close to import parity was also indicative of the impact of globalisation on the market.

The Tribunal thus found that the potential for collusion between automotive coatings producers was severely diminished by the disciplining threat of imports and the considerable countervailing power exercised by the OEMs. Consequently, the original condition of divestiture was found to be unwarranted. The Tribunal therefore approved the deal without the divestiture condition.

During the hearing, the Tribunal expressed concern about the manner in which the Commission arrived at its initial recommendation. The Tribunal was concerned that a third party might have knowingly provided the Commission with false information in order to influence the Commission's decision. During the hearing the Tribunal remarked that the Commission should send a clear message that if a party provided false information to the competition authorities there would be consequences.

THE KANSAI / FREEWORLD MERGER

The Tribunal panel on the case



Merle Holden

(Part-time Tribunal member)

Merle Holden, who is a part-time Tribunal member, sat on the deciding panel together with presiding member, Norman Manoim, and part-time Tribunal member, Medi Mokuena. Merle is currently emeritus professor in the School of Economics and Finance at the University of KwaZulu-Natal. In addition to her extensive academic career in economics, both locally and abroad, and numerous published works, she has served as a consultant to the World Bank and to UNCTAD.



Medi Mokuena

(Part-time Tribunal member)

Medi Mokuena, who also sat on the Kansai / Freeworld panel, is the managing director of Mokuena Attorneys, a law firm she established in 1998. Prior to starting her own practice she served as a legal advisor in various organisations and companies and completed her articles at Edward Nathan & Friedland Attorneys. She was appointed a part-time Tribunal member in August 2004.



Tebogo Hlafane

(Case manager)

Tebogo Hlafane was the case manager on the Kansai / Freeworld case. She resigned from the Tribunal on 23 December 2011.

Media coverage of the Kansai / Freeworld case

This merger drew a fair amount of coverage initially because it was a hostile take-over bid. Prior to the Kansai case one of the largest hostile takeover cases before the Tribunal took place in 2005 when Harmony Gold made a bid for Goldfields, a bid which Goldfields opposed on all fronts. Furthermore, Freeworld's chairman at the time of the Kansai / Freeworld merger was Mr Bobby Godsell, who had been making news due to his involvement in Eskom.

The case continued to receive media coverage because the dti later applied to intervene in the proceedings, this at the same time that the EDD was intervening in the Kansai / Freeworld merger. Some media houses took the view that this move signalled a more interventionist approach, in South Africa, to foreign investment.

Finally, as the matter progressed, it continued to be covered by the media because the Commission and the merging parties reached a settlement on the conditions to the deal, the dti withdrew its intervention and the Tribunal questioned whether the Commission had been provided false information in order for it to order the merging parties to divest of Freeworld's automotive coatings business.

Various media houses covered each of the above developments over the reporting period until the conclusion of the case.

newspaper articles on merger

Kansai and Freeworld

BUSINESS DAY, Companies & Markets
12 Jul 2011, p.11

Kansai asks tribunal for rethink of divestiture

MARK ALLIX
Industrial Correspondent

JAPAN'S Kansai Paint Co. has asked the Competition Commission to reconsider the divestiture imposed by the Commission in its takeover of Freeworld Coatings.

The commission's decision to divest the coatings business to DuPont and its joint venture with DuPont was limited to the coatings business, and the divestiture was to be completed by the end of the year.

The commission's decision was based on the fact that the coatings business was a significant part of the joint venture's operations, and its divestiture would have a significant impact on the joint venture's ability to compete in the market.

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BUSINESS REPORT (Mercury)
26 Jul 2011, p.3

Commission defends Kansai

THE COMPETITION Commission is defending Kansai Paint's request to the Competition Tribunal that it approves the Japanese firm's acquisition of Freeworld Coatings without having to sell off Freeworld's automotive operations.

Oppa Sodpe, the managing director of Kansai Paint, said yesterday that the commission's decision to divest the coatings business to DuPont and its joint venture with DuPont was limited to the coatings business, and the divestiture was to be completed by the end of the year.

The commission's decision was based on the fact that the coatings business was a significant part of the joint venture's operations, and its divestiture would have a significant impact on the joint venture's ability to compete in the market.

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BUSINESS REPORT (Africa News)
26 Nov 2011, p.2

Tribunal allows Kansai to keep Freeworld unit

KANSAI PAINT of Japan has won the interim relief application that would allow it to retain the automotive coatings unit of the Freeworld Coatings business while it negotiates the divestiture of its automotive operations.

The tribunal's decision was based on the fact that the automotive coatings unit was a significant part of the joint venture's operations, and its divestiture would have a significant impact on the joint venture's ability to compete in the market.

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BUSINESS REPORT (Africa News)
26 Nov 2011, p.2

Freeworld

Share price, Aug 14-Nov 20

Freeworld's share price has risen sharply since the announcement of the merger, reflecting investor confidence in the joint venture's ability to compete in the market.

The share price has risen from around 100 to over 200, indicating a significant increase in value.

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BUSINESS REPORT (Africa News)
26 Nov 2011, p.2

Freeworld to focus on business after deal

Freeworld Coatings is expected to focus on its core business after the completion of the merger with Kansai Paint, with the automotive coatings unit being sold off.

The company's management has indicated that the focus will be on improving the efficiency of the coatings business and expanding its market share.

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Dti pulls out of Kansai hearings

THE DEPARTMENT OF Trade and Industry (DTI) has pulled out of the Competition Tribunal's hearings on the proposed divestiture of Freeworld Coatings by Kansai Paint.

The DTI's decision was based on the fact that the divestiture was a purely commercial transaction, and it was not in the public interest for the DTI to be involved in the process.

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State to 'intervene' in ruling on divestiture

THE STATE is expected to intervene in the Competition Tribunal's ruling on the proposed divestiture of Freeworld Coatings by Kansai Paint.

The state's intervention is expected to be based on the fact that the divestiture was a purely commercial transaction, and it was not in the public interest for the state to be involved in the process.

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Commission backs down

THE COMPETITION Commission has backed down on its decision to divest the coatings business to DuPont and its joint venture with DuPont, following an appeal by Kansai Paint.

The commission's decision was based on the fact that the coatings business was a significant part of the joint venture's operations, and its divestiture would have a significant impact on the joint venture's ability to compete in the market.

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THE AON / GLENRAND MERGER

Evidence of justification is most credible when supported by contemporaneous documentation prepared at the time of the consideration of the transaction . . .

– **N Manoim**, chairperson of the Tribunal



Employment losses curtailed in Aon / Glenrand merger

On 4 August 2011 the Tribunal approved the intermediate merger between Aon South Africa (Pty) Ltd (Aon) and Glenrand MIB Ltd (Glenrand) subject to certain employment conditions that were tendered by the merging parties. This decision followed after the Commission had imposed a condition that no dismissals, based on operational requirements, was to take place at the new entity, after the merger. The condition was not subject to a time limitation. The merging parties wanted the transaction to be approved without any conditions.

In their original filing to the Commission, the merging parties had indicated that, on a worst case scenario, approximately 220 employees might be retrenched following the implementation of the merger. These retrenchments would affect approximately 15% of the combined workforce of both Aon and Glenrand.

Subsequent to filing its application with the Tribunal, the parties changed their position and undertook two further exercises to ascertain the number of employees likely to be retrenched. As a result of these exercises fewer employees would face retrenchment than initially stated. Secondly, they were also willing to accept a limited moratorium on retrenchments as a condition for approval of the merger. Thirdly, as a result of a voluntary retrenchment package offered by Aon, after the Commission's conditional approval, some employees had accepted the package and resigned. This had lowered the number of redundancies and hence the number of employees required to be retrenched. The Commission had also moved its position and conceded that the cap on retrenchments could not be indefinite, but should apply for a period of two years.

Following a hearing into the matter, the Tribunal accepted the conditions tendered by the merging parties. The Tribunal found the merging parties had followed a rational process in calculating the potential employment loss. The merging parties also led evidence of employment prospects in their industry and why they needed to retrench some employees.

The Tribunal was satisfied that far fewer jobs would be lost as a result of the merging parties internal investigations and there had also been an attempt to give greater protection to unskilled employees who were less likely to get employed soon if they were retrenched.

The Tribunal thus found that the conditions tendered by the merging parties were adequate to remedy any public interest concern in respect of the employment loss as a result of the merger.

Media coverage

The Aon / Glenrand merger followed closely on the merger between Momentum and Metropolitan in which the Tribunal imposed, for the first time, a moratorium on job losses for two

years from the merger implementation date. In the Aon / Glenrand merger, it was the Commission which imposed a moratorium but the Tribunal concluded that the Commission had done so with little evidence to justify its decision. The media coverage on this case drew

parallels between the facts in the Aon / Glenrand case and the Momentum / Metropolitan case. Below are three examples of print media stories which followed the deal from the time it was referred to the Tribunal till the Tribunal issued its final decision.



FAST FACTS FOR THE YEAR

1	84	2	4	8
The number of mergers we prohibited	The number of mergers we approved	The number of cases we decided on public interest grounds	The number of cases where we ordered employment conditions	The number of cases where 3 rd parties intervened

ANNUAL PERFORMANCE REPORT

TRIBUNAL HEARINGS AND DECISIONS				
TRIBUNAL HEARINGS AND DECISIONS			YEAR TO DATE	REASON FOR DEVIATIONS
Budget:	R 13 018 399.12		R 13 018 399.12	
Actual			R 13 517 347.97	
Hold hearings and adjudicate matters brought before the Tribunal.				Budget slightly exceeded - difficult to accurately predict costs associated with adjudication as volume cannot be predicted
Promote and maintain competition within South Africa through the implementation of the Competition Act.				
OUTPUT	PERFORMANCE INDICATORS	ANNUAL TARGET	ACTUAL	DEVIATIONS
Large mergers and reconsidered mergers:				
Notice of set-downs	Set-down notices sent to parties in accordance with the delivery timeframes	75% of set-down notices sent within 10 business days of the filed merger	71%	Delays occur because we attempt to hear uncontested mergers on Wednesdays and the earliest Wednesday may fall after the 10 days. In some instances parties request that their matter be set down on a specific date.
Orders	Orders issued to parties in accordance with the delivery timeframes	98% of orders issued within 10 business days of the last hearing date	100%	Exceeding target
Reasons for decision documents	Reasons for decisions issued to parties in accordance with the delivery timeframes	56% of "reason for decisions" issued within 20 business days of order being issued	70%	Exceeding target
Opposed prohibited practices:				
Notice of set-downs	Pre-hearing invitations sent to parties in accordance with the delivery timeframes	90% of pre-hearing invitations sent to parties within 20 business days of close of pleadings	100%	Exceeding target
Orders and reasons for decision documents	Orders and reasons for decisions issued to parties in accordance with the delivery timeframes	90% of orders and reasons for decisions issued within 60 business days of the hearing date	100%	Exceeding target
Consent orders:				
Orders	Orders issued to parties in accordance with the delivery timeframes	75% of consent orders issued within 10 business days of the last hearing date	89%	Exceeding target
Procedural matters:				
Orders	Orders issued to parties in accordance with the delivery timeframes	85% of orders issued within 20 business days of the last hearing date	74%	In some instances reasons are issued with orders in procedural matters. These matters involve complex points of law and often require extensive research time before arriving at a decision. If decisions are complicated then more detail is often required when writing reasons – thus causing delays
Interim relief cases:				
Reasons for decision documents	Reasons for decisions issued to parties in accordance with the delivery timeframes	85% of "reasons for decisions" issued within 20 business days of the last hearing date	No reasons issued	No reasons issued

Aim: To educate and create awareness of competition matters to the Tribunal's stakeholders.



Londiwe Senona, Tribunal case manager

part

2011-12

THREE

competition tribunal annual report



Stakeholder
Awareness



Stakeholder Awareness

INTRODUCTION

The Tribunal recognises the value of keeping our stakeholders informed. We communicate with them through the media, through our newsletter and through our website.

COMMUNICATING THE WORK OF THE TRIBUNAL THROUGH THE MEDIA

Why we communicate the Tribunal's work

In an effort to promote the public's access to justice, the Competition Act requires the Tribunal to conduct its hearings in public and to conduct them informally. The Competition Act also specifically frees the Tribunal from some of the more restrictive rules of procedure characteristic of the traditional court system while still observing administrative law principles of fairness and due process. Guided by the same principle, the

Tribunal considers it important to keep the public informed of the hearings that take place and invite them to attend. Being aware of the Tribunal's cases and witnessing the process raises the public's level of understanding of the competition regime and its application to their lives and encourages them to participate in it. This doesn't only happen through attending the hearings, which is generally not a practical option, but also through the public participating in the broader debate on competition matters, which happens through the media.

in the case discussion in part 2 we included examples of the public participation in the Wal-Mart / Massmart merger debate. In a separate case Professor Massimo Motta, the dean of the Barcelona Graduate School of Economics, wrote commentary on the appeal of the Tribunal's decision in the Southern Pipeline Contractors case. His commentary (*Recent CAC judgment opens door to leniency on cartels, 31 August 2011*) was published in Business Report.

BUSINESS REPORT (Cont Times)
27 Aug 2011, p. 16

Recent CAC judgment opens door to leniency on cartels

CONCRETE PENALTIES

Massimo Motta

A RECENT judgment (see reference: 106/09, CAC/Doctis) of the Competition Appeal Court (CAC) suggests that cartel penalties should be based on quantitative evidence about the extent of anti-competitive conduct, such as the extent to which prices were increased by a cartel above the levels that would otherwise have prevailed.

This approach risks penalties being decided on the basis of complex and sensitive economic models. In fact, this will lead to a system that is difficult to administer and a high degree of uncertainty about the applicable penalties. The critical deterrence function played by cartel fines would also be undermined.

The case at issue involved a cartel of concrete pipe and culvert producers in operation for around 30 years. It covers the main producers in Gauteng, Cape Town and Durban and resulted in a cartel agreement to coordinate their market shares. They also allocated market areas among themselves, removing competition.

While most firms had settled with the Competition Commission, two firms admitted to the conduct but contested the financial penalty. These were Southern Pipeline Contractors, which joined the cartel in 1994 and was allocated a substantial

profitability and price increases places both in the ability of economic and financial analysis to arrive at conclusions that are reasonably robust and objective.

The concrete pipe cartel provides a good illustration of some of the problems that will likely be encountered if quantitative criteria are not followed in the determination of penalties. First, to assess extra profits and price overcharges one should determine the proper counterfactual, that is, to establish what would have happened in the absence of the cartel. In this case, the cartel has existed for such a long time that it is difficult to see how a period before the cartel can be identified.

The concrete pipe cartel provides a good illustration of some problems likely to be encountered if quantitative criteria are followed in determining penalties.

What about the period after the cartel ended? After so many years of collective activity, firms know and understand each other's business as well and have established norms and conventions by which to make decisions that it would take some time for competition to have effect. In other words, it is likely that tacit collusion would replace explicit collusion, without changes in market outcomes, at least for a period.

But even in cases where it is possible to

see out in the market aggressively looking to win business, and variety of choice is also denied to customers. The effect is as much what the cartel does not do as what it does do. How to quantify this?

Third, cartels are per se prohibited. The law does not accept justification for them, and accordingly should strongly discourage and heavily fine them. It would be paradoxical if the resulting firms in cartel trials penalties because of insufficient quantitative evidence.

In its evaluation, the CAC appeared to accept a testimony that Southern Pipeline joined the cartel "sober states" in 1994, and obtained no benefit from it, along with data that indicated that unit increases from 2002 to 2007 had exceeded price increases. The court noted that this was similar to the testimony of the witnesses for the commission from the leniency applicant that the cartel "was not producing results for the members that they would have hoped".

The companies, including those granted leniency by the commission, are still subject to damages claims from customers and so have every interest to dispute the effect of their actions. Moreover, in this case the cartel had been in place for so long that the members had little idea of what a competitive market was like. In other words, as what facts can they or any body else establish the effect?

Further, it is well known in economics that a monopolist (and the cartel behaved as one) does not generally increase prices by the same proportion as cost increases, so evidence that costs rose more than prices over a certain period is hardly telling.

If the cartel, collectively determining prices and allocating customers for concrete water pipes, did not raise the profits of the members it can only be because they



often giving results with little comment, even for guidance giving, used or the penalties to cartel members on the basis of these economic evidence.

The Tribunal recognises the value of keeping our stakeholders informed

How we communicated the Tribunal's work this year

As in previous years, in the year under review the Tribunal continued to raise the public's awareness of its cases and processes. The Tribunal did this in the following ways:

- in addition to the legal process of inviting known interested stakeholders to participate in hearings, we invited the media to the merger and complaint hearings that took

place in the reporting period. In this regard we sent out 68 media statements inviting the media to attend complaint and merger hearings or updating the media on changes to hearing dates.

- with due regard to confidentiality claims by parties to cases before the Tribunal, we made available case documents to the media when this was requested and responded to questions of process;
- we monitored the media coverage of the Tribunal in order to stay abreast of perceptions and to respond where necessary. While, informally, we regularly communicated with reporters to correct any minor reporting mistakes or misperceptions, formally we requested one correction and responded in writing to one article. In the first instance we requested a correction to a Business Day article which incorrectly attributed a

comment by an official of the dti to the chairperson of the Tribunal. The correction appeared in the Business Day on 17 May 2011. We responded to an article which appeared in *Without Prejudice*, a legal professions publication, in June 2011, wherein we clarified a perception created by an article that the Tribunal had little regard for the plight of respondents when it handed down its decision in the South African Breweries case;

- in order to monitor perceptions more closely and determine future communication strategy, from October 2011 we started compiling a monthly report on the positive, negative and neutral media coverage the Tribunal receives. These reports assist the Tribunal in determining what its communication strategy should be in major cases;
- in addition to inviting the media to attend the hearings, we informed

them of the outcome of 97 Tribunal proceedings and sent out media statements when the Tribunal reached decisions in major cases. These included the Tribunal's decisions in the SAB case, the Pioneer / Pannar merger and the Wal-Mart / Massmart merger. This helped to deepen the public's understanding of the Tribunal's approach to matters.

Cases that featured prominently in the media this year

While most of the Tribunal's cases received media coverage in the year under review, the cases which featured prominently in the media were:

- the Tribunal's hearing into the Wal-Mart / Massmart merger;
- the Tribunal's hearing into alleged anti-competitive conduct by Telkom;
- the proposed large merger hearing between Media 24 Limited, Paarl Coldset and Natal Witness; and
- the proposed large merger between Pioneer International and Pannar.

TRIBUNAL REVAMPS ITS NEWSLETTER

This year we revamped the Tribunal's newsletter, Tribunal Tribune, and introduced new features to make it more informative for our readers and to better communicate the work of the Tribunal. Thus far we have issued two editions featuring in-depth case studies, research, profiles

of Tribunal members and useful statistics about past cases. The newsletter is sent to government and academic stakeholders.

In addition to the newsletter being a communication tool, it is also a means of empowering staff because they

conduct the research and author some of the articles which appear in the newsletter. For example in the April 2012 issue of the newsletter, case manager, Ipeleng Selaledi, wrote a synopsis of the Tribunal's judgment in the Pioneer / Pannar seed merger.

The Tribunal Tribune

The Tribunal Tribune



In the April 2012 issue

Competition matters
 Research: Fighting bid rigging in public procurement p 1
 Judgments: The Tribunal prohibits the Pioneer / Pannar seed merger p 3
 Events: Seminar on competitive effects analysis and merger policy p 5

On the bench
 We profile part-time Tribunal member, Lawrence Reyburn p 7

The paper trail
 Recent media coverage of the Tribunal's cases p 9

Trial & Error
 Notable quotes from Tribunal proceedings and judgments p 9

Statistics p 10

Have your say
 Tell us what you think p 11

Fighting Bid Rigging in Public Procurement

"As both a trade unionist and public servant at the competition authority, I've seen how public money and resources are squandered by both the public and private sectors."

Dave Lewis, Executive Director of Corruption Watch

Effective procurement policies are designed to obtain goods and services at the lowest possible price or, more generally, to achieve the best value for money. Vigorous competition among suppliers helps governments attain these objectives. However, the formal rules that govern procurement and the way in which tenders are designed and carried out can all hinder competition and promote or sustain bid-rigging conspiracies. Bid rigging, also referred to as collusive tendering, occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and services for purchasers who wish to acquire products or services through a bidding process.

Public and private organisations often rely upon a competitive bidding process to achieve better value for money. When bid rigging impacts public procurement, it has the potential to cause great harm. One reason for this is that public procurement is often a large part of a nation's economy.

In many countries, it amounts to 15% of the gross domestic product and in most developing countries it is substantially more than this. Bid rigging takes resources from purchasers and taxpayers, diminishes public confidence in the competitive process, undermines the benefits of a competitive market place and thus erodes integrity in business.

A well planned tender can reduce or even eliminate the ability of bidders to reach a collusive agreement. The OECD and other organisations have developed guidelines and instruments to fight hard core cartels and, in particular, bid rigging to assist governments.

In October 2011 the OECD launched its *CleanGovBiz* Toolkit which contains practical guidance on how corruption can best be tackled in different policy areas. Its guidelines for fighting bid rigging in public procurement help to identify:

- markets in which bid rigging is more likely to occur so that special precautions can be taken;
- methods that maximise the number of bids;
- best practices for tender specifications, requirements and award criteria;
- procedures that inhibit communication among bidders; and
- suspicious pricing patterns, statements, documents and behaviour by firms, that procurement agents can use to detect bid rigging.



MONITORING AND UPDATING THE WEBSITE

The Tribunal's website is the main means of communication used by the Tribunal to generate information regarding the work of the Tribunal. Recent Tribunal decisions are posted to the website on a regular basis and, in the year under review, 92 reasons were posted. Apart from information relating to the staff of the Tribunal, publications produced by the Tribunal, press releases and the Competition Act, visitors to the site can access a wide range of archived material on "closed" cases. They can also view a calendar detailing forthcoming hearings.

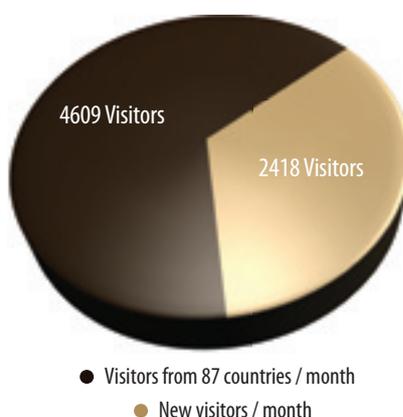
Given the significant public interest in the Wal-Mart / Massmart transaction, the Tribunal opted to dedicate space on its website and create a specific link leading to information on the Wal-Mart / Massmart merger. This helped keep the media and other interested parties updated on the progress in the merger.

In the previous financial year the Tribunal undertook a significant upgrade of the Tribunal's website. The website statistics generated indicate that the website is being used extensively and there are a number of "new" visitors every month. On average during the 12 months April 2011 to March 2012 the website had:

- 4 609 visitors from 87 countries/territories per month
- 2 418 new visitors per month

The average time spent on the site by a visitor is 5.03 minutes with an average of 4.35 pages being opened per visit.

Fig 2: Average visitors to the website



The Tribunal will continue to monitor the use of the website by its stakeholders and to look for new and innovative ways of using the website as a means of communication.



Colin Venter is responsible for monitoring the Tribunal website

Tebogo Mputle is responsible for updating the Tribunal's website

STUDY TOUR TO THE COMPETITION TRIBUNAL

The Tribunal hosted a delegation from the Fair Competition Tribunal of Tanzania from 22 to 26 August 2011. The delegation comprised of Mr. Kunda Mkenda, Mr Nsanzigwa Mchany, Mr Sembeyu Salimurajabu and Mr Totimus Modest.

On arrival the delegation was introduced to the management team of the Tribunal. Thereafter the chairperson, Norman Manoim, gave them an overview of the South African competition authorities.

During their stay with us the delegation met with the various departments of

the Tribunal. They learnt about different aspects of the organisation including:

- how cases are handled from inception to the handing down of a judgment;
- how the Tribunal conducts its hearings;
- the management of cases;
- the interaction between the Tribunal and the CAC;
- how the Tribunal's performance is measured; and
- the role and importance of a communication consultant.

The delegation also attended one of the Tribunal's hearings and had an opportunity to talk to the Tribunal's sister organisation, the Commission, for an overview of their business.

At the end of the tour, the delegation expressed their sincere gratitude to the Tribunal for hosting them and acknowledged that they had gained a great deal from the visit. In their own words:

“We thank you very much for hosting us. It was a big experience to visit your Tribunal. We really learnt a lot from you and we much appreciate your kindness and generosity. You really made us feel at home. Our stay with you has been very beneficial and we are very grateful for that.”



Tanzanian study tour to the Tribunal.
Lerato Motaung, co-ordinated the visit of the delegation

ANNUAL PERFORMANCE REPORT

STAKEHOLDER AWARENESS				
STAKEHOLDER AWARENESS			YEAR TO DATE	REASON FOR DEVIATIONS
Budget:		R 548 131.60		R 548 131.60
Actual:				R 538 433.04
Communicate the activities and decisions of the Tribunal effectively.				Budget slightly underspent - difficult to accurately predict costs associated with stakeholder awareness
Educate and create awareness of competition matters to the Tribunal's stakeholders.				
OUTPUT	PERFORMANCE INDICATORS	ANNUAL TARGET		DEVIATIONS
"Reasons for decision" documents	Turnaround time for all the "reasons for decisions" to be posted on the website after release	97% of reasons for decisions posted on the Tribunal website within 24 hours of release	52%	There was a misunderstanding of the target and the person responsible thought it was 72 hours and not 24 hours. This will be corrected going forward
Tribunal Tribunes produced	Tribunal Tribune's distributed to stakeholders	Three Tribunal Tribunes distributed by 31 March 2012	2.00	Behind target - third Tribune produced and distributed in April due to time constraints
		Tribunal Tribunes distributed to 52 stakeholders by 31 March 2012	71 per issue	Exceeding target
Notice of final merger decisions	Merger decisions published in the Government Gazette	100% of the merger decisions issued sent to the Government Gazette for publishing within 20 days of the final decision	78%	In the earlier quarters adverts were being grouped and distributed at the end of the month rather than within 20 days - this was later rectified.
Press releases	Press releases of final decisions issued to the media	Press releases issued for 100% of the final decisions issued by the Tribunal by 31 March 2012	87%	Lack of communication around the required targets in the first two quarters explains some of the deviation and this has been rectified going forward

Aim: To enhance the expertise of Tribunal staff, strengthen our organisational capability and improve service to our customers.



Elizabeth Preston-Whyte, consultant case manager

part

2011-12

FOUR

competition tribunal annual report



Operational
Effectiveness



Operational Effectiveness

INTRODUCTION

Operational effectiveness is about:

- enhancing the expertise of the Tribunal, by providing ongoing training and development opportunities
- to staff and by continuing to offer the Tribunal's short-term internship programme;
- strengthening the Tribunal's organisational capability, by ensuring that
- the Tribunal adheres to sound corporate governance principles; and
- improving service to our customers.

TRAINING AND DEVELOPMENT

The Tribunal is a small entity and has tended not to have a high turnover of staff. By implication this means that institutional memory has been retained and there is no significant pressure on the organisation to continually provide training to new employees. Nevertheless the Tribunal recognises that training is necessary for the long-term sustainability of the entity and has continued to provide employees with opportunities for further education and for personal development. By building the skills and knowledge of each staff member we are able to

maintain a more productive, enthusiastic and motivated group. Training, particularly for the Tribunal members and the case managers, is identified as a strategic objective and includes in-house training, external courses, workshops and conferences (local and international).

Tribunal staff attended the following workshops, conferences and seminars during the year under review:

- the annual ICN conference held in the Netherlands in May 2011
- (attended by two Tribunal members and the head of research);
- the bi-annual LEAR conference held in Rome in June 2011 (attended by the head of research and a Tribunal member);
- the competition committee meeting of the OECD in Paris in June 2011 (attended by the head of research and a Tribunal member);
- the EU competition law summer school presented in London in August 2011 (attended by two part-time Tribunal members);

- the Fifth Annual Competition Commission, Competition Tribunal and Mandela Institute Conference on Competition Law, Economics and Policy in South Africa held in Johannesburg in September 2011, (attended by three Tribunal members, the head of research and four case managers);
- the ICN cartel conference held in Belgium in October 2011 (attended by two case managers);
- a judgment writing workshop held in Johannesburg in October 2011 (attended by the head of research, three full-time members and five part-time members); and
- a seminar on competitive effects analysis and merger policy

The head of research and case managers continued to participate in telephonic International Competition Network (ICN) working groups dealing with unilateral conduct and mergers.

We elaborate on some of these workshops and seminars below.

Seminar on competitive effects analysis and merger policy

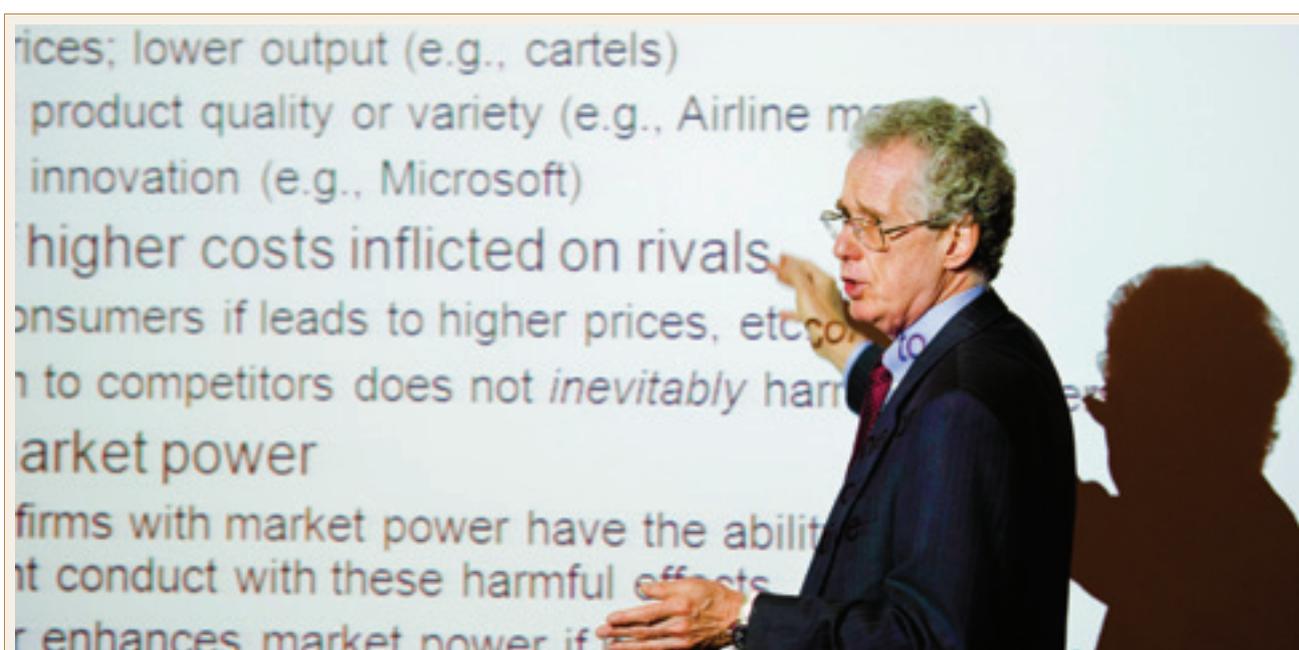
On 23 February 2012, Professor of economics and law at Georgetown University Law Centre, Steven Salop, presented a seminar analysing competitive effects and merger policy. The seminar was held at the Tribunal and attended by the three full-time Tribunal members, four part-time Tribunal members and four case managers.

In the seminar, Professor Salop discussed the following topics:

- the United States' legal standards for horizontal mergers;
- the role of merger guidelines in the United States and European Union;
- an analysis of the role and importance of market definition in merger analyses;
- market power constraints;
- competition concerns such as unilateral effects, co-ordinated effects and exclusionary effects;

- the gross upward pricing pressure index or "GUPPI", a rough gauge to quantitatively measure unilateral effects in a merger transaction;
- the exclusionary competitive effects highlighted by the AT&T/T-Mobile transaction;
- possible competition concerns arising from vertical mergers as illustrated by the Google/Motorola case study; and
- an analysis of the efficiency benefits which were more prevalent in a vertical merger than a horizontal merger, as well as how these competitive effects affected consumers.

The informative morning concluded with a question and answer session and an interactive discussion about the difference and similarities between the competition law systems in South Africa, the United States and the European Union.



Professor Steven Salop of Georgetown University, United States, presents a seminar on competitive effects analysis and merger policy



Nicola Ilgner was one of four Tribunal case managers who attended Professor Steven Salop's seminar



Part-time Tribunal member, Takalani (Taki) Madima, was among the Tribunal members who attended the seminar. Takalani Madima practices law from the Cape and Johannesburg bars as an advocate and senior counsel. He has held various corporate legal positions, was formerly acting judge in the Western Cape High Court and also holds a membership in several legal associations. Taki joined the Tribunal as a part-time member in August 2009.

ICN Cartel Workshop 2011

In October 2011 Ipeleng Selaledi and Songezo Ralarala, both case managers in the Tribunal's research department, attended the ICN cartel workshop in Bruges, Belgium. The workshop took place from 10 to 13 October at the Oud Sint-Jan Conference Centre and was co-hosted by the ICN and the European Commission.

The aim of the workshop was to keep the international competition community abreast of developments in dealing with cartels. It was attended by competition agencies, regulatory bodies and non-governmental agencies throughout the world. The majority of those in attendance were representatives of competition agencies from various jurisdictions such as Germany's Bundeskartellamt, United Kingdom's Office of Fair Trading, Romania's Competition Council, United States' Department of Justice: Antitrust Division, Chile's Fiscalía Nacional Económica, Zambia's Competition and Consumer Protection Commission, Swaziland Competition Commission, Namibian Competition Commission and Japan's Fair Trade Commission, to name a few.

The subject matter covered in the workshop included the following:

- co-ordinating cross-border investigations;
- information sharing between agencies;
- regional co-operation;
- the pro's and con's of leniency programmes;
- case resolution methods; and
- mechanisms and general experiences of competition authorities as well as their approaches to different cases.

As part of the workshop, Songezo Ralarala presented a paper on the South African competition regime at a lecture held at the College of Europe. The topic of the lecture was "enhancing the role of newer competition agencies in the legal review procedure".

Both Songezo Ralarala and Ipeleng Selaledi reported that they found the workshop informative and helpful for their own case analyses. The networks they created have also assisted them in their research and in understanding foreign competition regimes better.



Songezo Ralarala, case manager in the research department, presented a paper on the South African competition regime

The 5th Annual Conference on Competition Law, Economics and Policy

On 4 and 5 October 2011, the Tribunal and the Commission held their joint 5th annual conference on competition law, economics and policy. It took place at the University of Johannesburg, South Africa. The conference discussed various competition related topics including:

- the implications of recent CAC and Supreme Court of Appeal (SCA) judgments on the rights of complainants and respondents;
- recent themes emerging from mergers and acquisitions, particularly public interest. In this regard reference was made to the Wal-Mart / Massmart merger; and
- market power and abuse of dominance.

Academics, regulators and legal practitioners attended the conference and made valuable contributions. Colleagues from the competition authorities of several African countries also attended the conference and presented research papers.



Thabani Ngilande, case manager in research, was amongst the Tribunal staff who attended the 5th annual competition conference.

EU COMPETITION LAW SUMMER SCHOOL



Andiswa Ndoni

Andiswa Ndoni is, amongst other things, currently company secretary and legal counsel for UBANKL Ltd and she was a member of the Judicial Services Commission. Andiswa Ndoni joined the Tribunal as a part-time member in August 2009.

Andiswa attended a training course on European Union competition law in London, in August 2011. She responds to questions on the course below.

What was the purpose of the course?

The purpose of the course was to provide participants with a guide to EU competition law and to equip them with essential practical tools to master the legal complexities.

Who was the course aimed at?

The course targeted competition lawyers, in-house counsel, national competition authorities, national regulators, lawyers in governmental and public bodies, trade associations and consulting economists.

What was your experience of it?

I found it very comprehensive and balanced, with a mixture of case studies and presentations. The case studies resulted in the better understanding of the material and facilitated sharing of experience from various jurisdictions.

What was the benefit of the course to the work of the Tribunal?

In all the different topics ranging from articles 101 & 102, mergers, intellectual property rights, horizontal agreements, cartels and abuse of dominance, a lot of time was spent in analysing recent competition law cases and the practical implications of the cases. This has helped me to keep abreast of the latest reforms and developments and gave me insight into the procedures of foreign competition authorities. This has enhanced my knowledge on the subject tremendously.

What did you gain from the course?

A sound understanding of EU competition law, recent trends and the latest decisions on competition law.

Administrative training and teambuilding

In addition to the training sessions related directly to competition law and economics, staff members attended training related to the various other functions of the Tribunal. The list of topics covered by the courses and workshops attended by various staff members is evidence of the fact that staff members are being exposed to a broad spectrum of areas of responsibility. These include:

- the responsibilities of health and safety representatives;
- governance, risk and compliance;
- supply chain management;
- records management;
- performance information;
- use of Pastel – the accounting software package used in the Tribunal
- microsoft office software courses; and
- technical IT training courses.

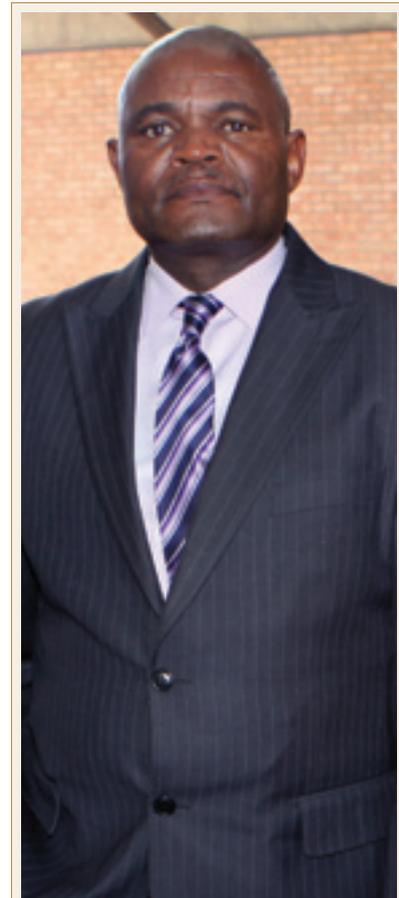
The Tribunal's annual team building workshop took place in September 2011. The workshop focused on code of conduct, conflict of interest and ethics

within the Tribunal environment. It was interactive with various role playing exercises. The workshop was attended by three full-time members and 13 staff members.

The head of corporate services continues to attend the CFO and risk forum's hosted by National Treasury which allow chief financial officers and chief risk officers in the public sector to interact, share ideas and discuss compliance requirements amongst themselves.

The Tribunal has continued to provide staff members with career advancement opportunities through the Tribunal's bursary and study loan scheme. Study loans are granted to staff members and once confirmation is received that students have passed, their loans are converted into bursaries.

During the year under review, the Tribunal gave study loans totalling R16,025.45 to three staff members and awarded bursaries totalling R11, 172.45 to four staff members.



David Tefu, the registry clerk and court orderly, was among the Tribunal staff who attended the Tribunal team building

SHORT TERM INTERNSHIPS

While the Tribunal is limited in its ability to provide long term internships or learnerships, we continued to focus on this important aspect and our short term internship programme expanded in 2011/2012 to include 11 students.

Six of these students were specifically recruited to assist us with the loading of data and documents on the electronic document management software programme being developed within the Tribunal. Through this work students were able to gain a better understanding of the work of the Tribunal and the manner

in which data can be used to reflect the performance of the Tribunal. At the same time these students gained some invaluable computer and administrative skills.

The corporate services department managed the internship of four students studying commerce, accounting or economics at the University of Johannesburg, the University of Pretoria and the University of Cape Town. These students were introduced to us through the Alexandra Education Committee - a bursary scheme that provides funding for

the secondary education of boys and girls from financially deprived families. The Tribunal gave the students opportunities to attend Tribunal hearings, audit committee meetings, risk management meetings and an internally hosted workshop on work ethics.

In the research department, we offered one internship to a final year LLB student from the University of Pretoria as part of the "supervised internship programme" – a joint collaboration between the Tribunal and the University of Pretoria.

The university's final year LLB students who participate in this programme are participating in it as an elective course in which they spend 120 hours, either full-time over a three week period or part-time over a few months. Through this programme they are able to focus on substantive issues but simultaneously develop an understanding of the practical operations of the institution. On completion of their internship they are required to complete a 5 000 word report to the faculty.

This was how some of the students described their internship experience at the Tribunal.

"I enjoyed the working environment, everyone was so friendly and people made a concerted effort to get to know each other. I learnt so many things which will assist me in my future career prospects. I have also acquired an array of skills which will enable me to be more productive and efficient in my work. Thank you very much, it was a great experience" – **Grethe Goosen**

"I enjoyed the flexibility in between the departments, I was able to acquire on the job skills which were practical. A well deserved break from all the theoretical work I do in varsity. The inner workings of the Tribunal were also exciting to me as I had heard of the Tribunal in local media and in my research for an economics essay based on the Wal-Mart / Massmart merger. Meeting the people who shape the economic decisions in our country and working under them was an honour"

– **Dalisu Jwara**

"The job I was designated to do, was a totally new experience. The skills that I have gained during the internship will contribute greatly to my future career prospects. The Tribunal staff made a concerted effort to make the office a great working environment, this has been the case throughout the year and I am extremely grateful for being given the opportunity to get to know these amazing people. It truly is a blessing. The Tribunal has a great internship programme. The job I was given was on par with my expectations.

I enjoyed learning the internal structures of the Tribunal and the workshop that Jeanne presented was fabulous. Such activities are both enlightening and fun. I am thoroughly happy with the internship. Thank you very much." – **Didi Goosen**

"As an accounting student who had considered to study law not so long ago, it made me appreciate the career I was in and also inspired me to consider studying towards a B Comm (Law) and LLB. I worked in the research department and learnt so much about mergers and competition law. I also got an opportunity to test skills I'd recently learnt, mainly in using Pastel. The practical side is not as simple as the lectures made it look. Overall the Tribunal afforded me the opportunity to experience the reality of working - the early mornings and late afternoons. I can honestly say I have one up on my peers in terms of experience and how wide my knowledge is in terms of the commerce side of things. I appreciate the opportunity granted to me. A learning curve indeed!" – **Dumisani Mbatha**



Bottom row, from left to right: Dumisani Mbatha, Sizwe Shakung, Nicola Igner, Dalisu Jwara.

Top row: Kgabo Mokgatla, Martin Motlhame, Darlington Ndlovu

CORPORATE GOVERNANCE

The corporate services division of the Tribunal can be described as the Tribunal’s engine room as its prime role is to ensure the smooth running of the administrative functions of the organisation. This division consists of five staff members with Janeen de Klerk as the head and the chief financial officer, Kirsteen Kunneke as financial administrator, Colin Venter who is responsible for all aspects of IT and facilities in the Tribunal, Lufuno Ramaru as Tribunal administrator who provides a support function, particularly with regard to compliance, governance and risk management and finally Lethabo Mabilisa as the executive assistant

providing administrative support to the Tribunal members and responsible for logistic arrangements for Tribunal members when they attend hearings.

Over the last few years increasing emphasis has been placed on public entities to ensure that they adhere to principles of good corporate governance. In the Tribunal’s context, this refers to the system of policies, processes, people and laws which ensure that the needs of all Tribunal stakeholders are met. Maintaining effective governance systems requires the commitment of all and implies that the activities of the

Tribunal must be directed, controlled and managed using good business practices, accountability, objectivity and integrity.

The Tribunal strives to achieve transparency, accountability, efficient management and optimal use of its resources. In these attempts the Tribunal is guided by the principles encompassed in the King III code and is supplemented by statutory duties set out in the PFMA and the Competition Act.

The governance structures in the Tribunal include the following:

Fig 3: Governance structures in the Tribunal



The Tribunal team

These structures monitor the Tribunal's compliance with legislation and corporate governance principles.

During the current financial year the Tribunal has continued to place focus on various activities whose end result would be an improved corporate governance environment. The sections below highlight the progress made with regard to the development of a solid corporate governance structure and framework.

Executive committee

The composition and objectives of the executive committee and a review of its activities during the year under review are set out in the chairperson's report.

The executive committee continues to meet but as meetings are often difficult to attend, given the hearings, they have this year opted for much more use of memo's and electronic communication. They meet at least quarterly or when substantial decisions need to be discussed and made. The executive committee held four meetings in the year under review.

Audit committee

Since March 2000 the Tribunal has had an audit committee in place. As indicated earlier this committee consists of five non-executive members with standing invitees including the Tribunal chairperson, the head of corporate services, the internal auditors and the external auditors.

This committee is constituted as a statutory committee of the Tribunal in order to perform its statutory duties in terms of the PFMA and a committee of the executive committee in respect to all other duties assigned to it. The committee does not assume the functions of management, which remain

the responsibility of the executives, officers and other members of senior management.

Membership, attendance and fees received by the members are detailed in the audit committee's report in part 1.

An audit and risk committee manual developed by the Tribunal provides a comprehensive understanding of the powers and functions of the audit and risk committees and provides guidance on key principles and activities to be considered by these committees. The committee's roles and responsibilities, as well as all the requirements necessary for the committee to fulfil its function, are detailed in an audit committee charter which is reviewed annually.

The committee is responsible to ensure that its members are kept abreast of changes in legislation, regulations and related codes of good governance and practice. These members have participated in two training sessions that dealt with the prescripts of King III, the PFMA, good governance practice and the role of audit committee members.

The committee must remain independent while simultaneously assisting the accounting authority in fulfilling his obligations to demonstrate accountability and transparency while ensuring a high quality of service.

During the period under review the audit committee approved the internal and external plans presented by the auditors and reviewed the Tribunal's quarterly internal audit reports, annual report and financial statements for the year ending 31 March 2012.

In addition the committee has:

- assessed the effectiveness of the Tribunal's internal controls;
- overseen the combined assurance process;

- assessed the Tribunal's continued ability to meet its mandate;
- ensured compliance with laws and regulations; and
- ensured the Tribunal endorses ethical norms and good financial management principles.

Governance of risk

A mature and well embedded risk management framework exists within the Tribunal and consists of the following structures:

- the risk committee (RC) – consists of members of the audit committee and is responsible for providing the accounting authority with independent counsel and advice.
- the risk management committee (RMC) – responsible for addressing the corporate governance requirements of risk management and monitoring the Tribunal's performance in risk management.
- the risk coordination committee (RCC) – responsible for the design, implementation and monitoring of risk management and its integration into the Tribunal's day to day activities. This committee is headed by the chief risk officer who is assisted in her duties by a deputy chief risk officer.

A risk management implementation plan and risk charter have been developed and all office bearers performing risk functions have signed appointment letters.

RCC meetings are held quarterly and these meetings are also used to provide training to risk assurance providers on their specific functions and responsibilities.

As part of the risk embedding process, the risk management framework and

risk register was workshopped with all staff in March 2011. Staff members have been made aware of their role in terms of risk management and staff is aware that they can provide inputs into the risk

management process at any time during the year.

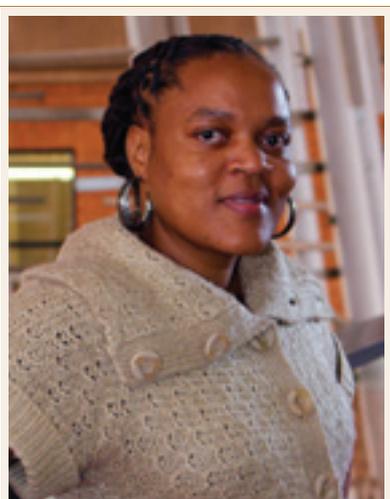
On a quarterly basis the RC evaluates the reports submitted by the RMC and

discusses any changes in the Tribunal's risk profile.

The top five risks identified as at March 2012 are detailed below:

Table 3: Top five risks faced by the Tribunal as at year-end

RISK	RISK CATEGORY
Poor case management	Operational
Decision making compromised	Operational
Inadequate performance management	Organisational
Inability to attract and retain key critical positions within the organisation	Human resources
Insufficient funding from the EDD	Financial stability



Lufuno Ramaru is the deputy risk officer of the Tribunal

side the Tribunal embarked on two major projects – the website upgrade and the development of electronic case document management software. We have reported on the website upgrade in part 2 of this report.

Document management system

During the current financial year we continued to focus on the final stages of the development and implementation of the Tribunal's electronic case document management software. As indicated in the previous annual report the development of this system has a three-fold purpose:

- i. to electronically manage all processes related to the case function;
- ii. to store case documents in a manner that facilitates easy retrieval and safe storage; and
- iii. to provide required performance information for reporting purposes.

To date we have loaded basic case information for all cases heard and completed by the Tribunal since inception, in 1999, to the period ending 31 March 2011. This represents over 1 100 cases. In addition we have loaded documentation pertaining to all cases open as at 1 April 2011 and subsequent new matters brought before the Tribunal.

Much of the last few months have been spent verifying the data loaded on the system and developing the required reports. We are anticipating that the software will be fully implemented by July 2012. We are all very excited to use the system to generate case information and performance information that is up to date and accurate.

Development of an IT policy framework

A high level gap analysis of the Tribunal's IT policies in the previous financial year identified some shortcomings in the policy when compared to international standards of good practice and the applicable legislation.

We have focused on revising these policies and developing new policies taking account of the identified gaps.

A second review was undertaken by KPMG as part of the internal audit process and, apart from two minor findings, the policies were found to be fully compliant. These policies have been communicated to staff and they have had an opportunity to make comments. Staff have been made aware of their responsibilities in terms of these policies. Once approved by the executive, we are confident that the Tribunal will have in place a sound

Governance of information technology

Sound corporate governance requires that consideration be given to the effective management and use of information technology. This is particularly important given the increasingly important role information and therefore information technology now plays in an entity's business processes as well as product and service delivery.

During the period under review the Tribunal spent considerable resources and time in the areas of IT governance and IT development. On the development

IT governance framework with policies that adhere to best practice and an IT strategy that addresses the IT needs of the Tribunal for the next five years.

The Tribunal, by virtue of its size, does not have a separate IT steering committee. As a result the executive committee takes responsibility for the approval of all major decisions pertaining to IT that are motivated by the IT support and network assistant. In addition, this committee and the audit committee receive a quarterly report on all aspects of IT and a bi-annual compliance report. The latter enables these committees to assess the level of compliance by the Tribunal to internal policies and legislative requirements.

Having developed a set of policies that meets best practice, the Tribunal's IT focus has moved towards ensuring that all the relevant controls are in place and, where necessary, to acquire software that assists the IT support and network assistant monitor compliance to policies, ensure that the controls are effective and highlight any vulnerabilities the Tribunal's IT environment faces.

Any risks pertaining to IT that become evident or are identified during the course of normal business are referred to the Tribunal's risk management process for evaluation and included in the risk register if necessary.

Governance and sustainability

Changes in the practice of good corporate governance has placed the responsibility on entities – both government and business – to produce what is referred to as an integrated report. An integrated report implies that the annual report must include financial and sustainability information in one report. Through such reports, stakeholders are informed of the extent to which the entities operations affect the environment and community

it operates in and, similarly, how the environment and community affect the entities operations.

A complete definition of sustainability includes environmental, economic and social sustainability where:

- **“environmental sustainability”** refers to the ability to maintain the indefinite use of renewable and non-renewable resources;
- **“economic sustainability”** refers to the entity's ability to support defined levels of production/business activity; and
- **“social responsibility”** refers to the social impact of a business but also includes adherence to ethical principles, giving back to society, health & safety, respect for human rights, equal opportunities, fair compensation, and ensuring a high quality of life. It involves eliminating unethical and corrupt behaviour. It involves providing a safe work environment and doing things for the local community, educating or helping others, participating in community groups or your local city and chamber of commerce.

The Tribunal, being a public entity, is limited in its ability to engage in corporate social investment and, not being a manufacturer, will have limited negative impact on the environment. We have however tried in our own small way to address these issues and to make whatever limited contribution we can, as set out below.

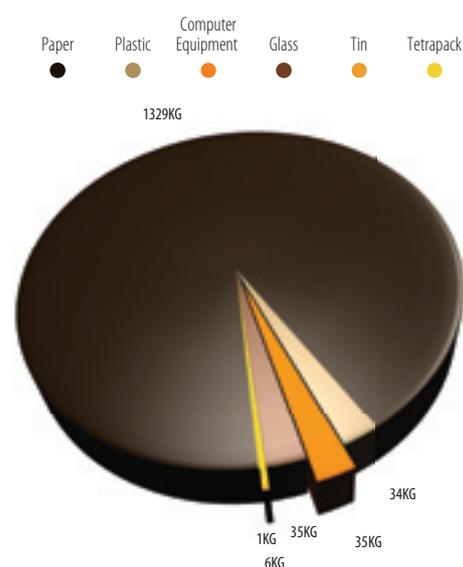
Environmental sustainability

The Tribunal has continued with its office recycling project and for the 2011-2012 financial year we recycled a total of 1,436 kg of material. These materials include paper, plastic, electronic equipment, tin, glass and tetrapack.

In addition we have replaced normal A4 printing and copying paper with recycled or environmental paper and printed our Annual Report for the period ending 31 March 2011 on environmentally friendly paper. We are also currently in the process of developing a green policy to further promote awareness of the need to preserve our environment and to recycle waste materials.

The diagram below reflects the breakdown of material recycled by weight per item.

Fig 4: Material recycled by weight per item



Economic sustainability

The issue of financial stability as well as the presentation and commentary on the Tribunal's financial results is addressed in part 6 of this report.



Janeen De Klerk heads the corporate services department of the Tribunal

Social sustainability

Being a public entity the Tribunal is limited in its ability to make any monetary contributions that would qualify as corporate social investment. We have however, as an organisation, continued to make some small contribution towards the well being of the broader community.

In November 2011 the Tribunal donated school bags, toiletries and tinned food to Tshwane Home of Hope, a shelter for girls based in Sunnyside.

We replaced office chairs in the office during December 2011 and we were able to donate the old chairs to Highlands North Boys High school in Johannesburg for use in their staff room as well as to Nkosi's Haven, a shelter for HIV/Aids victims, for use in their after school centre.

COMPLIANCE WITH LEGISLATION

The Tribunal is obliged to adhere to various legislative Acts, the two major ones being the Competition Act and the PFMA.

The Competition Act

The Competition Act and the rules of the Tribunal prescribe the Tribunal's functions, powers, activities and procedures. Procedures are periodically reviewed to ensure compliance with the requirements of legislation and to ensure that the Tribunal's work proceeds effectively and efficiently.

The Tribunal provides the EDD with quarterly reports detailing turn-around times and targets for cases that have been set-down and for decisions and orders issued.

The PFMA

In terms of the PFMA the Tribunal has been listed as a national public entity in Schedule 3A since 1 April 2001. The PFMA prescribes requirements for accountable and transparent financial management.

In accordance with the PFMA and Treasury regulations the Tribunal has, during the period under review, submitted the following documents to the EDD for approval:

- strategic plan for the period 1 April 2011 – 31 March 2016 (submitted and approved);
- budget for the period 1 April 2011 – 31 March 2012 (submitted and approved);
- business plan for the period 1 April 2011 – 31 March 2012 (submitted and approved);
- strategic plan for the period 1 April 2012 – 31 March 2017 (submitted and approved);
- budget for the period 1 April 2012 – 31 March 2013 (submitted and approved);
- annual performance plan for the period 1 April 2012 – 31 March 2013 (submitted and approved);
- request for approval to retain surpluses generated as at 31 March 2011 (submitted and approved); and
- quarterly reports on the Tribunal's expenditure, budget variance,

activities and performance against set targets.



Kirsteen Kunneke, the financial administrator, ensures that the Tribunal's financial procedures comply with required legislation

Internal audits

In April 2009 the auditing firm KPMG was awarded a three year contract to perform the Tribunal's internal audit function.

KPMG defines its mission as being *"to provide an innovative, responsive and effective value-added internal audit function by assisting management in controlling risks, monitoring compliance and improving the efficiency and effectiveness of internal control systems."*

In the year under review, the following internal audits were performed:

- internal audit for 2009-2010 follow up review;
- case management review;
- performance information review;
- information technology management review; and
- financial controls review.

An internal audit plan that balances risk and compliance was developed. In developing the plan the following were taken into consideration:

- discussions with head of corporate services;
- the Tribunal's strategic risk profile;
- the Tribunal's core business processes; and
- the Tribunal's operating environment.

Internal audits are prioritised based on areas identified as high risk as well as areas where the Tribunal may be seeking to improve internal controls. The plan is reviewed annually and presented to the audit committee for final approval.

External audit

The Auditor-General has completed the external audit for the period ending 31 March 2012.

Statutory requirements

The Tribunal has registered for and met its obligations in respect of the following levies and taxes:

- skills development levy;
- workmen's compensation;
- unemployment insurance fund (UIF); and
- pay-as-you-earn (PAYE).

In terms of Section 24(1) of the Value-Added Tax Act of 1991, which governs the levying of value added tax (VAT), the Tribunal was deregistered as a VAT vendor with effect from 1 April 2005.

In October 2005, the South African Revenue Service exempted the Tribunal from Section 10(1)(cA)(i) of the Income Tax Act of 1962.

OCCUPATIONAL HEALTH AND SAFETY

The Tribunal has a legislated requirement, in terms of the Occupational Health and Safety Act (OHS Act), to ensure a healthy and safe environment for the Tribunal's employees.

A section 16(2) appointee is responsible for the implementation of the requirements of the Competition Act and reports, on a quarterly basis, to the executive committee and the risk committee on the compliance review (legislative and

safety aspects) undertaken. In this way, these committees' attention is focussed on any issues that may compromise the safety of employees.

Other key OHS role players appointed were:

- an evacuation officer;
- a fire officer; and
- a first aider.

The Tribunal continues to ensure that these role players are adequately trained to perform their allotted functions. Three staff members attended two different training courses dealing with the OHS Act and the functions of health and safety representatives.

ETHICS

The Tribunal is committed to maintaining high standards of integrity and ethics and compliance to principles of honesty, objectivity and independence. The Tribunal ensures that its policies and procedures support this commitment.

A code of conduct stating what is expected of employees in their individual conduct and in relationships with others is in place.

Various procedures are in place that ensure that confidentiality is maintained and possible conflicts of interest disclosed. These include:

- confidentiality and non-disclosure provisions to ensure that employees understand that it is necessary for them to uphold the confidentiality of confidential aspects of the work and services of the Tribunal, both during and after their employment with the Tribunal;
- conflict of interest provisions to clarify rules on how to avoid conflicts of interest and how to disclose any potential conflicts of interest that may occur;
- annually Tribunal members (both full-time and part-time), managers and case managers complete financial disclosure forms thus ensuring that financial interests are fully disclosed and reducing the possibility that conflicts of interest might occur; and
- permanent employees and full-time members are also required to complete a disclosure form dealing with possible procurement or supply chain management conflicts.

STAFF MEETINGS

A forum comprising non-executive staff - the Tribunal Employees Forum (TEF) - provides an open, democratic channel through which staff members can raise issues of concern to them.

The TEF meets quarterly, to discuss issues pertaining to performance reviews, job grading and remuneration, as required. Where necessary, appointed TEF representatives will request to meet with management representatives to discuss issues of concern.



In November 2011, Tribunal staff delivered much needed school bags to the Tshwane Home of Hope

ANNUAL PERFORMANCE REPORT

OPERATIONAL EFFECTIVENESS				
OPERATIONAL EFFECTIVENESS			YEAR TO DATE	REASON FOR DEVIATIONS
Budget:	R1 562 717.69		R1 562 717.69	
Actual:			R610 619.86	
Enhance the expertise of Tribunal staff.				Budget underspent due to delay in Tribunal survey and lower attendance at international conferences. The latter due mainly to time constraints
Improve the service of the Tribunal to our customers.				
Strengthen the Tribunal's organisational capability and performance to deliver on its legislative mandate				
OUTPUT	PERFORMANCE INDICATORS	ANNUAL TARGET	ACTUAL	DEVIATIONS
Training feedback form	Conferences and training courses attended	Tribunal members and research staff attend 75% of the budgeted international and national conferences/workshops and training courses by 31 March 2012	87.80%	Target exceeded
Customer satisfaction survey	Bi-annual customer satisfaction survey results	75% of the customers surveyed by 31 January 2012 are satisfied with the service of the Tribunal	No survey completed	Behind target - survey process delayed as more involved than we originally anticipated

The third institution established in terms of the Competition Act is the Competition Appeal Court, a specialised body that hears appeals from and reviews of the decisions of the Tribunal.



Dennis Davis, Judge President of the
Competition Appeal Court

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competition tribunal annual report



Competition Appeal
Court



The Competition Appeal Court

The third institution established in terms of the Competition Act is the CAC, a specialised body that hears appeals from and reviews of the decisions of the Tribunal.

The President, acting on the advice of the Judicial Services Commission, appoints the CAC judges.

The judges constituting the CAC during the year under review are in the table below.

Table 4: Judges of the CAC

NAME	COURT	TERM OF OFFICE
The Honourable Mr Justice D Davis	Cape of Good Hope Provincial Division of the High Court	October 2007 - October 2012
The Honourable Madam Justice LM Mailula	Witwatersrand Local Division of the High Court	October 2007 - October 2012
The Honourable Mr Justice CN Patel	Natal Provincial Division of the High Court	October 2007 - October 2012
The Honourable Mr Justice D Zondi	Cape of Good Hope Provincial Division of the High Court	January 2012 – December 2012
The Honourable Madam Justice NC Dambuza	Eastern Cape Division of the High Court	December 2010 – December 2020
The Honourable Mr Justice KGB Swain	KwaZulu-Natal High Court	January 2012 – December 2012
The Honourable Madam Justice MB Molemela	Free State High Court	January 2012 – December 2012

The Tribunal performs the registry function for the CAC and the Tribunal's registrar acts as its registrar.

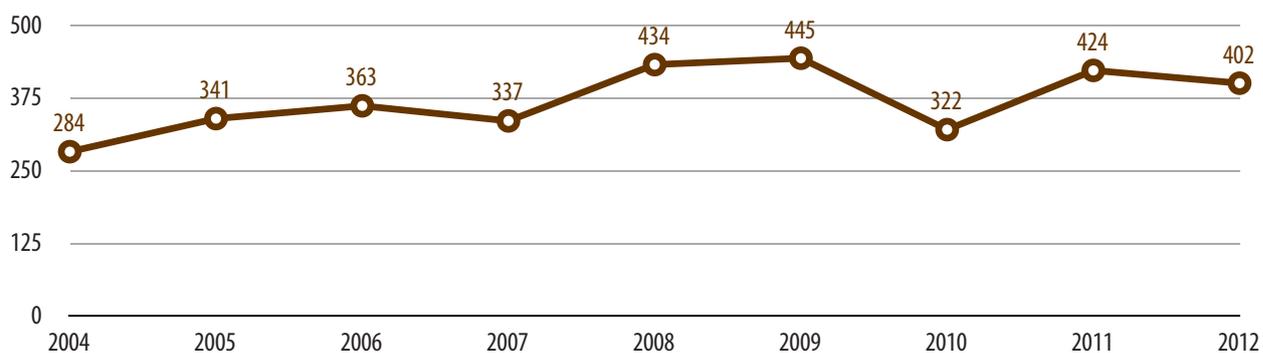
Funding for the CAC is received from the EDD and its budget appears as a line item on the Tribunal's budget. The budget is managed by the Judge President and

administered by the Tribunal's secretariat on behalf of the CAC. The figure to follow sets out the expenditure of the CAC over the past nine years.



From left to right: Mr Justice Swain, Madam Justice Molemela, Mr Justice Davis, Madam Justice Dambuza, Professor Salop, Madam Justice Mailula and Mr Justice Zondi

Fig 5: CAC expenditure over time



Like the Tribunal it is difficult for the CAC to accurately predict its expenditure as there is no indication of the number of matters that will be brought before it. The budget is therefore drawn on the basis of expected matters and their associated costs, and some provision is made for the attendance of CAC judges at international competition conferences.

Cases before the CAC

In the period under review the CAC received 13 applications, heard 14 cases (nine from the previous review), handed down seven judgments (four from the previous review), and two cases were withdrawn (both from the previous review).

There are currently 13 cases pending on the roll (five pending hearings and eight pending judgment).

A detailed list of CAC cases is given in Appendix G.

In the year under review the Tribunal spent 92.87% of its budget



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competition tribunal annual report



Financial
Management



Financial Overview

In line with the requirements of the strategic framework guidelines, the Tribunal allocated its budget across the three strategic focus areas set for the year and reported expenditure against this budget on a quarterly basis. The Tribunal

is responsible for the administrative functioning of the CAC and the Tribunal reports expenditure against this budget on a quarterly basis. The remainder of the budget not directly related to the three stated strategic objectives and the CAC is

categorised as expenditure on facilities, capital and support services. The table below details the budget versus actual expenditure during the reporting period.

Table 5: Budget and expenditure for the reporting period

CATEGORY	BUDGET	ACTUAL	% OF BUDGET SPENT
Strategic focus 1: Tribunal hearings and decisions	R13 018 399	R13 517 348	103.83
Strategic focus 2: Stakeholder awareness	R548 132	R538 433	98.23
Strategic focus 3: Operational efficiency	R1 562 718	R610 620	39.07
Competition Appeal Court	R710 475	R402 215	56.61
Facilities	R1 050 602	R896 464	85.33
Capital	R1 073 080	R1 099 179	102.43
Support services	R8 457 525	R7 321 606	86.57
TOTAL	R26 420 931	R24 385 865	92.32

In the year under review the Tribunal spent 92.32% of its budget. The overspending on the first strategic focus, Tribunal hearings and decisions, is primarily a result of the fact that the fees paid to part-time Tribunal members was 36.46% more than budgeted.

Part-time members sitting on a panel are paid a daily fee for the duration of the hearing and for preparation. In addition part-time members may be requested to write decisions, in which case a daily fee is applicable. In some instances a hearing may be cancelled shortly before it begins

or while a case is part heard. Part-time Tribunal members receive a daily fee if the notice of cancellation given was insufficient for them to take up non-Tribunal work.

Fees paid to part-time Tribunal members during the review increased by 74.02%. This is in line with the 76.94% increase in the number of days part-time members

were paid for - a total of 323.80 days of work, whereas in the previous year this figure was 183. There were seven part-time members who were each paid for

an average of 46.26 days per annum. Part-time members were paid R7,000 per day. The table below shows the distribution of fees paid over the past two years.

Table 6: Distribution of hearing days over 2 years

CATEGORY	2012	2011	% CHANGE
Hearing days (including cancelled days)	176	120	46.67
Preparation days	108	39.50	173.42
Decision writing	39.80	23.50	69.36
TOTAL DAYS	323.80	183.00	76.94

In the year under review the Tribunal heard 158 matters over 146 hearing days, whereas in the previous year 116 matters were heard over 106 days. This represents an increase of 36.21% in the

volume of cases and a 37.74% increase in the number of hearing days. The average number of days per hearing was 1.08 days as compared to 1.09 days in the previous period.

Each panel consists of three Tribunal members. The table below illustrates the allocation of hearing days expressed as person days between full-time and part-time members.

Table 7: Allocation of hearing days between full-time and part-time members

DAYS	2012	%	2011	%
Hearing days	146		106	
Person days, full-time members	279	63.70	242	76.10
Person days, part-time members	159	36.30	76	23.90
TOTAL PERSON DAYS	438	100	318	100
Per Tribunal member	43.80		31.80	

The increase in the volume of cases had other impacts on the budget. The Tribunal made a conscious decision not to send representatives to various budgeted conferences or workshops and to tone down the nature of internal workshops and conferences held as the busy court roll meant that full-time and part-time Tribunal members were required to attend to these matters and were therefore unable to attend any workshops or conferences. This accounts for 56.69% of the unspent budget allocated for "operational efficiency."

In 2010/2011 the Tribunal awarded a tender to Business Connexion (Pty) Ltd (BCX) to develop an electronic case

document management system. The project began in August 2010 and we expect to be fully operational in July 2012.

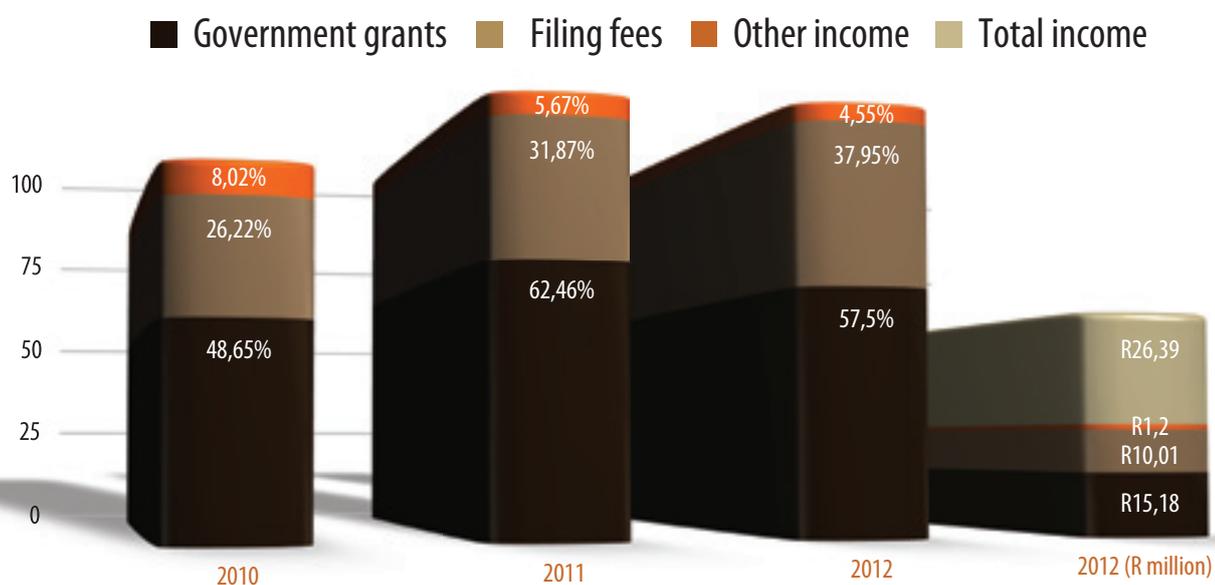
In the current year we have spent R0.88 m on intangible assets. This expenditure includes software costs, development costs, legal costs as well as the costs of the IT consultant managing the project. These costs total R0.23 m and normally would be reflected as "professional services" but, as they are part of the software development, we have allocated them as a capital cost. This explains the "overspending" on intangible assets and "underspending" on professional fees. The costs incurred on this project are reflected on the balance sheet (as intangible

assets) as opposed to an expense in the income and expenditure statement.

The budget compiled by the Tribunal for the 12-month period ending 31 March 2012 reflected estimated expenditure of R26.42 m and estimated revenue (generated from aliquot fees, interest and an EDD grant) of R23.12 m. It was anticipated that the budget shortfall would be met by using accumulated surpluses of R3.3 m.

Actual revenue for the year amounted to R26.39 m and was made up as recorded in the following figure:

Fig 6: Tribunal's total income over three years



The grant received from the EDD increased by 11.38% over that of the previous year and accounted for 57.50% of the Tribunal's revenue in the year under review. Filing fees received in terms of the memorandum of understanding with the Commission increased by 44.08% from those of the previous year and accounted for 37.95% of the Tribunal's revenue.

While the budget provided for an increase in filing fees we did not anticipate such a significant increase.

Despite this increase we still expect that in the future filing fees will represent a reducing component of the Tribunal's revenue and the Tribunal will accordingly continue to request the National Treasury's approval to accumulate any surpluses generated. It will also be

necessary to look to the EDD and the National Treasury for larger annual grants.

Total expenditure (net of capital expenditure) for the period increased by 16.67% from R19.96 m to R23.29 m.

The table below illustrates the nature of expenditure incurred by the Tribunal and the percentage change in each category in the year under review.

Table 8: Expenditure by category over two financial years

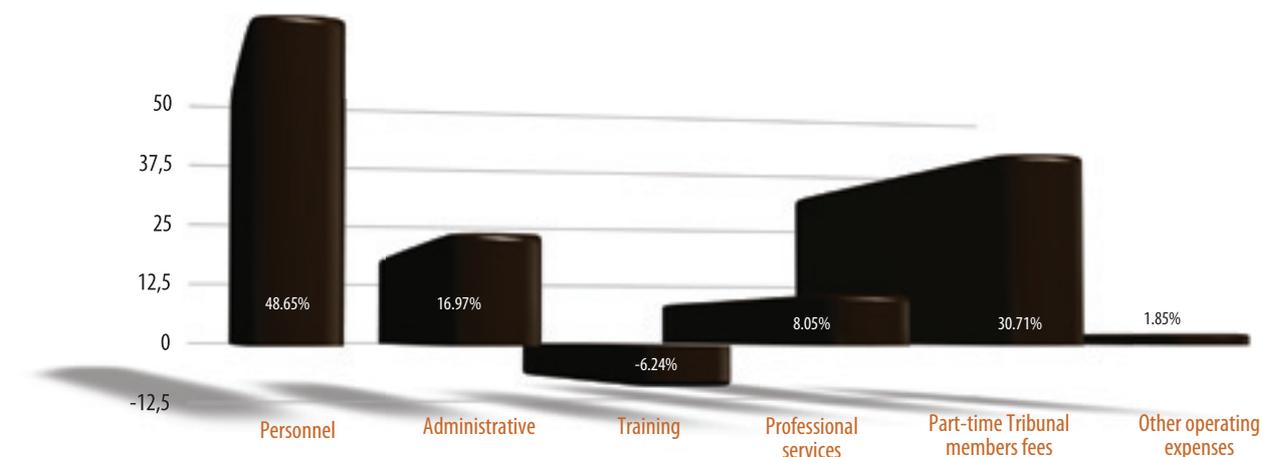
EXPENDITURE CATEGORY	PERCENTAGE	PERCENTAGE	PERCENTAGE CHANGE
	(2012)	(2011)	
Personnel	54.43	55.39	14.64
Administration	18.54	18.80	15.05
Training	4.46	6.25	-16.64
Professional services	9.77	10.05	13.35
Part-time Tribunal members fees	10.31	6.92	74.02
Other operating expenses	2.49	2.59	11.90
TOTAL EXPENDITURE	100	100	16.67

Expenditure on professional services includes payments to the Commission in terms of the memorandum of understanding in place with the Tribunal,

transcription services, legal fees, public relations and finance related consulting services.

The figure to follow sets out the contribution of each category to the 16.67% increase in total expenditure:

Fig 7: Category contributions to increase in total expenditure



The biggest contributors to the increase in expenditure are personnel expenditure (which accounts for 48.65% of the increase) and expenditure on part-time Tribunal members (which accounts for 30.71% of the increase). Early on in this section we discuss fees paid to part-time Tribunal members.

Personnel increased by 14.64% during the year under review. The increase in

personnel expenditure is attributed to a number of factors which include:

- cost of living increases of 6.8% awarded to the Tribunal secretariat were backdated to 1 May 2011. In prior years these were effective from 1 July;
- performance bonuses paid increased by 14.80%;
- an additional case manager was em-

ployed in the research department;

- the number of interns appointed increased from one in 2010/2011 to 11 in 2011/2012

During the period under review there was a 13.35% increase in expenditure on professional services. The table below illustrates the distribution of categories of expenditure within the line item 'professional services'.

Table 9: Distribution of expenditure in professional services

CATEGORY	DISTRIBUTION	% CHANGE
Consulting	30.08	-18.04
Recruitment	0	0
Public relations	19.85	5.65
Transcription services	29.49	84.09
Shared services with the Commission	20.60	20.52
TOTAL	100	13.35

As indicated earlier the volume of cases increased by 36.21% and this in turn led to an increase in the cost of transcription services.

The Tribunal has continued to report quarterly to its "parent department" – the EDD – on the economic indicator

dashboard. The dashboard is attached as Appendix F to this report.

The dashboard enables the Tribunal, to some extent, to determine the "actual" operating costs associated with a hearing held at the Tribunal. At present we are able to calculate what we refer to as

"direct hearing costs". These are variable costs and do not include the salaries of full-time members or case managers. If these are included we arrive at what is referred to as "total adjudication costs".

These costs are reflected in the following table.

Table 10: Operating costs associated with a hearing

	DIRECT HEARING COSTS	ADJUDICATION COSTS	NUMBER
	R'000	R'000	
Per order issued	23.93	90.72	149 issued
Per reason issued	38.33	145.35	93 issued
Per person day	8.14	30.86	438 person days
Per actual hearing day	24.42	92.59	146 hearing days
Per part-time member person day	22.42	85.02	159 person days
Per transcript page produced	0.23	0.89	15236 pages

Earlier in this section we noted that the Tribunal spent 92.32% of its budget this year. It must be noted that the Tribunal's ability to budget accurately is limited by its inability to predict the number of cases that will be heard in any year.

In its initial years of operation the Tribunal experienced large budget variances, but in recent years actual expenditure has been more closely aligned to the budget. There will always be a prospect that the Tribunal will need to employ counsel to oppose certain types of legal challenges and it is therefore necessary to retain a contingency budget for professional services in this regard.

Table 11: Percentage of Tribunal's budget spent over time

YEAR	ACTUAL EXPENDITURE (IN R MILLION)	BUDGET (IN R MILLION)	% OF BUDGET SPENT
2000	4,29	9,12	47.03
2001	6,35	9,08	69.93
2002	6,37	9,13	69.76
2003	7,36	9,33	78.88
2004	9,08	10,44	86.97
2005	9,25	11,54	80.15
2006	10,64	12,41	85.23
2007	13,22	15,81	83.62
2008	15,56	16,60	93.73
2009	17,71	20,35	87.03
2010	18,48	26,40	70.00
2011	20,42	27,41	74.50
2012	24,39	26,42	92.32

Annual Financial Statements

for the year ended 31 March 2012

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

financial **INDEX**

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STATEMENT OF FINANCIAL POSITION AS AT 31 MARCH 2012

	NOTE(S)	2012 R '000	2011 R '000
ASSETS			
CURRENT ASSETS			
Inventory	2	34	14
Receivables from exchange transactions	3	976	1 038
Cash and cash equivalents	4	24 322	21 264
		25 332	22 316
NON-CURRENT ASSETS			
Property, plant and equipment	5	1 165	1 292
Intangible assets	6	2 436	1 578
		3 601	2 870
Non-current assets		3 601	2 870
Current assets		25 332	22 316
TOTAL ASSETS		28 933	25 186
LIABILITIES			
CURRENT LIABILITIES			
Finance lease obligation	7	86	123
Payables from exchange transactions	8	1 953	1 384
Provisions	9	611	461
		2 650	1 968
NON-CURRENT LIABILITIES			
Finance lease obligation	7	17	58
		17	58
Non-current liabilities		17	58
Current liabilities		2 650	1 968
TOTAL LIABILITIES		2 667	2 026
Assets		28 933	25 186
Liabilities		(2 667)	(2 026)
NET ASSETS		26 266	23 160
NET ASSETS			
Accumulated surplus		26 266	23 160

STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 31 MARCH 2012

		2012	2011
	NOTE(S)	R '000	R '000
REVENUE			
Revenue from non- exchange transactions	10	15 175	13 625
Revenue from exchange transactions	11	10 015	6 951
Other income	12	11	30
Investment income	13	1 191	1 206
Gains on disposal of assets		1	1
TOTAL REVENUE		26 393	21 813
EXPENDITURE			
Personnel	14	(12 646)	(11 030)
Administration	15	(4 344)	(3 778)
Depreciation and amortisation	16	(444)	(445)
Impairment loss/ Reversal of impairments	17	(17)	(4)
Finance costs	18	(12)	(43)
Other operating expenses	19	(5 824)	(4 660)
TOTAL EXPENDITURE		(23 287)	(19 960)
Revenue		26 393	21 813
Expenditure		(23 287)	(19 960)
Other		-	-
NET SURPLUS FOR THE YEAR		3 106	1 853

STATEMENT OF CHANGES IN NET ASSETS FOR THE YEAR ENDED 31 MARCH 2012

	ACCUMULATED FUNDS	TOTAL NET ASSETS
	R '000	R '000
Balance at 01 April 2010	21 307	21 307
Surplus for the year	1 853	1 853
Total changes	1 853	1 853
Balance at 01 April 2011	23 160	23 160
Surplus for the year	3 106	3 106
Total changes	3 106	3 106
Balance at 31 March 2012	26 266	26 266

CASH FLOW STATEMENT

		2012	2011
	NOTE(S)	R '000	R '000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Grants		15 175	13 625
Interest income		1 191	1 206
Other receipts		10 089	7 119
		26 455	21 950
Payments			
Employee costs		(12 646)	(11 030)
Suppliers		(569)	46
Finance costs		(12)	(43)
Other payments		(8 900)	(8 600)
		(22 127)	(19 627)
Total receipts		26 455	21 950
Total payments		(22 127)	(19 627)
NET CASH FLOWS FROM OPERATING ACTIVITIES	21	4 328	2 323
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	5	(317)	(813)
Proceeds from sale of property, plant and equipment	5	7	108
Purchase of other intangible assets	6	(881)	(1 465)
NET CASH FLOWS FROM INVESTING ACTIVITIES		(1 191)	(2 170)
CASH FLOWS FROM FINANCING ACTIVITIES			
Repayment of finance leases		(78)	(189)
NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS		3 058	(37)
Cash and cash equivalents at the beginning of the year		21 264	21 301
CASH AND CASH EQUIVALENTS AT THE END OF THE YEAR	4	24 322	21 264

ACCOUNTING POLICIES FOR THE YEAR ENDED 31 MARCH 2012

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.

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

These accounting policies are consistent with the previous period.

1.1 Presentation currency

These financial statements are presented in South African Rands.

1.2 Revenue

Revenue is recognised to the extent that it is probable that the economic benefits will flow and can be reliably measured. Revenue is measured at fair value of the consideration receivable on an accrual basis. The following specific recognition criteria must also be met before revenue is recognised:

Revenue from non-exchange transactions

Revenue from non-exchange transactions refers to transactions where the Tribunal received revenue from another entity without directly giving approximately equal value in exchange. Both annual appropriation and statutory appropriation from the National Revenue Fund is classified as non-exchange revenue.

Revenue from non-exchange transactions is generally recognised to the extent that the related receipt or receivable qualifies as recognition as an asset and there is no liability to repay the amount in the event of non-performance.

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 and the grant has been received and there is no liability to repay the amount in the event of non-performance.

Revenue from exchange transactions

Filing fees

Filing fees in respect of mergers are recognised when the papers have been filed and the filing fees have been paid.

Revenue on filing fees is recognised as economic benefits compulsorily receivable or receivable by entities, in accordance with laws or regulations, established to provide revenue to government, excluding fines or other penalties imposed for breaches or laws or regulations.

Interest income

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

Other income

Other income is recognised on an accrual basis.

1.3 Irregular expenditure

Irregular expenditure means expenditure incurred in contravention of, or not in accordance with a requirement of any applicable legislation including the PFMA.

The expenditure portion of any irregular expenditure is charged against surplus in the period in which they occur. This expenditure will be disclosed separately in the annual financial statements.

1.4 Fruitless and wasteful expenditure

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

The expenditure portion of any fruitless and wasteful expenditure is charged against in the period in which they occur. This expenditure will be disclosed separately in the annual financial statements.

1.5 Employee benefits

Pension and post retirement benefits

Payments to defined contribution retirement benefit plans are charged as an expense as they fall due. The entity operates a defined contribution plan for all its employees.

Contributions to the defined contribution plan are charged to the statement of financial performance in the year to which they relate.

1.6 Property, Plant And Equipment

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

- it is probable that future economic benefits associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Costs include costs incurred initially to acquire or construct an item of property, plant and equipment and costs incurred subsequently to add to, replace part of, or service it. If a replacement cost is recognised in the carrying amount of an item of property, plant and equipment, the carrying amount of the replaced part is derecognised.

Property, plant and equipment are stated at historical cost less depreciation. Depreciation is calculated on a straight-line basis at rates considered appropriate to reduce the cost of the assets less their residual value over the estimated useful life. Useful life, depreciation policy and residual value are reviewed annually.

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

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

ITEM	AVERAGE USEFUL LIFE
Furniture and fixtures	
• Bought before 1 April 2010	15 years
• Bought after 1 April 2010	5 years
Motor vehicles	5 years
Office equipment	
• Bought before 1 April 2010	15 years
• Bought after 1 April 2010	5 years

ITEM	AVERAGE USEFUL LIFE
IT equipment	
• Computer Equipment	3 years
• Server	10 years
Leased Assets	Period of the lease

The residual value and the useful life of each asset are assessed at each financial period-end.

Each part of an item of property, plant and equipment with a cost that is significant in relation to the total cost of the item shall be depreciated separately.

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

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

1.7 Intangible assets

An intangible asset is recognised when:

- it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity; and
- the cost of the asset can be measured reliably.

Intangible assets are initially recognised at cost.

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

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

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

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

An intangible asset is regarded as having an indefinite useful life when, based on all relevant factors, there is no foreseeable limit to the period over which the asset is expected to generate net cash inflows. Amortisation is not provided for these intangible assets. For all other intangible assets amortisation is provided on a straight line basis over their useful life.

The amortisation period and the amortisation method for intangible assets are assessed every period-end. Reassessing the useful life of an intangible asset with a definite useful life after it was classified as indefinite is an indicator that the asset may be impaired. As a result the asset is tested for impairment and the remaining carrying amount is amortised over its useful life.

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 for server	10 years
Computer software	5 years

1.8 Leases

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

Leased assets

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

Assets held under finance leases are recognised as assets at their fair value at the inception of the lease or, if lower at the present value of the minimum lease payments. The corresponding liability to the lessor is included in the statement of financial position as a finance lease obligation. Lease payments are apportioned between finance charges and reduction of the lease obligation so as to achieve a constant rate of interest on the remaining balance of the liability. Finance charges are charged to surplus or deficit.

Contingent rentals are recognised as expenses in the periods in which they are incurred.

Leases under which the lessor effectively retains the risks and benefits of ownership are classified as operating leases. Payments made under operating leases are charged against revenue on a straight-line basis over the term of the lease.

1.9 Inventory

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

Net realisable value for consumables is assumed to approximate the cost price due to the relatively short period that these assets are held in stock.

Inventories are measured at the lower of cost and net realisable value on the first-in-first-out (FIFO) basis.

Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

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.

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

When inventories are sold, the carrying amount of those inventories are recognised as an expense in the period in which the related revenue is recognised. The amount of any write-down of inventories to net realisable value and all losses of inventories are recognised as an expense in the period the write-down or loss occurs. The amount of any reversal of any write-down of inventories, arising from an increase in net realisable value, are recognised as a reduction in the amount of inventories recognised as an expense in the period in which the reversal occurs.

The cost of inventory is based on the FIFO method and includes expenditure incurred in acquiring the inventory and other costs incurred in bringing them to their existing 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.

1.10 Provisions and contingencies

Provisions are recognised when:

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

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

Provisions are not recognised for future operating deficits.

If an entity has a contract that is onerous, the present obligation under the contract shall be recognised and measured as a provision.

1.11 Financial instruments

Classification

The Tribunal's principal financial instruments are receivables, cash and cash equivalents, payables and lease liabilities.

Classification depends on the purpose for which the financial instruments were obtained / incurred and takes place at initial recognition. Classification is re-assessed on an annual basis, except for derivatives and financial assets designated as at fair value through surplus or deficit, which shall not be classified out of the fair value through surplus or deficit category.

Initial recognition and measurement

Financial assets are recognised in the Tribunal's statements of financial position when the Tribunal becomes a party to the contractual provisions of an instrument.

Financial instruments are initially recognised using the trade date accounting method.

Financial assets are classified as financial assets at fair value through surplus or deficit, loans and receivables or held to maturity investment as appropriate. When financial assets are initially recognised they are measured at fair value.

The Tribunal determines the classification of its financial assets on initial recognition and, where allowed and appropriate, re-evaluates this designation at each financial year end.

Subsequent measurement

Financial instruments at fair value through surplus or deficit are subsequently measured at fair value, with gains and losses arising from changes in fair value being included in surplus or deficit for the period.

Loans and receivables are subsequently measured at amortised cost, using the effective interest method, less accumulated impairment losses.

Gains and losses arising from changes in fair value are recognised in other comprehensive income and accumulated in equity until the asset is disposed of or determined to be impaired. Interest on available for sale financial assets calculated using the effective interest method is recognised in surplus or deficit as part of other income. Dividends received on available for sale equity instruments are recognised in surplus or deficit as part of other income when the entity's right to receive payment is established.

Financial liabilities at amortised cost are subsequently measured at amortised cost, using the effective interest method.

Fair value determination

The fair values of quoted investments are based on current bid prices. If the market for a financial asset is not active (and for unlisted securities), the entity establishes fair value by using valuation techniques. These include the use of recent arm's length transactions, reference to other instruments that are substantially the same, discounted cash flow analysis, and option pricing models making maximum use of market inputs and relying as little as possible on entity-specific inputs.

Impairment of financial assets

At each end of the reporting period the entity assesses all financial assets, other than those at fair value through surplus or deficit, to determine whether there is objective evidence that a financial asset or group of financial assets has been impaired.

Impairment losses are recognised in surplus or deficit.

Impairment losses are reversed when an increase in the financial asset's recoverable amount can be related objectively to an event occurring after the impairment was recognised, subject to the restriction that the carrying amount of the financial asset at the date that the impairment is reversed shall not exceed what the carrying amount would have been had the impairment not been recognised.

Reversals of impairment losses are recognised in surplus or deficit except for equity investments classified as available for sale.

Impairment losses are also not subsequently reversed for available-for-sale equity investments which are held at cost because fair value was not determinable.

Asset carried at amortised cost

In relation to receivables a provision for impairment is made when there is objective evidence (such as the probability of insolvency or significant financial difficulties of the debtor) that the Tribunal will not be able to collect all the amounts due under the original terms of the invoice. The carrying amount of the receivable is reduced through use of an allowance account. Impaired debts are derecognised when they are assessed as uncollectible.

Receivables from exchange transactions

Trade receivables are measured at initial recognition at fair value, and are subsequently measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in surplus or deficit when there is objective evidence that the asset is impaired. Significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy or financial reorganisation, and default or delinquency in payments (more than 30 days overdue) are considered indicators that the trade receivable is impaired. The allowance recognised is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

The carrying amount of the asset is reduced through the use of an allowance account, and the amount of the deficit is recognised in surplus or deficit within operating expenses. When a trade receivable is uncollectible, it is written off against the allowance account for trade receivables. Subsequent recoveries of amounts previously written off are credited against operating expenses in surplus or deficit.

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. After initial measurement loans and receivables are carried at amortised cost using the effective interest method less any allowance for impairment. Gains and losses are recognised in surplus or deficit when the receivables are derecognised or impaired, as well as through the amortisation process.

Trade and other receivables are classified as loans and receivables.

Payables from exchange transactions

Trade payables are initially measured at fair value, and are subsequently measured at amortised cost, using the effective interest rate method.

After initial recognition, payables are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in surplus and deficit when the liabilities are derecognised as well as through the amortisation process.

Cash and cash equivalents

Cash and cash equivalents in the statement of financial position comprise cash at banks and on hand and cash equivalents with an original maturity of three months or less. For the purpose of the cash flow statement, cash and cash equivalents consist of cash and cash equivalents as defined above, net of outstanding bank overdrafts.

Cash and cash equivalents are recognised at cost.

Bank overdraft and borrowings

Bank overdrafts and borrowings are initially measured at fair value, and are subsequently measured at amortised cost, using the effective interest rate method. Any difference between the proceeds (net of transaction costs) and the settlement or redemption of borrowings is recognised over the term of the borrowings in accordance with the entity's accounting policy for borrowing costs.

1.12 Comparative figures

In order to conform to changes, comparative figures have been adjusted, where necessary. The comparative figures shown in these financial statements are limited to the figures shown in the previous year's audited financial statements and such other comparative figures that may reasonably have been available for reporting.

1.13 Impairment of non-cash generating assets

The entity assesses at each statement of financial position date whether there is any indication that an asset may be impaired. If any such indication exists, the entity estimates the recoverable amount of the asset.

The carrying amount of the Tribunal's non-cash generating assets are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication then the assets recoverable service amount is estimated. The recoverable service amount is the higher of the non-cash generating assets's fair value less the costs to sell and its value in use.

When the recoverable service amount of an asset is less than its carrying amount, the carrying amount is reduced to its recoverable service amount. The reduction is an impairment loss.

An impairment loss of assets carried at cost less any accumulated depreciation or amortisation is recognised immediately in surplus or deficit. Any impairment loss of a revalued asset is treated as a revaluation decrease.

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

An impairment loss recognised in prior periods for an asset is reversed if there has been a change in the estimates used to determine the assets recoverable service amount since the last impairment loss was recognised. If this is the case, the carrying amount of the asset is increased to its recoverable service amount. The increase is a reversal in impairment loss. The increased carrying amount attributable to a reversal of an impairment loss shall not exceed the carrying amount that would have been determined (net of depreciation or amortisation) had no impairment loss been recognised in prior period.

A reversal of an impairment loss for an asset shall be recognised immediately in surplus or deficit. An impairment loss is tested using the depreciated replacement cost approach.

1.14 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 value for this provision by multiplying the number of days due per employee by an estimated value for the daily wage per employee as reflected in the payroll software.

Provision for payment in terms of voluntary disclosure payment (VDP)

In October 2011 the Tribunal submitted a VDP to SARS with regard a PAYE and SDL levy liability of R244 046.76. The Tribunal, on behalf of employees, pays the monthly contributions for a group life policy/permanent health insurance and had failed to make these contributions subject to perks tax calculations and deductions. These liability were calculated for the 5 year period ending 31 March 2011 and the VDP submission was submitted to SARS. Since April 2011 the payroll has been adjusted to ensure that these contributions are taxed correctly. No response has been received from SARS with regard to this VDP and a provision has been raised for the payment of this amount.

1.15 Related parties

Related party disclosures are prepared in accordance with GRAP 20 Related Party Disclosures. Related parties are identified as being those parties that control or have significant influence over the Tribunal and those parties that are controlled or significantly influenced by the Tribunal. Disclosure is made of all relationships involving control, even when there are no transactions between such parties during the year; all other related party transactions and management compensation.

Related party relationship exists with all national government departments, trading entities, major state owned entities (Schedule 2), national government business enterprises (Schedule 3B) and national public entities (Schedule 3A) within the National Sphere of Government due to the Tribunal's oversight of these entities.

All related party transactions are consistent with normal operating relationships between the entities, and are undertaken on terms and conditions that are normal for such transactions in these circumstances.

1.16 Standards in issue not yet effective

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

NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

	2012	2011
	R '000	R '000

2. INVENTORY

Consumable stores (office stationery)	34	14
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3. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Receivables	786	934
Prepayments	190	104
Total	976	1 038

Trade receivables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice and therefore approximate fair value.

4. CASH AND CASH EQUIVALENTS

Cash and cash equivalents comprise cash that is held with registered banking institutions and are subject to insignificant interest rate risk. The carrying amount of these assets approximates their fair value.

There are no restrictions on the use of cash.

Cash on hand	-	3
Cash at bank	24 322	21 261
Total	24 322	21 264

5. PROPERTY, PLANT AND EQUIPMENT

	2012			2011		
	COST	ACCUMULATED DEPRECIATION & ACCUMULATED IMPAIRMENT	CARRYING VALUE	COST	ACCUMULATED DEPRECIATION & ACCUMULATED IMPAIRMENT	CARRYING VALUE
Furniture and fixtures	455	(224)	231	422	(239)	183
Motor vehicles	210	(39)	171	210	(18)	192
Office equipment	72	(21)	51	72	(10)	62
IT equipment	1 111	(492)	619	982	(294)	688
Leased assets	640	(547)	93	584	(417)	167
TOTAL	2 488	(1 323)	1 165	2 270	(978)	1 292

Reconciliation of property, plant and equipment - 2012

	OPENING BALANCE	ADDITIONS	DISPOSALS	DEPRECIATION	IMPAIRMENT LOSS	TOTAL
Furniture and fixtures	183	111	(4)	(43)	(16)	231
Motor vehicles	192	-	-	(21)	-	171
Office equipment	62	2	(1)	(11)	(1)	51
IT equipment	688	148	(1)	(216)	-	619
Leased assets	167	56	-	(130)	-	93
	1 292	317	(6)	(421)	(17)	1 165

Reconciliation of property, plant and equipment - 2011

	OPENING BALANCE	ADDITIONS	DISPOSALS	DEPRECIATION	IMPAIRMENT LOSS	TOTAL
Furniture and fixtures	152	58	-	(27)	-	183
Motor vehicles	103	210	(103)	(18)	-	192
Office equipment	16	53	(3)	(4)	-	62
IT equipment	392	475	(1)	(174)	(4)	688
Leased assets	352	17	-	(202)	-	167
	1 015	813	(107)	(425)	(4)	1 292

Assets subject to finance lease (Net carrying amount)

Leased assets	93	167
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6. INTANGIBLE ASSETS

	2012			2011		
	COST	ACCUMULATED AMORTISATION & ACCUMULATED IMPAIRMENT	CARRYING VALUE	COST	ACCUMULATED AMORTISATION & ACCUMULATED IMPAIRMENT	CARRYING VALUE
COMPUTER SOFTWARE	2 498	(62)	2 436	1 617	(39)	1 578

Reconciliation of intangible assets - 2012

	OPENING BALANCE	ADDITIONS	AMORTISATION	TOTAL
COMPUTER SOFTWARE	1 578	881	(23)	2 436

Reconciliation of intangible assets - 2011

	OPENING BALANCE	ADDITIONS	AMORTISATION	TOTAL
COMPUTER SOFTWARE	132	1 465	(19)	1 578

	2012	2011
	R '000	R '000

7. FINANCE LEASE OBLIGATION

Minimum lease payments due

- within one year	90	134
- in second to fifth year inclusive	18	60
	108	194
less: future finance charges	(5)	(13)
<i>Present value of minimum lease payments</i>	103	181

Present value of minimum lease payments due

- within one year	86	123
- in second to fifth year inclusive	17	58
	103	181
Non-current liabilities	17	58
Current liabilities	86	123
	103	181

The Tribunal is leasing photocopiers and data cards on finance leases and there are no restrictions imposed on the Tribunal in terms of these leases. The obligation under the finance lease is secured by the lessor's title to the leased asset. The lease can be extended for a further period after the initial period has expired.

8. PAYABLES FROM EXCHANGE TRANSACTIONS

Creditors	723	241
Other accruals	1 230	1 143
	1 953	1 384

Trade payables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice and therefore approximate fair value.

9. PROVISIONS

Reconciliation of provisions - 2012

	OPENING BALANCE	ADDITIONS	REVERSED DURING THE YEAR	TOTAL
LEAVE PROVISION	461	611	(461)	611

Reconciliation of provisions - 2011

	OPENING BALANCE	ADDITIONS	REVERSED DURING THE YEAR	TOTAL
LEAVE PROVISION	344	461	(344)	461

	2012	2011
	R '000	R '000
10. REVENUE FROM NON-EXCHANGE TRANSACTIONS		
Government grants	15 175	13 625
11. REVENUE FROM EXCHANGE TRANSACTIONS		
Fee Income received from the Commission	10 015	6 951
12. OTHER INCOME		
Recoupment of printing costs	6	30
Insurance refund	5	-
	11	30
13. INVESTMENT INCOME		
Interest received		
- Bank deposits	1 191	1 206
14. PERSONNEL		
Basic salaries	5 388	4 135
Performance awards	348	263
Medical aid - company contributions	185	139
Statutory contributions	86	73
Insurance	74	67
Other non-pensionable allowances	-	115
Other salary related costs	30	11
Defined contribution pension plan expense	398	446
Executive committee members emoluments	6 137	5 781
	12 646	11 030
15. ADMINISTRATIVE EXPENSES		
Audit committee members fees (inclusive of travel)	256	163
Audit committee training	17	83
Audit committee meeting expenses	11	7
General and administrative expenses	1 046	734
External audit fees	349	587
Internal audit fees	639	431
Travel and subsistence	570	406
Unitary payments for building occupation	1 456	1 367
	4 344	3 778

	2012	2011
	R '000	R '000
16. DEPRECIATION AND AMORTISATION		
Depreciation		
Furniture and fittings	43	27
Motor vehicles	21	18
Office equipment	11	4
Computer equipment	216	174
Leased assets - office equipment	130	202
	421	425
Amortisation		
Computer software	23	19
17. IMPAIRMENT OF ASSETS		
Impairments		
Property, plant and equipment	17	4
This impairment arose from the disposal of redundant furniture and computer equipment.		
18. FINANCE COSTS		
Finance leases	13	43
Fair value adjustments on payables	(1)	-
	12	43
19. OTHER OPERATING EXPENSES		
Consultants, contractors and special services	2 275	2 007
Staff training and development	1 039	1 247
Fees paid to part-time Tribunal members	2 402	1 380
Legal fees	12	18
Maintenance, repairs and running costs	95	8
Fruitless and wasteful expenditure	1	-
	5 824	4 660
20. TRADE PAYABLES - TERMS AND CONDITIONS		

Trade payables (exclusive of accruals) are paid within 30 days of date of invoice

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.

	2012	2011
	R '000	R '000
21. CASH GENERATED FROM OPERATIONS		
Surplus for the year	3 106	1 853
Adjustments for:		
Depreciation and amortisation	444	445
Profit on sale of assets and liabilities	(1)	(1)
Impairment deficit	17	4
Movements in provisions	150	117
Changes in working capital:		
Inventory	(20)	-
Receivables from exchange transactions	62	(141)
Payables from exchange transactions	570	46
	4 328	2 323

22. EMPLOYEE BENEFIT OBLIGATIONS

Defined contribution plan

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

23. INCOME TAX EXEMPTION

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

24. FINANCIAL RISK MANAGEMENT

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

Credit risk

The Tribunal trades only with recognised, creditworthy third parties. It is the Tribunal's policy that all customers who wish to trade on credit terms are subject to credit verification procedures. In addition, receivables balances are monitored on an ongoing basis with the result that the Tribunal's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed in Note 3. There is no significant concentration of credit risk within the Tribunal.

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

Exposure to credit risk

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

	2012	2011
	R '000	R '000
Cash and cash equivalents	24 322	21 264
Other receivables	786	934
TOTAL	25 108	22 198

Concentration of credit risk

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

2012	AAA AND GOVERNMENT	UNRATED
R '000	R '000	R '000
Cash and cash equivalents	24 322	-
Other receivables	-	786

2012	AAA AND GOVERNMENT	UNRATED
R '000	R '000	R '000
Cash and cash equivalents	21 264	-
Other receivables	-	934

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

2012	NEITHER PAST DUE NOR IMPAIRED	PAST DUE BUT NOT IMPAIRED - LESS THAN 2 MONTHS	PAST DUE BUT NOT IMPAIRED - MORE THAN 2 MONTHS	CARRYING VALUE
	R '000	R '000	R '000	R '000
Cash and cash equivalents	24 322	-	-	24 322
Other receivables	762	24	-	786

2011	NEITHER PAST DUE NOR IMPAIRED	PAST DUE BUT NOT IMPAIRED - LESS THAN 2 MONTHS	PAST DUE BUT NOT IMPAIRED - MORE THAN 2 MONTHS	CARRYING VALUE
	R '000	R '000	R '000	R '000
Cash and cash equivalents	21 264	-	-	21 264
Other receivables	922	-	12	934

Market risk

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

Interest rate risk

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

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

Sensitivity Analysis

INCREASE / (DECREASE) IN NET SURPLUS FOR THE YEAR			
2012	CHANGE IN INVESTMENTS	UPWARD CHANGE	DOWNWARD CHANGE
Cash and cash equivalents	1.00%	243	(243)
Finance lease	1.00%	(1)	1
2011			
Cash and cash equivalents	1.00%	199	(199)
Finance lease	1.00%	(2)	2

Liquidity risk

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

Financial instruments

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

2012	CARRYING AMOUNT	TOTAL CASH FLOW	CONTRACTUAL CASH FLOW WITHIN 1 YEAR	CONTRACTUAL CASH FLOW BETWEEN 1 AND 5 YEARS
Finance lease obligation	103	103	86	17
Payables	1 953	1 954	1 954	-

2011	CARRYING AMOUNT	TOTAL CASH FLOW	CONTRACTUAL CASH FLOW WITHIN 1 YEAR	CONTRACTUAL CASH FLOW BETWEEN 1 AND 5 YEARS
Finance lease obligation	181	181	123	58
Payables	1 384	1 384	1 366	18

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

FINANCIAL INSTRUMENT	CLASSIFICATION	CARRYING AMOUNT	CARRYING AMOUNT
Cash and cash equivalents	Loans and receivables	24 322	21 264
Receivables	Loans and receivables	786	934
Payables	Financial liabilities	1 953	1 384
Finance leases	Financial liabilities measured at amortised cost	103	181

The accounting policies for financial instruments have been applied to the items below:

Financial assets at amortised cost

Receivables	786	934
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Financial liabilities at amortised cost

Payables	1 953	1 384
Finance leases	103	181

	2012	2011
	R '000	R '000

25. RELATED PARTIES

RELATED PARTY	RELATIONSHIP
The Competition Commission	Public entity in the national sphere
The Department of Trade and Industry	National Department in the national sphere
Economic Development Department	National Department in the national sphere

Related party balances

Amounts included in trade payables regarding related parties

The Department of Trade and Industry	5	6
Amounts included in trade receivables regarding related parties		
The Competition Commission	960	967

Related party transactions

The Competition Commission

Filing fees received as at year end	10 015	6 950
Facility fees paid as at year end	1 925	1 756
Employee costs received as at year end	77	501
Administrative costs received as at year end	-	74

The Department of Trade and Industry

Administrative costs paid as at year end	68	62
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Economic Development Department

Grants received as at year end	15 175	13 625
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Full-time member/chairperson: N Manoim

Package	1 787	1 770
Statutory contributions	18	17
Other salary related contributions	49	59
Total package	1 854	1 845

Full-time member: Y Carrim

Package	1 625	1 535
Statutory contributions	16	10
Other salary related contributions	45	48
Total package	1 686	1 593

Head of Corporate Services: J de Klerk

Package	1 013	879
Performance bonus	132	133
Statutory contributions	12	11
Other salary related contributions	26	30
Total package	1 183	1 052

Head of Research: R Badenhorst

Package	604	538
Performance bonus	78	84
Statutory contributions	8	8

	2012	2011
	R '000	R '000
Other salary related contributions	20	23
Total package	710	652
<i>Registrar: L Motaung</i>		
Package	598	535
Performance bonus	78	74
Statutory contributions	8	8
Other salary related contributions	20	22
Total package	704	638

26. FRUITLESS AND WASTEFUL EXPENDITURE

Fruitless and wasteful expenditure	1	-
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An amount of R 1 060 is reflected as fruitless and wasteful expenditure in the current financial year. This amount reflects two traffic fines incurred by a user of the Tribunal vehicle. One traffic fine was incurred by a previous employee and we are unable to trace who used the vehicle when the second fine was incurred.

27. EXTERNAL AUDIT FEE

Fees	349	587
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28. CONTINGENT LIABILITY

In the past the Tribunal was informed that applications for the retention of accumulated surpluses could not be made to National Treasury until the audit had been finalised. The Tribunal has permission to retain surpluses generated as at 31 March 2011. Permission to retain surpluses of R 3.6 m generated as at 31 March 2012 will be requested following confirmation of the audit.

29. COMPARATIVE FIGURES

In Note 14 personnel costs were reclassified to exclude parking expenses that were incurred for non staff members and had in 2010/2011 been included in personnel costs. The total cost reallocated was R 28 467.97. These costs were allocated to travel and subsistence in Note 15. Salary provisions (with the exception of leave provisions) were previously reflected as provisions but as these amounts are known, we have reclassified them as accruals.

The effects of the reclassification are as follows:

Statement of Financial Performance

Personnel	-	11 056
Decrease due to restating of other salary related expenses	-	(26)
Personnel restated	-	11 030
	-	-
Administrative expenses previously stated	-	3 752
Increase due to restating of travel and subsistence	-	26
Administrative expenses restated	-	3 778

	2012	2011
	R '000	R '000
30. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE		
Reconciliation of budget surplus/deficit with the surplus/deficit in the statement of financial performance:		
Net surplus per the statement of financial performance	3 106	1 853
Adjusted for:		
Impairments recognised / reversed	17	4
Fair value adjustment	(1)	(7)
Profit/loss on the sale of assets	(1)	(1)
Increases / decreases in provisions	149	(118)
Printing recoupement and insurance refund	(11)	(23)
Transfer from retained income	3 296	7 323
Adjustments for items capital expenditure reflected on budget:		
Leased equipment	(118)	(197)
Capital expenditure	(1 073)	(2 984)
Income in excess of budget:		
Filing fees from the Commission	(2 765)	(1 191)
Interest received	(491)	(506)
Under expenditure on budget:		
Personnel	(108)	(304)
Part-time Tribunal member fees	256	(1 225)
Local training	(377)	(223)
Overseas training	(468)	(396)
Professional Services	(619)	(271)
Recruitment costs	(120)	(108)
Administrative expenses	(328)	(578)
Facilities and capital	(36)	(15)
Competition Appeal Court	(308)	(326)
Under expenditure due to project delay		
Support for Case Document Management System	-	(500)
Other (specify)	-	(207)
Net surplus per approved budget	-	-

	2012	2011
	R '000	R '000

31. NEW STANDARDS AND INTERPRETATIONS

31.1 STANDARDS AND INTERPRETATIONS EARLY ADOPTED

The entity has chosen to early adopt the following standards and interpretations:

STANDARD/ INTERPRETATION:	EFFECTIVE DATE: YEARS BEGINNING ON OR AFTER	EXPECTED IMPACT:
• GRAP 24: Presentation of Budget Information in the Financial Statements	01 April 2012	Not expected to impact on results but may require more disclosure than currently reflected in the statements
• GRAP 20: Related parties	01 April 2013	Not expected to impact on results but may require more disclosure than currently reflected in the statements

32. IRREGULAR EXPENDITURE

Opening balance	-	-
Add: Irregular Expenditure - current year	160 985	358 409
Less: Amounts condoned	(160 985)	(358 409)
Less: Amounts recoverable (not condoned)	-	-
Less: Amounts not recoverable (not condoned)	-	-
Amounts awaiting condonation	-	-

During the current financial year the Tribunal procured services with a transaction value between R2 000.00 and R10 000.00 without obtaining price quotations as required by Treasury Regulation 16A6.1. These services included travel agents fees (R39 147.00), car hire (R32 950.00), catering (R16 380.00) and accommodation (R72 508.00). Valid reasons for using these services were noted and I signed a deviation in February 2012 condoning this procurement. However a deviation cannot be applied retrospectively and we have therefore reflected R160 985.00 as irregular expenditure.



APPENDICES

2011-12

competition tribunal annual report



Appendix A – Large Mergers

CASE NUMBER	ACQUIRING FIRM	TARGET FIRM	STATUS
01/LM/Jan11 011965	Housing Impact Fund South Africa	Rand Leases Securitisation (Pty) Ltd	Approved in previous period, reasons issued in this period
02/LM/Jan11 011973	Main Street 796 Limited	Firststrand STI Holdings Limited	Approved in previous period, reasons issued in this period
77/LM/Dec10 011874	Unilever PLC	Alberto-Culver Company	Approved in previous period, reasons issued in this period
03/LM/Jan11 011981	Retail Africa Consortium Holdings (Pty) Ltd	Rapfund Holdings (Pty) Ltd and Retail Africa Wingspan Investments (Pty) Ltd	Approved in previous period, reasons issued in this period
75/LM/Nov10 011858	Growthpoint Properties Limited	Design Square Shopping Centre (Pty) Ltd, in respect of an 18% undivided share of the business enterprise known as Brooklyn Mall	Approved in previous period, reasons issued in this period
06/LM/Jan11 012013	Proudafrique 267 Trading (Pty) Ltd	S Buys (Pty) Ltd	Approved in previous period, reasons issued in this period
26/LM/May10 011239	Tsogo Sun Holdings (Pty) Ltd	Gold Reef Resorts Limited	Approved in previous period, reasons issued in this period
05/LM/Jan11 012005	Hyprop Investments Limited	Attfund Retail Limited	Approved
26/LM/Apr11 012427	Hosken Consolidated Investments Limited	KWV Holdings Limited	Approved
29/LM/Apr11 012468	Business Venture Investments no 1473 (Pty) Ltd	McDonald's (SA) (Pty) Ltd	Approved
11/LM/Feb11 012104	RMB Ventures Six (Pty) Ltd	MCG Industries (Pty) Ltd	Approved
28/LM/Apr11 012450	Resilient Properties (Pty) Ltd	Casadobe Props 75 (Pty) Ltd	Approved
20/LM/Mar11 012237	Investec Property Limited	Edgardale Properties	Approved
16/LM/Mar11 012817	Government Employee Pension Fund	Lexshell 44 General Trading (Pty) Ltd	Conditional approval
68/LM/Oct10 011759	The JSE Limited and Momentum Managed Account Platform Holdings (Pty) Ltd	First Rand Alternative Investment Management (Pty) Ltd	Conditional approval
73/LM/Nov10 011817	Wal-Mart Stores Inc	Massmart Holdings Limited	Conditional approval
02/LM/Jan10 010892	The South African Breweries Limited	Boland Beer Distributors (Pty) Ltd	Withdrawn 15 Apr 11
18/LM/Mar11 012203	Tiger Brands Limited	Davita Trading (Pty) Ltd	Approved
09/LM/Feb11 012088	Lexshell 826 Investments (Pty) Ltd	Umcebo Mining (Pty) Ltd	Approved
17/LM/Mar11 012195	Rio Tinto PLC	Riversdale Mining Limited	Approved

CASE NUMBER	ACQUIRING FIRM	TARGET FIRM	STATUS
25/LM/Apr11 012419	Reunert Limited	ECN Telecommunications (Pty) Ltd	Approved
33/LM/Apr11 012518	Newshelf 1093 (Pty) Ltd	Pepkor Holdings Ltd	Approved
42/LM/May 11 012666	Dipula Property Fund (Proprietary) Limited	Asakhe Reality Investment Fund (Pty) Ltd	Approved
41/LM/May 11 012658	Redefine Properties Ltd	Rowmoor Investments 567 (Pty) Ltd	Approved
23/LM/Mar11 012344	JD Group Limited	Unitrans Motor Enterprises (Pty) Ltd and Steinhoff Doors and Buildings (Pty) Limited	Approved
46/LM/Jun11 012757	Engine Holdings GMBH And Tognum AG	The Bergen Business Operated By the Rolls-Royce Group	Approved
48/LM/Jun11 012773	RMB Investments Advisory (Pty) Ltd	RTT Holdings (Pty) Ltd	Approved
49/LM/Jul11 012856	Aquarius Platinum South Africa (Pty) Ltd	Blue Ridge (Pty) Ltd	Approved
52/LM/Jul11 012898	Aquarius Platinum South Africa (Pty) Ltd	The Southern Booyensdal Mining Right	Approved
57/LM/Jul11 012963	Old Mutual Life Assurance (SA) Ltd	Liberty Star Consumer Holdings (Pty) Ltd	Approved
61/LM/Jul11 013003	Blue Falcon 134 Trading (Pty) Ltd	Denny Mushrooms (Pty) Ltd	Approved
40/LM/May11 012641	Mainstreet 872 (Pty)Ltd	Tracker Investment Holdings (Pty)Ltd	Approved
30/LM/Apr11 012476	Shoprite Checkers (Pty) Ltd	Metcash Seven Eleven (Pty) Ltd	Conditional approval
36/LM/Apr11 012542	Shanike Investments no 137 (Pty) Ltd	Tiso Group (Pty) Ltd & Kagiso Trust Investments (Pty) Ltd	Conditional approval
50/LM/Jul11 012864	Murray & Roberts Steel (Pty) Ltd	Alert Steel Reinforcing (Pty) Ltd and Alert Steel Polokwane (Pty) Ltd	Approved
58/LM/Jul11 012971	Senwesbel Ltd	Senwes Ltd	Approved
45/LM/Jun11 012740	TP Hentiq 6159 (Pty) Ltd	The Xeedan Property Portfolio	Approved
66/LM/Aug11 013128	Zeder Financial Services Ltd	Capespan Group Ltd	Approved
54/LM/Jul11 012930	Investec Bank Ltd and the Management Shareholders of Ferro Industries Products (Pty) Ltd	Ferro Industrial Products (Pty) Ltd	Approved
68/LM/Aug11 013151	Resilient Properties (Pty) Ltd	Ilanga Lifestyle Centre (Pty) Ltd in Respect of 20% Undivided Share of the Property Letting Enterprise Known as Ilanga Mall	Approved
60/LM/Jul11 012997	Sun International (South Africa) Ltd	Sunwest International (Pty) Ltd and Worcester Casino (Pty) Ltd	Approved
69/LM/Aug11 013177	Total Energie Development S.A.S	Tenesol S.A	Approved
71/LM/Aug11 013201	Lodestone Brands (Pty) Ltd	the Business of National Pride Trading 4 (Pty) Ltd (The "National Pride Business")	Approved
56/LM/Jul11 012955	Redefine Properties Ltd	Fin Properties 107 (Pty) Ltd in Respect of 50% Undivided Share in the Property Letting Enterprise known as Dawn Distribution Centre	Approved
64/LM/Aug11 013102	Investec Bank Ltd	MB Technologies (Pty) Ltd	Approved
38/LM/May11 012575	Old Mutual Life Assurance Company (SA) Ltd	Momentum Group Ltd	Approved
59/LM/Jul11 012489	Volkswagen AG	Man SE	Approved

CASE NUMBER	ACQUIRING FIRM	TARGET FIRM	STATUS
67/LM/Aug11 013136	Ethos Private Equity Fund V ('Ethos Fund V') and others	Universal Industries Corporation Ltd	Approved
76/LM/Sep11 013250	Business Venture Investment No: 1542	Vox Telecom Ltd	Approved
77/LM/Sep11 013268	Resilient Properties (Pty) Ltd	Pangbourne Properties in respect of the Property Letting Known as Boardwalk Shopping Centre	Approved
72/LM/Aug11 013219	Land and Agricultural Bank of South Africa	The Performing Farmer Lending Book of Gro Capital Financial Service (Pty) Ltd	Approved
85/LM/Sep11 013391	Redefine Properties Ltd	Zenprop Property Holdings Ltd iro a portfolio of Property Letting Enterprises	Approved
89/LM/Oct11 013474	Redefine Properties Ltd	The FNB Pension Fund and the Letting Enterprise at 155 West Str, Sandown	Approved
83/LM/Sep11 013342	Capital Partners Group Holdings Ltd	Premier Group (Pty) Ltd	Approved
82/LM/Sep11 013334	Lodestone Brands (Pty) Ltd	Mister Sweet (Pty) Ltd	Approved
87/LM/Oct11 013458	Ethos Equity Fund VI	Kevro (Pty) Ltd	Approved
94/LM/Nov11 013581	Redefine Properties Ltd	Cool Ideas 208 (Pty) Ltd, Improvon Property Fund 1 (Pty) Ltd, Improvon Growth Fund (Pty) Ltd and Wavelengths 124 (Pty) Ltd, in respect of six property letting enterprises	Approved
84/LM/Sep11 013383	AngloGold Ashanti Ltd	First Uranium Corporation	Approved
65/LM/Aug11 013110	Stefanutti Stocks (Pty) Ltd	Cycad Pipelines (Pty) Ltd	Approved
51/LM/Jul11 012872	Afgri Operations Ltd	Pride Milling Company (Pty) Ltd	Approved
78/LM/Sep11 013276	Bid Industrial Holdings (Pty) Ltd	A&S Food Distributors (Pty) Ltd and Star Sea Wholesalers (Pty) Ltd	Approved
81/LM/Sep11 013326	Venfin Media Investments (Pty) Ltd and Mainstreet 754 (Pty) Ltd	Marc Group Ltd	Approved
88/LM/Oct11 013466	Hitachi Data Systems Europe Holdings BV	Shoden Data Systems (Pty) Ltd	Approved
90/LM/Oct11 013482	Government Employees Pension Fund	Pareto Ltd and Business Venture Investment no 1360	Approved
55/LM/Jul11 012948	Opiconsivia Trading 99 (Pty) Ltd	The Fruitspot Group	Conditional approval
35/LM/Apr11 012534	Mystic Blue Trading 62 (Pty) Ltd	The Rhino Group	Conditional approval
102/LM/Nov11 013698	Municipal Employee Pension Fund	The Letting Enterprise being sold by Chrisal Investment and Takou Investment (Pty) Ltd and Procprops 60 (Pty) Ltd	Approved
105/LM/Dec11 013722	Firstrand Bank Ltd	Old Mutual Life Assurance Company, Erf Number 173019	Approved
06/LM/Jan12 013862	Sycom Property Fund Collective Investment Scheme	Grapnel Property Investment (Pty) Ltd	Approved
08/LM/Jan12 013904	Super Group Dealerships, a division of Super Group Trading (Pty) Ltd	Auto Lux (Pty) Ltd	Approved
03/LM/Jan120 013839	Nampak Products Ltd	Wiegand Glass (Pty) Ltd	Approved
04/LM/Jan12 013847	Vukile Property Fund Ltd	Sanlam Life Insurance Ltd Group	Approved
108/LM/Dec11 013763	Southern Sun Hotel (Pty) Ltd	Hotel Formule 1 (Pty) Ltd	Approved
106/LM/Dec11 013730	Nedbank Ltd	Emergent Investment (Pty) Ltd	Approved, pending reasons

CASE NUMBER	ACQUIRING FIRM	TARGET FIRM	STATUS
104/LM/Nov11 013714	Humulani Investments (Pty) Ltd	Equipment Spare Parts (Africa) (Pty) Ltd	Approved, pending reasons
01/LM/Jan12 013813	Lodestone Brands (Pty) Ltd	Dynamic Brands (Pty) Ltd	Approved, pending reasons
86/LM/Oct11 013441	Piruto BV	Optimum Coal Holdings Ltd and Others	Conditional approval, pending reasons
99/LM/Nov11 013664	Government Employees Pension Fund represented by Public Investment Corporation Ltd	Afrisam Consortium (Pty) Ltd	Conditional approval, pending reasons
70/LM/Aug11 013193	Actom (Pty) Ltd	Savcio Holdings (Pty) Ltd	Conditional approval, pending reasons
09/LM/Jan12 013912	Zeder Financial Services Ltd	Agrico Machinery (Pty) Ltd in respect of Agricol Holdings Ltd	Conditional approval, pending reasons
109/LM/Dec11 013771	Curro Holdings Ltd	The Rudell Holdings Trust, in respect of Woodhill College (Pty) Ltd and Woodhill College Property Holdings (Pty) Ltd	Approved, pending reasons
107/LM/Dec11 013755	Shanduka Resources (Pty) Ltd	Shanduka Coal (Pty) Ltd	Approved, pending reasons
02/LM/Jan12 013821	Imperial Holdings Ltd	Probe Group	Approved, pending reasons
17/LM/Feb12 014050	Unitrans Supply Chain Solutions (Pty) Ltd	Tanzer Transport (Pty) Ltd	Approved, pending reasons
100/LM/Nov11 013672	Steinhoff International Holdings Ltd	JD Group Ltd	Approved, pending reasons
101/LM/Nov11 013680	Steinhoff International Holdings Ltd	KAP International Holdings Ltd	Approved, pending reasons
07/LM/Jan12 013870	Bytes Technology Group South Africa (Pty) Ltd	Unisys Africa (Pty) Ltd	Approved, pending reasons
28/LM/Mar12 014720	The Buffshel 18 Trust	The 921 properties situated in Burgersfort and Rustenburg (RSA) that are owned by subsidiaries of Impala Platinum Holdings Ltd	Approved, pending reasons
74/LM/Sep11 013235	Life Healthcare (Pty) Ltd	Joint Medical Holdings Ltd	Pending hearing
103/LM/Nov11 013706	Synergy Income Fund Ltd	SA Corporate Real Estate Fund	Pending hearing
16/LM/Feb12 014027	Transnet SOC Ltd	Airports Company South Africa Ltd	Pending hearing
15/LM/Feb12 014019	Pepkor Capital (Pty) Ltd	Flash Mobile Cash, Sharedphone International (Pty) Ltd and Take It Eazi Vending	Pending hearing
12/LM/Feb12 013987	Anglo American PLC	De Beers SA	Pending hearing
15/LM/Mar11 012179	Media24 Ltd and Paarl Coldset (Pty) Ltd	The Natal Witness Printing and Publishing Company (Pty) Ltd	Pending further hearing

Appendix B – Intermediate Mergers

CASE NUMBER	COMPLAINANT/ACQUIRING FIRM	RESPONDENT/TARGET FIRM	DECISION
63/AM/Aug11 013094	Griekwaland Wes Korporatief Ltd	The Fertilizer Manufacturing Plant Operated by Sasol Chemical Industries in Kimberly	Withdrawn 24 Nov 11
82/AM/Dec10 011940	Softline (Pty) Ltd	Netcash (Pty) Ltd	Conditional approval
37/AM/Apr11 012559	AON South Africa (Pty) Ltd & Glenrand MIB Ltd	Competition Commission	Conditional approval
81/AM/Dec10 011916	Pioneer Hi-Bred International Inc	Pannar Seed (Pty) Ltd	Prohibited
53/AM/Jul11 012906	Kansai Paint Co. Ltd and Freeworld Coatings Ltd	Competition Commission	Conditional approval
11/AM/Jan12 013953	Synergy Income Fund Ltd	Khuthala Alliance (Pty) Ltd	Conditional approval Pending reasons
05/AM/Jan12 013854	Tedelex Trading (Pty) Ltd	Sammeg Satellite (Pty) Ltd, Sammeg Cape (Pty) Ltd & Sammeg KZN (Pty) Ltd	Pending hearing
10/AM/Feb11 012096	MTO Forestry (Pty) Ltd, Boskor Sawmill (Pty) Ltd & Boskor Ripplant (Pty) Ltd	Competition Commission	Pending further hearing
111/AM/Dec11 013797	Paarl Media (Pty) Ltd	Primedia (Pty) Ltd	Pending hearing
10/AM/Jan12 013946	Thaba Chueu Mining (Pty) Ltd	Samquarz (Pty) Ltd	Pending hearing
14/AM/Feb12 014001	Senmin International (Pty) Ltd	Cellulose Derivatives (Pty) Ltd	Pending hearing
19/AM/Feb12 014167	Sunset Bay Trading 368 (Pty) Ltd	Jobling Investments (Pty) Ltd	Pending hearing

Appendix C – Prohibited Practices

Complaint referrals from the Commission

CASE NUMBER	COMPLAINANT	RESPONDENT	STATUS
103/CR/Dec06 007070	Competition Commission	Clover Industries Ltd and 7 others	Withdrawn 20 Apr 11
32/CR/Jun10 011338	Competition Commission	Fritz Pienaar Cycles (Pty) Ltd, Cycle Lab (Pty) Ltd and others	Withdrawn 10 Jun 11
76/CR/Nov09 010652	Competition Commission	Geomatic Quarry Sales (Pty) Ltd t/a Quarry Co, Derby Concrete (Pty) Ltd t/a Denron, Robberg Quarry CC t/a Robberg Quarry, Denron Quarries (Pty) Ltd t/a Denron Quarries	Dismissed
134/CR/Dec07 008482	Competition Commission	SA Breweries Ltd & 12 Others	Dismissed
06/CR/Mar10 010967	Competition Commission	Chevron SA (Pty) Ltd & Others	Settled
19/CR/Mar05 005009	Competition Commission	Nationwide Airlines (Pty) (Ltd)	Withdrawn in 2009
15/CR/Feb09 010009	Competition Commission	DPI Plastics (Pty) Ltd, Petzetakis, Marley Pipes System (Pty)Ltd, Swan Plastics (Pty) Ltd, Amitech South Africa (Pty), Flo-Tek Pipes & irrigation (Pty) Ltd, Macneil Agencies (Pty) Ltd, Andrag (Pty) Ltd, Gazelle Plastics (Pty) Ltd	Pending decision
84/CR/Dec09 010777	Competition Commission	Aveng (Africa) Limited t/a Steeledale, Capital Africa Steel (Pty) t/a Reinforcing Mesh Solutions, Vulcania Reinforcing (Pty) Limited, BRC Mesh Reinforcing (Pty) Limited	Pending decision
65/CR/Sep09 010546	Competition Commission	RSC Ekusasa Mining (Pty) Ltd, Aveng (Africa) Ltd T/A Duraset, Dywidag-Systems International, Videx Wire Product (Pty)Ltd	Pending decision
11/CR/Feb04 003855	Competition Commission	Telkom SA Ltd	Pending decision
30/CR/Mar12 014761	Competition Commission	Vibro Bricks (Pty) Ltd, Cast Industries (Pty) Ltd, Bosun Brick Midrand (Pty) Ltd, MVA Bricks (Pty) Ltd, Murray & Roberts Building Products (Pty) Ltd t/a Concor Technicrete and Aveng (Africa) Ltd t/a Infraset	Pending hearing
31/CR/Mar12 014779	Competition Commission	Primedia (Pty) Ltd t/a Ster-Kinekor Theatres, Avusa Ltd t/a Nu-Metro Cinemas	Pending hearing
34/CR/Mar12 014803	Competition Commission	ArcelorMittal SA Ltd, Highveld Steel and Vanadium Corporation Ltd and South African Iron and Steel Institute	Pending hearing
27/CR/Apr11 012443	Competition Commission	Pentel South Africa (Pty) Ltd	Pending hearing
80/CR/Sep11 013318	Competition Commission	Omnia Fertilizer Limited and Another	Pending hearing
92/CR/Oct11 013938	Competition Commission	Media 24 Ltd	Pending hearing
73/CR/Aug11 013227	Competition Commission	Crown National Ltd, Dynamic Intertrade (Pty) Ltd	Pending hearing
74/CR/Jun08 009225	Competition Commission	Astral Operation Limited & Elite Breeding Farms	Pending hearing
103/CR/Sep08 009522	Competition Commission	Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Feltex Automotive (Pty) Ltd, Steinhoff International Holdings Ltd & KAP International Holdings Ltd	Pending hearing
111/CR/Oct07 008250	Competition Commission	Komatiland Forests (Pty) Ltd & 10 others	Pending hearing

CASE NUMBER	COMPLAINANT	RESPONDENT	STATUS
63/CR/Sep09 010512	Competition Commission	Cape Gate (Pty) Ltd & Others	Pending hearing
61/CR/Sep09 010496	Competition Commission	Arcelormittal South Africa Ltd, Scaw South Africa (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron and Steel Institute	Pending hearing
08/CR/Jan07 007229	Competition Commission	Iskor Ltd & 6 Others	Pending hearing
31/CR/May05 005124	Competition Commission	Sasol Chemical Industries Ltd, Kynoch Fertilizer (Pty) Ltd, Omnia Fertilizer Ltd	Pending hearing
18/CR/Mar05 004994	Competition Commission	Assa Abloy (SA) (Pty) Ltd & 14 others	Pending hearing
09/CR/Jan07 007237	Competition Commission	Allen Meshco (Pty) Ltd & 4 Others	Pending hearing
73/CR/Oct09 010645	Competition Commission	Telkom SA Ltd	Pending hearing
15/CR/Mar10 011080	Competition Commission	Pioneer Foods & 16 Others (White Maize Milling)	Pending hearing
10/CR/Mar10 011015	Competition Commission	Pioneer Foods (Pty) Ltd, Foodcorp (Pty) Ltd, Godrich (Pty) Ltd, Premier Foods (Pty) Ltd and Tiger Brands Ltd (Wheat milling)	Pending hearing
20/CR/Apr10 011163	Competition Commission	Computicket (Pty) Ltd	Pending hearing
56/CR/Aug10 011619	Competition Commission	Apollo Tyres South Africa (Pty) Ltd, Goodyear South Africa (Pty) Ltd, Continental Tyre South Africa (Pty) Ltd, Bridgestone South Africa (Pty) Ltd, South African Tyre Manufacturers Conference (Pty) Ltd (Car Tyres)	Pending hearing
51/CR/Aug10 011551	Competition Commission	SA Metal and Machinery (Pty) Ltd, National Scrap Metal (Pty) Ltd, Ben Jacobs Metals (Pty) Ltd, Power Metals Recyclers (Pty) Ltd, Universal Recycling Company (Pty) Ltd, Ton Scrap (Pty) Ltd, Scaw SA (Pty) Ltd, Scaw Metals Group (Pty) Ltd, Amalgamated Scrap Metals Recycling cc, Abbedac Trading (Pty) Ltd, Ben Jacobs Iron and Steel (Pty) Ltd, Cape Town Iron and Steel Works (Pty) Ltd and the New Reclamation Group (Pty) Ltd	Pending hearing
42/CR/Jul10 011445	Competition Commission	British Airways PLC, South African Airways (Pty) Ltd, Air France Cargo-KLM Cargo, Alitalia Cargo, Cargolux International SA, Singapore Airlines, Martinair Cargo and Lufthansa Cargo AG	Pending hearing
35/CR/Jul10 011361	Competition Commission	Giuricich Costal Projects (Pty) Limited, Grinaker-LTA (Pty) Limited	Pending hearing
48/CR/Aug10 011502	Competition Commission	Sasol Chemical Industries Ltd (sec8) (Polymers)	Pending hearing
08/CR/Feb11 012062	Competition Commission	Aveng (Africa) Ltd, Reinforcement Mesh Solutions (Pty) Ltd & 18 Others	Pending hearing
14/CR/Mar11 012153	Competition Commission	Esorfranki Ltd & 5 others	Pending hearing
19/CR/Mar11 012211	Competition Commission	Erf 179 Bedfordview (Pty) Ltd, Liberty Group Limited, Bedford Square Properties (Pty) Ltd & Wintwice Properties (Pty) Ltd	Pending hearing
24/CR/Mar11 012377	Competition Commission	Concor (Pty)Ltd, Wilson Bayly Homes Ovcon (Pty) Ltd & Lennings Dec Rail Services (Pty) Ltd	Pending hearing
92/CR/Dec09 010850	Competition Commission	Bridgestone South Africa (Pty)Ltd, Maxiprest (Pty) Ltd, Autotruck & Tyres CC	Pending hearing

Complaint referrals from complainant

CASE NUMBER	COMPLAINANT/APPLICANT	RESPONDENT	STATUS
37/CR/Apr09 010249	Jose Fernandes, O.J.L.De Sa, Henrique Leca	OBC Group (Pty) Ltd	Withdrawn
100/CR/Sep08 009498	Joshua Dlamini	Industrial Development Corporation, Competition Commission	Removed from roll
62/CR/Jul11 013045	Lateral Unison Insurance Brokers (Pty) Ltd	Lion of Africa Insurance (Pty) Ltd, AON South Africa (Pty) Ltd	Pending hearing
98/CR/Nov11 013649	Jacobus Petrus Hendrik du Plessis and Others	Linpac Plastics Ltd and Others	Pending hearing
97/CR/Nov11 013631	Council for Medical Schemes	Board of Healthcare Funders and Others	Pending hearing
24/CR/Mar12 014688	Johan Venter	The Law Society of the Cape of Good Hope	Pending hearing
44/CR/May07 007583	Charter Property Sales	The Saturday Star Property Guide	Pending hearing
43/CR/May09 010306	Preferred Provider Negotiators (Pty) Ltd	Iso Leso Optics Limited	Pending hearing
21/CR/Mar11 012328	Gerhardus Johannes Jacobs	The New Reclamation Group	Pending hearing
55/CR/Jul09 010421	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Pending hearing
78/CR/Nov09 010694	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Pending hearing
91/CR/Dec09 010843	1Time Airline (Pty)Ltd	Lanseria International Airport (Pty)Ltd and Comair Limited t/a Kulula.Com	Pending hearing
16/CR/Feb07 007302	Charter Property Sales	East Cape Property Guide	Pending hearing
39/CR/May05 005207	Comair Ltd	South African Airways (Pty) (Ltd)	Pending hearing
97/CR/Sep08 009456	Fourier Holdings (Pty) Ltd	BMW South Africa (Pty) Ltd t/a BMW Motorrad & 13 Others	Pending hearing

Consent orders and settlement agreements

CASE NUMBER	COMPLAINANT	RESPONDENT	PENALTY
15/CR/Mar10 012161	Competition Commission	Carolina Rollermeulle (Pty) Ltd	R4 417 546.00
84/CR/Dec09 011767 08/CR/Feb11 012062	Competition Commission	Aveng (Africa) Limited t/a Steeleedale (Mesh and Rebar)	R128 904 640.00
43/CR/Jun11 012781	Competition Commission	Tuinroete Agri Ltd	R48 048.87
43/CR/Jun11 012690	Competition Commission	Afgri Operations Limited	R15 600 000.00
43/CR/Jun11 012682	Competition Commission	Kaap Agri Bedryf Ltd	R1 199 075.36
44/CR/Jun11 012724	Competition Commission	NWK Limited	R520 290.00
44/CR/Jun11 012732	Competition Commission	Rand Merchant Bank, a Division of FirstRand Bank Limited	R2 100 000.00
43/CR/Jun11 012716	Competition Commission	MGK Bedryfsmaatskappy (Pty) Ltd	R226 800.00
43/CR/Jun11 012708	Competition Commission	Suidwes Agriculture (Pty) Ltd	R4 644 617.65

CASE NUMBER	COMPLAINANT	RESPONDENT	PENALTY
06/CR/Mar10 013029	Competition Commission	Southern African Bitumen Association	R500 000.00
43/CR/Jun11 012831	Competition Commission	Sentraal-Suid Co-operative Limited	R75 852.04
43/CR/Jun11 012849	Competition Commission	Morreesburgse Koringboere	R159 364.60
43/CR/Jun11 012823	Competition Commission	Overberg Agri Bedrywe	R241 186.20
43/CR/Jun11 013359	Competition Commission	GWK Ltd	R301 415.23
43/CR/Jun11 013367	Competition Commission	Senwes Ltd	R7 628 670.36
43/CR/Jun11 013375	Competition Commission	NWK Ltd	R3 295 158.08
43/CR/Jun11 013417	Competition Commission	Vrystaat Kooperasie Beperk	R1 286 969.22
43/CR/Jun11 013425	Competition Commission	NTK Limpopo Agric Beperk	R189 854.66
43/CR/Jun11 013433	Competition Commission	OVK Operations Ltd	R375 615.00
43/CR/Jun11 013565	Competition Commission	The Grain Silo Industry (Pty) Ltd	R94 556.00
93/CR/Nov11 013557	Competition Commission	Afrisam (South Africa) (Pty) Ltd	R124 878 870.00
56/CR/Aug10 013615	Competition Commission	Apollo Tyres South Africa (Pty) Ltd	R45 000 000.00
52/CR/Aug10 011569	Competition Commission	Spring Lights Gas (Pty) Ltd	Pending further hearing
96/CR/Nov11 013623	Competition Commission	Schenker South Africa (Pty) Ltd	R959 000.00
110/CR/Dec11 013789	Competition Commission	Kuehne + Nagel (Pty) Ltd	R962 657.01
06/CR/Mar10 014233	Competition Commission	Engen (Pty) Ltd	R28 800 000.00
06/CR/Mar10 014241	Competition Commission	Shell (Pty) Ltd	R26 259 480.00
23/CR/Mar12 014654	Competition Commission	Lafarge Industries South Africa (Pty) Ltd	R148 724 400.00

Appendix D – Procedural Matters

CASE NUMBER	APPLICANT	RESPONDENT	CATEGORY	DECISION
82/AM/Dec10 012294	Stratcol	Softline (Pty) Ltd, Netcash (Pty) Ltd	Intervention application	Withdrawn 14 Apr 11
13/X/Feb11 012252	Caxton and CTP Publishers and Printers Limited	Competition Commission Paarl Media (Pty) Ltd Primedia (Pty)Ltd	Section 45 application	Withdrawn
103/CR/Dec06 012278	Ladismith Cheese (Pty) Ltd	Competition Commission & Others	Dismissal application	Withdrawn 20 Apr 11
103/CR/Dec06 012385	Parmalat SA (Pty) Ltd	Competition Commission & Others	Dismissal application	Withdrawn 20 Apr 11
103/CR/Dec06 010330	Clover Industries Ltd, Clover SA (Pty) Ltd	Competition Commission & Others	Dismissal application	Withdrawn 20 Apr 11
32/CR/Jun10 011833	Competition Commission	Fritz Pienaar Cycles (Pty) Ltd, Cycle Lab (Pty) Ltd and others	Amendment application	Withdrawn 10 Jun 11
84/CR/Dec09 012369	Competition Commission	Capital Africa Steel (Pty) t/a Reinforcing Mesh Solutions, Vulcania Reinforcing (Pty) Limited, BRC Mesh Reinforcing (Pty) Limited	Joinder application	Withdrawn at hearing
12/IR/Feb11 012435	Bedford Square Properties (Pty) Ltd	ERF 179 Bedfordview (Pty) Limited, Liberty Group Limited	Application to strike out	Withdrawn on 01 Jun 11
15/LM/Mar11 013516	Media 24 Ltd and Paarl Coldset (Pty) Ltd	The Natal Witness Printing and Publishing Company (Pty) Ltd	Inspection applications	Settled between parties
70/LM/Aug11 013656	Actom Proprietary Ltd	Savcio Holdings (Pty) Ltd	Extension application	Settled between parties
81/AM/Dec10 013037	Pioneer Hi-Bred International Inc	Pannar Seed (Pty) Ltd	Section 45 application	Settled between parties
73/LM/Nov10 012260	Wal-Mart Stores Inc	Massmart Holdings Ltd	Discovery application	Partly granted
134/CR/Dec07 012302	Competition Commission	SA Breweries Ltd & 12 Others	Dismissal application	Granted
10/CR/Mar10 011924	Competition Commission	Paramount Mills (Pty) Ltd	Dismissal application	Dismissed
80/AM/Oct04 010017	Londoloza Forestry Consortium (Pty) Limited	Bonheur 50 General Trading (Pty) Limited & Others	Costs order application	Dismissed
13/X/Feb11 012138	Caxton and CTP Publishers and Printers Limited	Competition Commission Paarl Media (Pty) Ltd Primedia (Pty)Ltd	Review	Partly granted
21/CR/Mar11 012567	Gerhardus Johannes Jacobs	The New Reclamation Group	Strike out application	
11/CR/Feb04 013086	Competition Commission	Telkom Ltd (SAVA)	Discovery application	Granted
27/CR/Apr11 013078	Competition Commission	Pentel South Africa (Pty) Ltd	Objections in limine	Dismissed
74/CR/Jun08 012799	Competition Commission	Astral Operation Limited & Elite Breeding Farms	Dismissal application	Dismissed
20/CR/Apr10 013540	Competition Commission	Computicket (Pty) Ltd	Strike out application	Dismissed
20/CR/Apr10 012401	Competition Commission	Computicket (Pty) Ltd	Discovery application	Dismissed

CASE NUMBER	APPLICANT	RESPONDENT	CATEGORY	DECISION
20/CR/Apr10 013185	Competition Commission	Computicket (Pty) Ltd	Condonation application	Partly granted
10/AM/Feb11 012120	MTO Forestry (Pty) Ltd, Boskor Sawmill (Pty) Ltd & Boskor Ripplant (Pty) Ltd	Competition Commission	Suspension application	Dismissed
11/CR/Feb04 012229	Competition Commission	Telkom Ltd (SAVA)	Amendment application	Granted
22/X/Mar11 012336	Monsanto South Africa (Pty) Ltd & Monsanto International, SARL	Bowman Gilfillan, Pioneer Hi-Bred International Inc & Pannar Seed (Pty) Ltd	Stay application	Dismissed
02/LM/Jan10 012310	The South African Breweries Limited	Boland Beer Distributors (Pty) Ltd	Discovery application	Granted
91/CR/Dec09 012286	1Time Airline (Pty) Ltd	Lanseria International Airport (Pty)Ltd and Comair Limited t/a Kulula.Com	Discovery application	Granted
39/X/May 11 012617	Competition Commission	Royal Bafokeng Holdings (Pty)Ltd & Others	Consent Order – Failure to notify	Fined R1 100 000.00
81/AM/Dec10 012674	Pioneer Hi-Bred International Inc	Pannar Seed (Pty) Ltd	Discovery application	Granted
81/AM/Dec10 012054	Pioneer Hi-Bred International Inc	Pannar Seed (Pty) Ltd	Intervention applications	Granted
10/AM/Feb11 012583	AC Whitcher (Pty) Ltd	MTO Forestry (Pty) Ltd, Boskor Sawmill (Pty) Ltd & Boskor Ripplant (Pty) Ltd , Competition Commission	Joinder/Intervention application	Granted
10/AM.Feb11 012500	PG Bison Ltd & 3 others	MTO Forestry (Pty) Ltd & 4 others	Intervention application	Granted
11/CR/Feb04 012807	Competition Commission	Telkom Ltd (SAVA)	Discovery application	Granted
15/LM/Mar11 013169	Caxton and CTP Publishers and Printers Ltd	Media 24 Ltd and Paarl Coldset (Pty) Ltd & Others	Intervention application	Granted
30/LM/Apr11 02922	Shoprite Checkers (Pty) Ltd	Metcash Seven Eleven (Pty) Ltd	Extension application	Granted
30/LM/Apr11 013011	Shoprite Checkers (Pty) Ltd	Metcash Seven Eleven (Pty) Ltd	Application to consider merger without CC's recommendations	Dismissed
53/AM/Jul11 012914	Kansai Paint Co. Ltd	Competition Commission, Freeworld Coatings Ltd, Ernst & Young	Stay application	Granted
53/AM/Jul11 013144	Department of Trade and Industry	Kansai Paint co. Ltd and others	Intervention application	Granted
15/LM/Mar11 013409	Media 24 Ltd and Paarl Coldset (Pty) Ltd	The Natal Witness Printing and Publishing Company (Pty) Ltd	Discovery application	Partly granted
06/CR/Mar10 014035	Competition Commission	Chevron SA (Pty) Ltd & Others (Bitumen)	Amendment application	Granted
74/LM/Sep11 013888	Competition Commission	Life Healthcare Group (Pty) Ltd (Primary acquiring firm) and Joint Medical Holdings Limited	Extension application	Granted
108/LM/Dec11 014217	Southern Sun Hotels (Pty) Ltd	Hotel Formula 1 (Pty) Ltd	Extension application	Granted
70/LM/Aug11 013896	Actom Proprietary Ltd	Savcio Holdings (Pty) Ltd	Intervention application	Granted
15/LM/Mar11 014662	Biz Afrika 614 (Pty) Ltd and Others	Media24 Ltd and Others	Intervention application	Dismissed
48/CR/Aug10 013524	Competition Commission	Sasol Chemical Industries Ltd	Discovery application	Pending reasons
79/FN/Sep11 013284	Competition Commission	Phelps Dodge National Cables Corp & 3 Others	Failure to notify	Pending decision

CASE NUMBER	APPLICANT	RESPONDENT	CATEGORY	DECISION
74/LM/Sep11 014407	Competition Commission	Life Healthcare Group (Pty) Ltd and Joint Medical Holdings Limited	Discovery application	Pending hearing
15/LM/Mar11 013961	Caxton CTP Publishers and Printers Ltd	Media 24 Ltd & 3 others	Discovery application	Partly granted
48/CR/Aug10 014308	Competition Commission	Sasol	Discovery application	Pending hearing
10/AM/Jan12 014811	Thaba Chueu Mining (Pty) Ltd	Samquarz (Pty) Ltd	Discovery application	Pending hearing
19/AM/Feb12 014829	Competition Commission	Sunset Bay Trading and Jobling Investment	Discovery application	Pending hearing
73/CR/Aug11 013979	Competition Commission	Crown National (Pty) Ltd and Dynamic Intertrade (Pty) Ltd	Amendment application	Pending hearing
10/AM/Jan12 014746	Silicon Technology (Pty) Ltd	Thaba Chueu Mining (Pty) Ltd & others	Intervention application	Pending hearing
10/AM/Jan12 014738	Sublime Technologies (Pty) Ltd	Thaba Chueu Mining (Pty) Ltd & others	Intervention application	Pending hearing
111/AM/Dec11 013920	Caxton and CTP Publishers and Printers Limited	Paarl Media (Pty) Ltd, Primedia (Pty) Ltd, and the Competition Commission	Intervention application	Pending hearing
97/CR/Nov11 014225	South African Paediatric Association	Council for Medical Schemes	Dismissal application	Pending hearing
22/X/Mar12 014456	Pangbourne Properties Limited & 2 Others	The Competition Commission	Other Procedural Matter	Pending hearing
95/EA/Nov11 014936	Gas2 Liquids (Pty) Ltd	Competition Commission and 16 others	Locus Standi	Pending hearing
20/CR/Apr10 012609	Competition Commission	Computicket (Pty) Ltd	Dismissal application	Pending hearing
15/CR/Mar10 012591	Blinkwater Mills (Pty) Ltd	Competition Commission	Dismissal (immunity)	Pending hearing
71/SM/Nov10 011791	The Association of System Operators	Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Review of CC's decision	Pending hearing
72/SM/Nov10 011809	The Association of System Operators	Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Review of CC's decision	Pending hearing
71/SM/Nov10 012625	Concorde	The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention application	Pending hearing
71/SM/Nov10	Direct Transact	The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention application	Pending hearing
71/SM/Nov10	Paycord	The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention application	Pending hearing
71/SM/Nov10	EFT POS	The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention application	Pending hearing
72/SM/Nov10 012633	Direct Transact	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing
72/SM/Nov10	ACET	The Association of System Operators and Competition Commission of SA, Comesa Financial Joinder/Intervention applications Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing

CASE NUMBER	APPLICANT	RESPONDENT	CATEGORY	DECISION
72/SM/Nov10	Paycorp	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing
72/SM/Nov10	EasyPay	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing
72/SM/Nov10	Drawcard	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing
21/CR/Mar11 012815	Gerhardus Johannes Jacobs	The New Reclamation Group	Amendment application	Pending hearing
55/CR/Jul09 010421	Telkom SA Ltd	Competition Commission, Dimension Data (Pty) Ltd t/a Internet Solutions	Exception application	Pending hearing
56/CR/Aug10 013052	Competition Commission	Apollo Tyres SA (Pty) Ltd.	Exception application	Pending hearing
61/CR/Sep09 012880	Competition Commission	Arcelormittal South Africa Ltd, Scaw South Africa (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron and Steel Institute	Application to set aside complaint	Pending hearing
61/CR/Sep09 013060	Competition Commission	Arcelormittal South Africa Ltd, Scaw South Africa (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron and Steel Institute	Dismissal application	Pending hearing
55/CR/Jul09 010421	Telkom SA Ltd	Competition Commission, Dimension Data, MTN & 2 Others	Section 45 application	Pending hearing
55/CR/Jul09 73/CR/Oct09 78/CR/Nov09 013292	Competition Commission	Telkom SA Ltd	Application to compel filing of an answer	Pending hearing
48/CR/Aug10 013524	Competition Commission	Sasol Chemical Industries Ltd (sec8) (Polymers)	Discovery application	Pending hearing
91/X/Oct11 013532	Lexshell 849 and Piruto B.V	Competition Commission	Refund of filing fee	Pending hearing
14/CR/Mar11 013573	Competition Commission	Esorfranki Ltd & 7 others	Application for Joinder	Pending hearing
97/CR/Nov11 013805	South African Medical Association	Council for Medical Schemes	Dismissal application	Pending hearing
15/CR/Mar10 013490	Competition Commission	Godrich Milling (Pty) Ltd	Dismissal application	Pending hearing
10/CR/Mar10 013508	Competition Commission	Godrich Milling (Pty) Ltd	Dismissal application	Pending hearing
95/EA/Nov11 013607	Gas2 Liquids (Pty) Ltd	Competition Commission and 16 others	Condonation Application	Pending hearing

Appendix E – Exemptions Appeals

CASE NUMBER	APPLICANT	RESPONDENT	CATEGORY
95/EA/Nov11 013599	Gas2 Liquids (Pty) Ltd	Competition Commission and 16 others	Exemption Appeal

Appendix F: Competition Tribunal Dashboard For Period Ending 31 March 2012

METRIC	KEY PERFORMANCE AREAS	YEAR END
		TOTAL
Total budget	Total budgeted funds as per the Annual Performance Plan	R26 420 931
	Actual total expenditure	R24 054 003
Hearing budget	Budgetted total direct hearing costs	R3 230 001
	Actual total direct hearing costs	R3 564 854
Adjudication budget	Budgetted total adjudication costs as per the Annual Performance Plan	R13 018 399
	Actual adjudication costs	R13 517 348
Number of staff employed	Total number of staff employed	3
	Secretariat Support staff	5
	Case Management staff	6
Matters on the roll	Total number of active matters	119
Number of matters attended to	Number of orders (decisions) issued	149
	Number of reasons issued	93
Hearing days	Number of person days spent in hearings by all Tribunal members	438
	% of person days spent in hearings by PT members	36%
	% of person days spent in hearings by FT members	64%
	Number of days spent in hearings	146
Recordings	Number of transcript pages (court record) produced	15 236
	Number of transcript pages (court record) produced per actual hearing day	104
Direct hearing cost per matter	Direct hearing cost per order issued	R23 925
	Direct hearing cost per reason issued	R38 332
	Direct hearing cost per person day	R8 139
	Direct hearing Cost per actual hearing day	R24 417
	Direct hearing cost per PT member person day	R22 420
	Direct hearing cost per transcript page produced	R234
Total adjudication costs per matter	Total adjudication cost per order issued	R90 720
	Total adjudication cost per reason issued	R145 348
	Total adjudication cost per person day	R30 862
	Total adjudication Cost per actual hearing day	R92 585
	Total adjudication cost per PT member person day	R85 015
	Total adjudication cost per transcript page produced	R887
Matters per Case management staff	Average number of active matters per case management staff member	20

METRIC	KEY PERFORMANCE AREAS	YEAR END
		TOTAL
	Average number of orders issued per case management staff member	25
	Average number of reasons issued per case management staff member	16
Turnaround time – mergers	Total number of new merger cases received	92
	Number of cases set down within 10 business days of the filed merger	71%
	Number of orders issued within 10 business days of the last hearing date	100%
	Number of reasons issued within 20 business days of the order being issued	70%
Turnaround time – opposed prohibited practices	Total number of new opposed prohibited practice cases received	11
	Number of prehearings (with pleadings closed) held	1
	Number of pre-hearing invitations sent out within 20 business days of close of pleading	100%
	Number of orders and reasons for decision issued	2
	Number of orders and reasons for decisions issued within 60 business days of the hearing date	100%
Turnaround time – consent orders	Number of consent orders issued	27
	Number of consent orders issued within 10 business days of the last hearing date	24
	% of matters where consent order issued within 10 business days	89%
Turnaround time – procedural matters	Total number of procedural matters heard	25
	Number of orders issued	35
	Number of orders issued within 20 business days of last hearing day	26
	% of matters where orders issued within 20 business days of last hearing day	74%
Turnaround time – interim relief matters	Total number of new interim relief matters received	0
	Number of reasons issued	0
	Number of reasons issued within 20 business days of the last hearing date	0
	% of matters where reasons issued within 20 business days of the last hearing date	No reasons issued
Fines generated	Total rand value of administrative penalties imposed	R548 491 066
Operational priorities for 2012/13	Development of a case management system	Work in progress and to be finalised end May 2012
	Customer Survey to be developed and assessed	Getting quotes for survey to be assessed - project delayed
	Provision of internships to students	11

Appendix G: Cases before the CAC

CASE NUMBER	APPELLANT / APPLICANT	RESPONDENT	NOTICE OF APPEAL / MOTION (+ 15)	DECISION
108/CAC/Mar11	Phutuma Networks (Pty) Ltd	Telkom Ltd	24 Mar 2011	Pending hearing
114/CAC/Nov11 APPEAL	The Competition Commission	South African Breweries Ltd & 13 Others	28 Oct 2011	Pending hearing
115/CAC/Nov11 APPEAL	MTO Forestry (Pty) Ltd, Boskor Sawmill (Pty) Ltd & Boskor Ripplant (Pty) Ltd (Pty) Ltd and Steinhoff Doors & Building Materials (Pty) Ltd	The Competition Commission, AC Whitcher (Pty) Ltd, PG Bison Ltd, Steinhoff Southern Cape (Pty) Ltd, Thesen Sawmill	24 Nov 2011	Pending hearing
116/CAC/Dec11 REVIEW	Afgri Operations Ltd	The Competition Tribunal, the Competition Commission and Minister of Finance	20 Dec 2011	Pending hearing
117/CAC/Dec11 REVIEW	Macsteel Service Centres (Pty) Ltd	Norman Manoim, Takalani Madima, Medi Mokuena, Competition Tribunal, Kagiso Tiso Holdings (Pty) Ltd, Kagiso Trust Investment (Pty) Ltd, Tiso Group Investment (Pty) Ltd, Venmac Investments (Pty) Ltd & the Competition Commission	29 Dec 2011	Pending hearing
112/CAC/Jul11 APPEAL	Paramount Mills (Pty) Ltd	The Competition Commission	27 Sep 2011	Pending judgment
113/CAC/Nov11 APPEAL	Pioneer Hi-Bred International Inc & Pannar Seed (Pty) Ltd	The Competition Commission, African Centre for Biosafety & Biowatch SA	09 Nov 2011 17 Feb 2012 sup notice of appeal	Pending judgment
103/CAC/Sep10 APPEAL	ArcelorMittal SA Ltd	Competition Commission, Scaw SA (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	27 Sep 2010	Pending judgment
103/CAC/Sep10 REVIEW	ArcelorMittal SA Ltd	Norman Manoim NO, the Competition Commission, Scaw SA (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	27 Sep 2010	Pending judgment
103/CAC/Sep10 APPEAL	Cape Gate (Pty) Ltd	Competition Commission, Scaw SA (Pty) Ltd, ArcelorMittal SA Ltd, Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	01 Oct 2010	Pending judgment
103/CAC/Sep10 REVIEW	Cape Gate (Pty) Ltd	Norman Manoim NO, Yasmin Carrim NO, Medi Mokuena NO, Scaw SA (Pty) Ltd, Competition Commission, , ArcelorMittal SA Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron & Steel Institute & Competition Tribunal	01 Oct 2010	Pending judgment
103/CAC/Sep10 STAY	Cape Gate (Pty) Ltd	Norman Manoim NO, Yasmin Carrim NO, Medi Mokuena NO, Scaw SA (Pty) Ltd, Competition Commission, , ArcelorMittal SA Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron & Steel Institute & Competition Tribunal	20 Oct 2010	Pending judgment

CASE NUMBER	APPELLANT / APPLICANT	RESPONDENT	NOTICE OF APPEAL / MOTION (+ 15)	DECISION
103/CAC/Sep10 STAY	ArcelorMittal SA Ltd	Norman Manoim NO, the Competition Commission, Scaw SA (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	27 Oct 2010	Pending judgment
92/CAC/Mar10	South African Airways	Comair Limited & Nationwide Airlines (Pty) Ltd	10 Mar 2010	Appeal dismissed with costs, including the costs of two counsel
100/CAC/Jun10 APPEAL	Feltex Holdings (Pty) Ltd	Competition Commission, Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Steinhoff International Holdings Ltd, KAP International Holdings Ltd, Gomma Gomma (Pty) Ltd & Steinhoff Africa Holdings (Pty) Ltd	29 Jun 2010	Appeal upheld with costs, such costs to include those consequent upon the employment of two counsel.
101/CAC/Jun10 REVIEW	Feltex Holdings (Pty) Ltd	Norman Manoim NO, Competition Commission, Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Steinhoff International Holdings Ltd, KAP International Holdings Ltd, Gomma Gomma (Pty) Ltd & Steinhoff Africa Holdings (Pty) Ltd	29 Jun 2010	Appeal upheld with costs, such costs to include those consequent upon the employment of two counsel.
102/CAC/Jun10 APPEAL	Loungefoam (Pty) Ltd, Gomma Gomma (Pty) Ltd, Steinhoff International Holdings Ltd & Steinhoff Africa Holdings (Pty) Ltd	Competition Commission, Vitafoam (Pty) Ltd, Feltex Holdings (Pty) Ltd & KAP International Holdings Ltd	30 Jun 2010	Appeal upheld with costs, such costs to include the costs of two counsel, where two counsel were employed.
105/CAC/Dec10 APPEAL	Southern Pipeline Contractors	The Competition Commission	15 Dec 2010	Appeal upheld with costs, including the costs of two counsel
106/CAC/Dec10 APPEAL	Conrite Walls (Pty) Ltd	The Competition Commission	15 Dec 2010	Appeal upheld with costs, including the costs of two counsel
109/CAC/Jun11 APPEAL	Monsanto South Africa (Pty) Ltd & Monsanto International, SARL	Bowman Gilfillan, Pioneer Hi-Bred International Inc & Pannaar Seed (Pty) Ltd	13 Jun 2011	Appeal dismissed with costs, including the cost of two counsel.
107/CAC/Dec10 APPEAL	The Competition Commission	Gralio Precast (Pty) Ltd	21 Dec 2010	Appeal dismissed with costs.
93/CAC/Mar10 & 94/CAC/Mar10 INTERLOCUTORY	Competition Commission	Yara South Africa (Pty) Ltd, Omnia Fertilizer Ltd and Sasol Chemical Industries (Pty) Ltd	19 April 2011	Appeal upheld with costs
110/CAC/Jun11 APPEAL	South African Commercial, Catering and Allied Workers' Union	Wal-Mart Stores Inc & Massmart Holdings Limited	27 Jun 2011	Review dismissed with costs, including the costs of two counsel. Appeal upheld in part.
111/CAC/Jul11 REVIEW	The Minister of Economic Development, the Minister of Trade and Industry, The Minister of Agriculture, Forestry and Fisheries	The Competition Tribunal, the Competition Commission, Wal-Mart Stores Inc, Massmart Holdings Limited, SACCAWU, SACTWU and SASMMEF	20 Jul 2011	Review dismissed with costs, including the costs of two counsel. Appeal upheld in part.
93/CAC/Mar10 & 94/CAC/Mar10 LEAVE TO APPEAL	Competition Commission	Yara South Africa (Pty) Ltd, Omnia Fertilizer Ltd and Sasol Chemical Industries (Pty) Ltd	19 April 2011	Postponed sine die
102/CAC/Jun10 LEAVE TO APPEAL	Competition Commission	Loungefoam (Pty) Ltd, Gomma Gomma (Pty) Ltd, Steinhoff International Holdings Ltd & Steinhoff Africa Holdings (Pty) Ltd	03 Jun 2011	Postponed sine die
97-99/CAC/Mar10 LEAVE TO APPEAL	The Competition Commission and Tracetec (Pty) Ltd	Netstar (Pty) Ltd, Matrix Vehicle Tracking (Pty) Ltd and Tracker (Pty) Ltd	18 Mar 2011	Withdrawn on 7 Dec 2011
97-99/CAC/Mar10 LEAVE TO APPEAL	The Competition Commission and Tracetec (Pty) Ltd	Netstar (Pty) Ltd, Matrix Vehicle Tracking (Pty) Ltd and Tracker Network (Pty) Ltd	18 Mar 2011	Withdrawn on 7 Dec 2011

CASE NUMBER	APPELLANT / APPLICANT	RESPONDENT	NOTICE OF APPEAL / MOTION (+ 15)	DECISION
107/CAC/Dec10 LEAVE TO APPEAL	The Competition Commission	Gralio Precast (Pty) Ltd	30 Nov 2011	Postponed sine die



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