



2013/2014

**ANNUAL  
INTEGRATED REPORT**



**competitiontribunal**  
*south africa*



The Tribunal is one of three institutions established by the Competition Act to regulate competition between companies in the market place. Competition matters were previously regulated by the old Competition Board but in 1998 the democratic government of South Africa established a new framework of competition regulation creating three independent bodies, which replaced the Competition Board. These were the Competition Commission, the Competition Tribunal and the Competition Appeal Court.

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# OUR APPROACH TO INTEGRATED REPORTING

There is no single accepted definition of what an integrated annual report is and, more specifically, how an organisation like the Competition Tribunal (Tribunal) – a statutory body which adjudicates cases as a public service – should present its annual report in an integrated way. Nevertheless, given the recognised value of integrated reporting to an organisation's stakeholders and the critical influence integrated reporting has on entities' operations, we were keen this year to reflect our operations in line with integrated reporting principles, to the extent that we could, and in this way enhance the value and relevance of our annual report to all our stakeholders who make use of it.

To this end we made several noticeable changes to our reporting when compared to the Tribunal's annual reports in previous years but we have kept key elements, which we consider important for our stakeholders information or which we are required to report on by law, the same as previous years.

Our core business remains the adjudication of competition matters brought to the Tribunal by the Competition Commission or private complainants and so part 3 of this report focuses solely on the most important cases the Tribunal heard. Importantly though we moved away from the silo'd approach of reporting on individual cases and, this year, opted to use one case study – the *Telkom* case – to demonstrate how each of the Tribunal's functions (core and support) add value to case processes and thus contributes to delivering justice to consumers as mandated by the Competition Act 89 of 1998. The construction cartel case study goes a step further and talks to how much contested proceedings can cost the tax payer which is why settlement proceedings, such as in the construction cartel case, make time and money sense where this option is appropriate. In this way we hope to give the reader a holistic, all encompassing view of what it takes to effectively deliver justice to all consumers.

But integrated reporting is not only about shining the spotlight on one moment in time in an organisation's history and so, given that

we celebrate 15 years of competition enforcement this year, we took the opportunity to reflect back on the Tribunal's impact on markets and people in its 15 years of existence. A snapshot example of this appears in the section titled "From the seed to the dinner table" which shows the impact of the Tribunal's decisions on the food chain over the last 15 years.

The illustration does so in a way that immediately brings home to the reader the fact that the Tribunal's decisions have directly affected, in one way or another, every level of the food chain and ultimately all consumers, whether they know it or not. We also look back over our history and take an honest look at the more noteworthy cases we've decided over this time with a view to learning the impact of our decisions and the benefit markets derived from our intervention. Essentially, these reflective case studies ask and answer the question "Have we left the world a better place?"

Guided by the principle of 'materiality' we have significantly cut down on reporting about the nature of our operations, how each department within the Tribunal functions and what legal requirements the Tribunal is obliged to meet. This is partly because we've integrated these descriptions in the case discussion to show relevance and also because integrated reporting requires that we focus on the most important elements of our operations that our stakeholders have use for. Therefore, this year, part 2 gives a brief account of who we are, what we do and what it takes to get it done in a legally compliant manner. We have however retained part 1, which contains the mandatory reports we are required to provide our stakeholders and part 4, which is the financial report of the Tribunal.

Overall we've adopted a more story telling approach to our reporting in the hope that this will help the reader engage with the content more intimately than in previous years. But at 15 we are still young, which accounts for the modern design, clean lines and uncluttered spaces behind the look and feel of this, our 15th annual report.







We made several noticeable changes to our reporting when compared to the Tribunal's annual reports in previous years.

# Is big also bad? ANC and industry agree to differ

The historic meeting between business and the ANC this week made it clear that a major obstacle remains: The ANC wants anti-trust legislation on the lines of the US or British models, business considers this 'perfectly foolish'. REG RUMNEY reports

THE African National Congress has made an anti-monopoly drive part of its agenda.

This became clear at the press conference after the Consultative Business Movement's "Options for Building an Economic Future" meeting between businessmen and the ANC.

It also became clear that apart from sanctions and nationalisation this was an issue on which big business parted company with the ANC.

The 270 people paid to be at the meeting, which was also attended by 50 to 70 guests, including an ANC delegation of 40 people.

Anglo American executive director Gavin Relly's speech, released at the conference, contained much of what has already been said by the private sector about the limits imposed on redistribution by the economic state of the country and outside investment.

ANC deputy president Nelson Mandela's address to the meeting covered a number of economic issues. He stressed that the structure of economic power as well as political power would have to be altered.

He said the "excessive concentration of power in a few white hands" had to change.

"It is said that less than 10 corporate conglomerates control almost 90 percent of the shares listed on the Johannesburg Stock Exchange. If somebody did any arithmetical calculation, he or she would probably find that the total number of people who sit on the boards of these companies as directors is far less than 1 000. These will almost exclusively be white males. If you add to this fact that 87



Two sides of the coin ... Nelson Mandela shakes hands with an ideological adversary, Gavin Relly

percent of the land is by law white-owned and is in fact owned by a minority even among the whites, then the iniquity of the system we have all inherited becomes even more plain."

Mandela's speech played down the issue of nationalisation — though in the press conference later he affirmed it had not been dropped from the ANC's agenda.

Nationalisation and redistribution were not the only words in the ANC's economic agenda. One of the

many other issues the ANC would have to consider was whether South Africa might learn from United States anti-trust laws or the work of the Monopolies Commission in Great Britain to ensure no unhealthy over-concentration of economic power.

At the press conference Relly reacted to the idea that Anglo might be broken up in terms of anti-trust laws: "I think the idea perfectly foolish." A distinction had to be made between monopoly and bigness. "Bigness

can't help itself."

He said he did not think South Africans were stupid enough to kill the goose that lays the golden egg.

In his speech, Mandela did qualify the anti-monopoly drive suggestion by adding that South Africa's economic realities might dictate various optimal sizes for different firms. Among factors to be considered in looking at economic concentration were economies of scale, the capacity to generate large enough funds for investment, the strength to compete on international markets and the ability to do research and development.

Mandela raised the possibility of putting government appointed directors on the boards of privately owned companies.

He said the state might establish new public corporations or strengthen existing ones. One area for public involvement might be housing.

But, he added, enormous savings would be made in abolishing unelected administrative structures, thinning down the security forces.

He said too that small and medium business would have to be encouraged.

Other points made by Mandela that privatisation would have to wait at least until a new government was in place, especially since it would reinforce unequal power relations.

There was, he said, agreement on the need to generate sufficient domestic savings, attract foreign investment and keep inflation low.

He expressed concern at repatriating domestic companies exporting from South Africa — the prospect of "a gloomy picture of South Africa would sink South Africa into the economic crisis afflicting many countries."

Mandela emphasised the need for a democratic parliament and the need to work out a macro-economic plan.

"We are saying, in other words, that the process of growth cannot be left to develop spontaneously. It would inevitably result in structural distortions and imbalances which have to be corrected."

Growth by itself would not ensure equity, he said, apparently in response to a liberal economic

Mandela warned that public services would come under pressure in a future state's social responsibilities for the disadvantaged.

Concerns about the capacity to carry an increased budget were legitimate but visaged rapid economic growth a tax system would have to be viewed.

"The aim would be to reduce the burden of direct and indirect taxation on sections of the community capable of looking after themselves and to shift the burden of corporate taxation to producing a situation of returns."

UNION OF DEMOCRATIC  
UNIVERSITY STAFF ASSOCIATIONS

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VACANCY





## PART 1: REPORTS

Chairperson's report

Auditor-General's report

Audit committee's report

Risk committee's report

### From the archives:

"The historic meeting between business and the ANC this week made it clear that a major obstacle remains: The ANC wants anti-trust legislation on the lines of the US or British models, business considers this 'perfectly foolish', Reg Rumney reports."

# CHAIRPERSON'S REPORT



## NORMAN MANOIM

Chairperson

### 1. Introduction

This is a year of significant anniversaries. Not only do we celebrate 20 years of democracy but 2014 is also the 15th birthday of the Competition Tribunal (Tribunal). For this reason we have decided to give our annual report a fresh look for a special year.

To start off we are adopting, where we can, the 'integrated reporting' approach. What this means is that we report on how all our separate

divisions work together to achieve our objectives instead of reporting on activities separately as we have done in the past. A good example of this approach can be found in the section dealing with one of the major cases we decided this year, the *Telkom* case, titled "Connecting the dots". Here we show how our whole organisation was involved in this case; from the Tribunal members who sat on the case to our driver, accounts department and registry officials who each had an





important, but different part to play in the organisation of our hearings for this case and ultimately in ensuring that the Tribunal delivers justice to South African consumers, as the Competition Act 89 of 1998 (the Act or the Competition Act) requires.

Because 2014 is our 15th year we have also looked back at past cases to assess our impact. Among other cases, we have chosen to look at our impact on the food chain because not only is it an area where the competition authorities have been active but it's also an area of central concern to all consumers. See the section headed "From the seed to the dinner table".

## 2. Highlights

From 17 July to 18 July 2013, over two days, the Tribunal approved 16 consent agreements. Consent agreements are settlements reached between the Competition Commission (Commission) and respondents in a given case, after the Commission has completed an investigation. The Tribunal must confirm a consent agreement in order for it to be legally enforceable.

The unusually high number is explained by the fact that 15 out of the 16 settlements, involved agreements reached between the Commission and firms in the construction industry, arising out of a Commission investigation into the industry and the unusual approach it took in inviting firms to settle alleged past transgressions.

Many firms responded positively to the invitation and agreed to settle cases, mostly involving rigging of tenders in respect of both public and private sector projects. Later in the year we approved two settlement agreements arising from the same process. We detail more about this process in part 3 of this report.

But what got less attention on that same day, but was no less significant, was the remaining settlement agreement we approved, which was entered into between the Commission and Telkom that settled a long running dominance case where Telkom was accused of denying rivals in the internet industry competitive access to its

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fixed line infrastructure. In competition parlance this is referred to as a margin squeeze. As part of the settlement Telkom agreed to pay a penalty of R200 million but more significantly agreed to a complex behavioural remedy that involved separating its wholesale and retail operations to obviate the incentive to squeeze rivals margins.

Of course not all prohibited practice cases result in settlements and much of our time is devoted to hearing disputes. This year was no exception and panels were devoted to hearing three long cases, only one of which was concluded in this financial year. All three cases have been brought by the Commission.

In the *Commission v South African Breweries Ltd (SAB)* case, after protracted hearings we acquitted SAB of alleged anti-competitive practices in relation to its distribution system. The Commission has since appealed this decision which is likely to be heard by the Competition Appeal Court (CAC) later in 2014.

In *Commission v Sasol Chemical Industries Limited (SCI)* the Commission alleged that SCI, a Sasol Ltd subsidiary, had charged excessive prices for propylene and polypropylene. Sasol denied the prices charged were excessive.

The case was concluded in 2013 after 29 days of hearing and the Tribunal issued its finding in the case in June 2014, which is subsequent to the current reporting period.

This was the first excessive pricing case to be decided since the *Mittal* case in 2007 which was referred back to the Tribunal by the CAC, but was then settled between the parties.

At the other end of the pricing spectrum we are still in the midst of hearing a predatory pricing case in which the Commission alleges that Media 24 Ltd (Media 24) excluded a rival community paper from the Welkom market by engaging in predatory pricing by one of its local titles for advertising. Media 24 denies the allegations.

The CAC has decided three cases involving cartels. In all three cases the convictions were confirmed although in one case a fine imposed was decreased and in another the CAC was of the view that the fine might need to be increased and therefore referred the matter back to the parties to see if they could settle.

In the same period the Supreme Court of Appeal (SCA) handed down a decision in the *Yara / Omnia* case which has clarified the approach in relation to procedures to be followed when the Commission refers a case at the behest of a complainant. This area of law has been bedevilled in the past by an overly technical approach and the robust approach by the SCA seems likely to end the confusion.

### 3. Other key developments

This financial year also saw the largest expansion of our staff since we started. In the course of the year we restructured our staffing levels increasing the number of positions from 13 to 25, although at the time of writing not all these positions have been filled. Most of this expansion occurred amongst our administrative staff.

There were two main reasons for this. Firstly our administrative capacity had not expanded much beyond what it was when we started out in 1999, despite a considerable growth in activities. Secondly, the reporting and corporate governance demands on institutions have become far greater than they were at the time of our inception.

We identified the need to expand our administrative capacity to meet this increasing demand on our resources. We embarked on a complex exercise to identify where the gaps in our organisation were and how we could best fill them. In part 2 of this report we give more detail to how we addressed this.

The table below sets out the increased workload of the Tribunal measured over the past six years. Whilst there is considerable fluctuation from year to year there is still a trend of increasing activity. The past year saw the largest number of matters measured in the period. It is a 25% increase over the next highest year of activity and more than a 125% increase over the lowest.

TABLE 1: Number of cases decided by the Tribunal over the past six years

Type of case	2009	2010	2011	2012	2013	2014
Large merger	102	52	54	80	69	97
Intermediate merger	2	-	1	5	7	-
Complaints from the Commission	2	2	3	2	4	1
Consent order	8	5	21	27	14	42
Complaints from a complainant	-	2	1	-	2	1
Interim relief	-	-	2	-	-	3
Procedural matter	22	21	29	35	27	42
Exemption appeal	-	-	-	-	1	-
Total	136	82	111	149	124	186



The increase has largely been driven by growth in three areas: mergers, consent agreements and procedural matters. The increase in merger activity seems to portend an end to the decline witnessed in the post 2009 period and hopefully is a sign of greater optimism in the economy.

The increase in consent orders, most of which result from settlements of cartel cases, is an indication of the success of the Commission's cartel unit and the leniency policy that underpins it. Since procedural issues piggyback on the number of substantive cases heard it is not surprising that when our case load increases so does the number of procedural matters.

At the same time as increasing our staff we also completed an exercise in redefining job definitions – which was necessary given the increased staffing levels – and improving our performance assessment of staff, moving from a highly subjective system to a more objective measurable one.

Our case management system which went live just prior to the commencement of this financial year has been bedded in and is proving its worth in terms of the information it provides us and the efficiencies introduced in our systems. We are now embarked on a second phase of this project.

The Tribunal has performed well in getting merger cases set down and decided within our targeted time periods. Our performance in completing reasons in opposed cases is less impressive although the statistic is based on only two cases. We are taking steps to improve turnaround periods for reasons, including getting more members to write reasons and increasing the active pool of members who hear cases.

Nevertheless given their complexity and the duration of the record certain matters unavoidably require some time in order to conclude reasons. Table 2 gives a detailed account of the orders we issued in this financial year against the reasons we issued in the same cases compared to last year's figures.

TABLE 2: Orders and reasons issued in two successive financial years

Type of Case	Orders issued 2013/2014	Reasons issued 2013/2014	Orders issued 2012/2013	Reasons issued 2012/2013
Large merger	97	97	69	76
Intermediate merger	-	-	7	8
Complaints from the Commission	1	1	4	4
Consent order	42	-	14	-
Complaints from a complainant	1	1	2	2
Interim relief	3	3	-	-
Procedural matter	42	28	27	13
Exemption appeal	-	-	1	1
<b>Total</b>	<b>186</b>	<b>130</b>	<b>124</b>	<b>104</b>

The table below details the number of mergers the Tribunal decided in this financial year compared with the previous financial year.

TABLE 3: Mergers decided in two successive financial years

Mergers decided	2013/2014	%	2012/2013	%
Approved	82	84.54	57	75
Approved with conditions	15	15.46	19	25
<b>Total</b>	<b>97</b>	<b>100</b>	<b>76</b>	<b>100</b>

This financial year also saw the largest expansion of our staff since we started. In the course of the year we restructured our staffing levels increasing the number of positions from 13 to 25.

## 4. Accounting authority's responsibilities and approval

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 2014.

The financial statements presented on pages 64 to 101 have been prepared in accordance with the South African Statements of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 55 of the Public Finance Management Act (PFMA) to the extent as indicated in the accounting policies, and include amounts based on judgments and estimates made by management. The accounting authority, in consultation with the 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 accounting authority initially approved and submitted the financial statements to the Auditor-General South Africa on 31 May 2014.

## 5. Nature of business

The Tribunal is listed as a national public entity in terms of the PFMA. The Competition Act provided for the constitution of three institutions constituted to promote and maintain competition in the economy and to ensure compliance with the Act's provisions. The Tribunal derives its mandate from the Act and has jurisdiction throughout South Africa. It 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 to or review by the CAC. Details of the Act, the rules of procedure that govern the adjudicative process as well as decisions for cases are all published on the Tribunal's website. The Tribunal's main functions are to regulate mergers and to adjudicate cases concerning restrictive practices, which are also known as prohibited practices.

The members appointed by the President on a full-time or part-time basis during the period under review are as follows:

- Norman Manoim, chairperson (full-time)
- Yasmin Carrim (full-time)
- Andreas Wessels (full-time)
- Mondo Mazwai (part-time)
- Andiswa Ndoni (part-time)
- Fiona Tregenna (part-time)
- Merle Holden (part-time)
- Anton Roskam (part-time)
- Medi Mokuena (part-time)
- Takalani Madima (part-time)
- Imraan Valodia (part-time)

Matters are 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 a panel consisting of three Tribunal members is constituted to hold hearings. In a merger case the Tribunal's 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 Act has been contravened, impose any of a wide range of remedies, including the imposition of an administrative penalty and an order of divestiture.

## 6. Objectives and targets

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

A more detailed report on our performance against certain administrative objectives and legislated turnaround times follows in part 2 of this report and again in appendix H. It is recorded that we have failed to meet six of our 18 identified targets. Reasons for not meeting these targets are given in part 2, however, a further explanation is required to put this in context. Not all the targets are of equal significance.

Of the 18 targets we are required to meet, 11 relate to the core function of the Tribunal which is to hold hearings and adjudicate matters.

The Tribunal successfully achieved five of the 11 core function objectives while two could not be measured as no orders/reasons were issued. Of the four core function objectives not met, two related to the issuing of orders and two related to the issuing of reasons.

Delays in our turnaround times have occurred for any one of the following reasons:

- parties are not ready for a specified date or request that the matter be set down on a specific date;
- panel members are travelling and therefore unable to fully attend to the writing of reasons;
- matters are complicated and complex points of law need to be considered which may result in decisions only being issued at the same time that reasons are issued.

The remaining two targets not met relate purely to operational objectives 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.

## 7. Financial highlights and performance

	2014 R '000	2013 R '000
Revenue	27 801	24 215
Other income	6	10
Investment income	999	1 113
<b>Total Revenue</b>	<b>28 806</b>	<b>25 338</b>
<b>Expenditure</b>	<b>(32 485)</b>	<b>(26 790)</b>
<b>Net surplus/(deficit)</b>	<b>(3 679)</b>	<b>(1 452)</b>
<b>Total assets</b>	<b>23 993</b>	<b>27 160</b>
<b>Total liabilities</b>	<b>2 858</b>	<b>2 346</b>

Revenue for the year ended 31 March 2014 increased by 13.68%. Filing fee income increased by 28.98% while the grant received from the Economic Development Department (EDD) increased by 7.26%.

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.

During the current financial year total expenditure (net of capital expenditure) increased by 21.26%. The changes in expenditure are discussed more fully in part 4 of this report.

Salaries account for 49.78% of total expenditure and account for 43.21% of the increase. At the beginning of the financial year the Tribunal had accumulated surpluses of approximately R24.81 million and these have decreased by just over R3.68 million during the current financial year.

In terms of Section 53 (3) of the PFMA, entities are not allowed to accumulate surpluses unless approved by the National Treasury. The Tribunal has received permission to retain accumulated surpluses generated in prior financial years to fund the approved budget. The drawing down of these to fund budgeted expenditure is reflected in the Medium Term Expenditure Framework (MTEF).

The current financial year reflects an operating loss and it is therefore not necessary to request retention of an accumulated surplus. 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 reflect the drawing down of surpluses to fund budgeted expenditure but will simultaneously seek additional government funding to ensure sustainability of the institution in the foreseeable future.

The Tribunal's main functions are to regulate mergers and to adjudicate cases concerning restrictive practices, which are also known as prohibited practices.

## 8. Events subsequent to financial position date

No events took place between the year-end date, 31 March 2014, and the date on which the financial statements were signed that was sufficiently material to warrant disclosure to interested parties.

## 9. Executive committee members' emoluments

### Employee costs

In terms of Treasury Regulation 28.1.1 the annual financial statements and the accounting authorities report must include the disclosure of remuneration in respect of the person in charge of the entity, the chief financial officer and person's serving on the public entity's senior management.

This disclosure is detailed in the related parties note (Note 25) in the annual financial statements which 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 and these figures have been included in the stated total remuneration, as has any back pay received.

Performance bonuses for staff members are payable for the year ending March 2014. These amounts are included in trade payables and reflected in the notes to the annual financial statements. Full-time Tribunal members do not receive performance bonuses.

The salaries of full-time Tribunal members 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 5%, effective 1 April 2013.

## 10. Executive committee

During the period under review the Tribunal underwent a structural change which is detailed in part 2 of this report. An operations committee was established which is headed by the chief operating officer and consists of the heads of each of the three divisions - case management, registry and corporate services.

This committee has no decision making powers and deals with operational issues while the executive committee, which is headed by the chairperson/accounting authority, remains responsible for the development and formulation of the Tribunal's strategic policy framework and, in terms of finance related responsibilities, must 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.

## 11. Number of employees

At the end of the financial year the Tribunal's personnel complement consisted of three full-time Tribunal members, 20 full-time staff members and two contract employees. Note that Tribunal members are appointed for a five-year period and are therefore not regarded as permanent employees.

## 12. Irregular and fruitless and wasteful expenditure

The Tribunal has no irregular expenditure to disclose for the period under review, however, it has disclosed fruitless and wasteful expenditure of R84 141.68 that pertains to penalties paid to the South African Revenue Services (SARS). R65 785.13 of this figure pertains to penalties imposed by SARS on a Voluntary Disclosure Process (VDP) submission made by the Tribunal in the 2011/2012 financial year.

The disclosure related to the incorrect application of perks tax on the contributions made by the Tribunal to employees for risk benefits. SARS, in considering the VDP application, determined that penalties were to be imposed on the amounts declared for each of the five years but waived interest charges.

The Tribunal is of the view that the penalties imposed are in excess of that originally stated but we have adopted a “pay then dispute” attitude and are currently consulting with PricewaterhouseCoopers on this matter.

The remaining R18 356.55 pertains to a penalty imposed on a late submission of PAYE in the month SARS changed the payment process. A misinterpretation of the manner in which the process had to be applied led to a late payment and the resultant penalties and interest.

The Tribunal has determined that valid explanations for these penalties exist and, in addition, it is noted that they did not result because of negligence on the part of a staff member but rather due to incorrect interpretation of required processes.

### 13. 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 monthly management fee for the period under review was R43 261. The MOA and 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.

While the fee payable to the Commission for the unitary payment was reduced to R137 631 per month (due to a recalculation of space occupied) there were no substantial changes in the nature of the billing from the Commission for the year under review.

Revenue for the year ended 31 March 2014 increased by 13.68%. Filing fee income increased by 28.98% while the grant received from the Economic Development Department increased by 7.26%.

### 14. Address

Business address	Building C (Mulayo Building) 77 Meintjies Str, Sunnyside, 0132
Postal address	Private Bag X24, Sunnyside, 0132

### 15. Going concern

The Tribunal recorded an operating deficit of R3.68 million and total assets exceeded total liabilities. This deficit was funded by accumulated surpluses. The Tribunal is, however, dependent on the EDD and National Treasury for the continued funding of operations. The annual financial statements are prepared on the basis of accounting policies applicable to a going concern and that the EDD / National Treasury has neither the intention nor the need to liquidate or curtail materially the scale of the Tribunal.



Norman Manoim

# AUDITOR-GENERAL'S REPORT

## 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 Competition Tribunal set out on pages 64 to 101, which comprise the statement of financial position as at 31 March 2014, the statement of financial performance, statement of changes in net assets, the cash flow statement for the year ended, the statement of comparison of budget information and actual amounts for the year then ended, as well as 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 the South African Standards of General 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 the 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 judgement, 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 Competition Tribunal as at 31 March 2014 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 on the reported performance information against predetermined objectives for selected objectives presented in the annual performance report, non-compliance with legislation as well as internal control. The objective of my tests was to identify reportable findings as described under each subheading but not to gather evidence to express assurance on these matters. Accordingly, I do not express an opinion or conclusion on these matters.

### Predetermined objectives

8. I performed procedures to obtain evidence about the usefulness and reliability of the reported performance information for the following selected objective presented in the annual performance report of the entity for the year ended 31 March 2014:
- Strategic Focus Area: Tribunal hearings and decisions on pages 125 to 127.
9. I evaluated the reported performance information against the overall criteria of usefulness and reliability.
10. I evaluated the usefulness of the reported performance information to determine whether it was presented in accordance with the National Treasury's annual reporting principles and whether the reported performance was consistent with the planned objectives. I further performed tests to determine whether indicators and targets were well defined, verifiable, specific, measurable, time bound and relevant, as required by the National Treasury's Framework for managing programme performance information (FMPPi).
11. I assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
12. I did not raise any material findings on the usefulness and reliability of the reported performance information for the selected objective.

### Additional matter

13. Although I did not identify any material findings on the usefulness and reliability of the reported performance information for the selected objectives, I draw attention to the following matter:

### Achievement of planned targets

14. Refer to the annual performance matrix on pages 125 to 130 for information on the achievement of the planned targets for the year.

### Compliance with legislation

15. I performed procedures to obtain evidence that the public entity had complied with applicable legislation regarding financial matters, financial management and other related matters. I did not identify any instances of material non-compliance with specific matters in key legislation, as set out in the general notice issued in terms of the PAA.

### Internal control

16. I considered internal control relevant to my audit of the financial statements, the annual performance report and compliance with legislation. I did not identify any significant deficiencies in internal control.



Pretoria  
31 July 2014



AUDITOR-GENERAL  
SOUTH AFRICA

*Auditing to build public confidence*

# AUDIT COMMITTEE'S REPORT

We are pleased to present our report for the financial year ended 31 March 2014.

TABLE 4: Audit committee members and attendance

Name	Status of member	Number of meetings required to attend	Number of meetings attended
V. Nondabula (Chairperson – term ends in October 2014.)	Non-executive	4	4
M. Ramataboe (term ends in October 2016).	Non-executive	4	3
K.Teixeira (term ended October 2013).	Non-executive	2	1
N. Mhlongo (term ended October 2013.)	Non-executive	2	2
S. Gounden (term ends in October 2016)	Non-executive	4	4
D. Thayser (term ends in November 2016)	Non-executive	2	2
M. Moodley (term ends in November 2016)	Non-executive	2	2

The audit committee of the Tribunal consists of the members listed above and is required to meet four times per annum as per its approved terms of reference. During the year under review the committee held four meetings. The committee's meetings have regularly included the internal auditors and representatives from the office of the Auditor-General.

### Audit committee responsibility

The audit 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 audit 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 effectiveness of internal control

The system of internal 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, internal audit provides the committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the internal auditors, the audit report on the annual financial statements, any qualification and/or emphasis of matter, and the management letter of the Auditor-General, it was noted that no significant or material non-



compliance with prescribed policies and procedures has been reported. Accordingly, we can report that the system of internal controls for the period under review was efficient and effective.

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

Monthly and quarterly reports on performance information and the Tribunal's finances were presented and reported in committee meetings and were monitored throughout the year.

The audit committee is satisfied with the content and quality of monthly and quarterly reports prepared and issued by the accounting authority of the Tribunal in the year under review.

### Evaluation of annual financial statements

The audit committee has:

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

The audit committee concurs with and accepts the Auditor-General of South Africa's report on the annual financial statements and is of the opinion that the audited financial statements should be accepted and read together with the report of the Auditor-General of South Africa.

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

### Internal audit

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

### Auditor-General of South Africa

The audit committee has met with the Auditor-General to ensure that there were no unresolved issues.



Chairperson of the audit committee



# RISK COMMITTEE'S REPORT

The risk committee is a formal governance committee of the Tribunal and is responsible for assisting the accounting authority in discharging his responsibilities for the governance of risk through a formal process and a system of risk management. The committee has adopted appropriate formal terms of reference, as per its charter, and has regulated its affairs in compliance with this charter and discharged all its responsibilities as contained therein.

The charter includes the committee's responsibilities to:

- assist the accounting authority to review the risk management policy and recommend same to the accounting authority for approval;
- monitor the implementation of the risk management framework and, through systems and processes designed for that purpose, ensure that:
  - management disseminates the risk management policy and plan throughout the Tribunal; and
  - management ensures that the risk management plan is integrated into the daily activities of the business;
- based upon the reports of management, and any reviews by internal and external audits, express formally to the accounting authority their opinion on the effectiveness of risk management systems and processes;
- review the risk management report at each meeting with particular regard to:
  - ensuring that a process exists where risk management frameworks and methodologies are implemented to increase the possibility of anticipating unpredictable risk;
  - ensuring that a process exists where risk management assessments are performed on a continuous basis;
  - ensuring that management considers and implements appropriate risk responses;
  - ensuring that continuous risk monitoring by management takes place.

In supporting this objective, the risk committee conducted the activities listed below:

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

During the year under review the committee is satisfied that it has complied with its charter, which has been formalised to include principles contained in King III and guides the committee in performing its duties during the year.

The membership is made up of five independent non-executive members. Andreas Wessels, Janeen de Klerk (from the Tribunal), the external auditors as well as internal auditors have a standing invitation to the meetings. The committee met four times during the year under review.

The serving risk committee members for the period under review were:

Chairperson: K Teixeira (term ended 31 October 2013)

M Ramataboe (from 01 November, 2013)

Members: V Nondabula (re-appointed 01 November 2013)

S Gounden (re-appointed 01 November 2013)

N Mhlongo (term ended 31 October 2013)

M Moodley (appointed 01 November 2013)

D Thayser (appointed 01 November 2013)



Maemili Ramataboe







### Where are they now?

David ("Dave") Lewis, who chaired the Tribunal for a decade from its founding in 1999, is now the executive director of Corruption Watch. He received his training in economics from the universities of the Witwatersrand and Cape Town and between 1975 and 1990 he worked in the trade union movement, serving as general secretary of the General Workers Union and national organiser of the Transport and General Workers Union.

He participated in the drafting of the Competition Act and was a member of the Competition Board from January 1998, chairing the board from January to August 1999. With the promulgation of the Competition Act in September 1999, Dave was appointed chairperson of the Tribunal.

In 2009 Dave was appointed as an extraordinary professor at the Gordon Institute of Business Science. A year later UCT awarded him an honorary doctorate in economic sciences.

Dave is also an author and his book, *Thieves at the Dinner Table: Enforcing the Competition Act – a Personal Account*, was published in 2012.





## PART 2: OUR OPERATIONS

The Tribunal in brief

Our purpose, values and strategic objectives

Systems that govern our performance

Changing our operational structure

# OUR OPERATIONS

## The Tribunal in brief

The Tribunal is one of three institutions established by the Competition Act to regulate competition between companies in the market place. Competition matters were previously regulated by the old Competition Board but in 1998 the democratic government of South Africa established a new framework of competition regulation creating three independent bodies, which replaced the Competition Board. These were the Commission, the Tribunal and the CAC.

The Commission is the investigation and prosecutorial agency. The Tribunal is the adjudicative body, very much like a court. The CAC considers appeals and reviews against decisions of the Tribunal. The Constitutional Court hears competition matters only in so far as they raise constitutional issues.

The Tribunal is made up of Tribunal members, who serve as panels of judges on cases they are allocated to and a secretariat of staff which provides administrative, research and organisational support to the chairperson and other Tribunal members.

The President, on the recommendation of the Minister of Economic Development, has appointed 11 Tribunal members to serve for a term of five years each.

Three members, including the chairperson, are full-time members and eight are part-time members. These members constitute the pool from which the chairperson appoints adjudicative panels comprising three members each.

The secretariat underwent a major restructure during this financial year which is discussed in more detail later.

## Our purpose, values and strategic objectives

### Purpose and values

In short, the Tribunal adjudicates complaints of anti-competitive conduct and mergers. For the most part complaints are referred to the Tribunal by the Commission, after a Commission investigation, but occasionally complainants refer cases to the Tribunal directly when the Commission has elected not to refer the complainant's case to the Tribunal. In the case of mergers, the Tribunal approves or prohibits large mergers after hearing a recommendation from the Commission. Complaints and mergers make up the biggest part of the Tribunal's work, however, the Tribunal also:

- upon application by the parties, reconsiders small and intermediate mergers that were conditionally approved or prohibited by the Commission, as well as exemptions; and
- hears applications for interim relief where a complainant requests relief from the effects of alleged anti-competitive conduct while the Commission's investigation is still underway.

The Act guarantees the Tribunal's independence, making it subject only to the constitution and the law. According to the Act, the Tribunal must be impartial and perform its functions without fear, favour or prejudice. The Tribunal upholds these values through various measures such as:

- the ethics policy, which prevents Tribunal members from hearing matters which could present any conflict of interest;
- our accessibility, pursuant to which we regularly invite the media and the public to attend Tribunal hearings; and
- our commitment to transparency, in terms of which we publish written reasons for decisions in mergers and restrictive practices and make these available on the Tribunal's website so that all interested parties are kept informed.

DIAGRAM 1: Hierarchy of entities that regulate competition in South Africa



## Strategic objectives for the year

In the annual performance plan for 2013 / 2014 the Tribunal identified three strategic areas of focus which enabled the Tribunal to deliver on its mandate in the most effective way. Performance indicators were identified for each strategic area and targets were set for each indicator.

The table below summarises the Tribunal's performance in each of these areas. A detailed performance matrix reflecting annual performance is attached as appendix H to this report. 61.11% of the targets set by the Tribunal pertain to the Tribunal's core function and mandate while the remaining 38.89% deal with stakeholder awareness and operational effectiveness.

TABLE 5: Strategic focus areas and performance this year

Strategic focus area	Strategic objective	Number of performance indicators	Number of targets achieved or exceeded	Number of targets not met	Number of targets not measured due to inactivity
Tribunal hearings and decisions	To promote and maintain competition within South Africa by holding hearings and adjudicating matters brought before the Tribunal within the adopted delivery timeframes.	11	5	4	2
Stakeholder awareness	To educate and to create awareness of competition matters to our stakeholders by communicating the activities and decisions of the Tribunal within the adopted delivery timeframes.	6	4	2	N/A
Operational effectiveness	To enhance the expertise of Tribunal members and staff.	1	1	0	N/A
<b>Total</b>		<b>18</b>	<b>10</b>	<b>6</b>	<b>2</b>

In the year under review, 11 targets related to our core function of hearing cases and issuing decisions. Two of these targets related to activities that did not occur in this financial year and hence could not be measured. Therefore, we can only report on the remaining nine objectives.

As explained earlier, we failed to meet four of these achievable targets and we therefore explain more fully below why we did not do so or, where relevant, the degree of non-compliance:

- 25 of the 97 large mergers (25.77%) set down did not meet the target of 10 days within which matters must be set down for hearing. 56% of these set-downs missed the target by a maximum of three days and the remaining 44% could not be set-down in line with the requirement as parties were unavailable in the specified period. Since the 10 day target is there for the benefit of the parties to the merger non-compliance in these circumstances should not be regarded as non-achievement of the target set.
- The target set for the issuing of a decision and/or reasons in opposed prohibited practices was set at 80%. During the period under review the Tribunal issued an order and reasons in two opposed prohibited practice cases. In only one of these instances did the Tribunal meet the delivery time frames, thus achieving only 50%. The delay occurred in the **SAB** case which was a long and complicated case with substantial and detailed evidence. In addition, the same panel was allocated to a lengthy prohibited practice soon after the **SAB** case concluded and this resulted in further delays. In order to achieve a target of 80% we would need to have issued decisions and/or reasons in a minimum of five cases. An analysis of our historic data shows that we seldom have this volume and the Tribunal, will in the forthcoming strategic plan, revisit this target.
- The situation is similar in the case of interim relief matters, where the target for the issuing of reasons within 20 business days is set at 85%. In this period only three matters had reasons issued making an 85% target impossible. None of these matters had reasons issued timeously but in two matters the target was missed by two days and in the third the decision was issued within 24 hours but the reasons were delayed as the panel member writing the decision was overseas.
- 83% of the 42 orders issued in procedural matters were issued within the stipulated timeframe (20 business days) and therefore, just missed the target of 85%. These delays arose because of the complexity of some points of law or because it was agreed that the order would only be issued with the reasons.

Two targets relating to operational objectives were not met but do not adversely affect any stakeholders. By example: not placing a decision on the website within 24 hours does not prejudice the parties to the case as they receive the decision directly from the Tribunal on the day the decision is assented to.

In addition, it is often the parties themselves who delay this process as they review documents to ensure confidential information included in the reasons is excluded when the decision is posted for public viewing.

While table 5 (page 25) summarises the level of the Tribunal's compliance with the annual targets set in respect of each strategic focus area, part 3 of this report discusses selected hearings and decisions in order to effectively illustrate the relationship between the Tribunal's operations and each strategic focus area.

We document how we carried out the stakeholder awareness function in the highlighted cases and how operational effectiveness enhanced our ability to deliver justice as mandated by the Act. In this way we aim to demonstrate how each strategic focus area is integrated in our day to day performance, how each function and department within the Tribunal adds value to the Tribunal's core business and contributes to the overall effectiveness of service delivery.

## Systems that govern our performance

### Corporate governance

Management structures established in the Tribunal are responsible for overseeing that sound corporate governance is practiced in the Tribunal. In addition, a well developed system of policies, processes, people and rules enables us to effectively meet our stakeholders' needs.

### Governance structures in the Tribunal and their functions

#### Executive committee

While the Tribunal does not have a board of directors it has established an executive committee (EXCO). The EXCO is a decision making body whose mandate and procedures are set out in an EXCO charter. Its main function, under the leadership of the chairperson, is to give effect to the role set out for the Tribunal in the Act, the PFMA and relevant Treasury Regulations.



### **Chief operating officer (COO) and the operations committee (OPCOM)**

The COO works closely with the chairperson to ensure that the Tribunal's day to day operations are managed effectively and to provide institutional wide leadership and input into strategy.

The COO together with the three divisional heads form an OPCOM whose mandate is detailed in an OPCOM charter. The OPCOM is not a decision making body and reports to the EXCO via the COO.

### **Audit committee**

The audit committee is required to remain independent but simultaneously assist the accounting authority to fulfil his obligations to demonstrate accountability and transparency. A report detailing the activities of the audit committee in the year under review is contained in part 1 of this report.

### **Risk committee**

The risk committee forms part of a wider risk management framework embedded within the Tribunal. The risk committee, together with internal audit and the audit committee, play an advisory and supporting role to provide assurance that risks are managed rigorously and that the internal audit plan is risk based and is implemented and monitored accordingly. The risk committee report is included in part 1 of this report.

### **Fraud prevention committee**

This committee is established to provide the accounting authority with an independent and objective view of the effectiveness of the Tribunal's fraud management systems, practices and procedures as well as assist him in discharging his accountability for fraud management.

### **The governance of information technology**

An IT governance framework is in place in the Tribunal. This framework sets out how the Tribunal implements the principles expounded by COBIT (Control Objectives for Information and Related Technologies).

We have also developed an IT strategic framework to ensure that the Tribunal can address its vision for a fully-developed, robust IT infrastructure that facilitates the implementation of the strategic plan.



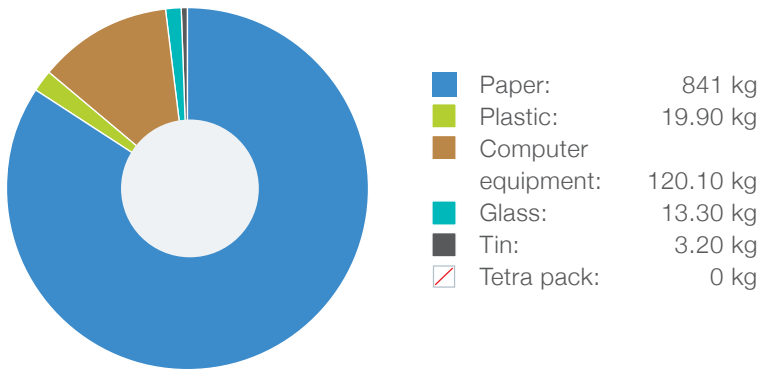
Our social and environmental impact

Sound corporate governance practice requires the Tribunal to consider its impact on the environment within which it operates both in terms of our social impact and our environmental footprint.

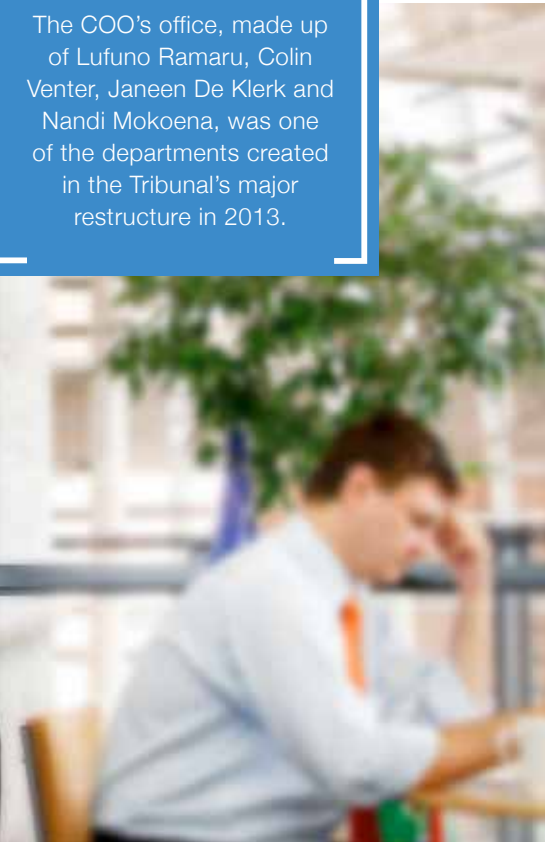
Beyond the charitable projects the Tribunal was involved in this year, we also made an effort to raise awareness amongst our staff about the significance of former President Nelson Mandela’s legacy and the significance of celebrating 20 years of democracy. To this end we laid flowers at Nelson Mandela Square in Johannesburg on the morning after the former President’s passing and, in January 2014, we designed a team building event aimed at enhancing staff member’s knowledge of South Africa’s journey to democracy.

This year we continued with an office recycling project initiated in 2010 and for the period under review we recycled a total of 1 128.70 kg’s of material.

These materials included paper, plastic, electronic equipment, tin, glass and tetra packs. The graph below reflects the breakdown of material recycled by weight per item.



The COO’s office, made up of Lufuno Ramaru, Colin Venter, Janeen De Klerk and Nandi Mokoena, was one of the departments created in the Tribunal’s major restructure in 2013.







### Economic sustainability

Part 4 of this report addresses the issue of financial stability as well as presenting and commenting on the Tribunal’s financial results.

### Legislation and guidelines

The table below sets out the most important legislation the Tribunal is required to adhere to and other areas of compliance which guide us in our day to day activities.

**TABLE 6: The application of legislation and guidelines to our daily work**

Legislation or guideline	Application in our day-to-day activities
The Competition Act	The Tribunal’s functions, powers, activities and procedures are prescribed by the Act and the rules of the Tribunal. Our compliance is monitored quarterly by the EDD.
The PFMA and Treasury Regulations	These prescribe requirements for accountable and transparent financial management. Our compliance is monitored quarterly by the EDD.
Occupational Health and Safety (OHS) Act	An OHS committee is operative in the Tribunal and compliance with required legislation is monitored by the executive committee and the risk committee.
Levies and taxes	The Tribunal has registered for and met its obligations in respect of the required and legislated levies and taxes.
Ethics	The Tribunal embraces the four ethical values underpinning good corporate governance: responsibility, transparency, accountability and fairness. Various policies and procedures have been adopted to ensure that the Tribunal maintains its commitment to high standards of integrity, ethics and compliance to principles of honesty, integrity and independence.
Internal audit	The Tribunal outsources its internal audit function for a period of three years. The internal audit function, is defined in an internal audit charter and is conducted in accordance with an internal audit plan that is developed and approved by the audit committee.
External audit	The annual audit of the Tribunal is, in accordance with the PFMA, conducted by the Auditor-General. The objective of the audit is to provide an independent opinion on the financial statements of the Tribunal and report findings regarding predetermined objectives, compliance with laws, regulations and internal controls. See the Auditor-General’s report in part 1 for his detailed findings.

## Changing our operational structure

The Tribunal has been in existence since 1999 and organisational changes have not kept up with the more-than-treble growth in budget and its core function, which is adjudication. While we have seen an increase in the core operational staff (full-time members and researchers) over time commensurate with the increase in workload this was not matched by a concomitant increase in our administrative and registry staff capacity.

These divisions remained stagnant and gaps in the administrative function were filled in an *ad hoc* manner using a variety of unsatisfactory temporary measures, including, the use of consultants and interns or relying on the Commission's staff to provide us with additional capacity.

Other external and internal factors also exacerbated the situation. Externally these included the increasing governance and compliance demands placed on the public sector by regulation. Internally we have had to improve our IT systems to keep pace with growth in the volume of work, number of people, improvements in public access and requirements for improved case management. From a small organisation with one server, in 1999, we now have a sophisticated IT system responsible for our own IT function, website, 12 servers and 30 computers or laptops. In addition to this, and perhaps most demanding of all, was the introduction, in February 2013, of an electronic case management system. Both these developments, whilst improving our efficiency, have had staffing implications.

By way of example: In our early history we were largely a paper based organisation so a registry clerk was someone who stamped papers that were served in hard copies. In our new world of electronic case management a registry clerk has to be someone with IT skills capable of working with a software program that runs this system. The skills required of the former are not suitable for the current position.

Our website, which started out as a rudimentary interface with the public, has evolved into a standard by which we measure public access to our institution. All our decisions are posted on the website and are fully searchable. Critical institutional documents such as supply chain management questionnaires, annual reports and current hearing updates have all been added to the site as improvements to public access. In addition we are now part of the SAFLII site which permits free global access to judgements of courts and specialist adjudicative bodies. This development now requires additional support in the form of specialist IT support but also requires our administrative staff to be IT-savvy.

The fact that administrative demands had not been compensated for by an increase in staff capacity led to serious deficiencies in the organisation. Some staff were being overburdened while others were performing functions that were a mismatch to their core skills. These, "add-ons" were characteristic of several administrative functions in the Tribunal and lead to inefficiencies. All these factors resulted in the Tribunal embarking on an exercise to re-design our structure, an exercise which we concluded in this financial year.

The task included determining whether the job definitions of the current positions were adequate and whether there was a knock-on effect in terms of job grading. It was also deemed appropriate to simultaneously benchmark our structure with appropriate comparable organisations in order to assess whether we were paying competitively relative to our function and when measured against appropriate comparators.

The outcome of the process led to the following key recommendations being implemented in October 2013:

1. The creation of a chief operating officer position: the flat management structure (three managers in three divisions namely corporate services, registry and case management reporting to the chairperson) led to a silo-based management structure ill-suited to the growing entity and changing needs. It was evident that a lacuna existed as there was no single position below the chairperson to whom the three divisional heads would report, who has a bird's eye view of the organisation and could consider strategic issues at the same time. The head of corporate services had *de facto* been performing this function and the revised structure led to the creation of a position for the chief operating officer. The position of head of corporate services remained but at a less senior level and with the prime responsibility being to coordinate the activities of the corporate services department, thus facilitating greater efficiencies and role separation.
2. The creation of a procurement officer and a human resources (HR) officer position with the former being responsible for all functions pertaining to supply chain management and procurement in the Tribunal while the latter was responsible for all HR functions including recruitment, payroll, training, performance management, implementation and compliance with the OHS Act.
3. Shared intern or consultant positions were formalised as permanent positions – certain jobs previously performed by consultants on contract, shared with the Commission or temporarily filled by interns were formalised into the staff structure. These included

the public relations officer, who performs the function of media liaison and is responsible for maintaining and enhancing the profile and relevance of the Tribunal; facilities and support services, who serves as a driver and is responsible for the maintenance of our facilities; kitchen support, who is responsible for internal and external catering and cleaning requirements.

4. The creation of a document and knowledge manager position whose prime function is to ensure the integrity of the data and documentation in the recently implemented electronic case management system. The incumbent would be required to manage the Tribunal's records in compliance with the National Archives Act and ensures that, as a court of record, our document management is compliant with best practice.
5. The case management division was restructured with roles from junior to senior case management officers to allow for growth.

This resulted in four new positions and the conversion of three previously existing intern/consultant positions into permanent position. Salaries were benchmarked against the following organisations: the Department of Public Service and Administration (DPSA), the Department of Public Enterprises (DPE), the Commission, Gauteng

Provincial Legislature, the Takeover Regulation Panel and, in respect of case managers only, a private law firm. It was concluded that salary bands paid by the DPSA and the Commission were the most appropriate to use for the purpose of a relevant market comparison.

The changes, with exception of the appointment of the document and knowledge manager, have been fully implemented and we have already seen greater efficiencies being created. These changes will ensure that the institutional memory of the Tribunal and its long term feasibility will rest with the core management team of the COO and the three divisional heads.

This is particularly important as Tribunal members are not permanent employees but serve fixed terms. Hence continuity in the top levels of the management of the support structure serves as the only guarantee of continuity and repository of an institutional memory. The tables below represent the demographics of the Tribunal at financial year end, which was after the restructure had been implemented.

The benefits to the restructuring are already evident. Staff members are able to better focus on key areas of delivery against the Tribunal's strategic objectives. A review of this process will take place in late 2014 to determine whether it achieved its objective.

**TABLE 7: Tribunal demographics per department: (inclusive of contract workers and full-time members)**

Division	Female			Female Total	Male		Male Total	Grand Total
	African	Indian	White		African	White		
Case management	3		1	4		2	2	6
COO's office	2		1	3		1	1	4
Corporate services	3		1	4	2		2	6
Full-time Tribunal member		1		1		2	2	3
Registry	4			4	2		2	6
<b>Total</b>	<b>12</b>	<b>1</b>	<b>3</b>	<b>16</b>	<b>4</b>	<b>5</b>	<b>9</b>	<b>25</b>

**TABLE 8: Demographics for part-time Tribunal members**

Part-time Tribunal members	Male			Male Total	Female		Female Total	Grand Total
	African	Indian	White		African	White		
	1	1	1	3	3	2	5	8
<b>Total</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>8</b>



## BUSINESS

IN the 10 years since the Maintenance and Promotion of Competition Act was passed, South Africa's Competition Board has launched 29 formal investigations.

In only a handful of cases has the minister responsible for trade and industry actually acted on those investigations.

Does this mean that the board, whose job it is to ensure effective competition in South Africa, is ineffectual?

Board chairman Dr Pierre Brooks admits that enforcing the Act is not without its problems. But, he points out, the figures belie the fact that the very launching of an investigation is a deterrent. And the 29 formal investigations must be distinguished from the many informal investigations the board undertakes, and internal memoranda requested by the government. Brooks says the board tries to disassociate those investigated from any "restrictive practices" it is involved in. "Even after an investigation is completed an agreement can be reached between the parties concerned."

The apparent inability of the board to do anything about the concentration of economic power in South Africa is partly caused by the framework of the law within which it operates.

The board, for instance, cannot simply act against a company which has a monopoly in a certain market. The company must engage in restrictive practices.

South Africa's competition law addresses the issues of restrictive prac-

# Competition Board hamstrung by laws

**The ANC has adopted as policy the need for anti-trust legislation.**

**REG RUMNEY asked**

**Competition Board chairman Pierre Brooks how the present law panned out.**

tices, acquisitions and monopolies. But none of these is prohibited by the Competition Act. The minister is empowered to act against people involved in these, and prohibit specific practices, after investigation and a recommendation by the board.

If a monopoly is defined as it is in the Act, there are big and small monopolies, Brooks points out. A monopoly occurs where a person or company controls the class of business in which it operates.

"We are not worried about bigness per se," said Brooks.

The Act does not prohibit the existence of big companies, but actions which are not in the public interest. This, he said, is accepted in all Western legal systems.

Even in the United States, Brooks says, the existence of a monopoly is not an offence in terms of the US's classic anti-trust legislation, the Sherman Act. The monopoly must abuse its power to be illegal.

However, Brooks concedes that it is often not necessary for a monopoly to abuse its power. "Size as such can act as a deterrent to competition. This is a matter of concern for South Africa."

Moreover, economic concentration can mean big companies could raise prices without even colluding. There is often "price leadership" in an industry dominated by two or three companies. One puts up prices, and the others follow suit — to exactly the same level or just below it.

These and other problems of monopolies and economic concentration Brooks admits are taxing.

He notes that while price leadership is not regarded as a restrictive practice, it could in theory constitute one, if it eliminates competition.

Economic concentration has also been identified as contributing to inflation. Can price increases ever be regarded as excessive, in the free-market economist's vision of the world?

Brooks argues that while South African businessmen contend that in a free market system they could "charge what the market will bear" this only applies where there is competition. They have no right to do so when there isn't competition, for whatever reason.

As a last recourse the minister has the power to impose price controls.

On acquisitions, Brooks reckons his hand may be strong. An amendment, now before parliament, to the Act, makes it a presumption that an acquisition is against the public interest.

This is not so now, and the board has to prove an acquisition is against the public interest.

Conglomerates, of which South Africa has its fair share, pose a problem on acquisitions policy. Of the types of acquisition, horizontal (companies in the same industry) and vertical (by suppliers of retailers, for example) and by conglomerate acquisition it is difficult to find restrictive practices. As a minimum, though, the board does try to ensure competition between the conglomerates.

Brooks points out that in the debate the possibility of nationalisation as another last-resort measure against major monopolies has been raised. "They don't advocate it," he says, "but it is mentioned as a possibility."

It is not only the law which hampers action on economic concentration now.

In terms of Government Notice of March 2 1986 certain formal restrictive practices are prohibited up to the police and the attorney general to find such practices and bring them to justice. But not one successful prosecution has been recorded so far.





## PART 3: CASE HIGHLIGHTS

### Justice delivered

- Connecting the dots: The Tribunal's operations seen through the lens of the Telkom case
- Unravelling the construction cartel, brick by brick: The Tribunal's role in ending the construction cartel

### Reflections on 15 years of competition adjudication

- From the seed to the dinner table: The Tribunal's impact on the food chain over 15 years, at a glance
- Training and development as a merger condition: Looking back on the Ashton Canning merger
- Protecting employment first: How the first moratorium on retrenchments was received in the market
- Delayed but not denied: After years of litigation, the ANSAC case delivers results
- Concrete benefits: Looking at the progress of the concrete pipes market since the Tribunal's decision

### From the archives:

“The ANC has adopted as policy the need for anti-trust legislation. Reg Rumney asked Competition Board chairman Pierre Brooks how the present law panned out.”

# CONNECTING THE DOTS

## THE TRIBUNAL'S OPERATIONS SEEN THROUGH THE LENS OF THE TELKOM CASE

### Terminating high prices

On 17 July 2013 the Tribunal confirmed a settlement agreement between the Commission and Telkom SA SOC Limited (Telkom) which resolved a series of complaints lodged against Telkom by Internet Service Providers or ISPs and was referred to the Tribunal in October 2009. In the settlement agreement Telkom agreed to pay a penalty of R200 million and admitted that it had contravened the Competition Act by squeezing the margins of its competitors in the ISP space and, in that way, put them at a disadvantage when competing against Telkom in the market. What was most significant about the settlement agreement though was not the R200 million penalty Telkom agreed to pay for its contraventions but the changes in future pricing behaviour, which Telkom committed to through this agreement. This creative remedy to a long standing and complex concern in the telecommunications industry led Norman Manoim, the chairperson of the Tribunal, to describe the settlement agreement as “certainly the most impressive consent agreement that I have seen here in my years at the Tribunal. No doubt, it took a lot of hard work and many hours of negotiation.”

Telkom undertook to no longer discriminate in pricing between its competitors (who were forced to purchase basic telecommunications infrastructure and services from Telkom in order to provide a value added service to end consumers) and its own retail operations.

To this end Telkom agreed to implement functional separation between its retail and wholesale operations, including a transfer pricing programme to regulate transactions in the provision of network services between its wholesale and retail divisions. In addition, it would implement a code of conduct for its wholesale division that would ensure non-discriminatory treatment of ISP's and protection of their confidential service information from the competing retail division.

Telkom would also keep separate internal accounts for its own retail corporate VPN and internet access products to allow for monitoring and in that way ensure that it does not engage in a margin squeeze in future. Telkom went further in the settlement agreement and committed to various price reductions. Over the 2014, 2015 and 2016 financial years Telkom would reduce the prices of wholesale services implicated in the complaint and used by ISP's to deliver their IP VPN and internet access services (namely undersea cable international lines, national high bandwidth transmission lines, access to ADSL lines via the IP connect service and Diginet leased line access) and related retail products (Telkom's VPN Supreme and Internet Access). The Commission and Telkom estimated that these price reductions would amount to an estimated R875 million in savings to the market. Telkom would also ensure that any price reductions were not reversed in the 2017 and 2018 financial years.

In addition to the above penalty and the undertakings to reduce prices, Telkom committed to provide points of presence at strategic locations in the public sector. This, together with the price reductions undertaken by Telkom, was aimed at creating not only a more competitive market in South Africa, but also aiding government in the provision of public services in a digital economy.

The Telkom settlement is certainly the most impressive consent agreement that I have seen here in my years at the Tribunal. No doubt, it took a lot of hard work and many hours of negotiation.





## Leading up to the Telkom settlement

Below we take a detailed look at the Tribunal's operations through the example of the Telkom matters as a whole. The discussion includes references to an earlier but related case against Telkom, commonly referred to as 'the 2004 case' after the date on which the Commission referred it to the Tribunal, as opposed to 'the 2009 case' which culminated in the settlement agreement discussed above. We reported on the 2004 case in the 2012/2013 annual report but it remains connected to the current discussion because of the similar allegations made in both matters. The 2009 case, which is only one of the 186 cases the Tribunal decided in this financial year, highlights how each step that goes into bringing a case to finality adds value to the process of delivering justice to consumers.

## How it all began

Much like the system which operates between the police and the courts, the Tribunal's involvement in the Telkom matter began when the Commission finalised its investigation. The Commission acted on complaints received from various firms in the industry that competed

with Telkom alleging that Telkom's wholesale prices to them prevented them from competing effectively against Telkom in several downstream information technology markets. Following its investigation, the Commission referred the case to the Tribunal in October 2009.

The Tribunal's registry department received the complaint referral and began the process involved in preparing a case for hearing. The registry department is the first port of call for parties filing cases in the Tribunal or requesting information. The team is headed by Lerato Motaung.

Together they manage the Tribunal's case logistics and manage case documents. They are responsible for:

- hearing logistics and planning;
- administrative support;
- communicating with party representatives;
- issuing subpoenas;
- receiving, distributing and filing documents;
- maintaining the Tribunal's electronic case management system;
- managing public access to documents;
- archiving and document security; as well as
- performing a registry function for the CAC.

David Tefu, Nkuli Mpepuka, Maggie Mkhonto, Lerato Motaung, Sibongile Moshoeshoe and Themba Chauke. Together the registry team manages the Tribunal's case logistics, administration and catering.



Having received all the documents needed to file a complaint referral, the registry department opened an electronic and hard copy file of the Telkom case and transferred the Telkom file to the case management department. The case management department comprises researchers assigned to manage the legal processes in a case, manage the case files, assist the Tribunal panel members with research, summarise the legal issues involved and, during the hearing, manage the record of evidence as it is handed up to the Tribunal.

The case management team is headed by Rietsie Badenhorst who, like Lerato Motaung, has been with the Tribunal since its inception in 1999. Thereafter the registry team and case management team worked closely together to ensure that all the statutory steps required to prepare a case for hearing were carried out.

These included:

- placing a notice about the Telkom case in the Government Gazette, within 20 days of the Commission's referral;
- monitoring the pleadings filed in the case;
- setting up a pre-hearing conference;

- ascertaining the eligibility and availability of Tribunal members to hear the case;
- ensuring the confidentiality of documents, as informed by the Act and the Tribunal's guidelines on ethics; and
- managing interlocutory applications, if any. An interlocutory issue is a point of law that has to be decided separately from a decision on the merits of a case.

Other staff in registry were continuously involved in receiving documents filed by the parties in all the various applications, copying them and seeing they were delivered to members on the panel and inserted in their hearing files. This involved work by several staff members including the registry clerk, our driver who delivers documents and picks up members from airports and the Gautrain station when they attend hearings, all overseen by the registrar.

Prior to the 2009 case, in 2004, the Commission had referred largely similar allegations against Telkom but pertaining to their conduct in the years 1999 to 2004. Telkom challenged the 2004 referral on various fronts, including jurisdictional grounds, in the higher courts. After five years of litigation the Supreme Court of Appeal, in 2009,

The case management team: Caroline Sserufusa, Ipeleng Selaledi, Derrick Bowles and Rietsie Badenhorst, ensures that case procedures are met and assists panel members with any research they might need. Lebo Moleko and Shannon Quinn recently joined the case management team.







Tribunal members  
Yasmin Carrim and  
Professor Merle  
Holden deliberate  
over lunch.



Maintaining confidentiality and avoiding conflicts of interest are imperative for the Tribunal to remain committed to maintaining high standards of integrity and ethics. To support this commitment the Tribunal has internal policies and procedures in place that ensure that all employees and Tribunal members comply with the principles of honesty, objectivity and independence.

These include, but are not limited to:

- provisions on how to avoid conflicts of interest and how to disclose any potential conflicts of interest that may occur; and
- annual financial disclosures by Tribunal members (both full-time and part-time), managers and case managers, thus ensuring that financial interests are fully disclosed and reducing the possibility that conflicts of interest might occur.

rejected the jurisdictional point and referred the matter back to the Tribunal for a hearing. The Tribunal's hearing of the 2004 case then took place over several days from October 2011 to February 2012 with twelve factual and expert witnesses presenting evidence on behalf of Telkom and the Commission. This hearing culminated in a finding against Telkom in which the Tribunal imposed a R449 million penalty against it. The case management team watched the developments in litigation closely over the years in order to be ready to set both the 2004 and the 2009 case down for hearing when the matters had undergone all legal requirements.

With the 2004 case having been concluded, the registry and case management team prepared for the Tribunal to hear the 2009 Telkom case, conducting all the steps mentioned above. However, in the first half of 2013 the Commission and Telkom informed the Tribunal that Telkom would no longer be opposing the Commission's referral in a contested proceeding.

Rather, Telkom and the Commission had reached a settlement agreement which they requested the Tribunal to confirm in terms of the Act. According to the Act, a settlement agreement must be confirmed by the Tribunal to be of legal force and effect. The Tribunal promptly began preparing for the one-day settlement hearing, as opposed to a contested hearing which could have taken months to conclude.

## The deciding panel

When selecting a panel of three Tribunal members to adjudicate any given case, the chairperson of the Tribunal is guided by the nature of expertise the case requires as well as the ethical guidelines the Tribunal has in place. Regarding the latter, the chairperson had to ensure that the panel selected to hear the Telkom settlement did not have any conflicts of interest.

Having considered these, the chairperson appointed himself, Yasmin Carrim, full-time Tribunal member; and Dr Takalani Madima, a part-time Tribunal member, as adjudicating panel members for the Telkom settlement.

Typically, in a contested hearing, the Tribunal members would start a hearing at 10H00 each day, take a 15 minute tea break and an hour's lunch adjournment then end the hearing day at 16H00. Occasionally the Tribunal members are required to start earlier or finish later in order to accommodate witnesses or other parties to the case. The Tribunal members make use of the tea breaks and lunch adjournments to discuss the merits of the case and the testimony of witnesses while the information is still top of mind and they have an opportunity to follow up with questions where any remain. However, given that the Telkom case was a settlement agreement which raised no significant concerns, the entire proceeding lasted approximately one hour which meant there was no need for a full-day hearing.

During the hearing the Tribunal panel members raised several questions about the manner in which the Telkom settlement was expected to bring benefits to consumers and about the negotiation process leading up to the settlement agreement. Yasmin Carrim asked the parties whether they had involved other market participants and regulatory bodies in the drafting of the settlement agreement. Ultimately Norman Manoim, chairperson of the Tribunal, praised the parties for arriving at the creative and far-reaching solution which they had. He also praised the newly appointed leadership of Telkom for cooperating in the settlement rather than taking the company and other parties through protracted litigation for years to come.

## Issuing judgment

Tribunal judgments can take months to deliberate over once a case has been heard. The reasons vary from issues of complexity involved in a case to the length of the record to the number and types of other cases the Tribunal members must attend to.





For the most part though, settlement agreements take a day or two to decide given that no evidence needs to be led and both the Commission and the respondent come to the Tribunal having already agreed to the terms of an agreement. Notwithstanding, the Tribunal has the authority, in the Act, to confirm a settlement agreement, refuse to confirm it or request that changes be made to it. In the Telkom case the Tribunal confirmed the settlement on the same day it was heard.

## Reactions all round

According to media reports [Brainstorm, September 2013], Dominic Cull – who was then the head of Ellipsis Regulatory Solutions and regulatory advisor to the Internet Service Provider's Association – lamented that there had not been more time for industry participants to comment on the settlement agreement but described it as “significant” saying that it provided “substantially greater transparency between Telkom wholesale and retail.”

He added that a lack of transparency was what resulted in the complaints and it is what the settlement sought to address. “Greater transparency can only be a good thing as it will make it far harder for Telkom to engage in predatory pricing practices, levelling the local playing field substantially.”

The Commission stated that it was satisfied with the terms of the settlement and Telkom was reported to have hailed the settlement as “a good outcome”.

And it was not long before the market started to experience the direct benefits of the settlement agreement. Just two months later, on 19 September 2013, Richard Cutcher [Telkom abides by competition rules with price reductions, 19 September 2013], a journalist with HumanIPO reported that “From October 17, Telkom Wholesale will reduce its tariff prices on IP Connect by 8%, Diginet by 4%, CHIPAC by 4%, Ethernet Express by 6%, Metro Clear by 6% and IPLC by 25%.”

Sipho Maseko, Telkom's group chief executive officer, said these undertakings were “aimed at stimulating increased competition in the market with a large emphasis on wholesale.” He went on to say “Telkom is committed to fully complying with the provisions of the settlement agreement which is proof of a higher level of transparency within Telkom and ultimately a further expression of the foundation of a new Telkom”.



# UNRAVELLING THE CONSTRUCTION CARTEL, BRICK BY BRICK

## THE TRIBUNAL'S ROLE IN ENDING THE CONSTRUCTION CARTEL

### Construction cartel in the spotlight

“Nail them and jail them”, “Name them and shame them”, “Charge them” were all among the newspaper headlines that followed the Tribunal's construction cartel settlement hearings on 17 and 18 July 2013.

In a scene that resembled the Wal-Mart / Massmart merger of 2011, reporters, lawyers, advocates, non-governmental organisations, unions and onlookers gathered in a packed court room to hear how 15 construction companies would explain their involvement in widespread collusion that took place mostly during the period running up to the soccer world cup, from 2006 until 2010, when there was a massive construction rollout in South Africa.

Over two days the construction firms repeatedly said, in their submissions to the Tribunal, that the reason they had engaged in collusion was that during this period demand for construction had increased to such an extent that it surpassed supply and that there were not enough firms around to bid in the various projects. In order to facilitate the smooth running of the government's procurement process, which required a minimum of three tenderers, dummy bids were created in the form of cover pricing.

These were false bids that were higher than the rest of the bids submitted for a project and that gave the appearance of competition amongst the bidding firms but, in reality, were only submitted in order to ‘cover’ the construction firm that wanted to win the bid. In some cases loser's fees were paid to firms that had put in dummy bids.

When asked by Tribunal chairperson, Norman Manoim, why these payments were not reflected in the financial statements of the construction firms concerned, the firms responded that these payments were often disguised in their financial statements as ‘hiring of equipment’ or ‘plant hire’.

The Commission, which brought the construction cartel to the Tribunal after a detailed investigation, explained that it had opted to settle with the 15 construction firms involved as part of what they termed “a fast-track settlement” and not prosecute each firm individually in contested hearings before the Tribunal.

The case that later became known as the ‘construction cartel’ started as a complaint filed with the Commission relating to bid-rigging and collusion in the construction of the stadiums for the 2010 FIFA Soccer World Cup in 2009 but was, within months, escalated to an industry wide investigation when it became apparent to the Commission, based on leniency applications received, that there were widespread



Dr Takalani Madima was part of the Tribunal panel that heard the construction settlements in July 2013.

The construction cartel case started as a complaint of bid-rigging and collusion in the construction of the stadiums for the 2010 FIFA Soccer World Cup.



contraventions of the Act in this industry that involved many more projects. In order to cope with the magnitude of transgressions and to come to a cost-effective, comprehensive and speedy resolution, the Commission embarked on a fast track investigation in 2009 by publicly inviting firms that were involved in collusive conduct and bid-rigging to disclose such conduct and engage in settlement negotiations with it.

As a result, 21 firms in the construction industry came forward with information on 300 projects worth an estimated R47 billion. Of these, 160 were no longer eligible for prosecution under the Act, which left 140 projects susceptible for prosecution.

It took the Commission close to four years to investigate these allegations. During its investigation the Commission considered the entire life-cycle of each construction project, ascertained who the participants were in each project, how the tender process was managed and the results achieved.

It also had to cross-reference all the submissions made by the various firms in order to ensure that the information received corresponded. The Commission then settled with 15 of the construction firms. These were firms that admitted their involvement in the collusion and agreed to pay administrative penalties, collectively totalling R1.46 billion.

The Commission gave immunity from prosecution to firms who were first in the queue and had satisfied all the conditions set out in the public invitation to settle.


In arriving at appropriate penalty amounts the Commission sought to strike a balance between discouraging the most egregious of competition contraventions, rewarding parties for full and honest disclosure and encouraging a speedy resolution to the whole matter.

During the hearing it emerged that few steps, if any, had been taken by the construction firms against any individual staff members. According to them most of the employees who were involved in the collusive practices had retired or had left the firms and in some instances the country.

In those cases where employees remained in the service of the firms some of the firms undertook to ensure that the employees would not be involved in future tenders while others indicated that they were considering taking legal steps against those employees. A smaller player said that it would not take any steps against its employees because it regarded cover pricing as endemic in the industry and as such it was, at least from a historical perspective, regarded as acceptable by many players in the construction industry.

All of the firms said that competition compliance programs would be developed within the firms. One of the Tribunal panel members, Yasmin Carrim, suggested that the construction industry should consider developing a directors' charter which should be extended to other sectors to change the way in which South African business men and women conducted themselves in the market.

Yasmin Carrim, suggested that the construction industry should consider developing a directors' charter which should be extended to other sectors to change the way in which South African business men and women conducted themselves in the market.

A portrait of Andreas Wessels, a man with short brown hair, wearing a light blue dress shirt and a bright orange tie. He is standing with his arms crossed and a slight smile. The background is a blurred indoor setting with a brick wall and a window.

Andreas Wessels, a full-time Tribunal member, was part of the adjudicating panel on several Tribunal cases this year.

The Tribunal had also invited concerned third parties to make submissions during the hearing. Corruption Watch stated that, from its perspective, the most pernicious form of horizontal collusion was the rigging of bids in response to public sector tenders. It said that it was a particularly egregious form of collusion because it represented an assault on the living standards of those most dependent on the provision of public services and who could least afford a reduction in their living standards. Although it supported the settlements, it called for additional sanctions to be imposed on individuals that engaged in these cartel activities by other law enforcement authorities. It suggested this could be done by naming and shaming individuals concerned.

Corruption Watch said that criminal prosecutions were feasible under present legislation and advocated the use of the Prevention and Combatting of Corrupt Activities Act to prosecute individuals concerned. The South African National Road Agency Limited, SANRAL, which was the victim of several rigged bids for its road projects said that the construction firms had breached its trust and had acted to its detriment and against the public interest. However the South African Local Government Association (SALGA) and the Gauteng Provincial Government applied to postpone proceedings on the grounds that they considered the fines too low and wanted a postponement so that they could apply for access to the Commission's file in order to make representations over what a proper fine should be. The Tribunal refused the postponement finding that the applicants had made out no case for suggesting why the fines were too low in the circumstances. The ruling was given promptly so that the hearings were not delayed.

After hearing the Commission and each firm involved, the Tribunal confirmed each of the 15 settlement agreements as an order of the Tribunal, bringing an end to the construction fast track settlement process. The table below shows the individual penalty amounts that each construction firm paid.

The cost of prosecuting the construction cartel would have been over R9 million to the Tribunal alone and the cases would have taken more than two and a half years to concluded once they were ready for trial.



**TABLE 9: Administrative penalties paid by firms in construction settlement proceeding**

	Firm	Settlement amount
1	Aveng	R306 576 143
2	Basil Read	R94 936 248
3	Esorfranki	R155 850
4	G Liviero	R2 011 078
5	Giuricich	R3 552 568
6	Haw & Iglis	R45 314 041
7	Hochtief	R1 315 719
8	Murray & Roberts	R309 046 455
9	Norvo	R714 897
10	Raubex	R58 826 626
11	Rumdel	R17 127 465
12	Stefanutti	R306 892 664
13	Tubular	R2 634 667
14	Vlaming	R3 421 662
15	WBHO	R311 288 311
<b>Total</b>		<b>R1 463 814 394</b>

## The true cost of prosecution

Given the massive public outcry about the construction cartel, even before the 15 firms appeared before the Tribunal, the Commission could have elected to prosecute each firm individually in a contested proceeding.

But in the Tribunal's conservative estimation, the cost of such proceedings would have been R9 226 282.64 to the Tribunal alone, and the cases would have taken more than two and half years to conclude once they were ready for trial.

The settlement proceedings therefore clearly saved the justice system much time and money through the two-day hearing that took place in these matters during this financial year.

The Tribunal calculated the time and money the construction cartel would have taken to hear in response to a parliamentary question.

In arriving at the total, the Tribunal made the following key assumptions:

- the Commission would have divided up the prosecutions into three separate cases in respect of each segment of the industry, namely civil engineering, general building and mechanical engineering;
- on average, each case would have involved four respondents as one firm would typically have received immunity from prosecution;
- based on past experience, each project would take three days to hear if witnesses for the Commission and respondent firms were to testify and face cross examination;
- each case would be heard by one full-time Tribunal member and two part-time members, one of whom would be from out of town.

Using the above assumptions, the schedule below shows what the construction cartel hearing would have cost the Tribunal to run. It does not include the costs the Commission would have incurred to participate in the hearings or the costs to the private sector who would be respondents in the matter.

	Number of projects	Total preparation, hearing and decision writing days	Case manager costs, full-time members costs and part-time members costs	Transcription costs	Total costs
General building projects	21	112.50	R2 336 833,49	R134 100,22	R2 470 933,71
Civil engineering projects	75	327.50	R5 916 541,90	R236 647,45	R6 153 189,35
Mechanical engineering projects	5	30	R572 578,65	R29 580,93	R602 159,58
<b>Total</b>	<b>101</b>	<b>470</b>	<b>R8 825 954,04</b>	<b>R400 328,60</b>	<b>R9 226 282,64</b>

This calculation shows the time and cost benefits of having concluded settlements in the construction cartel case. A further benefit was that, unlike the ANSAC case which is discussed later in this report, claims for damages by entities that suffered harm because of the cartel could start sooner than later. The Act entitles any person that has been harmed by anti-competitive conduct to claim for damages in the High Court after receiving a certificate, from the Tribunal, confirming that the respondent has contravened the Act. However they cannot commence a case for damages until the Tribunal has made a finding against the firm that is to be sued. Approval of a consent order or settlement agreement is considered a finding by the Tribunal. By the end of the reporting period the Tribunal had already issued more than a 100 certificates in terms of the Act, which is an indication of the damages claims that could be brought against the construction firms implicated in the cartel.

## Managing the costs of prosecution

It is the Tribunal's corporate services team which manages the costs associated with hearings and all other costs the Tribunal incurs. When it comes to hearings specifically, the corporate services department ensures that the Tribunal adheres to supply chain management regulations when selecting service providers such as transcription services for hearings. The corporate services department ensures that part-time Tribunal members receive all the documents they require to prepare for matters in good time. It is also this team which ensures that all service providers are paid timeously for the services they provide the Tribunal. Under the leadership of Ann Slavin, corporate services carries out the following functions: human resources, finance management, procurement as well as facilities and support services.

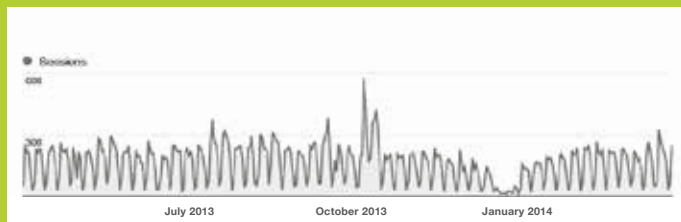
Bellah Kekana, Matome Modiba, Ann Slavin, Tumi Mabilo and Dazzyril Chabalala. Sometimes called the spine of the Tribunal, the corporate services department manages costs as well as the support functions the Tribunal needs to deliver an efficient service.



# WEBSITE ACTIVITY THROUGH THE YEAR

The Tribunal's website plays an important role in communicating its work to the public and keeping stakeholders up to date. As part of our performance targets, we aim to place all Tribunal decisions on the website within 24 hours of the decision being made.

On average the Tribunal's website had 160 visitors a day in this financial year but this number increased when the Tribunal heard the Telkom settlement and the construction cartel case in July 2013. Another of the Tribunal's decisions which drew much attention during the year was the South African Breweries Limited (SAB) case. The Tribunal issued its judgment in this case towards the end of the financial year, on 24 March 2014.



Website activity in this financial year

Throughout the financial year the Tribunal's website had a total number of 58 256 visitors, 27 024 of those were new users that visited the website for the first time.

The website's current look and feel will undergo an upgrade during the 2014/2015 financial year. The Tribunal is also aiming to upgrade the search engine and calendar's functionality to improve the overall experience of all visitors to our site.



# FROM THE SEED TO THE DINNER TABLE

## The Tribunal's Impact On The Food Chain Over 15 Years At A Glance



**2005:** Tribunal approved the large merger between Langeberg Foods International and Ashton Canning Company (Pty) Ltd subject to conditions aimed at enhancing the employment prospects of fruit canners in the town of Ashton.



**1999:** Tribunal granted an interim relief application by South African Raisins (Pty) Ltd and another against SAD Holdings Ltd and another ordering the respondents to refrain from requiring or inducing producers of grapes-for-raisins not to deal with SA Raisins.



**2011:** Tribunal confirmed 15 settlement agreements penalising grain storage and trading companies for colluding by agreeing on the storage rates for SAFEX. The Tribunal imposed a collective penalty of R35 million.



**2013:** Tribunal confirmed a settlement between the Commission and Senwes Ltd and imposed a remedy for its abuse of dominance.



**2011:** Tribunal confirmed settlement agreements finding that Rand Merchant Bank (RMB) and NWK Limited (NWK) had divided the grain trading market, in which they competed, by allocating territories and customers. The Tribunal imposed a combined penalty of R2.6 million.



**2009:** Tribunal confirmed a settlement agreement between the Commission and Lancewood Cheese (Pty) Ltd for information exchange in contravention of the Act. The Tribunal imposed a R100 000.00 penalty.

The remaining cases against Clover SA, Woodlands Dairy (Pty) Ltd and others fell away for technical reasons.



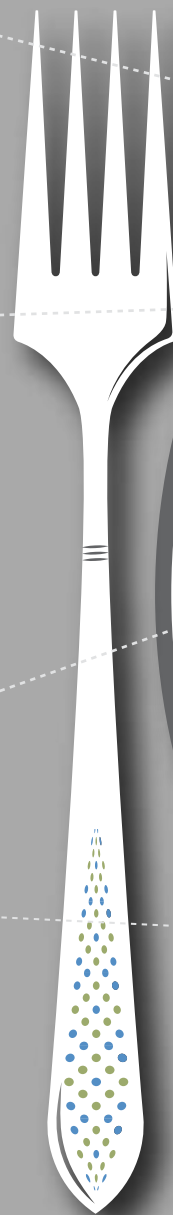
**2000:** The Tribunal prohibited the large merger between Tongaat-Hulett Group Ltd and Transvaal Suiker Bpk merger because competition would be prevented if the merger went ahead.



IMPACT



MONETARY PENALTY







**2002:** Tribunal approved the intermediate merger between Astral Foods Ltd and National Chick Ltd subject to conditions which protected competition in the chicken breeding or broiler industry and the animal feed industry.

**2004:** Tribunal approved the large merger between Astral Operations Ltd and Early Bird Farm finding that the merger would pave the way for Afgri to enter the broiler market.

**2004:** Tribunal approved the large merger between Afgri Operations Ltd and Daybreak Farms (Pty) Ltd enabling Afgri to expand vertically into the broiler market

**2010:** Tribunal confirmed a settlement agreement between the Commission and Rooibos Ltd and found that Rooibos had concluded anti-competitive exclusive agreements with rooibos tea packers and used a system of volume discounts with anti-competitive effects.

**2007 and 2009:** Tribunal confirmed settlement agreements and imposed a combined penalty of R143 million on Tiger Brands Ltd and Foodcorp for engaging in the bread price fixing cartel.

**2010:** Tribunal approved a settlement in terms of which Pioneer Foods (Pty) Ltd agreed to pay R500 million as a penalty and towards an agro-processing fund as well as take a price reduction/margin sacrifice on flour and bread for an agreed period.

**2011:** Tribunal approved the large merger between US based Wal-Mart Stores Inc and local Massmart Holdings Ltd subject to conditions aimed at addressing employment and procurement concerns.

**2012 and 2014:** Tribunal confirmed settlement agreements, imposing a penalty of R35 million on Oceana Brands Ltd and R2 million on Premier Fishing SA (Pty) Ltd for collusion regarding the service of catching raw pelagic fish.

**2014:** Tribunal approved the intermediate merger between Oceana Group Ltd and Foodcorp (Pty) Ltd but on condition that Oceana must divest of the Glenryck brand of canned pilchards together with the fishing quota to a willing and able independent third party in order to preserve competition in the canned fish industry.

**2010 and 2011:** Tribunal confirmed settlements in which Keystone Milling (Pty) Ltd and Carolina Rollermeule (Pty) Ltd admitted to fixing the price of milled white maize. The Tribunal imposed penalties of R6 730 349.00 and R4 417 546.00 respectively.

**2011:** Tribunal prohibited the large merger between US based Pioneer Hi-Bred International Inc and local firm, Pannar Seed (Pty) Ltd finding that it would not be in the best interest of South African maize farmers and consumers of maize products. Overturned on appeal.

# TRAINING AND DEVELOPMENT AS A MERGER CONDITION

## LOOKING BACK ON THE ASHTON CANNING MERGER

It has been almost nine years since the Tribunal, in September 2005, approved the merger between two fruit canning businesses, Langeberg Foods International (Langeberg) and Ashton Canning Company (Pty) Ltd (Ashton Canning Company) subject to employment related conditions. The new company that formed from the merger became known as Langeberg & Ashton Foods (Pty) Ltd (Langeberg & Ashton) with Tiger Food Brands Ltd (Tiger Brands) owning two-thirds of the firm while Ashton Canning Company owned the rest.

Since that time Tiger Brands has bought Ashton Canning Company's share, bringing Langeberg & Ashton fully into the Tiger Brands stable. By all accounts the Ashton Canning merger, as it became known, was a memorable experience for the Commission and Tribunal staff who

worked on it, the legal practitioners who advised the merging firms and the employees of the merging firms that were closely involved with the deal. Nassos Martalas the chief operating officer at Langeberg & Ashton noted, on celebrating 30 years with the Tiger group of companies, that the Ashton Canning merger was among the highlights of his career. Mark Garden of Edward Nathan Sonnenbergs Attorneys (ENS), the law firm that represented the merging parties in the deal, remembered the Tribunal's decision as a "revolutionary" move which was to be commended in some respects.

This was the first time, he said, that the Tribunal deviated from the more orthodox merger conditions of the past and adopted an innovative, purpose-crafted solution to the merger concerns that it identified."



Mondo Mazwai, Anton Roskam and Imraan Valodia joined the Tribunal as part-time members in 2013.





## Essence of the deal

The two merging firms were both competitors and produced canned deciduous fruit and fruit puree concentrates for the local and export market. The Tribunal concluded that the merger would introduce efficiencies that would offset some of the competition concerns. However substantial public interest concerns were raised as well, in particular the implications of the merger for the employment prospects of seasonal workers.

The Commission contended that the merger would lead to an employment loss of 45 permanent jobs and 1000 seasonal jobs. Seasonal workers were employed in the industry for short periods of time during the high season. The high season lasted six months, but not all seasonal workers were employed for the full season. It was accepted by all the parties to the case that seasonal workers were unskilled workers and that if 1000 less were to be engaged by the merged firm after the merger, their prospects for other employment would be limited. Moreover, as the Tribunal noted in its judgment, the small town of Ashton, in the Western Cape, was “heavily dependent on the canning firms since it [was] an economically troubled area that offer[ed] little hope for unskilled labour.” It was this fact that led the Tribunal to conclude that the merger would have a significantly negative effect on the public interest. Although the Tribunal approved the transaction, it limited the permissible retrenchments to 45 employees and 1000 seasonal workers for three years following the merger. In order to improve the employment prospects of the employees and seasonal workers affected by the merger, the Tribunal ordered the merging parties to make available R2 million for training the retrenched employees and seasonal workers for a period of three years. The Tribunal also ordered the Commission to monitor the implementation of the conditions.

## Terms and conditions applied

Reports on exactly how Langeberg and Ashton implemented the Tribunal's conditions vary but what all parties agree on is that the merger did not result in any job losses amongst the seasonal workers; six permanent employees were retrenched; several permanent employees opted for voluntary retrenchment packages; and the bulk of the R2 million training fund for retrenched employees and seasonal workers was not used for this purpose but nevertheless used to improve the lives of the greater Breede Valley community.

According to Garden, the merger resulted in six forced retrenchments and 53 voluntary retrenchments. Of the R2 million which the merging parties had set aside for training, Garden said R100 000 of this was used to up-skill the retrenched employees. He attributed the limited uptake of the training fund to the fact that the employment reductions envisaged at the time of the merger did not ultimately materialise.

When, at the end of the three year period, the new merged firm realised that the allocated money would not be entirely spent, it approached the Commission with a proposal to establish an education and training trust for the Breede Valley community to the value of R1, 9 million. Garden commended the Commission for taking a quick and pragmatic approach towards resolving the issue and both parties soon agreed to the establishment of an education and training trust which has benefited the community in that area.



# PROTECTING EMPLOYMENT FIRST

## HOW THE FIRST MORATORIUM ON RETRENCHMENTS WAS RECEIVED IN THE MARKET

“I just remember being completely shocked at the Tribunal’s departure from previous decisions” is how Jocelyn Katz of ENS, described her reaction to the Tribunal’s October 2010 decision in the merger between Metropolitan Holdings Ltd (Metropolitan) and Momentum Group Ltd (Momentum). She was reacting to the Tribunal decision to impose a moratorium, for the first time, on retrenchments resulting from the merger between Metropolitan and Momentum.

ENS was the law firm that represented Metropolitan, one of the merging parties, in the transaction. MMI, as the new merged firm would later be known, had argued before the Tribunal that in order to realise the anticipated benefits of the merger they would need to retrench a maximum of 1000 employees in the first three years after implementing the merger. MMI offered to provide support, such as core skills training to affected unskilled and semi-skilled employees, outplacement support and counselling, and to use their best endeavours to redeploy affected employees within the merged entity.

“I just remember being completely shocked at the Tribunal’s departure from previous decisions” is how Jocelyn Katz, of Edward Nathan Sonnenbergs described her reaction to the Tribunal’s October 2010 decision in the merger between Metropolitan Holdings Ltd and Momentum Group Ltd.



## EDUCATION AND TRAINING IN 2013/2014

Tribunal staff underwent their own training in this financial year in courses ranging from economic foundations to drivers license training. In summary, staff attended 35 training sessions during the year. 25 of these sessions were local conferences and workshops. The remaining ten were international training sessions.



The Commission, which assessed the proposed merger prior to referring it to the Tribunal, accepted the merging parties' undertakings and recommended to the Tribunal that the merger be approved subject to the implementation of these support measures.

The National Education Health and Allied Workers Union (NEHAWU) however, which represented about 6% of Momentum's employees, argued before the Tribunal that the merging parties had failed to properly justify the need for any job losses and had not substantiated how they arrived at the 1 000 retrenchments figure. At one point during the two-day hearing NEHAWU's advocate, when questioning a Momentum witness on how they arrived at the number of employees to be retrenched, said "Alright, so again all that we have is your say-so that you believe it was taken into account, but how it was done, what its implications, you can't help us with?" to which the witness replied "No".

In the circumstances NEHAWU asked the Tribunal to prohibit the merger or to approve it without any job losses.

The Tribunal, after hearing the Commission, the merging parties and NEHAWU on the merger, issued a decision imposing a moratorium on retrenchments at MMI for two years after the merger implementation date.

Although the Tribunal's novel stance on employment losses in the MMI merger took some by surprise in 2010, Katz says she now regularly advises her clients to work hard to justify each potential retrenchment. "Although clients have always been alive to the employment aspects of mergers, they now apply a new standard to justify employment losses where these are necessary".

Clients now apply a new standard to justify employment losses where these are necessary.

# DELAYED BUT NOT DENIED

## AFTER YEARS OF LITIGATION THE ANSAC CASE DELIVERS RESULTS

### A protracted legal saga

ANSAC was an association whose members were United States firms competing in the production of soda ash. The association was incorporated in accordance with the provisions of the United States Export Trade Act 1918, commonly known as the Webb-Pomerene Act. The purpose of this Act was to exempt United States associations engaged in export trade from the application of the Sherman Act, which was the counterpart of South Africa's Competition Act.

The Commission found, in its investigation, that members of ANSAC were obliged, in terms of their membership agreement, to sell soda

ash for export exclusively through ANSAC to any country outside the United States other than Canada. ANSAC, through its board of directors, determined prices and trading conditions in respect of the sale of soda ash. In South Africa ANSAC had engaged CHC as its agent, to give effect to the pricing decisions made by ANSAC.

The Commission found that this arrangement amounted to price fixing amongst competitors and, on 14 April 2000, referred the matter to the Tribunal for adjudication. ANSAC and CHC opposed the referral on the grounds, amongst other things, that the challenged conduct constituted no contravention of the Act and was not an improper agreement but rather constituted an open and transparent corporate joint venture, validly created and existing under the laws of the United



Fiona Tregenna, Medi Mokuena and Andiswa Ndoni are part-time Tribunal members.





States for purposes of promoting export sales and, in this way, generating efficiencies for consumers. ANSAC and CHC argued that its arrangements benefitted the South African market. However the Tribunal would only get to hear the merits of the case eight years later.

Between 2000, when the Commission referred the case to the Tribunal, and 2008 the parties became involved in extended litigation involving legal points and appeals. These took place in the higher courts and included whether the Tribunal had jurisdiction over ANSAC's economic activities in South Africa and whether ANSAC had contravened the Act. On 13 May 2005 the SCA directed that the case be sent back for the Tribunal to determine which provisions of the Act applied to the conduct of ANSAC and CHC.

On 23 July 2008 the hearing into the merits of the Commission's case against ANSAC and CHC began, only to be concluded through a settlement agreement four months later. Before closing arguments were heard in the case, ANSAC and CHC approached the Commission to discuss settlement.

It turned out ANSAC had made a commercial decision to withdraw from the South African market and therefore wished to settle the legal proceedings and avoid any further unnecessary litigation.

As part of the settlement ANSAC admitted that its membership agreement eliminated price competition between its members in export sales to South Africa and that this was a contravention of the Act.

## From ashes to life

By one account the South African soda ash market experienced immediate gains following the Tribunal's 2008 confirmation. "All of a sudden the market became flooded and all of a sudden we had enquiries from all over the world", said Jaco Human who in 2008 was supply chain executive for Consol Glass, the largest user of soda ash in South Africa.

By one account the South African soda ash market experienced immediate gains following the Tribunal's 2008 confirmation. "All of a sudden the market became flooded and all of a sudden we had enquiries from all over the world", said Jaco Human.

Of the approximate 500 000 tons of soda ash that was imported into South Africa, Consol procured 150 000 tons for use as a key ingredient in the manufacture of glass. Human recounted how he received enquiries from several foreign firms who saw Africa as a point for growth shortly after the ANSAC cartel ended its South African operations.

Traditionally, Consol Glass obtained all of its soda ash requirements from Botash who opted not to supply Consol Glass' Cape Town operations from 2008.

Subsequently, Consol Glass contracted a third of its soda ash requirements from ANSAC in the midst of a global soda ash shortage at the time. Consol Glass continued to obtain the balance of its requirements from Botash for its inland operations. After the Tribunal's ANSAC decision, Consol Glass initially contracted with a soda ash supplier in Kenya for about a year. Thereafter Consol contracted directly with an American supplier, which had formerly been a member of ANSAC and enjoyed lower prices than it had previously.

“For a period of four to five years after ANSAC, South Africa enjoyed the lowest soda ash prices in the world”, Human said. He recalled how the number of players supplying the local market doubled in a short space of time. Consol Glass had potential suitors from India, Kenya and even four separate American firms who had previously supplied South Africa through ANSAC. According to Human, one American firm finally established a complete distribution facility in South Africa given the levels of business it was receiving from the country.

Human, who has since left Consol Glass and is now with Nampak in a similar capacity, still closely follows developments in the soda ash market. He noted that although South Africa enjoyed the lowest soda ash prices in the world for several years following the Tribunal’s ruling, soda ash prices have been on the increase in recent times due to import duties imposed on selected importers, a move which has dampened the impact of open competition in the market.

Given the global shortage of soda ash in the latter years of ANSAC’s trade in South Africa, Consol Glass was initially concerned about what the dismantling of the ANSAC machinery would do to the availability of soda ash. In this context, Consol Glass at the time was supportive of ANSAC’s case before the Tribunal with a view to maintaining a level of stability in the industry during a time of global commodity uncertainty.

However with hindsight Human now remarks that the entry of competitive forces was the best outcome Consol Glass and its customers could have hoped for.



For a period of four to five years after ANSAC, South Africa enjoyed the lowest soda ash prices in the world.



# CONCRETE BENEFITS

## LOOKING AT THE PROGRESS OF THE CONCRETE PIPES MARKET SINCE THE TRIBUNAL'S DECISION

### Collusion exposed

On 29 November 2010 the Tribunal found that two firms in the concrete pipe industry had contravened the Act by engaging, with their competitors, in a series of collusive agreements over a protracted period.

The Tribunal imposed fines on Southern Pipeline Contractors (SPC) and Conrite Walls, although these fines were reduced on appeal to the CAC.

In its judgment the Tribunal said that the concrete pipes cartel had “operated in such secrecy that members were referred to by number and not name”. The Tribunal also noted that throughout the existence of the cartel, its members “enjoyed a quiet and hugely profitable life”, as evidenced by the testimony of Aveng Africa Ltd (Aveng) that, in their estimation, prices of concrete pipes fell between 25% and 30% after the cartel disbanded in 2007.

The cartel operated at both national and regional levels. In Gauteng the cartel members monitored their collusion by meeting on the second Tuesday of every month, after their Concrete Manufacturers' Association meetings, to discuss the market. Amongst SPC's main clients for more than 20 years were the Department of Water Affairs and Forestry, Rand Water Board and various municipalities, with projects pertaining to essential services such as water and sewage, which were critical sectors for South Africa's development.

The Tribunal's judgment followed the Commission's one year investigation of the concrete pipes industry in which it uncovered a cartel that had operated in construction from 1973 to 2007 in the market for the manufacturing of pre-cast concrete products such as concrete pipes, culverts, pre-cast manholes and concrete sleepers at both national and regional levels.

The Commission initiated this investigation after it received a leniency application from Rocla (Pty) Ltd (Rocla), a Murray & Roberts Ltd subsidiary, in which Rocla confessed its role in the cartel and undertook to give the Commission all the information it needed to successfully prosecute the remaining eight members of the cartel in exchange for immunity from prosecution.

Aveng, Concrete Units and Cobro Concrete, who were all respondents in the case concluded settlement agreements with the Commission. In February 2009 the Commission concluded its investigation and referred the case to the Tribunal for prosecution.

### And prices will fall

Aveng testified during the August 2010 hearing on the concrete pipes cartel that, in its estimation, prices of concrete pipes fell between 25% and 30% after the cartel disbanded in 2007. Following on from that the Commission conducted a study in 2012, two years after the Tribunal issued its decision in the concrete pipes case, which examined the concrete products cartel to understand how competition had developed from the time the cartel came undone.

The study, which was authored by Commission economists J. Khumalo, S. Roberts and J. Mashiane, demonstrated clearly what happened after the concrete pipes cartel was bust and what benefits could accrue to markets and consumers when cartel conduct was eradicated.

As mentioned, the cartel was mainly focused on precast concrete pipes and culverts. These were products used in various construction applications such as road construction and earthworks which were important for the government's infrastructure development drive.



According to Rocla, it and nine other firms had engaged in anti-competitive conduct involving market allocation, price fixing and collusive tendering. The cartel was tightly managed on the basis of very sophisticated rules contained in a document referred to as the “modus operandi”.

Cartel members agreed market shares along regional lines, along with the types of products each was allowed to produce. Market shares by product were allocated in defined areas around Johannesburg, Durban and Cape Town. The cartel members agreed that only Rocla would supply in the rest of the country. Cartel members also agreed to charge similar prices and to increase these prices by the same percentage twice a year.

The Commission’s study found that after the cartel conduct ceased:

- SPC, which during the cartel period did not make any culverts, started supplying the whole product range that was covered by the cartel and far outside the 150km radius around Gauteng within which it had agreed to stay under the cartel;

- Cobro, which had agreed to compete only within the Durban area, started delivering in the northern parts of the Eastern Cape. Cobro also extended its product range after having agreed not to make culverts;
- Concrete Units, which under the cartel was limited to the regions around Johannesburg and Cape Town, started competing as far as Limpopo, Mpumalanga and the Free State on a regular basis, and added concrete pipes to its product range in the Western Cape;
- five new players entered various product and geographic markets which were previously the reserve of the cartel. This pointed to the fact that the stability of any cartel lay in its ability to prevent new entry;
- while concrete pipe prices in the Durban and Johannesburg areas did continue to increase for some 18 months after the uncovering of the cartel, the study estimated that, from mid-2009 to June 2011, prices declined by 37% in the Durban area and 27% around Johannesburg. During the existence of the cartel, customers were overcharged by an estimated 51% to 57% in the Durban area and an estimated 16.5% to 28% in Johannesburg. These estimates were very high by international comparison and suggested that this was a very damaging cartel.





While concrete pipe prices in the Durban and Johannesburg areas did continue to increase for some 18 months after the uncovering of the cartel, the study estimated that, from mid-2009 to June 2011, prices declined by 37% in the Durban area and 27% around Johannesburg.



### **Where are they now?**

Urmilla Bhoola, who served as a part-time Tribunal member for 10 years from the founding of the Tribunal in 1999, is now the executive director of an international woman's rights organisation based in Kuala Lumpur. Prior to taking up this appointment Bhoola was a judge in the Labour Court.





## PART 4: FINANCIAL REPORTS

Financial management

### Annual financial statements

- Statement of financial position
- Statement of financial performance
- Statement of changes in net assets
- Cash flow statement
- Statement of comparison of budget and actual amounts
- Accounting policies
- Notes to the annual financial statements

# FINANCIAL MANAGEMENT

The budget compiled by the Tribunal for the 12 month period ending 31 March 2014 reflected estimated expenditure of R33.08 million and estimated revenue (generated from aliquot fees, interest and an EDD grant) of R27.32 million.

It was anticipated that the budget shortfall of R5.76 million would be met by using a portion of accumulated surpluses of R24.81 million held at the end of the 2012/2013 financial year.

Actual revenue for the year amounted to R28.81 million and was made up as recorded in the following table:

TABLE 10: Tribunal's total income over three years

Category	Amount (R million)	% 2014	% 2013	% 2012
Government grants	16.95	58.83	62.35	57.50
Filing fees	10.86	37.70	33.22	37.95
Other income	1.00	3.47	4.43	4.55
<b>Total</b>	<b>28.81</b>	<b>100</b>	<b>100</b>	<b>100</b>

The grant received from the EDD increased by 7.26% over that of the previous year and accounted for 58.83% 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 28.98% from those of the previous year and accounted for 37.70% of the Tribunal's revenue.

The Tribunal cannot place reliance on the filing fee figure the Commission expects to receive year on year and, accordingly, the Tribunal has continued to request the National Treasury's permission

to use current accumulated funds to cover budgeted expenses. In addition, it will be necessary to look to the EDD and the National Treasury for larger annual grants from 2016/2017.

In the year under review the Tribunal over-spent its total budget (inclusive of capital expenditure) by 1.39%. A number of factors resulted in this over expenditure:

- An organisational assessment which began in 2012/2013 was only completed in 2013/2014 and this resulted in funds allocated for 2012/2013 having to be used in this period.
- Implementation of the findings of the organisational assessment resulted in an additional eight people being employed from October 2013 onwards (an increase of 50% in the Tribunal staff) and this impacted on administrative expenses.
- In order to ensure that these positions were filled quickly recruitment agencies were used and this resulted in the Tribunal exceeding the recruitment budget.
- Growth in both the size of the Tribunal and the volume of cases being brought before the Tribunal have resulted in an increased need to develop the Tribunals IT infrastructure and processes. Insufficient focus was placed on this requirement in the period under review. This oversight will be rectified going forward by more rigorous focus on the required budget and the development and monitoring of an IT strategy.

Total expenditure (net of capital expenditure) for the period increased by 21.26% from R26.79 million to R32.49 million.

The table that follows indicates the allocation of expenditure across different categories and how this allocation compares to the 2013 financial year.

**TABLE 11: Allocation of expenditure across different categories**

Expenditure Category	% 2014	% 2013	% change
Personnel	49.78	51.18	17.95
Administration	16.57	19.77	1.64
Training	4.39	5.51	-3.35
Professional services	11.90	9.51	51.66
Part-time Tribunal members fees	10.85	3.63	26.54
Other operating expenses	6.51	10.40	117.27
<b>Total</b>	<b>100</b>	<b>100</b>	<b>21.26</b>

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 table below sets out the contribution of each category to the 21.26% increase in total expenditure.

**TABLE 12: Category contributions to increase in total expenditure**

Expenditure category	%
Personnel	43.21
Administrative	1.53
Training	-0.87
Professional services	23.11
Part-time Tribunal members fees	12.99
Other operating expenses	20.03
<b>Total</b>	<b>100</b>

The biggest contributors to the increase in expenditure are personnel expenditure, which accounts for 43.21% of the increase, and professional services expenditure, which accounts for 23.11% of the increase.

While 43.21% of the expenditure increase is due to an increase in personnel expenses, this line item only increased by 17.95% in the year under review. This is low when one considers that the cost of living adjustment was 6.7% and staff complement increased by 50% following the organisational assessment.

During the period under review the increase in professional services accounted for 23.11% of the increase in total expenditure. The table below illustrates the distribution of categories of expenditure within the line item 'professional services'.

**TABLE 13: Distribution of expenditure within professional services**

Category	Distribution %
Consulting services	51.97
Recruitment	14.00
Public relations	4.30
Transcription services	16.30
Shared services with the Commission	13.43
<b>Total</b>	<b>100</b>

Expenditure on consulting services increased by 51.66% from R2.55 million to R3.86 million. This increase is unusual and pertains to the continuation of organisational assessment roll out and the use of consultants to assist with the development of manuals related to and reports generated from the Tribunal's electronic case management system. These processes allow for the Tribunal to report timeously and with accuracy on its strategic objectives and targets.

The Tribunal budget drafted for 2013/2014 made provision for an additional full-time Tribunal member. However, given a full complement of part-time members, it was decided that it was not necessary to fill this vacancy. This, to some extent, contributed to the Tribunal under spend of 12.58% on the budget allocated for the first strategic objective, namely adjudication.

In drafting the 2013/2014 budget a conscious decision was made to reduce the number of representatives sent to international conferences/workshops and to tone down the nature of internal workshops and conferences held. Despite reducing this budget, which was under-spent by 28.25%, the Tribunal was still able to ensure that



we exceeded the training target. Staff members spent 104.70 days in training, which was an average of 4.55 days per person.

Part-time members sitting on a panel receive a fee for each day a hearing is held and a fee for each preparation day allocated to a matter. If part-time members are requested to write decisions the daily fee becomes applicable. In some instances a hearing may be cancelled shortly before it begins or while a case is partly 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 for attendance, preparation and decision writing increased by 20.98% this year and this accounts for 12.98% of the increase in total expenditure.

This increase in fees paid is a result of a 20.42% increase in the number of days part-time members were paid for. Part-time members were paid for a total of 414.50 days of work, whereas in the previous year this figure was 344.20 days. The eight part-time members were each paid for an average of 51.81 days per annum. The daily fee, R 7 000, paid to part-time members has remained unchanged since 2006/2007.

The table below shows the distribution of hearing days over the past two years.

TABLE 14: Distribution of hearing days over two years

Category	2014	2013	% change
Hearing days (including cancelled days)	214.50	176.50	21.53
Preparation days	164.00	128.00	28.13
Decision writing days	36.00	39.70	-9.32
Total	414.50	344.20	20.42

In the year under review the Tribunal heard 188 matters over 120 days, whereas in the previous year 128 matters were heard over 109.50 days. This represents an increase of 46.88% in the volume of cases and a 9.59% increase in the number of hearing days. The average number of days per hearing was 1.57 days as compared to 1.17 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 15: Allocation of hearing days between full-time and part-time members

Days	2014	%	2013	%
Hearing days	120		109.50	
Person days, full-time members	211	53.02	174.00	53.46
Person days, part-time members	187	46.98	151.50	46.54
Total person days	398	100	325.50	100
Per Tribunal member	36.18		29.23	

In addition to the fees explained earlier, Tribunal members are paid a “retainer” for the reading of Tribunal and CAC decisions and other relevant decisions and articles they may be referred to, thus ensuring they stay abreast of international and competition law. The fee is equivalent to 10 days (based on one day per month for the months February to November each calendar year) and is paid in two equal tranches – the first being at the beginning of the Tribunal’s financial year in April and the second six months later in September. The retainer represents 14.46% of the fees paid to Tribunal members.

During the period under the review the Tribunal has continued to report quarterly to its parent department, the EDD, on the economic indicator dashboard.

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”. The dashboard is attached as appendix I to this report.

Earlier in this section we noted that the Tribunal spent 101.39% of its budget this year. Reasons for this over spending have been given and we also indicated that 2013/2014 was an unusual year. As it is difficult

to predict the number of cases that will be heard in a year it is difficult for the Tribunal to budget accurately.

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.

The table below reflects the percentage of the Tribunal's budget spent over the last 15 years.

**TABLE 16: Percentage of Tribunal's budget spent**

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	24.54	26.42	92.90
2013	27.41	31.11	88.10
2014	33.54	33.08	101.39



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## STATEMENT OF FINANCIAL POSITION

	Note(s)	2014 R '000	2013 R '000
<b>ASSETS</b>			
<b>CURRENT ASSETS</b>			
Cash and cash equivalents	2	19 586	22 465
Receivables from exchange transactions	3	522	797
Inventory	4	30	18
		<b>20 138</b>	<b>23 280</b>
<b>NON-CURRENT ASSETS</b>			
Property, plant and equipment	5	1 289	1 236
Intangible assets	6	2 566	2 644
		<b>3 855</b>	<b>3 880</b>
<b>TOTAL ASSETS</b>		<b>23 993</b>	<b>27 160</b>
<b>LIABILITIES</b>			
<b>CURRENT LIABILITIES</b>			
Payables from exchange transactions	7	1 880	1 604
Finance lease obligation	8	204	105
Provisions	9	686	544
		<b>2 770</b>	<b>2 253</b>
<b>NON-CURRENT LIABILITIES</b>			
Finance lease obligation	8	88	93
		<b>88</b>	<b>93</b>
<b>TOTAL LIABILITIES</b>		<b>2 858</b>	<b>2 346</b>
<b>NET ASSETS</b>		<b>21 135</b>	<b>24 814</b>
<b>NET ASSETS</b>			
Accumulated surplus		21 135	24 814



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## STATEMENT OF FINANCIAL PERFORMANCE

	Note(s)	2014 R '000	2013 R '000
<b>REVENUE</b>			
<b>Revenue from exchange transactions</b>			
Fees earned	10	10 856	8 417
Other income	11	5	1
Interest received - investment	12	999	1 113
Gains on disposal of assets		1	9
<b>Total revenue from exchange transactions</b>		<b>11 861</b>	<b>9 540</b>
<b>Revenue from non-exchange transactions</b>			
<b>Transfer revenue</b>			
Government grants & subsidies	13	16 945	15 798
<b>TOTAL REVENUE</b>		<b>28 806</b>	<b>25 338</b>
<b>EXPENDITURE</b>			
Personnel	14	(16 170)	(13 710)
Administrative expenses	15	(5 345)	(5 256)
Depreciation and amortisation	16	(1 077)	(555)
Impairment loss/ Reversal of impairments	17	-	(64)
Finance costs	18	(28)	(26)
General Expenses	19	(9 865)	(7 179)
<b>TOTAL EXPENDITURE</b>		<b>(32 485)</b>	<b>(26 790)</b>
<b>Operating deficit</b>		<b>(3 679)</b>	<b>(1 452)</b>
<b>Deficit for the year</b>		<b>(3 679)</b>	<b>(1 452)</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## STATEMENT OF CHANGES IN NET ASSETS

	Accumulated surplus	Total net assets
	R '000	R '000
Balance at 01 April 2012	26 266	26 266
Deficit for the year	(1 452)	(1 452)
Balance at 01 April 2013	24 814	24 814
Deficit for the year	(3 679)	(3 680)
Balance at 31 March 2014	21 135	21 134

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## CASH FLOW STATEMENT

	Note(s)	2014 R '000	2013 R '000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Receipts</b>			
Grants		16 945	15 798
Interest income		999	1 113
Other receipts		11 136	8 596
		<u>29 080</u>	<u>25 507</u>
<b>Payments</b>			
Employee costs		(16 029)	(13 710)
Suppliers		(14 945)	(12 833)
Finance costs		(28)	(26)
		<u>(31 002)</u>	<u>(26 569)</u>
<b>Net cash flows from operating activities</b>	21	<u>(1 922)</u>	<u>(1 062)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Purchase of property, plant and equipment	5	(514)	(592)
Proceeds from sale of property, plant and equipment	5	3	21
Purchase of other intangible assets	6	(540)	(318)
		<u>(1 051)</u>	<u>(889)</u>
<b>Net cash flows from investing activities</b>		<u>(1 051)</u>	<u>(889)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Increase in/repayment of finance leases		94	94
		<u>94</u>	<u>94</u>
<b>Net cash flows from financing activities</b>		<u>94</u>	<u>94</u>
Net increase/(decrease) in cash and cash equivalents		(2 879)	(1 857)
Cash and cash equivalents at the beginning of the year		22 465	24 322
<b>Cash and cash equivalents at the end of the year</b>	2	<u>19 586</u>	<u>22 465</u>



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

Budget on Accrual Basis	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual
	R '000	R '000	R '000	R '000	R '000
STATEMENT OF FINANCIAL PERFORMANCE					
REVENUE					
REVENUE FROM EXCHANGE TRANSACTIONS					
Fees earned	9 775	-	9 775	10 856	1 081
Other income	-	-	-	5	5
Interest received - investment	600	-	600	999	399
<b>TOTAL REVENUE FROM EXCHANGE TRANSACTIONS</b>	<b>10 375</b>	<b>-</b>	<b>10 375</b>	<b>11 860</b>	<b>1 485</b>
REVENUE FROM NON-EXCHANGE TRANSACTIONS					
Government grants & subsidies	16 945	-	16 945	16 945	-
<b>TOTAL REVENUE</b>	<b>27 320</b>	<b>-</b>	<b>27 320</b>	<b>28 805</b>	<b>1 485</b>
EXPENDITURE					
Personnel	(17 324)	-	(17 324)	(16 170)	1 154
Depreciation and amortisation	(1 009)	-	(1 009)	(1 077)	(68)
Finance costs	-	-	-	(28)	(28)
Administrative expenses	(5 626)	-	(5 626)	(5 345)	281
Other operating expenses	(8 624)	-	(8 624)	(9 865)	(1 241)
<b>TOTAL EXPENDITURE</b>	<b>(32 583)</b>	<b>-</b>	<b>(32 583)</b>	<b>(32 485)</b>	<b>98</b>
Operating deficit	(5 263)	-	(5 263)	(3 680)	1 583
Gain on disposal of assets and liabilities	-	-	-	1	1
Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement	<b>(5 263)</b>	<b>-</b>	<b>(5 263)</b>	<b>(3 679)</b>	<b>1 584</b>

**Note:** The Tribunal's MTEF submission reflects a drawing down of accumulated funds to cover the budget shortfall and as these accumulated funds are not reflected as revenue it appears as if we budget for a deficit.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

Budget on Accrual Basis	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual
	R '000	R '000	R '000	R '000	R '000
<b>ASSETS</b>					
<b>CURRENT ASSETS</b>					
Inventory	-	-	-	30	30
Receivables from exchange transactions	-	-	-	522	522
Cash and cash equivalents	-	-	-	19 586	19 586
	-	-	-	<b>20 138</b>	<b>20 138</b>
<b>NON-CURRENT ASSETS</b>					
Property, plant and equipment	501	-	501	1 289	788
Intangible assets	-	-	-	2 566	2 566
	<b>501</b>	-	<b>501</b>	<b>3 855</b>	<b>3 354</b>
<b>TOTAL ASSETS</b>	501	-	501	23 993	23 492
<b>LIABILITIES</b>					
<b>CURRENT LIABILITIES</b>					
Finance lease obligation	-	-	-	204	204
Payables from exchange transactions	-	-	-	1 880	1 880
Provisions	-	-	-	686	686
	-	-	-	<b>2 770</b>	<b>2 770</b>
<b>NON-CURRENT LIABILITIES</b>					
Finance lease obligation	-	-	-	88	88
<b>TOTAL LIABILITIES</b>	-	-	-	2 858	2 858
<b>NET ASSETS</b>	501	-	501	21 135	20 634
<b>ACCUMULATED SURPLUS</b>	501	-	501	21 135	20 634

Refer to Note 29 - Reconciliation between Budget and Statement of Financial Performance to see description of budget variances and the annual report for further explanations of the variances.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES

### 1. BASIS OF PREPARATION

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

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 Competition Commission informs us that these amounts are now due to us. The Commission recognises these filing fees when the case is filed with them, any cases paid for but not filed or those that lapse for the periods stipulated in the Competition Act are refunded by the Commission to the parties. Any fees due by the Commission to the Tribunal but not yet received are reflected as receivables by the Tribunal.

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.



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES (continued)

### 1.3 IRREGULAR EXPENDITURE

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

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

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

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

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority must be recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps must thereafter be taken to recover the amount from the person concerned. If recovery is not possible, the accounting officer or accounting authority may write off the amount as debt impairment and disclose such in the relevant note to the financial statements.

The irregular expenditure register must also be updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto must remain against

the relevant programme/expenditure item, be disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

### 1.4 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

#### Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid annual leave), are recognised in the period in which the service is rendered and are not discounted.

The expected cost of bonus payments is recognised as an expense when there is a legal or constructive obligation to make such payments as a result of past performance.

#### 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

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

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## ACCOUNTING POLICIES (continued)

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	Useful life
Furniture and fixtures	Between 5 and 15 years
Motor vehicles	5 year
Office equipment	Between 5 and 15 years
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. Items of entity are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

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

### 1.7 INTANGIBLE ASSETS

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and
- the cost or fair value 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 or service potential.
- there are available technical, financial and other resources to complete the development and to use or sell the asset.
- the expenditure attributable to the asset during its development can be measured reliably.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## ACCOUNTING POLICIES (continued)

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 or service potential. Amortisation is not provided for these intangible assets, but they are tested for impairment annually and whenever there is an indication that the asset may be impaired. 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 reviewed at each reporting date.

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, internally generated	5 years
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 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.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES (continued)

When inventory are sold, the carrying amount of those inventory 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 first-in-first-out (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

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

The amortised cost of a financial asset or financial liability is the amount at which the financial asset or financial liability is measured at initial recognition minus principal repayments, plus or minus the cumulative amortisation using the effective interest method of any difference between that initial amount and the maturity amount, and minus any reduction (directly or through the use of an allowance account) for impairment or uncollectibility.

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

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

Derecognition is the removal of a previously recognised financial asset or financial liability from an entity's statement of financial position.

The effective interest method is a method of calculating the amortised cost of a financial asset or a financial liability (or group of financial assets or financial liabilities) and of allocating the interest income or interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the financial asset or financial liability. When calculating the effective interest rate, an entity shall estimate cash flows considering all contractual terms of the financial instrument (for example, prepayment, call and similar options) but shall not consider future credit losses.

The calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest rate (see the Standard of GRAP on Revenue from Exchange Transactions), transaction costs, and all other premiums or discounts.



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES (continued)

There is a presumption that the cash flows and the expected life of a group of similar financial instruments can be estimated reliably. However, in those rare cases when it is not possible to reliably estimate the cash flows or the expected life of a financial instrument (or group of financial instruments), the entity shall use the contractual cash flows over the full contractual term of the financial instrument (or group of financial instruments).

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

A financial asset is:

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

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

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

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

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

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

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

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

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

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

Transaction costs are incremental costs that are directly attributable to the acquisition, issue or disposal of a financial asset or financial liability. An incremental cost is one that would not have been incurred if the entity had not acquired, issued or disposed of the financial instrument. Financial instruments at amortised cost are non-derivative financial assets or non-derivative financial liabilities that have fixed or determinable payments, excluding those instruments that:

- the entity designates at fair value at initial recognition; or
- are held for trading.

Financial instruments at cost are investments in residual interests that do not have a quoted market price in an active market, and whose fair value cannot be reliably measured.

Financial instruments at fair value comprise financial assets or financial liabilities that are:

- derivatives;
- combined instruments that are designated at fair value;
- instruments held for trading. A financial instrument is held for trading if:
  - it is acquired or incurred principally for the purpose of selling or repurchasing it in the near-term; or

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## ACCOUNTING POLICIES (continued)

- on initial recognition it is part of a portfolio of identified financial instruments that are managed together and for which there is evidence of a recent actual pattern of short term profit-taking;
- non-derivative financial assets or financial liabilities with fixed or determinable payments that are designated at fair value at initial recognition; and
- financial instruments that do not meet the definition of financial instruments at amortised cost or financial instruments at cost.

### Classification

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

Class	Category
Trade receivables	Financial asset measured at amortised cost
Cash and Cash equivalents	Financial asset measured at cost

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

Class	Category
Trade payables	Financial liability measured at amortised cost

### Initial recognition

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

The entity recognises financial assets using trade date accounting.

### Initial measurement of financial assets and financial liabilities

The entity measures a financial asset and financial liability initially at its fair value plus transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability.

The entity measures a financial asset and financial liability initially at its fair value [if subsequently measured at fair value].

### Subsequent measurement of financial assets and financial liabilities

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

- Financial instruments at fair value.
- Financial instruments at amortised cost.
- Financial instruments at cost.

All financial assets measured at amortised cost, or cost, are subject to an impairment review.

### Fair value measurement considerations

The best evidence of fair value is quoted prices in an active market. If the market for a financial instrument is not active, the entity establishes fair value by using a valuation technique. The objective of using a valuation technique is to establish what the transaction price would have been on the measurement date in an arm's length exchange motivated by normal operating considerations.

Valuation techniques include using recent arm's length market transactions between knowledgeable, willing parties, if available, reference to the current fair value of another instrument that is substantially the same, discounted cash flow analysis and option pricing models. If there is a valuation technique commonly used by market participants to price the instrument and that technique has been demonstrated to provide reliable estimates of prices obtained in actual market transactions, the entity uses that technique.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES (continued)

The chosen valuation technique makes maximum use of market inputs and relies as little as possible on entity-specific inputs. It incorporates all factors that market participants would consider in setting a price and is consistent with accepted economic methodologies for pricing financial instruments. Periodically, an entity calibrates the valuation technique and tests it for validity using prices from any observable current market transactions in the same instrument (i.e. without modification or repackaging) or based on any available observable market data.

The fair value of a financial liability with a demand feature (e.g. a demand deposit) is not less than the amount payable on demand, discounted from the first date that the amount could be required to be paid.

### Reclassification

The entity does not reclassify a financial instrument while it is issued or held unless it is:

- combined instrument that is required to be measured at fair value; or
- an investment in a residual interest that meets the requirements for reclassification.

Where the entity cannot reliably measure the fair value of an embedded derivative that has been separated from a host contract that is a financial instrument at a subsequent reporting date, it measures the combined instrument at fair value. This requires a reclassification of the instrument from amortised cost or cost to fair value.

If fair value can no longer be measured reliably for an investment in a residual interest measured at fair value, the entity reclassifies the investment from fair value to cost. The carrying amount at the date that fair value is no longer available becomes the cost.

If a reliable measure becomes available for an investment in a residual interest for which a measure was previously not available, and the instrument would have been required to be measured at fair value, the entity reclassifies the instrument from cost to fair value.

### Gains and losses

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

For financial assets and financial liabilities measured at amortised cost or cost, a gain or loss is recognised in surplus or deficit when the financial asset or financial liability is derecognised or impaired, or through the amortisation process.

### Impairment and uncollectibility of financial assets

The entity assess at the end of each reporting period whether there is any objective evidence that a financial asset or group of financial assets is impaired.

### Financial assets measured at amortised cost:

If there is objective evidence that an impairment loss on financial assets measured at amortised cost has been incurred, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows (excluding future credit losses that have not been incurred) discounted at the financial asset's original effective interest rate.

The carrying amount of the asset is reduced directly OR through the use of an allowance account. The amount of the loss is recognised in surplus or deficit.

If, in a subsequent period, the amount of the impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment was recognised, the previously recognised impairment loss is reversed directly OR by adjusting an allowance account.

The reversal does not result in a carrying amount of the financial asset that exceeds what the amortised cost would have been had the impairment not been recognised at the date the impairment is reversed. The amount of the reversal is recognised in surplus or deficit.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES (continued)

### Financial assets measured at cost:

If there is objective evidence that an impairment loss has been incurred on an investment in a residual interest that is not measured at fair value because its fair value cannot be measured reliably, the amount of the impairment loss is measured as the difference between the carrying amount of the financial asset and the present value of estimated future cash flows discounted at the current market rate of return for a similar financial asset. Such impairment losses are not reversed.

### Derecognition

#### Financial assets

The entity derecognises financial assets using trade date accounting.

The entity derecognises a financial asset only when:

- the contractual rights to the cash flows from the financial asset expire, are settled or waived;
- the entity transfers to another party substantially all of the risks and rewards of ownership of the financial asset; or
- the entity, despite having retained some significant risks and rewards of ownership of the financial asset, has transferred control of the asset to another party and the other party has the practical ability to sell the asset in its entirety to an unrelated third party, and is able to exercise that ability unilaterally and without needing to impose additional restrictions on the transfer. In this case, the entity:
  - derecognise the asset; and
  - recognise separately any rights and obligations created or retained in the transfer.

The carrying amounts of the transferred asset are allocated between the rights or obligations retained and those transferred on the basis of their relative fair values at the transfer date. Newly created rights and obligations are measured at their fair values at that date. Any difference between the consideration received and the amounts recognised and derecognised is recognised in surplus or deficit in the period of the transfer.

If the entity transfers a financial asset in a transfer that qualifies for derecognition in its entirety and retains the right to service the financial asset for a fee, it recognise either a servicing asset or a servicing liability for that servicing contract. If the fee to be received is not expected to compensate the entity adequately for performing the servicing, a servicing liability for the servicing obligation is recognised at its fair value. If the fee to be received is expected to be more than adequate compensation for the servicing, a servicing asset is recognised for the servicing right at an amount determined on the basis of an allocation of the carrying amount of the larger financial asset.

If, as a result of a transfer, a financial asset is derecognised in its entirety but the transfer results in the entity obtaining a new financial asset or assuming a new financial liability, or a servicing liability, the entity recognise the new financial asset, financial liability or servicing liability at fair value.

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

If the transferred asset is part of a larger financial asset and the part transferred qualifies for derecognition in its entirety, the previous carrying amount of the larger financial asset is allocated between the part that continues to be recognised and the part that is derecognised, based on the relative fair values of those parts, on the date of the transfer. For this purpose, a retained servicing asset is treated as a part that continues to be recognised. The difference between the carrying amount allocated to the part derecognised and the sum of the consideration received for the part derecognised is recognised in surplus or deficit.

If a transfer does not result in derecognition because the entity has retained substantially all the risks and rewards of ownership of the transferred asset, the entity continue to recognise the transferred asset in its entirety and recognise a financial liability for the consideration received. In subsequent periods, the entity recognises any revenue on the transferred asset and any expense incurred on the financial liability.



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES (continued)

Neither the asset, and the associated liability nor the revenue, and the associated expenses are offset.

### **Financial liabilities**

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

An exchange between an existing borrower and lender of debt instruments with substantially different terms is accounted for as having extinguished the original financial liability and a new financial liability is recognised. Similarly, a substantial modification of the terms of an existing financial liability or a part of it is accounted for as having extinguished the original financial liability and having recognised a new financial liability.

The difference between the carrying amount of a financial liability (or part of a financial liability) extinguished or transferred to another party and the consideration paid, including any non-cash assets transferred or liabilities assumed, is recognised in surplus or deficit. Any liabilities that are waived, forgiven or assumed by another entity by way of a non-exchange transaction are accounted for in accordance with the Standard of GRAP on Revenue from Non-exchange Transactions (Taxes and Transfers).

### **Presentation**

Interest relating to a financial instrument or a component that is a financial liability is recognised as revenue or expense in surplus or deficit. Losses and gains relating to a financial instrument or a component that is a financial liability is recognised as revenue or expense in surplus or deficit.

A financial asset and a financial liability are only offset and the net amount presented in the statement of financial position when the entity currently has a legally enforceable right to set off the recognised amounts and intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.

In accounting for a transfer of a financial asset that does not qualify for derecognition, the entity does not offset the transferred asset and the associated liability.

### 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.

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.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES (continued)

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.

#### **Amortisation of internally generated software**

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

All development costs associated with this development (development costs, legal fees, technical support, project management etc.) were capitalised and the entire cost is amortised over 5 years from this “go live date”.

Phase 2 of this project has begun and it will not be treated as a separate asset. All costs associated with this Phase will be capitalised and amortised as incurred.

### 1.15 BUDGET INFORMATION

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

General purpose financial reporting by the Tribunal shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

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

The approved budget covers the fiscal period from 01/04/2013 to 31/03/2014.

The annual financial statements and the budget are on the same basis of accounting therefore a comparison with the budgeted amounts for the reporting period have been included in the Statement of comparison of budget and actual amounts.

### 1.16 RELATED PARTIES

The entity operates in an economic sector currently dominated by entities directly or indirectly owned by the South African Government.

As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

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## ACCOUNTING POLICIES (continued)

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

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

### 1.17 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 32.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

### 2. 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 restriction of the use of cash.

	2014	2013
	R '000	R '000
Cash on hand	3	3
Cash at bank	19 583	22 462
	<b>19 586</b>	<b>22 465</b>

### 3. RECEIVABLES FROM EXCHANGE TRANSACTIONS

	2014	2013
	R '000	R '000
Receivables	294	610
Prepayments	228	187
	<b>522</b>	<b>797</b>

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. INVENTORY

	2014	2013
	R '000	R '000
Consumable stores (office stationery)	30	18



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 5. PROPERTY, PLANT AND EQUIPMENT

	2014			2013		
	Cost	Accumulated depreciation and accumulated impairment	Carrying value	Cost	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	564	(298)	266	488	(253)	235
Motor vehicles	210	(82)	128	210	(60)	150
Office equipment	74	(43)	31	74	(32)	42
IT equipment	1 069	(494)	575	1 123	(500)	623
Leased assets	1 184	(895)	289	894	(708)	186
	<b>3 101</b>	<b>(1 812)</b>	<b>1 289</b>	<b>2 789</b>	<b>(1 553)</b>	<b>1 236</b>

Reconciliation of property, plant and equipment - 2014

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	235	101	(2)	(68)	266
Motor vehicles	150	-	-	(22)	128
Office equipment	42	-	-	(11)	31
IT equipment	623	123	-	(171)	575
Leased assets	186	290	-	(187)	289
	<b>1 236</b>	<b>514</b>	<b>(2)</b>	<b>(459)</b>	<b>1 289</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 5. PROPERTY, PLANT AND EQUIPMENT (continued)

Reconciliation of property, plant and equipment - 2013

	Opening balance	Additions	Disposals	Depreciation	Impairment loss	Total
Furniture and fixtures	231	79	(11)	(60)	(4)	235
Motor vehicles	171	-	-	(21)	-	150
Office equipment	51	2	-	(11)	-	42
IT equipment	619	257	(1)	(192)	(60)	623
Leased assets	93	254	-	(161)	-	186
	<b>1 165</b>	<b>592</b>	<b>(12)</b>	<b>(445)</b>	<b>(64)</b>	<b>1 236</b>

	2014	2013
	R '000	R '000
Assets subject to finance lease (Net carrying amount)		
Leased assets (Refer to note 8)	289	186

### 6. INTANGIBLE ASSETS

	2014			2013		
	Cost	Accumulated amortisation and accumulated impairment	Carrying value	Cost	Accumulated amortisation and accumulated impairment	Carrying value
Computer software	3 356	(790)	2 566	2 815	(171)	2 644

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 6. INTANGIBLE ASSETS (continued)

Reconciliation of intangible assets - 2014

	Opening balance	Additions	Amortisation	Total
Computer software	2 644	540	(618)	2 566

Reconciliation of intangible assets - 2013

	Opening balance	Additions	Amortisation	Total
Computer software	2 436	318	(110)	2 644

### 7. PAYABLES FROM EXCHANGE TRANSACTIONS

	2014	2013
	R '000	R '000
Creditors	56	17
Accrued bonus	699	687
Other accruals	1 125	900
	<b>1 880</b>	<b>1 604</b>

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.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 8. FINANCE LEASE OBLIGATION

	2014	2013
	R '000	R '000
Minimum lease payments due		
- within one year	222	117
- in second to fifth year inclusive	92	98
	314	215
less: future finance charges	(22)	(17)
Present value of minimum lease payments	292	198
Present value of minimum lease payments due		
- within one year	204	105
- in second to fifth year inclusive	88	93
	292	198
Non-current liabilities	88	93
Current liabilities	204	105
	<b>292</b>	<b>198</b>

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.

(Refer to note 5)



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 9. PROVISIONS

Reconciliation of provisions - 2014

	Opening Balance	Additions	Utilised during the year	Reversed during the year	Total
Leave provision	544	686	(73)	(471)	686

Reconciliation of provisions - 2013

	Opening Balance	Additions	Utilised during the year	Reversed during the year	Total
Leave provision	611	544	(172)	(439)	544

### 10. FEES EARNED

	2014	2013
	R '000	R '000
Fees earned	10 856	8 417

### 11. OTHER INCOME

	2014	2013
	R '000	R '000
Recoupment of Printing cost	5	1

### 12. INVESTMENT INCOME

	2014	2013
	R '000	R '000
Interest received		
- Bank deposits	999	1 113

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 13. GOVERNMENT GRANT AND SUBSIDIES

	2014	2013
	R '000	R '000
Economic Development Department	16 945	15 798

### 14. PERSONNEL

	2014	2013
	R '000	R '000
Basic salaries	7 118	5 377
Performance awards	337	371
Medical aid - company contributions	349	294
Statutory Contributions	213	138
Insurance	106	77
Other salary related costs	70	43
Defined contribution pension plan expense	504	371
Executive committee members emoluments	7 473	7 039
	<b>16 170</b>	<b>13 710</b>

### 15. ADMINISTRATIVE EXPENSES

	2014	2013
	R '000	R '000
Audit Committee members fees	171	204
Risk Committee Members Fees	108	128
Audit Committee training	102	48
Audit Committee meeting expenses	8	13
General and administrative expenses	1 296	1 055
External audit fees	827	519
Internal audit fees	543	711
Travel and subsistence	638	678
Unitary payments for building occupation	1 652	1 900
	<b>5 345</b>	<b>5 256</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 16. DEPRECIATION AND AMORTISATION

	2014	2013
	R '000	R '000
<b>Depreciation</b>		
Furniture and fittings	68	60
Motor vehicles	22	21
Office equipment	11	11
Computer equipment	171	192
Leased assets - office equipment	187	161
	459	445
<b>Amortisation</b>		
Computer software	618	110

### 17. IMPAIRMENT OF ASSETS

	2014	2013
	R '000	R '000
<b>Impairments</b>		
Property, plant and equipment		
• This impairment arose from the disposal of redundant and broken furniture, office and computer equipment	-	64

### 18. FINANCE COSTS

	2014	2013
	R '000	R '000
Finance leases	30	23
Fair value adjustments on payables	(2)	3
	28	26

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 19. OTHER OPERATING EXPENSES

	2014	2013
	R '000	R '000
Consultants, contractors and special services	3 859	2 542
Staff training and development	1 427	1 476
Fees paid to part-time Tribunal members	3 526	2 793
Fraud prevention committee	38	36
Legal fees	271	134
Maintenance, repairs and running costs	660	198
Fruitless and wasteful expenditure	84	-
	<b>9 865</b>	<b>7 179</b>

### 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.

### 21. CASH GENERATED FROM OPERATIONS

	2014	2013
	R '000	R '000
(Deficit) / Surplus for the year	(3 679)	(1 452)
Adjustments for:		
Depreciation and amortisation	1 077	555
Gain on sale of assets and liabilities	(1)	(9)
Impairment deficit	-	64
Movements in provisions	142	(67)
Changes in working capital:		
Inventory	(12)	16
Receivables from exchange transactions	275	180
Payables from exchange transactions	276	(349)
	<b>(1 922)</b>	<b>(1 062)</b>



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 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 Competition Tribunal is a participating employer on the Sanlam Umbrella Fund. The scheme offers the members various investment options for their pension fund contributions. As an insured fund, the Sanlam Umbrella Fund and thus the Competition Tribunal as participating employer, complies with regulation 28 of the Pension Fund Act of 1956.

### 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:

	2014	2013
	R '000	R '000
Cash and cash equivalents	19 586	22 465
Other receivables	294	610
	<b>19 880</b>	<b>23 075</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 24. FINANCIAL RISK MANAGEMENT (continued)

#### Concentration of credit risk

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

2014	AAA and government	Unrated
	R '000	R '000
Cash and cash equivalents	19 586	-
Other receivables	-	294

2013	AAA and government	Unrated
	R '000	R '000
Cash and cash equivalents	22 465	-
Other receivables	-	610

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

2014	Neither past due nor impaired	Past due but not impaired - less than 2 months	Past due but not impaired - more than 12 months	Carrying value
	R '000	R '000	R '000	R '000
Cash and cash equivalents	19 586	-	-	19 586
Other receivables	294	-	-	294

2013	Neither past due nor impaired	Past due but not impaired - less than 2 months	Past due but not impaired - more than 12 months	Carrying value
	R '000	R '000	R '000	R '000
Cash and cash equivalents	22 465	-	-	22 465
Other receivables	568	-	42	610

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 24. FINANCIAL RISK MANAGEMENT (continued)

#### Market risk

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

#### Interest rate risk

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

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

#### Sensitivity Analysis

2014	Increase/(decrease) in net surplus for the year		
	Change in Investments	Upward change	Downward change
Cash and cash equivalents	1.00%	196	(196)
Finance lease	1.00%	(2)	2

2013	Increase/(decrease) in net surplus for the year		
	Change in Investments	Upward change	Downward change
Cash and cash equivalents	1.00%	225	(225)
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.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 24. FINANCIAL RISK MANAGEMENT (continued)

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

2014	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
	R '000	R '000	R '000	R '000
Finance lease obligation	292	292	204	88
Payables	1 880	1 880	1 880	-

2013	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
	R '000	R '000	R '000	R '000
Finance lease obligation	198	198	105	93
Payables	1 604	1 604	1 604	-

### Financial instruments

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

Financial instrument	Classification	Carrying amount	Carrying amount
		R '000	R '000
Cash and cash equivalents	Financial asset measured at cost	19 586	22 465
Receivables	Financial asset measured at fair value	294	610
Payables	Financial liabilities measured at fair value	1 880	1 604
Finance leases	Financial liabilities measured at amortised cost	292	198



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 24. FINANCIAL RISK MANAGEMENT (continued)

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

Financial assets at fair value:

	2014	2013
	R '000	R '000
Receivables	294	610
<b>Financial liabilities at fair value</b>		
Payables	1 880	1 604
<b>Financial liabilities at amortised cost</b>		
Finance Leases	292	198
<b>Financial assets at cost</b>		
Cash and cash equivalents	19 586	22 465

### 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

**Note:** Amounts that were paid to state departments and private entities are disclosed below.

The Competition Tribunal is a public entity that falls within the oversight responsibility of the Economic Development Department and contributes towards the achievement of the objectives of the Economic Development Department and the overall Government strategies. The entities listed below are also part of the Economic Development Department's oversight responsibilities, against which no transaction has occurred:

- Industrial Development Corporation (IDC)
- Small Enterprise Finance Agency (Sefa)
- International Trade Administration Commission (ITAC)

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 25. RELATED PARTIES (continued)

#### Related party balances

	2014	2013
	R '000	R '000
<b>Amounts included in trade payables regarding related parties</b>		
The Department of Trade and Industry	9	4
<b>Amounts included in trade receivables regarding related parties</b>		
The Competition Commission	285	560
<b>Related party transactions</b>		
<b><i>The Competition Commission</i></b>		
Filing fees received as at year end	10 855	8 416
Facility fees paid as at year end	2 171	2 410
Employee costs received as at year end	119	14
Employee costs paid as at year end	63	133
Administrative costs received as at year end	-	45
Administrative costs paid as at year end	50	31
<b><i>The Department of Trade and Industry</i></b>		
Administrative costs paid as at year end	50	54
<b><i>Economic Development Department</i></b>		
Grants received as at year end	16 945	15 798
<b><i>Full-time member/Chairperson: N Manóim</i></b>		
Package	2 071	1 999
Statutory contributions	20	19
Other salary related contributions	53	51
	<b>2 144</b>	<b>2 069</b>
<b><i>Full-time member: Y Carrim</i></b>		
Package	1 929	1 900
Statutory contributions	19	18
Other salary related contributions	50	48
	<b>1 998</b>	<b>1 966</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 25. RELATED PARTIES (continued)

	2014	2013
	R '000	R '000
<b>Head of Corporate Services: J de Klerk (CFO)</b>		
Package	1 273	1 118
Performance bonus	172	144
Statutory contributions	14	13
Other salary related contributions	32	28
	<b>1 491</b>	<b>1 303</b>
<b>Head of Research: R Badenhorst</b>		
Package	790	734
Performance bonus	97	86
Statutory contributions	9	9
Other salary related contributions	25	22
	<b>921</b>	<b>851</b>
<b>Registrar: L Motaung</b>		
Package	790	733
Performance bonus	97	86
Statutory contributions	9	9
Other salary related contributions	24	22
	<b>920</b>	<b>850</b>

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 26. FRUITLESS AND WASTEFUL EXPENDITURE

	2014	2013
	R '000	R '000
Fruitless and wasteful expenditure (Payment to South African Revenue Services)	84	-
	84	-

The fruitless and wasteful expenditure of R84 141.68 disclosed pertains to penalties paid to the South African Revenue Services (SARS). R65 785.13 of this figure pertains to penalties imposed by SARS on a Voluntary Disclosure Process (VDP) submission made by the Tribunal in the 2011/2012 financial year. The disclosure related to the incorrect application of perks tax on the contributions made by the Tribunal to employees for risk benefits. SARS in considering the VDP application determined that penalties were to be imposed on the amounts declared for each of the 5 years but waived interest charges. The Tribunal is of the view that the penalties imposed are in excess of that required but we have adopted a “pay and then dispute” attitude and are currently consulting with PricewaterhouseCoopers on this matter. The remaining R 18 356.55 pertains to a penalty imposed on a late submission of PAYE in the month SARS changed the payment process and a misintepretation of the manner in which the process had to be applied led to a late payment and the resultant penalties and interest.

The Tribunal has determined that valid explanations for these penalties exist and in addition it is noted that they did not result because of negligence on the part of a staff member but rather due to incorrect intepretation of required processes.

### 27. EXTERNAL AUDIT FEE

	2014	2013
	R '000	R '000
External audit fees	827	519

### 28. COMPARATIVE FIGURES

	2014	2013
	R '000	R '000
There has been no reclassification of figures in and therefore no effect on the financial statements needs to be disclosed.	-	-

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 29. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE

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

	2014	2013
	R '000	R '000
Net deficit per the statement of financial performance	(3 679)	(1 452)
<b>Adjusted for:</b>		
Fair value adjustments	2	(3)
Impairments recognised / reversed	-	67
Profit/loss on the sale of assets	(1)	(12)
Printing recoupement and insurance refund	(5)	(1)
Transfer from retained income	5 764	5 837
<b>Adjustments for items reflected as capital expenditure on budget:</b>		
Leased equipment	(203)	(144)
Capital expenditure	(501)	(585)
<b>Income under (in excess) of budget:</b>		
Filing fees from the Commission	(1 081)	658
Interest received	(399)	(512)
EDD Grant	-	(198)
<b>(Over)/Under expenditure on budget:</b>		
Personnel	(1 153)	(2 119)
Part-time Tribunal member fees	438	353
Local training	(286)	(317)
Overseas training	(203)	(249)
Professional Services	827	(65)
Recruitment costs	458	(133)
Administrative expenses	(239)	(290)
Facilities and capital	514	(655)
Competition Appeal Court	(253)	(180)
<b>Net surplus per approved budget</b>	-	-



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 30. IRREGULAR EXPENDITURE

	2014	2013
	R '000	R '000
Opening balance	-	-
Add: Irregular Expenditure - current year	-	268 738
Less: Amounts condoned	-	(268 738)
Less: Amounts recoverable (not condoned)	-	-
Less: Amounts not recoverable (not condoned)	-	-
<b>Amounts awaiting condonation</b>	<b>-</b>	<b>-</b>

### 31. CHANGES IN ACCOUNTING POLICY

The annual financial statements have been prepared in accordance with Standards of Generally Recognised Accounting Practice on a basis consistent with the prior year.

# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2014

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 32. NEW STANDARDS AND INTERPRETATIONS

#### 32.1 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 20: Related parties	01 April 2014	

#### 32.2 STANDARDS AND INTERPRETATIONS NOT YET EFFECTIVE OR RELEVANT

The following standards and interpretations have been published and are mandatory for the entity's accounting periods beginning on or after 01 April 2014 or later periods but are not relevant to its operations:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
GRAP 18: Segment Reporting	01 April 2016	No impact
GRAP 105: Transfers of functions between entities under common control	01 April 2014	No impact
GRAP 106: Transfers of functions between entities not under common control	01 April 2014	No impact
GRAP 107: Mergers	01 April 2014	No impact
IGRAP 11: Consolidation – Special purpose entities	01 April 2014	No impact
IGRAP 12: Jointly controlled entities – Non-monetary contributions by ventures	01 April 2014	No impact
GRAP 6 (as revised 2010): Consolidated and Separate Financial Statements	01 April 2014	No impact
GRAP 7 (as revised 2010): Investments in Associates	01 April 2014	No impact
GRAP 8 (as revised 2010): Interests in Joint Ventures	01 April 2014	No impact
GRAP 27 (as revised 2012): Agriculture (Replaces GRAP 101)	01 April 2013	No impact
IGRAP16: Intangible assets website costs	01 April 2013	No impact
IGRAP1 (as revised 2012):Applying the probability test on initial recognition of revenue	01 April 2013	No impact
GRAP32: Service Concession Arrangements: Grantor	01 April 2015	No impact
GRAP108: Statutory Receivables	01 April 2015	No impact

## TRIBUNAL INTERNSHIP PROGRAM



### Where are they now?

Daniel Leslie was the Tribunal's first case management intern under the Tribunal's internship program. His time with the Tribunal inspired him to pursue post-graduate studies and, in his words, gave him "a clear vision of the career which I wish to pursue". He is currently working in the field of international arbitration at the Paris offices of an international law firm and pursuing admission into the New York legal system.



## PART 5: APPENDICES

The Tribunal has had an internship programme running for several years. In this time we have seen many interns start their careers at the Tribunal and, with this foundation, move on to other successes. Daniel Leslie, pictured here, was the Tribunal's first case management intern.



## APPENDIX A: LARGE MERGERS

Case number	Acquiring firm	Target Firm	Status
87/LM/Sep12 015644	Business Venture Investments no. 1658 (Pty) Ltd	Afgri Operation Ltd and Senwes Capital (Pty) Ltd	Conditional approval
016196	Prestige Bullion (Pty) Ltd	Rand Refinery (Pty) Ltd	Approved
016386	Newco, a Newly Incorporated Special Purpose Vehicle	ReatileTimrite (Pty) Ltd	Approved
016634	Smei Projects Holdco (Pty) Ltd	Smei Projects (Pty) Ltd	Approved
016519	Fortress Income 2 (Pty) Ltd	The Immovable (Pty) and Property Letting Enterprises of Pick N Pay Rustenburg, Central Park Bloemfontein, Nelspruit Plaza, New RedruthAlberton, Sterkspruit Plaza and Tzaneen Centre	Approved
016311	CA Sale Holding (Pty) Ltd	Pack N Stack Investment Holding (Pty) Ltd	Conditional approval
016428	Pacorini Metals Europe B.V (Netherlands)	Access Freight (Pty) Ltd	Conditional approval
016527	Presmooi (Pty) Ltd, Savyon Building (Pty) Ltd and IPS Investments (Pty) Ltd	Investments (Pty) Ltd, Odeon Investments (Pty) Ltd and Adamax Property Projects, Persequor (Pty) Ltd	Conditional approval
016436	The Bidvest Group Ltd	Amalgamated Appliance Holdings Ltd	Approved
016410	The Corob Trust: The Palm Trust and Others	Longland Investments (Pty) Ltd and Tangmere Investment Corporation (Pty) Ltd	Approved
016394	ABSA Bank Ltd	Certain Movable and Immovable Assets and Claims (Excluding any Liabilities) of a Million up 105 (Pty) Ltd	Approved
016576	Land and Agricultural Bank of South Africa	The Operating Lending Book Suidwes Agriculture (Pty) Ltd	Approved
112/LM/Dec12 016113	Capitau Investment Management Limited	New Foodcorp Holdings (Pty) Ltd	Conditional approval
016303	Opiconsivia Investments 265 (Pty) Ltd	Union Carriage and Wagon Company (Pty) Ltd	Approved
016592	Land and Agricultural Bank of South Africa	The Performing Financial Products of the Lending Book of GWK Ltd	Approved
016626	Land and Agricultural Bank of South Africa	Statusfin Financial Services (Pty) Ltd	Approved
016774	Volkswagen Financial Services South Africa (Pty) Ltd	Volkswagen Financial Services South Africa, A Division of Wesbank, A division of Firststrand Bank Ltd	Approved



Case number	Acquiring firm	Target Firm	Status
016261	Holdco and Lanseria International Airport (Pty) Ltd	Execujet Airline Investments (Pty) Ltd	Conditional approval
016329	Industrial Development Corporation of South Africa Ltd – Herbei Iron and Steel Group CO Ltd – Mauritius SPV (Yet to be Formed Special Purpose Vehicle) Owned by Smart Union Resource (Hong Kong) CO Ltd	Rio Tinto South Africa Ltd	Conditional approval
017590	Stefanutti Stock (Pty) Ltd	Energotec (A Division of First Strut ) (Pty) Ltd	Conditional approval
016659	Sycom Property Fund Collective Investment Scheme in Property	AECI Pension Fund	Conditional approval
016683	Hyprop Investments Limited	Sycom Fund Managers Limited, in Respect of the Property Letting Enterprise Known as Somerset Mall and Somerset Mall Property Management Company (Pty) Limited	Conditional approval
017145	SA Corporate Real Estate Fund	A Portfolio of Commercial Property of Lushaka Investments Proprietary Ltd	Approved
017608	Terris Mining Ltd	International Mineral Resources BV	Approved
017178	Newshelf 1261 (Pty) Ltd	The Construction Products Division of Murray & Roberts Ltd	Approved
017087	Arch Property Fund Ltd	K2012089838 (SA) (Pty) Ltd and Armandi Properties Ltd in respect of a 50% (fifty percent) undivided share in the Steenberg Property	Approved
016741	Rustenburg Platinum Mines Ltd	Certain Rights and Assets of GA-PHASHA Platinum Mine (Pty) Ltd and Boikgantsho Platinum Mine (Pty) Ltd	Approved
016758	Roeland Street Investments (Pty) Ltd	Harlequin Duck Properties 95 CC, Inforteam Investments 87 CC, D & M Padaanleg Transvaal CC, Superstrike Investments 77 (Pty) Ltd, Polfin CC and Friedcorp 192 CC, In Respect of 8 (Eight) Property Ltd Enterprises	Approved
017285	Newshelf 1260 Proprietary Ltd	The Much Asphalt Business of Murray & Roberts	Approved
017392	PSG Private Equity (Pty) Ltd	Precrete Holdings (Pty) Ltd	Approved
016733	WBHO Industrial Holdings (Pty) Ltd	Capital Africa Steel (Pty) Ltd	Approved
016873	Vukile Property Fund Limited	5 Properties Owned by Encha Properties (Pty) Ltd	Approved
016709	Grindrod Holdings South Africa (Pty) Ltd	RRL Grindrod Locomotives (Pty) Ltd	Approved
017103	Sasol Pension Fund	An undivided half share in property owned by Elixir Trust	Approved

Case number	Acquiring firm	Target Firm	Status
017541	Ponahalo Investments (Pty) Ltd	De Beers Group Services (Pty) Ltd in respect De Beers Trading Company South Africa	Approved
017442	Hollard Insurance Company Limited	Etana Insurance Company Limited	Approved
017640	Government Employees Pension Fund	Trevenna Building	Approved
017749	Redefine Properties Ltd	Chantilly Trading 95 (Pty) Ltd in Respect of the Property Letting Enterprise Known as Ellerines Warehouse Cato Ridge	Approved
017723	Old Mutual Investment Group (SA) (Pty) Ltd	Main Street 642 (Pty) Ltd	Approved
017681	Bushwillow GD 271 Investments (Pty) Ltd	The Car Trader (Pty) Ltd	Approved
017533	Old Mutual Life Assurance Company (South Africa) Ltd	Woolworths (Pty) Ltd and Business Venture Investments No 1360 (Pty) Ltd	Approved
017772	Resilient Properties (Pty) Ltd	Arbour Town (Pty) Ltd	Approved
017715	CA Sales Holdings (Pty) Ltd	SMC Brands SA (Pty) Ltd	Conditional approval
016881	Zaad Holdings Limited	Klein Karoo Saad Bemarking (Pty) Limited	Approved
017095	Standard Chartered Private Equity (Mauritius) III Ltd	ETC Group (Mauritius) (ETC)	Approved
017582	Imperial Car Imports (Pty) Ltd	Renault South Africa (Pty) Ltd	Approved
017798	Industrial Electronic Investments Ltd	Community Investment Ventures Holdings Ltd	Approved
017848	MH Power Systems Ltd	The New South Africa Company	Approved
017434	Premier Group (Pty) Ltd	Eastern Cape Bakeries	Approved
017699	Grindrod Holding South Africa (Pty) Ltd	Racec Group Ltd	Approved
017921	Absa Bank Ltd	Absa Towers Complex	Approved
017780	Unitrans Automotive (Pty) Ltd	Abrina 3765 (Pty) Ltd and Phase IV Motor Investments (Pty) Ltd	Approved
017459	Afgri Operations Limited	MGK Operating Company (Proprietary) Limited	Approved
017632	Bidvest Group Ltd	Academy Brushware (Pty) Ltd	Approved
017673	Business Venture Investment No 1657 (Pty) Ltd	CJP Chemical (Pty) Ltd	Approved
018002	Growthpoint Properties Ltd	Abseq Properties (Pty) Ltd	Approved

Case number	Acquiring firm	Target Firm	Status
017111	Dis-chem Pharmacies (Pty) Ltd	The CJ Wholesalers Business	Approved
017806	Fortress Income 2 (Pty) Ltd	The Property Letting Enterprises Trading as Arbour Crossing and Galleria Shopping Centre	Approved
017996	Skynet South Africa (Pty) Ltd and The Warehouse	Skynet World Express as Division Operated by Crossroads Distribution (Pty) Ltd	Approved
017426	Pinnacle Technology Holdings Ltd	Datacentrix Holdings Ltd	Conditional approval
016899	The Bidvest Group Limited	Mvelaserve Limited	Approved
017954	Premier Group (Pty) Ltd	Lil-Lets Group Ltd	Approved
018044	Mogs (Pty) Ltd	Booyesen Bore Drilling Company (Pty) Ltd	Approved
017962	Desert Star Trading 496 (Pty) Ltd	M-Tech Industrial (Pty) Ltd	Approved
018093	BOE Private Equity Investment (Pty) Ltd	Little Green Beverages (Pty) Ltd	Approved
017947	Attacq Ltd	Brooklyn Bridge Office Park (Pty) Ltd	Approved
017707	PPC Ltd	Safika Cement Holdings (Pty) Ltd	Approved
018010	Glencore International AG	The Optimum purchase rights held by BHP Billiton Energy SA (Pty) Ltd	Approved
018077	Auto & General Insurance Company Limited	The Short Term Insurance Book of Compass Involving Insurance Company Limited by Mua Insurance Acceptances (Pty) Ltd	Approved
018135	Kendrum Ltd	Siemens Turbocare Business and Wood Group GTS Division	Approved
017186	Aspen Nutritionals, a Division of Pharmacare Ltd	The South African Infant Nutrition Business of Pfizer Nutrition	Approved
018309	Old Mutual Life Assurance Company (SA) Ltd in Respect of 50% of Vuselele Investments (Pty) Ltd	IPS Investments (Pty) Ltd	Approved
018168	Acucap Properties Limited	Sycom Property Fund Collective Investment Scheme in Property Represented by Firststrand Bank Limited	Approved
018143	Growthpoint Properties Limited	Tiber Property Group Proprietary Limited	Approved

Case number	Acquiring firm	Target Firm	Status
017855	Sibanye Gold Ltd	Newshef 1114 (Pty) Ltd	Conditional approval
018176	MMI Strategic Investments (Pty) Ltd	Guardrisk Group (Pty) Ltd	Approved
018218	Modern Media Promotions Pty Ltd	Main Street 1132 Pty Ltd	Approved
018424	Redefine Properties Ltd	Grapnel Property Investments (Pty) Ltd in Respect of the Property Letting Enterprise Known as Ericsson Building	Approved
018242	Acucap Investments (Pty) Ltd	Sycom Property Fund Collective Investment Scheme in Property and Liberty Group Limited	Approved
018366	Sibanye Gold Ltd	Witwatersrand Consolidated Gold Resources Ltd	Approved
018325	Redefine Retail (Pty) Ltd	The Trustees for The Time Being of Maponya Mall Property Trust and Redefine Retails (Pty) Ltd	Approved
018150	Macneil Proprietary Limited	Brands 4 Africa Distribution and Logistics Proprietary Limited	Approved
018085	Microsoft Corporation	Nokia Corporation in Particular the Devices and Services Business of Nokia Corporation	Approved
018390	One Mutual Investment (Pty) Ltd	Absa Insurance Risk Management Services	Approved
018333	Super Group Trading (Pty) Ltd	Greystone Trading 6 CC Restaurant and Hotel Liquor Distribution	Approved
018317	Barloworld SA (Pty) Ltd	Leatoy (Pty) Ltd T/A Leach Toyota	Approved
018432	Zeder Financial Service Ltd	Agri Voedsel Ltd	Conditional approval
018382	Dimension Data Middle East and Africa (Pty) Ltd	Dataflo SA (Pty) Ltd	Approved
018234	Super Group Holdings (Pty) Ltd	Great Wall Motors SA Pty Ltd	Approved
018341	Imperial Group Ltd	Mitsubishi Motors Paarden Eiland and Mitsubishi as Motors Sandton	Approved Pending reasons
018408	MB Technologies Investments (Pty) Ltd	Securedata Holdings Limited	Approved Pending reasons
018416	The Prepaid Company (Pty) Ltd	Retail Mobile Credit Specialists (Pty) Ltd	Approved Pending reasons
018481	Pareto Ltd	Fountainhead Property Trust Scheme and Sycom Property Trust Scheme	Approved Pending reasons
018226	Shoprite Checkers (Pty) Ltd	Gaterite Hypermarket, The Business of Nafawa Trading CC	Approved Pending reasons

Case number	Acquiring firm	Target Firm	Status
018374	Mediclinic Southern Africa (Pty) Ltd	Mediclinic Limpopo Ltd	Approved Pending reasons
018192	Newshelf 1273 Pty Ltd	The Business of joint Medical holdings Ltd	Approved Pending reasons
017939	Agrigroupe Holdings (Pty) Ltd	Afgri Ltd	Conditional approval Pending reasons
103/LM/Nov12 015982	Boxmore Plastics SA (Pty) Limited	Winplas Proprietary Limited	Pending hearing

## APPENDIX B: MERGER CONSIDERATIONS

Case number	Acquiring firm	Respondent/Target Firm	Decision
113/AM/Dec12 016121 018069	National Union of Metalworkers of SA	Marley Pipe Systems (Pty) Ltd and Petzetakis Africa (Pty) Ltd	Pending hearing
018101	Oceana Group Ltd	Foodcorp (Pty) Ltd	Pending further hearing
017657	Lexshell 129 General Trading (Pty) Ltd	Nomad Information Systems (Pty) Ltd	Pending hearing
017665	Comesa Financial Exchange (Pty) Ltd	Emid Holdings (Pty) Ltd	Pending hearing



## APPENDIX C: COMPLAINT REFERRAL FROM THE COMPETITION COMMISSION

Case Number	Complainant	Respondent	Status
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	Settled
73/CR/Oct09 010645 78/CR/Nov09 010694	Competition Commission  Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Settled under 016865
016295	Competition Commission	Shekinah Medical & Disposables CC Hosanna Medical & Disposables CC	Settled under 016857
74/CR/Jun08 009225	Competition Commission	Astral Operation Limited & Elite Breeding Farms	Settled under 015891
105/CR/Nov12 016014	Competition Commission	Lambda Test Equipment CC, Aztec Components CC	Settled under 018028, 018036
134/CR/Dec07 008482	Competition Commission	SA Breweries Ltd & 12 Others	Dismissed
48/CR/Aug10 011502	Competition Commission	Sasol Chemical Industries Ltd (Polymers)	Pending decision
017731	Competition Commission	Sam Louw No and Anita Louw No and Welkom Key Centre CC	Pending hearing
017558	Competition Commission	Arcelormittal South Africa Ltd and Columbus Stainless (Pty) Ltd and Cape Gate (Pty) Ltd and Scaw South Africa (Pty) Ltd	Pending hearing
018051	Competition Commission	H Pistorius and CO (Pty) Ltd and Kalkor (Pty) Ltd, Enviro Lime (Pty) Ltd and SA Lime & Gypsum (Pty) Ltd	Pending hearing
018622	Competition Commission	Pioneer Fishing (Pty) Ltd and Blue Continent Products (Pty) Ltd	Pending hearing
018614	Competition Commission	Alvern Cables (Pty) Ltd and South Ocean Electric Wire Company (Pty) Ltd and Tulisa Cables (Pty) Ltd and Aberdare Cables (Pty) Ltd	Pending hearing
018663	Competition Commission	Premium Brand Distributors Proprietary Limited	Pending hearing
018671	Competition Commission	Fields Wear CC and Camclo CC	Pending hearing
018697	Competition Commission	Gansbaai Marine (Pty) Ltd and Others	Pending hearing

Case Number	Complainant	Respondent	Status
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
63/CR/Sep09 010512	Competition Commission	Cape Gate (Pty) Ltd & Others	Pending hearing Joined 017491
09/CR/Jan07 007237	Competition Commission	Allen Meshco (Pty) Ltd & 4 Others	
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
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

Case Number	Complainant	Respondent	Status
35/CR/Jul10 011361	Competition Commission	Giuricich Costal Projects (Pty) Limited, Grinaker-LTA (Pty) Limited	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
24/CR/Mar11 012377	Competition Commission	Concor (Pty) Ltd, Wilson Bayly Homes Ovcon (Pty) Ltd & Lennings Dec Rail Services (Pty) Ltd	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
67/CR/Jun12 015289	Competition Commission	African Oxygen Ltd, Air Products (Pty) Ltd	Pending hearing
56/CR/May12 015099	Competition Commission	Copper Tubing Africa (Pty) Ltd and Maksal Tubes (Pty) Ltd	Pending hearing
41/CR/Apr12 014902	Competition Commission and	British Airways PLC and Virgin Atlantic Airways Limited	Pending hearing
92/CR/Oct11 013938	Competition Commission	Media 24 Ltd	Pending hearing
73/CR/Jul12 015362	Competition Commission	Fritz Pienaar Cycles ( Pty) Ltd and Others	Pending hearing
99/CR/Oct12 015859	Competition Commission	Chevron SA Ltd and Engine Ltd and Shell SA Ltd and Total SA Ltd and BP SA Ltd and Sasol Ltd and SAPIA	Pending hearing
96/CR/Oct12 015792	Competition Commission	Western Granite (Pty) Ltd and Columbia DBL (Pty) Ltd	Pending hearing
016469	Competition Commission	Afrox Oxygen Ltd and Sasol Chemical Industries (Pty) Ltd	Pending hearing
016451	Competition Commission	Glass South Africa (Pty) Ltd & 5 Others	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
106/CR/Nov12 016006	Competition Commission	ArcelorMittal SA Ltd	Pending hearing

## APPENDIX D: CONSENT ORDERS

Case Number	Complainant	Respondent	Decision
73/CR/Jul12 016352	Competition Commission	Pedaling Dynamics CC t/a Dunkeld Cycles	Confirmed
73/CR/Jul12 016360	Competition Commission	The New Just Fun Group (Pty) Ltd	Confirmed
73/CR/Jul12 016378	Competition Commission	Cytek Cycle Distributors CC	Confirmed
110/CR/Dec06 016485	Competition Commission	Senwes Ltd	Confirmed
74/CR/Jun08 015891	Competition Commission	Astral Operation Ltd & Elite Breeding Farms	Confirmed Fined R16 732 894.47
52/CR/Aug10  011569	Competition Commission	Spring Lights Gas (Pty) Ltd	Confirmed Fined R10 800 000
016717	Competition Commission	Hosanna Medical & Disposables CC	Confirmed Fined R37 597
016691	Competition Commission	Primkop Airport Management (Pty) Ltd	Confirmed Fined R2 000 000
016543	Competition Commission	McCoys Glass Wholesalers CC	Confirmed Fined R2 487 450.70
016493	Competition Commission	Bowman Cycles (Pty) Ltd	Confirmed
016501	Competition Commission	West Rand Cycles CC	Confirmed
016725	Competition Commission	Airports Company South Africa Ltd	Confirmed

Case Number	Complainant	Respondent	Decision
017475	Competition Commission	Hochtief Construction AG	Confirmed Fined R1 907 793
018028	Competition Commission	Lambda Test Equipment CC	Confirmed Fined R100 000
016857	Competition Commission	Shekinah Medical & Disposables CC	Confirmed Fined R143 143.69
30/CR/Mar12 017129	The Competition Commission	Cast Industries (Pty) Ltd	Confirmed Fined R567 970.40
016840	Competition Commission	DBS Distributing CC t/a Thule Car Rack Systems CC	Confirmed
73/CR/Oct09 78//CR/Oct09 016865	Competition Commission	Telkom SA SOC Limited	Confirmed Fined R200 000 000
016931	Competition Commission	Aveng (Africa) Ltd	Confirmed Fined R306 576 143
016949	Competition Commission	Basil Read Holdings (Pty) Ltd	Confirmed Fined R94 936 248
016956	Competition Commission	Esorfranki Ltd	Confirmed Fined R155 850
016964	Competition Commission	G Liviero & Son Building (Pty) Ltd	Confirmed Fined R2 011 078
016972	Competition Commission	Guiricich Bros Construction (Pty) Ltd	Confirmed Fined R3 552 568
016980	Competition Commission	Haw & Inglis Civil Engineering (Pty) Ltd	Confirmed Fined R45 314 041
016998	Competition Commission	Hochtief Construction AG	Confirmed Fined R 1 315 719
017004	Competition Commission	Norvo Construction (Pty) Ltd	Confirmed Fined R714 897



Case Number	Complainant	Respondent	Decision
017012	Competition Commission	Raubex (Pty) Ltd	Confirmed Fined R58 826 626
017020	Competition Commission	Rumdel Construction Cape (Pty) Ltd	Confirmed Fined R17 127 465
017038	Competition Commission	Stefanutti Stocks Holdings Ltd	Confirmed Fined R306 892 664
017046	Competition Commission	Tubular Technical Construction (Pty) Ltd	Confirmed Fined R2 634 667
017053	Competition Commission	Vlaming (Pty) Ltd	Confirmed Fined R3 421 662
017061	Competition Commission	WBHO Construction (Pty) Ltd	Confirmed Fined R311 288 311
017277	Competition Commission	Murray & Roberts Limited	Confirmed Fined R309 046 455
017400	Competition Commission	National Glass Distributors (Pty) Ltd	Confirmed Fined R414 615
017293	Competition Commission	Glass South Africa (Pty) Ltd	Confirmed Fined R4 395 023.02
017301	Competition Commission	The Dorper Sheep Breeders Society of South Africa	Confirmed Fined R24 171.30
017483	Competition Commission	Northern Hardware and Glass (Pty) Ltd	Confirmed Fined R214 530.53
017525	Competition Commission	Stefanutti Stocks Holdings Ltd	Confirmed Fined R55 864 536
017517	Competition Commission	Wes Enterprises (Pty) Ltd	Confirmed Fined R2 099.24
017509	Competition Commission	MGK Operating Company (Pty) Ltd	Confirmed Fined R32 346.19

Case Number	Complainant	Respondent	Decision
018036	Competition Commission	Aztec Components CC	Confirmed Fined R100 000
018440	Competition Commission	Martinair Cargo, A Division of Martinair Holland N.V.	Confirmed Fined R5 758 250
018465	Competition Commission	Amsteele Systems (Pty) Ltd	Pending decision
018549	Competition Commission	WBHO Construction (Pty) Ltd	Pending hearing

## APPENDIX E: COMPLAINT REFERRALS FROM A COMPLAINANT

Case Number	Complainant	Respondent	Status
62/CR/Jul11 013045	Lateral Unison Insurance Brokers (Pty) Ltd	Lion of Africa Insurance (Pty) Ltd, AON South Africa (Pty) Ltd	Withdrawn 12 Sep 13
015123	Autobid (Pty) Ltd	Transunion Information Solutions (Pty) Ltd	Withdrawn 25 Jun 13
010694	Dimension Data (Pty) Ltd	Telkom SA Ltd	Settled 17 Jul 13
017764	Eldrich Page	East Cape Property Guide and Saturday Star Property Guide	Dismissed under procedural matter 017913
24/CR/Mar12 014688	Johan Venter	The Law Society of the Cape of Good Hope	Dismissed
018291	Pindiwe Abegail Kema	Africa Race Group (Pty) Ltd and National Horseracing Authority; Phumelele Gaming and Leisure Ltd; Gold Circle (Pty) Ltd	Pending hearing
018564	South African Insurance Brokers	SA Taxi Securitization (Pty) Ltd; SA Taxi Finance Holding (Pty) Ltd; SA Taxi Risk Management Services (Pty) Ltd; SA Taxi Development Finance (Pty) Ltd; SA Taxi Finance Solutions (Pty) Ltd	Pending hearing
017079	Geosystems Africa (Pty) Ltd	Leica Geosystems AG	Pending hearing

Case Number	Complainant	Respondent	Status
101/CR/Nov12 015958	Ian Walter Buchanan	The Health Professions Council Of South Africa & The Professional Board For Optometry	Pending hearing
016444	New Number Plate Requisites CC	Uniplate Group (Pty) Ltd	Pending hearing
38/CR/Apr12 014878	Omnia Group (Pty) Ltd and	Sasol Chemical Industries Ltd	Pending hearing
016584	Protea Automation Solutions (Pty) Ltd and	Invensys Plc, Invensys Systems (UK) Ltd, Eurotherm Ltd, EOH Holdings Ltd and EOH Mthombo (Pty) Ltd	Pending hearing
017624	Magnitech (Pty) Ltd	Eskom Holdings SOC Ltd	Pending hearing
017160	Council for Medical Schemes	Society for Cardiothoracic Surgeons of SA South African Medical Association	Pending hearing
017152	Council for Medical Schemes	South African Pediatric Association South African Medical Association	Pending hearing
017897	Beer Properties (Pty) Ltd	Pinzon Traders 8 (Pty) Ltd	Pending hearing
43/CR/May09 010306	Preferred Provider Negotiators (Pty) Ltd	IsoLeso Optics Limited	Pending hearing
21/CR/Mar11 012328	Gerhardus Johannes Jacobs	The New Reclamation Group	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
79/CR/Aug12 015503	SA Airlink (Pty) Ltd	South African National Parks and Primkop Airport Management (Pty) Ltd	Pending hearing
102/CR/Nov12 015933	Peter Arthur Dykes, Cheryl Ramsamy, Phasudi Doctor Segogoba, Johan van Heerden	The Law Society of the Northern Provinces (Inc as the Law Society of the Transvaal)	Pending hearing

## APPENDIX F: INTERIM RELIEF

Case Number	Applicant	Respondent	Decision
32/IR/Apr11  012492	AutoBid (Proprietary) Limited	Transunion Auto Information Solutions (Proprietary) Limited	Withdrawn
016550	Simba Chitando	Michael Fitzgerald SC and RusselMacwilliam SC and MichealWragge SC	Dismissed
016568	Simba Chitando	Webber Wentzel and Bowman Gilfillan and Shepstone Wylie and Norton Rose	Dismissed
017616	Anchor Zedo Outdoor CC	Passenger Rail Agency of South Africa	Dismissed
100/IR/Oct12 015941	Protea Automation Solutions (Pty) Ltd	Invensys PLC and Others	Pending hearing
018507	Normandien Farms (Pty) Ltd and	Komatiland Forests (Pty) Ltd	Pending further hearing

## APPENDIX G: PROCEDURAL MATTERS

Case Number	Applicant	Respondent	Category	Decision
017814	Eldrich Page	East Cape Property Guide and Saturday Star Property Guide	Amendment application	Dismissed under 017913
48/CR/Aug10 015826	Competition Commission	Sasol Chemical Industries Ltd (sec8) (Polymers)	Discovery application	Settled between parties
016675	Competition Commission	Telkom SA SOC Limited	Dismissal application	Settled between parties 18 Jul 13

Case Number	Applicant	Respondent	Category	Decision
48/CR/Aug10 016535	Competition Commission	Sasol Chemical Industries Ltd (sec8) (Polymers)	Subpoena challenge	Settled between parties 17 Apr 13
016089 109/X/Dec12	Primeprac (Pty) Ltd and Murray & Roberts Retail Asset Management (Pty) Ltd	Competition Commission	Other procedural matter	Withdrawn 06 Aug 13
24/CR/Mar12 017418	Johan Venter	The Law Society of the Cape of Good Hope	Access to confidential information	Withdrawn 20 Aug 13
59/CR/May12 016832	AutoBid (Pty) Ltd	Transunion Auto Information Solutions (Pty) Ltd	Discovery application	Withdrawn 25 June13
101/CR/Nov12 015958	Ian Walter Buchanan	The Health Professions Council Of South Africa & The Professional Board For Optometry	Amendment Application	Granted
016923	Competition Commission	Cargill RSA (Pty) Ltd	Failure to notify	Confirmed  Fined  R100 000
016808	Competition Commission	Old Mutual Life Assurance Company (South Africa ) limited and Momentum Group Limited	Failure to notify	Confirmed  Fined R350 000
016600 48/CR/Aug10	Sasol Chemical Industries (Pty) Ltd and	The Competition Commission and Julius Lebi and Miriam Jacob	Subpoena compliance	Granted
92/CR/Oct11 016824	Competition Commission	Media 24 Ltd	Application to strike out	Granted
016782	Amdec Investments (Pty) Ltd	Competition Commission	Filing fee refund	Granted
016816	Incolabs (Pty) Ltd	Competition Commission	Filing fee Refund	Granted



Case Number	Applicant	Respondent	Category	Decision
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 applications	Joined and granted
71/SM/Nov10 012625	Direct Transact Paycord 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 applications	
71/SM/Nov10 012625		The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention applications	
71/SM/Nov10 012625		The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention applications	
72/SM/Nov10 012633	Direct Transact ACET	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention applications	Joined and granted
72/SM/Nov10 012633	Paycorp EasyPay Drawcard	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention applications	
72/SM/Nov10 012633		The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention applications	
72/SM/Nov10 012633		The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention applications	
72/SM/Nov10 012633		The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention applications	
92/CR/Oct11 017830	Competition Commission	Media 24 Ltd	Notice of objection to evidence	Dismissed

Case Number	Applicant	Respondent	Category	Decision
017905	Protea Automation Solutions (Pty) Ltd	Invensys Plc, Invensys Systems (UK) Ltd, Eurotherm Ltd, EOH Holdings Ltd and EOH Mthombo (Pty) Ltd	Application to uphold applicant's exception	Dismissed
017970	Association of Systems Operations & Others	Comesa Financial Exchange & Others	Intervention applications	Granted
017988	Competition Commission	Comesa Financial Exchange (Pty) Ltd, Emid Holdings (Pty) Ltd, Lexshell 129 General Trading (Pty) Ltd Nomad Information Systems (Pty) Ltd	Exception application	Dismissed
018184	Comesa Financial Exchange (Pty) Ltd	Emid Holdings (Pty) Ltd	Discovery application	Granted
101/CR/Nov12 018119	Ian Walter Buchanan	The Health Professions Council Of South Africa & The Professional Board For Optometry	Discovery application	Granted
09/CR/Jan07 and 63/CR/ Sep09 017491	Competition Commission	Allen Meshco (Pty) Ltd & 4 Others	Consolidation application	Granted
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 application	Partly granted
72/SM/Nov10 011809	The Association of System Operators	Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Review application	Partly granted
73/CR/Jul12 015784	Omnico (Pty) Ltd	Competition Commission & Others	Dismissal application	Granted
73/CR/Jul12 015438	Coolheat Cycle Agencies (Pty) Ltd	Competition Commission & 19 others	Exception application	Granted
73/CR/Jul12 015461	Cytek Cycle Distributors CC	Competition Commission & 19 others	Dismissal application	Granted
016618	Simba Chitando	Webber Wentzel and Bowman Gilfillan and Shepstone Wylie and Norton Rose	Exception application	Dismissed
017194-017269 017384	South African Local Government Association	Stefanutti Stocks Holdings Ltd and 7 others	Intervention applications	Dismissed

Case Number	Applicant	Respondent	Category	Decision
017319-017376	Gauteng Province Government	Stefanutti Stocks Holdings Ltd and 7 others	Intervention applications	Dismissed
016907	Omnia Group (Pty) Ltd	Sasol Chemical Industries Ltd	Separation of issues	Dismissed
017913	Saturday Star Property Guide	Eldrich Page	Dismissal application	Dismissed
018267	Protea Automation Solutions (Pty) Ltd	Invensys Plc, Invensys Systems (UK) Ltd, Eurotherm Ltd, EOH Holdings Ltd and EOH Mthombo (Pty) Ltd	Application for security for costs	Dismissed
018275	Protea Automation Solutions (Pty) Ltd	Invensys Plc, Invensys Systems (UK) Ltd, Eurotherm Ltd, EOH Holdings Ltd and EOH Mthombo (Pty) Ltd	Application for security for costs	Dismissed
018283	Protea Automation Solutions (Pty) Ltd	Invensys PLC and Others	Cost application	Dismissed
017889 73/CR/Jul12	Competition Commission	Coolheat Cycle Agencies (Pty) Ltd	Exception application	Dismissed
018515	Competition Commission	H Pistorius and CO (Pty) Ltd, Kalkor (Pty) Ltd, Enviro Lime (Pty) Ltd, SA Lime (Pty) and Gypsum (Pty) Ltd	Condonation application	Pending hearing
018580	Council for Medical Schemes	South African Paediatric Association and South African Medical Association	Condonation application	Pending hearing
018598	Council for Medical Schemes	The Society for Cardiothoracic Surgeons of South Africa and The South African Medical Association	Condonation application	Pending hearing
113/AM/Dec12 018655	Marley Pipe Systems (Pty) Ltd	The Competition Commission of South Africa, National Union of Mine Workers South Africa, Petzetakis Africa (Pty) Ltd	Review application	Pending hearing
018689	Competition Commission	Nenana Management Services (Pty) Ltd, Rema Tip Top South Africa (Pty) Ltd and Dunlop Industrial Products (Pty) Ltd	Failure to notify	Pending hearing
018259	Competition Commission	Arcelormittal South Africa Ltd and Columbus Stainless (Pty) Ltd and Cape Gate (Pty) Ltd and Scaw South Africa (Pty) Ltd	Exception to supplementary complaint referral	Pending hearing
017863	Competition Commission	Furman Glass Company (Pty) Ltd	Amendment application	Pending hearing
113/AM/Dec12 018069	National Union of Metalworkers of SA	Marley Pipe Systems (Pty) Ltd and Petzetakis Africa (Pty) Ltd	Access to confidential information	Pending hearing

Case Number	Applicant	Respondent	Category	Decision
08/CR/Jan07 and 106/CR/ Nov12  017756	Competition Commission	ArcelorMittal Ltd	Consolidation application	Pending hearing
14/Cr/Mar11  016667	Competition Commission	Esorfranki Ltd & 7 others	Condonation application	Pending hearing
14/CR/Mar11  016642	Competition Commission	Geomech Africa (Pty) Ltd	Application for joinder	Pending hearing
14/CR/Mar11  016776	Competition Commission	Geomech Africa (Pty) Ltd	Amendment application	Pending hearing
017137	Twangoo SA (Pty) Ltd t/a Groupon	Allied Health Professions Council of SA, Health Professions Council of SA and SA Dental Association	Condonation application	Pending hearing
018127	Competition Commission	Allen Meshco (Pty) Ltd & 4 Others	Determination of confidentiality	Pending hearing
99/CR/Oct12  016238	Total SA (Pty) Ltd	Competition Commission and others	Discovery application	Pending hearing
61/CR/Sep09  015909	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	Stay application	Pending hearing
016162  113/AM/Dec12	National Union of Metalworkers of SA	Marley Pipe Systems (Pty) Ltd and Petzetakis Africa (Pty) Ltd	Condonation application	Pending hearing
56/CR/Aug10  016154	Goodyear SA (Pty) Ltd	Competition Commission & Others	Confidentiality application	Pending hearing
56/CR/May12  015685	Competition Commission	Copper Tubing Africa (Pty) Ltd and Maksal Tubes (Pty) Ltd	Discovery application	Pending hearing
37/IR/Apr12  015677	G4S Aviation Security (SA) (Pty) Ltd	Protea Coin Group (Security Services) (Pty) Ltd	Costs application	Pending hearing

Case Number	Applicant	Respondent	Category	Decision
56/CR/Aug10 015602	Continental Tyre SA (Pty) Ltd	Competition Commission	Application to inspect	Pending hearing
56/CR/Aug10 015602	Goodyear SA (Pty) Ltd	Competition Commission	Discovery application	Pending hearing
35/X/Apr12 014837	The Trustees for the time being of the children's resources centre& Others	Premier Food Limited and the Competition Commission	Application for CT 16 certificate	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) application	Pending hearing
21/CR/Mar11 012815	Gerhardus Johannes Jacobs	The New Reclamation Group	Amendment 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	Appl 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
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
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



## APPENDIX H: ANNUAL PERFORMANCE MATRIX

Strategic Focus Area 1:	Tribunal Hearings and Decisions				Total	Reason for deviations
	Prior year budget:	R 16 184 912	Current budget	R 18 294 005	R 18 294 005	Budget divided equally across 4 quarters
	Prior year actual	R 14 405 020	Actual expenditure	R 16 128 374	R 16 128 374	
Goal Statement:	Hold hearings and adjudicating matters brought before the Tribunal.					
Strategic Outcome:	Promote and maintain competition within South Africa through the implementation of the Competition Act.					
Strategic objective	Output	Performance indicators	Annual target	Prior year annual performance	Annual performance	Deviations
To promote and maintain competition within South Africa by holding hearings and adjudicating matters brought before the Tribunal that pertain to large and intermediate mergers, interim relief cases, procedural matters, opposed as well as unopposed prohibited practices within the adopted delivery timeframes.	Large Mergers:					
	Merger notices	Merger set down (heard) in accordance with delivery timeframes	75% of mergers heard within 10 business days of the filed merger	81%	74%	25 cases were not set down within the specified target. In 14 of these the target was missed by a maximum 3 days. In the other 11 cases the parties were not available for hearings on the earlier days allocated by the Tribunal. Parties unavailability results in the Tribunal not meeting its targets.
	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%	100%	Target exceeded for the year to date
	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	51%	82%	Target exceeded for the year to date

Strategic objective	Output	Performance indicators	Annual target	Prior year annual performance	Annual performance	Deviations
	Requests for consideration (Intermediate mergers):					
	Merger notices	Merger set down(heard) in accordance with delivery timeframes	75% of mergers heard within 10 business days of receiving the Commissions record	57%	100%	Target exceeded for the year to 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%	No orders were issued during the target period	No orders were issued during the target period
	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	13%	No reasons were issued during the target period	No reasons issued during the target period
	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	86%	100%	Target exceeded for the year to date
	Orders and reasons for decision documents	Orders and reasons for decisions issued to parties in accordance with the delivery timeframes	80% of orders and reasons for decisions issued within 100 business days of the hearing date	33%	50%	Orders or reasons were only issued in 2 matters during this financial year. SAB (decided in the 4th quarter) was a long and complicated case with substantial and detailed evidence. In addition, the panel involved had to take on a lengthy prohibited practice case soon after the conclusion of the SAB case. This resulted in the writing of the reasons only commencing after these hearings had been concluded. The year end closure period also contributed to the delay.

Strategic objective	Output	Performance indicators	Annual target	Prior year annual performance	Annual performance	Deviations
	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	100%	98%	Target exceeded for the year to date
	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	89%	83%	Delays in achieving targets occur because of the complexity of some of the points of law. In addition, in some cases the decision is issued at the same time as the reasons thus leading to delays In meeting the target.
	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 during the target period	0%	Reasons were only issued in 3 matters - in 2 of these the target was missed by 3 days as the part-time member that worked on them was travelling and therefore unable to sign off on time. In the other matter orders and reasons were issued and, while the order was issued within 24 hours of the last hearing date, the issuing of reasons was delayed as the panel member writing the decision was overseas.

Strategic Focus Area 2:	Stakeholder Awareness				Total	Reason for deviations
	Prior year budget:	R 641 937	Current budget	R 651 937	R 651 937	Budget divided equally across 4 quarters
	Prior year actual	R 538 433	Actual expenditure	R 319 629	R 319 629	
<b>Goal Statement:</b>	Communicate the activities and decisions of the Competition Tribunal effectively.					
<b>Strategic Outcome:</b>	Educate and create awareness of Competition Matters to the Tribunal's stakeholders.					
Strategic objective	Output	Performance indicators	Annual target	Prior year annual performance	Annual performance	Deviations
To educate and to create awareness of competition matters to our stakeholders by communicating the activities and decisions of the Competition Tribunal by way of the internet, press releases, the Government Gazette as well as internal publications within the adopted delivery timeframes	"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	79%	69%	The registry administrator post was vacant for a period and this led to delays in loading documents on the website. In addition, many delays resulted because parties challenged information in the reasons and claimed confidentiality over it.
	Tribunal Tribunes produced	Tribunal Tribune's distributed to Stakeholders	Three Tribunal Tribunes distributed by 31 March 2014	3	3	Target met for the year to date
			Tribunal Tribunes distributed to 50 stakeholders by 31 March 2013	69	86	Target exceeded for the year to date

Strategic objective	Output	Performance indicators	Annual target	Prior year annual performance	Annual performance	Deviations
	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	74%	94%	Target not achieved. 5 matters were submitted late to the Government Printers due to an internal oversight.
	Press releases	Press releases of final decisions in merger cases issued to the media	Press releases issued for 75% of the final decisions in mergers issued by the Tribunal each quarter	93%	98%	Target exceeded for the year to date
	Press releases	Press releases of final decisions in prohibited practice cases issued to the media	Press releases issued for 100% of the final decisions in prohibited practice cases issued by the Tribunal each quarter	92%	100%	Target met for the year to date



Strategic Focus Area 3	Operational Effectiveness				Total	Reason for deviations
	Prior year budget:	R 1 570 216	Current budget	R 1 581 789	R 1 581 789	Budget divided equally across 4 quarters
	Prior year actual	R 991 248	Actual expenditure	R 1 042 829	R 1 042 829	
Goal Statement:	Enhance the expertise of Tribunal staff.					
	Improve the service of the Tribunal to our customers.					
Strategic objective	Output	Performance indicators	Annual target	Prior year annual performance	Annual performance	Deviations
To enhance the expertise of Tribunal members and staff by sending them on planned International as well as local conferences and training courses.	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 2014	85,37%	144,12%	Target exceeded for the year

## APPENDIX I: YEAR END DASHBOARD

	Key Performance Areas	2012/2013 Annual achievements	2013/2014 Targets as per the APP	2013/2014 Targets as per the APP
Total budget	Total budgeted funds as per the Annual Performance Plan	31 112 045		33 083 689
	Actual total expenditure	26 485 228		33 336 741
	% of budget spent	85%		101%
Hearing budget	Budgetted total direct hearing costs	3 893 913		4 830 084
	Actual total direct hearing costs	3 500 733		5 034 381
	% of budget spent	90%		104%
Adjudication budget	Budgeted total adjudication costs as per the Annual Performance Plan	16 777 144		18 294 006
	Actual adjudication costs	15 027 460		16 128 375
	% of budget spent	90%		88%
Number of staff employed	Total number of FT staff employed	13	22	22
	Registry staff	3	6	6
	Secretariat Support staff (includes learner	4	10	10
	Case Management staff	6	6	6
Matters on the roll	Total number of active matters	103		101
Number of matters attended to	Number of orders (decisions) issued	124		186
	Number of reasons issued	104		130
Hearing days	Number of person days spent in hearings by all Tribunal members	326		398
	% of person days spent in hearings by PT members	47%		47%
	% of person days spent in hearings by FT members	53%		53%
	Number of days spent in hearings	110		120
Recordings	Number of transcript pages (court record) produced	14 006		16 716
	Number of transcript pages (court record) produced per actual hearing day	128		139

	Key Performance Areas	2012/2013 Annual achievements	2013/2014 Targets as per the APP	2013/2014 Targets as per the APP
Direct hearing cost per matter	Direct hearing cost per order issued	28 232		27 067
	Direct hearing cost per reason issued	33 661		38 726
	Direct hearing cost per person day	10 755		12 649
	Direct hearing Cost per actual hearing day	31 970		41 953
	Direct hearing cost per PT member person day	23 107		26 922
	Direct hearing cost per transcript page produced	250		301
Total adjudication costs per matter	Total adjudication cost per order issued	121 189		86 712
	Total adjudication cost per reason issued	144 495		124 064
	Total adjudication cost per person day	46 167		40 524
	Total adjudication Cost per actual hearing day	137 237		134 403
	Total adjudication cost per PT member person day	99 191		86 248
	Total adjudication cost per transcript page produced	1 073		965
Matters per case management staff	Average number of active matters per case management staff member	17		17
	Average number of orders issued per case management staff member	21		31
	Average number of reasons issued per case management staff member	17		22
Turnaround time – large mergers	Total number of new large merger cases received	68		94
	Number of cases set down within 10 business days of the filed large merger	81%	74%	75%
	Number of large merger orders issued within 10 business days of the last hearing date	100,00%	98%	100%
	Number of large merger reasons issued within 20 business days of the order being issued	51%	56%	82%
Turnaround time – intermediate mergers	Total number of new intermediate merger cases received	4		3
	Number of intermediate merger cases set down within 10 business days of the filed merger	57%	75%	No new matters set down
	Number of intermediate merger orders issued within 10 business days of the last hearing date	100,00%	98%	No orders issued
	Number of intermediate merger reasons issued within 20 business days of the order being issued	0,125	56%	No reasons issued

	Key Performance Areas	2012/2013 Annual achievements	2013/2014 Targets as per the APP	2013/2014 Targets as per the APP
Turnaround time – opposed prohibited practices	Total number of new opposed prohibited practice cases received	17		17
	Number of prehearings (with pleadings closed) held	5		5
	Number of pre-hearing invitations sent out within 20 business days of close of pleading	86%	90%	100%
	Number of orders and reasons for decision issued	6		2
	Number of orders and reasons for decisions issued within 100 business days of the hearing date	2		1
	% of orders and reasons for decisions issued within 100 business days of the hearing date	33%	80%	50%
Turnaround time – consent orders	Number of consent orders issued this quarter	14		42
	Number of consent orders issued within 10 business days of the last hearing date	14		41
	% of matters where consent order issued within 10 business days	100%	75%	98%
Turnaround time – procedural matters	Total number of procedural matters heard	32		40
	Number of orders issued	27		42
	Number of orders issued within 20 business days of last hearing day	24		35
	% of matters where orders issued within 20 business days of last hearing day	89%	85%	83%
Turnaround time – interim relief matters	Total number of new interim relief matters received	2		4
	Number of reasons issued during quarter	0		3
	Number of reasons issued within 20 business days of the last hearing date	0		0
	% of matters where reasons issued within 20 business days of the last hearing date	No reasons issued	85%	0%
Fines generated	Total rand value of administrative penalties imposed	731 470 806		1 764 070 531
Learnerships/Internships	Provision of learnerships to students	3		3
	Provision of internships to students	6		6

## This image shows a full page of blank, lined paper. It features approximately 20 horizontal blue or grey lines spaced evenly apart, typical of notebook paper. The lines extend across the entire width of the page, leaving small margins at the top and bottom. There are no vertical lines, text, or other markings on the page.



## NOTES

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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