



# Competition Tribunal

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Annual Report 2000/2001

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The chairperson's report and financial statements as set out on pages 6 – 33 were approved by the accounting officer on 3 August 2001 and are signed below by him.



**David Lewis**  
*Accounting officer*  
Pretoria  
3 August 2001

# Functions of the Competition Tribunal

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An independent, impartial institution

*The Competition Tribunal regulates mergers and adjudicates on anti-competitive business practices:*

## In respect of mergers, the Tribunal

- *authorises or prohibits large mergers*
- *adjudicates appeals from the Competition Commission's decisions on intermediate mergers*

## In respect of anti-competitive practices, the Tribunal

- *adjudicates complaint referrals*
- *adjudicates interim relief applications*
- *hears appeals on exemptions*



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## Highlights of the period

- *Thirty-five large merger transactions decided in the period*
- *Twenty-nine large mergers approved*
- *Threshold for notification raised, filing fees reduced*
- *Tribunal rated joint fourth in international survey*

# Report of the auditor-general



AUDITOR-GENERAL

on the financial statements of the Competition Tribunal for the year ended 31 March 2001

## Audit assignment

The financial statements as set out on pages 24 to 33, for the year ended 31 March 2001, have been audited in terms of section 188 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), read with sections 3 and 5 of the Auditor-General Act, 1995 (Act No 12 of 1995) and section 40(10) of the Competition Act, 1998 (Act No 89 of 1998), as amended. These financial statements, the maintenance of effective control measures and compliance with relevant laws and regulations are the responsibility of the chairperson of the Competition Tribunal. My responsibility is to express an opinion on these financial statements and the compliance with relevant laws and regulations, applicable to financial matters, based on the audit.

## Regularity audit

### *Nature and scope*

#### **Financial audit**

The audit was conducted in accordance with generally accepted government auditing standards which incorporate generally accepted auditing standards. These standards require the audit to be planned and performed to obtain reasonable assurance that the financial statements are free of material misstatement. An audit includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements;
- assessing the accounting principles used and significant estimates made by management; and
- evaluating the overall financial statement presentation.

I believe that the audit provides a reasonable basis for my opinion.

#### **Compliance audit**

Furthermore, an audit includes an examination, on a test basis, of evidence supporting compliance in all material respects with the relevant laws and regulations which came to my attention and are applicable to financial matters.

I believe that the audit provides a reasonable basis for my opinion.

### *Qualification: Compliance audit*

Non-compliance with section 34(1) of the Competition Act, 1998, with regard to the remuneration of part-time tribunal members

In terms of section 34(1) of the Competition Act, 1998, the Minister of Trade and Industry may in consultation with the Minister of Finance determine the remuneration, allowances and other benefits of the members of the Competition Tribunal.

Part-time members of the Competition Tribunal are remunerated at a rate of R4 000 per day. This arose out of the Competition Tribunal's interpretation of approval obtained on 19 June 2000 from the relevant ministers to remunerate part-time members of the Tribunal at a level of a Judge of the High Court. The Minister of Trade and Industry, however, pointed out in a letter to the Competition Tribunal dated 9 May 2001 that he did not concur with the interpretation of the Tribunal and that the rates payable to part-time members should be calculated by dividing the relevant annual salary of a Judge of the High Court by 252 days. This resulted in an approved rate of R1 655 per day, from the inception date to 30 June 2000, and at the further approved rate of R1 754 per day from 1 July 2000.

In light of the above, expenditure to the amount of R289 446 for the 2000-2001 financial year and R165 344 for the 1999-2000 financial year has not been authorised in terms of the said section of the Competition Act, 1998.

### *Audit opinion*

#### **Unqualified opinion: Financial audit**

In my opinion, the financial statements fairly present, in all material respects, the financial position of the Competition Tribunal at 31 March 2001 and the results of



# Report of the auditor-general

on the financial statements of the Competition Tribunal for the year ended 31 March 2001

its operations and cash flows for the year then ended in accordance with generally accepted accounting practice and in the manner required by the Competition Act, 1998.

## *Qualified opinion: Compliance audit*

Based on the audit work performed, except for the matter referred to above nothing has come to my attention that causes me to believe that material non-compliance with laws and regulations, applicable to financial matters, has occurred.

## Appreciation

The assistance rendered by the staff of the Competition Tribunal during the audit is sincerely appreciated.

**L A van Vuuren**  
*for Auditor-general*

Pretoria  
12 August 2001

*The Competition Tribunal must be impartial  
and perform its functions without fear,  
favour and prejudice.*

# Chairperson's introduction

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South Africa's competition authorities are now fully up and running. The Competition Appeal Court, the third in the trio of institutions created by the Competition Act, was established in September 2000, with Judge Dennis Davis as the Judge President. The court has already commenced functioning. The Tribunal staff provides registry and other administrative services to the court.

For its part, the Tribunal continues to perform its functions effectively. Indeed, the overall functioning of the Tribunal has, if anything, become more streamlined, as the staff and members of the Tribunal acquire experience of the act and the rules.

In the year under review, a number of significant decisions have been taken, particularly in the area of merger regulation. However, while we continue to hear a steady stream of applications for interim relief, we have only recently received the first full complaint referral from the Commission. The time taken to bring restrictive practices complaints to full trial has clearly been underestimated. While this mirrors experience in other jurisdictions and reflects the immense complexity of these matters, it is clear that the task of implementing new legislation in a relatively new and untested constitutional environment adds an unforeseen element of delay and complexity. There are currently several High Court reviews of aspects of our legislation pending, reviews that stem directly from restrictive practice complaints submitted to the Commission. Our expectation is that once the High Court clarifies certain basic interpretations of our legislation, restrictive practice matters will begin finding their way to the Tribunal.

The work of the Tribunal impacts significantly on important commercial decisions and is, accordingly, subject to close scrutiny by the business and investment community and the media. The South African business community clearly has some way to go before it fully accepts the reality of a robust competition regime in South Africa. Although South Africa has had competition legislation for decades, this legislation was characterised by weak substantive and enforcement provisions. Weak competition law partly accounts for the high levels of concentrations in our economy and for the existence of

business practices out of step with the requirements of a competitive economy. Because the Competition Act and the authorities responsible for its implementation, inevitably question these long-established anti-competitive, though highly lucrative, practices, there has been some measure of resistance to our work in parts of the business community.

I am confident, however, that the South African government's decision to install an effective competition statute reflects international best practice. The past two decades have witnessed a significant extension of market relations, both globally and within individual nations. Markets, like any institution, require clear rules if they are to function effectively. The Competition Act represents an important component of these rules. We will inevitably brush up against those who have benefited from a lax set of rules in the past and we must expect, even welcome, criticism from these quarters. Certainly, we are encouraged by the growing sophistication of media analysis of our work and by the developing professional and academic interest in this critically important branch of law and economics.

Maintaining accounting and other records and an effective system of internal control is my responsibility as chairperson. I believe this requirement has been fulfilled and that the financial statements prepared fairly present the results of the Tribunal for the 12 months to 31 March 2001.

The Tribunal's annual financial statements are prepared on the historical cost basis and relevant accounting policies. These policies have continually been complied with. I approved the annual financial statements set out on pages 24 to 33.

No material facts or circumstances have arisen between the date of the balance sheet and the date of approval which affect the financial position of the Competition Tribunal as reflected in these financial statements. I believe the Competition Tribunal is financially sound and operates as a going concern.

Unfortunate confusion has arisen regarding the fees payable to part-time members of the Tribunal. The process

# Chairperson's introduction

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of determining the appropriate salaries of the full-time members of the Tribunal and the fees of the part-time members involved considerable consultation and research. In June 2000, the Minister of Trade and Industry, in consultation with the Minister of Finance, determined that the chairperson and the members should be remunerated at the level of the Judge President and Judges of the High Court respectively. While this settled the level at which full-time members are paid, acting judges are not remunerated on a daily basis and, accordingly, there is no readily equivalent basis for remunerating the Tribunal's part-time members. Accordingly I recommended to the Minister of Trade and Industry that the fee structure of the Arbitration Foundation be used as a benchmark for the remuneration of part-time members, namely a fee of R4 000,00 per day, at the middle to lower end of the Arbitration Foundation fee structure. This was communicated to the Department of Trade and Industry and the Tribunal has remunerated its part-time members at this level.

Thereafter, following a request to the DTI for an increase in the daily fee commensurate with salary increases awarded to High Court Judges, the Tribunal received a letter from the Minister of Trade and Industry instructing us to pay part-time members at the level of R1 754,00 per day. This rate is calculated by dividing the annual salary of a High Court judge by a specified number of days. As per the Minister's instruction, we have reverted to paying part-time members at this level. We are, however, in the process of seeking clarification from the Minister and believe we have a strong case in resolving the matter.

It remains for me to thank the members and staff of the Tribunal for their outstanding contribution.

**David Lewis**



David Lewis  
Chairperson of the Competition Tribunal



Shan Ramburuth  
Chief executive officer and registrar

# The Competition Tribunal

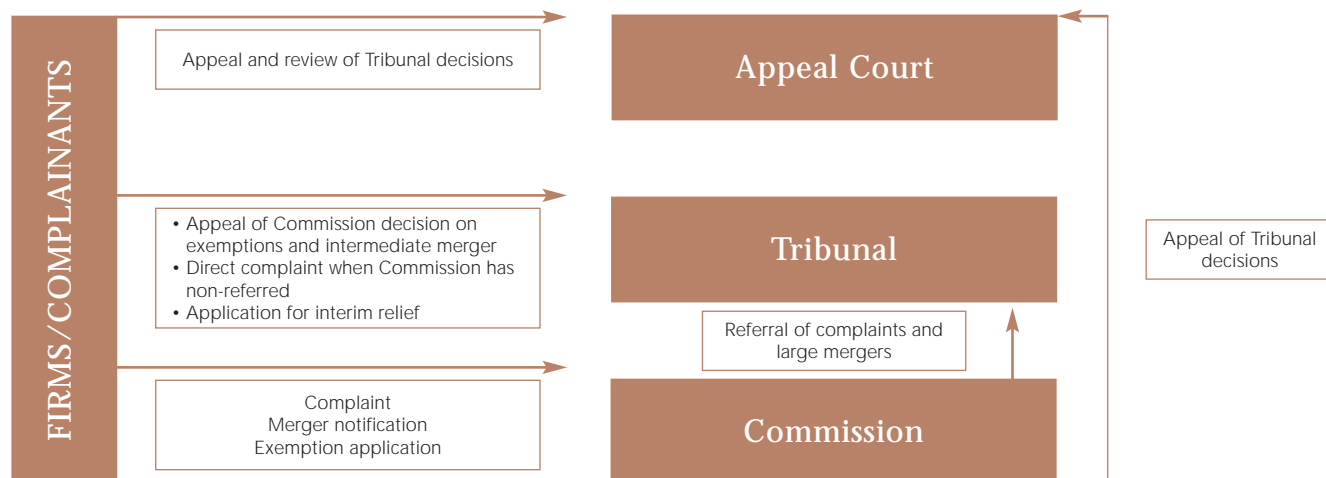
## 1. The competition authorities

The Competition Act provides for the establishment of three institutions. These are:

- The Competition Commission investigates mergers and complaints of anti-competitive practices and grants exemptions;

When a matter is referred to it in terms of the Competition Act, the Tribunal must:

- authorise or prohibit a large merger, with or without conditions;
- adjudicate appeals from the Competition Commission's decisions on intermediate mergers and exemptions;



- The Competition Tribunal is the court of first instance: it adjudicates cases referred to it by the Competition Commission or brought directly to it by an aggrieved party;
- The Competition Appeal Court has the status of the High Court, hears appeals from and reviews decisions of the Competition Tribunal.

- adjudicate complaints of prohibited conduct in terms of the act by determining whether prohibited conduct has occurred and, if so, impose a remedy provided for in the act;
- grant or deny an order for interim relief; and
- grant or deny an order for costs.

## 2. The functions of the Competition Tribunal

The Competition Tribunal adjudicates competition matters, in accordance with the Competition Act No 89 of 1998. It has jurisdiction throughout South Africa. The Competition Tribunal is independent and is subject to the constitution and the law. It must be impartial and perform its functions without fear, favour or prejudice.

## 3. The Competition Act

Section 2 of the Competition Act specifies that its purpose is to promote and maintain competition in the Republic to:

- promote the efficiency, adaptability and development of the economy;
- provide consumers with competitive prices and product choices;
- promote employment and advance the social and economic welfare of all South Africans;



# The Competition Tribunal

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- expand opportunities for South Africa to participate in world markets and to recognise the role of foreign competition in the Republic;
- ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
- promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged people.

The Competition Act:

- prohibits anti-competitive practices between firms in vertical and horizontal relationships;
- prohibits abuse of a dominant position;
- provides for restrictive practices to be exempted on specified grounds; and
- requires notification of merger transactions above a specified threshold and for the regulation thereof.

## 4. Changes to the Competition Act

On 1 February 2001, the Competition Second Amendment Act came into operation. At the same time, new rules for the Competition Tribunal and Commission came into effect, as did new thresholds for the notification of mergers.

### *Changes to merger thresholds and filing fees*

It is compulsory for mergers above a certain threshold to be notified. Since 1 February 2001, the lower threshold for compulsory notification was raised from R50 million to R200 million of combined assets and/or turnover, and for the target firm from R5 million to R30 million of turnover or assets. As a consequence, fewer mergers will require compulsory notification.

As from 1 February 2001, the filing fees for large mergers have been reduced from R500 000 to R250 000; and for intermediate mergers from a maximum of R125 000 to R75 000.

Although the amendments were wide ranging, touching on aspects of jurisdiction, procedural rights and institutional reform, they did not affect the core provisions of the act which, with one minor change, remains the same.

The most prominent of these amendments was to delete a section of the act that excluded jurisdiction over “acts

subject to or authorised by public regulation”. The ambit of this exclusion had led to conflicting interpretations in the high courts. The object of the provision, as has been observed by one judgment in the Supreme Court of Appeal, was to avoid a situation of double jeopardy so that a firm was not faced with having to defend itself twice under different regulations for the same conduct. What emerged in practice was that the exclusion was being interpreted too broadly so that firms in regulated industries escaped the Competition Act’s jurisdiction without being subject to equivalent regulation in their sector in respect of anti-competitive behaviour.

There will now be concurrent jurisdiction with sector regulators where the same conduct is the subject of the jurisdiction of both the Competition Act and the sector regulation. The difficulties this may lead to are ameliorated by a requirement in the act for sector regulators and the Competition Commission to enter into agreements to manage concurrent jurisdiction.

From the Tribunal’s point of view, the most important impact of the changes has been at the level of procedure. Prior to the amendment, procedures in the act and rules were asymmetrical – for certain procedures, one had to look to the act to see how they were to be regulated while for others, one had to look to rules. All procedures are now treated on the same footing. Issues of standing and procedural rights are now uniform and are found in the act. Where rules are more detailed or differ in relation to specific procedures, these can be found in the respective rules of the Commission and the Tribunal.

The amendments have made merger regulation simpler, more focused and less onerous on business. In addition, the threshold for notification has been raised while fees have been reduced. These reforms have been well received by the business community. Labour, too, has benefited from the reforms. Unions can now appeal to the Tribunal against a decision of the Competition Commission in relation to an intermediate merger. Amendments to the rules now require merging firms to provide employees with a summary of the employment effects of the merger.

The amended act, new rules and thresholds can be found on the Tribunal’s website.

# The Competition Tribunal

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## 5. The Competition Tribunal's members

The President, on recommendation from the Minister of Trade and Industry, appointed the chairperson and nine other members of the Tribunal with effect from 1 August 1999. Terms of appointment are for five years. Two of the members (including the chairperson) are full-time executive members and eight (including the deputy chairperson) are part-time non-executive members. The members of the Tribunal constitute the pool from which the chairperson appoints adjudicative panels comprising three members.

The act specifies that, viewed collectively, the membership of the Tribunal should represent a broad cross-section of the population of South Africa and that each member should be a citizen of the Republic and should have suitable qualifications and experience in economics, law, commerce, industry or public affairs. Six of the current Tribunal members have a legal background, three are economists and one is a chartered accountant.

### *Members of the Competition Tribunal*

(from top left to right)

#### **Chairperson**

David Lewis (BCom, MA)

#### **Deputy chairperson (part-time member)**

Advocate Marumo Moerane (BSc, BCom, LLB)

#### **Full-time member**

Norman Manoim (BA, LLB)

#### **Part-time members**

Urmila Bhoola (BA Hons, LLB, LLM)

Professor Frederick Fourie (BA Hons, MA, PhD)

Professor Merle Holden (BCom Hons, MA, PhD)

Phatudi Maponya (BProc, LLB, HDip Company Law, LLM)

Christine Qunta (BA, LLB)

Diane Terblanche (BA, LLB, LLM)

Sindi Zilwa (CA(SA), Adv Tax Cert (SA), CFP)



# The Competition Tribunal

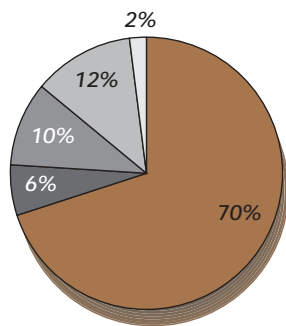
Tribunal members have met three times in the year to review their work and to keep abreast with specific aspects of competition economics and law. A two-day workshop on adjudication held in March 2001 was facilitated by Sir Christopher Bellamy, president of the UK Competition Appeals Tribunal, and Prof Richard Whish, Professor of Law at Kings College, London.

Tribunal members are also kept informed of cases through a quarterly newsletter, The Tribunal Tribune, which carries briefing articles on topical issues.

## 6. Competition Tribunal cases

The Competition Tribunal issued 50 orders in this period, up from 14 for the seven months to 31 March 2000. They were distributed as follows:

Volume of cases per proceeding (Apr 00 – Mar 01)



- Large mergers
- Intermediate merger appeals
- Interim relief
- Complaints
- Other (incl. interlocutories)

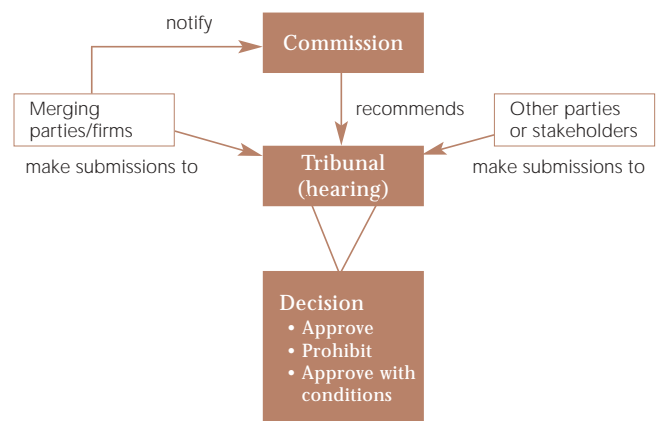
The vast majority of cases were in respect of merger transactions. It is difficult, however, to compare time expended on different types of proceedings, with some requiring greater scrutiny than others. In practical terms, cases differ in terms of volume of documentation, hearing time and writing time. These are generally substantial with complaint and interim relief applications and vary in relation to mergers.

The Tribunal publishes written reasons for all its decisions and provides considerable detail in cases where there are competition concerns. Even where there are no competition concerns, the Tribunal delivers reasons for its decisions in order to maintain an accurate record of the transaction and to promote an understanding of the factors considered in adjudication.

### Large mergers

All large mergers having an effect within the Republic of South Africa have to be approved by the Competition Tribunal. A merger is considered large if the combined turnover or combined assets of target and acquiring firms exceed R3,5 billion; and the assets or turnover of target firm exceeds R100 million.

### Procedure for assessing mergers



# The Competition Tribunal

*Large mergers reviewed between 1 April 2000 and 31 March 2001*

<b>Parties</b>	<b>Date of order</b>	<b>Decision</b>
Santam Limited and Guardian National Insurance	4 Apr 2000	Approved without conditions
Ford Motor Company and SAMCOR	5 Apr 2000	Approved without conditions
P Q Data Trading (Pty) Limited and Alexander Forbes Group (Pty) Limited	5 Apr 2000	Approved without conditions
Anglo American Plc and Silicon Smelters (Pty) Limited	5 Apr 2000	Approved without conditions
Distillers Corporation (SA) Limited and Hygrace Holdings (Pty) Limited	10 Apr 2000	Approved without conditions
Bromor Foods Limited and The Game Sports Drink	14 Apr 2000	Approved with conditions
Harmony Gold Mining Company Limited and Randfontein Estates Limited	14 Apr 2000	Approved without conditions
Pioneer Foods (Pty) Limited and National Brands Limited	19 Apr 2000	Approved without conditions
Anglovaal Mining Limited and De Beers Consolidated Mines Limited	19 Apr 2000	Approved without conditions
Ceramic Industries Limited and Vitro Punched Tile	3 May 2000	Approved without conditions
Aerospatiale Matra Societe Anonyme and Daimlerchrysler Aerospace AG	17 May 2000	Approved without conditions
The Dow Chemical Company and Union Carbide Corporation	17 May 2000	Approved without conditions
Imperial Holdings Limited and The Cold Chain (Pty) Limited	24 May 2000	Approved with conditions
Secotrade 72 (Pty) Limited and Hyundai Motor Distributors (Pty) Limited	1 Jun 2000	Approved without conditions
Naspers Limited and The Education Investment Corporation Limited	13 Jun 2000	Approved with conditions
Imperial Holdings Limited and J H Bachman (Pty) Limited	28 Jun 2000	Approved without conditions
Grayston Property No 005 (Pty) Limited and The Gateway Partnership	28 Jun 2000	Approved without conditions
De Beers Consolidated Mines Limited and Industrial and Commercial Holdings Group Limited	14 Jul 2000	Approved without conditions
Nasmedia Limited and Paarl Post Web Printers (Pty) Limited	26 Jul 2000	Approved without conditions
BP Amoco plc and Burmah Castrol plc	7 Aug 2000	Approved without conditions
The Bidvest Group Limited and I-Fusion Limited	7 Aug 2000	Approved without conditions
Franco-Nevada Mining Corp. Limited and Gold Fields Limited	21 Aug 2000	Approved without conditions
JD Group Limited and Ellerine Holdings Limited	31 Aug 2000	Prohibited
Ford Motor Company and Land Rover Group Limited	6 Sep 2000	Approved without conditions
Investec Group Limited and Frame Group Limited	6 Sep 2000	Approved without conditions
Aveng Limited and LTA Limited	27 Sep 2000	Approved without conditions
TPI Investment (Pty) Limited, Praysa Trade 1062 (Pty) Limited and Telkom SA Limited	2 Oct 2000	Approved with conditions

# The Competition Tribunal

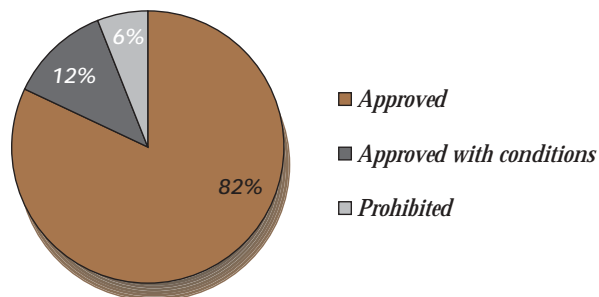
Large mergers reviewed between 1 April 2000 and 31 March 2001 (continued)

Parties	Date of order	Decision
Tongaat – Hulett Group Limited and Transvaal Suiker Beperk	27 Nov 2000	Prohibited
Trident Steel (Pty) Limited and Baldwins Steel	6 Dec 2000	Approved without conditions
Roadway Logistics (Pty) Limited and Roadway Transport Limited	13 Dec 2000	Approved without conditions
Sasol Chemical Industries Limited and Polyfos (Pty) Limited	13 Dec 2000	Approved without conditions
Sasol Chemical Industries Limited and Fedmis Joint Venture	13 Dec 2000	Approved without conditions
The Chase Manhattan Corporation and JP Morgan and Company Incorporated	13 Dec 2000	Approved without conditions
Framatome Societe Anonyme and Siemens Aktiengesellschaft AG	14 Mar 2001	Approved without conditions
Fabvest Investment Holding Limited and National Cereal Holdings	14 Mar 2001	Approved without conditions

## Decisions

In the period under review, the Tribunal decided 35 large mergers. Of these, 29 were approved without conditions, four were approved with conditions and two were prohibited. Two notified matters were withdrawn.

Breakdown of merger decisions



## Turnaround times

In its second year of operation, the Tribunal has continued to process its consideration of large merger transactions efficiently and swiftly.

Of the 35 merger transactions considered, the Tribunal released an order on the same day of the hearing in 24 (72%) of the cases, and in all but two of the remaining instances, an order was released within a week of the hearing.

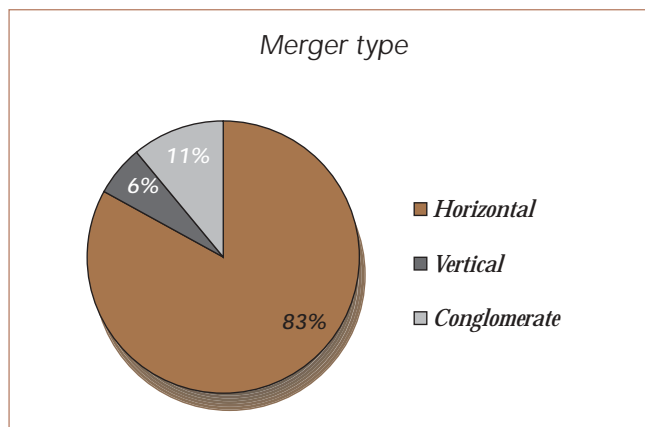
Twenty-one (60%) were set down for hearing within 15 days of the Tribunal receiving a recommendation from the Commission.

## Types of mergers

The Tribunal has considered transactions in varied product markets including consumer goods, chemicals and minerals, services and distribution. The majority comprised horizontal mergers (mergers between competing firms selling the same products or providing the same services), some conglomerate mergers (mergers between firms conducting unrelated business activities) and a small percentage comprised vertical mergers (mergers between firms operating at different stages of production).

# The Competition Tribunal

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## International mergers

Twenty-three percent of the mergers adjudicated during the review period formed part of multinational mergers, which were notified with several competition authorities worldwide. All were approved by the Tribunal.

## Defences

The Competition Act allows parties to justify an otherwise anti-competitive merger with defences specified in the act. Frequently-invoked defences relate to efficiencies arising from the merger transaction and public interest arguments. In reality, there has been a tendency to combine these defences. Specifically, arguments that the merger would result in a “national champion” for a particular industry or sector is often incorporated with an efficiency defence.

None of the mergers considered in this period have been decided solely on public interest grounds. In one landmark decision however, (*Trident Steel (Pty) Ltd and Baldwins Steel*), the Tribunal allowed the efficiency defence to prevail over an otherwise anti-competitive merger – “The efficiencies claimed are so overwhelming, especially in relation to the plant re-organisation that is entailed and the reduction of the scrap rate they suggest, that they will dwarf the anti-competitive effects.”

## Public interest considerations

In addition to its core function to preserve and promote competition and consumer welfare, the Competition Tribunal is obliged to consider the public impact of transactions and how they prejudice the rights of less powerful interest groups. The Tribunal has maintained transparency and flexibility in allowing the participation of trade unions and other interested parties in its proceedings. Public interest concerns have been considered in a number of decisions and featured prominently in the *JD/ElleRines* and *Tongaat-Hulett/TSB* transactions, although they were not in themselves decisive to the outcome in these cases.

In the merger between *JD Group Limited and ElleRines Holding Limited*, the Tribunal’s major concern was consumer interests and their vulnerability vis-à-vis the merging of two large retail groups – “. . . the interests directly affected by this merger are represented by millions of atomised, disorganised individuals incapable of defending their economic interests except to the extent that they are able to exercise a preference for one retail outlet over another . . . the real competition significance of this transaction is to be found in the direct links between the parties and South African consumers.”

In *Naspers Limited/The Education Investment Corporation Limited*, the Tribunal considered the impact of the merger on the education sector and on small business enterprises through onerous franchise agreements – “The potentially pervasive economic and social consequences of monopolistic structures and conduct in the education sector demand that the Tribunal pays particularly close attention to its public interest mandate.” “. . . there is no question that the impact of monopolistic practices in the private education sector will reverberate more powerfully on the economy and society than would similar practices in most other sectors.”

The Tribunal approved this merger in the secondary and higher education sector, but imposed certain remedies designed to ameliorate the potentially negative consequences of the transaction for the public interest.

# The Competition Tribunal

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The merged company was ordered to collaborate with the Department of Education in building capacity in public education and to consult with franchisees if it were to alter the terms of the franchise agreement. The Tribunal also imposed a postponed divestiture remedy – a non-core brand may be divested in two years depending on the outcome of an investigation by the Competition Commission on the competitive impact of the transaction in the relevant markets – “The objective of a divestiture remedy is not punitive but it is rather to ensure the basis for continued competition.”

The Tribunal has in certain instances (*JD/Ellerines and Tongaat/TSB*) employed its inquisitorial powers to allow an expansive scrutiny of particular mergers. It is within the ambit of the Tribunal to demand additional evidence, expert or otherwise, from both merging parties and the Competition Commission. Representation at Tribunal hearings from government departments and policy experts has provided information to contextualise merger transactions within broader public policy objectives and sector regulation.

The Tribunal’s consideration of the proposed merger between *Tongaat-Hulett Group Ltd and Transvaal Suiker Bpk* exposed the tension between excessive regulation and preserving a competitive market. The proposed transaction would have occurred in a highly-regulated sector affected by government policy in a state of flux. In its decision to prohibit this transaction, the Tribunal considered the general tenure of regulatory policy and prospects for a liberalised market – “In evaluating this merger, considerable attention has been given to the interplay between regulation and competition, between regulation in the rest of the world and regulation in South Africa, and between competition in the rest of the world and competition in South Africa . . . the regulatory regime has undoubtedly undermined the extent of competition. In essence, the tariff holds international competition at bay while the equitable proceeds arrangement eliminates the incentive to compete for domestic market share.”

The Tribunal endeavours to ensure that the potential for competition and countervailing factors are

not disregarded. In *Santam/Guardian National*, a merger in the short-term insurance industry, the Tribunal approved the transaction despite the merged entity having high market shares in most short-term insurance products – “The broker’s role as intermediary between the customer and insurer effectively consolidates the buying power of customers and should therefore contribute significantly towards countervailing the potential market power established by moderate to high concentration levels on the supply side of the markets.”

Despite the Tribunal’s due consideration of public interest submissions, it applies a flexible, case-by-case approach to evaluating them. It avoids, for example, taking an overly expansive view on long-term employment effects. Accordingly, a merger which could hypothetically create unemployment in unrelated industries in the distant future, will generally not deter the Tribunal from approving the immediate transaction under its consideration, provided of course the merger would not otherwise prevent or substantially lessen competition. However, the Tribunal will, in appropriate cases, seek undertakings from parties to allay public interest concerns.

In its decision in *TPI Investment (Pty) Ltd, Praysa 1062 (Pty) Ltd and Telkom SA Ltd*, a merger involving a restructuring of state assets by Telkom, the Tribunal acknowledged that the dynamic nature of the telecommunications industry warranted certain guarantees on employment. It included in its order voluntary undertakings from the parties to refrain from retrenching employees as a consequence of the transaction.

## *Intermediate mergers*

The Tribunal’s role in intermediate mergers is to hear appeals on the decisions of the Competition Commission.

Three decisions by the Competition Commission on intermediate mergers were appealed to the Tribunal in the period. In one of these, which was separately appealed by the parties to the merger, the Commission had not taken its decision within the requisite time period, necessitating the Tribunal’s approval of the merger by default.

# The Competition Tribunal

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*Intermediate mergers between 1 April 2000 and 31 March 2001*

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<b>Parties</b>	<b>Date of order</b>	<b>Decision</b>
Santam Limited & Guardian National Insurance	04 Apr 2000	Approved
Food & Allied Workers Union vs Heinz Frozen Foods and Mc Cain Foods	11 April 2001	Approved with conditions
Nasmedia Limited and CT Media Limited vs The Competition Commission	26 May 2000	Approved
Bubble Pac (Pty) Limited vs The Competition Commission	28 Jun 2000	Approved
Sealed Air Africa (Pty) Limited vs The Competition Commission	28 Jun 2000	Approved
Glaxo Wellcome Plc and Smithkline Beecham vs The Competition Commission	28 Jul 2000	Approved with conditions

In another case involving pharmaceutical companies, *Glaxo Wellcome plc* and *Smithkline Beecham*, the Tribunal approved the merger conditional on the merged entity out-licensing the production of drugs in each of the three therapeutic categories where it would have had a significant market share. One of the cases, *Food & Allied Workers Union* versus *Heinz Frozen Foods* and *McCain Foods*, was heard subsequent to year-end.

*Restrictive practices*

### **Complaint referrals**

Any person can lodge a complaint to the Commission about anti-competitive practices prohibited by the

Competition Act. The Commission has one year to investigate such complaints. Investigations may also be initiated by the Competition Commissioner.

On completing its investigation, the Commission will either refer the matter to the Tribunal for adjudication or issue a notice of non-referral if it did not find that a prohibited practice had occurred. Complainants may make direct representation to the Tribunal when the Commission issues a notice of non-referral.

Of the 19 complaint referrals notified to the Tribunal in the period, 11 were referred by the Commission. Of these, six

*A prudent system of checks and balances*



# The Competition Tribunal

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*Complaint referrals in the period between 1 April 2000 and 31 March 2001*

<b>Parties</b>	<b>Date of order</b>	<b>Decision</b>
The Competition Commission vs Seven Eleven Corporation SA (Pty) Limited		Pending
The Competition Commission vs Seven Eleven Africa (Pty) Limited		Pending
Cine Biz (Pty) Limited vs Nu Metro Entertainment (Pty) Limited and Nu Metro Theatres (Pty) Limited		Taken off the roll
South African Recording Rights Association vs Electronic Media Limited		Pending
Botswana Ash (Pty) Limited, Chemsolve Technical Products (Pty) Limited vs American Natural Soda Ash Corporation and Another		Pending
Berry Donaldson (Pty) Limited vs South African Airways (Pty) Limited		Pending
The Competition Commission vs South African Forestry Company Limited		Pending
Avalon Group (Pty) Limited vs Old Mutual Properties		Pending
The Competition Commission vs Federal Mogul Aftermarket SA		Pending
The Perfume Shoppe (Pty) Limited vs The Prestige Group (Pty) Limited		Pending
The Perfume Shoppe (Pty) Limited vs Horton Products (Pty) Limited		Pending
Aero Africa Management (Pty) Limited vs South African National Parks		Pending
The Competition Commission vs South African Airways (Pty) Limited		Pending
The Competition Commission in re Sphinx Acrylic vs Acrylic Products and Plexicor	19 Apr 2000	Consent order
The Competition Commission of SA vs Palabora Mining Company Limited	17 May 2000	Consent order
The Competition Commission vs Skye Products	25 Jan 2001	Consent order
The Competition Commission vs Myal Clothing Industries	25 Jan 2001	Consent order
The Competition Commission vs Nutri-Health Africa (Pty) Limited	25 Jan 2001	Consent order
The Competition Commission vs American Natural Soda Ash and CHG Global (Pty) Limited	27 Mar 2001	Consent order

# The Competition Tribunal

were settled by consent orders and five are pending. Eight complaint referrals were filed by complainants, following a non-referral by the Commission. These are pending.

Consent orders are issued by the Tribunal when the Commission and the respondent agree on the nature of the contravention and the appropriate remedy. The six consent orders agreed in the period related to agreements between parties in a vertical relationship (section 5(1)), minimum resale price maintenance (section 5(2)), engaging in an exclusionary act by a dominant firm (section 8(c)) and price discrimination by a dominant firm (section 9(1)). The respondents' willingness to make

concessions to complainants by way of consent order further illustrates that the prohibited practices defined in the act are well understood and are effective in securing relief for complainants.

## *Interim relief*

Since complaint referrals take some time to investigate, a person is entitled to apply to the Competition Tribunal for interim relief, pending the outcome of the Commission's investigation. The Tribunal will grant interim relief if it is satisfied that the complainant may suffer irreparable harm from the prohibited practice during the period in which the investigation is taking place and having regard to the

## *Intermediate mergers between 1 April 2000 and 31 March 2001*

<b>Transactions</b>	<b>Date of order</b>	<b>Decision</b>
National Association of Pharmaceutical Wholesalers and Others vs Glaxo Wellcome SA (Pty) Limited and Others		Withdrawn
Modisi Moila Family Trust Agency vs Sappi and Mondi		Withdrawn
Paarl Post Web Printers (Pty) Limited vs CTP Holdings and Another		Withdrawn
Sky Envelope & Stationery Manufacturers vs Sappi Fine Papers		Taken off the roll
York Timber Limited vs South African Forestry Company Limited		Withdrawn
Atasca Paper Merchants CC vs Finwood Papers (Pty) Limited and Others		Pending
Nutrifirst Pharmaceuticals (Pty) Limited vs Fresenius Kabi SA (Pty) Limited and Others		Withdrawn
Netnews Bloemfontein (Pty) Limited vs Nasionale Pers Beperk		Withdrawn
New United Pharmaceutical Distributors and Others vs Novartis SA (Pty) Limited and Others		Pending
York Timbers Limited vs South African Forestry Company Limited		Pending
Cine Biz (Pty) Limited vs United International Pictures (SA)	N/A	Taken off the roll
Cine Biz (Pty) Limited vs Nu Metro Entertainment (Pty) Limited	N/A	Taken off the roll
Jakobus P Bezuidenhout vs Patensie Sitrus Beherend Limited	10 July 2000	Interim relief granted
National Association of Pharmaceutical Wholesalers and Others vs Glaxo Wellcome SA (Pty) Limited and Others	29 Aug 2000	Interim relief granted
Papercor CC vs Finwood Papers (Pty) Limited and Others	20 Oct 2000	Application dismissed
Nationwide Airlines (Pty) Limited vs South African Airways (Pty) Limited and Others	21 Dec 2000	Interim relief dismissed with costs
Natal Wholesale Chemists (Pty) Limited vs Astra Pharmaceuticals (Pty) Limited	12 Mar 2001	Interim relief denied

# The Competition Tribunal

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balance of convenience. The life of such interim relief orders is six months after issue (unless the Commission's enquiry is completed before this), extendable on good cause shown for a further six-month period.

During the period, there were 17 applications for interim relief, of which six were withdrawn, three were taken off the roll, two were granted, three were denied and three are pending.

In one of those granted, *Jakobus P Bezuidenhout vs Patensie Sitrus Beherend*, the Tribunal ordered PSB to refrain from enforcing its option to purchase the claimant's citrus crop in accordance with its articles of association. This was the second application for interim relief brought before the Tribunal in which the provisions of the articles of association of a company converted from an agricultural co-operative were alleged to be anti-competitive.

In *National Association of Pharmaceutical Wholesalers and Others vs Glaxo Welcome SA (Pty) Ltd and Others*, the Tribunal granted the relief, ordering the manufacturers to continue to supply their products directly to the wholesalers on the same terms before the formation of a joint exclusive distribution agency. This decision has since been taken on review to the Competition Appeal Court.

Interim relief applications require less stringent proof than would be the case when the final complaint referral is heard. Nevertheless, the act still requires evidence of a prohibited practice and certain applications have failed due to a lack of sufficient evidence.

In *Natal Wholesale Chemists vs Astra Pharmaceuticals*, the wholesalers were unsuccessful in their application, alleging that the exclusive distribution agreements in place between various manufacturers and its distribution company constituted prohibited practices. Unlike the first pharmaceutical case, there were no horizontal agreements concluded between the two manufacturers in this case.

In the *Nationwide vs SAA* case, the applicants failed in their application for interim relief claimed in pursuance

of alleged abusive practices by the dominant carrier. Their claim included allegations of predatory pricing by SAA. The Tribunal was not satisfied with the evidence produced by Nationwide to sustain their allegations.

## 7. Corporate governance

### *The Competition Act*

The Competition Act and the rules of the Competition Tribunal prescribe the functions, activities and procedures of the institution. The act and the rules were amended with effect from 1 February 2001 and procedures in the Tribunal were adjusted accordingly. The Tribunal secretariat periodically reviews its procedures to ensure that its work processes effectively and efficiently comply with the requirements of its prescribed rules. Workshops were held with staff in October 2000, February 2001 and March 2001 to streamline and strengthen procedures in the secretariat.

### *Audit committee*

An audit committee, established in March 2000, met twice this year. The committee is responsible for assisting the executive committee in fulfilling its supervisory responsibilities on internal controls, risk management, compliance with laws, regulations and ethics and financial management. Its functions are outlined in an audit committee charter, which was adopted on 6 December 2001.

### *Executive members*

- David Lewis
- Shan Ramburuth
- Janeen de Klerk

### *Non-executive members*

- Thabo Mosololi – chairperson
- Sakile Masuku
- Peter Modiselle
- Tobie Verwey

### *Internal audits*

The auditing firm, Sithole AB&T, performs the internal auditing function for the Tribunal. In the current financial year, audits were done quarterly:

# The Competition Tribunal

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April 2000 – June 2000 (signed off on 3 October 2000)  
July 2000 – September 2000 (signed off on 15 December 2000)  
October 2000 – December 2000 (received and awaiting management comments)  
January 2001 – February 2001 (awaiting report)

The audit committee adopted an internal audit charter in December 2000.

Internal audits have covered a range of areas identified by management and the internal auditors, including:

- corporate governance and compliance with relevant legislation;
- the efficiency and effectiveness of administrative policies and procedures;
- the reliability and integrity of financial and operating information; and
- the consistency of programmes with established objectives and goals.

The internal audits have verified the credibility of effective management controls in the Tribunal.

## **External audit**

The office of the auditor-general has completed an external audit for the period ending 31 March 2001.

## **Reporting to the Department of Trade and Industry**

The Tribunal submits business plans and budgets to the DTI six months in advance of the following financial year and provides monthly reports on its activities, expenditure and budget variance.

## **Statutory requirements**

The Tribunal has registered and met its obligations on the following levies and taxes:

- Skills Development Levy
- Workmen's Compensation
- Regional Services Council (RSC) Levy
- Establishment Levy
- Unemployment Insurance Fund (UIF)
- Value Added Tax (VAT)
- Pay As You Earn (PAYE)

The Receiver of Revenue exempted the Tribunal from Section 10(1)(a) of the Income Tax Act (1962) in November 2000.

## *Executive committee*

The executive committee of the Tribunal held 14 meetings in the review period. The executive committee provides policy direction on operational decision making and expenditure and receives reports from the chief executive and the head of finance on operational plans and their implementation.

## **Members**

- David Lewis, chairperson
- Marumo Moerane, deputy-chairperson
- Shan Ramburuth, CEO
- Janeen de Klerk, head of finance
- Norman Manoim, full-time Tribunal member

## *Case management committee*

The case management committee assists the chairperson in setting down matters on the Tribunal roll, convening panels and overseeing the administration and logistics for hearings. Meetings are recorded using a case management matrix system, which is designed to track the development and progress of each case. This committee meets weekly.

## **Members**

- David Lewis – chairperson of the Competition Tribunal
- Norman Manoim – full-time member
- Shan Ramburuth – CEO
- Eugene Tsitsi – head of registry
- Lerato Motaung – executive secretary to the chairperson
- Rietsie Badenhorst – case manager
- Thulani Kunene – case manager
- Kim Kappel – case manager

## *Staff meetings*

Staff meetings were held quarterly and have been effectively used to inform and consult staff on matters relating to the structure and functioning of the Tribunal and on human resource issues.

# The Competition Tribunal

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## 8. The staff of the Tribunal secretariat

The staff of the Competition Tribunal provides administrative, research and organisational support to the chairperson and Tribunal members.

### **Chief executive officer/registrar**

Shan Ramburuth

### **Case managers**

Kim Kappel

Rietsie Badenhorst

Thulani Kunene

### **Registry**

Eugene Tsitsi, head of registry

David Tefu, registry clerk

Jerry Ramatlo, court orderly/driver

Tebogo Mputle, receptionist

### **Finance**

Janeen de Klerk, head of finance

Donald Phiri, accounts assistant

### **Executive secretaries**

Lerato Motaung, executive secretary to the chairperson

Ntombi Mothei, executive secretary to the CEO

## 9. Case management

Cases are managed through the case management committee, which tracks the filing of documents and sets down cases for hearing. Case managers liaise with parties and panel members over the substantive aspects of a case, ensuring that relevant information is available. This includes arranging pre-hearings when required. The registry is responsible for document management and the logistics for hearings. The registry also attends to members of the public requesting access to case documents and ensures that confidentiality of documents is respected and maintained.

Case managers provide research support to panels in writing decisions. These include preparing summaries of cases, the acquisition and compilation of academic literature and case law from other jurisdictions and preparing briefing papers on specific topics relevant to



cases. In addition, three research papers were prepared in the period under review.

## 10. Communicating the work of the Tribunal

The Competition Tribunal has an integrated communication programme to educate targeted audiences on the role and function of the Tribunal, to highlight decisions and to stimulate debate on competition policy. This includes making presentations at seminars, participation in conferences and providing information to journalists and others. Tribunal decisions are promptly posted on our website ([www.comptrib.co.za](http://www.comptrib.co.za)). The Tribunal has achieved wide coverage in both the electronic and print media.

# The Competition Tribunal

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## 11. International trends

The Competition Act requires that the Tribunal considers international jurisprudence in its adjudication. Competition law is a rapidly evolving field and the Tribunal has initiated and maintained considerable interaction with international experts and institutions to keep abreast of developments.

There is an active debate internationally on the impact of globalisation and the enforcement of competition law. The Tribunal has engaged with the Department of Trade and Industry and the World Trade Organisation in formulating a South African response to these issues. The chairperson of the Tribunal participates in the steering committee of the Global Competition Initiative, which is attempting to formalise and strengthen international cooperation in competition law enforcement. The plenary group includes representation from Mexico, Zambia, the European Union and the United States.

Tribunal members and staff have attended eight international conferences and presented papers at four of these.

The Tribunal has also actively contributed to international debates and has raised the profile of the South African competition regime by co-hosting an annual competition conference with the Competition Commission. The South African competition conference focuses on the role of competition authorities in developing countries and has become a respected event in the international agenda of anti-trust conferences. Two conferences were held in the period: *Regulation and competition* in April 2000 and *The impact of globalisation and new technology on competition* in March 2001. Both were addressed by leading international and local experts, with wide attendance and participation from practitioners, sector regulators, parliamentarians, policy makers, SADC competition officials, trade unions and others.

Frederick Jenny (Chairperson of the WTO – Working Group on Trade and Competition Policy), presented the keynote address at the 2001 conference. The conference was opened by Alec Erwin (Minister of Trade and Industry) with David Lewis of the Competition Tribunal seated next to him.



# The Competition Tribunal

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## 12. Training and human resource development

### *Employment equity*

The Tribunal took into account employment equity in recruiting staff and this is reflected in the racial and gender distribution. We have complied with the requirements of the Employment Equity Act and timeously submitted our employment equity plan to the Department of Labour on 1 December 2000.

### *Staff composition*

The Tribunal secretariat consists of 12 staff – six are female, eight are black, one is Asian and three are white. Fifty percent have a bachelor's degree or higher.

### *Training and human resource development*

The Tribunal is committed to cultivating a culture of learning throughout the organisation by providing employees with opportunities for development and further education in line with our objectives.

Some 88,90 working days have been spent in training during the current financial year. In terms of salary cost, this amounts to R195 863 (ie an average of 6,35 training days per person at an average cost of R2 203 per day). Training and development comprises both in-house training and external courses, workshops and conferences locally and internationally.

In addition, a bursary scheme assists employees to obtain further tertiary qualifications. Study loans cover tuition and examination fees up to R4 000 per annum per employee. Study loans are converted to bursaries on the employee successfully completing a course. During the current financial year, eight staff members received study loans totalling R27 650. Some 80% of these loans were allocated towards university degrees.

## 13. Financial management

The budget for the 12-month period ending 31 March 2001 reflected expenditure (inclusive of capital expenditure) of R9,08 million and estimated income (generated from fees and interest) of R7,05 million.

Income for the year amounted to R10,28 million and was distributed as follows:

Category	Amount Rm	Percentage 2001	Percentage 2000
Government grants	0	0	47,88
Donor funds	0,25	2,46	0
Filing fees	9,20	89,50	49,79
Other income	0,83	8,04	2,33
<b>Total income</b>	<b>10,28</b>	<b>100</b>	<b>100</b>

Total expenditure (including capital expenditure) for the period was R6,3 million.

Category	Percentage 2001	Percentage 2000
Capital	0,52	25,83
Personnel and admin	79,68	59,39
Recruitment and training	9,69	6,26
Professional services	10,11	8,52
<b>Total expenditure</b>	<b>100</b>	<b>100</b>

Capital expenditure decreased dramatically as most of these were incurred in set-up costs in the previous year.

Professional service expenditure includes payments to the commission (in terms of the MOU), hearing transcription services, legal fees and media and finance-related consulting services.

Recruitment and training expenditure includes costs associated with co-hosting the second annual competition conference.

The variance in expenditure may in the main be attributed to a lower volume of cases (and therefore associated costs) than predicted.









# The Competition Tribunal

## 2001 score card

Objective as per business plan	Target and result	Progress
		0% <span style="float: right;">100%</span>
<b>Registry</b>		
Document management system	Filing system implemented; confidentiality maintained; documents timeously distributed to relevant parties	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>
Case management system	Time-frames in act adhered to; CMC meets weekly, effective communication with all parties; meetings and hearings set down	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>
Logistics	Hearings efficiently scheduled	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>
<b>Research</b>		
Case research	Research conducted for panels as required	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>
Newsletter	Four out of six planned newsletters produced	<div style="width: 66%; height: 15px; background-color: #8B4513;"></div>
Briefing papers	Three out of eight planned briefing papers produced	<div style="width: 37.5%; height: 15px; background-color: #8B4513;"></div>
Resource centre and source book	Material acquired; resource centre set up	<div style="width: 87.5%; height: 15px; background-color: #8B4513;"></div>
Annual conference	Conference held in April 2000 and March 2001	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>
<b>Operations</b>		
Policies and systems	Risk evaluation undertaken; policies and procedures reviewed at staff meetings	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>
Asset management	Policy approved, register updated monthly, physical assets inspected quarterly	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>
Human resource manual	Human resource policies agreed and manual compiled	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>
Performance management system	System agreed and implemented	<div style="width: 100%; height: 15px; background-color: #8B4513;"></div>



# The Competition Tribunal

Objective as per business plan	Target and result	Progress
		0% <span style="float: right;">100%</span>
<b>Operations (continued)</b>		
Training	Training identified and implemented; conferences attended	
Tribunal member meetings and training	Three out of four planned meetings/workshops held	
Code of ethics	Completed for staff but not Tribunal members	
Communication, media liaison and website	Fair media coverage on decisions; decisions publically available on website; average of 400 hits per month	
<b>Finance</b>		
Financial management	Budgets compiled and reviewed; monthly reporting; internal and external audits completed	
Asset management	Asset register maintained and labelling process initiated	
Compliance with legislation and regulation	Statutory payments made; employment equity plan finalised; adherence to PFMA monitored regularly	
Payroll and HR records	Records maintained and updated; compliance with legislation	

*Result – Competition Tribunal was rated joint fourth out of 24 in a survey of major international competition regulators by Global Competition Review, ahead of long-established heavyweights such as the UK Competition Commission and US Federal Trade Commission.*

# Balance sheet

at 31 March 2001

	Notes	2001 R	2000 R
<b>Assets</b>			
<b>Non-current assets</b>			
Property, plant and equipment	2	<b>839 800</b>	1 009 107
<i>Current assets</i>			
Inventory	3	<b>12 686</b>	11 032
Trade and other receivables		<b>242 457</b>	6 163 764
Cash and cash equivalent		<b>11 113 063</b>	3 600 725
<b>Total assets</b>		<b>12 208 006</b>	10 784 628
<b>Equity and liabilities</b>			
<i>Capital and reserves</i>			
Accumulated funds		<b>11 228 854</b>	7 260 057
<i>Current liabilities</i>			
Trade and other payables		<b>979 152</b>	3 524 571
<b>Total equity and liabilities</b>		<b>12 208 006</b>	10 784 628

# Income statement

for the year ended 31 March 2001

	Notes	2001 R	2000 R
Revenue		<b>9 202 092</b>	5 199 818
Other income	4	<b>1 079 414</b>	5 243 369
<b>Operating costs</b>	10	<b>(6 312 709)</b>	(3 183 130)
<b>Accumulated funds for the year</b>		<b>3 968 797</b>	7 260 057

# Statement of changes in equity

for the year ended 31 March 2001

	Accumulated funds
	2001 R
Balance as at 1 April 1999	-
Surplus for the year	<b>7 260 057</b>
Balance as at 31 March 2000	<b>7 260 057</b>
Surplus for the year	<b>3 968 797</b>
Balance at 31 March 2001	<b>11 228 854</b>

# Cash flow statement

for the year ended 31 March 2001

	Notes	2001 R	2000 R
Cash flows from operating activities		<b>7 545 093</b>	4 709 050
Cash receipts from customers		<b>15 376 359</b>	4 264 686
Cash paid to suppliers and employees		<b>(8 652 917)</b>	203 627
Cash generated by operations	8	<b>6 723 442</b>	4 468 313
Interest paid		<b>(4 803)</b>	
Interest received		<b>826 454</b>	240 737
Cash flows from investing activities		<b>(32 755)</b>	(1 108 325)
Investment to expand operations			
Property, plant and equipment – acquired		<b>(32 755)</b>	(1 108 325)
<b><i>Increase in cash and cash equivalents</i></b>		<b>7 512 338</b>	3 600 725
<b><i>Cash and cash equivalents at beginning of year</i></b>		<b>3 600 725</b>	-
<b><i>Cash and cash equivalents at end of the year</i></b>	9	<b>11 113 063</b>	3 600 725

# Notes to the annual financial statements

for the year ended 31 March 2001

## 1. Accounting policies

The financial statements are prepared on the historical cost basis and incorporate the following principal accounting policies, which are consistent with those of the previous year.

These financial statements comply with generally accepted accounting practice.

### 1.1 Property, plant and equipment

Assets costing less than R2 000 are written off in the year of acquisition.

Property, plant and equipment are stated at historical cost less depreciation. Depreciation is calculated on the straight-line method at rates considered appropriate to reduce the cost of the assets over their estimated useful lives.

The depreciation rates are as follows:

Computer equipment	– 3 years
Furniture and fittings	– 6 years
Leasehold improvements	– 12 years
Motor vehicles	– 5 years
Office equipment	– 6 years

### 1.2 Pension and other post-retirement benefits

Contributions to the defined contribution plan are charged to the income statement in the year in which they relate.

No shortfalls have been charged against income for the period under review.

### 1.3 Inventory

Inventory is valued at the lower of cost, determined on a first-in first-out basis, and net realisable value.

### 1.4 Leased assets

Leases under which the lessor effectively retains the risks and benefits of ownership are classified as operating leases. Obligations incurred under operating leases are charged to the income statement in equal instalments over the period of the lease, except when an alternative method is more representative of the time pattern from which benefits are derived.

### 1.5 Cash and cash equivalents

This figure includes monies held in call accounts as well as cash in the bank, cash on hand and money held in fixed deposit.

### 1.6 Revenue

Revenue comprises of fees receivable for the year excluding value-added tax.

# Notes to the annual financial statements

for the year ended 31 March 2001

	2001 R	2000 R
2. Fixed assets		
<i>Computer equipment</i>	<b>121 216</b>	200 833
Carrying amount at beginning of year	<b>200 833</b>	–
Cost	<b>238 876</b>	–
Accumulated depreciation	<b>(38 043)</b>	–
Additions	–	238 876
Depreciation	<b>(79 617)</b>	(38 043)
Carrying amount at end of year	<b>121 216</b>	200 833
Cost	<b>238 876</b>	238 876
Accumulated depreciation	<b>(117 660)</b>	(38 043)
<i>Furniture and equipment</i>	<b>214 465</b>	260 583
Carrying amount at beginning of year	<b>260 583</b>	–
Cost	<b>288 525</b>	–
Accumulated depreciation	<b>(27 942)</b>	–
Additions	<b>12 720</b>	288 525
Depreciation	<b>(58 838)</b>	(27 942)
Carrying amount at end of year	<b>214 465</b>	260 583
Cost	<b>301 245</b>	288 525
Accumulated depreciation	<b>(86 780)</b>	(27 942)
Carried forward	<b>335 681</b>	461 416

# Notes to the annual financial statements

for the year ended 31 March 2001

	2001 R	2000 R
2. Fixed assets (continued)		
Brought forward	<b>335 681</b>	461 416
<i>Leasehold improvements</i>	<b>420 806</b>	440 713
Carrying amount at beginning of year	<b>440 713</b>	-
Cost	<b>462 603</b>	-
Accumulated depreciation	<b>(21 890)</b>	-
Additions	<b>20 035</b>	462 603
Depreciation	<b>(39 942)</b>	(21 890)
Carrying amount at end of year	<b>420 806</b>	440 713
Cost	<b>482 638</b>	462 603
Accumulated depreciation	<b>(61 832)</b>	(21 890)
<i>Motor vehicles</i>	<b>74 645</b>	95 972
Carrying amount at beginning of year	<b>95 972</b>	-
Cost	<b>106 635</b>	-
Accumulated depreciation	<b>(10 663)</b>	-
Addition	-	106 635
Depreciation	<b>(21 327)</b>	(10 663)
Carrying amount at end of year	<b>74 645</b>	95 972
Cost	<b>106 635</b>	106 635
Accumulated depreciation	<b>(31 990)</b>	(10 663)
Carried forward	<b>831 132</b>	998 101

# Notes to the annual financial statements

for the year ended 31 March 2001

	2001 R	2000 R
2. Fixed assets (continued)		
Brought forward	<b>831 132</b>	998 101
Office equipment	<b>8 668</b>	11 006
Carrying amount at beginning of year	<b>11 006</b>	-
Cost	<b>11 686</b>	-
Accumulated depreciation	<b>(680)</b>	-
Additions	-	11 686
Depreciation	<b>(2 338)</b>	(680)
Carrying amount at end of year	<b>8 668</b>	11 006
Cost	<b>11 686</b>	11 686
Accumulated depreciation	<b>(3 018)</b>	(680)
	<b>839 800</b>	1 009 107
3. Inventory		
Inventory comprises:		
Consumables	<b>12 686</b>	11 032
4. Other income		
Government grants received	-	5 000 000
Interest received	<b>826 454</b>	240 737
Other	<b>252 960</b>	2 632
	<b>1 079 414</b>	5 243 369

Government grants relate to monetary assistance received from the Department of Trade and Industry.

# Notes to the annual financial statements

for the year ended 31 March 2001

	2001 R	2000 R
5. Operating profit before interest		
Operating profit before interest is stated after taking into account the following:		
<i>Expenditure</i>		
Auditors' remuneration	<b>72 500</b>	44 440
– Audit	<b>64 588</b>	44 440
– Underprovision previous year	<b>7 912</b>	–
Depreciation of fixed assets	<b>202 062</b>	99 218
– computer equipment	<b>79 617</b>	38 043
– furniture and equipment	<b>58 838</b>	27 942
– leasehold improvements	<b>39 942</b>	21 890
– motor vehicles	<b>21 327</b>	10 663
– office equipment	<b>2 338</b>	680
Operating leases	<b>488 480</b>	291 550
Premises	<b>419 148</b>	277 624
Hearing rooms	<b>18 720</b>	6 630
Equipment	<b>50 612</b>	7 296
Retirement benefit costs		
– defined contribution plan	<b>201 358</b>	83 009
Administration fees	<b>24 375</b>	10 651
Contributions	<b>169 413</b>	72 358
Board of Trustees expenses	<b>7 570</b>	–

## 6. Operating lease commitments

The Competition Tribunal is renting premises from the Competition Commission. Rentals are charged against income as and when incurred. The remaining period of the lease is 11 years.

The Competition Tribunal is leasing a photocopier for a period of three years from 1 April 2001. The lease agreement is renewable at the end of the lease term and the Tribunal does not have an option to acquire the equipment.

The Competition Tribunal is leasing a fax machine for a period of five years from 1 September 1999. The lease agreement is renewable at the end of the lease term and the Tribunal does not have an option to acquire the equipment.



# Notes to the annual financial statements

for the year ended 31 March 2001

	2001 R	2000 R
6. Operating lease commitments (continued)		
<i>Commitments for the next 12 months:</i>	<b>466 940</b>	425 029
– Land and buildings	<b>416 569</b>	375 288
– Property, plant and equipment	<b>50 371</b>	49 741
<i>Commitments for less than five years:</i>	<b>2 238 042</b>	2 072 601
– Land and buildings	<b>2 177 741</b>	1 961 929
– Property, plant and equipment	<b>60 301</b>	110 672
<i>Commitments for later than five years:</i>		
– Land and buildings	<b>4 834 687</b>	5 467 068
	<b>7 539 669</b>	7 964 698
7. Pension fund		
The Competition Tribunal Pension Fund, which is governed by the Pension Funds Act of 1956, is a defined contribution plan for all employees. The first statutory actuarial valuation report is only due on 1 June 2002 due to the fact that the fund was only established on 1 June 1999.		
8. Reconciliation of profit before taxation to cash generated from operations		
Profit before taxation	<b>3 968 797</b>	7 260 057
Adjustments for:		
Interest paid	<b>4 803</b>	–
Depreciation	<b>202 062</b>	99 218
Investment income	<b>(826 454)</b>	(240 737)
Operating profit before working capital changes	<b>3 349 208</b>	7 118 538
<i>Working capital changes</i>	<b>3 374 234</b>	(2 650 225)
Increase in inventory	<b>(1 654)</b>	(11 032)
Decrease/(increase) in trade and other receivables	<b>5 921 307</b>	(6 163 764)
(Decrease)/increase in trade and other payables	<b>(2 545 419)</b>	3 524 571
Cash generated from operations	<b>6 723 442</b>	4 468 313

# Notes to the annual financial statements

for the year ended 31 March 2001

	2001 R	2000 R
9. <b>Cash and cash equivalents</b>		
Cash and cash equivalents consist of cash on hand and balance with banks, and investments in call accounts and fixed deposits.		
Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:		
Bank	<b>1 105 758</b>	115 407
Cash on hand	<b>595</b>	114
Investments	<b>10 006 710</b>	3 485 204
	<b>11 113 063</b>	3 600 725
10. <b>Comparative figures</b>		
The previous year's figures only represent seven months of business activities of the Competition Tribunal and this fact should be taken into account with performance comparison of financial information.		

# Schedule to the annual financial statements

for the year ended 31 March 2001

	2001 R	2000 R
<b>Operating costs</b>		
Audit fees – external	<b>72 500</b>	44 440
Audit fees – internal	<b>67 054</b>	–
Audit – sundry expenses	<b>2 534</b>	–
Bank charges	<b>6 637</b>	3 468
Catering management fee	<b>24 408</b>	14 238
Competition Commission – shared services	<b>145 599</b>	113 802
Computer, software licences	<b>5 690</b>	82 582
Conferences and seminars	<b>462 966</b>	105 112
Courier and delivery costs	<b>20 187</b>	16 254
Depreciation	<b>202 062</b>	99 218
Electricity, rates and taxes	<b>50 250</b>	–
Equipment hire	<b>50 612</b>	7 296
Establishment levy	<b>22 316</b>	–
Gifts	<b>4 521</b>	1 431
Insurance	<b>60 011</b>	8 869
Interest paid	<b>4 803</b>	–
IT service provider	<b>31 570</b>	–
Media expenses	<b>17 177</b>	27 589
Minor office equipment	<b>1 739</b>	6 151
Motor vehicle expenses	<b>12 346</b>	3 776
Motor, travelling and entertainment	<b>199 643</b>	143 976
Printing, stationery and postage	<b>119 284</b>	37 965
Professional services	<b>336 862</b>	180 014
Publications, books and subscriptions	<b>63 599</b>	3 960
Recruitment and training costs	<b>151 897</b>	163 485
Rent paid	<b>437 868</b>	284 254
Repairs, maintenance and cleaning	<b>73 147</b>	24 093
Salaries	<b>3 539 413</b>	1 745 054
Security	<b>31 950</b>	13 845
Signage	–	14 362
Telephone and telex	<b>94 064</b>	37 896
	<b>6 312 709</b>	3 183 130



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