



**COMPETITION TRIBUNAL**

*South Africa*

**ANNUAL REPORT  
2003/2004**



**competitiontribunal**  
*south africa*

## CONTENTS:

Report of the Auditor-General	2
Chairperson's report	3
Members of the Tribunal	7
Corporate Governance	9
Training and Human Resource Development	11
Financial Management	12
Communicating the work of the Tribunal	13
Performance indicators	14
Cases before the Competition Tribunal	15
The Competition Appeal Court	36
Annual Financial Statements	38
Report of the Audit Committee	49

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*Cover picture taken by Reg Caldecott*

## HIGHLIGHTS

- 60 large merger transactions decided
- Average set down time for large mergers was within 9 days of receiving case
- 82% of large merger decisions were released on the day of the hearing, while 15% of large merger decisions were released within 10 days
- The Tribunal actively participates in the work of the OECD global forum on competition law policy
- Chairperson David Lewis continues to serve as vice-Chairperson of the International Competition Network, a body established to address practical competition enforcement and policy issues.

## WHAT WE DO

The Competition Tribunal regulates mergers and adjudicates 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



# REPORT OF THE AUDITOR-GENERAL



AUDITOR-GENERAL

## REPORT OF THE AUDITOR- GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE COMPETITION TRIBUNAL FOR THE YEAR ENDED 31 MARCH 2004

### 1. AUDIT ASSIGNMENT

The financial statements as set out on pages 3 to 6 and 38 to 47, for the year ended 31 March 2004, 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). 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, based on the audit.

### 2. NATURE AND SCOPE

The audit was conducted in accordance with Statements of South African Auditing Standards. Those standards require that I plan and perform the audit 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.

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.

### 3. AUDIT OPINION

In my opinion, the financial statements fairly present, in all material respects, the financial position of the Competition Tribunal at 31 March 2004 and the results of its operations and cash flows for the year then ended, in accordance with generally accepted accounting practice and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

### 4. APPRECIATION

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

**Y M Essack**  
**for: Auditor-General**

**Pretoria**  
**07 July 2004**

# CHAIRPERSON'S REPORT

FOR THE YEAR ENDED 31ST MARCH 2004

I have pleasure in presenting the fifth annual report, which forms part of the audited financial statements of the Tribunal for the period ending 31st March 2004.

The Tribunal has, as at 31st March 2004, been in existence for four and a half years. The Competition Authorities were set up de nova in September 1999 and began operations in the absence of jurisprudence and precedence. During this period a solid institution has been established, one that is efficiently managed and which enjoys credibility amongst the range of stakeholders that are affected by its decisions. A credible body of South African jurisprudence on competition issues has evolved from the decisions of the Tribunal. Our decisions continue to receive widespread media attention.

The Tribunal has remained active in international bodies such as the International Competition Network (ICN) where I continue to serve as a vice-Chairman. Tribunal personnel have been active in most of the working groups of the ICN, including the various merger-working groups as well as in those groups directed at enhancing the capacity of developing country competition authorities. I have also participated actively in the work of the OECD's global forum on competition law and policy.

**DAVID LEWIS**  
CHAIRPERSON



The 10-year review of government performance noted that the competition authorities appeared to be focused on merger review while tackling too few cases of anti-competitive conduct. It is, however, not unusual, even in the mature competition jurisdictions, for cases of anti-competitive conduct to take many years to be brought to the adjudicative stage and South Africa is clearly no exception in this regard. Indeed, as we reach the end of our first five years of existence we are seeing a notable upsurge in the number of restrictive practices complaints referred to the Tribunal.

The terms of office of seven of the serving Tribunal members expire during the course of the next financial year. I would like to take this opportunity to thank my deputy Chairperson, Marumo Moerane, and the other Tribunal members for their contribution and commitment during their term of office. Those individuals who will be newly appointed and reappointed to serve the Tribunal for the next five years are assured of a busy and challenging term of office.

I would also like to extend my gratitude to the staff of the Tribunal whose dedicated service has provided the South African public with an institution of which it may feel justifiably proud.

## 1. STATEMENT OF RESPONSIBILITY

The accounting authority is responsible for the preparation, integrity and fair presentation of the financial statements of The Competition Tribunal of South Africa for year ended 31st March 2004. The financial statements presented on pages 38 to 48 have been prepared in accordance with generally accepted accounting practice 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 accounting authority is of the opinion that the Tribunal will continue as a going concern in the foreseeable future.

The Office of the Auditor General has audited the financial statements. The auditors were given

unrestricted access to all financial records and related data, including minutes of all meetings of the Executive Committee, staff and the case management committee. The accounting authority believes that all representations made to the auditors during their audit are valid and appropriate.

The audit report of the Office of the Auditor General is presented on page 2.

The financial statements were approved and signed by the accounting authority on 31st May 2004.

## 2. NATURE OF BUSINESS

The Competition Tribunal has jurisdiction throughout South Africa and adjudicates competition matters in accordance with the Competition Act (Act 89 of 1998). The Tribunal is subject to the constitution and the law and acts independently. When a matter is referred to it the Tribunal may:

- grant an exemption from a relevant provision of the Act
- authorize a merger, with or without conditions, or prohibit a merger
- adjudicate in relation to any conduct prohibited in terms of the Act by determining whether prohibited conduct has occurred, and if so, impose a remedy provided for in the Act
- grant an order for costs.

The Competition Tribunal is listed in terms of the Public Finance Management Act, 1999 as a National Public Entity effective from 1st April 2001.

## 3. OBJECTIVES AND TARGETS

The Competition Act (1998) defines the role and core activities of the Competition Tribunal and the Rules of the Competition Tribunal outline the procedures applicable when dealing with matters brought before the Tribunal. As a court of first instance the Tribunal is limited in its ability to proactively set objectives and targets or accurately predict the number and types of anticipated cases. The Tribunal's workload is driven by the cases brought to it in terms of the Act. As a result the institution is limited in its ability to proactively set objectives and targets or

to accurately predict the number and types of anticipated cases.

### 3.1 Financial Results

	2004 R	2003 R
Total Income	5 919 466	6 577 733
Total Expenditure	(8 885 934)	(7 326 131)
Operating loss for the year	(2 966 468)	(748 398)

	2004 R	2003 R
Total Assets	7 245 491	10 225 837
Total Liabilities	398 785	412 663

### 3.2 Financial Performance

Income for the year ending 31st March 2004 decreased by 10.01%. This decrease is primarily explained by a decrease in the filing fees received from the Competition Commission (6.02% decrease) and a decrease in other income (primarily interest) of 31.17%. Filing fees continue to constitute the larger portion of the Tribunal's annual revenue (87.89%).

In terms of a memorandum of agreement signed between the Tribunal and the Commission, the Tribunal receives 30% of the filing fees received by the Commission for larger mergers and 5% of the filing fees received for intermediate mergers.

Total expenditure (net of capital expenditure) for the period under review increased by 21.29%.

The distribution of expenditure (net of capital expenditure) within the Tribunal for the year under review is illustrated in the table below:

Category	Percentage
Donor funds returned	3.47
Salaries	54.52
Administrative expenses	13.63
Training	7.86
Professional fees	20.52

An analysis of the increase in the following main categories of expenditure compared to the previous year is tabled below:

Category	Percentage
Salaries	23.99
Administrative expenses	19.83
Training	7.93
Professional fees	3.56

A number of factors led to the increase in salaries:

- i) the job grading increases suggested by Deloitte and Touché (following a job grading exercise in the previous financial year) were implemented in April 2003
- ii) 2 new employees were employed as junior researchers as from June 2003
- iii) remuneration paid to part-time Tribunal members as a percentage of the salary bill increased from 10.11% to 15.93%. This is a result of a 25% increase in the average time spent on each hearing (2.17 days per hearing in the current year as opposed to 2.05 days per hearing in the previous year) as well as the fact that this was the first year in which the approved rate of R4 000 per day was applied for the whole financial year.

The increase in administrative expenses has occurred primarily as a result of increased activity. The total number of cases heard by the Tribunal increased (from 77 in the previous year to 89 this year) and this in turn resulted in increased administrative expenses.

#### 4. EVENTS SUBSEQUENT TO BALANCE SHEET DATE

No material events requiring disclosure took place between the balance sheet date and the date the financial statements were signed.

#### 5. REMUNERATION

The table below shows total remuneration received by the Chairperson and the CEO for the period ending 31st March 2004.

	2004	2003
Chairperson - D Lewis	663 254	615 661
CEO - S Ramburuth	523 250	440 146

The Tribunal is responsible for the employees' contribution to group life as well as the administration costs associated with the pension

fund. These figures are not included in the total remuneration given above but performance bonuses paid to the CEO and any back pay received by the Chairperson and the CEO is included. The remuneration of the CEO was increased in April 2003 following a job grading assessment completed by Deloitte and Touché in the previous financial year.

#### 6. PROPERTY, PLANT AND EQUIPMENT

There has been no change in the policy relating to the use of plant and equipment. Leasehold improvements were previously written off over a period of 5.5 years due to the anticipated relocation of the Tribunal to the dti campus in Sunnyside. As the relocation is occurring sooner than we originally anticipated the leasehold improvements are now being written off over a period of 4.75 years.

#### 7. MATERIALITY FRAMEWORK

The Competition Tribunal for the period 1st April 2003 - 31st March 2004 determined a planning materiality figure of R150 000.00. The nature of the Tribunal's business is such that it is not capital intensive and revenue was regarded as the best indicator of business activity. 1% of budgeted revenue was used in determining the materiality figure.

Material facts of a quantitative nature need to be disclosed and would refer to any fact discovered that exceeds the materiality figure of R150 000.00 Facts of a qualitative nature would need to be disclosed if:

- i) the disclosure is required by law
- ii) the fact could influence the decisions of the executive authority or legislature

Material losses of a quantitative nature are to be referred to in the Annual Report and Financial Statements if:

- i) they arose through criminal conduct
- ii) they arose through irregular/fruitless/wasteful expenditure

Any material loss of a qualitative nature arising through criminal conduct is to be disclosed.

A disposal of a significant asset will be disclosed if it increases or decreases the operational

functions of the Tribunal outside of the approved strategic plan.

## 8. EXECUTIVE COMMITTEE

The composition of the Executive Committee has remained unchanged over the period under review.

### Members

- David Lewis, Chairperson
- Marumo Moerane, deputy-Chairperson
- Shan Ramburuth, CEO
- Janeen de Klerk, Head of Finance
- Norman Manoim, full-time Tribunal member

The Executive Committee meets regularly and is responsible for developing and formulating the strategic policy and objectives for the Tribunal's operational management and administration. The Executive Committee provides direction, prepares and reviews business plans and budgets, makes expenditure decisions, receives reports from the Chief Executive Officer and the Head of Finance and makes decisions with respect to staffing issues. This committee meets once every month.

## 9. FRUITLESS AND WASTEFUL EXPENDITURE

An amount of R20 417 was paid as penalties and interest. R7 118 of this was in respect of the late submission of VAT returns, R109 was interest on overdue RSC and establishment levies paid to Tswane Metro Council, and R13 910 was in respect of late submission of PAYE returns.

The Tribunal requested a waiver of the VAT penalties on the grounds that the late payment was an oversight and primarily due to administrative measures. The Tribunal, as a public body, has no private incentive to deprive the fiscus of its tax receipts. The South African Revenue Service refused the request and to date, despite numerous requests, we have not received detailed reasons as to why the waiver was refused.

An internal investigation took place in the Tribunal and as the late submission was not wilful, no action was taken against the individuals concerned.

The Tribunal has put into place systems and processes to ensure that this does not happen again.

## 10. IRREGULAR EXPENDITURE

As at 31st March 2004 there has been no irregular expenditure in the Tribunal.

## 11. MANAGEMENT FEE PAID TO THE COMPETITION COMMISSION

The Competition Commission and the Competition Tribunal share premises in Glenfield Office Park. The Commission is the signatory to contracts with service providers and to the lease agreement for the building. In terms of a memorandum of agreement signed between the two institutions the Tribunal makes use of some services contracted by the Commission and the Commission bills the Tribunal for these particular services.

The management fee for the period under review was R90 000.00 per month. This fee is reviewed annually.

No change has occurred in the nature of billing from the Commission for the financial year under review.

## 12. OFFICE ADDRESS

The Competition Tribunal's registered offices are situated at:

The dti Campus  
3rd Floor, Mulayo Building  
77 Meintjies Street  
Sunnyside  
Pretoria

With the postal address being:

Private Bag X28  
Lynwood Ridge  
0040  
Pretoria



David Lewis  
Chairperson



# MEMBERS OF THE TRIBUNAL

## THE COMPETITION TRIBUNAL'S MEMBERS

In April 2003 the President appointed 3 new members to the Tribunal (to replace members who had resigned in December 2001 and August 2002). The Tribunal therefore consisted of the Chairperson and nine other members during the period under review. These members, all in terms of the Competition Act, are appointed by the President and serve a 5-year period.

Two of the members (including the Chairperson) are full-time executive members and the remaining eight (including the deputy Chairperson) are part-time non-executive members.

As specified by the Competition Act each member is a citizen of South Africa and all members have suitable qualifications and experience in economics, law, commerce, industry or public affairs. Three of the current Tribunal members are economists and seven have a legal background.

Adjudicative panels comprising three tribunal members are appointed by the Chairperson for each hearing brought before the Competition Tribunal.

### Training of Tribunal members

Tribunal members have continued to attend a variety of local and international meetings. These meetings provide members with an opportunity to share experiences with their peers.

Two internal meetings were held in the period under review. Through these meetings members

are able to review the work of the Tribunal and to keep up to date with aspects of competition economics and law.

The "Competition Adjudicators Seminar" was held in September 2003. This seminar, attended by Tribunal members, case managers and Competition Appeal Court judges, was addressed by Prof Richard Whish from Kings College in London and Prof Sean Ennis from the OECD. Topics covered in this seminar included competition issues in health care, abuse of dominance and remedies.

The Tribunal has remained active in most of the working groups of International Competition Network (ICN) and has participated actively in the work of the OECD's global forum on competition law and policy. Two Tribunal members attended the 2<sup>nd</sup> annual ICN conference in Mexico in June 2003.

We have continued to encourage the interaction of Tribunal members with our international counterparts through their attendance at the following international conferences/seminars:

- Fordham AntiTrust Conference held in October 2003 in New York (2 members attended)
- Unctad Judges Seminar in Lusaka in May 2003
- International Cartel Conference in Bonn in May 2003
- International Network of Civil Society Organisations on Competition (INCSOC) Conference in Geneva in January 2004
- OECD Joint Global Forum on Trade and Competition in Paris in May 2003
- OECD Global Forum on Competition in Paris in February 2004

### Members of the Competition Tribunal

Member	Role	Qualification	Term expires
David Lewis	Chairperson	BCom, MA	August 2004
Adv Marumo Moerane	Deputy Chairperson	BSc, BCom, LLB	August 2004
Norman Manoim	Full-time member	BA, LLB	August 2004
Urmila Bhoola	Part-time member	BA Hons, LLB, LLm	August 2004
Frederick Fourie	Part-time member	BA Hons, MA, PhD	August 2004
Merle Holden	Part-time member	BCom, Hons, MA, PhD	August 2004
Phatudi Maponya	Part-time member	BProc, LLB, H Dip Company Law, LLM	August 2004
Adv Mbuyiseli Madlanga	Part-time member	BJuris, LLB, LLM	March 2008
Thandi Orleyn	Part-time member	BJuris, BProc, LLB, Honorary PhD	March 2008
Lawrence Reyburn	Part-time member	BSc, LLB	March 2008

## THE TRIBUNAL MEMBERS



David Lewis  
Chairperson



Adv Marumo Moerane  
Deputy Chairperson



Norman Manoim  
Full-time member



Urmila Bhoola  
Part-time member



Frederick Fourie  
Part-time member



Merle Holden  
Part-time member



Phatudi Maponya  
Part-time member



Adv Mbuyiseli  
Madlanga  
Part-time member



Thandi Orleyn  
Part-time member



Lawrence Reyburn  
Part-time member

## THE TRIBUNAL STAFF



## THE TRIBUNAL SECRETARIAT

The *Competition Act* provides for the Chairperson to appoint staff to assist the Tribunal in carrying out its functions. Secretariat support (administration, registry, logistics, research and financial management) is rendered by a staff complement of 13, headed by a Chief Executive who reports to the Chairperson. Registry and administrative functions are prescribed by the rules of the Tribunal.

As at year end the Tribunal consisted of 13 staff members

### **Chief Executive Officer/Registrar**

Shan Ramburuth

### **Case Managers**

Kim Kempel

Rietsie Badenhorst  
Shaazia Bhaktawer

### **Junior Case Managers**

Thabelo Masithulela  
Malanee Modise (one year contract)

### **Registry**

Lerato Motaung, registry administrator  
David Tefu, registry clerk  
Jerry Ramatlo, court orderly/driver

### **Finance**

Janeen de Klerk, head of finance  
Donald Phiri, accounts assistant

### **Executive Secretaries**

Thandeka Yeni, executive secretary to the Chairperson  
Tebogo Mputle, executive secretary to the CEO

## CORPORATE GOVERNANCE

The Tribunal continues to follow processes and use systems by which its affairs can be directed and by which it can be held accountable.

### COMPLIANCE WITH LEGISLATION

#### **The Competition Act**

The functions, activities and procedures of the Competition Tribunal are prescribed by The Competition Act and the rules of the Competition Tribunal.

#### **The Public Finance Management Act**

The Tribunal has been listed as a national public entity in schedule 3 A of the Public Finance Management Act (PFMA) since 1st April 2001. Requirements for accountable and transparent financial management in the institution are prescribed in the PFMA.

In accordance with the PFMA and Treasury regulations the Tribunal has submitted its Business Plan and budgets to the dti. In addition quarterly reports on the Tribunal's expenditure,

budget variance and activities have been submitted.

#### **Audit Committee**

The Audit Committee, established in March 2000, has met four times in the year under review.

The Audit Committee facilitates the Executive Committee in fulfilling its obligations to demonstrate accountability and to ensure a high quality of service. Its functions and responsibilities are outlined in an Audit Committee charter and include:

- Financial management and other reporting practices
- Internal controls and risk management
- Compliance with laws, regulations and ethics
- Ensuring an effective and efficient internal audit function

The Audit Committee consists of three executive members and four non-executive members.

The term of office of three Audit Committee members expired in May 2003. One member did

not wish to be reappointed. As at year-end this position was still vacant and the Executive Committee is in the process of filling this position.

**Executive members:**

- David Lewis
- Shan Ramburuth
- Janeen de Klerk

**Non-executive members:**

- Sakhile Masuku - Chairperson (reappointed in May 2003)
- Thabo Mosololi (term of office expired in May 2003)
- Nonku Tshombe
- Tobie Verwey (reappointed in May 2003)

**Internal audits**

KPMG were awarded a 3-year contract beginning 1st April 2002 to perform the internal audit function for the Tribunal.

In the period under review, KPMG performed the following reviews:

Asset Management and Compliance Review - August 2003  
Strategic Risk Update Assessment - August 2003  
Follow-up internal audit review of core processes (asset management, human resources, expenditure and compliance to legislation) - March 2004.

**External audit**

The Office of the Auditor General has completed an external audit for the period ending 31st March 2004.

**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 South African Revenue Service exempted the Tribunal from income tax in terms of Section 10(1)(a) of the Income Tax Act (1962).

**EXECUTIVE COMMITTEE**

The Executive Committee is responsible for developing and formulating the strategic policy and objectives for the Tribunal's operational management and administration.

The composition of the Executive Committee has remained unchanged and is as follows

**Members**

- David Lewis, Chairperson
- Marumo Moerane, deputy-Chairperson
- Shan Ramburuth, CEO
- Janeen de Klerk, Head of Finance
- Norman Manoim, full-time Tribunal member.

The Executive Committee held 11 meetings in the period under review.

**STAFF MEETINGS**

5 staff meetings were held this year.

These meetings are used to keep staff informed on matters relating to the structure and functioning of the Tribunal and on human resource issues. They also provide a forum for management to consult staff on pertinent issues.

The meetings this year have been used in particular to keep staff informed of the building of the new dti campus and to deal with specific logistics associated with the move.

# TRAINING AND HUMAN RESOURCE DEVELOPMENT

## STAFF COMPOSITION

The Tribunal secretariat consists of 13 staff members. 3 new appointments and 1 internal promotion were made during the course of the year:

- Lerato Motaung as Registry Administrator in April 2003 (internal promotion)
- Thandeka Yeni as Executive Secretary to the Chairperson in April 2003
- Thabelo Masithulela as Junior Case Manager in June 2003
- Malanee Modise as Junior Case Manager (one year contract appointed in June 2003)

Eight of the staff members are female, seven are black, three are Asian and three are white. 53.85% have a bachelors degree or higher.

## TRAINING AND HUMAN RESOURCE DEVELOPMENT

The Tribunal has continued to provide employees with opportunities for development and further education. Training and development occurs in the form of in-house training, external courses, workshops, local and international conferences.

72 working days have been spent in training during the current financial year. In terms of salary cost, this amounts to R54 088.40 (i.e. an average of 5.53 training days per person at an average cost of R751.23 per day).

Shaazia Bhaktawer attended the Fifth Annual EC Competition Law Summer School at Downing College, Cambridge, in August 2003. This Summer School is held annually and is attended by international experts in EU Competition Law. In August 2003 it was addressed by members of the European Commission and the UK Competition Commission and provided an opportunity to meet other competition law practitioners.

Kim Kampel attended and presented a paper titled The Role of South African Competition Law in Supporting SMEs at the 48<sup>th</sup> World Conference of the International Council for Small Business in Belfast, Ireland, in June 2003. The conference addressed issues relating to government support, regulation and policy for entrepreneurs and SMEs.

An internal workshop presented by Prof Phil Knight, an expert in plain language drafting from Canada, was held for all case managers in November 2003. The workshop titled Law, Language and Decision Writing gave case managers an understanding of types of legal writing, the purpose of decisions and the character and form of decisions.

8 staff members participated in the ExecRead Course in October 2003. The objective of the course was to enhance reading skills and teach effective study methods. Improving reading speed means that employees will be able to simultaneously improve their recall and comprehension.

To encourage and enhance personal development of its staff the Tribunal operates a bursary scheme. The aim of the scheme is to assist employees in obtaining further tertiary qualifications. The loans cover tuition and examination fees up to R4 000 per annum per employee and are converted to bursaries on the employee successfully completing a course. Loans in excess of R4 000.00 may be granted by a special decision of the Executive.

During the current financial year, three staff members received study loans totalling R9 970.00. 79.7% of these loans were converted to bursaries in the year under review.

Two staff members were awarded bursaries to attend courses that were identified as within their careers and functions at the Tribunal, and which simultaneously fulfilled their training needs identified during the performance appraisal process.

## PERFORMANCE MANAGEMENT SYSTEM

The Tribunal has in place a performance management system. This system provides a forum for ensuring adequate levels of support and feedback is given to employees thus allowing them to fulfil their work responsibilities. The system also facilitates the alignment of individual performance with institution objectives.

Performance appraisal meetings with the Chairperson and the CEO were held with each

member of staff during May 2003. These meetings are used to evaluate the employees overall performance, identify areas for improvement and

determine training needs. Performance bonuses and salary adjustments are also determined on the basis of the performance appraisal.

## FINANCIAL MANAGEMENT

The budget for the 12-month period ending 31 March 2004 reflected expenditure (inclusive of capital expenditure) of R10.44 m and estimated income (generated from fees and interest) of R5.77 m.

Income for the year amounted to R5.92 m and was comprised of:

Category	Amount (Rm)	% (2003)	% (2004)	% (2002)
Filing fees	5.20	87.89	84.16	83.62
Other income	0.72	12.11	15.84	16.38
<b>Total income</b>	<b>5.92</b>	<b>100</b>	<b>100</b>	<b>100</b>

Over the last 3 years filing fees have remained the significant income generator for the Competition Tribunal.

Since 1st April 2001 the Tribunal has been given Treasury approval to accumulate any surpluses generated as at year-end and to use these surpluses to cover expenditure for the next financial year. For this reason the Tribunal has not needed to approach the dti for funds.

Total expenditure (excluding capital expenditure) for the period was R8.89 million. This represents an increase of 21.29%. An explanation for this increase is given in the Chairperson's report on pages 4 and 5.

The table below illustrates the distribution of expenditure within the Tribunal for the year under review.

Expenditure Category	% (2004)	% (2003)	% (2002)
Capital	2.19	0.45	0.59
Administration	13.35	13.74	12.16
Personnel	53.33	53.09	56.58
Recruitment, Training, Conferences and Seminars	7.67	8.79	7.13
Professional Services	20.07	23.93	23.54
Donor funds returned	3.39	0.00	0.00
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

Professional services expenditure in the table above includes audit fees, payments to the Commission (in terms of the MOA), hearing transcription services, legal fees and media and finance-related consulting services.

As the Tribunal is reactive (in terms of cases brought before it) as opposed to being proactive, management finds it difficult to predict the number of cases that may be heard during the year. As a result budgeting becomes a difficult exercise and the Tribunal often finds itself with a large variance. Since the Tribunal's inception we have found our actual expenditure more closely equated to the budget and therefore smaller variances are occurring.

Year	Actual Expenditure (in Rm's)	Budget (in Rm's)	% budget spent
2000	3.18	9.12	34.89
2001	6.31	9.08	69.50
2002	6.33	9.13	69.35
2003	7.33	9.33	78.55
2004	8.89	10.44	85.12

## COMMUNICATING THE WORK OF THE TRIBUNAL

The Tribunal strives to be an accessible institution and continues to keep media and the general public informed of all Tribunal hearings and decisions. Media coverage has been extensive with 673 reports (as opposed to 354 for the period ending 31st March 2003) appearing in the financial media monitored by the Tribunal. This coverage helps educate the public about the Tribunal's functions and the Competition Act.

The Tribunal website ([www.comptrib.co.za](http://www.comptrib.co.za)) enables public access to information about its activities and outputs. Decisions are published on the site immediately after their release. The site also contains links to other competition-related sites as well as the Competition Act, the Tribunal rules and Tribunal forms.

Full-time members have during the course of the year lectured university students and made presentations at local and international conferences, meetings and seminars. The Tribunal has continued to produce a newsletter titled the "Tribunal Tribune".

This newsletter carries brief articles on Tribunal cases and topical issues in competition regulation, and keep members and other stakeholders informed of cases heard by the Tribunal.

In the period under review the following newsletters were produced:

Newsletter No 14 - September 2003

Newsletter No 15 - December 2003

**SHAN RAMBURUTH**  
CEO



## PERFORMANCE INDICATORS

Strategic Objective	Performance Indicator	2004	2003
To ensure timeous judgments of a high calibre	Number of large mergers finalized	60	62
	Heard within 10 days	76%	72.6%
	Order released same day as hearing	82%	79%
	Order released within 10 days	15%	19.4%
	Order released after 10 days	3%	1.6%
To comply with various legislation	No. of lawsuits settled with reference to non-compliance	0	0
	Fine related expenses/costs/irregular expenditure associated with compliance	R20 417	R52 219
To encourage effective communication both externally and internally	No. of Tribunal Tribunes produced	2	3
	Total working days spent in training	72	70.6
	Total salary cost of training	R54 088	R113 390
	Total work days spent in training by full-time Tribunal members	27.5	28
	Total salary cost of training	R67 931	R126 607
	Media reports in financial press	673	354
	Public addresses made	4 papers	9 papers
	Executive meetings held	11	13
	Meetings held for Tribunal panel	1	2
	Website maintained and updated	Yes	Yes
	Annual Report produced	Yes	Yes
To maintain a good corporate image and reputation	Peer review conducted	Biannual	OECD
	Joint conference held	Biannual	Yes
	Reports in financial press	673	354
	Submit business plan and budget to dti	Submitted and approved	Submitted and approved
	Timeous financial reporting to dti	Quarterly reporting	Quarterly reporting
To provide an efficient, competent and speedy service	Large mergers completed within legislatively prescribed days (within 20 days)*	42/60	44/62
To inculcate a proper value system	No of sick days as % of total sick leave days	14.12%	11.15%
	Disciplinary hearings	None	None
To be fair, objective and independent	Assessments by other international legislative bodies	Biannual	OECD

\*Note: Delays in finalizing cases are not always within the control of the Tribunal as parties may seek additional time to prepare their case and pursue their rights.



# CASES BEFORE THE COMPETITION TRIBUNAL (APRIL 2003 – MARCH 2004)

## LARGE MERGERS

Merger transactions are classified as 'large', 'intermediate' or 'small' based on the annual turnover and net asset value of the merging parties. The Minister of Trade and Industry sets the thresholds for this classification. The Competition Tribunal is required to consider all large merger transactions having an effect within the Republic of South Africa on the basis of

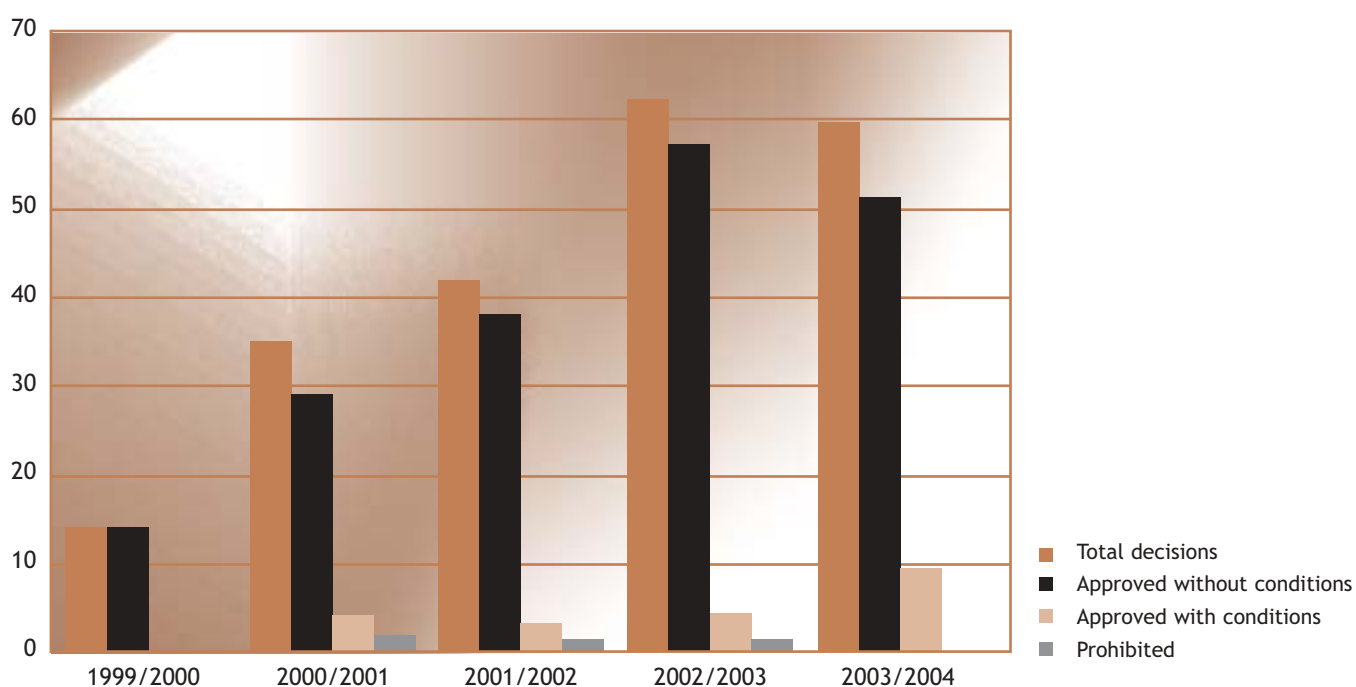
criteria specified in the Competition Act. The Tribunal must then approve the transaction unconditionally, approve it with conditions, or prohibit the transaction.

Since its inception in September 1999, the Tribunal has decided 213 large mergers. Of these, 189 were approved without conditions, 20 were approved with conditions and 4 were prohibited.

Large merger decisions of the Tribunal (1999 - 2004)

Year	Total decisions	Approved without conditions	Approved with conditions	Prohibited
1999/2000	14	14	0	0
2000/2001	35	29	4	2
2001/2002	42	38	3	1
2002/2003	62	57	4	1
2003/2004	60	51	9	0
<b>TOTAL</b>	<b>213</b>	<b>189</b>	<b>20</b>	<b>4</b>

Large merger decisions of the Tribunal (1999 - 2004)



In the period under review, the Tribunal had 65 large merger cases on its roll. Of these, 5 were pending from the previous year. The Tribunal decided 60 large mergers; 51 were approved unconditionally and 9 were approved subject to

conditions. No mergers were prohibited. Two merger cases were withdrawn; one by the merging parties and the other, a banking merger, by the Minister of Finance. Three cases were pending at year-end.

Merging Parties	Sector	Date received	Hearing date	Order date	Decision date	Decision
Pepkor Ltd and Fashaf (Pty) Ltd	Textiles and fabrics	04-Mar-03	02-Apr-03	02-Apr-03	08-May-03	Approved
ABSA Bank Ltd and Meeg Bank Ltd	Financial	31-Mar-03	09-Apr-03	09-Apr-03	17-Apr-03	Approved
Distillers Corporation (SA) Limited and Stellenbosch Farmers Winery Group Ltd		20 Jun 02	16-Apr-03. 06-Jun-03	18-Jun-03	30-Jul-03	Approved with conditions
Corpcapital Investments (Pty) Ltd and CICL Investment Holdings (Pty) Ltd	Financial	10-Apr-03	30-Apr-03	30-Apr-03	13-May-03	Approved
Sentrachem Limited and Chemical Services Limited	Manufacturing: chemicals	10-Apr-03	30-Apr-03	30-Apr-03	12-Jun-03	Approved with conditions
Tiger Brands Ltd and Enterprise Foods (Pty) Ltd	Retail consumer foods	08-Apr-03	30-Apr-03	30-Apr-03	12-Jun-03	Approved
Main Street 87 (Pty) Ltd and Total Petroleum Renaissance (Pty) Ltd	Fuel/petrol	17-Apr-03	30-Apr-03	30-Apr-03	15-May-03	Approved
Clidet no. 441 (Pty) Ltd and Global Roofing Solutions - a division of Dorbyl Ltd	Industrial goods	30-Apr-03	14-May-03	14-May-03	10-Jun-03	Approved
Bytes Technology Group Ltd and Xerox SA (Pty) Ltd	IT and document management	09-May-03	14-May-03	14-May-03	09-Jun-03	Approved
Kulungile Metals (Pty) Ltd/Abkins Steel Corporation (Pty) Ltd and Abkins Steel Service (Pty) Ltd	Steel	09-May-03	14-May-03	14-May-03	09-Jun-03	Approved
Anglo American Plc and Kumba Resources Ltd	Mining	09-Sep-02	26-29-May 03. 5,17,19-Jun-03. 04-Jul-03	6,7-Aug-03 04-Sep-03	04-Sep-03	Approved with conditions
Trufit (Pty) Ltd and Cobra Group Ltd	Manufacturing: plumbing products	19-May-03	04-Jun-03	04-Jun-03	12-Jun-03	Approved
The Used Equipment Company (Pty) Ltd and Barloworld Equipment (Pty) and BLC Plant Company (Pty) Ltd	Earth moving equipment	23-May-03	04-Jun-03	04-Jun-03	04-Jun-03	Approved
Main Street 122 (Pty) Ltd and Harvey Fibreglass Holdings (Pty) Ltd	Resin and related products	27-Jun-03	02-Jul-03	02-Jul-03	14-Jul-03	Approved
Daun et Cie AG and Kolosus Holdings Ltd	Hides and skins/leather/automotive	30-Apr-03	8-10-Jul-03. 14,24,25 Jul-03	29-Jul-03	17-Sep-03	Approved with conditions
Harmony Gold Mining Company Limited and African Rainbow Gold Limited	Mining	02-Jul-03	16-Jul-03	16-Jul-03	30-Jul-03	Approved

Merging Parties	Sector	Date received	Hearing date	Order date	Decision date	Decision
The Clicks Organisation (Pty) Ltd and Purchase Milton & Associates (Pty) Ltd, Milton & Associates (Pty) Ltd, J&G Purchase (Pty) Ltd, Leon Katz (Pty) Ltd	Pharmaceutical	15-Jul-03	23-Jul-03	04-Aug-03	09-Sep-03	Approved
Sasol Mining (Pty) Ltd and Anglo Operations Ltd (Anglo through its Anglo Coal Division)	Mining	16-Jul-03	23-Jul-03	23-Jul-03	12-Aug-03	Approved
Xstrata South Africa (Pty) Ltd and Char Technology (Pty) Ltd	Furnaces, aluminium, ferro-alloy calcium carbide	09-Jul-03	23-Jul-03	23-Jul-03	12-Aug-03	Approved
Primegro Properties Ltd and Growthpoint Properties Ltd	Property	24-Jul-03	30-Jul-03	30-Jul-03	16-Sep-03	Approved
Liberty Group Ltd and Investec Employee Benefits	Insurance: retirement fund	25-Jul-03	05-Aug-03	05-Aug-03	18-Aug-03	Approved
Ethos Private Equity Fund IV and The Tsebo Outsourcing Group (Pty) Ltd	Fast food services	29-Jul-03	13,20-Aug-03	02-Oct-03	03-Oct-03	Approved
Mettle operations Ltd and Clidet 433 (Pty) Ltd	Commercial property	07-Aug-03	13-Aug-03	13-Aug-03	15-Sep-03	Approved
Momentum Property Investments (Pty) Ltd and Bonatla Property Holdings Ltd	Property	11-Aug-03	20-Aug-03	20-Aug-03	25-Sep-03	Approved
Sun Air Limited & Kersaf Investments Limited and Sun International (SA) Holdings (Pty) Ltd & Sun International (SA) Ltd	Leisure	11-Aug-03	20-Aug-03	20-Aug-03	26-Aug-03	Approved
Rustenburg Platinum Mines Ltd and Aquarius Platinum (South Africa) (Pty) Ltd	Mining	27-Aug-03	03-Sep-03	03-Sep-03	13-Oct-03	Approved
Super Group Trading (Pty) Ltd and The Micor, Scherwood, DNA, Steamwork and Jumpoint businesses of DNA Supply Chain Investment Ltd	Business support services	22-Aug-03	03-Sep-03	03-Sep-03	08-Oct-03	Approved
Chemical Services Ltd and Ondeo Nalco SA (Pty) Ltd	Chemicals	03-Sep-03	17-Sep-03	18-Sep-03	14-Oct-03	Approved
Heinz Foods SA (Pty) Ltd and Today Frozen Foods, a business unit of Pioneer Foods (Pty) Ltd	Frozen foods	19-Sep-03	01-Oct-03	02-Oct-03	08-Oct-03	Approved
Metall und Rohstoff Shipping Holdings B.V and Southern Chartering (Pty) Ltd	Freight transport	25-Sep-03	15-Oct-03	15-Oct-03	04-Nov-03	Approved
Spar Group Ltd and Nelspruit Wholesalers (Pty) Ltd	Wholesale and retail of groceries	01-Oct-03	15-Oct-03	15-Oct-03	03-Nov-03	Approved
Great Wins Investments (Pty) Ltd and The Fuel Logistics Holdings Company (Pty) Ltd	Security services	08-Oct-03	15-Oct-03	15-Oct-03	27-Oct-03	Approved
Rapid Dawn 271 (Pty) Ltd and Moresport (Pty) Ltd and Peter Taylors Sports (Pty) Ltd	Retail: sports footwear, apparel and equipment	15-Oct-03	29-Oct-03	29-Oct-03	13-Nov-03	Approved
New Republic Bank Ltd and Saambou Bank	Banking					Jurisdiction withdrawn by Minister of Finance
Main Street 150 (Pty) Ltd and Profert (Pty) Ltd & Rowan Tree 16 (Pty) Ltd	Fertiliser	24-Oct-03	05-Nov-03	19-Nov-03	02-Dec-03	Approved with conditions

Merging Parties	Sector	Date received	Hearing date	Order date	Decision date	Decision
Alpha (Pty) Ltd and Slagment (Pty) Ltd	Cement	05-Nov-03				Matter proceeding
Mutual and Federal Insurance Company Ltd and Credit Guarantee Insurance Corporation of Africa	Insurance	24-Oct-03	05-Nov-03	05-Nov-03	05-Dec-03	Approved
Fluxrab Investments no.58 (Pty) Ltd and Seven Eleven Africa (Pty) Ltd	Retail: convenience supermarkets	24-Oct-03	05-Nov-05 03-Dec-03	03-Dec-03	07-Jan-04	Approved with conditions
Boart Longyear, a division of Anglo Operations Ltd and Huddy (Pty) Ltd & Huddy Rock Tools (Pty) Ltd	Mining and construction equipment	24-Oct-03	26-28 Nov 03	08-Dec-03	20-Jan-04	Approved with conditions
Sasol Oil (Pty) Ltd and Exel Petroleum (Pty) Ltd	Oil and petroleum	26-Nov-03	10-Dec-03	10-Dec-03	04-Feb-04	Approved
Pioneer Foods (Pty) Ltd and Ceres Investment Company Ltd	Food and beverages	26-Nov-03	10-Dec-03	10-Dec-03	07-Jan-04	Approved
Imperial Group (Pty) Ltd and Clover SA (Pty) Ltd	Transport	28-Nov-03	17-Dec-03	17-Dec-03	16-Jan-04	Approved
Nedbank Ltd and Fasic Africa (Pty) Ltd	Banking and consumer goods	17-Dec-02	17-Dec-03	17-Dec-03	20-Jan-04	Approved
Emira Property Fund (Pty) Ltd and PCP Equity (Pty) Ltd	Financial	04-Dec-03	17-Dec-03	17-Dec-03	18-Dec-03	Approved
Rand Merchant Bank, a division of Firststrand Bank Ltd and Mettle Treasury (Pty) Ltd	Financial	05-Dec-03	17-Dec-03	17-Dec-03	18-Dec-03	Approved
Allied Technologies Ltd and Namitech Holdings Ltd	Electronic equipment	06-Oct-03	13-16-Jan-04. 22-Jan-04	05-Feb-04	17-Mar-04	Approved with conditions
Nedbank Limited and Retail Brands Interafrica (Pty) Ltd and Continental Beverages (Pty) Ltd	Bottling & packaging	19-Dec-03	21-Jan-04	21-Jan-04	27-Jan-04	Approved
Anglo Gold Limited and Driefontein Consolidated (Pty) Ltd	Mining	19-Dec-03	21-Jan-04	21-Jan-04	04-Feb-04	Approved
Cool Ideas 252 (Pty) Ltd and Crossroads Distribution (Pty) Ltd & Others	Transport	18-Dec-03	21-Jan-04	21-Jan-04	04-Feb-04	Approved
Castellina Investments (Pty) Ltd and Pepkor Ltd	Retail clothing	15-Jan-04	21-Jan-04	21-Jan-04	11-Feb-04	Approved
General Motors Laam Holdings and Boco (Pty) Ltd	Motor industry	20-Jan-04	28-Jan-04	28-Jan-04	10-Feb-04	Approved
The Tiso Consortium and New Africa Investments Ltd	Media	05-Jan-04	28-Jan-04	28-Jan-04	23-Feb-04	Approved with conditions
Investec Property Group Ltd and Nestlé (SA) (Pty) Ltd	Property	15-Jan-04	28-Jan-04	28-Jan-04	02-Feb-04	Approved
Housing Solutions no. 39 (Pty) Ltd and Stock Buildings Africa (Pty) Ltd	Construction	15-Jan-04	28-Jan-04	28-Jan-04	09-Feb-04	Approved
Growthpoint Properties Ltd and 100 Grayston Drive Property (Pty) Ltd & Block E Power Station Properties (Pty) Ltd	Property	27-Jan-04	04-Feb-04	04-Feb-04	09-Feb-04	Approved
Bidvest Group Ltd and McCarthy Ltd	Motor industry	22-Jan-04	04-Feb-04	04-Feb-04	11-Feb-04	Approved
Vodacom Group (Pty) Ltd and Smartphone SP (Pty) Ltd, trading as Smartcall	Cellular telephony	06-Feb-04	18-Feb-04	23-Feb-04	19-Mar-04	Approved

Merging Parties	Sector	Date received	Hearing date	Order date	Decision date	Decision
Zelpy 1734 (Pty) Ltd and Mettalg South Africa (Pty) Ltd	Chemicals	19-Feb-04	03-Mar-04	03-Mar-04	11-Mar-04	Approved
Barloworld Motor (Pty) Ltd and Avis Southern Africa Ltd	Motor industry	18-Feb-04	03-Mar-04	03-Mar-04	08-Mar-04	Approved
Momentum Group Ltd and M Cubed Holdings Ltd	Financial services	05-Mar-04	Withdrawn			Withdrawn 11 Mar 04
Clidet no.485 (Pty) Ltd and Pamodzi Foods (Pty) Ltd	Food	05-Mar-04	17-Mar-04	17-Mar-04	31-Mar-04	Approved
Engen Petroleum Ltd and Exxonmobil SA (Pty) Ltd	Petroleum	15-Mar-04	24-Mar-04		24-Mar-04	Approved
Edgars Consolidated Stores Ltd and Pick n Pay Retailers (Pty) Ltd in relation to the Boardmans Homeware business	Retail	16-Mar-04	24-Mar-04		24-Mar-04	Approved
Ubuntu-Ubuntu Commercial Enterprises (Pty) Ltd and Anglovaal Mining Ltd/Avgold Ltd/Harmony Gold Mining Company Ltd	Mining	24-Mar-04				Matter proceeding
Murray & Roberts Ltd and Cementation Company (Pty) Ltd	Mining equipment	25-Mar-04				Matter proceeding

### TURNAROUND TIMES IN LARGE MERGER PROCEEDINGS

In terms of Tribunal Rule 35 (1), when a merger referral has been filed, the registrar must set down the matter to be heard within 10 business days of the filing date. In the period under review, 76% of the total merger referrals received were set down within 10 days of receiving the Competition Commission’s recommendations. In the remaining cases, a pre-hearing meeting with the parties determined the time-frames for the proceedings. The average set-down time for large mergers, however, was within 9 days of receiving the case.

Of the 60 orders on large mergers released in the period under review, 49 (82%) were released on the same day as the hearing, 9 (15%) were released within 10 days and 2 (3%) were released beyond 10 days of the hearing.

In terms of Tribunal Rule 35(5), the Tribunal must within 20 days of issuing an order, provide written reasons for its decision. The average time taken for issuing written reasons is 14 days. Of the 58 mergers in which reasons were released within the review period, 42 (72%) were released within 20 days of the order, and 16 (18%) were released beyond 20 days of the order.

## CASE 1: MERGER CONDITIONS LIMIT RETRENCHMENTS

The Tribunal approved the merger between Daun et Cie AG and Kolosus Holdings Ltd subject to conditions relating to the merger effect on employment, one of the public interest grounds in the Act.



Two trade unions, the South African Clothing and Textile Workers Union (SACTWU) and the South African Food and Allied Trade Union (SAFATU) participated in the hearings.

The trade unions did not oppose the transaction but expressed concern and sought assurances that job losses as a consequence of the merger would be minimised. The merging parties' initial submission indicated that the merger would, at worst, result in 150 job losses. In the course of the hearing, however, the parties acknowledged that restructuring in the wake of the merger, necessitated by financial and efficiency considerations, would ultimately determine the total number of jobs lost.

In line with its statutory requirement to consider the employment implications of mergers, the Tribunal imposed a condition to ensure that job losses do not exceed the level

forecast by the parties in their merger notification and limited the number of retrenchments to 150 for a period of a year.

In its decision the Tribunal emphasised that *"the notification requirements exist precisely to ensure transparent disclosure of all material aspects of the transaction at an early stage. This is intended to allow the competition authorities and, with regard to labour issues, the trade unions to react accordingly. It is improper for the notification forms to be "sugar-coated" merely to ensure a favourable reaction, while later in the process, less favourable facts are disclosed, particularly when the number of retrenchments is as significant as in this case.*

*We also take cognizance that it is rather easy for companies to disguise merger related retrenchments so that it would appear that these would occur even absent the merger.*

*These practices are strongly discouraged and the importance of transparent and bona fide disclosure is once again emphasised. It is these concerns that motivated the imposition of the condition to the merger."*

## CASE 2: ALTECH/NAMITECH MERGER APPROVED SUBJECT TO DIVESTITURE

The Competition Commission initially recommended the prohibition of this horizontal merger between two plastic and smart card suppliers. The Commission was concerned that the merger would result in an unacceptable degree of concentration in the market for the manufacture and supply of basic PVC and magstripe cards; and that the post-merger market position of the merged entity would create a platform for the monopolisation of the market for smart cards in the financial sector. Furthermore there were concerns that, because Altech, through its ACS division, was the exclusive agent for Datacard personalization equipment, the merged entity would be in a strong position to raise the costs of their rivals many of whom used Datacard equipment. There were also fears that Altech would have access to confidential business information when they

enter their rivals' plants to service the personalisation equipment.

Subsequent to referring the merger to the Tribunal, the merging parties negotiated a settlement agreement with the Commission with the view to remedying the anti-competitive consequences of the merger. The Tribunal accepted the agreement and ordered that the merger be approved subject to the condition that the merged entity dispose of Altech's Africard plastic card manufacturing division, excluding its personalisation bureau, to an independent purchaser approved by the Competition Commission. The parties identified Labat Card Technologies as the prospective purchaser. A further condition on the merger was that the merged entity terminate Altech's exclusive right to distribute



Datacard personalization equipment in the South African market.

The merging parties and Commission agreed that the remedies would ensure that, post-divestiture, there would still be two effective

competitors producing magnetic stripe cards both of which would possess the requisite financial resources, technical capability and incentive to supply smart cards to the financial sector when the predicted migration from magstripe cards to smart cards occurred.



### CASE 3: PHARMACEUTICAL RETAIL MERGER UNDER CHANGING REGULATORY CONDITIONS

This transaction represented the first foray by a corporate entity into the retail pharmaceutical market, coinciding with legislation whereby corporate entities will be allowed to own pharmacies, something they were not previously entitled to do. The Clicks Group, in pursuance of this legislative change, acquired four companies that own the retail pharmacy groups trading under the brand names of Hyperpharm, Galleria, Guardian, Pharmarama, Remedys, and Medirama. These groups together accounted for 83 pharmacy outlets countrywide.

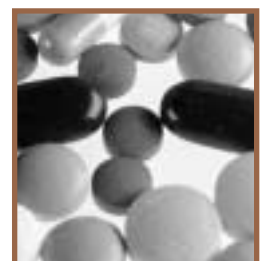
The Tribunal focused its concern on the retail pharmaceutical drug market. The Commission had not initially evaluated this aspect of the market because Clicks had not hitherto competed in the retail dispensary market. The Tribunal noted that Clicks, because of its particularly strong potential presence in the retail pharmaceutical market should, for the purposes of this merger, properly have been treated as a market participant and effectively presumed to constrain existing rivalry. Regulation 7 of the new pharmacy regulations stipulate that licences will be awarded on the basis of the "need" for another pharmacy in respect of a particular area. Assuming a high post-merger concentration by Clicks-owned stores, the Tribunal went on to caution that it was concerned about "the inclusion of what are effectively competition considerations - such as the 'need' for additional pharmacies - into the licensing

criteria". It felt that, as a "worst-case scenario", this could potentially raise entry barriers into the market for those new entrants and operate to protect "first-mover" incumbents such as Clicks from the threat of new entrants.

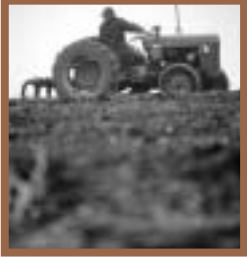
Despite the Tribunal approving the merger unconditionally, it had cautionary words to say with respect to the Department of Health's issuing of licences under the new regime.

It emphasized that the level of entry and exit into the retail pharmaceutical market should be dictated by the play of market forces, instead of by regulatory intervention. Though the Tribunal emphasized that it did not seek to penalise firms for adopting long-term pro-competitive strategies that enabled them to acquire first-mover advantages this, together with a regulatory system that inhibited new entry, could give rise to an anti-competitive structure in the retail pharmaceutical trade.

Finally the Tribunal concluded that the state of the regulatory environment was characterized by much uncertainty and therefore it could not conclude definitively that the Health Department would apply the regulations in a way that would necessarily thwart ease of entry or that competition would be substantially lessened or prevented. It furthermore felt that various pro-competitive features of the transaction tipped the scales in favour of approving the merger.



## CASE 4: MERGER IN FERTILISER INDUSTRY APPROVED SUBJECT TO IMPLEMENTATION OF COMPLIANCE PROGRAMME



The transaction involved a buy-out by management of Profert and Genbel Securities of Senwes Limited's shareholding in Profert. Profert is primarily involved in the business of the marketing and trading of fertilisers, aimed at servicing the agricultural community.

Although the Tribunal found that the merger would not lead to a substantial lessening of competition, it was concerned about suggestions of cartel behaviour and collusion in the fertiliser industry. The fertiliser industry has a long history of price control and market sharing agreements. Profert, it appeared, has, since its entrance, emerged as the industry maverick, seen by farmers as "independent of the cartel" and has prospered despite attempts by the bigger players to push it out of the market. However, documents filed with the Tribunal suggested that the latest efforts from

Profert's competitors have been aimed towards incorporation, merger or buy-out. The Tribunal felt that "*Gensec's short-term view of its presence in the fertiliser market ...suggest that Profert... is incentivised to accept accommodation and forswear its history of robust competition*". Gensec had indicated that a possible sale to "another player in the industry" could provide an attractive exit.

Under the circumstances, the Tribunal felt obliged to ensure that Profert and its new shareholder understood their obligations under the Competition Act. The Tribunal accordingly approved the transaction on condition that Profert develop a suitable compliance programme. Profert is required to submit a report to the Competition Commission on the implementation of its compliance programme within a year of the approval of the transaction.

## CASE 5: MERGER CONDITIONS TAKE INTO ACCOUNT CONCERNS OF FRANCHISEES



The Competition Tribunal approved the merger between Fluxrab Investments, a subsidiary of the Metcash Group and Seven Eleven Africa (Pty) Ltd, subject to the conditions that Metcash offer new franchise agreements on the same terms to all Seven Eleven and Friendly Shoppe franchisees within six months of the approval of the merger.

The Tribunal included this condition after the Seven Eleven Franchisees indicated to the Tribunal that they were concerned about being placed in a worse competitive position than the Metcash franchisees, specifically with regard to the different loyalty obligations required by each franchisor. This worried the Tribunal since there were two separate complaints relating to franchise

agreements pending before the Tribunal. The first, against Seven Eleven, was referred to the Tribunal by the Competition Commission and the second was brought by Foodies franchisees against Metcash. In both these cases the franchisees complained that the franchisor was, inter alia, engaging in an exclusionary act by appointing itself as the only designated supplier to the franchisees, without giving them the option to buy from other independent wholesale suppliers at lower prices.

The significance of this Tribunal decision is that it recognises the legitimate concerns of franchisees about possible competitive asymmetries in inter-brand competition and the effect this has on the prices that consumers pay for goods in franchise stores.





## INTERMEDIATE MERGERS

Mergers classified as "intermediate" are considered by the Competition Commission. Parties to an intermediate merger, who are unhappy with an adverse decision by the Commission, may apply to the Tribunal for the merger to be re-considered.

### Tribunal consideration of intermediate mergers (1999-2004)

Year	Total cases
1999/2000	0
2000/2001	5
2001/2002	2
2002/2003	2
2003/2004	1
<b>TOTAL</b>	<b>10</b>

In the period under review, the Tribunal received only one application to re-consider a decision of the Commission on an intermediate merger. This was an application by Digital Healthcare Solutions

(Pty) Ltd which challenged the Commission issuing a Notice of Apparent Breach of a Merger Condition.

## RESTRICTIVE PRACTICE CASES

The Competition Act prohibits horizontal and vertical restrictive practices that prevent or lessen competition. Such practices include price fixing, market division between firms, collusive tendering and minimum resale price maintenance. Dominant firms are also prohibited from charging an excessive price, refusing access to an essential facility, engaging in exclusionary acts and engaging in price discrimination.

Restrictive practice complaints are investigated and prosecuted by the Competition Commission. Should the Commission decide not to prosecute a complaint, the complainant is entitled to bring the matter directly to the Tribunal for adjudication. Parties are also entitled to apply to the Tribunal for interim relief during the period in which the complaint is being investigated by the Commission. Since its inception the Tribunal has considered 31 restrictive practice complaints.

### Number of referrals to, and decisions by, the Competition Tribunal in restrictive practice cases (1999-2004)

Year	CC	Referrals			Decisions*			
		Complainant	IR	Total	CC	Complainant	IR	Total
1999/2000	0	1	14	15	0	0	5	5
2000/2001	11	8	17	36	6	0	5	11
2001/2002	6	3	3	12	3	0	2	5
2002/2003	5	6	3	14	4	0	2	6
2003/2004	4	11	4	19	3	0	2	5
<b>Totals</b>	<b>26</b>	<b>29</b>	<b>41</b>	<b>96</b>	<b>16</b>	<b>0</b>	<b>16</b>	<b>31</b>

\* includes consent orders

**COMPLAINT REFERRALS FROM THE COMMISSION**

Received in:	Previous year	Current year	Total
<b>Status</b>			
Trib decision	1		1
Consent order		2	2
Withdrawn		1	1
Matter proceeding	11	1	12
<b>Total</b>	<b>12</b>	<b>4</b>	<b>16</b>

The Tribunal received 4 referrals from the Commission and 12 cases were pending from previous years. One decision, relating to an administrative penalty in a restrictive practice case, was released, 2 consent orders were issued, 1 case was withdrawn and 12 cases were pending at year end.

Complainant	Respondent	Summary	Basis of complaint	Date received	Hearing date	Decision
Competition Commission	Federal Mogul Aftermarket SA & Others	In January 2003, the Competition Tribunal found that Federal Mogul, a wholesale distributor of a range of motor-car components including Ferodo braking equipment, had engaged in minimum resale price maintenance, a practice prohibited by the Competition Act. After further hearings to determine an appropriate remedy for this transgression, the Tribunal imposed a penalty of R3m on the firm. Federal Mogul challenged the constitutionality of that section of the Competition Act that gives the Tribunal, as an administrative body, the power to impose such penalties	5(2); 59	07-Feb-01	07&23-Apr-03	Found in contravention of the Act. Penalty of R3m levied
Nationwide Airlines	South African Airways	The Commission alleges that SAA's incentives to travel agents constitute an abuse of dominance in that they are designed to induce travel consultants to book flights on SAA at the expense of other carriers, even when other carriers have tickets available and these tickets are cheaper. The Commission argues that this incentive scheme is detrimental to the interest of the consumer and has the effect of creating barriers to entry and eliminating or impeding a competitor from expanding in the market.  This case was referred by the Competition Commission in 2001 following its investigation of a complaint from Nationwide Airlines. Delays in hearing the merits of this case were due to various interlocutory Tribunal proceedings and an application by SAA to the High Court to review the actions of the Commission.	8 (d)(i) 8(c)	19-March-01	Merits not heard	Matter proceeding
Basketball South Africa	Competition Commission and Professional Basketball League Management & Others	The complaint related to an agreement between Basketball South Africa and the Professional Basketball League Management (PBL), which contained a non-compete clause. The Commission argues that this constitutes a restrictive vertical practice and wants the offending clause to be deleted.	5(1)	07-Aug-02	30-Apr-03. 04-Jun-03. 16-Jul-03	Matter proceeding

Complainant	Respondent	Summary	Basis of complaint	Date received	Hearing date	Decision
Competition Commission	The Association of Pretoria Attorneys	The Association of Pretoria Attorneys agreed that its guidelines, which set tariffs that attorneys in Pretoria should charge their clients, amounted to price-fixing in contravention of the Competition Act. The association agreed to voluntarily withdraw the guidelines and to pay a penalty of R223 000.00.	4(1)(b)(i)	26-Jun-03	30-Jul-03	Consent order
CUM Christian Book Stores	Maranatha Record Company	Maranatha, a recording company and distributor of Christian/Gospel music, admitted that its retailers were not allowed to deviate by more than 10% from the recommended retail price and that this amounted to minimum resale price maintenance. It agreed to rectify its pricing policies to comply with the Act, and to inform its customers that it would not prescribe a minimum resale price for its products.	5(2)	25-Jul-03	13-Aug-03	Consent order
Competition Commission	Gauteng Towing Association	The Competition Commission had alleged that the conduct of the Gauteng Towing Association, in publishing a document pertaining to the prices charged to its members for services provided, contravened the Competition Act.	4(1)(b)(i)	30-Sep-03		Withdrawn on 23 Mar 04
South African VANS Association and others	Telkom SA	The Competition Commission alleges that Telkom SA Limited has abused its dominant position by obliging VANS service providers to enter into contracts that restrict competition; by refusing to lease its facilities to VANS licencees and by charging VANS licencees an excessive price.	8 (a); 8 (b); 8 (c); 8 (d) (i) and 9	24-Feb-04	Merits not heard	Matter proceeding

The following restrictive practice referrals from the Commission, which were initiated and reported on in previous years, were pending at the end of the current period.

Complainant	Respondent	Date received
Dr S M Pillay	Uitenhage & Dispatch Independent Practitioners Association and Members	08-Aug-02
North West Ceramics and Fazel Rhemtula	Italtile Franchising, Italtile Ceramics, Italtile Ltd	13-Dec-02
Competition Commission	Iscor Ltd, Saldanha Steel (Pty) Ltd	05-Feb-03
Mondi Ltd	SAFCOL, York Timbers Ltd CJ Rance (Pty) Ltd	05-Feb-03
New United Pharmaceutical Distributors & Others	Norvatis SA (Pty) Ltd and others	02-May-01
Competition Commission	Seven Eleven Corporation SA (Pty) Ltd	09-May-01
Cancun Trading No 24 CC & Others	Seven Eleven Africa (Pty) Ltd	09-May-01
Botswana Ash (Pty) Ltd	American Natural Soda Ash Corp	14-Apr-00
American Natural Soda Ash Corp	Botswana Ash (Pty) Ltd	13-Sep-00

## CASE 6: TRIBUNAL PUTS THE BRAKES ON MINIMUM RE-SALE PRICE MAINTENANCE



The Competition Tribunal imposed a penalty of R3m on Federal Mogul Aftermarket Southern Africa (Pty) Ltd for having contravened the Competition Act. This is the largest penalty levied by the Competition Tribunal. It follows an earlier finding by the Tribunal that Federal Mogul had engaged in re-sale price maintenance by obliging distributors to on-sell Ferodo brake pads at a determined price and penalising those distributors who did not comply.

Resale price maintenance is a species of price fixing, considered to be a particularly egregious category of anti-competitive practice. Unlike other categories of prohibited practices, the South African Competition Act does not allow for the practice of resale price maintenance to be justified on the grounds that it may result in any technological, efficiency or pro-competitive gains.

Federal Mogul initially argued that the imposition upon them of an administrative penalty was akin to them receiving a fine from a criminal court. Since the Competition Act does not afford a respondent the same procedural protection as an accused person would have in criminal proceedings, Federal Mogul argued that the Tribunal's power to impose an administrative penalty was unconstitutional. However, the Tribunal found that a respondent in prohibited practice cases was not in an analogous position to an accused in criminal proceedings and that the Act provided adequate procedural mechanisms and hence the constitutional attack failed.

In the reasons for its decision, the Tribunal explained how it arrived at the quantum of

the penalty with reference to criteria set out in section 59(3) of the Competition Act. The Tribunal concluded:

*"We are, in our view, dealing with a grave contravention of the Act. On the present evidence we know that the contravention had endured from the time that Erasmus entered the market and, although it may not be unreasonable to infer a longer duration, we give (Federal Mogul) the benefit of any residue of doubt and so conclude that the duration of the contravention was short. (Federal Mogul's) share of the market and the leading character of its brand lead us to conclude that the contravention was of a far-reaching extent. It is not possible to calculate precisely the loss or damage suffered as a result of the contravention, nor the level of profit which accrued to (Federal Mogul). However, the nature of the product and the (Federal Mogul's) position in the market enables us to conclude with confidence that the damage wrought to the competitive fabric of the market was significant. While (Federal Mogul) has not previously been found in contravention of the Act, it has not co-operated with the Commission in its investigation - indeed it has resorted to the expedient of legal technicality and plain deceit to throw the investigators off course."*

While the maximum penalty (that is, 10% of annual turnover) the Tribunal is entitled to impose amounted to just over R6m, it found, after having regard to the factors specified in section 59(3) of the Competition Act, that R3m was an appropriate penalty.



### COMPLAINT REFERRALS FROM A COMPLAINANT FOLLOWING A NON-REFERRAL BY THE COMMISSION

The Tribunal received 11 restrictive practice cases brought directly by a complainant and had a further 10 cases on its roll from previous years. Two cases were withdrawn after hearings had begun and a further case was withdrawn before the hearings commenced. 16 cases were pending at year-end.

Received in:	Previous year	Current year	Total
<b>Status</b>			
Trib decision			
Consent order			
Withdrawn	4	1	5
Matter proceeding	6	10	16
<b>Total</b>	<b>10</b>	<b>11</b>	<b>21</b>

Applicant	Parties	Summary	Basis of complaint	Date received	Hearing date	Decision
Berry & Donaldson (Pty)Ltd & Others	South African Airways (Pty) Ltd & Others	The complainant, Berry Donaldson, offers freight forwarding services to the exporters of fresh fish from South Africa to Europe. Their complaint was that SAA had offered air cargo space on more favourable and preferential terms to their competitor. They alleged that this constituted price discrimination and an abuse of SAA's dominant position. Berry Donaldson had also wanted the Tribunal to impose an administrative penalty on SAA for charging it an excessive price. The case was withdrawn following 5 days of hearings.	5(1) 8(a), 8(c); 8(d)(ii) and 9(1)	Sep-00	22,24,25-Apr-03. 09-Jun-03	With- drawn on 08- Dec-03
Shield Stain CC	Afrox Limited	Shield Stain alleged that Afrox had abused its dominance by entering into exclusive anti-competitive supply agreements for chemicals used in the welding industry.	5 8(a);(c) and (d) and 9(1)	06-Jan-03	03-Jun-03	With- drawn on 10- Jun-03
David Paul Botha	Enviroglass and Waste Services	The complainant buys glass from SAB and on-sells to Enviroglass. He alleges that Enviroglass, as the sole purchaser of recyclable glass, is a dominant firm which has contravened the Competition Act in inducing a supplier not to deal with a competitor in an attempt to exclude the competitor from the market. The complaint is based on an agreement in terms of which SAB sold its glass to Enviroglass at a lower price than SAB sold to the complainant.	8(d)(i)	16-May-03	Merits not heard	Matter proceeding
Yenti Investments (Pty) Ltd	Sonae South Africa (Pty) Ltd and Sappi Timber Industries (Pty) Ltd	The applicant alleges that the respondents had abused their dominant position by refusing access to an essential facility; refusing to supply scarce goods; and engaging in prohibited price discrimination in contravention of the Competition Act. The complainants are involved in the wholesale, retail sale, supply and distribution of board, timber and related products .	8(b), 8(c), 8(d)(ii) and 9(1)(a), (b) and (c)(i), (ii), and (iii)	15-Sep-03	Merits not heard	Matter proceeding
Independent Cellular Service Providers Association of SA	Telkom SA Ltd	The complainants allege that the introduction by Telkom of the terrestrial to cellular telephony product known as "Cellsaver" constitutes an "uncompetitive action' " and amounts to an abuse of dominance and price discrimination	8 and 9	17-Sep-03	Merits not heard	Matter proceeding

Applicant	Parties	Summary	Basis of complaint	Date received	Hearing date	Decision
Phoebus Apollo Aviation (Pty) Ltd and others	British American Tobacco SA (Pty) Ltd & Commissioner of the South African Revenue Services	The complainants allege that BAT and SARS entered into an agreement whereby they engaged in industrial espionage with the goal of eliminating the complainants from the market. The complainants are seeking a declarator that this conduct is an exclusionary act prohibited by the Competition Act, and an interdict prohibiting the respondents from further engaging in such conduct. They also ask that the Tribunal impose a fine of 10% of turnover on BAT.	8c	28-Oct-03	Merits not heard	Matter proceeding
GLI Africa (Pty) Ltd	South African Bureau of Standards (SABS)	The complainant alleged that SAB acted anti-competitively in revoking its approval to allow GLI Africa to test gaming equipment.	7 and 8	05-Nov-03		Withdrawn
Nationwide Poles cc	Sasol Oil (Pty) Ltd	Nationwide produces building and fencing poles primarily for vineyards and is supplied with creosote, used to treat poles, by Sasol Oil. Nationwide alleges Sasol Oil is abusing its dominant position as the supplier of wax additive creosote in discriminating between purchasers in equivalent transactions, by way of price or discount.	9	05-Dec-03	Merits not heard	Matter proceeding
Formax (Pty) Ltd	Lithotech Ltd	Formax (Pty) Ltd alleges that Lithotech Limited is abusing its dominant position by engaging in price discrimination in the sale of business forms (in particular, pre-printed computer invoices and statements).	9	05-Dec-03	Merits not heard	Matter proceeding
Digital Healthcare Solutions (Pty) Ltd	Medscheme (Pty) Ltd, Discovery Health (Pty) Ltd, Healthbridge (Pty) Ltd	This complaint concerns the formation of a joint exclusive agency (Healthbridge) by medical aid administrators, Medscheme and Discovery, for the conveyance of medical aid claims to them. The complainant alleges that the medical aid administrators have refused them permission, as a supplier of both batch and real-time claims, to submit real-time claims directly to the administrators (as opposed to through Healthbridge's technology).	4 (1)(a); 5 (1): 8 (b); 8 (c) and 8 (d)(i)	31-Dec-03	Merits not heard	Matter proceeding
Harmony Gold Mining Company Ltd and Durban Roodepoort Deep Ltd	Iscor Ltd and Macsteel International BV	The applicants allege that Iscor is a dominant firm engaging in conduct prohibited by the Competition Act 89 of 1998. The alleged conduct relates to charging excessive prices to the detriment of consumers, and requiring or inducing a customer to not deal with a competitor.	8 (a) 8(d)(i)	27-Feb-04	Merits not heard	Matter proceeding
Otherchoice (Pty) Ltd and 6 others	Multichoice SA (Pty) Ltd and UEC Technologies (Pty) Ltd	The applicants allege that Multichoice unilaterally decreased the access capacity of its digital satellite decoders thereby preventing the subscribers to Otherchoice's services from utilising their Smart Cards to gain access. The applicants allege that Multichoice is a dominant firm engaging in exclusionary conduct.	8c	29-Mar-04	Merits not heard	Matter proceeding
Cachecorp Procurement (Pty) Ltd	South African Forestry Company Ltd and Komati-land Forest (Pty) Ltd	The complainant alleges that the respondents are abusing their dominant position by refusing to supply it with pine poles either directly or indirectly; and by requiring, inducing or effectively forcing the complainant's customers not to deal with it.	8 (d)(i), (ii) and (iii)	29-Mar-04	Merits not heard	Matter proceeding

The following cases which were reported in previous years were pending at the end of the current financial year:

Applicant	Respondent	Date received
Anglo American Corporation Medical Scheme and Engen Medical Fund	United South African Pharmacies	17-Jan-02
National Association of Pharmaceutical Wholesalers & Others	Glaxo Wellcome (Pty) Ltd & Others	20-Jul-01
Justice or Foodies Committee and others	Metcash Trading Limited	08-Aug-01
Independent Estate Agents Action Committee	Kwazulu Natal Property Services Limited and Others	25-Apr-02
Pharmed Pharmaceuticals (Pty) Ltd	Astrazeneca Pharmaceuticals (Pty) and Others	14-Jun-02
Sadick Mukaddam	Ster Kinekor, Nu Metro and United Pictures	16-Sep-02

The following cases from previous years were withdrawn in the period under review.

Applicant	Respondent	Date received	Date withdrawn
FFS Refiners (Pty) Ltd	Eskom	11-Sep-02	25-Nov-03
Avalon Group (Pty) Ltd	Old Mutual Life Assurance Company of South Africa	14-May-01	05-Dec-03

### INTERIM RELIEF APPLICATIONS

The Tribunal received 4 applications for interim relief and 1 application was pending from the previous year. Two interim relief cases were heard in the period, both of which were dismissed. Three cases were pending at year-end.

Received in:	Previous year	Current year	Total
<b>Status</b>			
Trib decision	1	1	2
Consent order			
Withdrawn			
Matter proceeding		3	3
<b>Total</b>	1	4	5

Applicant	Respondent	Summary	Basis of complaint	Date received	Hearing date	Decision date	Decision
National Association of Pharmaceutical Wholesalers & Others	Glaxo Wellcome (Pty) Ltd & Others	The Tribunal dismissed this application on the grounds that the wholesalers had not established the conditions that have to be met in order to sustain a successful claim for interim relief. The wholesalers had complained that they were no longer being afforded competitive access to the manufacturers' products, in that they were compelled to purchase the manufacturer's products from an exclusive distribution agency, Kinesis, on the same terms available to the wholesaler's customers in the retail trade. The Tribunal concluded that changes in the mode of distributing pharmaceutical products and the reduced reliance on wholesalers reflected changes in market conditions that had altered the character of distribution across a wide section of the economy.	4, 5, 8 and 9	Jun-00	18-20 Mar-03	18-Jun-03	Interim relief dismissed
Dumpit Waste Removal (Pty) Ltd	The City of Johannesburg & Pikitup	Dumpit Waste Removal had applied for an interim order to prevent Pikitup from dissuading its customers from contracting with Dumpit. They also claimed that the City of Johannesburg was performing exclusionary acts in not issuing waste removal permits to private parties. The Tribunal found that local authorities had a constitutional right to manage waste and that the City of Johannesburg had acted in accordance with the Systems Act.	5, 8(c) and 8(d)(i)	30-Apr-03	20-Nov-03	07-Jan-04	Interim relief dismissed
Orion Cellular (Pty) Ltd	Telkom SA Ltd., Standard Bank of SA Ltd., Edgars Consolidated Stores Ltd.	Orion alleges that, following the introduction of its "Premicell" technology, which reduces the cost of landline to cellphone calls, Telkom had engaged in predatory activities to drive Orion out of the market. Orion alleges that Telkom reached agreements with two of Orion's customers, Standard Bank and Edcon, which undercut Orion and induced them to choose Telkom over Orion.	8 and 9	17-Apr-03	Merits not heard		Matter proceeding
Nutri Flo cc, Nutri Fertiliser cc	Sasol Ltd, Sasol Chemical Industries (Pty) Ltd, Kynoch (Pty) Ltd, Nitrochem (Pty) Ltd.	NutriFlo alleges that Sasol's price increase in September 2003 for the chemical inputs required by Nutriflo for the manufacture of fertiliser amounted to an exclusionary act, charging an excessive price and price discrimination.	8(c) 8(a) 9(1)	03-Nov-03	Merits not heard		Matter proceeding
Coastal Electronic cc	Chubb Electronic Security (Pty) Ltd	Coastal Electronic, an armed response security company operating in small towns in the Eastern Cape, claims that it was losing its customers to Chubb because Chubb was offering its services at a price below the cost of providing the service.		30-Oct-03	Merits not heard		Matter proceeding



## CASE 7: INTERIM RELIEF APPLICATION BY PHARMACEUTICAL WHOLESALERS DISMISSED

The Tribunal dismissed the application by the National Association of Pharmaceutical Wholesalers (NAPW) and eight other pharmaceutical wholesalers for interim relief. The Tribunal also dismissed a subsequent application brought by the applicants to re-open the case, subsequent to the hearing of the main matter.

Five of the respondents are pharmaceutical manufacturers who, in 2000, established a joint exclusive distribution agency to distribute their products. The manufacturers purchased one of the wholesalers, Druggists Distributors, and converted it from a wholesaler, trading on its own account, into an agency distributor, which distributed the manufacturers' stock at an agreed fee.

This application was first heard some two years ago, on which occasion the Tribunal panel held that the manufacturers' joint ownership of the distribution agency contravened Section 4 of the Act which prohibited agreements between competitors. This decision was subsequently reviewed by the Competition Appeal Court which remitted the decision to the Tribunal for further hearing

Subsequent to the decision of the first panel, Druggists Distributors, now renamed Kinesis, was sold to Tibbett and Britten, a UK logistics services provider.

The wholesalers complained that they were no longer being afforded competitive access to the manufacturers' products. They claimed that they were compelled to purchase the manufacturers' products from Kinesis on the same terms available to the wholesalers' customers in the retail trade. As a result, they maintained that they could no longer pass on discounts to their customers, the pharmacists and, so, were effectively being squeezed out of the market.

They initially alleged contraventions of Sections 4 ('horizontal restrictive practices'), 5 ('vertical restrictive practices'), 8 ('abuse of dominance') and 9 ('price discrimination') of the Act. However at the hearing, they only relied on sections 4,5, and certain sub-sections of section 8.

However, the Tribunal concluded that the wholesalers had not established, for the purposes of interim relief, that the manufacturers had contravened any of the sections of the Act. The Tribunal concluded that changes in the mode of distributing pharmaceutical products and the reduced reliance on wholesalers reflected changes in market conditions, changes that had already profoundly altered the character of distribution across a wide swathe of the economy.

In respect of the section 4 allegations, the Tribunal found that the wholesalers had failed to establish the prima facie existence of an agreement between parties in a horizontal relationship. All that had been established was the existence of a number of separate vertical arrangements between each of the manufacturers and Kinesis, their exclusive distribution agency. Nor were these vertical arrangements found to be in contravention of the Act.

Nor, in the Tribunal's view, had the applicants established the other conditions that have to be met in order to sustain a successful claim for interim relief. In particular, the wholesalers had not established that they were suffering "serious or irreparable damage", as required for interim relief matters, but in fact were trading profitably in both pharmaceutical and non-pharmaceutical products.

The applicants contended that a recent proclamation of amendments to the Medicines and Related Substances Acts impacted on the quantum of harm suffered by them. These amendments had been proclaimed subsequent to the conclusion of hearings before the Tribunal and so the applicants applied for the hearings to be re-opened. This too was denied. The Tribunal held that there was no nexus between the additional harm alleged and the alleged conduct of the respondents in this matter. Moreover, the coming into operation of the Medicines Act had been contemplated and indeed already argued during the interim relief proceedings.



## DECISIONS ON PROCEDURE OR POINTS OF LAW

The Tribunal received 22 applications relating to procedure and interpreting the law. These applications were interlocutory to merger and restrictive practice proceedings. 18 of these applications were heard, 2 were withdrawn and 2 were pending at the end of the year.

Applicants	Respondents	Type of application	Hearing date	Date of decision	Decision
Industrial Development Corporation of South Africa Ltd	Anglo American Plc and The Competition Commission	Access to confidential information	04-Jul-03	09-Jul-03	Access denied
Astral Foods Limited	Competition Commission Mike's Chicken (Pty) Ltd Daybreak Farms (Pty) Ltd Midway Chix (Pty) Ltd	To vary order	16-Jun-03	18-Jul-03	Declaratory order
Healthbridge (Pty) Ltd	Digital Healthcare Solutions (Pty) Ltd	Intervention	28-Mar-03	15-May-03	Intervention granted
National Association of Pharmaceutical Wholesalers & Others	Glaxo Wellcome (Pty) Ltd & Others	To reopen hearing	23-May-03	18-Jun-03	Application dismissed
Mondi Ltd	Competition Commission, SAFCOL, York Timbers, CJ Rance	Intervention	05-Aug-03	With-drawn	Applicant decided not to intervene
Dumpit Waste Removal (Pty) Ltd	The City of Johannesburg & Pikitup	Amendment to founding affidavit	01-Oct-03	03-Oct-03	Granted
Johnnic Communications Ltd & Others	New Africa Investments Ltd & Others	Failure to notify	09-Oct-03	13-Oct-03	With-drawn
Competition Commission	South African Airways	Discovery	24-Oct-03	31-Oct-03	Set time frames
Competition Commission and	Digital Healthcare Solutions (Pty) Ltd	In limine points	20-Oct-03	22-Oct-03	Dismissed
Competition Commission	South African Airways	Discovery	24-Nov-03	26-Nov-04	Granted
Orion Cellular (Pty) Ltd	Telkom SA & Others	Section 45	15-Dec-03	23-Dec-03	Granted
Competition Commission	Anglovaal Industries Ltd and Real Juice Holdings	Failure to notify Intermediate merger (consent order)	28-Jan-04	28-Jan-04	Granted
Tsebo Outsourcing (Pty) Ltd/Ethos Private Equity Fund IV and Drave&Scull FM (SA) (Pty) Ltd	Competition Commission	Refund of merger filing fee	28-Jan-04	28-Jan-04	Granted
NUPD & Others	Competition Commission & Others	Joinder and postponement	18-Feb-04	19-Feb-04	Granted

Applicants	Respondents	Type of application	Hearing date	Date of decision	Decision
Boart Longyear, a division of Anglo Operations Ltd and Huddy (Pty) Ltd & Huddy Rock Tools (Pty) Ltd	Competition Commission	Amendment of order	3-Mar-04	4-Mar-04	Dismissed
The Competition Commission	South African Airways	Compel discovery	03-Mar-04	03-Mar-04	Granted
Dr S M Pillay	The Competition Commission and Uitenhage & Dispatch Independent Practitioners Association and Members	Intervention application	03-Mar-04	04-Mar-04	Granted
Nutri Flo cc & Others	Sasol Ltd & Others	Access to confidential information	03-Mar-04	31-Mar-04	Granted
Mettle Ltd	Competition Commission, PSG Capital, Algoa Insurance Company	Access to restricted information	17-Mar-04	With-drawn	With-drawn
Caxton and CTP Publishers and Printers Ltd	Naspers Ltd, Electronic Media Network Ltd Supersport International Holdings Ltd, Competition Commission	Failure to notify	19-Mar-04	24-Mar-04	Dismissed
The City of Johannesburg and Pikitup Johannesburg (Pty) Ltd	Dumpit Waste Removal (Pty) Ltd	Variation of order			Matter proceeding
Network Healthcare Holdings Ltd	Competition Commission and others	Access to confidential information			Matter proceeding



## CASE 8: ACCESS TO CONFIDENTIAL INFORMATION EXTENDED TO EMPLOYEES OF COMPLAINANT FIRM



Two interlocutory decisions in restrictive practice cases broadened the categories of persons who may have access to information over which confidentiality has been claimed. These decisions provide for wider access than the earlier *Unilever* decision. While the *Unilever* decision restricted access to legal representatives, decisions in *Orion/Cellular* and *Nutriflo/Sasol* extended access of the employees of the complainant firm, subject to confidentiality undertakings, without making a final determination on whether the claims to confidentiality were valid. The Tribunal stressed that its decisions in these matters did not impel the information into the public domain nor allowed it to be used for a purpose outside of Tribunal proceedings.

In *Orion/Telkom*, employees of Orion Cellular (Pty) Ltd ("Orion") were allowed to inspect agreements Telkom SA Ltd ("Telkom") had with Standard Bank and Edcon subject to strict controls on wider disclosure. Orion had sought access to these documents because they were pivotal to their application alleging that Telkom was engaging in a campaign of predatory activities to exclude Orion from the market. The Tribunal's decision relied on the criteria of equity and fairness and it concluded that basic justice would not have been served if the officials of Orion were denied the right to study the confidential information.

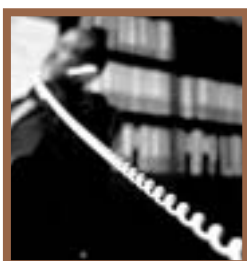
The Tribunal adopted a similar approach in *Nutriflo/Sasol* where Sasol Limited claimed that certain portions of its answering affidavit and a report from its economic experts constituted confidential information. These papers were filed in a case involving allegations by Nutriflo of excessive pricing, exclusionary behaviour and price discrimination by Sasol. Sasol was prepared to

have Nutriflo's lawyers, but not its employees, have sight of the information.

In its decision, the Tribunal noted that *"the confidential information is contained in the pleadings of the party asserting confidentiality. This is a pleading to which the applicants are entitled to respond in terms of our rules of procedure. Failure to do so or failure to do so adequately may result in an adverse conclusion on factual allegations that may be in dispute. It is...a proceeding where an applicant to succeed must meet a standard of proof"*.

*The Tribunal said that: "Although we have accepted that all the information claimed is confidential, this just means that it is not contested that they meet the statutory test on the evidence before us thus far. We do not know, unless the claimant properly enlightens us, whether we are dealing with information whose disclosure may cause blushes or ruin. Indeed none of the information is on the face of it obviously confidential. Discounts are not inherently confidential and are often transparent. So too are market shares, margins, capital costs and production capacities"*.

The Tribunal said it had taken *"an ad hoc approach, largely determined by the circumstances of this case, which, like that of Orion, is an interim relief application, where the applicants want to get a move on to the main application and not haggle over classification, provided that they can do their own case justice"*. The Tribunal warned that its approach *"should therefore not be seen as an invitation to the obsessively secretive or opportunistic litigant to file confidentiality claims, without a proper basis, in the hope that we will allow this practice to go unchallenged."*



## CASE 9: CHANGE OF CONTROL AND THE NOTIFIABILITY OF MERGERS

Two cases heard by the Tribunal that sought clarity on the notifiability of large mergers are discussed below.

### Ethos Private Equity Fund IV and Tsebo Outsourcing (Pty) Ltd

In *Ethos/Tsebo*, the merging parties argued that, even though the shareholding of an existing shareholder (Ethos) increased marginally beyond 50%, there would be no change of control because its shareholders agreement required the assent of 67% of the shareholders and therefore its ability to control the firm remained unchanged both pre- and post- the transaction.

The question that the Tribunal had to decide was whether Ethos' crossing the 50% plus threshold referred to in section 12(2)(a) of the Competition Act triggered notification, in circumstances where joint control had already been notified in a previous transaction.

The Tribunal held that it is possible for more than one firm to simultaneously control another firm. A firm can at the same time be subject to joint control and sole control because the Competition Act recognizes different forms of control and different firms may exercise control over a target firm by virtue of different instances at the same time. In this case, the joint shareholders controlled the company for purposes of obtaining the necessary two-thirds vote to get through a resolution. However, the fact that Tsebo continued to be subject to the joint control of its shareholders in terms of section 12(2) did not detract from the fact that Ethos, in acquiring more than a 50 percent shareholding, was regarded as solely acquiring control over the company. The Tribunal held that the question of Ethos' acquiring sole control of Tsebo had therefore not previously been considered and was accordingly notifiable.

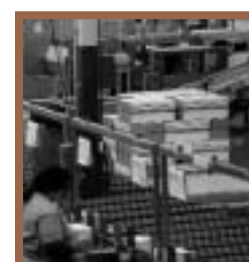
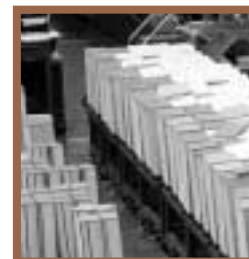
### Caxton and CTP Publishers and Printers Ltd / Naspers Limited, Electronic Media Network Limited ("M-Net"), SuperSport International Holdings Limited ('SuperSport')

The questions of change of control and notifiability were again considered in an application by Caxton to declare a transaction between Naspers, MNet and Supersport a notifiable merger in terms of the Act.

MNH98, a company jointly controlled by Naspers and Johncom held 52% of the shares in MNet and Supersport prior to the transaction and would continue to do so post-transaction. The MNH98 shareholders agreement, which also regulated the relationship between Naspers and Johncom in respect of MNet and Supersport, contained various clauses that ensured that MNH98 continued to control both MNet and Supersport.

The Tribunal held that to succeed, the applicant had to show that all of Naspers' interest in MNet and Supersport was subject to its sole control, post the transaction. Although Naspers was increasing its direct holding in MNet and Supersport in terms of the transaction, part of its total interest in MNet and Supersport would remain subject to joint control.

The Tribunal distinguished the facts of the case from the *Ethos/Tsebo* where the acquirer had sole control of the interest that exceeded the threshold of 50%. In the transaction that was scrutinised in *Caxton/Naspers*, Naspers would only exceed that threshold if its indirect holding were aggregated with its direct holdings. However, since it did not enjoy sole control of its indirect holdings, held though MNH98, it was unable through that holding to exercise either political or economic control of the whole interest. The Tribunal held that to be included in the calculation of total interest, the indirect holdings must at the very least be under the control of the putative acquirer.



# THE COMPETITION APPEAL COURT

The *Competition Act (1998)* set up a triad of institutions (the Competition Commission, the Competition Tribunal and the Competition Appeal Court) with exclusive jurisdiction over competition matters.

The Competition Appeal Court may review, or consider an appeal arising from, any Tribunal decision. There is no appeal beyond the Competition Appeal Court on any matter within the exclusive jurisdiction of the competition authorities. Judges of the Competition Appeal Court are appointed by the President on the advice of the Judicial Services Commission. The tenure of office, remuneration and terms and conditions of service of a judge of the High Court is not affected by his/her appointment to the Competition Appeal Court.

The Tribunal secretariat provides the registry function for the CAC and the Registrar of the Tribunal acts as the Registrar of the CAC.

***The members of the court are:***

The Honourable Mr Justice Dennis Davis (Judge President)

The Honourable Mr Justice Thabani Jali  
 The Honourable Mr Justice Selwyn Selikowitz  
 The Honourable Mr Justice Ismail Hussain  
 The Honourable Ms Justice Lucy Mailula  
 The Honourable Mr Justice Frans Malan  
 The Honourable Mr Justice Chimanlal Patel

The Competition Appeal Court judges participated in the Competition Adjudicators Seminar held in September 2003. In addition 3 judges attended the Fordham AntiTrust Conference in New York in October and following this visited the AntiTrust Division of the US Department of Justice and Federal Trade Commission.

## CASES BEFORE THE COMPETITION APPEAL COURT

In the period under review, the Competition Appeal Court received 14 applications and 4 cases were pending from previous years. The court heard 7 cases and released 9 judgments:

Appellant	Respondent	Date of application	Date of hearing	Date of decision	Bench	Decision
Patensie	CC & Others	24-April-02	09-Dec-02	07-Jul-03	Selikowitz JA, Hussain JA, Malan AJA	Appeal dismissed with costs
Old Mutual Properties Pty Ltd; Old Mutual Life Assurance Company (SA) Ltd	Competition Tribunal & Others	12-Jul-02	28-Mar-03	24-April-03	Hussain JA Jali JA Malan AJA	Appeal dismissed with costs
Association of Shipping lines	Competition Commission	05-Sep-02	25-Sep-03	14-Nov-03	Patel AJA Hussain JA Mailula AJA	Appeal dismissed with costs
Sappi Fine (Proprietary) Ltd	Competition Commission, Papercor cc	18-Sep-02	28-Mar-03	25-Sep-03	Davis JP Mailula AJA Patel AJA	Complaint set aside
Steinhoff International Holdings Ltd	Competition Tribunal, Competition Commission, JD Group Ltd, Profurn Ltd, The Intervenors	27-May-03	25-Sep-03	25-Sep-03	Davis JP Malan AJA Jali JA	Appeal upheld
JD Group Ltd and Profurn Ltd	Competition Tribunal	28-May-03				

Appellant	Respondent	Date of application	Date of hearing	Date of decision	Bench	Decision
ANSAC	BOTASH	24-Jun-03	30-Oct-03	30-Oct-03	Davis JP, Jali JA, Malan AJA	Application for leave to appeal dismissed with costs
NAPW & Others	Glaxo Wellcome & Others	09-Jul-03	23-25-Mar-04		Selikowitz JA Patel AJA Jali JA	
NAPW & Others	Glaxo Wellcome & Others	25-Sep-03				
Competition Commission	Distillers Corporation (SA) Ltd, SFW Group Ltd	28-Aug-03	29-Oct-03	11-Dec-03	Davis JP Jali JA Malan AJA	Appeal dismissed
Federal Mogul Aftermarket	Competition Commission	09-Sep-03	03-Dec-03	03-Dec-03	Davis JP Hussain JA Patel AJA	Case adjourned to allow joinder of Minister
Mike's Chicken & Others	Astral Foods Ltd and the Competition Commission	17-Sep-03	05-Dec-03	28-Jan-04	Malan AJA Selikowitz JA Mailula AJA	Appeal upheld with costs
DHS (Pty) Ltd	CC & Healthbridge (Pty) Ltd	12-Nov-03				<i>Withdrawn on 10-May-04</i>
NUPD & Others	Novartis SA & Others	11-Dec-03	15-Jun-04		Malan AJA Selikowitz JA Mailula AJA	Adjourned to 28-Jul-04
Telkom SA Ltd & Others	Orion Cellular (Pty) Ltd	06-Jan-04	14-Jun-04		Davis JP Selikowitz JA Mailula AJA	Adjourned to 29-Jul-04
Astral Foods Limited	Competition Commission	25-Feb-04	14-Jun-04		Jali JA Hussain JA Malan AJA	
Boart Longyear and Huddy (Pty) Ltd	Competition Commission	09-Mar-04				<i>Withdrawn on 26-April-04</i>
Competition Commission	The Association of Shipping Lines	25-Mar-04				Case continuing



# ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 2004

## CONTENTS:

Balance sheet	39
Income statement	39
Statement of changes in funds	40
Cash flow statement	40
Notes to the financial statements	41-47
Schedule to the annual financial statements	48

The annual financial statements were approved by the Accounting Authority on 31st May 2004 and are signed below by him.



ACCOUNTING AUTHORITY  
D LEWIS

Pretoria  
31st May 2004



## BALANCE SHEET

AT 31 MARCH 2004

	Notes	2004 R	2003 R
<b>ASSETS</b>			
<b>NON-CURRENT ASSETS</b>			
Property, plant and equipment	2	274 012	389 399
<b>CURRENT ASSETS</b>			
Inventory	3	14 543	13 926
Trade and other receivables		217 607	456 825
Cash and cash equivalents		6 739 329	9 365 687
<b>TOTAL ASSETS</b>		<b>7 245 491</b>	<b>10 225 837</b>
<b>FUNDS AND LIABILITIES</b>			
<b>CAPITAL AND RESERVES</b>			
Accumulated funds		6 846 706	9 813 174
<b>CURRENT LIABILITIES</b>			
Trade and other payables	4	398 785	412 663
<b>TOTAL FUNDS AND LIABILITIES</b>		<b>7 245 491</b>	<b>10 225 837</b>

## INCOME STATEMENT

FOR THE YEAR ENDED 31 MARCH 2004

	Notes	2004 R	2003 R
REVENUE		5 202 391	5 535 890
OTHER INCOME		9 127	-
		5 211 518	5 535 890
INTEREST RECEIVED		707 948	1 041 843
INTEREST PAID		(31)	(159)
OPERATING COSTS		(8 885 903)	(7 325 972)
<b>DEFICIT FOR THE YEAR</b>	5	<b>(2 966 468)</b>	<b>(748 398)</b>

## STATEMENT OF CHANGES IN FUNDS

### FOR THE YEAR ENDED 31 MARCH 2004

#### Accumulated Funds

	2004 R
Balance as at 1 April 2002	10 561 572
Deficit for the 2003 year	(748 398)
Balance as at 31 March 2003	9 813 174
Deficit for the 2004 year	(2 966 468)
Balance at 31 March 2004	6 846 706

## CASH FLOW STATEMENT

### FOR THE YEAR ENDED 31 MARCH 2004

	Notes	2004 R	2003 R
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
		(2 432 946)	(190 289)
Cash receipts from customers		5 450 735	5 845 744
Cash paid to suppliers and employees		(8 591 598)	(7 077 717)
Cash utilised by operations	8	(3 140 863)	(1 231 973)
Interest paid		(31)	(159)
Interest received		707 948	1 041 843
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
		(193 412)	(33 308)
Investment to maintain operations		5 877	-
Proceeds on disposal of property, plant and equipment		5 877	-
Investment to expand operations		(199 289)	(33 308)
Property, plant and equipment - acquired		(199 289)	(33 308)
<i>Decrease in cash and cash equivalents</i>		(2 626 358)	(223 597)
<i>Cash and cash equivalents at beginning of year</i>		9 365 687	9 589 284
<i>Cash and cash equivalents at end of the year</i>	9	6 739 329	9 365 687

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2004

## 1. ACCOUNTING POLICIES

The financial statements are prepared on a 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 a straight-line basis at rates considered appropriate to reduce the cost of the assets over their estimated useful lives.

The depreciation rates are as follows:

Computer equipment	-	33.33%
Furniture and fittings	-	20%
Leasehold improvements	-	21.05%
Motor vehicles	-	20%
Office equipment	-	20%

### 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.

### 1.3 Inventory

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

### 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 Provisions

Provisions are recognised when the institution has a present legal or obstructive obligation as a result of past events, for which it is probable that an outflow of economic benefits will occur, and where a reliable estimate can be made of the amount of the obligation.

## 1.6 Revenue

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

## 1.7 Financial Instruments

Financial instruments carried on the balance sheet include cash and bank balances, receivables and trade payables. These financial instruments are generally carried at their estimated fair value, which is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable and willing parties in an arm's length transaction. The Competition Tribunal is therefore exposed to the following risks:

- Interest rate risk, which is the risk that the value of a financial instrument will fluctuate due to the change in market interest rates with respect to cash and cash equivalents, and
- Credit risk, which is the risk that one party to a financial instrument will fail to discharge an obligation and cause the other party to incur a financial loss with respect to receivables and trade payables.

### Recognition

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

### Measurement

Financial instruments are initially measured at cost, which includes transaction cost. Subsequently to initial recognition these instruments are measured at fair value.

Gains and losses arising from changes in the fair value of financial instruments are recognised in net surplus or deficit in the year in which they arise.

	2004 R	2003 R
<b>2. PROPERTY, PLANT AND EQUIPMENT</b>		
<b>Computer equipment</b>	<b>157 972</b>	<b>26 121</b>
Carrying amount at beginning of year	26 121	69 844
Cost	284 921	273 311
Accumulated depreciation	(258 800)	(203 467)
Additions	187 052	11 610
Disposals	-	-
Cost	103 200	-
Accumulated depreciation	(103 200)	-
Depreciation	(55 201)	(55 333)
Carrying amount at end of year	157 972	26 121
Cost	368 773	284 921
Accumulated depreciation	(210 801)	(258 800)
<b>Furniture and fittings</b>	<b>61 631</b>	<b>116 850</b>
Carrying amount at beginning of year	116 850	158 581
Cost	326 066	304 368
Accumulated depreciation	(209 216)	(145 787)
Additions	12 237	21 698
Depreciation	(67 456)	(63 429)
Carrying amount at end of year	61 631	116 850
Cost	338 303	326 066
Accumulated depreciation	(276 672)	(209 216)
<b>Leasehold improvements</b>	<b>42 089</b>	<b>210 443</b>
Carrying amount at beginning of year	210 443	315 664
Cost	482 638	482 638
Accumulated depreciation	(272 195)	(166 974)
Depreciation	(168 354)	(105 221)
Carrying amount at end of year	42 089	210 443
Cost	482 638	482 638
Accumulated depreciation	(440 549)	(272 195)
Carried forward	261 692	353 414

	2004 R	2003 R
<b>2. PROPERTY, PLANT AND EQUIPMENT</b> <i>(continued)</i>		
Brought forward	261 692	353 414
<b>Motor vehicles</b>	<b>10 663</b>	<b>31 991</b>
Carrying amount at beginning of year	31 991	53 318
Cost	106 635	106 635
Accumulated depreciation	(74 644)	(53 317)
Depreciation	(21 328)	(21 327)
Carrying amount at end of year	10 663	31 991
Cost	106 635	106 635
Accumulated depreciation	(95 972)	(74 644)
<b>Office equipment</b>	<b>1 657</b>	<b>3 994</b>
Carrying amount at beginning of year	3 994	6 331
Cost	11 686	11 686
Accumulated depreciation	(7 692)	(5 355)
Depreciation	(2 337)	(2 337)
Carrying amount at end of year	1 657	3 994
Cost	11 686	11 686
Accumulated depreciation	(10 029)	(7 692)
<b>Closing balance</b>	<b>274 012</b>	<b>389 399</b>
<b>3. INVENTORY</b>		
Inventory comprises of :		
Consumables	14 543	13 926
<b>4. TRADE AND OTHER PAYABLES</b>		
Payables and accruals	242 028	330 078
Leave pay due	156 757	82 585
	<b>398 785</b>	<b>412 663</b>

	Notes	2004 R	2003 R
<b>5. OPERATING DEFICIT FOR THE YEAR</b>			
Operating deficit is stated after taking into account the following:			
<b>Income</b>			
Profit from sale of equipment		5 877	-
<b>Expenditure</b>			
Auditor's remuneration - external		74 557	27 872
- Fees for audit		74 557	28 997
- Over provision previous year		-	(1 125)
Depreciation of property, plant and equipment		314 676	247 647
- computer equipment		55 201	55 333
- furniture and fittings		67 456	63 429
- leasehold improvements		168 354	105 221
- motor vehicles		21 328	21 327
- office equipment		2 337	2 337
Operating leases		85 247	60 299
Equipment		85 247	60 299
Retirement benefit costs			
- defined contribution plan		248 956	212 764
Administration fees		24 787	20 460
Contributions		209 956	170 256
Board of Trustees expenses		14 213	22 048
Employee costs		4 844 900	3 907 481
Chairperson		663 254	615 661
CEO		523 250	440 146
Other personnel		3 658 396	2 851 674
Professional services		523 416	673 941
Disclosable item:			
Fruitless expenditure	11	20 417	52 220

## 6. OPERATING LEASE COMMITMENTS

The Competition Tribunal is leasing a photocopier for a period of 5 years from 2002. The lease agreement is renewable at the end of the lease term and the Tribunal does not have an option to acquire the equipment.

	2004 R	2003 R
<i>Commitments for the next 12 months:</i>	96 301	83 740
- Equipment	96 301	83 740
<i>Commitments for one to five years:</i>	331 095	427 395
- Equipment	331 095	427 395
	427 396	511 135

## 7. EMPLOYEE BENEFITS

### Pension Fund

The Competition Commission Pension Fund, which is governed by the Pension Funds Act of 1956, is a defined contribution plan for all employees. All employees of the Tribunal are members of this fund which is administered by Sanlam Ltd. The scheme is currently invested in investment policies with Metropolitan Life. As an insured fund, the Competition Commission Pension Fund complies with regulation 28 of the Pensions Fund Act of 1956 and is exempted from statutory actuarial valuation.

## 8. RECONCILIATION OF DEFICIT TO CASH UTILISED BY OPERATIONS

	2004 R	2003 R
Operating deficit	(2 966 468)	(748 398)
Adjustments for:		
Interest paid	31	159
Profit on disposal of property, plant and equipment	(5 877)	-
Depreciation	314 676	247 647
Investment income	(707 948)	(1 041 843)
Deficit before working capital changes	(3 365 586)	(1 542 435)
<b>Working capital changes</b>	224 723	310 462
(Increase)/decrease in inventory	(617)	11 664
Decrease in trade and other receivables	239 218	309 854
Decrease in trade and other payables	(13 878)	(11 056)
Cash utilised by operations	(3 140 863)	(1 231 973)



## 9. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of cash on hand and balance with banks, and investments in call accounts.

Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

Cash at bank	6 738 329	9 365 509
Cash on hand	1 000	178
	<b>6 739 329</b>	<b>9 365 687</b>

## 10. INCOME TAX EXEMPTION

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

## 11. FRUITLESS EXPENDITURE

An amount of R20 417 is reflected as fruitless expenditure. This consists of R7 118 which was paid to the South African Revenue Service as penalties and interest in respect of late submission of VAT returns, R13 190 in respect of late submission of PAYE returns and R109 being interest on overdue RSC and Establishment levies paid to the City of Tshwane Metropolitan Council.

## 12. CHANGE IN ESTIMATE

Leasehold improvements were previously written off over a period of 5.5 years and are now being written off over a period of 4.75 years due to the anticipated relocation of the Tribunal. The net effect of the change in estimate resulted in an additional depreciation charge of R63 133.

### Change in estimate: Leasehold Improvements

Current depreciation charge	63 133
Previous depreciation charge	168 354
	105 221

## 13. FINANCIAL INSTRUMENTS

### Credit risk

Financial assets, which potentially subject the Competition Tribunal to concentrations of credit risk consist principally of cash and trade receivables. The Competition Tribunal's cash and short term deposits are placed with high credit quality financial institutions. Credit risk with respect to trade receivables is limited due to the nature of the Tribunal's revenue transactions. Accordingly the Competition Tribunal has no significant concentration of credit risk.

### Interest rate risk

The Competition Tribunal's exposure to interest rate risk is managed by investing in current accounts, the Corporation for Public Deposits and short term deposits of between 32 days and 90 days.

### Fair values

At 31 March 2004 and 31 March 2003 the carrying amounts of cash and bank balances, accounts receivable and trade creditors approximate their fair values due to the short-term maturities of these assets and liabilities.

## SCHEDULE TO THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2004

### OPERATING EXPENSES

	2004 R	2003 R
Audit fees - external	74 557	27 872
Audit fees - internal	126 241	79 846
Audit - sundry expenses	17 753	9 598
Bank charges	8 886	7 772
Competition Commission - shared services	1 080 000	960 000
Computer, software licenses	21 600	15 358
Conferences and seminars	220 269	242 635
Courier and delivery costs	38 948	42 345
Depreciation	314 676	247 647
Donor funds returned	307 992	-
Equipment hire	85 247	60 299
Establishment levy	9 443	6 258
Gifts	8 836	7 624
Insurance	85 256	66 755
Media expenses	1 424	9 498
Minor office equipment	2 666	8 517
Motor vehicle expenses	10 744	14 751
Motor, travelling and entertainment	307 698	207 117
Printing, stationery and postage	186 339	173 769
Professional services	523 416	673 941
Publications, books and subscriptions	6 910	22 894
Recruitment and training costs	478 095	404 403
Repairs, maintenance and cleaning	1 470	1 404
Salaries	4 844 900	3 907 481
Telephone and telex	102 120	75 968
Penalties and interest	20 417	52 220
	8 885 903	7 325 972

## REPORT OF THE AUDIT COMMITTEE OF THE COMPETITION TRIBUNAL

This report was prepared as per the Treasury Regulations for public entities issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and promulgated in Government Gazette No. 21249 on 31 May 2000.

The Competition Tribunal is listed as a national public entity in Schedule 3A of the PFMA.

The Audit Committee met 4 times during the year under review. The external members of the Committee are Mr S Masuku, Mr T Verwey and Ms N Tshombe.

Persons in attendance at Committee meetings regularly include the internal auditors and representatives of the Office of the Auditor General.

The Committee operates in accordance with the terms of its charter, and is satisfied that it has completed its responsibilities in compliance with the said charter.

The Committee has reviewed the Competition Tribunal annual financial statements for the financial year ended 31 March 2004 as audited by the Office of the Auditor General and is satisfied that these statements are reasonable and fair.

The Committee also reviewed the periodic management reports, and was satisfied with the quality and content thereof.

The Committee has also reviewed the reports of the Office of the Auditor General and the internal auditors, in the context of the Committee's understanding of the risks facing the entity, and is satisfied that the internal control systems in place are adequate and effective in managing the major financial risks facing the Tribunal.



Sakhile Masuku  
Audit Committee Chairperson



**competitiontribunal**  
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