



competitiontribunal
south africa

competition tribunal

Annual Report
2004/2005

**Annual
Report**

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Highlights

- The Tribunal has been in existence for five and a half years and continues to develop a credible body of jurisprudence
- 97 cases heard, 73 decisions issued and 63 of these posted on the Tribunal website
- 62 large merger transactions decided
- 81.30% of large mergers were set down within 10 days of receiving the case
- 79% of large merger decisions were released on the day of the hearing, while 19% of large merger decisions were released within 10 days
- The Tribunal plays a leading role in international bodies such as the International Competition Network
- 597 reports appearing in media monitored by the Tribunal

What We do

The Competition Tribunal has jurisdiction throughout South Africa and adjudicates competition matters in accordance with the Competition Act.

In respect of matters brought before it the Tribunal may:

- 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.
- hear and adjudicate upon appeals or reviews arising from certain decisions of the Competition Commission.
- make rulings or orders incidental to its functions, such as granting interdicts and orders for costs.



REPORT OF THE AUDITOR-GENERAL

for the year ended 31 March 2005

1. AUDIT ASSIGNMENT

The financial statements as set out on pages 3 to 6 and 37 to 47, for the year ended 31 March 2005 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 4 and 20 of the Public Audit Act, 2004 (Act No. 25 of 2004), 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 accounting authority. 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.

The audit was completed in accordance with Auditor-General Directive No. 1 of 2005.

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 2005 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

11 July 2005



AUDITOR - GENERAL

Chairperson's Report



Chairperson: D. Lewis

I have pleasure in presenting the sixth annual report, which forms part of the audited financial statements of the Tribunal for the period ending 31st March 2005.

The competition authorities established under current legislation began their operations in September 1999 in the absence of jurisprudence and precedence. Thus the Tribunal has, as at 31st March 2005, been in existence for five and a half years.

In this still relatively short life-span I am confident that we have established an effective institution that enjoys the credibility and confidence of its stakeholders. We have developed – and we are developing further – a credible body of jurisprudence that addresses the specific needs of our country and its legislation but which is, nevertheless, solidly grounded in the rich international learning and experience in this field.

During the first term of the Tribunal much of its activity was focused on the adjudication of merger referrals. However, in the past year we have begun to see an increase in the number of restrictive practices cases. This will undoubtedly characterize the next phase of the Tribunal's life.

The Tribunal has consistently played a leading role in relevant international bodies such as the International Competition Network (ICN) of which I continue to serve as vice-chairperson. Plans are currently well advanced for hosting the 2006 annual conference of the ICN in Cape Town.

Members of the Tribunal have also been particularly active in supporting the development of competition authorities in other developing countries, notably in Africa and Asia.

The Tribunal has continued to receive extensive media coverage of its proceedings. This has helped to deepen understanding of our work and has promoted public debate about the role of competition.

The term of office of the first Tribunal ended on the 30th July 2004. Of the seven appointees who commenced new five-year terms in August 2004, five, including the chairperson and deputy chairperson, were appointed to serve second terms. Commensurate with the Tribunal's increased workload, the number of full-time members has been increased from two to three. I would like to thank the Tribunal members, both those currently serving and those who are no longer in office, for their contribution to the work of the Tribunal.

I would also like to record my deep appreciation to the staff of Tribunal for their outstanding contribution. It is a matter of some pride that staff turnover in the Tribunal has been particularly low. I interpret this as a signal of the staff's commitment to the institution, despite the sometimes considerable pressures of work of this kind.

1. Statement of Responsibility

The accounting authority is responsible for the preparation, integrity and fair presentation of the financial statements of the Competition Tribunal for the year ended 31st March 2005. The financial statements presented on pages 37 to 47 have been prepared in accordance with generally accepted accounting practice and include entries based on judgments and estimates made by management. The accounting authority, in consultation with the executive committee, prepared the other information included in the annual report and is responsible for both its accuracy and its consistency with the financial statements.

The going-concern basis has been adopted in preparing the financial statements. The accounting authority has no reason to believe that the Tribunal will not be a going concern in the foreseeable future, based on forecasts and available cash resources. These financial statements support the viability of the Tribunal.

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

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

The financial statements were approved on 31st May 2005 by the accounting authority.

2. Nature of business

The Competition Tribunal adjudicates competition matters in accordance with the Competition Act (Act No. 89 of 1998 as amended) and has jurisdiction throughout South Africa. The Tribunal acts independently and is subject to the Constitution and the law. In dealing with matters brought before it, the Tribunal may:

- authorize a merger, with or without conditions, or prohibit a merger.
- hear and adjudicate upon appeals or reviews arising from certain decisions of the Competition Commission.
- make rulings or orders incidental to its functions, such as granting interdicts and orders for costs.

Since April 2001 the Competition Tribunal has been listed as a national public entity in terms of the Public Finance Management Act, 1999.

3. Objectives and targets

The role and core activities of the Competition Tribunal are defined in the Competition Act, while the rules of the Competition Tribunal outline the procedures to be adhered to when dealing with matters brought before the Tribunal.

The Tribunal is a court of first instance and is therefore limited in its ability to proactively set objectives and targets or accurately predict the number and types of cases to come before it in terms of the Act. The Tribunal's workload is entirely driven by these cases.

“The Tribunal is a court of first instance...”

The Tribunal has however identified seven strategic objectives, which enable it to optimise its activities within the context of its founding legislation. These objectives are:

- Ensuring timeous decisions of a high calibre.
- Compliance with relevant legislation.
- Encouraging effective communication both internally and externally.
- Maintaining a good corporate image and reputation.
- Providing efficient, competent and speedy service to the public.
- Inculcating a proper value system.
- Fairness, objectivity and independence.

In its strategic plan these objectives of the Tribunal are divided into three major categories:

- Policy and legislation
- Enforcement and compliance
- Education and awareness

Specific activities and outputs have been identified for each category and performance indicators and targets have been assigned to each output. Performance against these objectives is reported on pages 13 to 15.

3.1 Financial results

	2005 R'000	2004 R'000
Total revenue	8 098	5 920
Total expenditure	(8 963)	(8 886)
Operating loss for the year	(865)	(2 966)

	2005 R'000	2004 R'000
Total assets	6 580	7 247
Total liabilities	598	400

3.2 Financial performance

Revenue for the year ended 31st March 2005 increased by 37%. This increase was caused by a 20% increase in filing fees received from the Competition Commission. In addition a grant of R1.4 million was received from the Department of Trade and Industry whereas in the previous financial year no grant was received. This grant represented 17% of the Tribunal's annual revenue.

In terms of a memorandum of agreement signed between the Tribunal and the Commission, the Tribunal receives 30% of the filing fees paid to the Commission for large mergers and 5% of the filing fees for intermediate mergers. These filing fees continue to constitute a major portion of the Tribunal's revenue (77%).

Total expenditure (net of capital expenditure) for the period under review remained relatively stable.

A breakdown of expenditure (net of capital items) is set out on the table below:

CATEGORY	PERCENTAGES	
	2005	2004
Donor funds returned	0	3
Salaries	56	55
Administrative expenses	12	14
Training	10	8
Professional fees	22	20
TOTAL	100	100

4. Events subsequent to balance sheet date

No events took place between the year-end (balance sheet) date and the date on which the financial statements were signed that were material enough to warrant disclosure to interested parties.

5. Remuneration

The table below shows total remuneration received by the executive committee for the period ended 31st March 2005.

	2005	2004	Increase
Chairperson - D. Lewis	705,167	663,254	6%
Full-time member - N. Manoim	592,731	558,112	6%
CEO - S. Ramburuth	598,926	523,250	15%
Head of Finance - J. de Klerk	353,678	304,402	16%

The Tribunal is responsible for its employees' contributions to group life insurance 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 the head of finance and any back pay received by the chairperson, the CEO, the full-time member and the head of finance are included.

The remuneration of the CEO and the head of finance were increased in April 2004 in line with the recommendations of a job grading assessment completed by Deloitte and Touché.

6. Property, Plant and Equipment

There has been no change in the policy relating to the use of property, plant and equipment.

7. Executive Committee

The composition of the executive committee remained unchanged in the period under review.

Members:

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

The executive committee meets once every month and its responsibilities include:

- developing and formulating the Tribunal's strategic policy.
- setting objectives for the Tribunal's operational management and administration.
- providing direction.

- preparing and reviewing business plans and budgets.
- making expenditure decisions.
- receiving reports from the chief executive officer and the head of finance.
- making decisions with respect to staffing issues.

8. Number of employees

At the year-end the Tribunal consisted of 3 full-time Tribunal members and 13 staff members.

9. Fruitless and wasteful expenditure

An amount of R38 698 was paid to the South African Revenue Service (SARS) as penalties and interest. R38 211 was in respect of the late submission of PAYE returns for the period June 2000 – November 2002. R487 was in respect of PAYE due for the period March 2003 and February 2004. These monies were paid despite the fact that the Tribunal disputes the liability determined by SARS. The payment was made to avoid further penalties while SARS and the Tribunal's tax consultant were reconciling the account. This reconciliation was still not resolved at year-end.

No action was taken against any individual in the Tribunal for these penalties. The matter had been investigated in previous years and it was found that the late submission was not wilful. In addition and as stated earlier the Tribunal disputes the extent of the liability and is investigating the matter with SARS.

10. Irregular Expenditure

I am pleased to report there was no irregular expenditure by the Tribunal in the year under review.

11. Management fee paid to the Competition Commission

The Competition Commission and the Competition Tribunal share premises and services. In terms of a memorandum of agreement (MOA) signed between the two institutions the Competition Tribunal pays a monthly management fee to the Competition Commission for these services.

The management fee for the period under review was R96 300 per month. The MOA and the management fee are reviewed annually.

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

12. Materiality Framework

The Competition Tribunal for the period 1st April 2004 – 31st March 2005 determined a planning materiality figure of R70 000. The nature of the Tribunal's business is such that it is not capital intensive. The average of 1% of actual revenue and actual expenditure in the previous financial year was used in determining the materiality figure.

Material facts of a quantitative nature that need to be disclosed would refer to any fact discovered that exceeds the materiality figure of R70 000. Facts of a qualitative nature would need to be disclosed if:

- the disclosure is required by law.
- 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:

- they arose through criminal conduct.
- they arose through irregular/fruitless/wasteful expenditure.

Any material loss of a qualitative nature arising through criminal conduct will 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.

13. Significant events

The Tribunal relocated to its new premises at the end of July 2004. The move was successful with no loss of productive hours. Tribunal business resumed on the first day at the new offices and all systems, applications and operations were operative on that day.

14. Office Address

The Competition Tribunal's registered offices are situated at:

Building C

The dti Campus

77 Meintjies Str.

Sunnyside

Pretoria

The Tribunal's postal address is:

Private Bag X28

Lynwood Ridge

0040

Pretoria



D. Lewis
Chairperson

31 May 2005

The Competition Tribunal's members

In August 2004 the term of office of seven of the Tribunal members expired. The President (on the recommendation of the Minister of Trade and Industry) reappointed five of these members for a second five-year term, and two new appointments were made. In addition it was decided that the workload of the Tribunal warranted an additional full-time member, and as a result the Tribunal currently consists of three full-time members (including the chairperson) and seven part-time non-executive members. Two of the full-time members serve as executive members of the Tribunal.

For each hearing brought before the Competition Tribunal the chairperson appoints adjudicative panels comprising three Tribunal members.

The Act specifies that each member of the Tribunal should be a citizen of South Africa and that members should have suitable qualifications and experience in economics, law, commerce, industry or public affairs. Eight of the current Tribunal members have a legal background and two are economists.

Members of the Competition Tribunal:

Chairperson

David Lewis (BCom, MA)

Full-time members

Yasmin Carrim (BSc, LLB)

Norman Manoim (BA, LLB)

Part-time members

Urmila Bhoola (BA Hons, LLB, LLM)

Merle Holden (BCom Hons, MA, PhD)

Mbuyiseli Madlanga (BJuris, LLB, LLM)

Marumo Moerane (BSc, BCom, LLB)

Medi Mokuena (Dip Juris, LLB, LLM)

Thandi Orelyn (BJuris, BProc, LLB, honorary PhD)

Lawrence Reyburn (BSc, LLB)

Training of Tribunal members

The Tribunal is of the opinion that interaction with international counterparts is beneficial to its members and has thus continued to identify opportunities where Tribunal members can interact and share experiences with their peers internationally.

Tribunal members have attended the following international conferences or seminars:

- Third annual ICN conference held in Seoul, Korea in April 2004 (two members attended).
- Unctad and World Bank conference on competition policy in Dar es Salaam in Tanzania in May 2004 (one member attended).
- 31st Fordham antitrust conference held in New York in October 2004 (five members attended).
- Unctad judges' seminar in Zambia in October 2004 (two members attended).
- CCIER conference in New Delhi, India in January 2005 (one member attended).
- OECD global forum on competition in Paris in February 2005 (one member attended).

Two internal training events were held during the period under review:

In August 2004 the competition adjudicator's seminar was held. This seminar was addressed by Prof Richard Whish from Kings College, London and was attended by Tribunal members, case managers, Appeal Court judges and competition officials from three SADC countries. Funding for this seminar was received from the OECD.

In March 2005 Tribunal members and case managers attended a seminar entitled "Recent developments in merger analysis: the increasing use of merger simulations" presented by David Elliot of Price Waterhouse Coopers – United Kingdom.

In the period under review Tribunal members, at various conferences, seminars and workshops, presented five papers.

The Tribunal has continued to remain active in the working groups of the International Competition Network (ICN) and has participated actively in the work of the OECD's global forum on competition law and policy.

The Tribunal Secretariat

The staff (referred to as the secretariat) of the Competition Tribunal provides administrative, research and organisational support to the chairperson and Tribunal members. The secretariat, headed by the chief executive officer, who reports to the chairperson, consisted of thirteen persons at year-end.

In October 2004 a full-time appointment was given to Malanee Modise who in the previous year had worked in the Tribunal as a junior case manager on a one-year contract.

THE TRIBUNAL MEMBERS



David Lewis
- Chairperson



Adv Marumo Moerane
- Deputy Chairperson



Norman Manoim
- Full-time member



Yasmin Carrim
- Full-time member



Urmila Bhoola
- Part-time member



Merle Holden
- Part-time member



Mbuyiseli Madlanga
- Part-time member



Medi Mokuena
- Part-time member



Thandi Orellyn
- Part-time member



Lawrence Reyburn
- Part-time member

THE TRIBUNAL STAFF



Back row (Left to Right): Norman Manoim, Thandeka Yeni, Donald Phiri and Jerry Ramatlo

2nd row (Left to Right): Malanee Modise, Janeen de Klerk, Kim Kampel, Thabelo Masithulela, David Tefu and Shan Ramburuth.

Front row seated (Left to Right): Lerato Motaung, Tebogo Mputle, David Lewis and Yasmin Carrim

Not present: Rietsie Bodenhorst, Shaazia Bhaktawer.

Chief executive officer/registrar

Shan Ramburuth

Case managers

Kim Kappel

Rietsie Badenhorst

Shaazia Bhaktawer (on study leave from August 2004 – November 2005)

Junior case managers

Thabelo Masithulela

Malanee Murugan Modise (appointed in October 2004)

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 properly conducted and by which it can be held accountable.

Compliance with Legislation

The Competition Act

The Competition Act and the rules of the Competition Tribunal prescribe the functions, activities and procedures of the Competition Tribunal.

The Public Finance Management Act

Since 1st April 2001 the Tribunal has been listed as a national public entity in Schedule 3A of the Public Finance Management Act (PFMA). The PFMA prescribes requirements for accountable and transparent financial management in the institution.

In accordance with the PFMA and Treasury regulations, the Tribunal has submitted the following documents to the Department of Trade and Industry for approval in the period under review:

- Memorandum of agreement with the Department of Trade and Industry (submitted in May 2004 and approved on 16th August 2004).
- Budget for the period 1st April 2004 – 31st March 2005 (submitted on 28th October 2003 and approved on 16th August 2004).
- Business plan for the period 1st April 2004 – 31st March 2005 (submitted on 18th February 2004 and approved on 16th August 2004).
- Request for approval to retain surpluses generated as at 31st March 2004 (submitted on 11th March 2004 and approval received on 20th September 2004).
- Quarterly reports on the Tribunal's expenditure, budget variance, activities and performance against set targets.
- Strategic plan for the 3-year period 2004 – 2007 (submitted in September 2004 and approved in February 2005).
- Budget for the 2005/2006 financial year and a five-year budget to 31st March 2009 (submitted in October 2004 and one year budget approved in March 2005).
- Business plan for the period 1st April 2005 – 31st March 2006 (submitted in December 2004 and approved in March 2005).
- Request for approval to retain surpluses generated as at 31st March 2005 (submitted on 15th March 2005).

Audit Committee

The audit committee, which was established in March 2000, met twice in the year under review. An audit committee charter adopted in December 2000 (and reviewed in December 2004) outlines the audit committee's functions.

During these meetings the audit committee reviewed quarterly internal audit reports, internal and external audit plans and financial statements for the period ending 31st March 2005.

The audit committee has continued to assist the executive committee in fulfilling its oversight responsibilities relating to internal controls, risk management, compliance with laws, regulations, ethical norms and financial management.

The audit committee consists of three executive members and four non-executive members. Humphrey Buthelezi was appointed in June 2004 to replace Thabo Mosoli, whose term of office expired in May 2003.

Membership of the audit committee as at the year-end was as follows:

Executive members:

- David Lewis
- Shan Ramburuth
- Janeen de Klerk

Non-executive members:

- Sakhile Masuku – chairperson
- Humphrey Buthelezi
- Nonku Tshombe
- Tobie Verwey

Internal audits

The internal auditing function for the Tribunal has been performed by KPMG. KPMG was awarded a three-year contract starting on 1st April 2002. The audit committee approved an internal audit charter when KPMG was appointed in 2002.

In July 2004 KPMG undertook a review of the completeness and validity of data following the Tribunal's relocation to the Sunnyside premises. In October 2004 a strategic risk assessment was performed, and in March 2005 KPMG reviewed the financial statements of the Tribunal for compliance with gaap.

Two other internal audits were performed during the financial year.

In November 2004 KPMG undertook a risk-based review of the potential leakage of information, loss of credibility and human resources. Existing controls were evaluated to determine their effectiveness in minimising risk.

In February 2005 KPMG performed a risk-based review of expenditure and compliance with legislation. The entire expenditure cycle was reviewed and an assessment was performed to determine whether there was adequate awareness of legislation in the Tribunal. Procedures to enhance awareness were evaluated and compliance with certain statutes was reviewed.

External audit

The office of the Auditor-General has completed the external audit for the period ending 31st March 2005.

Statutory requirement

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

- Skills development levy
- Workmen's compensation
- Regional services council levy (RSC)
- Establishment levy
- Unemployment insurance fund (UIF)
- Value-added-tax (VAT)
- Pay-as-you-earn (PAYE)

SARS exempted the Tribunal from income tax in terms of Section 10(1)(a) of the Income Tax Act 1962 in November 2000. In December 2004 we again wrote to SARS requesting exemption from this statutory provision and are still awaiting a response.

Executive committee

The executive committee, which provides direction, makes expenditure decisions and receives reports from the chief executive and the head of finance held nine meetings in the period under review. The executive committee is also responsible for the development and formulation of the Tribunal's operational and administrative policy and objectives.

The composition of the executive committee has remained unchanged and is detailed on page 5 of this report.

Staff meetings

Four staff meetings were held during the year under review. The purpose of these periodic meetings is to keep staff informed about human resource issues and matters relating to the structure and functioning of the Tribunal. Issues raised and discussed at these meetings have included: leave policy, organisational structure, performance reviews, employee assistance programmes and grievance procedures.

In addition, a two-day team-building session was held in November 2004 for all Tribunal staff and the full-time Tribunal members.

HUMAN RESOURCE DEVELOPMENT

Staff composition

At the beginning of the period under review the Tribunal secretariat consisted of 12 full-time staff members and one staff member on a one-year contract.



The staff member on a one-year contract was appointed to a full-time junior case manager's position in November 2004. No resignations or other new appointments were made in the period under review.

Eight of the staff members are female, seven are african, three are indian and three are white, and 53.85% have a bachelor's degree or higher qualification.

Training and development

Employees have been provided with opportunities for development and further education.

Some 69.5 person-days were devoted to training of members of the secretariat during the financial year (excluding Tribunal members and Appeal Court judges). In terms of salary cost, this amounted to R104 965.50 (i.e. an average of 5.35 training days per person at an average salary cost of R876.56 per day). Training and development comprised both in-house training and external courses, workshops and conferences, locally and internationally.

The Tribunal provided funding and one year's leave of absence to Shaazia Bhaktawer to undertake a master's degree course in competition law at Kings College in London. Shaazia Bhaktawer left the Tribunal in August 2004 and is scheduled to return in November 2005.

Two junior case managers attended the six-day ICN workshop on leniency and cartels in Australia in November 2004. The workshop focussed on giving delegates practical insight into cartel investigation and enforcement orientation, and looked at ways of developing an effective leniency programme.

All the case managers attended the adjudicators seminar held in August 2004, and attended the seminar conducted by David Elliot in March 2005 entitled "Recent developments in merger analysis: the increasing use of merger simulation".

Five case managers attended a one-day workshop run by the Gordon Institute of Business Science in April 2004 on mergers and acquisitions.

Two case managers attended a two-day course in March 2005 run by the Corporate Strategy and Industrial Development Unit (CSID) at the University of the Witwatersrand entitled "Competition economics for lawyers".

Kim Kampel presented a paper titled "The role of South African competition law in supporting SMEs" at the ProPoor regulation and competition conference. The conference, held in Cape Town in September 2004, was the third international conference hosted by the Centre for Regulation and Competition (CRC). The CRC is based in Manchester in the United Kingdom.

The Tribunal has since its inception operated a bursary scheme. The aim of the scheme is to assist employees to obtain further tertiary qualifications. Loans of up to R4000 per annum per employee are provided to cover tuition and examination fees and are converted to bursaries if the employee successfully completes a course. Loans in excess of R4000 can be granted by a special decision of the executive committee.

During the financial year, four staff members received study loans totalling R17 450 and 30% of these loans were converted to bursaries.

Performance Management System

Performance appraisal meetings with the chairperson and the CEO were held with each staff member during April 2004 and December 2004. During each such appraisal process individual performance action plans are discussed and formulated.

The performance management system facilitates the alignment of individual performance with the Tribunal's institutional objectives. It also provides a forum that ensures adequate levels of support and feedback for employees in fulfilling their work responsibilities.

These annual performance appraisal meetings evaluate overall performance, identify areas for improvement, and determine training needs. Performance bonuses and salary adjustments are also linked to the outcome of a performance appraisal.

FINANCIAL MANAGEMENT

The budget for the 12-month period ending 31 March 2005 reflected expenditure (inclusive of capital expenditure) of R11.16m and estimated income (generated from fees and interest) of R5.38m.

Income for the year amounted to R8.09m and was made up as follows:

Category	Amount (Rm's)	Percentage (2005)	Percentage (2004)	Percentage (2003)
Government grants	1.40	17.29	0.00	0.00
Filing fees	6.26	77.37	87.89	84.16
Other income	0.43	5.34	12.11	15.84
Total income	8.09	100.00	100.00	100.00

Minor changes in the composition of income have occurred over the last three years with filing fees remaining the main income generator. Filing fees received from the Competition Commission in the financial year under review increased by 20.42%. The Tribunal also received a grant of R1.4 m from the Department of Trade and Industry, and has continued to receive Treasury approval to accumulate surpluses generated on condition that these surpluses are used to cover expenditure for the next financial year.

COMMUNICATING THE WORK OF THE TRIBUNAL

Total expenditure (net of capital expenditure) for the period was R8.96 million and when compared to expenditure in the previous period remained almost unchanged (increasing by only 0.87%).

The nature of expenditure incurred by the Tribunal in the year under review is illustrated in the table below:

Expenditure Category	Percentage (2005)	Percentage (2004)	Percentage (2003)
Capital	2.60	2.19	0.45
Administration	11.42	13.35	13.74
Personnel	54.53	53.33	53.09
Recruitment and training	9.96	7.67	8.79
Professional services	21.49	20.07	23.93
Donor funds returned	0.00	3.39	0.00
Total expenditure	100.00	100.00	100.00

Professional service expenditure includes payments to the Commission in terms of the Tribunal's memorandum of agreement with it, transcription services, audit fees, legal fees and fees for media and finance-related consulting services.

The Tribunal is a reactive body in the sense that its function is to deal with cases brought before it and this poses problems in terms of budgeting. It is difficult to predict the number of cases that will be heard during a year, and therefore the associated expenses. The Tribunal has found itself with large budget variances but over the last few years actual expenditure has been more closely equated to the budget, and variances are tending to diminish.

We will, however, necessarily have to retain a contingency budget for professional services as there will always be uncertainty on the need for the Competition Tribunal to employ counsel to defend its decisions should the decision be taken on review or appeal.

Year	Actual Expenditure (in Rm's)	Budget (in Rm's)	% Budget spent
2000	3.18	9.12	34.87
2001	6.31	9.08	69.49
2002	6.33	8.78	72.10
2003	7.33	9.33	78.56
2004	8.86	10.44	84.87
2005	8.92	11.54	77.30

The Tribunal continues to keep the media and the general public informed of its activities, thus ensuring that it remains an accessible institution.

The public is educated about the functions of the Tribunal and the Competition Act through extensive media coverage. In the period under review 597 reports appeared in media monitored by the Tribunal.

The public can access information on the Tribunal's activities and outputs through its website (www.comptrib.co.za). The website is linked to other competition-related sites and to the Act, the rules and the official forms. Decisions, once released, are published on the website. In the period under review 63 decisions were posted on the website.

The work of the Tribunal is also communicated through university courses presented by a full-time member and through presentations made by case managers and Tribunal members at local and international conferences, meetings and seminars.

The Tribunal Tribune, an internal newsletter, is produced quarterly and enables Tribunal members and other stakeholders to remain informed about cases heard by the Tribunal. The Tribune also includes brief articles on topical issues in competition regulation. In the period under review the following newsletters were produced:

Newsletter No 16 – April 2004

Newsletter No 17 – August 2004

Newsletter No 18 – December 2004



1. Output targets as per the approved business plan of the Competition Tribunal for the 2004/2005 financial year.

Mandate: To promote and maintain competition in the economy and to ensure compliance with the provision of the Competition Act (No. 89 of 1998).

Sub Prog.	Output	Measure	Target	Status for the year (April-04 to March-05)	Reasons for deviation and Corrective action Plan
Policy and Legislative Development	Input/ conduct research and contribute to various policy making processes	Position papers Policy recommendations to be presented on request by other agencies/ stakeholders	3 Position papers per annum finalized and presented to relevant stakeholders Position papers placed on website	5 papers delivered by Chairperson 5 papers posted on the website	
	To comply with various legislation	No of lawsuits settled with reference to non-compliance. Fine related expenses/costs/irregular expenditure associated with compliance	Nil Nil	No lawsuits were filed against the Tribunal Fruitless and wasteful expenditure of R 38 698 occurred	
Enforcement and Compliance	Merger referrals	Number of referrals received	Tribunal has no control over this	53 uncontested mergers (1 from a previous period) 14 contested mergers (2 from a previous period)	
	Uncontested mergers	Number resolved and turnaround times	Hearing set down within 10 days of referral Order issued within 10 days of hearing Written reasons of decision provided within 20 days of order being issued	51 of the 53 uncontested mergers were heard 40 of 51 cases were heard within 10 days 51 of the 51 cases in which orders were issued met this target 35 of the 47 cases in which written decisions were provided met this target	Set down occurs after the 10-day period with the agreement of the merging parties and is done if the parties are not ready
	Contested mergers	Number resolved and turnaround times	Hearing set down within 10 days of referral Order issued within 10 days of hearing Written reasons of decision provided within 20 days of order being issued	13 of the 14 contested mergers were heard 12 of the 13 contested mergers heard had the hearing set down within 10 days of referral 10 of the 13 cases heard had orders issued within 10 days 4 of the 8 cases in which written decisions were issued	Contestation results in delays. Set down occurs after the 10-day period with the agreement of the merging parties and is done if the parties are not ready
	Interim relief cases	Number of referrals received	Tribunal has no control over this	7 interim relief applications (3 from a previous period)	

PERFORMANCE INDICATORS

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Sub Prog.	Output	Measure	Target	Status for the year (April-04 to March-05)	Reasons for deviation and Corrective action Plan
Enforcement and Compliance		Number of cases received and resolved	Hearing or prehearing set down within 10 days after completion of filing Order issued within 10 days of hearing Written reasons of decision provided within 20 days of order being issued	3 withdrawn and 1 application heard 1 of 1 case was heard within the 10 day period An order was issued in 1 case and this was issued within the 10 day period Reasons were issued in 1 decided case after the 20 day period	These are not targets set by the rules of the Tribunal. They have been identified by us and need to be revisited as time frames for hearing restrictive practice cases are dependent on parties filing their papers.
	Complaint referral from the Commission	Number of referrals received	Tribunal has no control over this	25 complaint referrals from the Commission (11 from a previous period)	
		Number of cases received and resolved	Hearing or prehearing set down within 10 days after completion of filing Order issued within 10 days of hearing Written reasons of decision provided within 20 days of order being issued	1 referral from the Commission was withdrawn and 8 referrals were heard (1 from a previous period) 4 of the 8 cases heard were set down with the 10-day period. 7 of the 8 cases heard had orders issued within the 10 days No written reasons were issued within 20 days of the order being issued	These are not targets set by the rules of the Tribunal. They have been identified by us and need to be revisited as time frames for hearing restrictive practice cases are dependent on parties filing their papers.
Enforcement and Compliance	Complaint referral from a complainant	Number of referrals received	Tribunal has no control over this	23 complaint referrals from a complainant (16 from a previous period)	
		Number of cases received and resolved	Hearing or prehearing set down within 10 days after completion of filing Order issued within 10 days of hearing Written reasons of decision provided within 20 days of order being issued	4 referrals from a complainant were withdrawn and 1 referral was heard The 1 case heard was not set down with the 10-day period. No cases had the order issued within 10 days of the hearing No written reasons were issued within 20 days of the order being issued	These are not targets set by the rules of the Tribunal. They have been identified by us and need to be revisited as time frames for hearing restrictive practice cases are dependent on parties filing their papers.
	Procedural matters	Number of referrals received	Tribunal has no control over this	22 new applications and 2 from the previous period	

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Sub Prog.	Output	Measure	Target	Status for the year (April-04 to March-05)	Reasons for deviation and Corrective action Plan
Enforcement and Compliance	Procedural matters	Number of cases received and resolved	Hearing or prehearing set down within 10 days after completion of filing Order issued within 10 days of hearing Written reasons of decision provided within 20 days of order being issued	2 withdrawn and 22 were heard 11 of the 22 cases heard were set down within 10 days 15 of the 16 cases in which decisions were issued Reasons issued in 6 cases, all within the 10-day period.	These are not targets set by the rules of the Tribunal. They have been identified by us and need to be revisited as time frames for hearing restrictive practice cases are dependent on parties filing their papers.
	Appeal hearings by the Competition Appeal Court	Number of cases resolved	No control over timeframes	8 applications received 6 applications from the previous year were pending 7 cases heard 2 judgments released	
Education & Awareness	Tribunal Tribune	Tribune disseminated	4 per annum. 100 copies circulated	3 Tribunes issued	Last quarter Tribune was issued late and after year end
	Media reports	Media reports circulated	As and when required	597 reports per annum	
	Reporting to the dti	Business plan and budget submission Financial reports Annual Report	Annually Monthly and quarterly Annually	Business plan submitted and approved Monthly reporting to the CFO's office and quarterly reporting on performance Annual report produced and issued timeously	
	Reasons for decisions posted on website	Reason for decisions of the Tribunal posted on the website	Reason for decision posted within 24 hours	Reasons were given in 63 cases and in all these cases decisions were posted on the website within 24 hours (website maintained and updated)	
	Conferences and workshops	Number of successful workshops conferences	1 conference per annum	Secretariat spent 69.5 person days in training Full time Tribunal members spent 32 person days in training 2 internal meetings held for Tribunal members and case managers 2 internal meetings held for Appeal Court judges 1 teambuilding meeting held for staff 1 conference paper presented by a case manager	
	Advice and referrals	Number of advice and referrals	On demand	Approximately 72 (no records kept)	
	Access to Tribunal files	Number of requests received and processed	As and when required	33 requests	
	Meetings	Number held	EXCOM Staff Case	9 4 24	
	Taxation of bills	Number of bills taxed	As and when required	2	

CASES BEFORE THE COMPETITION TRIBUNAL

In the period under the review the Tribunal heard 97 cases and written reasons were issued in 73 cases.

Type of case	Number heard	Reasons issued
Large Merger	64	55
Procedural	22	16
Intermediate Merger	1	0
Complaint Referral from the Commission	8	0
Complaint referral from a complainant	1	1
Interim Relief	1	1
Total heard	97	73

Reasons in 9 large mergers were still to be issued at year-end. One reason in a complaint referral from the Commission was still to be issued at the year end. 7 of the complaint referrals from the Commission were consent orders and reasons are not issued in the case of consent orders.

In rare occasions and then only in the case of strictly procedural matters the Tribunal will advise parties that reasons will not be issued unless specifically requested.

LARGE MERGERS

Annual turnover and net asset value of the merging parties determine whether mergers are classified as "large", "intermediate" or "small". The thresholds for these classifications are set by the Minister of Trade and Industry and have statutory force under the Competition Act.

All large mergers having an effect within the Republic of South Africa are required, in terms of the Act, to be considered by the Competition Tribunal. The Tribunal can then:

- approve the transaction unconditionally, or
- approve the transaction with conditions, or
- prohibit the transaction

Since its inception in September 1999 the Tribunal had heard and decided 275 mergers, 244 were approved without conditions, 27 were approved with conditions, and 4 were prohibited.

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
2004/2005	62	55	7	0
Total	275	244	27	4

In the year under review the Tribunal had 67 large mergers on its roll. Of these, three were pending from the previous year. Hearings of 64 mergers took place and 62 were decided. At year-end four were still pending and one had been withdrawn.



Parties	Date Received	Hearing Date	Order Date	Decision Date	Decision	Sector
Ubuntu-Ubuntu Commercial Enterprises (Pty) Ltd and Anglovaal Mining Ltd/ Avgold Ltd/Harmony Gold Mining Company Ltd	24-Mar-04	07-Apr-04	07-Apr-04	21-May-04	Approved	Mining
Murray & Roberts Ltd and Cementation Company Africa Ltd	25-Mar-04	12-13-May-04	18-May-04	28-Jun-04	Approved	Drilling and mining
J P Morgan Chase & Co and Bank One Corporation	16-Apr-04	28-Apr-04	28-Apr-04	28-Apr-04	Approved	Financial
Kagiso Financial Services and Infrastructure Finance Corporation	16-Apr-04	28-Apr-04	28-Apr-04	01-Jun-04	Approved	Financial
Standard Bank of SA Ltd and Five Others and Global Resorts (Pty) Ltd	20-Apr-04	05-May-04	05-May-04	06-May-04	Approved	Gaming and hotel
Main Street no. 188 (Pty) Ltd and Mondi Newsprint business	20-Apr-04	05-May-04	05-May-04	17-May-04	Approved	Newsprint
Tsebo Outsourcing Group (Pty) Ltd and Drake & Skull (SA)(Pty) Ltd	30-Apr-04	19-May-04	19-May-04	21-May-04	Approved	Food and facilities management
ABSA Bank Ltd and Avena Leaseplan South Africa (Pty) Ltd	03-May-04	19-May-04	19-May-04	27-May-04	Approved	Financial and fleet management
Afgri Operations Ltd and Natal Agricultural Co-Operative Ltd Natalagri	04-May-04	04-Jun-04	04-Jun-04	06-Jul-04	Approved	Agriculture
LNM Holdings N V and Iscor Ltd	14-May-04	07-Jun-04	08-Jun-04	05-Jul-04	Approved	Steel
Venfin Ltd and Intervid Ltd	14-May-04	26-May-04	27-May-04	31-May-04	Approved	Telecommunication
Selcovest 23 (Pty) Ltd and Basfour 2776 (Pty) Ltd, Lekup Properties no. 1 (Pty), Lekup Properties no. 2 (Pty) Ltd	26-May-04	07-Jun-04	08-Jun-04	21-Jun-04	Approved	Property
Industrial Development Corporation of South Africa and Prilla 2000 (Pty) Ltd	04-Jun-04	17-Jun-04	17-Jun-04	06-Jul-04	Approved	Textiles
Xstrata SA (Pty) Ltd and South African Chrome & Alloys Ltd	04-Jun-04	17-Jun-04	22-Jun-04	13-Aug-04	Approved	Mining
Johnnic Publishing Ltd and New Africa Publications Ltd	15-Jun-04	02-Jul-04	02-Jul-04	13-Sep-04	Approved	Media and publishing

Parties	Date Received	Hearing Date	Order Date	Decision Date	Decision	Sector
Lonmin Plc and Western Platinum Ltd & Eastern Platinum Ltd	06-Jul-04	14-Jul-04	14-Jul-04	28-Jul-04	Approved	Platinum mining
Growthpoint Properties Ltd and Lyons Corporate Lease Fund Ltd	07-Jul-04	14-Jul-04	14-Jul-04	28-Jul-04	Approved	Property
BOE Holdings (Pty) Ltd and Unique Finance (Pty) Ltd	08-Jul-04	14-Jul-04	14-Jul-04	18-Aug-04	Approved	Financial
Wesbank, a division of Firstrand Bank Ltd and The Industrial Machinery Finance Book, owned by Barloworld Equipment Finance, a division of Barloworld Capital (Pty) Ltd	28-Jul-04	11-Aug-04	11-Aug-04	25-Aug-04	Approved	Financial
Avi Limited and Dennys Mushrooms (Pty) Ltd	28-Jul-04	11-Aug-04	11-Aug-04	27-Aug-04	Approved	Food and beverage
Fluxrab Investments no. 90 (Pty) Ltd and Metcash Trading Africa Ltd and Metcash Aviation (Pty) Ltd	28-Jul-04	25-Aug-04	26-Aug-04	13-Sep-04	Approved	Retail and food
Clidet no. 500 (Pty) Ltd and Ferro Enamels (Pty), Ferro Plastics (Pty) Ltd, Ferro Industrial Products (Pty) Ltd	28-Jul-04	11-Aug-04	11-Aug-04	24-Aug-04	Approved	Metals
Pioneer Foods (Pty) Ltd and Bromor Foods (Pty) Ltd	05-Aug-04	18-Aug-04	18-Aug-04	31-Aug-04	Approved	Retail and food
Masstores (Pty) Ltd and Hentiq 2869 (Pty) Ltd & Rivonia Produce and hardware (Pty) Ltd	05-Aug-04	18-Aug-04	18-Aug-04	24-Aug-04	Approved	Building supplies and hardware
Established Investments (Pty) Ltd and National Cereal Holdings (Pty) Ltd	27-Aug-04	08-Sep-04	08-Sep-04	15-Sep-04	Approved	Food
Astral Operations Ltd and Earlybird Farm (Pty) Ltd	01-Sep-04	08-Sep-04	08-Sep-04	20-Sep-04	Approved	Poultry
Reunert Ltd and African Cables Ltd	01-Sep-04	08-Sep-04	08-Sep-04	13-Sep-04	Approved	High voltage cables
Bid Industrial Holdings (Pty) Ltd and G.Fox & Company (Pty) Ltd	08-Sep-04	22-Sep-04	22-Sep-04	13-Oct-04	Approved	Wholesale and retail
Pioneer Foods (Pty) Ltd and Accolade Trading Company (Pty) Ltd	14-Sep-04	22-Sep-04	22-Sep-04	04-Oct-04	Approved	Foodstuffs
Pioneer Foods (Pty) Ltd and Golden Lay Farms Ltd, Golden Lay Farms KZN (Pty) Ltd, Golden Lay Foods (Pty) Ltd	17-Sep-04	29-Sep-04	29-Sep-04	13-Oct-04	Approved	Retail and food
Manupont 198 (Pty) Ltd and IST Group Limited	23-Sep-04	29-Sep-04	29-Sep-04	13-Oct-04	Approved	Computer software
Nedbank Ltd, Investec Ltd, Hosken Consolidated Investment Ltd and The IQ Business Group (Pty) Ltd	14-Oct-04	27-Oct-04	27-Oct-04	04-Nov-04	Approved	Project management



Parties	Date Received	Hearing Date	Order Date	Decision Date	Decision	Sector
Rainbow Farms (Pty) Ltd and Vector Logistics (Pty) Ltd	15-Oct-04	27-Oct-04	27-Oct-04	05-Nov-04	Approved	Logistics
Venfin Media Investments (Pty) Ltd and Sail Group Ltd	19-Oct-04	27-Oct-04 15-Dec-04	15-Dec-04	01-Mar-05	Approved	Sport, entertainment and media
Mvelaphanda Holdings (Pty) Ltd and Reberse Holdings Ltd	19-Oct-04	27-Oct-04	27-Oct-04	08-Nov-04	Approved	Property and facilities management
Gauteng Provincial Government and Apexhi Properties Limited	19-Oct-04	27-Oct-04	27-Oct-04	28-Oct-04	Approved	Property
Bytes Technology Group SA (Pty) Ltd and CS Computer Services Holdings Ltd	05-Nov-04	17-Nov-04	17-Nov-04	17-Jan-05	Approved	Banking
Momentum Property Investments (Pty) Ltd and Arnold Property Fund Limited	05-Nov-04	17-Nov-04	17-Nov-04	10-Jan-05	Approved	Property
Vukile Property Fund Limited and MICC Property Income Fund Limited	08-Nov-04	17-Nov-04	17-Nov-04	10-Jan-05	Approved	Property
Plaaskem (Pty) Ltd and UAP Agrochemicals Kwa-Zulu Natal (Pty) Ltd/UAP Crop Care (Pty) Ltd	08-Nov-04	08-Dec-04	08-Dec-04	14-Jan-05	Approved	Agricultural chemicals
Clidet No. 517 (Pty) Ltd and Giostra Investments (Pty) Ltd	30-Nov-04	15-Dec-04	15-Dec-04	18-Jan-05	Approved	Investment
Clidet no 533 (Pty) Ltd and Defy Appliances Ltd	30-Nov-04	15-Dec-04	15-Dec-04	17-Jan-05	Approved	Appliances
Citibank NA South Africa Branch (Registration No. 1995/007396 /10) and Mercantile Bank Ltd	03-Dec-04	15-Dec-04	15-Dec-04	17-Jan-05	Approved	Banking
Vodacom Service Provider Company (Pty) Ltd and Tiscali (Pty) Ltd	14-Dec-04	12-Jan-05	12-Jan-05		Approved	ICT
Steinhoff Africa Holdings (Pty) Ltd and Unitrans Ltd	17-Dec-04	12-Jan-05	12-Jan-05	15-Feb-05	Approved	Furniture and transport
Business Venture Investments 904 (Pty) Ltd and certain businesses of Momentum Group Ltd and M Cubed Ltd	21-Dec-04	12-Jan-05	12-Jan-05	21-Jan-05	Approved	Asset management
JP Morgan Securities South Africa (Pty) Ltd and Cazenove South Africa (Pty) Ltd	22-Dec-04	12-Jan-05	12-Jan-05	15-Feb-05	Approved	Banking and finance
Ellerine Holdings Ltd and Relyant Retail Ltd	25-Jan-05	7-9-Mar-05	29-Mar-05		Approved	Furniture
Afgri Operations Ltd and Nedal Oil Mills (Pty) Ltd	11-Feb-05	23-Feb-05	23-Feb-05	18-Mar-05	Approved	Agriculture
Johnnic Holdings Ltd and Fabcos Investment Holding Company Ltd	11-Feb-05	23-Feb-05	23-Feb-05	18-Mar-05	Approved	Casino and gaming

Parties	Date Received	Hearing Date	Order Date	Decision Date	Decision	Sector
Sanlam Life Insurance Ltd and Safrican Insurance Company & Others	25-Feb-05	10-Mar-05	10-Mar-05	18-Mar-05	Approved	Insurance
Liberty Group Ltd and Capital Alliance Holdings Ltd	25-Feb-05	10-Mar-05 17-Mar-05	17-Mar-05		Approved	Insurance
Masstores (Pty) Ltd and the business conducted by Cell-Shack Communications (Pty) Ltd	10-Mar-05	17-Mar-05	17-Mar-05	18-Mar-05	Approved	Cellular products
Clidet no. 526 (Pty) Ltd and Pamodzi Investment Holdings (Pty) Ltd	16-Mar-05	23-Mar-05	23-Mar-05		Approved	Insurance
Capital Alliance Life Ltd and Rentmeester Assurance Ltd	11-Feb-05	23-Feb-05	23-Feb-05		Approved	Long term insurance
Alpha (Pty) Ltd and Slagment (Pty) Ltd	05-Nov-03	6-27-May-04 24-Jun-04 10 & 13-Sep-04	04-Oct-04	26-Oct-04	Conditional approval	Cement
Inzuzo Furniture Manufacturers (Pty) Ltd and PG Bison Holdings (Pty) Ltd	14-May-04	17-18-Jun-04	22-Jun-04	31-Aug-04	Conditional approval	Furniture manufacturing
Cherry Creek Trading (Pty) Ltd and Northwest Star (Pty) Ltd	14-Sep-04	29-Sep-04	01-Oct-04	20-Oct-04	Conditional approval	Commuter transport
Xstrata South Africa (Pty) Ltd and Egalite (Pty) Ltd & International Carbon Holdings (Pty) Ltd	12-Oct-04	15-Dec-04	20-Dec-04	15-Feb-05	Conditional approval	Ferrochrome
Multichoice Subscriber Management (Pty) Ltd (MWEB)/Tiscali (Pty) Ltd	30-Nov-04	12-Jan-05	17-Jan-05		Conditional approval	Internet service
Business Venture Investments no 790 (Pty) Ltd and Afrox Healthcare Ltd	20-Jan-05	10-11-Feb-05	02-Mar-05		Conditional approval	Healthcare
Continental Beverages (Pty) Ltd and Retail Brands InterAfrica (Pty) Ltd AND Frucon Foods and W Daly and Sonc conducted by Frucon Food and Beverage Company (Pty) Ltd, Coffee Tea and Chocolate Company (Pty) Ltd and Frucon and Beverage Company (Pty) Ltd	11-Feb-05	23-Feb-05	23-Feb-05		Conditional approval	Beverages
Momentum Group Ltd and Bonheur 94 General Trading (Pty) Ltd	14-Jan-05	09-Feb-05	29-Sep-04	13-Oct-04	Matter proceeding	Healthcare
Clover Fonterra Ingredients (Pty) Ltd and New Zealand Milk Products (SA) (Pty) Ltd	31-Jan-05	10-Mar-05			Matter proceeding	Milk products
Harmony Gold Mining Ltd and Gold Fields Ltd	11-Feb-05				Matter proceeding	Mining
Channel Life Ltd and M Cubed Investment Life Ltd	31-Mar-05				Matter proceeding	Financial
Government Employees Pension Fund and Tiber Property Group (Pty) Ltd	17-Mar-05	Withdrawn on 22-Mar-05				Financial

Turnaround times in large merger proceedings

Tribunal Rule 35 (1) specifies that the registrar must set down a matter within ten business days of the merger referral having been filed or that a pre-hearing conference be held within that period. On rare occasions – and with the agreement of the merging parties – set down only occurs after the ten-day period. This is invariably done only if the parties are not ready to have the matter set down within the specified period.

In the period under review 81.30% (52 cases) of the 64 cases heard were given hearings within the ten-day period.

Orders were released in 62 cases with 79% of the orders (49 cases) being released on the same day as the hearing, while 19% of the orders (12 cases) were released within 10 days of the hearing. In the remaining 2% (1 case) the order was released more than 10 days after the hearing.

Tribunal Rule 35 specifies that written reasons must be provided within 20 days of issuing an order. Written reasons were issued for 55 cases. On occasion, in order to enable the Tribunal to prioritise issuing reasons in urgent and contested matters in the shortest time possible, reasons in uncontested matters are only released shortly after the 20-day period. In 71% (39) of the cases the order was issued within 20 days and in 29% (16 cases) of the reasons were issued more than 20 days of the date of the order.

CASE STUDIES

VERTICAL MERGERS

During the period under review, the Tribunal had to decide a number of mergers which resulted in vertical integration. Vertical integration occurs when a firm operates at more than one level in the chain of production and distribution or when it owns its sources of inputs or the customers for its output. A firm can integrate vertically in two different directions. If a firm integrates into a market from which it obtains some raw material or service, the integration is said to be 'backward' or upstream. If a firm integrates in the direction of the end-use consumer, the integration is said to be 'forward' or downstream.

In analysing the effect on competition from vertical integration, effects in two markets usually have to be considered -- the market in which the integrating firm already competes, and the market into which it is vertically integrating.

As a general rule, if both markets are competitive, vertical integration cannot raise any significant competition issues. If market power exists in one or both markets, vertical integration can have anti-competitive effects. It can, for example, cause a foreclosure of markets for other users or buyers of the product, or a reduction in the sources of supply, or an inability to obtain supplies on a competitive basis. Vertical integration can also raise entry barriers by forcing new firms to enter at both levels of competition.

The cases reported below were conditionally approved because the Tribunal was concerned about the anti-competitive effect that the transactions could have on the relevant markets.

CASE STUDY 1

Xstrata SA (Pty) Ltd and Egalite Investment (Pty) Ltd and International Carbon Holdings (Pty) Ltd.

In December 2004 the Tribunal conditionally approved a transaction in which Xstrata, a fully integrated ferrochrome producer, sought to acquire the entire issued share capital of the African Carbon group. Post merger, Xstrata would enjoy a market share of 83% in the char market.

The Tribunal found that the likelihood of foreclosure in the char market was great since, Xstrata would control the market for the supply of char. Customers of African Carbon would have no viable local substitutes for char.

The Tribunal in approving the merger, imposed a set of conditions which required the merged entity to comply with its existing supply agreement with Samancor. It also required the merged entity to comply with its supply agreements with ferrochrome producers other than Samancor and Xstrata for a period of three years from the date of approval.



CASE STUDY 2

Alpha (Pty) Ltd and Slagment (Pty) Ltd.

In October 2004, the Tribunal conditionally approved a merger between Alpha, a cement producer, and Slagment, a supplier of refined slag. Slag is an extender used in the production of cement. The merger would result in customers of the target firm, Slagment, having to source essential inputs from their much larger vertically integrated competitor, Alpha.

The Tribunal found that foreclosure of downstream independent blenders that compete with the cement producers seemed highly probable. In order to address the concerns raised by downstream rivals, the Tribunal imposed a condition which sought to ensure that more raw slag is made available to the downstream independent blenders and users other than the three large cement producers.

HORIZONTAL MERGERS

Horizontal mergers always tend to increase market power because, by definition, two competitors are merging. The effect on competition of such transactions may be small or large depending on the market shares of the firms. Section 12A(2) lists the factors relevant to competition which should be taken into account when deciding whether a merger would substantially prevent or lessen competition in a relevant market.

Three of the more interesting horizontal mergers, which were conditionally approved, are discussed below.



CASE STUDY 1

Murray & Roberts Limited and the Cementation Company (Africa) Limited.

On 18 May 2004 the Tribunal unconditionally approved the large merger which involved the acquisition by Murray & Roberts Limited ("M&R") of a 79.13% controlling interest in Cementation Company (Africa) Limited ("Cementation"), a company previously in the hands of Skanska AB, a multinational company based in Sweden.

At first glance this transaction raised serious grounds for concern in two sub-markets. In the shaft-sinking sub-market, one of the two largest participants was merging with the third-largest firm, leaving only one other well-established domestic firm in this sub-market. In the raise drilling sub-market, the second largest firm was merging with the third largest firm, the result being a two-firm sub-market. A significant competitor was being eliminated in each sub-market, where barriers to entry appeared to be high.

However, on further analysis the Tribunal found sufficient factors that mitigated these concerns. Customers (i.e. mining companies) of the merging firms, for all their undoubted purchasing power and sophistication, were for the most part price-takers in their own product markets and would have little or no ability to pass on the cost increases to their downstream customers. Thus the incentive to resist upward pressure on the cost of key inputs was considerable. Further, the parties had to bid or tender for contracts and this process, by its nature, would ensure high levels of competition. Lastly, the Tribunal was persuaded that consortia of international and local firms could prove, and had already proved, to be credible new entrants in the sub-markets.



CASE STUDY 2

Multichoice Subscriber Management (Pty) Ltd and Tiscali (Pty) Ltd – 72LM/SEP04

This merger was approved, subject to conditions. Multichoice Subscriber Management (Pty) Ltd (“M-Web”) acquired the internet access business of Tiscali, a subsidiary of Tiscali International B.V.

In determining the relevant market for competition purposes, the Tribunal found that this could not be done on the basis of choice of technology alone. The relevant market should be determined on the basis of the nature of the consumer and the type of service consumers required. Hence the relevant market was found to be corporate and home-based consumer markets (roughly corresponding to the leased line and dial-up access segments used by the Commission).

In the market for internet access by home-based consumers, the Tribunal found that even though the merger would result in a relatively high market share for the merged entity, entry was relatively easy. Many potential entrants for example banks and fixed-line and mobile operators, with their large client bases, could easily enter this market. However, entry for new entrants without an existing client base would be more difficult as they would have to rely on new sign-ups.

The merging parties had exclusive agreements with the major computer retailers, access to the retail market was not easy for a new entrant. For this reason the Tribunal imposed a condition outlawing exclusive distribution agreements for a period of 3 years.



CASE STUDY 3

Cherry Creek Trading 14 (Pty) Ltd and Northwest Star (Pty)

This merger was conditionally approved on 1 October 2004. Northwest Star (“NWS”) and its holding company, Northwest Transport Investments (“NTI”), both of which were placed under judicial management, were acquired by Cherry Creek Trading (“CCT”) through a public tender process.

Although this transaction did not raise any competition concerns it did raise some public interest concerns. The Tribunal was concerned about the impact on fares for commuters and on employees.

Because of this, the Tribunal ordered that the merging parties make known to consumers, by way of either an advertisement in the newspapers or a notice on the buses, that there existed a contractual stipulation regarding fares that the merging parties could charge to consumers.

As regards employees, the merging parties provided the Tribunal with an undertaking that there would be a one-year moratorium on retrenchments. In order to ensure compliance and awareness by employees of this undertaking, the Tribunal made the undertaking a condition of the approval.

INTERMEDIATE MERGERS

The Competition Commission decides the cases of mergers that are classified as “intermediate” but parties to these mergers may apply to the Tribunal to reconsider a merger if they wish to dispute an adverse decision made by the Commission.

In the period under review the Tribunal received three applications to reconsider a decision made by the Commission on an intermediate merger. One of these applications was withdrawn and two were still pending at the year-end.

Parties	Date received	Date of pre-hearing	Hearing date	Decision	Sector
General Workers Association and CC & Wild Rush Trading 107 (Pty) Ltd and Oil Manufacturing & Margarine Business of Tiger Food Brands	29-Apr-04 04-May-04	10-Jun-04 25-Jun-04	02-Jul-04	Withdrawn on 02-Jul-04	Oil and margarine manufacturing
Greif SA (Pty) Ltd, Rheem SA (Pty) Ltd and Competition Commission	12-Aug-04	01-Sep-04		Matter proceeding	Industrial containers
Bonheur 50 General Trading (Pty) Ltd and Komatiland Forests (Pty) Ltd	18-Nov-04	09-Dec-05 26-Jan-05		Matter proceeding	Forestry

Since its inception the Tribunal has received 13 applications to reconsider an intermediate merger, an average of 2.17 applications per year.

Year	Total applications received
1999/2000	0
2000/2001	5
2001/2002	2
2002/2003	2
2003/2004	1
2004/2005	3
Total	13

The Tribunal received one exemption appeal in the period under review. At the year-end this matter was still pending.

Parties	Type	Date received	Decision
Payment Issues Forum of South African Retailers and Competition Commission	Exemption Appeal	20-Dec-04	Matter proceeding

Restrictive Practice Cases

Horizontal and vertical restrictive practices and those of dominance that prevent or lessen competition are prohibited by the Competition Act. Restrictive practices include price fixing, market division between firms, collusive tendering and minimum resale price maintenance.

Interim Relief

The Competition Commission investigates and prosecutes restrictive practice complaints. The complainant is entitled to bring a matter directly to the Tribunal if the Commission decides not to prosecute a complaint. Parties are entitled to apply to the Tribunal for interim relief while the Commission is investigating the complaint.

In the period under review the Tribunal had seven interim relief applications on its roll, three of which were pending from the previous period. One application was heard, three were withdrawn, and three are still pending.

Parties	Date received	Hearing date	Order date	Decision date	Decision
Maria Christina (Torga) Buchanan and Health Professions Council of SA, Professional Board for Optometry	16-Apr-04				Matter proceeding
Nuco Chrome (Pty) Ltd and Xstrata SA (Pty) Ltd & Rand York Minerals (Pty) Ltd	19-Apr-04	14-May-04	19-May-04	18-Aug-04	Dismissed
Gaydon Motor Spares SA (Pty) Ltd and Federal Mogul Aftermarket Southern Africa (Pty) Ltd	28-Jun-04				Matter proceeding
Teqplate Manufacturing CC and Uniplate Group (Pty) Ltd	10-Sep-04				Withdrawn 04-Feb-05
Nutri Flo cc and Sasol Ltd	03-Nov-03				Withdrawn 05-Nov-04
Orion Cellular (Pty) Ltd and Telkom SA Ltd & Others	17-Apr-03				Matter proceeding
Coastal Electronics CC and Chubb Electronic Security (Pty) Ltd	30-Oct-04				Withdrawn 15-Oct-04

Complaint referrals from the Commission

The Tribunal received 14 new referrals from the Commission and had 11 cases pending from previous years.

Seven of the referrals received in the current period came in the form of consent orders (opposed complaint referrals). One of these referrals was withdrawn and then refiled.

All these referrals were heard and consent orders were granted in all seven cases.

One referral from a previous period was withdrawn and one referral from a previous period was heard but a decision on this case is still pending.

The remaining 16 referrals, nine from a previous period and seven from the current period, are still pending.

Consent orders (opposed complaint proceedings)

Parties	Date received	Hearing date	Decision date	Decision	Amount fined
Competition Commission and South African Medical Association	07-Apr-04	26-Apr-04	26-Apr-04	Consent order granted	R900 000
Competition Commission and Hospital Association of South Africa	07-Apr-04	26-Apr-04	26-Apr-04	Consent order granted	R4 500 000
Competition Commission and Toyota South Africa Motors (Pty) Ltd	10-May-04	02-Jun-04	02-Jun-04	Consent order granted	R12 000 000
Competition Commission and The Board of Healthcare Funders of Southern Africa	08-Oct-04	20-Oct-04	Withdrawn 27-Oct-04		
Competition Commission and J Melnick & Co (Pty) Ltd	02-Nov-04	17-Nov-04	17-Nov-04	Consent order granted	R200 000
The Competition Commission v/s United South African Pharmacies	09-Jul-04	23-Jul-04	23-Jul-04	Consent order granted	R250 000
Competition Commission and The Institute of Estate Agents of South Africa	24-Nov-04	08-Dec-04	08-Dec-04	Consent order granted	R522 400
Competition Commission and The Board of Healthcare Funders of Southern Africa	18-Feb-05	02-Mar-05	03-Mar-05	Consent order granted	R500 000

Contested complaints pending from the current period

Parties	Date received	Hearing date	Decision date	Decision	Applicant	Rel sec in Act
Competition Commission and South African Airways (Pty) Ltd	12-Oct-04			Matter proceeding	Comair	8(d),8(d) (i), 5(i)
Competition Commission and Consol (Pty) Ltd and Nampak (Pty) Ltd	11-Nov-04			Matter proceeding	Enviroglass Division of the Reclamation Group (Pty) Ltd	4(i)(b)(ii) alt 4(i)(a) and 4(i)(b)(ii),4(i)(a)
Competition Commission and British American Tobacco SA (Pty) Ltd	11-Feb-05			Matter proceeding	JTI	8(a) and 8(d)(i)
Competition Commission and Netstar & 4 others	16-March-05			Matter proceeding	Tracetec	4(i)(a)8,(c)
Competition Commission and Assa Abloy (SA) (Pty) Ltd & 14 others	16-March-05			Matter proceeding	Competition Commission	4(i)(b)(i),5(2)
Competition Commission and Nationwide Airlines (Pty) Ltd	18-March-05			Matter proceeding	Competition Commission	4(i)(b)(i)
Competition Commission and South African Airways (Pty) Ltd, SA Airlink (Pty) Ltd, South African Express Airways (Pty) Ltd	18-March-05			Matter proceeding	Competition Commission	4(i)(b)(i)
Competition Commission and South African Airways	19-Mar-01	26-Apr-04,16-20-Aug-04 04-Oct-04,08-11-Nov-04 07-Dec-04,05-Mar-05			Nationwide Airlines	8(d)(i)

Contested complaint withdrawn

Parties	Date received	Applicant	Rel sec in Act
The Competition Commission v/s South African Forestry Company Limited.	18-Dec-00	Mondi	9



Contested complaints pending from a previous period

Parties	Date received	Applicant
Uitenhage & Dispatch Independent Practitioners Association and Members	20-Aug-02	Dr Pillay
Competition Commission and Telkom	24-Feb-04	VANS
Italtile Franchising, Italtile Ceramics, Italtile Ltd	13-Dec-02	North West Ceramics and Fazel Rhemtul
Iscor Ltd, Saldanha Steel (Pty) Ltd	05-Feb-03	Competition Commission
Norvatis SA (Pty) Ltd and others	02-May-01	New United Pharmaceutical Distributors & Others
Seven Eleven Corporation SA (Pty) Ltd	09-May-01	Competition Commission
Seven Eleven Africa (Pty) Ltd	09-May-01	Cancun Trading No 24 CC & Others
American Natural Soda Ash Corp	14-Apr-00	Botswana Ash (Pty) Ltd
Botswana Ash (Pty) Ltd	13-Sep-00	American Natural Soda Ash Corp

Complaint referrals from a complainant

Received in:	Previous years	Current year	Total
Status			
Tribunal decision	1		1
Consent order			0
Withdrawn	9		9
Complaint referral from the Commission	1		1
Matter proceeding	10	9	19
TOTAL	21	9	30

The Tribunal received nine restrictive practice cases brought directly by a complainant. All nine new referrals were unheard and still pending at year-end. There were a further 16 cases on the roll from previous years, one of which is reflected as a complaint from the Commission in the period under review. Four referrals pending from the previous year were withdrawn and one referral (from a previous period) was heard and decided. 19 cases were pending at the year-end.

The following nine cases were all received in the current period and are still pending:

Parties	Date received	Decision	Rel sec in Act
Platinum Holdings (Pty) Ltd, Unitrade 1152 CC, Platinum Clothing Waterfront 267269 CC, Platinum Clothing Waterfront 229 CC and Victoria & Alfred Waterfront (Pty) Ltd, V & A Waterfront Properties (Pty) Ltd, Competition Commission	19-Apr-04	Matter proceeding	4(1)(a), 4(1)(b)(i), 8(a), 8(c) and 9
Recyclers Association of SA and Scrap Metal Export Permit Policy Implementation Committee	23-Apr-04	Matter proceeding	4(1)(a) and 4(1)(b)(i)
Orion Cellular (Pty) Ltd and Telkom SA Limited, Standard Bank of SA Limited, Edgars Consolidated Stores Limited	07-May-04	Matter proceeding	8 and 9
Maria Christina (Torga) Buchanan and Health Professions Council of SA, Professional Board of Optometry	02-Jun-04	Matter proceeding	4
Mandla-Matla Publishing (Pty) Ltd and Independent Newspapers	25-Jun-04	Matter proceeding	8(b) and 8(d)(i)
Mpho Makhathini, Nelisiwe Mthethwa, Musa Msomi, Elijah Paul Musoke, Tom Myers, Aids Healthcare Foundation Ltd and GlaxoSmithKline South Africa (Pty) Ltd, Glaxo Group Ltd	20-Aug-04	Matter proceeding	8(a)
Croskill Investments t/a Pro Visions Books vs. Lexis Nexis Butterworths	29-Sep-04	Matter proceeding	9
Teqplate Manufacturing CC and Uniplate Group (Pty) Ltd	10-Nov-04	Matter proceeding	9
Mieliemaize Holdings (Pty) Ltd and Pretoria Portland Cement (Pty) Ltd	24-Nov-04	Matter proceeding	8 and 9

The following case received in a previous period was heard in the period under review and was decided on:

Parties	Date received	Hearing date	Order date	Decision date	Decision	Rel sec in Act
Nationwide Poles and Sasol Oil (Pty) Ltd	05-Dec-03	4-6-Aug-04 31-Aug-04 22-23-Nov-04 01-Dec-04	31-Mar-05	31-Mar-05	Granted	9

The following cases received previously were withdrawn in the period under review:

Applicant	Respondent	Date Received
South African Forestry Company Ltd & Komatiland Forest (Pty) Ltd	Cachecorp Procurement (Pty) Ltd	29-Mar-04
Formax (Pty) Ltd	Lithotech Ltd	05-Dec-03
Sadick Mukaddam	Ster Kinekor, Nu Metro and United Pictures	16-Sept-02
David Paul Botha	Enviroglass and Waste Service	16-May-03

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

Harmony Gold Mining Company Ltd, Durban Roodepoort Deep Ltd and Iscor Ltd, Macsteel International BV
Otherchoice (Pty) Ltd and 6 others and Multichoice SA (Pty) Ltd and UEC Technologies (Pty) Ltd
Yenti Investments and Sappi Timber Industries
Independent Cellular Providers Association and Telkom SA Ltd
Phoebus Apollo Aviation (Pty) Ltd, Apollo Tobacco CC, RPB Systems CC, Tobacco Joint CC, Exempli Distributors CC and British American Tobacco SA (Pty) Ltd & Commissioner of the South African Revenue Services
Digital Healthcare Solutions (Pty) Ltd and Medscheme (Pty) Ltd, Discovery Health (Pty) Ltd, Healthbridge (Pty) Ltd
National Association of Pharmaceutical Wholesalers & Others and Glaxo Wellcome (Pty) Ltd & Others
Justice or Foodies Committee & and Others and Metcash Trading Limited
Independent Estate Agents Action Committee and Kwazulu Natal Property Services Limited & Others
Pharmed Pharmaceuticals (Pty) Ltd and Astrazeneca Pharmaceuticals (Pty) & Others

CASE STUDY 1



Nationwide Poles and Sasol Oil (Pty) Ltd

This case was brought to the Tribunal by Nationwide Poles CC (“Nationwide”), a small business based in Port Elizabeth that buys creosote from Sasol Oil (Pty) Ltd (“Sasol”) to treat wooden poles, which it sells to vineyards in the Western Cape. Nationwide had initially made a complaint of unlawful price discrimination, to the Competition Commission but, following its investigation, the Commission decided not to prosecute the matter. The owner of Nationwide, Mr Jim Foot, subsequently brought the complaint to the Tribunal himself as a self-represented complainant.

Nationwide alleged that Sasol's volume discounts discriminated against small business and that it was entitled to the full discount offered to bigger customers. Sasol opposed this on the basis that it was not a dominant firm as the relevant market in which it operated was that of wood preservatives, and not merely creosote. Sasol also claimed that its volume discounts did not have an anti-competitive effect.

The Tribunal found that the relevant market was linked to creosote, and that Sasol was dominant in that market. Further, Sasol's discounting practices were found to have an anti-competitive effect because of their impact on small customers such as Nationwide, accordingly, Sasol was found guilty of price discrimination in contravention of section 9 of the Competition Act. This finding enables the complainant to claim damages from Sasol in the High Court.

In its decision, the Tribunal showed that the form of price discrimination proscribed by Section 9 was consistent with the policy context within which the Act was located. The Tribunal held that it was not a requirement of the Competition Act to prove the actual anti-competitive effect of price discrimination. Price discrimination was uniquely carved out from other restrictive practices by the legislature to avail complainants to prove their case without giving them an onerous evidential burden.

It was intended to set a low threshold of proof of anti-competitive effects in order to avail complainants who would otherwise find it very difficult to prove harm to consumer welfare.

“It is our view that the proscription of price discrimination reflects the legislature's concern to maintain accessible, competitively structured markets, markets which accommodate new entrants and which enable them to compete effectively against well-established incumbents.

This set of concerns points directly to problems confronting small and medium sized enterprises (SMEs) which, in the absence of a ‘level playing field’, or, what is the same thing, in the presence of discrimination, may well find it difficult to enter new markets and even more difficult to thrive.”

The Tribunal pointed out however that the Act's formulation of the prohibition of price discrimination embodies certain limiting principles:

“There is, in other words, no basis to conclude that Section 9 constitutes a blanket prohibition on price differentiation or on the commercially important and widespread practice of discounting even when these pricing practices explicitly favour large firms over small firms. Hence, and in significant contrast with the Robinson-Patman Act (in the United States), in our Act the offence of price discrimination is limited to dominant firms. Moreover, Section 9(1) specifies certain elements to which any act of price differentiation must conform if it is to constitute prohibited price discrimination. And then a series of defences, many of which were developed piece-meal over the course of many years of US and European jurisprudence, are explicitly provided for in Section 9(2). Section 9 cannot therefore be read as an omnibus prohibition of the practice of differentiating on price. Rather, proscription of the practice of price differentiation is confined to particular, specified circumstances”.

DECISIONS ON PROCEDURE OR POINTS OF LAW

The Tribunal received 22 new applications relating to procedural matters and two were pending from the previous year.

The nature of these applications is illustrated in the table below:



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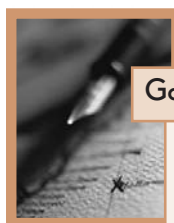
Nature of procedural matter	Number of applications
Access to restricted information (from the Competition Commission)	2
Intervention application	4
Section 45 (access to confidential information)	2
Failure to notify	3
Discovery	1
Extension application	2
Condonation	1
Consent order	1
Consolidation	1
Postponement	1
Variation order	3
Refund of filing fee	2
Other	1
Total applications	24

Two of these applications were withdrawn in the period under review and 22 cases were heard. Decisions were issued in 16 of these cases and decisions in six cases were pending at the year-end.

Parties	Type of application	Date received	Hearing date	Order and Decision Date	Decision
Italtile Franchising, Ceramics, Ltd and Competition Commission	Access to restricted information	20-Sep-04	Withdrawn 01-Oct-04	Withdrawn 01-Oct-04	Withdrawn 01-Oct-04
Greif SA (Pty) Ltd, Rheem SA (Pty) Ltd and Competition Commission	Access to restricted information	20-Sep-04	25-Nov-04	25-Nov-04	Granted
New United Pharmaceutical distributors (Pty) Ltd & Others and Competition Commission & Others	Intervention application	17-Dec-03	02-Jun-04	02-Jun-04	Postponed sine die
Comair Ltd and Competition Commission and South African Airways (Pty) Ltd	Intervention application	17-Nov-04	14-Mar-05		Pending
Community Healthcare Holdings (Pty) Ltd and Cornucopia (Pty) Ltd and Business Venture Investments no.790 (Pty) Ltd and Afrox Healthcare Ltd	Intervention application	28-Jan-05	08-Feb-05	16-Feb-05	Dismissed

Parties	Type of application	Date received	Hearing date	Order and Decision Date	Decision
Stitch Wise (Pty) Ltd, Paragon Textiles (Pty) Ltd, Knee'd'em (Pty) Ltd and Harmony Gold Mining Company Ltd and Gold Fields Ltd	Intervention application	25-Feb-05	30-Mar-05		Pending
Gold Fields Ltd and Harmony Gold Mining Company Ltd and Competition Commission	Section 45	08-Mar-05	30-Mar-05		Pending
Harmony Gold Mining Company Ltd and Gold Fields Ltd and Competition Commission	Section 45	08-Mar-05	30-Mar-05		Pending
Harmony Gold Mining Company Ltd and Gold Fields Ltd	Discovery	08-Mar-05	30-Mar-05		Pending
Competition Commission and The Tiso Consortium & others	Failure to notify	04-Oct-04	20-Oct-04	21-Oct-04	Granted – Fined R100 000
Gold Fields Ltd and Harmony Gold Mining Company Ltd, MMC Norilsk Nickel, the Competition Commission	Failure to notify	27-Oct-04	12-Nov-04	18-Nov-04	Dismissed
Citibank NA South Africa Branch (Registration No. 1995/007396/10) and Mercantile Bank Ltd	Failure to notify	03-Dec-04	15-Dec-04	15-Dec-04	Granted – Fined R 100 000
Bonheur 50 General Trading (Pty) Ltd and Komatiland Forests (Pty) Ltd	Extension application	06-Oct-04	07-Oct-04	07-Oct-04	Granted
Mpho Makhathnini, Nelisiwe Mthethwa, Musa Msomi, Elijah Paul Musoke, Tom Myers, Aids Healthcare Foundation Ltd and GlaxoSmithKline South Africa (Pty) Ltd, Glaxo Group Ltd	Condonation application	22-Apr-04	18-Jun-04 19-Jul-04	11-Aug-04 23-Jul-04	Granted
GlaxoSmithKline South Africa (Pty) Ltd and Mpho Makhathnini, Nelisiwe Mthethwa, Musa Msomi, Elijah Paul Musoke, Tom Myers, Aids Healthcare Foundation Ltd	Consent order	22-Nov-04	02-Mar-05		Matter proceeding
Competition Commission and South African Airways	Consolidation application	23-Apr-04	26-Apr-04	30-Apr-04	Dismissed
Competition Commission and LNM Holdings NV & Iscor Ltd	Extension application	06-Apr-04	15-Apr-04	15-Apr-04	Granted
Competition Commission and Digital Healthcare Solutions (Pty) Ltd	Extension of conditions	02-Apr-04	07-Apr-04	16-Apr-04	Dismissed
Nationwide Poles CC and Sasol Oil (Pty) Ltd	Postponement application	05-Dec-03	17-Jun-04	18-Jun-04	Granted
Attica Trading 12 (Pty) Ltd, Cheque Guarantee Services (Pty) Ltd and Competition Commission	Refund of filing fee	18-Aug-04	08-Sep-04	08-Sep-04	Granted
Gold Reef Casino Resorts Ltd and Competition Commission	Refund of filing fee	19-Aug-04	08-Sep-04	08-Sep-04	Granted

Parties	Type of application	Date received	Hearing date	Order and Decision date	Decision
Spatter Shield CC and Competition Commission	Review of Competition Commission's decision to non refer a complaint	04-May-04	17-Jun-04	Withdrawn on 17 Jun 04	Withdrawn on 17 Jun 04
Dumpit Waste Removal (Pty) Ltd vs. The City of Johannesburg and Pikitup Johannesburg (Pty) Ltd	Variation of order	27-Feb-04	26-May-04	27-May-04	Order varied
South African Breweries Ltd and Competition Commission	Variation of order	Oct 04	15-Dec-04	15-Dec-04	Granted



CASE STUDY 1

Gold Fields Ltd and Harmony Gold Mining Company Ltd, MMC Norilsk Nickel, Competition Commission

This case involves the hostile merger in which Harmony sought to acquire rival mining house Gold Fields by way of an offer to its shareholders. Harmony structured its offer into two legs. In terms of this first leg Harmony offered to acquire just below 35% of each shareholders shares. The first leg it indicated was not notifiable. In terms of the second leg, which Harmony stated was notifiable, it offered to acquire the remaining shares.

The reason was that it needed as many shares as it could get hold of, so it could vote at a shareholders meeting of Goldfields which was imminent. Were it to wait for regulatory approval it would not be able to vote shares at this meeting. As part of the first leg Harmony had also entered into an undertaking with Norilsk, a firm that held 20% of Goldfields shares. The material terms of the agreement were that Norilsk would give Harmony an option to buy all its shares in the second leg and it would vote against the IAMGold transaction in the first leg.

Prior to the general meeting Gold Fields brought an urgent application asking the Tribunal to declare that the first leg amounted to a merger and seeking to interdict its implementation. Goldfields contended that the first leg amounted to an assumption of joint control and therefore a merger that was notifiable. Harmony refuted all three theories of control posited by Gold Fields.

The Tribunal held on the first point that although Harmony intended ultimately to take control, intention alone was not sufficient to make the first leg a merger. It had to be shown that as a result of the first leg offer being accepted the second stage was inevitable. Harmony might acquire all the shares in the first leg, but still not acquire control in the second. The Tribunal held that while evidence of intention may have some value in deciding whether a transaction is a merger it is by no means decisive.

The Tribunal found further that the agreement with Norilsk was not in and of itself enough to come to the conclusion that there was joint control. An agreement to vote in respect of one resolution and to dispose of shares at a later stage was not enough to justify a conclusion that this constituted joint control. On the third argument, the Tribunal found on the facts that Harmony could not at 35%, control the company.

Goldfields successfully appealed the Tribunal's decision to the Competition Appeal Court. The Court overturned the decision of the Tribunal and held that Harmony had in the first leg intended to effect a merger. The Court also found that joint control had come about as a result of the undertaking with Norilsk. The Court went on to find that the Tribunal had the power to interdict and made an order preventing Harmony from voting any shares acquired as a result of the first leg until the merger had been approved.

THE COMPETITION APPEAL COURT

The Competition Appeal Court is one of three institutions established in terms of the Competition Act to deal with competition matters in South Africa.

The Competition Appeal Court is a specialised body that hears appeals from and reviews of decisions of the Tribunal. Its judges are drawn from the High Court.

The President, acting on the advice of the Judicial Services Commission appoints the judges of the Competition Appeal Court.

The members of the court at the year-end comprised:

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 Honourable Ms Justice Nonkosi Mhlantla

The registry function for the Competition Appeal Court is provided by the secretariat of the Tribunal and the registrar of the Tribunal acts as the registrar of the Competition Appeal Court.

Five judges of the Competition Appeal Court participated in the competition adjudicators seminar held in August 2004. In addition four judges attended the Fordham antitrust conference held in New York in October 2004.

A workshop on rules in the Competition Appeal Court was held in the Magaliesberg in December 2004. Seven judges attended this workshop.

The budget of the Competition Appeal Court appears as a line item on the Tribunal's budget and funding for it is received from the Department of Trade and Industry. The Tribunal's secretariat manages and administers this budget on behalf of the Competition Appeal Court. The table below sets out the expenditure of the Competition Appeal Court over the past three years.

Year	Total Expenditure (R'000)
2003	175
2004	284
2005	341

CASES BEFORE THE COMPETITION APPEAL COURT



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In the year under review, the Competition Appeal Court received eight cases and six cases were pending from previous years. The court heard seven cases and released five judgements.

Appellant	Respondent	Date of appeal	Date of hearing	Date of decision	Bench	Decision
National Association of Pharmaceutical Wholesalers & Others	Glaxo Wellcome (Pty) Ltd & Others	09-Jul-03 - Appeal 25-Sep-03 - Condonation	02-Dec-03 SS, TJ, CP postponed to 23-25-Mar-04	18-Feb-05	Patel AJA, Jali JA, Selikowitz JA	Cross appeal dismissed with costs Condonation refused with costs
Federal Mogul Aftermarket	Competition Commission	09-Sep-03	11-Jun-04	23-Sep-04	Davis JP, Jali JA, Hussain JA	Appeal dismissed with costs
NUPD & Others	Novartis SA & Others	11-Dec-03		25-Jun-04		Withdrawn on 15 Oct 04
Orion Cellular (Pty) Ltd	Telkom SA Ltd & Others	06-Jan-04	14-Jun-04 postponed to 29-Jul-04	17-Dec-04	Davis JP, Selikowitz JA, Mailula AJA	Appeal dismissed with costs
Astral foods Limited	Competition Commission	25-Feb-04	14-Jun-04		Malan AJA, Jali JA, Hussain JA	Condonation for late lodging of appeal granted and appeal allowed
The Competition Commission	The Association of Shipping Lines	25-Mar-04				Withdrawn on 04 Feb 05
South African Airways (Pty) Ltd	Competition Commission & Competition Tribunal	10-May-04	15-Jun-04	10-May-05	Davis JP, Hussain JA, Malan AJA	Review dismissed with special costs order
Gold Fields Ltd	Harmony Gold Mining Limited, MMC Norilsk Nickel & CC	19-Nov-04	24-Nov-04	27-Jan-05	Davis JP	Relief granted
Harmony Gold Mining Limited, MMC Norilsk Nickel & CC	Gold Fields Ltd	29-Nov-04	24-Mar-05		Davis JP, Jali JA, Hussain JA	Appeal dismissed with costs
Community Healthcare Holdings (Pty) Ltd & Cornucopia (Pty) Ltd	Competition Tribunal, Competition Commission, Business Venture & Others	18-Feb-05 substituted on 22-Feb-05	23-Mar-05	26-Apr-05	Davis JP, Jali JA, Malan AJA	Leave to appeal refused with costs
Community Healthcare Holdings (Pty) Ltd & Cornucopia (Pty) Ltd	Competition Tribunal, Competition Commission, Business Venture & Others	28-Feb-05	14-Jun-05		Davis JP, Mailula AJA, Mhlantla AJA	
Community Healthcare Holdings (Pty) Ltd & Cornucopia (Pty) Ltd	Competition Tribunal, Competition Commission, Business Venture & Others	03-Mar-05	14-June-05		Davis JP, Mailula AJA, Mhlantla AJA	

Appellant	Respondent	Date of appeal	Date of hearing	Date of decision	Bench	Decision
Community Healthcare Holdings (Pty) Ltd & Cornucopia (Pty) Ltd	Competition Tribunal, Competition Commission, Business Venture & Others	03-Mar-05	11-Mar-05		Hussain JA	
Community Healthcare Holdings (Pty) Ltd & Cornucopia (Pty) Ltd	Competition Tribunal, Competition Commission, Business Venture & Others	18-Mar-05	14-Jun-05		Davis JP, Mailula AJA, Mhlantla AJA	Consolidation application dismissed with costs

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INCOME STATEMENT

for the year ended 31 March 2005

Continuing Operations	Notes	2005 R'000	2004 R'000
Revenue	1	6 265	5 202
Grants and transfers	2	1 400	0
Other income	3	65	9
		7 730	5 211
Less: Operating Expenses		8 963	8 886
Administrative expenses	4	1 106	1 092
Staff costs	5	5 019	4 848
Other operating expenses	6	2 668	2 632
Depreciation	7	170	314
Deficit from operations		(1 233)	(3 675)
Income from investments	8	368	709
Net deficit for the year		(865)	(2 966)

BALANCE SHEET

at 31 March 2005

		2005	2004
	Notes	R'000	R'000
Assets			
Non-current assets			
Property, plant and equipment	9	343	274
Current assets		6 237	6 973
Inventory	10	16	15
Trade and other receivables	11	880	218
Cash and cash equivalents	12	5 341	6 740
Total assets		6 580	7 247
Equity and liabilities			
Accumulated funds		5 982	6 847
Current liabilities		598	400
Trade and other payables	13	598	400
Total equity and liabilities		6 580	7 247

STATEMENT OF CHANGES IN EQUITY

for the year ended 31 March 2005

	Accumulated funds
	2005 R'000
Balance at 1 April 2003	9 813
Deficit for the year	(2 966)
Balance at 1 April 2004	6 847
Deficit for the year	(865)
Balance at 31 March 2005	5 982

CASH FLOW STATEMENT

for the year ended 31 March 2005

	Notes	2005 R'000	2004 R'000
Operating activities			
Cash utilised by operations	14	(1 593)	(3 140)
Interest received	8	368	709
Net cash outflow from operating activities		(1 225)	(2 431)
Net cash used in investing activities	15	(174)	(194)
Net decrease in cash and cash equivalents		(1 399)	(2 625)
Cash and cash equivalents at the beginning of the year		6 740	9 365
Cash and cash equivalents at end of the year	12	5 341	6 740

ACCOUNTING POLICIES

for the year ended 31 March 2005

The Annual Financial Statements are prepared in accordance with generally accepted accounting practice and the Public Finance Management Act (Act 1 of 1999) as amended and incorporate the following principal accounting policies, which are consistent with those applied in the previous year.

1. Basis of preparation

The financial statements have been prepared on the historical cost basis.

2. Currency

These financial statements are presented in South African Rands.

3. Revenue

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

4. Irregular and fruitless and wasteful expenditure

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

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

All irregular and fruitless and wasteful expenditure is charged against income in the period in which they are determined.

5. Pension and post retirement benefits

The entity operates a defined contribution plan.

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

6. Property, plant and equipment

Assets costing less than R 2 000 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 annual depreciation rates are as follows:

Leasehold improvements	- 21%
Office equipment	- 20%
Motor vehicles	- 20%
Computer equipment	- 33%
Furniture and fittings	- 20%

7. 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.

8. Inventory

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

9. 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.

10. 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.

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.

11. Government grants

Government grants are recognised in the year to which they relate, once reasonable assurance has been obtained that all conditions of the grants have been complied with and the grant has been received.

12. Comparative figures

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

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2005

1. Revenue

An analysis of the Tribunal's revenue is as follows:

Rendering of services:

Filing fees

Total

2005 R'000	2004 R'000
6 265	5 202
6 265	5 202

2. Grants and Transfers

Government grant

Total

1 400	0
1 400	0

3. Other Income

Profit on disposal of assets

Other

Total

65	6
0	3
65	9

4. Administrative expenses

General and administrative expenses

Auditor's remuneration

- **Audit fees**

Operating leases

Travel and subsistence

Total

663	663
115	74
115	74
97	85
231	270
1 106	1 092

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

CONTINUED.....

for the year ended 31 March 2005

5. Staff costs

	2005 R'000	2004 R'000
Salaries	2 454	2 443
Basic salaries	1 829	1 930
Performance awards	267	179
Other non-pensionable allowance	358	334
Defined Pension contribution plan expense	152	136
Social contributions (Employer's contributions)	162	220
Medical	13	79
UIF	15	15
Insurance	78	68
Other salary related costs	56	58
Director's emoluments	2 251	2 049
Total	5 019	4 848

6. Other operating expenses

Staff training and development	916	698
Consultants, contractors and special services	1 678	1 811
Legal fees	34	99
Maintenance, repairs and running costs	1	4
Fruitless and wasteful expenditure	39	20
Total	2 668	2 632

7. Depreciation

Leasehold improvements	42	169
Office equipment	1	2
Motor vehicles	10	21
Computer equipment	76	55
Furniture and fittings	41	67
Total	170	314

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

CONTINUED.....

for the year ended 31 March 2005

	2005 R'000	2004 R'000
8. Income from investments		
Interest income		
Bank deposits	368	709
Total	368	709

9. Property, plant and equipment

	Leasehold improvements R'000	Office equipment R'000	Motor vehicles R'000	Computer equipment R'000	Furniture and fittings R'000	Total R'000
Year ended 31/3/2004	211	3	31	26	117	388
Cost	483	11	106	285	326	1211
Accumulated depreciation	(272)	(8)	(75)	(259)	(209)	(823)
Additions				188	12	200
Disposals	0	0	0	0	0	0
Cost	0	0	0	103	0	103
Accumulated depreciation	0	0	0	(103)	0	(103)
Depreciation charge	(169)	(2)	(21)	(55)	(67)	(314)
Net carrying amount						
31 March 2004	42	1	10	159	62	274
Cost	483	11	106	370	338	1308
Accumulated depreciation	(441)	(10)	(96)	(211)	(276)	(1034)
Year ended 31/3/2005						
Opening net carrying amount	42	1	10	159	62	274
Cost	483	11	106	370	338	1308
Accumulated depreciation	(441)	(10)	(96)	(211)	(276)	(1034)
Additions		3	209	18	9	239
Disposals	0	0	0	0	0	0
Cost	483	0	106	18	0	607
Accumulated depreciation	(483)	0	(106)	(18)	0	(607)
Depreciation charge	(42)	(1)	(10)	76)	(41)	(170)
Net carrying amount						
31 March 2005	0	3	209	101	30	343
Cost	0	14	209	370	347	940
Accumulated depreciation	0	(11)	0	(269)	(317)	(597)

NOTES TO THE ANNUAL FINANCIAL STATEMENTS CONTINUED.....

for the year ended 31 March 2005

	2005 R'000	2004 R'000
10. Inventories		
Consumable stores	16	15
Total	16	
11. Trade and other receivables		
Trade receivables	880	218
Total	880	218

12. Cash and cash equivalents

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

Cash at bank	5 340	6 739
Cash on hand	1	1
Total	5 341	6 740

As required in section 7(2) and 7(3) of the Public Finance Management Act, the National Treasury has approved the local banks where the bank accounts are held.

13. Trade and other payables

Trade creditors	452	206
Leave pay due	73	157
VAT	73	37
Total	598	400

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

CONTINUED.....

for the year ended 31 March 2005

14. Reconciliation of net deficit for the year to cash utilised by operations

	2005 R'000	2004 R'000
Net deficit for the year	(865)	(2 966)
Adjusted for:		
Depreciation on property, plant and equipment	170	314
Profit on disposal of property, plant and equipment	(65)	(6)
Investment income	(368)	(709)
Operating cash flows before working capital changes	(1 128)	(3 367)
Working capital changes	(465)	227
(Increase)/decrease in inventories	(1)	1
(Increase)/decrease in receivables	(662)	240
Increase/(decrease) in payables	198	(14)
Cash utilised by operations	(1 593)	(3 140)

15. Net cash flows from investing activities

Proceeds on disposal of property, plant and equipment	65	6
Acquisition of property, plant and equipment	(239)	(200)
Cash used in investing activities	(174)	(194)

16. Operating lease arrangements

At the balance sheet date the Tribunal had outstanding commitments under non-cancellable operating leases, which fall due as follows:

Up to 1 year	111	96
1 to 5 years	220	331
	331	427

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.

The Competition Tribunal relocated its offices during the year under review to the new dti campus and is awaiting the finalization of the rental agreement with the relevant parties. The Competition Tribunal has however budgeted an amount of R 840 000 towards the rental agreement for the next financial year.

17. Employee benefits

Pension Fund

The Competition Commission Pension Fund, which is governed by the Pensions Fund Act of 1956, is a defined contribution plan for all employees in the Competition Tribunal. The fund is administered by Sanlam Ltd. The scheme is currently invested in investment policies with Metropolitan

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2005

Life and Sanlam Multi Managers. As an insured fund, the Competition Commission Pension Fund complies with regulation 28 of the Pension Fund Act of 1956.

18. Income tax exemption

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

19. Fruitless Expenditure

An amount of R 38 698 is reflected as fruitless expenditure. This consists of penalties levied by the South African Revenue Services as penalties and interest in respect of late submission of PAYE returns. R 38 211 of these liabilities refer to an earlier period of the Tribunal's operations (June 2000 – November 2002). R 487 was in respect of PAYE due for the period March 2003 and February 2004. The Tribunal paid the full amount despite the fact that we are of the opinion that SARS has not fully reconciled the Tribunal account. The matter is being investigated by the Tribunal's tax consultant. No action was taken against any individual in the Tribunal for these penalties. The matter had been investigated in previous years and it was found that the late submission was not wilful. In addition and as stated earlier the Tribunal disputes the extent of the liability and is investigating the matter with SARS.

20. 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 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 value

At 31 March 2004 and 31 March 2005 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.

21. Change in estimate

Leasehold improvements were previously written off over a period of 5.5 years and in 2003/2004 were 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.

	2005 R'000	2004 R'000
Change in estimate: Leasehold improvements	0	63 133
Current depreciation charge	0	168 354
Previous depreciation charge	0	105 221

REPORT OF THE AUDIT COMMITTEE

for the year ended 31 March 2005

This report was prepared according to the Treasury Regulations for public entities issued in terms of the Public Finance Management Act (PFMA), 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 twice during the year under review. The external members of the Committee are Mr S Masuku (chairperson), Mr T Verwey, Mr H Buthelezi and Ms N Tshombe.

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

The Audit 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's annual financial statements for the financial year ended 31 March 2005 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 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

24 June 2005



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