



competitiontribunal
south africa

ANNUAL REPORT 2005/2006

annual report

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HIGHLIGHTS

- Since its inception in September 1999 the Tribunal has made an average of 53.5 merger decisions annually
- 136 matters heard, 104 decisions issued in the current year
- 101 large mergers heard in the current year
- 76.24% of large mergers heard were set down within 10 days of notifications
- 84% of large merger decisions were released on the day of the hearing while 14% were released within 10 days of the hearing
- 195 days spent in hearings in the current year
- 859 reports appearing in media monitored by the Tribunal
- Chairperson David Lewis continues to serve as vice-chairperson of the International Competition Network
- Tribunal invited to join the Competition Committee of the Organisation for Economic Co-operation and Development (OECD)

WHAT WE DO

- We are an independent, impartial institution
- The Tribunal regulates mergers and adjudicates on anti-competitive business practices
- In respect of mergers, the Tribunal:
 - authorises or prohibits mergers
 - adjudicates appeals from the Competition Commission's decisions on intermediate mergers
- In respect of anti competitive behaviour, the Tribunal:
 - adjudicates complaint referrals
 - adjudicates interim relief applications
 - hears appeals on exemptions



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REPORT OF THE AUDITOR GENERAL

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE COMPETITION TRIBUNAL FOR THE YEAR ENDED 31 MARCH 2006

AUDIT ASSIGNMENT

The financial statements as set out on pages 5 to 9 and 32 to 44, for the year ended 31 March 2006, have been audited in terms of section 188 of the Constitution of the Republic of South Africa, 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 are the responsibility of the accounting authority. My responsibility is to express an opinion on these financial statements, based on the audit.

SCOPE

The audit was conducted in accordance with the International Standards on Auditing read with General Notice 544 of 2006, issued in Government Gazette no. 28723 of 10 April 2006 and General Notice 808 of 2006, issued in Government Gazette no. 28954 of 23 June 2006. 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
- evaluating the overall financial statement presentation.

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

BASIS OF ACCOUNTING

The entity is required to prepare financial statements on the basis of accounting determined by the National Treasury, as described in note 1.1 to the financial statements.

AUDIT OPINION

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Tribunal at 31 March 2006 and the results of its operations and its cash flows for the year then ended, in accordance with the basis of accounting determined by the National Treasury of South Africa, as described in note 1.1 to the financial statements, and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

APPRECIATION

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



Y M Essack for Auditor-General

Pretoria

31 July 2006



AUDITOR-GENERAL

CHAIRPERSON'S REPORT - FOR THE YEAR ENDED 31ST MARCH 2006

**DAVID LEWIS** CHAIRPERSON

It is my pleasure to present, as part of the audited financial statements, the seventh annual report of the Competition Tribunal, for the year ending 31st March 2006.

The Tribunal, which commenced operations in September 1999, has, as at 31st March 2006, been in existence for six-and-a-half years. I am confident that we have established an institution that enjoys the credibility and confidence of its stakeholders. A credible body of jurisprudence that addresses the country's specific needs and legislation but which is solidly grounded in rich international learning and experience, has been developed, and continues to be developed.

During the first term of the Tribunal much of its activity was focused on the adjudication of merger referrals. While merger regulation continues to constitute the 'bread and butter' of Tribunal work, there is a marked increase in the number of restrictive practices complaints referred to the Tribunal. These have come both by way of referrals from the Commission as well as referrals from private parties, both in instances where the Commission has elected not to refer a complaint and as applications

for interim relief. The increase in complaint referrals undoubtedly reflects the maturing of competition law and growing public confidence in the Competition Commission as an enforcer of competition law.

This increase in restrictive practices matters will undoubtedly characterize the next phase of the Tribunal's life. By their very nature these cases are lengthy and consume considerable time and other resources. We are fortunate to have secured, in the period under review, the services of a third full-time Tribunal member, Ms. Y. Carrim.

One measure of our impact has been the extensive media coverage of Tribunal hearings and the high level of public debate surrounding competition that has developed in consequence. This is making a significant contribution towards the building of a 'competition culture' and is a vindication of the transparent and inclusive approach adopted by the Tribunal.

The Tribunal has continued to play 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 in May 2006. The Tribunal has been active in assisting the ICN with the attendance of African delegates to this conference. The South African competition authorities - the Tribunal and the Commission - were invited to join the Competition Committee of the Organisation for Economic Co-operation and Development (OECD), a body at the international cutting edge of new developments in competition law and policy.

Tribunal members have continued to serve with dedication and commitment despite the increased demands made on the time of our part-time members. As already noted, we are fortunate to have secured the services of a third full-time Tribunal member. I would like to record my gratitude to both the full-time and part-time members for their contribution to the work of the Tribunal.

In April 2005 Mr. S. Ramburuth, the CEO of the Tribunal, was appointed Deputy Commissioner in the Competition Commission. As a result the CEO/registrar position in the Competition Tribunal became vacant and this precipitated a re-examination by the executive committee of the organization's structure, its current capacity and its future requirements.

The executive decided (following approval by the Department of Trade and Industry) to remove the CEO position from the organisational structure. The revised structure made provision for three departmental heads - a head of research, a registrar (head of registry) and a head of corporate services (previously referred to as the head of finance). The chairperson of the Tribunal has taken on the CEO's role and certain responsibilities have been devolved to the three departmental heads who report directly to the chairperson. This means that the chairperson now has a more hands-on involvement in the day-to-day management of the Tribunal. This is consistent with the chairperson's responsibility as the accounting officer of the institution and his powers in terms of the Competition Act. The chairperson can (and does) delegate certain executive functions to the other two full time members. All delegated responsibilities are reported on at the executive committee meetings.

The head of corporate services has since the restructuring of the Tribunal management assumed some of the onerous compliance functions previously carried out by the CEO. In consequence of this an additional staff member was appointed to take on many of the key financial functions.

I would like to record my thanks and appreciation to Shan Ramburuth who joined the staff of the Tribunal in 1999 and who has made a considerable contribution towards the establishment of the institution. In addition I would also like to record my sincere thanks to all the staff of the Tribunal for their outstanding contribution. Staff turnover in the Tribunal continues to be low - I believe that this signals the staff's commitment to the institution, despite the sometimes considerable pressures of work of this kind.

STATEMENT OF RESPONSIBILITY

The accounting authority is responsible for the preparation, integrity and fair presentation of the financial statements of The Competition Tribunal of South Africa for year ended 31st March 2006. The financial statements presented on pages 32 to 44 have been prepared in accordance with the basis of accounting determined by National Treasury as described in note 1.1 to the financial statements. 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 4.

The financial statements were approved on 31st May 2006 by the accounting authority.

NATURE OF BUSINESS

The role of the Competition Tribunal - which has jurisdiction throughout South Africa - is to adjudicate matters brought to it. These concern allegations of anti-competitive conduct as well as the regulation of mergers. The Tribunal is an independent and impartial administrative tribunal which is enjoined to perform its functions without fear, favour or prejudice, subject only to the law and the Constitution

Allegations of anti-competitive conduct may be brought to the Tribunal by the Commission, or, should the Commission decide not to refer a complaint, by the complainant itself. A complainant is also entitled to approach the Tribunal directly in order to obtain interim relief. Allegations of anti-competitive conduct may relate to anti-competitive agreements, horizontal or vertical, between firms or they may derive from unilateral conduct perpetrated by a dominant firm, the so-called 'abuse of dominance' provisions. The Commission may, on application, grant exemptions to firms with respect to specified conduct. In these latter instances the Tribunal performs an appellate role with respect to the decisions of the lower body, the Commission.

All mergers above a specified threshold must be notified to the Commission before they are implemented. All mergers above a second, higher threshold must be approved by the Tribunal prior to implementation. Mergers above the lower threshold - but below the higher second threshold - must be approved by the Commission prior to implementation. These latter decisions of the Commission may be appealed to the Tribunal.

The Competition Tribunal has, since 1st April 1999, been listed as a national public entity in terms of the Public Finance Management Act.

OBJECTIVES AND TARGETS

The Tribunal is a quasi-judicial body and creature of statute. As such the Tribunal cannot set itself any objectives that are not directly provided for in the law.

The quasi-judicial nature of the Tribunal precludes the Tribunal from setting pro-active objectives or embarking on focused intervention, which target any particular sector or emphasise any specific criterion in its decision-making. Furthermore the Tribunal has no control over the number and types of cases brought before it. Its caseload is determined entirely by complaint referrals and notified mergers and each case is adjudicated on its own merits.

In giving effect to the objectives of the Act the Tribunal has set itself seven strategic objectives that enable it to operate within the context of the Competition Act, 1998 and pursue its commitment to contributing to the purposes of the Act.

These objectives are divided into three major categories in the Tribunal's strategic plan: (i) Policy and legislation; (ii) Enforcement and compliance and (iii) Education and awareness.

Specific activities and outputs are identified in each category and performance indicators and targets have been assigned to each output. Performance against these objectives is reported on pages 17 to 21.

FINANCIAL RESULTS

	2006	2005
	R'000	R'000
Total revenue	13 852	8 098
Total expenditure	(10 622)	(9 009)
Surplus / deficit for the year	(3 230)	(911)
Total assets	10 177	6 760
Total liabilities	1 082	895

FINANCIAL PERFORMANCE

Revenue for the year ended 31st March 2006 increased by 71%. This increase was caused by a 35% increase in filing fees received from the Competition Commission and a larger grant from the Department of Trade and Industry.

In terms of a memorandum of agreement signed between the Tribunal and the Commission, the Tribunal receives 30% of the filing fees paid into 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 (61%).

In addition a grant of R5 million was received from the Department of Trade and Industry whereas in the previous financial year a grant of only R1.4 m was received. The grant represents 36% of the Tribunal's revenue.

Total expenditure (net of capital expenditure) for the period under review increased by 18%. During the period under review the Tribunal spent 195 days in hearings as opposed to 118 in the previous year. This increased activity (65% increase) has led to higher administrative costs. This increase is discussed more fully later in the report.

A breakdown of expenditure (net of capital items) is set out in the table below.

Category	Percentage	Percentage
	2006	2005
Salaries	56	56
Administrative expenses	21	18
Training	8	10
Professional fees	12	12
Other operating expenses	3	4
Total	100	100

EVENTS SUBSEQUENT TO STATEMENT OF FINANCIAL POSITION DATE

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

REMUNERATION

The table below shows total annual remuneration (cost to company) received by all those who served on the executive committee at any time during the period under review.

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 below but performance bonuses and any back pay received are included. Full-time Tribunal members do not receive performance bonuses. Performance bonuses for other staff are reflected separately in the table below.

	2006	2005
Chairperson - D Lewis	738 470	705 167
Fulltime member - N Manoim	622 804	594 719
Fulltime member - Y Carrim	624 466	0
CEO - S Ramburuth	147 921	598 926
Package	63 805	527 255
Performance bonus	84 116	71 671
Head of Corporate Services - J de Klerk	478 113	357 158
Package	427 710	313 868
Performance bonus	50 403	43 290
Head of Research - R Badenhorst	341 516	0
Package	301 424	
Performance bonus	40 092	
Registrar - L Motaung	276 744	0
Package	251 105	
Performance bonus	25 639	

The remuneration of the CEO and the head of corporate services were increased in April 2005 in line with the recommendations of a job grading assessment completed by Deloitte and Touche. In addition the three managers (head of corporate services, head of research and the registrar) received salary adjustments following the restructuring in May 2006.

INFRASTRUCTURE, PLANT AND EQUIPMENT

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

EXECUTIVE COMMITTEE

With the removal of the CEO/registrar position in the Tribunal's organogram the composition of the executive committee was changed to include two full-time members and the three heads of departments.

MEMBERS

- David Lewis, chairperson
- Yasmin Carrim, full-time Tribunal member (effective 1st May 2005)
- Shan Ramburuth, CEO (terminated on 30th April 2005)
- Janeen de Klerk, head of corporate services
- Norman Manoim (terminated on 30th April 2005)
- Lerato Motaung (effective 1st May 2005)
- Rietsie Badenhorst (effective 1st September 2005)

The executive committee meets monthly and its role includes developing and formulating a strategic policy framework, performance strategies and goals for the operational management and administration of the Tribunal.

The executive's main financial responsibility is to ensure that, in terms of three-year rolling strategic plans, services are efficiently and cost-effectively rendered within the framework of existing operational policies and the Tribunal's budget.

NUMBER OF EMPLOYEES

At year-end the Tribunal consisted of three full-time Tribunal members and thirteen staff members

FRUITLESS AND WASTEFUL EXPENDITURE

An amount of R297 was paid to the South African Revenue Services (SARS) as penalties and interest in respect of the late submission of SDL returns.

No action was taken against any individual in the Tribunal for these penalties.

In 2004/2005 the Tribunal paid but disputed a liability (to PAYE) of R38 211. SARS has indicated that there is an amount of approximately R25 140 due back to the Tribunal.

This amount is not reflected in the financial statements as a debtor as SARS has yet to verify in writing the amount owed.

IRREGULAR EXPENDITURE

Irregular expenditure arose as a result of leases being entered into where substantially all the risks and rewards incidental to ownership were transferred. This is synonymous with the definition of a finance lease as defined in South African Statements of Generally Accepted Accounting Practice IAS17 - Leases and Treasury Regulation 32.2.2. In accordance with Treasury Regulation 32.2.5(b) finance leases need to be entered into with the prior approval of the Minister of Finance. The intention of management was to acquire the use of an asset for an agreed period of time through the payment of a series of rentals, and not to contravene Treasury Regulations or the Public Finance Management Act. As a result no individual can be held liable for the incurrance of the irregular expenditure. We have subsequently written to National Treasury as required by Section 32.2.5 of the Treasury Regulations for approval of these finance leases.

The effect of the irregular expenditure is reflected in the notes to the financial statements in respect of infrastructure, plant and equipment, finance lease, depreciation, finance charges, prior year error and as per statement of charges in net assets.

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 services related to the use of these premises.

The management fee for the period under review was R30 584 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.

MATERIALITY FRAMEWORK

The Competition Tribunal for the period 1st April 2005 - 31st March 2006 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 (exclusive of government grants) 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.

OFFICE ADDRESS

The Competition Tribunal's registered offices are situated at:

3rd Floor, Mulayo
The dti Campus
77 Meintjies Str.
Sunnyside
Pretoria

The Tribunal's postal address is:

Private Bag X24
Sunnyside
0132
Pretoria



David Lewis
Chairperson

31st May 2006

MEMBERS



David Lewis



Marumo Moerane



Norman Manoim



Yasmin Carrim



Thandi Orleyn



Mbuyiseli Madlanga



Lawrence Reyburn



Merle Holden



Urmila Bhoola



Medi Mokuena

THE COMPETITION TRIBUNAL'S MEMBERS

In terms of the Competition Act the President (on the recommendation of the Minister of Trade and Industry) appoints the chairperson and nine other members to serve five-year terms on the Competition Tribunal. 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.

An adjudicative panel comprising three Tribunal members is appointed for each hearing of the Competition Tribunal.

The membership of the Tribunal represents a broad cross-section of the population of South Africa and each member is a South African citizen. The Act requires that each member of the Tribunal 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)

Part-time Deputy Chairperson

Marumo Moerane (BSc, BCom, LLB)

Full-time member

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)

Medi Mokuena (Dip Juris, LLB, LLM)

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

Lawrence Reyburn (BSc, LLB)

TRAINING OF TRIBUNAL MEMBERS

The Tribunal has continued to provide Tribunal members with opportunities to interact with their international counterparts and share experiences with their international peers.

Tribunal members have attended the following international conferences or seminars:

- Fourth annual ICN conference held in Bonn, Germany in June 2005 (two members attended)
- LEAR Conference on Advances in the Economics of Competition Law in Rome, Italy in June 2005 (one member attended)

- International Symposium on Competition Policy and Legislation in Beijing, China in June 2005 (one member attended)
- 32nd Fordham antitrust conference held in New York in September 2005 (four members attended)
- 5th United Nations Conference to review all aspects of the SET on Competition in Antalya, Turkey in November 2005 (one member attended)
- OECD global forum on competition in Paris in February 2006 (one member attended)

Internal meetings are held by the Tribunal thus enabling Tribunal members to review the work of the Tribunal and keep abreast with aspects of competition economics and law.

Two internal meetings were held during the period under review:

- In April 2005 all the case managers attended the Mergers and Acquisitions workshop presented by Johan Brink (Brink Cohen le Roux Inc), Trevor Cuss (Ernst and Young) and Dave Thayser (Ernst and Young).
- In September 2005 Professor Eleanor Fox presented a two-day workshop entitled "Monopolies and Abuse of Dominance". Prof Fox is a well-known competition law scholar who teaches at the New York University School of Law. Six Tribunal members and four case managers attended this workshop.

In the period under review one Tribunal member presented a paper at a conference. In addition Tribunal

members have presented lectures at the University of the Witwatersrand.

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 ICN provides developed and developing countries with a platform for addressing practical competition enforcement and policy issues. The chairperson, David Lewis, is vice-chairperson of the ICN and the two full-time members (Norman Manoim and Yasmin Carrim) have participated in various sub committees of the ICN.

The chairperson chaired a peer review of Kenyan Competition Authorities at the Unctad conference in November 2005 and was an examiner on the peer review of the Turkish Competition Authorities at the OECD Competition Committee in February 2006.

The Tribunal accepted an invitation to join the Competition Committee of the Organisation for Economic Co-operation and Development (OECD). This enables the Tribunal to participate in the tri-annual meetings of the Committee which deals with cutting edge issues in Competition Law.

THE TRIBUNAL SECRETARIAT

Until May 2005 the CEO headed the secretariat. The chairperson in his report (pages 5 to 6) outlines the structural changes that took place in the Tribunal following the resignation of the CEO.



Front row: David Tefu, Malanee Murugan-Modise, Xoliswa Mhlongo, Yasmin Carrim, Janeen de Klerk, Tebogo Mputle

Middle row: Thabelo Masithulela, Jabulani Ngobeni, Lerato Motaung, David Lewis

Back row: Donald Phiri, Romeo Kariga, Norman Manoim, Rietsie Badenhorst, Jerry Ramatlo

In the revised structure the chairperson now fulfils the CEO's role and certain responsibilities were devolved to three departmental heads namely head of research, head of registry (registrar) and head of corporate services. The three departmental heads report directly to the chairperson.

The more hands-on involvement by the chairperson in day-to-day management is consistent with his responsibility as the accounting officer and his powers in terms of the Competition Act. Executive functions can be, and have been, delegated to the other two full-time members.

The new structure provides for an office manager/company secretary. Creating this position meant that there were options available if the CEO role became too onerous for the chairperson in the event of an increased case-load, or if it became necessary to have a clearer division between the management and adjudicative roles.

Secretariat support (administration, registry, logistics, research and financial management) is rendered by a staff complement of 13 in the three departments. Registry and administrative functions are prescribed by the rules of the Tribunal.

At present the secretariat is large enough to deal with the administrative and case-load of the Tribunal and it is not anticipated that new posts will be created in the coming financial year.

Three resignations were received during the current financial year and two new appointments were made. In the research department it was decided to offer

contract posts (three years) as opposed to permanent positions. The reason for this is that the Tribunal has very limited opportunities for career development and offering contract positions will allow many junior legal/economic professionals to acquire competition experience before moving on to more permanent positions elsewhere.

Chief executive officer/registrar (until May 2005)
Shan Ramburuth (resigned in May 2005)

Departmental heads (created in May 2005)
Rietsie Badenhorst (Research)
Janeen de Klerk (Corporate Services)
Lerato Motaung (Registry)

Case managers
Shaazia Bhaktawer (resigned in November 2005)
Kim Kampel (resigned in March 2006)
Thabelo Masithulela (promoted in April 2005)
Malanee Murugan Modise (promoted in April 2005)
Romeo Kariga (appointed in March 2006)

Registry
Tebogo Mputle, registry administrator (appointed in May 2005)
David Tefu, registry clerk
Jerry Ramatlo, court orderly/driver

Finance
Xoliswa Mhlongo, financial administrator (appointed in December 2005)
Donald Phiri, accounts assistant

Executive secretary
Thandeka Yeni, executive secretary to the chairperson

CORPORATE GOVERNANCE

The Tribunal applies best practice principles in managing its work and uses its corporate governance framework to promote transparency, accountability and the efficient management and use of the Tribunal's resources. The Tribunal's executive committee and the audit committee monitor corporate governance and adherence to relevant legislation. The Tribunal reports to the dti on a quarterly basis on governance issues.

AUDIT COMMITTEE

The audit committee, which was established in March 2000, met thrice in the year under review. The audit committee's functions are outlined in an audit committee charter revised and adopted in November 2005. An audit committee compliance checklist provides guidance for

meeting agenda items.

The committee is responsible for assisting the executive committee by fulfilling its supervisory responsibilities on internal controls, risk management, compliance with laws, regulations, ethical norms and financial management.

In its meetings the audit committee also reviewed quarterly internal audit reports, internal and external audit plans and the annual report and financial statements for the period ending 31st March 2006.

The audit committee consists of three executive members and four non-executive members and as at the year-end was constituted as follows:

Executive members:

- David Lewis
- Shan Ramburuth (until May 2005)
- Janeen de Klerk

Non-executive members:

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

EXECUTIVE COMMITTEE

The executive committee held 13 meetings in the review period. The executive committee is responsible for the development and formulation of the Tribunal's operational and administrative policy and its implementation. The executive committee also makes expenditure decisions.

The composition of the executive committee during the current financial year is detailed on page 8 of this report.

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 secretariat periodically reviews its procedures to ensure that its work proceeds effectively and efficiently in order to comply with the requirements of its prescribed rules. The registry reports quarterly to the executive and the dti on turnaround times and targets in terms of set down, publishing decisions and orders.

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 dti for approval in the period under review:

- Memorandum of agreement with the dti (submitted in August 2005 and approved in January 2006).
- Request for approval to retain surpluses generated as at 31st March 2005 (submitted on 15th March 2005 and approved on 9th June 2005).
 - Quarterly reports on the Tribunal's expenditure, budget variance, activities and performance against set targets.

- Strategic plan for the three-year period 2006 - 2009 (submitted on 4 October 2005 - still awaiting approval).
- Budget for the 2006/2007 financial year and a five-year budget to 31st March 2011 (submitted on 4 October 2005 - still awaiting approval).
- Business plan for the period 1st April 2006 - 31st March 2007 (submitted on 4th October 2005 - still awaiting approval).

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 contract with KPMG was extended for an additional year to 31st March 2006. The audit committee approved an internal audit charter when KPMG was appointed in 2002.

In May 2005 KPMG reviewed the financial statements of the Tribunal for compliance with GAAP. In September 2005 KPMG performed a risk-based review of asset management. In February 2006 KPMG undertook a risk-based review of management information accuracy and performed a follow-up review of internal audit findings. A strategic risk assessment workshop was held in March 2006. This workshop formed the basis for the development of a risk management plan.

EXTERNAL AUDIT

The Auditor General has completed the external audit for the period ending 31st March 2006.

STATUTORY REQUIREMENTS

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

- Skills development levy
- Workmen's compensation
- Regional Services Council levy (RSC)
- Establishment levy
- Unemployment insurance fund (UIF)
- Pay-as-you-earn (PAYE)

In terms of Section 24(1) of the Value Added Tax Act 1991 ("the VAT Act") the Tribunal was deregistered as a VAT vendor effective 1st April 2005.

The South African Revenue Service exempted the Tribunal in terms of Section 10(1)(cA)(i) of the Income Tax Act 1962 in October 2005.

HUMAN RESOURCE DEVELOPMENT

STAFF COMPOSITION

The Tribunal secretariat consisted of 12 full-time staff members at the beginning of the period under review. Three resignations and two new appointments took place in the period under review. At year-end the staff compliment was 13.

Eight of the staff members are female, nine are black, one is Asian and three are white, and 53.85% have a bachelor's degree or higher qualification.

STAFF MEETINGS

Eight 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 2005 for all Tribunal staff and the full-time Tribunal members.

TRAINING AND DEVELOPMENT

The Tribunal recognises and acknowledges that employees are the most important resource for the organisation to achieve its goals. For this reason the Tribunal places emphasis on cultivating and nurturing a stable environment that is conducive to attracting and retaining high-quality employees at all levels. Tribunal employees have been provided with opportunities for development and further education during the period under review.

A total of 273 person-days were devoted to training of members of the secretariat during the current financial year (excluding Tribunal members and Appeal Court judges). This represents an average of 22.75 training days per person. Training and development comprised both in-house training and external courses, workshops and conferences, locally and internationally.

In the previous financial year 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. Ms Bhaktawer was scheduled to return to the Tribunal in November 2005. She completed her studies and obtained her masters degree but chose to remain in the

UK to further her studies. Ms Bhaktawer undertook to repay the Tribunal for the funding received.

One case manager attended the fourth Annual ICN Conference in Bonn in June 2005.

One case manager attended the LEAR conference entitled "Advances in the Economics of Competition Law" held in Rome, Italy in June 2005.

An in-house training course on strategic time management was held in August 2005 and was attended by seven staff members.

In October and November one case manager attended a series of workshops offered by the dti covering various aspects of trade and macroeconomic policy. The topics covered included:

- Macroeconomics and monetary policy
- Sector analysis and the workings of the market
- Poverty reduction, globalisation and growth
- Trade negotiations.

Two case managers attended a four-day workshop on leniency and cartels in Korea in November 2005. The workshop focussed on giving delegates practical insight into cartel investigation and enforcement orientation, and looked at ways of developing an effective leniency programme.

A case manager participated in an ICN working group on competition policy implementation during the course of the year under review.

All the case managers attended the Mergers and Acquisitions workshop presented by Johan Brink (Brink Cohen le Roux Inc), Trevor Cuss (Ernst and Young) and Dave Thayser (Ernst and Young). In addition all case managers attended a two-day workshop entitled "Monopolies and Abuse of Dominance" in September 2005 was attended by a case manager.

A case manager attended a five-day course offered by the Graduate Institute of Business Science entitled "Making Markets Work" in July 2005.

Two case managers attended a two-day seminar presented by the Law Society of Northern Provinces on competition economics in March 2006.

In March 2006 two registry staff members attended a refresher course in computer skills and the three heads of department attended an in house two-day course on managerial skills.

The Tribunal assists staff to obtain tertiary and advanced qualifications through a bursary scheme. A maximum loan of R8000 per annum per employee is provided to cover tuition and examination fees. Such a loan is converted to a bursary if the employee successfully completes a course. Loans in excess of R8000 can be granted by a special decision of the executive committee.

During the financial year, four staff members received study loans totalling R13 330. Of the loans granted last year, 32.46% were converted to bursaries during the current period.

PERFORMANCE MANAGEMENT SYSTEM

The performance management system helps to align

individual performance with the Tribunal's institutional objectives. The Tribunal undertakes annual performance reviews to ensure high levels of support and feedback for employees in meeting their work responsibilities.

Goals and achievements individually set by employees are appraised during such meetings and areas of improvements as well as training needs are identified to rectify performance gaps. Performance bonuses and salary adjustments are also linked to the outcome of the appraisals.

In the financial year under review, the tribunal conducted two performance appraisals, one in April 2005 and another in December 2005.

FINANCIAL MANAGEMENT

The budget for the 12-month period ending 31 March 2006 reflected expenditure (inclusive of capital expenditure) of R12.41m and estimated income (generated from fees, interest and a dti grant) of R12.41m.

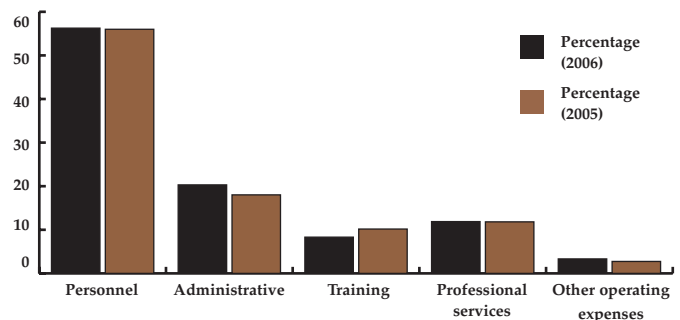
Actual income for the year amounted to R13.85m and was made up as follows:

Category	Amount (Rm)	Percentage (2006)	Percentage (2005)	Percentage (2004)
Government grants	5.0	36.39	17.29	0
Filing fees	8.45	61.53	77.37	87.89
Other income	0.40	2.08	5.34	12.11
Total income	13.85	100	100	100

Filing fees continue to remain the main income generator. In the financial year under review, filing fees received from the Competition Commission increased by 34.94%. The Tribunal received a grant of R5 million from the dti, and has continued to receive Treasury approval to accumulate surpluses generated. This approval is granted on condition that these surpluses are used to cover expenditure for the next financial year.

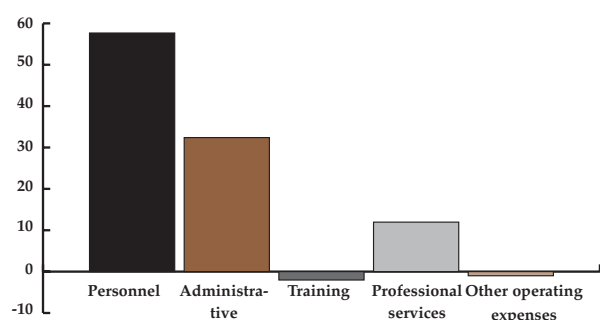
Total expenditure (net of capital expenditure) for the period was R10.62 million. When compared to expenditure in the previous period this represents an increase of 17.91%.

The nature of expenditure incurred by the Tribunal and the percentage change in each category in the year under review is illustrated in the following table:



Professional services expenditure includes payments to the Commission in terms of the Tribunal's memorandum of understanding with it, transcription services, legal fees, public relations and finance-related consulting services.

The table below reflects the contribution by each category to the 17.91% increase in expenditure.



Much of the increase in expenditure can be attributed to the increased number of large mergers heard by the Tribunal in the period under review.

In 2004/2005 the Tribunal heard 97 cases over 118 days whereas in 2005/2006 the Tribunal heard 136 cases over 195 days. This represents an increase of 40.2% in the volume of cases and 65.25 % in the number of hearing days. The chairperson in his report on page 5 refers to the increased length of the cases heard by the Tribunal and this is reflected in the merger figures given above and by the fact that the average number of days per hearing in 2004/2005 was 1.22 days whereas in 2005/2006 it was 1.40 days

The 18.94% increase in personnel expenses can be attributed to the employment of a third full-time member for the period under review and an increase in the total fee paid to part-time members sitting on panels. The latter increased by 38.17%.

When a part-time member sits in a hearing, she or he is paid for the actual number of days of the hearing and for preparation days. In 2004/2005 the number of days for which part-time members were paid was 147. This figure increased by 40.05% to 205.88 days in 2005/2006. This represents an average annual number of days per part-time member, of whom there are seven, of 29.41 as opposed to 18.38 in 2004/2005 when there were eight part-time members – an increase of 60.06%.

The increased case-load also explains the 18.51% increase in professional fees. Professional fees account for 11.88% of current expenditure. Transcription (recording fees) account for 40.59% of professional services expenses and these, as a result of the increased activity, have increased by 108.73% in the current financial year.

Administrative expenditure, which accounts for 20.30% of total expenditure has increased by 32.91%. A number

of factors gave rise to this increase. Those that should be mentioned include rent (increased by 24.23%) and telephone/ internet (increased by 163.17%) and travel (increased by 36.23%). The increases in rent and communication were primarily caused by the fact that the charges for services provided centrally on the dti campus had not been fully finalised in the 2004/2005 year. We expect rental in the next financial year to increase significantly as the dti has now finalised a rental tariff. In 2005/2006 the Tribunal paid the dti what it had budgeted. The increase in travel was caused by an increase in case related travel (i.e. the travel costs of panel members adjudicating hearings).

Accurate budgeting in the Tribunal is not an easy task. The difficulties can be primarily attributed to the fact that the Tribunal is unable to predict the number of cases that will be heard during a particular year, and therefore the associated expenses. The Tribunal has found itself with large budget variances but over the last few years actual expenditure (inclusive of capital expenditure) has been more closely equated to the budget, and variances are tending to diminish.

It will, however, be necessary to retain a contingency budget for professional services as there will always be uncertainty about the need for the Tribunal to employ counsel to defend its decisions should they be taken on review or appeal.

Year	Actual Expenditure (in Rm's)	Budget (in Rm's)	% Budget spent
2000	4.29	9.12	47.03
2001	6.35	9.08	69.93
2002	6.37	9.13	69.76
2003	7.36	9.33	78.88
2004	9.08	10.44	86.97
2005	9.25	11.54	80.15
2006	10.64	12.41	85.23

COMMUNICATING THE WORK OF THE TRIBUNAL

Extensive media coverage ensures that the public remains informed about the Competition Act and the Tribunal's functions and activities.

In the year under review, 859 reports appeared in the media about the Tribunal, its work in general, and specifically about cases heard by it and decisions rendered by it. The coverage was not only extensive but intensive including critical appraisals of competition policy and the competition system generally.

The Tribunal's website (www.comptrib.co.za) is an

additional medium whereby the public can access information on the Tribunal's activities and documentary outputs. Reasons for decisions, once released, are published on the website. In the period under review 104 decisions were posted on the website. The website is linked to other competition-related sites and to the Act, the rules and the official forms.

Full-time members have continued to communicate the work of the Tribunal at an academic level through the presentation of university courses. Case managers and Tribunal members have also presented papers or

participated in working groups at local and international conferences, meetings and seminars.

An internal newsletter, The Tribunal Tribune, has been produced three times in the past year. Tribunal members and other stakeholders remain informed about cases heard by the Tribunal through these newsletters, which include brief articles on topical issues in com-

petition regulation. Details of those newsletters are as follows:

- Newsletter No 19 – March 2005 (distributed in April 2005)
- Newsletter No 20 – June 2005
- Newsletter No 21 – March 2006

PERFORMANCE INDICATORS

Performance against output targets as per the approved business plan of the Competition Tribunal for the 2005/2006 financial year are detailed in the table below:

Sub Prog.	Output	Measure	Target	Status for the year (April 05 - March 06)	Reasons for deviation & 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	1 paper delivered by full-time member 2 full-time members delivered lecture series at the University of the Witwatersrand and University of the Witwatersrand link centre (2 series altogether) 1 paper posted on the website	Lecture series not posted on website
	International best practice research and contribution	Host 2006 ICN conference Participate in ICN conference/working group/research	Conference in May 2006 Participate in at least 2 working groups/conferences per annum	Regular planning meetings held to ensure logistics in place for hosting in May 2006 Full time members participated in 2 ICN working groups (development and telecommunications) Chairperson chaired peer review of Kenyan Competition Authorities at Unctad conference. Chairperson was an examiner on the peer review of the Turkish Competition Authorities at the OECD Competition Committee	
Enforcement and Compliance	Merger Referrals	Number of referrals received	Tribunal has no control over this	93 uncontested mergers (5 from a previous period) 16 contested mergers (3 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	88 of the 93 uncontested mergers were heard 71 of 88 cases were heard within 10 days 88 of the 88 cases in which orders were issued met this target	Set down occurs after the 10-day period with the agreement of the merging parties and is only done if the parties are not ready for the hearing



Sub Prog.	Output	Measure	Target	Status for the year (April 05 - March 06)	Reasons for deviation & Corrective Action Plan
Enforcement and Compliance			Written reasons of decision provided within 20 days of order being issued	49 of the 83 cases in which written decisions were provided met this target	There is little or no pressure to release reasons in respect of uncontested mergers within a limited time-frame. Accordingly the drafting of reasons in contested matters is prioritized.
	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 16 contested mergers were heard 6 of the 13 contested mergers heard had the hearing set down within 10 days of referral 11 of the 13 cases heard had orders issued within 10 days 5 of the 11 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 only done if the parties are not ready Meeting this time-frame depends on the length of the recommendation and is done with the agreement of the parties
	Small and Intermediate mergers	Number of referrals received	Tribunal has no control over this	1 small merger application was received 1 intermediate merger application 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	Small merger application withdrawn 1 intermediate merger heard and then withdrawn Neither merger was set down within the 10 days No orders issued as both matters were withdrawn No orders therefore no decisions	It is difficult to set down hearings within the set timeframes as we rely on a third party to file the record
	Interim Relief cases	Number of applications received	Tribunal has no control over this	7 interim relief applications were on the Tribunal roll	

Sub Prog.	Output	Measure	Target	Status for the year (April 05 - March 06)	Reasons for deviation & 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	2 withdrawn and 3 applications heard 0 cases were heard within the 10 day period Combined order and reasons were issued in 3 of the cases and these were all outside 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.
	Complaint referral from the Commission	Number of referrals received	Tribunal has no control over this	11 complaint referrals from the Commission (1 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	10 referrals were heard 2 of the 10 cases heard were set down with the 10-day period. 9 of the 10 cases heard had orders issued within the 10 days. In 1 case the reasons were issued together with the order and not within 20 days	These tend to be lengthy matters and consequently 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 a complainant	Number of referrals received	Tribunal has no control over this	8 complaint referrals from a complainant (3 from a previous period)	
		Number of cases received and resolved		4 referrals from a complainant were withdrawn, 1 was heard and is still proceeding. The remaining 3 are still pending	

Sub Prog.	Output	Measure	Target	Status for the year (April 05 - March 06)	Reasons for deviation & Corrective Action Plan	
Enforcement and Compliance			Hearing or prehearing set down within 10 days after completion of filing	Of the 4 matters proceeding 0 were set down within the 10-day period.	These tend to be lengthy matters and consequently 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.	
			Order issued within 10 days of hearing	No orders were issued as no matters were completed		
			Written reasons of decision provided within 20 days of order being issued	No written reasons were issued as no matters were completed		
		Procedural matters	Number of applications received	Tribunal has no control over this	24 new applications and 6 from the previous period	
			Number of cases received and resolved	Hearing or prehearing set down within 10 days after completion of filing	20 were heard 9 of the 20 cases heard were set down within 10 days	These are not targets set by the rules of the Tribunal. They have been identified by us and need to be revisited as the setting down of a hearing is dependent on and determined by the parties identifying and agreeing on suitable dates.
			Order issued within 10 days of hearing	17 of the 20 cases had orders issued within the 10 days		
			Written reasons of decision provided within 20 days of order being issued	Reasons issued in 6 cases, and were released together with the order		
		Taxation of bills	Number of bills taxed	As and when required	3	
	Fines/penalties imposed	Number and type of fine/penalty imposed		13 - all referred to as administrative penalties and imposed because of a contravention of the Act		
		Value of fines imposed		R 87 625 000		
	Appeal hearings by the Competition Appeal Court	Number of cases resolved	No control over timeframes	11 applications received 2 applications from the previous year were pending 6 cases heard 5 judgments released		
	Tribunal Tribune	Tribune disseminated	4 per annum. 100 copies circulated	3 Tribunes issued	Production has been slow due to a heavy caseload within the Tribunal	
	Media reports	Media reports circulated	As and when required	859 reports per annum		

Sub Prog.	Output	Measure	Target	Status for the year (April 05 - March 06)	Reasons for deviation & Corrective Action Plan
Education & Awareness	Reasons for decisions posted on website	Reasons for decisions of the Tribunal posted on the website	Reasons for decision posted within 24 hours	Reasons were given in 104 cases, most of these were not posted on the website within 24 hours	It is increasingly difficult to rely on this timeframe as we do not have control over the campus server. It has downtime and is often slow thus making it difficult for us to meet this deadline
	Training completed	Number of seminars attended / conferences attended	1 training course per annum per staff member Overseas conferences 5 for full time members / chairperson / registrar 5 for case managers 4 for part time members 3 for appeal court judges	Each staff member attended at least 1 course during the year Secretariat staff spent 93 person days in training Full time Tribunal members spent 33 person days in training 3 full time members attended 6 conferences during the year 3 of the 4 case managers attended 3 conferences during the year 2 attended Fordham 3 appeal judges attended 1 conference	1 case manager was on study leave and 1 case manager was unable to attend due to work commitments Part time members not all available to attend conferences
	Conferences and workshops	Number of successful workshops / conferences	1 conference per annum	2 internal meetings held for Tribunal members and case managers 1 of these internal meetings was attended by Appeal Court judges 1 teambuilding meeting held for staff	
	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 (records are kept but not of all requests)	

CASES BEFORE THE COMPETITION TRIBUNAL

In the year under review the Tribunal heard 136 cases, and written reasons were issued in 104 cases.

Type of case	Number heard	Reasons issued
Large Merger	101	94
Procedural	20	6
Intermediate Merger	1	0
Complaint Referral from the Commission	10	1
Complaint Referral from a complainant	1	0
Interim Relief	3	3
Total heard	136	104

LARGE MERGERS

Whether a merger is classified as “large”, “intermediate” or “small” is determined by annual turnover and net asset value of the merging parties. The Minister of Trade and Industry sets the thresholds for these classifications and the thresholds have statutory force under the Competition Act.

In terms of the Act, the Tribunal is required to consider all large mergers having an economic effect within the Republic of South Africa.

On consideration the Tribunal can :

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

A historic analysis of merger transactions heard and ruled on by the Tribunal is reflected in the table below.

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
2005/2006	100	87	11	2
Total	375	331	38	6

By year-end the Tribunal had decided on 375 mergers and 88% of these had been approved without conditions. In the seven years since its inception in September 1999 the Tribunal has on average made 53.5

merger decisions annually.

UNCONTESTED MERGERS

The Tribunal had 93 uncontested mergers on its roll in the year under review. Of these 88 were decided on, 85 being unconditionally approved and three being approved subject to conditions. Details of these proceedings are set out in Appendix A on page 46.

CONTESTED MERGERS

In the year under review the Tribunal had 16 contested mergers on its roll. Of these, 13 were received in the current year and three had been received in the previous year. Hearings were held on 13 of these mergers and 12 were decided. Of the 12 decided two were unconditionally approved, eight were approved subject to conditions, and two were prohibited

Details of these proceedings are set out in Appendix B on page 49.

TURNAROUND TIMES IN LARGE MERGER PROCEEDINGS

In terms of Tribunal Rule 35 (1) the registrar is required to set down a matter within ten business days of the filing of the merger referral, alternatively, a pre-hearing conference must be held within that period. There are, however, instances where set-down occurs after the ten-day period. If this happens it is because the parties are not ready for set-down and the delay takes place with the agreement of the merging parties.

In the year under review 76.24% (77 cases) of the 101 mergers heard were given hearings within the ten-day period.

Orders were released in 100 cases with 85% of the orders (85 cases) being released on the same day as the hearing, while 14% of the orders (14 cases) were released within 10 days of the hearing. In the remaining 1% (one case) the order was released more than 10 days after the hearing.

Written reasons were issued in 94 cases. Tribunal Rule 35 specifies that written reasons must be provided within 20 days of issuing an order. In 57.45 % (54 cases) reasons were issued within this 20-day period. In the remaining 42.55% (40 cases) written reasons were issued after the 20-day period. A delay in the issuing of reasons may occur because the Tribunal has prioritised the issuing of reasons in urgent and contested matters.

CROSS DIRECTORSHIP IN SPOTLIGHT

Momentum Group Limited and African Life Health (Pty) Ltd

This transaction was conditionally approved on 9 December 2005. Momentum sought to acquire the entire issued share capital of African Life Health from African Life Assurance Company Limited, the holding company of African Life Health.

The evidence revealed that post-merger, companies in the FirstRand group, comprising Discovery Health, Momentum and African Life Health, would control an estimated 34.6 percent of the medical scheme administration market. Discovery Health and Momentum compete in this market although both belong to the FirstRand Group. African Life



Health was a competitor to both. The Tribunal was concerned that post merger there would be an enhanced incentive to co-ordination between Discovery and Momentum rather than rivalry. In order to address this concern the Tribunal ordered that any persons who at present served as a director

on both the Momentum and Discovery boards must resign. It also ordered that as long as FirstRand had a controlling interest in Discovery Health and Momentum, no person who served as a director or an executive on any of the Discovery or Momentum boards could be appointed to the board of the other.

The condition has subsequently been overturned on appeal to the CAC.

FOCUSING ON LOW-COST HEALTH INSURANCE

Medicross Healthcare Group (Pty) Ltd and Prime Cure Holdings (Pty) Ltd

The Tribunal prohibited this transaction on 15 September 2005.

Both firms are managed care companies providing primary health-care services to medical aid schemes through a network of service providers (doctors and other health professionals).

The Tribunal found that the market for the provision of capitated primary managed healthcare products was a highly concentrated market, the three largest players, Medicross, Prime Cure and Carecross, accounting for 87,7% of the market share. Post the transaction only two players, Medicross and Carecross would remain. Capitated primary managed care refers to managed care that is characterised by a fixed payment per member per month to a scheme without regard to the frequency or nature of



the services provided to a member. Evidence revealed that this product was the most effective for the provision of low-cost insurance options.

The Tribunal found the barriers to entry into the market to be significant with a high failure rate of firms that had previously tried to enter. Furthermore, this was a new market, surrounded by considerable regulatory uncertainty, and the merging parties were among those very few entities in the healthcare market that had successfully delivered private healthcare to low-income consumers at considerable risk.

The Tribunal was not persuaded that the efficiency gains claimed were significant enough to outweigh the anti-competitive effects of this merger.

This decision has subsequently been overturned by the CAC.

RETRENCHMENTS LIMITED IN HOSTILE TAKEOVER

Harmony Gold Mining Company Ltd and Gold Fields Ltd

The Competition Tribunal conditionally approved the hostile takeover by Harmony of Gold Fields.

The Tribunal found that the proposed transaction would not significantly lessen competition. However, it imposed a condition to address the anticipated loss of employment as a



result of the merger. The retrenchments of semi-skilled and unskilled workers in the present mining environment could lead to long-term unemployment consequences and a condition was thus warranted to protect the public interest. The Commission had recommended that the number of retrenchments be limited to 1500. The Tribunal ordered that this be limited to 1000 and be confined to managerial and supervisory staff.

THREAT OF FORECLOSURE PRECLUDES MERGER

Sasol Limited and Engen Ltd – 101/LM/Dec04

On 23 February 2006 the Competition Tribunal prohibited the proposed merger between Sasol, the country's largest producer of refined white fuels, and Engen, the largest retailer of these products.

The Tribunal found that the merged entity would enjoy a near monopoly of refinery capacity and would have considerable market share in the inland retail market. According to the Tribunal, a market structured in this manner immediately portends the input foreclosure in that the merged entity could withhold supplies of the critical input - refined products – to the retail arms of its inland competitors. In the Tribunal's view, the merged entity's power to foreclose will end, not necessarily in a massively increased retail market share but in a reconstituted cartel, under the clear leadership of the merged entity. This new cartel will destroy the promise of lower fuel prices contained in further planned deregulation.

The Tribunal found that all of Sasol's competitors are vertically integrated and do have access to upstream products from their own refineries. However, these are all based at the coast, which is some considerable distance from the inland market. This logistical problem constrains the competitor's capacity to convey refined product from the coast to the inland, thus



increasing the risk of foreclosure. Such input foreclosure would enable the merged entity to expand its own downstream market share. The Tribunal noted that it was quite conceivable, and highly likely, that the merged entity would forbear from an all-out foreclosure campaign, provided that its competitors forbear from robust competition in the downstream market and accept the merged entity's pricing aspirations in the upstream market. These pricing aspirations were clearly stated to be the maintenance of the import parity price base that underpins wholesale and retail prices.

The Tribunal further found Sasol's averment that in the absence of the merger it is condemned to permanent exclusion from the country's retail markets to be at odds with the facts. According to the Tribunal, in the few years since the termination of the Main Supply Agreement, Sasol has made considerable inroads into both segments of the retail market, the service station segment and the commercial and industrial segment. It has achieved this by means of robust competition on the merits, including the discounting of the wholesale price. The Tribunal critically concluded that Sasol has the means to compete even more vigorously. Its wholly owned Synfuels division controls a highly competitive feedstock, particularly in these days of massively inflated crude oil prices.

HOSTILE TAKEOVER RAISES NO COMPETITION CONCERNS

Mercanto Investments (Pty) Ltd and Johnnic Holdings Ltd

On 7 December 2005 the Tribunal approved the merger on a hostile takeover basis between Mercanto Investments and Johnnic Holdings, subject to an undertaking by HCI (the holding company of Mercanto) that the merged entity will, within 12 months of the date of the order, divest the business of the Gallagher Estate Exhibition and Convention Centre as a going concern and/or the entire shareholding of Johnnic Holdings in Gallagher Estate Holdings.



The Tribunal considered two product markets namely the gaming, hotels and leisure product market, and the exhibition and conference facilities product market.

Although the Tribunal found that the transaction did not raise any competition concerns HCI offered to sell Gallagher Estate in order to remove any possible concerns regarding post-merger competition in the exhibition and conference facilities market.

TRIBUNAL CONCERNED ABOUT SEASONAL WORKERS

Tiger Brands Ltd, Ashton Canning Company (Pty) Ltd, Newco and Langeberg Foods International Ashton Canning Company (Pty) Ltd

On 30 September 2005 the Tribunal approved the merger subject to conditions that related to employment.

The merging parties' activities overlapped in respect of the production of canned deciduous fruit and fruit puree concentrates. Post the transaction the merged entity's market shares would increase to 68% in the national canned deciduous fruit market and to 50% in the national fruit purees market. The Tribunal



found that the merger would lead to a substantial lessening or prevention of competition in both the national markets but that certain pro-competitive efficiencies outweighed the potential loss to competition that resulted from the merger.

The Tribunal raised concerns about the public interest since the merger would lead to an employment loss of 45 permanent jobs and 1000 seasonal jobs. The Tribunal therefore ordered the merging parties to make available R2 million for training the 1000 retrenched workers for a prescribed period of three years.

SMALL MERGERS

In the period under review one application to reconsider a small merger was received and subsequently withdrawn.

Case Number	Parties	Date received	Hearing date
120/SM/Dec05	Eyethu Registrars (Pty) Ltd and Ultra Registrars (Pty) Ltd	15-Dec-05	Withdrawn 23 Mar 06

INTERMEDIATE MERGERS

An application to reconsider an intermediate merger received was partly heard and the merger was abandoned.

Case Number	Parties	Date received	Hearing date	
80/AM/Oct04	Bonheur 50 General Trading (Pty) Ltd and Komatiland Forests (Pty) Ltd AND Competition Commission	18 Nov 04	26-27 Jan06 06 Feb 06	Withdrawn 06 Feb06

RESTRICTIVE PRACTICES

COMPLAINT REFERRALS FROM THE COMMISSION.

In the year under review the Tribunal had on its roll 11 complaint referrals received from the Commission. Ten of these were received in the current period. Of these complaint referrals, ten were given hearings. One referral was decided and nine were confirmed as consent orders. Reasons were issued in one matter.

Competition Commission and Sasol Chemical Industries Ltd, Kynoch Fertilizer (Pty) Ltd, Omnia Fertilizer Ltd

The matter was referred to the Tribunal on 4 May 2005 by the Competition Commission following a complaint by Nutri-Flo CC against Sasol Chemical Industries. Nutri Flo alleged that Sasol was abusing its dominance in the markets for fertilisers by charging excessive

prices for certain fertilisers. Nutri-Flo further alleged that Sasol colluded with its competitors such as Kynoch and Omnia to fix prices of certain fertilisers. The matter is still proceeding.

The Competition Commission vs The USA Citrus Alliance

The Tribunal confirmed a settlement agreement concluded between the Competition Commission and The USA Citrus Alliance. The complaint was brought to the Commission by Diversified Citrus Marketing, which alleged that the USA Citrus Alliance was indirectly fixing the selling price of the citrus fruit in the American market, restricting the volume of citrus fruit that may be exported to the American market, constraining the importers with whom Diversified City Marketing's members may contract, obliging its members to use particular shipping services, fixing trading conditions, and dividing a market in contravention of the Competition Act. The Commission found these forms of conduct to be in contravention of the Act. The USA Citrus Alliance was ordered to pay an administrative penalty of R400 000.

Competition Commission vs Italtile Franchising, Italtile Ceramics, Italtile Ltd

The Tribunal confirmed an agreement between the Competition Commission and the Italtile group of companies. The complaint was brought to the Commission by North West Ceramics, a franchisee of Italtile. It alleged that the Italtile Group was abusing its dominance in the ceramic tiles and related products industry. The Commission undertook an investigation into the alleged prohibited practices and found that (i) the Italtile group compels franchisees to charge prices that are set centrally by the group; (ii) deviation from the centrally set prices, under certain circumstances, requires that franchisees obtain prior approval from Italtile; (iii) Italtile, through its officials, threatened to terminate franchises in which products are not sold at the set prices; (iv) the prices set centrally in the group are, therefore, mandatory.

The Commission concluded that the Italtile group's conduct amounted to minimum resale maintenance and was therefore in contravention of the Competition Act. The Commission negotiated an agreement with Italtile in which Italtile agreed to pay an administrative penalty of R2 million.

TRIBUNAL INDICATES HOW FACTORS ARE TO BE WEIGHTED WHEN CALCULATING AN ADMINISTRATIVE PENALTY

Competition Commission vs SAA

On 28 July 2005 the Tribunal imposed the largest administrative penalty so far under the Competition Act when it ordered South African Airways (SAA) to pay R45 million for abusing its dominant position in the domestic airline sector. The Commission had argued in its complaint referral that SAA had engaged in conduct prohibited under s8 (d)(i) of the Act, alternatively s8(c), and that agreements between SAA and travel agents were prohibited in terms of s5 (1).

The abuse of dominance concerned two of SAA's incentive schemes for travel agents. One of these is known as the override scheme, where travel agents are paid a bonus commission in addition to their basic commission if they achieve sales above a specified target. SAA is not alone in having such an override scheme: both Nationwide and Comair have their own, and they are common in the airline industry. However neither Nationwide nor Comair is a dominant firm and hence the prohibition does not apply to them. In any event it would be impossible



for firms without a large market share to attempt to use a loyalty scheme of this nature to exclude rivals. The Tribunal found the nature of the scheme objectionable. Although the SAA scheme had been in operation since the 1980's, evidence was provided that in late 1999, SAA made the override benefits' more 'challenging' for travel agents to secure.

SAA did this in two ways. It first reduced the basic commission from 9% to 7%. It then raised the target levels at which agents became entitled to the additional forms of compensation known as 'override' and 'incremental' commissions.

The Tribunal found that the schemes were unlawful and contravened section 8(d)(i).

In considering the appropriate remedy the Tribunal explained the principles it had used in weighting the factors to be taken into account when determining the amount of an administrative penalty. Based on these weightings the Tribunal found that the penalty should be set at 2,25% of SAA's relevant turnover, which amounted to R45 million.

SETTLEMENT IN MOTOR CAR PRICE FIXING CASES

COMPETITION COMMISSION AND MOTOR VEHICLE DEALERS

The Tribunal ordered the following companies to pay administrative penalties in terms of settlements reached with the Competition Commission. The Commission had found these dealers had entered into agreements to directly or indirectly fix selling



prices in contravention of the Competition Act

Subaru SA - R500 000

Nissan South Africa - R6 000 000

DaimlerChrysler SA - R8 000 000

General Motors SA - R12 000 000

Volkswagen SA - R5 000 000

Citroën SA - R150 000

BMW SA - R 8 000 000

COMPLAINT REFERRALS FROM COMPLAINANTS

The Tribunal had eight complaints referrals from complainants on its roll during the year under review. Three of these had been received in the previous year and five were received in the current year. Four of these referrals were withdrawn, filing is continuing in three, and one hearing is continuing.

Comair Pty Ltd and South African Airways Pty Ltd

The Competition Tribunal gave notice in terms of Section 51 (3) & (4) of the Competition Act 89 of 1998 as amended, that on 13 May it received a complaint referral from Comair Limited against South African Airways (Pty) Ltd. Comair alleges South African Airways is engaging in prohibited practices in contravention of sections 8(d)(i), 8(c) and 5(1) of the Competition Act 89 of 1998. The matter is still proceeding.

Harmony Gold Mining Company Ltd and Durban Roodepoort Deep Ltd vs Iscor Ltd and Macsteel International BV

On 27 February 2004 the Tribunal received a complaint from Harmony Gold Mining Company and Durban Roodepoort Deep against Iscor Limited and Macsteel International BV following a non-referral from the Commission in January 2004. The complainants allege that Iscor is a dominant firm engaging in conduct prohibited by sections 8(a) and 8(d)(i) of the Competition Act. The alleged conduct relates to charging excessive prices to the detriment of consumers, and requiring or inducing a customer to not deal with a competitor. The matter is still proceeding.

Enviroglass Division of the Reclamation Group (Pty) Ltd vs Consol Ltd and Others

The Enviroglass division of the Reclamation Group referred a complaint to the Tribunal against Consol and Nampak alleging that they have contravened section 8(c) of the Competition Act in that they, as collectively dominant purchasers (alternatively Consol as a dominant purchaser) of processed and unprocessed cullet, have engaged in exclusionary acts which have lowered and continue to lower the prices paid for processed and/or unprocessed cullet. The matter is still proceeding.

Association for Exploited Retirement & Medical Aid Fund Members vs South African Short-Term Industry as represented by the South African Insurance Association (SAIA)

The complaint was lodged by the Association for Exploited Retirement & Medical Aid Fund Members against the South African short-term industry, represented by the South African Insurance Association (SAIA). The complainant alleged that SAIA was in contravention of sections 7 and 8 of the Competition Act because of the confidentiality clause ("gagging clause") in its policy contracts, which made it impossible for policyholders to access information relating to their pension funds. The complaint was subsequently withdrawn on 15 September 2005.

Barrows & Tools cc and Ussher Investments (Pty) Ltd t/a Lasher Tools

A complaint was brought by Barrows & Tools against Ussher Investments (Pty) Ltd t/a Lasher Tools following a non-referral by the Commission. The complainant alleged that the respondent was in contravention of sections 5 and 9 of the Act by refusing to supply wheelbarrows to the complainant if the complainant did not resell the wheelbarrows at a certain minimum price.

The complaint was subsequently withdrawn on 03 March 2006.

JT International SA (Pty) Ltd vs British American Tobacco SA (Pty) Ltd

A complaint was brought by JT International SA (Pty) Ltd ("JTI") against British American Tobacco SA (Pty) Ltd ("BAT") following a decision by the Commission to refer only certain parts of JTI's complaints against BAT. JTI alleges that BAT has concluded agreements with some of its customers that oblige them inter alia, not to stock any brands of cigarettes other than BAT's, and not to display any signage of competitors' cigarette brands. JTI alleges that these agreements contravene section 5(1) of the Act. The matter is pending.

WITHDRAWN COMPLAINT REFERRAL CASES

The following cases received in a previous period were withdrawn:

- Aids Healthcare Foundation Ltd and Others vs Glaxo SmithKline South Africa (Pty) Ltd and Glaxo Group Ltd
- Maria Christina (Torga) Buchanan vs Health Professions Council of SA and Professional Board for Optometry

INTERIM RELIEF

The Tribunal had seven interim relief cases on the roll during the period under review. Three of these cases were heard and decided, two were withdrawn, and two are still to be heard.

Multichoice Subscriber Services (Pty) Ltd and Internet Solutions (Pty) Ltd vs Telkom SA Limited

This interim relief application was brought by Multichoice Subscriber Management Services and Internet Solutions against Telkom. It is alleged that Telkom has configured the architecture by which it provides ADSL internet access and has priced access to its facilities and services in such a way that its competitors in the retail ADSL market are subject to a "margin squeeze". As a result the complainants allege that they are unable to compete effectively with Telkom in this market. The matter is proceeding.

Nyobo Moses Malefo and Fullhouse Investments 119 (Pty) Ltd vs Street Pole Ads (SA) (Pty) Ltd, Brent Herbert, Grant Smith & Lucas Potgieter

This was an urgent interim relief application in which the applicants alleged that the respondents had contravened the Competition Act by, inter alia, engaging

in collusive tendering, exclusionary conduct with anticompetitive effects, inducing suppliers or customers not to deal with competitors, and price discrimination. Both the applicants and the respondents are active in the market for advertising on municipal street poles. The application was dismissed. Reasons for the decision are available on the Tribunal's website.

Charter Property Sales vs East Cape Property Guide & Others

This application for interim relief was brought by Charter Property Sales against East Cape Property Guide and Saturday Star Property Guide. The applicant alleged that the respondents were contravening the Competition Act by, inter alia, not allowing the applicant to place advertisements in newspapers published by the respondent. The matter is pending.

Zoutnet vs Caxton & CTP Publishers & Printers Ltd, CTP Limited t/a Northern Media Group

Zoutnet brought an application for interim relief against Caxton & CTP Publishers & Printers Ltd and CTP Limited t/a Northern Media Group. The applicant

alleged that the respondents had abused their dominant position in the publication industry in the northern region of the Limpopo province by, inter alia, selling services below their marginal cost and inducing customers not to deal with a competitor thereby contravening sections 8(d)(i), 8(d)(iv) and 9 of the Competition Act. The application was withdrawn on 29 March 2006.

Nqobion Arts Business Enterprise vs The Business Place Joburg & Bentrepreneur

Nqobion Arts Business Enterprise brought an application for interim relief against the first and second respondents in respect of a claim that intellectual property in the form of the Arts Tuesday trade mark was being used by the respondents to abuse their dominant market position, thereby contravening sections 8(b), 8(c) and 8(d) of the Competition Act. It was also alleged that the respondents were contravening sections 4(a) and 5(1) of the Competition Act because of a restrictive agreement between the first and second respondents. The application was dismissed. Reasons for the Tribunal decisions are available on its website.

TRIBUNAL FINDS WHEN CONTRACTURAL RESTRAINT OF TRADE MIGHT BE RESTRICTIVE HORIZONTAL PRACTICE

Nedschroef Johannesburg (Pty) Ltd vs Teamcor Limited and Others

Nedschroef Johannesburg Pty Ltd brought an application against the respondents in respect of a restraint of trade clause in a sale of business agreement that allegedly contravened section 4(1)(b) of the Competition Act ('Act'). Only the third respondent, CBC Fasteners (Pty) Ltd ("CBC"), opposed the application. On 30 January 2006 the Tribunal granted the order sought.

The restraints concerned a list of products contained in an annexure to the sale of business agreement. According to this agreement Nedschroef undertook to the seller, Teamcor, to restrict itself to manufacturing only a type of fastener specified in the annexure. In return Teamcor undertook not to manufacture any of the listed products. Nedschroef also undertook to extend the benefit of the restraint to CBC even though the latter was not otherwise a party to the sale agreement. CBC accepted the benefits of this restraint and was a signatory to the agreement.



Nedschroef now wanted to trade in these products and CBC sought to hold it to its contract.

The Tribunal found that there was no requirement in the Act that firms must have been prior competitors in order to contravene section 4(1)(b). Also, reciprocity, in the sense of one firm agreeing to do something in exchange for something done by another firm, is not a requirement for market division to occur.

Since Nedschroef had, prima facie, established a prohibited practice the Tribunal granted an interdict restraining the first and third respondents from enforcing the restraint of trade clause until a final determination of Nedschroef's complaint in terms of the Competition Act, alternatively six months after the date of the order. Further, it was ordered that any profits that accrued during that period to Nedschroef as a result of the order will be placed in a separate trust account and recorded.

WITHDRAWN INTERIM RELIEF CASES

One matter received in a previous period was withdrawn:

- Maria Christina (Torga) Buchanan vs Health Professions Council of SA and Professional Board for Optometry

DECISIONS ON PROCEDURE OR POINTS OF LAW

In the period under review the Tribunal had 30 matters of this nature on the roll. Of these, 24 were new applications and six were pending from the previous year. All six of the previous year's matters were decided on. Of the new matters 20 were heard, one was withdrawn and three matters are still to be heard. Of the 20 heard, 19 were decided and one matter was withdrawn.

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

Nature of procedural matter	Number of applications
Access to restricted information	1
Intervention application	8
Section 45 (access to confidential information)	5
Failure to notify	4
Discovery	3
Exception application	1
Condonation	3
Consent order	1
Stay Application	1
Interdict	1
Refund of filing fee	2
TOTAL:	30

Details of these proceedings are set out in Appendix C on page 50

ACQUISITION OF PREFERENCE SHARES MAY AMOUNT TO CHANGE OF CONTROL FOR PURPOSES OF ACT

Cape Empowerment Trust Ltd vs Sanlam Life Insurance Ltd and Sancino Projects Ltd

On 3 February 2006 the Tribunal dismissed an application by Cape Empowerment Trust Ltd ("CET") to restrain Sanlam Life Insurance Ltd from voting its preference shares at a meeting of Sancino's shareholders on 7 and 8 February 2006. CET asserted that by voting its preference shares Sanlam would be implementing a merger with Sancino without having obtained the approval of the competition authorities.

Sanlam owned 76.4% of the issued share capital of Sancino, 10% of which was ordinary shares and the balance redeemable non-voting preference shares which Sanlam had acquired in 1998. Payment on the preference shares fell in arrears on the due date in March 2002 affording Sanlam, in terms of the articles of association, the right to vote these shares and to convert them to ordinary shares. In January 2006 Sancino notified its shareholders that it was convening a special meeting of shareholders on 8 February 2006 to vote on a number of special resolutions, the



effect of these being to convert the entire indebtedness of Sancino to Sanlam into ordinary shares in Sancino. Subsequent to this CET, which was in the process of offering to acquire all the shares in Sancino, applied to the Tribunal to interdict Sanlam from voting at the shareholders meeting.

The Tribunal considered the role of preference shares in the share capital of the company and found that in this case the preference shares formed part of the issued share capital of Sancino. Accordingly Sanlam had acquired control of Sancino from March 1998, which predated the entry into force of Chapter 3 of the Act. Accordingly it was not incumbent on Sanlam and Sancino to file a notification of this relationship with the competition authorities when the Act came into force because it already had a form of control contemplated in section 12. By converting its preference shares to ordinary shares with voting rights the consequence in terms of control for the purposes of Section 12 did not change as one form of control was merely superimposed on another.

THE COMPETITION APPEAL COURT

The Competition Appeal Court, one of three institutions established in terms of the Competition Act, is a specialised body that hears appeals and reviews the decisions of the Tribunal. The President, acting on the advice of the Judicial Services Commission, appoints the judges of the Competition Appeal Court.

The members of the court during the period under review were as follows:

The Honourable Mr Justice D Davis (Judge President)
 The Honourable Mr Justice S Selikowitz
 The Honourable Ms Justice L Mailula
 The Honourable Mr Justice F Malan
 The Honourable Mr Justice C Patel
 The Honourable Ms Justice N Mhlantla
 The Honourable Mr Justice T. Jali (resignation effective 16th February 2006)
 The Honourable Mr Justice I. Hussain (resignation effective 31st March 2006)

The registrar of the Tribunal acts as the registrar of the Competition Appeal Court and the secretariat of the Tribunal provides the registry function.

Three judges attended the Fordham Annual Conference on International Antitrust and Law Policy in New York in September 2005. In addition four judges attended the seminar entitled "Monopolies and Abuse of Dominance" presented by Prof. Eleanor Fox in September 2005.

One judge attended a judicial seminar hosted in Malawi in March 2006.

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 dti. 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's)
2003	175
2004	284
2005	341
2006	363

CASES BEFORE THE COMPETITION APPEAL COURT

In the period under review, the Competition Appeal Court received 11 new applications and two cases were pending from the previous year. The court heard six cases and released five judgements. Four cases were withdrawn.

Details of these proceedings are set out in the Appendix D on page 51.



Mr Justice D Davis



Mr Justice T Jali



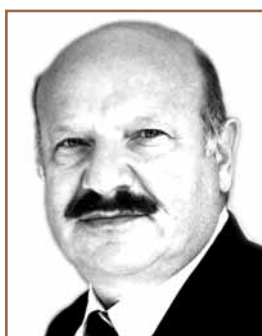
Ms Justice L Mailula



Mr Justice F Malan



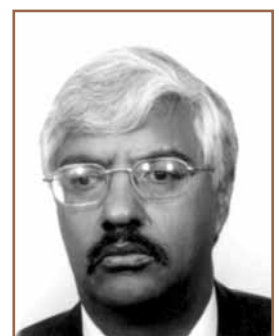
Ms Justice N Mhlantla



Mr Justice S Selikowitz



Mr Justice C Patel



Mr Justice I Hussain



ANNUAL FINANCIAL STATEMENTS - FOR THE YEAR ENDED 31 MARCH 2006

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STATEMENT OF FINANCIAL PERFORMANCE

FOR THE YEAR ENDED 31 MARCH 2006

		2006	2005
Revenue	Notes	R'000	R'000
Fee Income	2	8 454	6 265
Grants and transfers	3	5 000	1 400
Other revenue	4	172	65
Total Revenue		13 626	7 730
Expenses		10 622	9 009
Administrative expenses	5	2 156	1 622
Personnel	6	5 969	5 019
Other operating expenses	7	2 233	2 074
Finance charges	8	45	54
Depreciation	9	219	240
Surplus/(Deficit) from operations		3 004	(1 279)
Interest received	10	226	368
Net surplus/(deficit) for the year		3 230	(911)

STATEMENT OF FINANCIAL POSITION

AT 31 MARCH 2006

		2006	2005
	Notes	R'000	R'000
Assets			
Current assets			
Inventory	11	38	16
Receivables	12	1 836	880
Cash and cash equivalents	13	7 645	5 341
		9 519	6 237
Non-current assets			
Infrastructure, plant and equipment	14	658	523
Total assets		10 177	6 760
Liabilities			
Current liabilities			
Payables	15	640	598
Short term portion of finance lease	16	86	84
Accrued interest		4	4
		730	686
Non-current liabilities			
Finance Lease	16	352	209
Total liabilities		1 082	895
Net Assets		9 095	5 865
Net Assets		9 095	5 865
Accumulated surpluses		9 095	5 865
Total net assets		9 095	5 865

STATEMENT OF CHANGES IN NET ASSETS

FOR THE YEAR ENDED 31 MARCH 2006

		Accumulated surplus
		2006
		R'000
Balance at 1 April 2004 as previously reported		6 847
Prior year error adjustment	17	(71)
Restated balance at 31 March 2004		6 776
Deficit for the year ended 31 March 2005 as restated		(911)
As previously reported		(865)
Surplus year error		(46)
Balance at 31 March 2005		5 865
Surplus for the year ended 31 March 2006		3 230
Balance at 31 March 2006		9 095

CASH FLOW STATEMENT

FOR THE YEAR ENDED 31 MARCH 2006

		2006	2005
		R'000	R'000
	Notes		
Operating activities			
Cash received from customers		12 558	7 035
Cash paid to suppliers and employees		10 338	8 518
Cash increase/(decrease) from operations	18	2 220	(1 483)
Interest received	10	226	368
Finance charges	8	(45)	(54)
Net cash from operating activities		2 401	(1 169)
Net cash used in investing activities	19	(242)	(174)
Net cash flow from financing activities	20	145	(56)
Net increase/(decrease) in cash and cash equivalents		2 304	(1 399)
Cash and cash equivalents at the beginning of the year		5 341	6 740
Cash and cash equivalents at end of the year	13	7 645	5 341

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 2006

1. Accounting Policies

The annual financial statements have been prepared on the historical cost basis and include the following principal accounting policies, which in all material aspects, are consistent with those applied in the previous year, except as otherwise indicated.

1.1 Basis of preparation

The financial statements have been prepared in accordance with the South African Statements of Generally Accepted Accounting Practice (GAAP) including any interpretations of such Statements issued by the Accounting Practices Board, with the prescribed Standards of Generally Recognised Accounting Practice (GRAP) issued by the Accounting Standards Board replacing the equivalent GAAP Statement as follows:

Standard of GRAP	Replaced Statement of GAAP
GRAP 1: Presentation of financial statements	AC101: Presentation of financial statements
GRAP 2: Cash flow statements	AC118: Cash flow statements
GRAP 3: Accounting policies, changes in accounting estimates and errors	AC103: Accounting policies, changes in accounting estimates and errors

The recognition and measurement principles in the above GRAP and GAAP Statements do not differ or result in material differences in items presented and disclosed in the financial statements.

The implementation of GRAP 1, 2 & 3 has resulted in the following significant changes in the presentation of the financial statements:

a) Terminology differences:

Standard of GRAP	Replaced Statement of GAAP
Statement of financial performance	Income statement
Statement of financial position	Balance sheet
Statement of changes in net assets	Statement of changes in equity
Net assets	Equity
Surplus/deficit for the period	Profit/loss for the period
Accumulated surplus/deficit	Retained earnings
Contributions from owners	Share capital
Distributions to owners	Dividends
Reporting date	Balance sheet date

b) The cash flow statement can only be prepared in accordance with the direct method.

c) Specific information such as:

- i) receivables from non-exchange transactions, including taxes and transfers;
 - ii) taxes and transfers payable;
 - iii) trade and other payables from non-exchange transactions;
- must be presented separately on the statement of financial position.

d) The amount and nature of any restrictions on cash balances is required to be disclosed.

Paragraph 11 – 15 of GRAP 1 has not been implemented as the budget reporting standard is in the process of being developed by the international and local standard setters. Although the inclusion of budget information would enhance the usefulness of the financial statements, non-disclosure will not affect fair presentation.

1.2 Presentation currency

These financial statements are presented in South African Rands.

1.3 Revenue

Revenue comprises of filing fees receivable for the year excluding value – added tax and is recognised on an accrual basis. Interest income is accrued on a time preparation basis taking into account the principle invested and the effective interest rate applicable to the relevant investments.

1.4 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.

1.5 Pension and post retirement benefits

The entity operates a defined contribution plan for all its employees.

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

1.6 Infrastructure, plant and equipment

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

Infrastructure, 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:

Office equipment	- 20%
Motor vehicles	- 20%
Computer equipment	- 33%
Furniture and fittings	- 20%
Leased Assets	- period of the lease

1.7 Leased assets

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

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

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 statement of financial performance in equal instalments over the period of the lease.

1.8 Inventory

Inventory is stated at the lower of cost and net realisable value and cost is determined on a first-in-first-out basis. Net realisable value represents the estimated selling price in the ordinary course of the business less any costs incurred in selling and distribution.

1.9 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.

1.10 Financial Instruments

Financial instruments carried on the statement of financial position include cash and bank balances, receivables and 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.

Receivables

Receivables are stated at the nominal value as reduced by appropriate allowances for estimated irrevocable amounts.

Cash and bank balances

Cash and cash equivalents are measured at fair value.

Payables

Trade and other payables are stated at their nominal 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.

1.11 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.

1.12 Comparative figures

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

1.13 Impairment of assets

The Tribunal assesses at each reporting date whether there is any indication that an asset may be impaired. If any such indication exists, the entity estimates the recoverable amount of the asset. If there is any indication that an asset may be impaired, recoverable amount is estimated for the individual asset. If it is not possible to estimate the recoverable amount of the individual asset, the recoverable amount of the cash-generating unit to which the asset belongs is determined.

The recoverable amount of an asset or a cash-generating unit is the higher of its fair value less costs to sell and its value in use. If the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable amount. That reduction is an impairment loss.

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

An impairment loss is recognised for cash-generating units if the recoverable amount of the unit is less than the carrying amount of the units. The impairment loss is allocated to reduce the carrying amount of the assets of the unit in the following order:

- first, to reduce the carrying amount of any goodwill allocated to the cash-generating unit and
- then, to the other assets of the unit, pro rata on the basis of the carrying amount of each asset in the unit.

The Tribunal assesses at each reporting date whether there is any indication that an impairment loss recognised in prior periods for assets may no longer exist or may have decreased. If any such indication exists, the recoverable amounts of those assets are estimated.

2. Revenue

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

Rendering of services:

Fee Income

Total

3. Grants and transfers

Government grant

Total

4. Other revenue

Profit on disposal of assets

Hearing cost recoupement

Total

5. Administrative expenses

General and Administrative expenses

Auditor's remuneration

- Audit fees

Travel and subsistence

Rent paid to the dti

Total

6. Personnel

Salaries

Basic salaries

Performance awards

Other non-pensionable allowance

Defined Pension contribution plan expense

Social contributions (Employer's contributions)

Medical

UIF

Insurance

Other salary related costs

Director's emoluments

Total

	2006 R'000	2005 R'000
	8 454	6 265
Total	8 454	6 265
	5 000	1 400
Total	5 000	1 400
	112	65
	60	0
Total	172	65
	890	660
	184	115
	184	115
	317	232
	765	615
Total	2 156	1 622
	2 346	2 402
	1 735	1 777
	159	267
	452	358
	150	152
	243	209
	59	61
	16	15
	88	84
	80	49
	3 230	2 256
Total	5 969	5 019

7. Other operating expenses

Staff training and development	883	917
Consultants, contractors and special services	1 262	1 064
Legal fees	88	34
Maintenance, repairs and running costs	0	1
Fruitless and wasteful	0	39
Loss on leased asset	0	19

Total

2006	2005
R'000	R'000
2 233	2 074

8. Finance charges

Capitalized finance leases	45	54
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Total

45	54
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9. Depreciation

- Leasehold improvements	0	42
- Office equipment	1	1
- Motor vehicles	42	10
- Computer equipment	73	76
- Leased Assets – office equipment	92	70
- Furniture and fittings	11	41

Total

219	240
------------	------------

10. Interest received

Interest received	226	368
- Bank deposits		

Total

226	368
------------	------------

11. Inventory

Consumable stores	38	16
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Total

38	16
-----------	-----------

12. Receivables

Receivables	1 836	880
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Total

1 836	880
--------------	------------

13. Cash and cash equivalents

Cash at bank	7 644	5 340
Cash on hand	1	1

Total

7 645	5341
--------------	-------------

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.

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.

14. Infrastructure, plant and equipment

	Leasehold improvements	Office equipment	Motor vehicles	Computer equipment	Furniture and Fittings	Leased Assets- Office Equipment	Total
	R'000	R'000	R'000	R'000	R'000	R'000	R'000
Year ended 31/3/2005							
Opening net carrying amount	42	1	10	159	62	250	524
Cost	483	11	106	370	338	349	1657
Accumulated depreciation	(441)	(10)	(96)	(211)	(276)	(99)	(1133)
Additions		3	209	18	9	0	239
Disposals	0	0	0	0	0	0	0
Cost	483	0	106	18	0	0	607
Accumulated depreciation	(483)	0	(106)	(18)	0	0	(607)
Depreciation charge	(42)	(1)	(10)	(76)	(41)	(70)	(240)
Net carrying amount 31 March 2005	0	3	209	101	30	180	523
Cost	0	14	209	370	347	349	1289
Accumulated depreciation	0	(11)	0	(269)	(317)	(169)	(766)
Year ended 31/3/2006							
Opening net carrying amount	0	3	209	101	30	180	523
Cost	0	14	209	370	347	349	1289
Accumulated depreciation	0	(11)	0	(269)	(317)	(169)	(766)
Additions	0	0	0	16	0	501	517
Disposals	0	0	0	0	0	(163)	(163)
Cost	0	0	0	0	3	349	352
Accumulated depreciation	0	0	0	0	(3)	(186)	(189)
Depreciation charge	(0)	(1)	(42)	(73)	(11)	(92)	(219)
Net carrying amount 31 March 2006	0	2	167	44	19	426	658
Cost	0	14	209	386	344	501	1454
Accumulated depreciation	0	(12)	(42)	(342)	(325)	(75)	(796)

15. Payables

Trade creditors and accruals
VAT
Total

2006 R'000	2005 R'000
640	525
0	73
640	598

16. Finance lease

Amounts payable under finance lease:

- Within one year
- In the second to fifth year inclusive
- After five years

Less future finance charges

- Within one year
- In the second to fifth year inclusive
- After five years

Present value of minimum lease payments

- Within one year
- In the second to fifth year inclusive
- After five years

Less amounts due for settlement within 12 months

2006 R'000	2005 R'000
128	127
417	240
0	0
545	367
107	74
42	43
65	31
0	0
438	293
86	84
352	209
0	0
(86)	(84)
352	209

The Tribunal is leasing a photocopier on a finance lease and there are no restrictions imposed on the Tribunal in terms of this lease. The obligation under the finance lease is secured by the lessor's title to the leased asset. The lease can be extended for a further period after the initial period has expired (5 years).

17. Prior year error

The prior year figures have been adjusted with the correction of an error relating to previously reported operating leases, now being classified as finance leases in terms of IAS17.

The comparative figures of 2005 have been restated to correct this error

The effect of the error was as follows:

Adjustment against opening retained earnings 1 April 2005

Decrease in Lease Equipment - Registry expense

Loss to statement of financial performance due to vat claimed incorrectly

Increase in finance charges on finance leases

Increase in depreciation on finance leased asset

Decrease in surplus 31 March 2005

Increase in finance lease liability

Increase in finance lease asset cost

Increase in finance lease asset accumulated depreciation

Increase in interest accrued.

(71)
97
(19)
(54)
(70)
(46)
293
(349)
169
4
117

18. Reconciliation of net surplus/(deficit) for the year to cash utilised by operations

	2006 R'000	2005 R'000
Net surplus/(deficit) for the year	3 230	(911)
Adjusted for:		
- Depreciation on infrastructure, plant and equipment	219	240
- Profit on disposal of infrastructure, plant and equipment	(112)	(65)
- Finance costs	45	54
- Investment income	(226)	(368)
Operating cash flows before working capital changes	3 156	(1 050)
Working capital changes	(936)	(433)
- Increase in inventories	(22)	(1)
- Increase in receivables	(956)	(630)
- Increase in payables	42	198
Cash utilised by operating activities	2 220	(1 483)
19. Net cash flows from/investing activities		
Proceeds on disposal of leased assets	275	65
Acquisition of infrastructure, plant and equipment	(517)	(239)
Cash used in investing activities	(242)	(174)
20. Net cash flow from financing activities		
Net proceeds from/(payments) of lease liabilities	145	(56)

21. Future minimum lease payments**Office rental**

The Tribunal currently occupies space on the Department of Trade and Industry campus in Sunnyside. There is currently no lease agreement in place which specifies the annual rental charge or lease period. The landlord (the dti) has indicated that the annual rental will increase at a rate equal to the rate of inflation. It is therefore accepted that the real value of rental will remain constant in future years.

22. Employee benefits

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 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.

23. Income tax exemption

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

24. 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.

Liquidity risk

The Competition Tribunal's risk to liquidity is as a result of the funds available to cover future commitments. The Competition Tribunal regards this risk to be low, taking into consideration the Competition Tribunal's current funding structures and availability of cash resources.

Fair value

At 31 March 2005 and 31 March 2006 the carrying amounts of cash and bank balances, accounts receivable and trade creditors approximate their fair values.

25. Related parties

During the current period the Competition Tribunal entered into the following transactions:

Department of Trade and Industry

	R'000
Grant received from the dti	5 000
Rental paid to the dti	765
Administrative expenses paid to the dti	193
Amounts due to/by the dti at year end	76

Competition Commission

	R'000
Filing fees received as per MOA	8 363
Management fees paid to the Competition Commission	367
Employee costs paid to the Competition Commission	1
Receipts from the Competition Commission	89
Amounts due by the Competition Commission at year end	1 765

REPORT OF THE AUDIT COMMITTEE OF THE COMPETITION TRIBUNAL

This report was prepared according to the Treasury Regulations for public entities issued in terms of the Public Finance Management Act (PFMA), 1999 (Act No1 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 thrice 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 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 2006 as audited by 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
21st June 2006

APPENDIX A - UNCONTESTED MERGERS

UNCONDITIONAL APPROVALS

Case Number	Parties	Decision	Sector
03/LM/Jan05	Sanlam Life Insurance Ltd and S. African Insurance Company & Others	Approved	Insurance
04/LM/Jan05	Liberty Group Ltd and Capital Alliance Holdings Ltd	Approved	Insurance
10/ LM/Mar05	Clidet no.526 (Pty) Ltd and Pamodzi Investment Holdings (Pty) Ltd	Approved	Insurance
12/ LM/Mar05	Hosken Consolidated Investments Ltd and Fabvest Investment Holdings Ltd	Approved	Gaming & Leisure
16/ LM/Mar05	Channel Life Ltd and M Cubed Investment Life Ltd	Approved	Insurance
09/LM/Feb05	Standard Bank of SA Ltd and Worldwide African Investment Holdings (Pty) Ltd	Approved	Investment
27/LM/Apr 05	Growthpoint Properties Ltd and Tresso Trading 119 (Pty) Ltd	Approved	Property
14/ LM/Mar05	SA Leisure (Pty) Ltd and SA Leisure - a division of First Lifestyle (Pty) Ltd	Approved	Gaming & Leisure
15/ LM/Mar05	Investec Bank Ltd and Main Street 57 (Pty) Ltd, Corobrik (Pty) Ltd and Corovest (Pty) Ltd	Approved	Building materials
13/ LM/Mar05	Bytes Technology Group South Africa (Pty) Ltd and Digital Healthcare Solutions	Approved	Information Technology
24/LM/Mar05	BHP Billiton Ltd and WMC Resources Ltd	Approved	Mining
29/LM/Apr05	Clidet no. 546 (Pty) Ltd and Fast Track Liquors cc	Approved	Beverages
30/LM/May05	Standard Bank of SA Ltd and Safika Holdings (Pty) Ltd	Approved	Financial services
23/LM/Mar05	Community Investment venture Holdings (Pty) Ltd, Community Investment Ventures (Pty) Ltd and Community Investment Holdings (Pty) Ltd, CIE Group (Pty) Ltd	Approved	Investments
33/LM/May05	Avi Ltd and A&D Spitz	Approved	Branded consumer goods
34/LM/May05	Lanum Securities SA and 3C Telecommunications (Pty) Ltd	Approved	Telecommunications
22/LM/Mar05	Kermas South Africa (Pty) Ltd and Samancor Ltd	Approved	Resources
40/LM/May05	Liberty Group Limited and Wedelin Investments (Pty) Ltd	Approved	Insurance
38/LM/May05	Dunns Stores (Pty) Ltd and Shoe City Holdings (Pty) Ltd	Approved	Footwear
25/LM/Mar05	Massmart Holdings Ltd and Thabiletrade 22 (Pty) Ltd	Approved	Retail
26/LM/Apr05	Massmart Holdings Ltd and the business conducted by Nabuild (Pty) Ltd	Approved	Retail
28/LM/Apr05	Massmart Holdings Ltd and Servicestar (Pty) Ltd	Approved	Retail
37/LM/May05	South African Gas Development Company (Pty) Ltd and Companhia Mocambicana de Gasodudo SARL and Republic of Mozambique Pipeline Investments Company (Pty) Ltd	Approved	Fuel
44/LM/May05	Anglo South Africa Capital (Pty) Ltd; Eyesizwe Coal (Pty) Ltd and Mafube Coal Mining (Pty) Ltd and Arnot North Mining Business and Additional Reserves	Approved	Mining
32/LM/May05	Santam Ltd, Kagiso Newco and Nova Group Holdings Ltd	Approved	Insurance
50/LM/Jun05	Siemens Atkiengesellschaft and Flender Holding GmbH	Approved	Electricity
52/LM/Jun05	Vodacom Group (Pty) Ltd and Cointel V.A.S (Pty) Ltd	Approved	Cellular Communication
49/LM/Jun05	Siemens Atkiengesellschaft Osterreich and VA Technologie AG	Approved	Information Technology
53/LM/Jun05	Hyprop Investment Limited and South African Retail Properties Limited	Approved	Property
60/LM/Jul05	Unitrans Motors (Pty) Ltd and Alisa Holdings Ltd	Approved	Transport
63/LM/Jul05	Medicine Management Services (Pty) Ltd and Direct Medicines Pharmacy	Approved	Pharmaceutical
61/LM/Jul05	Imperial Group (Pty) Ltd and Bulktrans (Pty) Ltd	Approved	Transport
64/LM/Jul05	Combined Motor Holdings Limited and Forza (Pty) Ltd	Approved	Motor
76/LM/ Aug05	The Spar Group Limited and Sparit Family Supermarkets (Pty) Ltd	Approved	Retail
59/LM/Jul05	Theta Investments (Pty) Ltd and Teba Credit (Pty) Ltd	Approved	Manufacturing
43/LM/May05	Kumnandi Food Company (Pty) Ltd and Republiek Voedsel (Pty) Ltd	Approved	Food Services
51/LM/Jun05	Murray & Roberts Limited / Oconbrick Manufacturing (Pty) Ltd / P.S.P. Transport (Pty) Ltd / Purple Rain Properties No. 421 (Pty) Ltd	Approved	Construction
71/LM/ Aug05	Corvest 6 (Pty) Ltd and FCMS BEE Cash Management (Pty) Ltd	Approved	Cash Management /Security
66/LM/Jul05	Pangbourne Property (Pty) Ltd and the Enterprise conducted by Paramount Property Fund Limited	Approved	Property

UNCONDITIONAL APPROVALS CONTINUES

Case Number	Parties	Decision	Sector
70/LM/Aug05	Adcock Ingram Critical Care (Pty) Ltd & the Scientific Group (Pty) Ltd and Scientific Group Investments (Pty) Ltd	Approved	Healthcare
85/LM/Sep05	Super Group Dealerships - A division of Super Group Trading (Pty) Ltd and LM Wolfsohn Motors (Pty) Ltd	Approved	Motors
47/LM/Jun05	Shoprite Checkers (Pty) Ltd and Foodworld Group Investment Holdings (Pty) Ltd and Foodworld Stores Holdings (Pty) Ltd	Approved	Food retail
75/LM/Aug05	Medi-Clinic Investment (Pty) Ltd and Wits University Donald Gordon Medical Centre (Pty) Ltd	Approved	Healthcare
81/LM/Aug05	Sanlam Limited and African Life Assurance Company Limited	Approved	Insurance
69/LM/Jul05	Standard Bank Group Ltd and Andisa Capital (Pty) Ltd	Approved	Banking
77/LM/Aug05	Unitrans Motors (Pty) Ltd and Weiss Motors (Pty) Ltd	Approved	Motors
72/LM/Aug05	Corvest 6 (Pty) Ltd and Fidelity Supercare Services Group (Pty) Ltd	Approved	Investment
68/LM/Jul05	Apexhi Properties (Pty) Ltd and Prima Property Trust (Pty) Ltd	Approved	Property
88/LM/Sep05	Investec Bank Limited and BCE Foodservice Equipment (Pty) Ltd	Approved	Investment
86/LM/Sep05	Navigator Property Investments (Pty) Ltd and Two Others and Galleria Property Opportunities (Pty) Ltd and Thirteen Others	Approved	Property
89/LM/Sep05	Apexhi Properties Ltd and Sasol Pension Fund	Approved	Property
91/LM/Sep05	JD Group Limited and Connection Group Holdings Limited	Approved	Furniture & electronic retail
96/LM/Oct05	Imperial Holdings Limited and MCC Contracts (Pty) Ltd and Mutual Construction Company (TVL) (Pty) Ltd T/A MCC Plant Hire	Approved	Logistics
90/LM/Sep05	Standard Bank of South Africa Limited and RCS Investment Holdings (Pty) Ltd	Approved	Retail & personal financial services
97/LM/Oct05	SC-Beteiligungsgesellschaft MBH and Süd-Chemie AG (c/o One Equity Partners Europe GmbH)	Approved	Investment & chemicals
83/LM/Sep05	MTN Service Provider (Pty) Ltd and Cell Place (Pty) Ltd	Approved	Cellular Communication
108/LM/Nov05	The Public Investment Corporation Limited and ADR International Airports South Africa (Pty) Ltd	Approved	Property
93/LM/Sep05	Steinhoff Africa Holdings (Pty) Ltd and the North Eastern Cape Forest Joint Venture /Goeiehoop Farming (Pty) Ltd	Approved	Forestry
56/LM/Jun05	Merafe Ferrochrome and Mining (Pty) Ltd and Xstrata South Africa (Pty) Ltd / The Xstrata-Samancor Production Joint Venture and Samancor Ltd	Approved	Ferrochrome
45/LM/May05	Imperial Group (Pty) Ltd and Magic Merkel Motors (Pty) Ltd	Approved	Motor vehicle dealership
103/LM/Oct05	Evening Star Trading 431 (Pty) Ltd and Fraser Alexander Holdings (Pty) Ltd	Approved	Mining
107/LM/Nov05	CBS Property Trust and Growthpoint Properties Limited	Approved	Property
82/LM/Sep05	Rustenburg Platinum Mines Ltd and Aquarius Platinum (South Africa) (Pty) Ltd	Approved	Mining
102/LM/Oct05	Numsa Investment Company (Pty) Ltd and Doves Group Holdings (Pty) Ltd	Approved	Insurance
92/LM/Sep05	Industrial Partnership Investments Limited and Kagiso Trust Investments (Pty) Limited	Approved	Investment
104/LM/Oct05	Imperial Holdings Ltd and TFD Network Africa (Pty) Ltd	Approved	Logistics services
98/LM/Oct05	General Motors South Africa (Pty) Ltd and Midas Group (Pty) Ltd	Approved	Automotive parts
106/LM/Nov05	Liberty Group Limited and Investec Employee Benefits Limited	Approved	Investment
94/LM/Sep05	Sanlam Life Insurance Limited and Channel Life Limited	Approved	Insurance
110/LM/Nov05	Vodafone Group Plc and Venfin Limited	Approved	Cellular Communication
111/LM/Nov05	Business Venture Investments No. 951 Ltd and Venfin Group Finance (Pty) Ltd and Others	Approved	Cellular Communication
118/LM/Dec05	Barrick Gold Corporation and Placer Dome Incorporated	Approved	Mining
114/LM/Dec05	Combined Motor Holdings (Pty) Ltd and Craig Park Motors	Approved	Motor
15/LM/Feb06	Old Mutual Properties (Pty) Ltd and Marriott Property Services (Pty) Ltd; Marriott Asset Management (Pty) Ltd; Marriott Corporate Services (Pty) Ltd and Marriott Unit Trust Management Company Limited	Approved	Property

UNCONDITIONAL APPROVALS CONTINUES

Case Number	Parties	Decision	Sector
113/LM/Nov05	Afgri Operations (Pty) Ltd and Daybreak Farms (Pty) Ltd	Approved	Supply of poultry feed
10/LM/Feb06	Calibre Private Equity Partnership No. 12 and Salvage Management and Disposals (Pty) Ltd	Approved	Salvage motor vehicles
123/LM/Dec05	Vusani Property Investments (Pty) Ltd and Immovable Properties Owned by Sanlam Life Insurance Ltd	Approved	Property
09/LM/Feb06	Friedshelf 649 (Pty) Ltd & Ellerine Bros (Pty) Ltd and Wireless Business Solution Holdings (Pty) Ltd	Approved	Information Technology
19/LM/Feb06	BCE Foodservice Equipment (Pty) Ltd and Basfour 3018 (Pty) Ltd	Approved	Professional catering equipment
03/LM/Jan06	International Mineral Resources AG and Kermas South Africa (Pty) Ltd	Approved	Chrome ore mining
17/LM/Feb06	The Commercial Property Finance Division of ABSA Bank Ltd and Equity Estates (Pty) Ltd	Approved	Property
109/LM/Nov05	Chemical Services Limited and Leochem (Pty) Ltd	Approved	Speciality chemicals
01/LM/Jan06	Pangbourne Property Limited and Transnet Retirement Funds Property	Approved	Property
07/LM/Feb06	Old Mutual Life Assurance Company (South Africa) Limited and AFHCO Holdings (Proprietary) Limited	Approved	Property
08/LM/Feb06	Zelpy 4547 (Pty) Ltd and Chemical Specialties (Pty) Ltd and Others	Approved	Chemicals
04/LM/Jan06	Lexshell 668 Investments (Pty) Ltd and Graspan Colliery (Pty) Ltd	Approved	Mining
12/LM/Feb06	Ponahalo Investments (Pty) Ltd and De Beers Consolidated Mines Holdings (Pty) Ltd	Approved	Mining
116/LM/Dec05	Mananga Sugar Packers (Pty) Ltd and Sunshine Sugar Specialities (Pty) Ltd / MSASA Sugar (Pty) Ltd	Approved	Sugar
06/LM/Jan06	Pepkor Limited and Manrotrade Four (Pty) Ltd	Approved	Retail clothing
56/LM/Aug04	Ellerine Holdings Ltd and Relyant Retail Ltd	Approved	Furniture

CONDITIONAL APPROVALS

Case Number	Parties	Decision	Sector
54/LM/Jun05	Business Venture Investments No 976 (Pty) Ltd and Sage Group Ltd	Conditional approval	Short & Long-term insurance; unit trusts; and property rental
102/LM/Dec04	Media 24 and Lexshell 496 Investments (Pty) Ltd and The Natal Witness Printing and Publishing Company	Conditional approval	Printing & publishing
87/LM/Sep05	Momentum Group Limited and African Life Limited	Conditional approval	Medical administration services

APPENDIX B - CONTESTED MERGERS

CONTESTED MERGERS

Case Number	Parties	Decision	Sector
84/LM/Oct04	Momentum Group Ltd and Bonheur 94 General Trading (Pty) Ltd	Conditional approval	Healthcare
92/LM/Nov04	Clover Fonterra Ingredients (Pty) Ltd and New Zealand Milk Products (SA) (Pty) Ltd	Conditional approval	Dairy
93/LM/Nov04	Harmony Gold Mining Ltd and Gold Fields Ltd	Conditional approval	Mining
100/LM/Dec04	Chemical Services Ltd and Chemiphos SA (Pty) Ltd	Conditional approval	Chemicals
101/LM/Dec04	Engen Ltd, Sasol Ltd, Petronas International Corporation Ltd and Engen Ltd, Sasol Ltd	Prohibited	Petroleum
41/LM/May05	Lonmin Plc and Southern Platinum Corp, Southern Platinum (Cayman Islands) Ltd, Messina Ltd and Messina Platinum Mines Ltd	Conditional approval	Platinum mining
21/LM/Mar05	Edgars Consolidated Stores Ltd and Rapid Dawn 132 (Pty) Ltd	Approved	Retail
11/LM/Mar05	Medicross Healthcare Group (Pty) Ltd and Prime Cure Holdings (Pty) Ltd	Prohibited	Healthcare
46/LM/May05	Tiger Brands Ltd; Ashton Canning Company (Pty) Ltd and Newco and Langeberg Foods International and Ashton Canning Company (Pty) Ltd	Conditional approval	Fruit canning
48/LM/Jun05	AP Moller - Maersk and Royal P & O Nedlloyd N.V.	Conditional approval	Shipping
62/LM/Jul05	Massmart Holdings Limited & Moresport (Pty) Limited	Still proceeding	Sporting and outdoor goods retail
36/LM/May05	Foskor Limited and the Phosphoric Acid Business conducted by Sasol Chemical Industries Ltd	Still proceeding	Chemicals
84/LM/Sep05	Main Street 301 (Pty) Ltd and National Cereal Holdings (Pty) Ltd	Still proceeding	Bread, maize and wheat products
78/LM/Aug05	Mercanto Investments (Pty) Ltd and Johnnic Holdings Ltd	Conditional approval	Investment
99/LM/Oct05	Barloworld Coatings (Pty) Ltd and Prostart Investments (Pty) Ltd Trading as Marouns	Approved	Coatings
122/LM/Dec05	Phodiclinics (Pty) Ltd & DJF Defty (Pty) Ltd and Protector Group Medical Services (Pty) Ltd & 5 Others	Still proceeding	Healthcare

APPENDIX C - PROCEDURAL MATTERS

Case Number	Parties	Type	Decision
93/LM/Nov04	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	Granted
93/LM/Nov04	Gold Fields Ltd and Harmony Gold Mining Company Ltd and Competition Commission	Access to confidential information	Granted
93/LM/Nov04	Harmony Gold Mining Company Ltd and Gold Fields Ltd and Competition Commission	Access to confidential information	Granted
93/LM/Nov04	Harmony Gold Mining Company Ltd and Gold Fields Ltd	Access to confidential information	Granted
83/CR/Oct04	Comair Ltd and Competition commission and South African Airways (Pty) Ltd	Intervention application	Granted
97/CR/Nov04	GlaxoSmithKline South Africa (Pty) Ltd and Mpho Makhathnini, Nelisiwe Mthethwa, Musa Msomi, Elijah Paul Musoke, Tom Myers, Aids Healthcare Foundation Ltd	Consent order	Dismissed

APPENDIX C - PROCEDURAL MATTERS - CONTINUES

Case Number	Parties	Type	Decision
42/CR/May05	Enviroglass Division of the Reclamation Group (Pty) Ltd vs. Competition Commission, Consol Ltd and Others	Condonation application	Consolidated with 94/CR/Nov04
94/CR/Nov04	Enviroglass Division of the Reclamation Group (Pty) Ltd vs. Competition Commission, Consol Ltd and Others	Intervention application	Granted
55/CR/Jun05	Competition Commission and British American Tobacco SA (Pty) Ltd	Exception application	Decision stayed
55/CR/Jun05	JT International SA (Pty) Ltd vs. Competition Commission, British American Tobacco SA (Pty) Ltd	Condonation application	Granted
05/CR/Feb05	JT International SA (Pty) Ltd vs. Competition Commission, British American Tobacco SA (Pty) Ltd	Intervention application	Granted
101/LM/Dec04	Engen Ltd, Sasol Ltd, Petronas International Corporation Ltd and Engen Ltd, Sasol Ltd	Section 45	Granted
101/LM/Dec04	Engen Ltd, Sasol Ltd, Petronas International Corporation Ltd and Engen Ltd, Sasol Ltd	Discovery application	Granted
80/AM/Oct04	Bonheur 50 General Trading (Pty) Ltd and Komatiland Forests (Pty) Ltd	Discovery	Granted
80/AM/Oct04	Bonheur 50 General Trading (Pty) Ltd and Komatiland Forests (Pty) Ltd	Section 45	Granted
11/LM/Mar05	Medicrosss Healthcare Group (Pty) Ltd and Prime Cure Holdings (Pty) Ltd	Access to restricted information	Withdrawn 29 Jul 05
65/FN/Jul05	Johnnic Holdings Limited and Hosken Consolidated Investments Limited, CC	Failure to Notify	Dismissed
74/X/Aug05	Cream Magenta 150 (Pty) Ltd & Microaccess Financial Services (Pty) Ltd and the Competition Commission	Refund of filing fee	Granted
79/FN/Aug05	Competition Commission and Arvinmeritor Emissions GmbH	Failure to Notify	Fined - R200 000
47/LM/Jun05	Checkout (Pty) Ltd in re: Shoprite Checkers (Pty) Ltd and Foodworld Group Investment Holdings (Pty) Ltd and Foodworld Stores Holdings (Pty) Ltd	Intervention application	Withdrawn 26 Sep 05
73/CR/Aug05	Barrows & Tools cc and Ussher Investments (Pty) Ltd t/a Lasher Tools	Condonation application	Granted
83/CR/Oct04	Competition Commission, Comair and South African Airways (Pty) Ltd	Stay application	Granted
100/FN/Oct05	The Competition Commission and Oracle Corporation (South Africa) (Pty) Ltd	Failure to Notify	Fined R275 000
112/FN/Nov05	The Competition Commission and Edward Snell & Company Ltd & African Wines & Spirits (Pty) Ltd	Failure to Notify	Fined R100 000
119/X/Dec05	VNU N.V. and Competition Commission SA	Filing fee refund	Refunded
05/X/Jan06	Cape Empowerment Trust Limited and Sanlam Life Insurance & Sancino Projects Limited	Interdict	Dismissed
36/LM/May05	Foskor Ltd and the Phosphoric Acid Business conducted by Sasol Chemical Industries Ltd	Discovery and Section 45	Still proceeding
83/CR/Oct04	Nationwide (Pty) Ltd and Competition Commission, Comair (Pty) Ltd, SAA (Pty) Ltd	Intervention application	Still proceeding
122/LM/Dec05	Supreme Healthcare Administrators and Competition Commission, Phodclinics (Pty) Ltd & DJF Defty (Pty) Ltd and Protector Group Medical Services (Pty) Ltd & Others	Intervention application	Still proceeding
122/LM/Dec05	Network Healthcare Holdings Ltd and Competition Commission, Phodclinics (Pty) Ltd & DJF Defty (Pty) Ltd and Protector Group Medical Services (Pty) Ltd & Others	Intervention application	Still proceeding

APPENDIX D - CASES BEFORE THE COMPETITION APPEAL COURT

Appellant	Respondent	Date of appeal	Date of hearing	Date of decision	Bench	Decision	Summary
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	Application dismissed with costs, including the costs of two counsel	An application by Community Healthcare Holdings and Cornucopia to appeal a decision of the Competition Tribunal of 8 February 2005. The Tribunal had refused their application to intervene in the hearing on the large merger transaction between Business Venture Investments No 790 (Pty) Ltd. (Bidco) and Afrox Healthcare Ltd ("Ahealth"). The merger involved assets in the hospital sector. Since refusing the intervention application, the Tribunal completed the merger hearings on 10-11 February 2005 and approved the transaction with conditions on 2 March 2005. On 11 March 2005 Community Healthcare Holdings and Cornucopia unsuccessfully attempted to get an urgent order from the CAC to suspend the implementation of the transaction between Bidco and Ahealth pending the outcome of its appeal before the CAC.
Harmony Gold Mining Limited, MMC Norilsk Nickel & CC	Gold Fields Ltd	29 Nov 04	24 Mar 05	10 May 05	Davis JP Jali JA Hussain JA	Application for leave to appeal is dismissed with costs, including the costs of two counsel	Harmony Gold Mining Company Ltd made an application seeking leave to appeal a CAC decision, made in December 2004, in terms of which Harmony was prevented from voting Gold Fields Ltd shares it acquired in the "early settlement offer" until such time that Harmony had obtained approval from the competition authorities to implement a merger. Harmony intended appealing the CAC decision in the Supreme Court of Appeal.
Johnnic Holdings Ltd	Mercanto (Pty) Ltd & The Competition Commission	08 Dec 05	09 Dec 05	09 Dec 05	Hussain JA	Dismissed with costs	This is an application for interdictory relief to prevent the first and second respondents from further implementing the merger with the applicant, and particularly from purchasing or taking transfer of any further shares in the applicant, or exercising the voting rights attaching to shares acquired in pursuance of the first and second respondents' strategy to secure control over the applicant, pending the final determination of the appeal and the review of a decision of the Tribunal approving the merger.

CASES BEFORE THE COMPETITION APPEAL COURT CONTINUES

Appellant	Respondent	Date of appeal	Date of hearing	Date of decision	Bench	Decision	Summary
Sasol Oil	Nationwide Poles	22 Apr 05	19 Sep 05	13 Dec 05	Davis JP Selikowitz JA Mhlanhla AJA	The Tribunal's decision was set aside on the basis that there had been no proof of a lessening or prevention of competition.	Nationwide Poles, a small business based in Port Elizabeth which buys cresote from Sasol, initially laid a complaint with the Competition Commission alleging that Sasol's volume discounts discriminated against small business. 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 on behalf of Nationwide. The Tribunal found that Nationwide had successfully established that the practice in question conformed to the elements of prohibited price discrimination provided for in section 9 of the Competition Act.
Momentum Group Ltd & Others	Competition Tribunal & Others	23 Dec 05	02 Feb 06	14 Feb 06	Malan AJA Davis JP Mailula AJA	Conditions imposed by the Tribunal on the merger between Momentum Group and African Life Health were suspended pending the determination of a review and appeal of the order.	Momentum intends to acquire the entire issued share capital of African Life Health from African Life Assurance Company Limited, the holding company of African Life Health. Post-merger, the companies operating within the FirstRand group would control an estimated 34.6 percent of the medical scheme administration market. The companies within the FirstRand group are Discovery Health, Momentum and African Life Health. The Tribunal imposed conditions on the merger because it was concerned that "post merger there would be an enhanced incentive to co-ordination rather than rivalry". In order to address this concern the Tribunal ordered that any person who at present serves as a director on both Momentum group and Discovery board must resign. It also ordered that as long as FirstRand had a controlling interest in Discovery Health and Momentum no person who served as a director or an executive in any of the groups could be appointed to the board of any other group
Gold Fields Ltd	Harmony Gold Mining Company Ltd & Competition Commission	10 May 05	Withdrawn on 03/06/05				
South African Airways	The Competition Commission	19 Aug 05	Withdrawn on 05/12/05				

CASES BEFORE THE COMPETITION APPEAL COURT CONTINUES

Appellant	Respondent	Date of appeal	Date of hearing	Date of decision	Bench	Decision	Summary
Nyobo Moses Malefo & Another	Competition Tribunal & Others	21 Sep 05	Withdrawn on 30/11/05				
Johhnic Holdings Ltd	Hosken Consolidated Investments Ltd & the Competition Commission	14 Oct 05	Withdrawn on 10/02/06				
Omnia Fertilizer Limited	The Competition Commission & Others	17 Jun 05	20 Sep 05		Jali JA Malan AJA Patel AJA		Application for the review and setting aside the decision by the Competition Commission purportedly in terms of section 50(1) of the Competition, to refer the Nutri-Flo complaint to the Competition Tribunal and declaring the referral to be unlawful and thus of no force or effect.
Sasol Chemical Industries	The Competition Commission & Others	21 Jun 05	20 Sep 05		Jali JA Malan AJA Patel AJA		
Medicross Healthcare Group (Pty) Ltd, Prime Cure Holdings (Pty) Ltd	The Competition Commission	23 Sep 05	07 Dec 05		Davis JP Selikowitz JA Mhlanhla AJA	Tribunal's decision set aside and the merger approved unconditionally.	Application by Medicross Healthcare Group and Prime Cure Holdings against the Competition Tribunal decision on 15 January 2005 to prohibit the Medicross/Prime Cure merger. The Tribunal prohibited the merger on the grounds that the horizontal dimensions of the merger were likely to lead to a substantial lessening of competition in the relevant market and that there were no countervailing efficiencies. The Tribunal said that the merger would result in the removal of an effective competitor insofar as the merger comprised the only two entities that commanded access to both clinic and provider networks. In addition, "Barriers to entry into the market were formidable with a high failure rate of firms that had previously tried to enter".
Mybico	Lewis David, Competition Tribunal, Vodafone, Venfin	24 Feb 06					Application to review and set aside the Tribunal's decision approving the merger between Vodafone and Venfin



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