

tribunal

Annual Report 2009 - 2010



"10 Years of Promoting Competition"

10 Years of Promoting Competition

ANNUAL REPORT 2009 - 2010



SALIENT FEATURES OF THE YEAR

- Decisions were issued in respect of **71 of the 85 cases heard**.
- All of the **52 large merger** cases heard were decided.
- Of the large merger cases received, **63.46%** were heard within 10 days of receipt.
- All decisions regarding large merger cases were released within 10 days of their hearings.
- A total of **75 days** were spent in hearings.
- Media sources monitored by the Tribunal published **369 reports**.
- Tribunal personnel continued to participate actively in the work of the **Competition Committee of the Organisation for Economic Co-operation and Development (OECD)**.
- A joint conference was held with the **Competition Commission and the Mandela Institute** to celebrate **ten years of competition policy in South Africa**.
- **A ten-year review publication**, 'Unleashing Rivalry' was produced jointly with the Competition Commission.
- **Norman Manoim** was appointed as chairperson following **ten years of David Lewis's** leadership.
- Former chairperson David Lewis continued to serve as vice-chairperson of the **International Competition Network (ICN)**.
- The total value of administrative penalties imposed exceeded **R 292 million**.

WHAT WE DO

- The Tribunal is an independent, specialised institution established by statute.
- The Tribunal regulates corporate mergers and adjudicates allegations of anti-competitive practices.
- In respect of mergers, the Tribunal
 - authorises or prohibits large mergers, and
 - adjudicates appeals from decisions of the Competition Commission regarding intermediate mergers.
- In respect of anti-competitive behaviour, the Tribunal
 - adjudicates complaint referrals,
 - adjudicates interim relief applications, and
 - adjudicates appeals from decisions of the Competition Commission regarding applications for exemption.



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Report of the Auditor- General

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF COMPETITION TRIBUNAL FOR THE YEAR ENDED 31 MARCH 2010

REPORT ON THE FINANCIAL STATEMENTS

Introduction

I have audited the accompanying financial statements of the Competition Tribunal, which comprise the statement of financial position as at 31 March 2010, and the statement of financial performance, statement of changes in net assets and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information, as set out on pages 53 to 80.

Accounting authority's responsibility for the financial statements

The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and in the manner required by the Public Finance Management Act of South Africa. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor-General's responsibility

As required by section 188 of the Constitution of South Africa and section 4 of the Public Audit Act of South Africa and section 40(10) of the Competition Act, my responsibility is to express an opinion on the financial statements based on my audit.

I conducted my audit in accordance with International Standards on Auditing and *General Notice 1570 of 2009* issued in *Government Gazette 32758 of 27 November 2009*. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2010, and its financial performance and its cash flows for the year then ended, in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and in the manner required by the Public Finance Management Act of South Africa.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

In terms of the PAA of South Africa and *General notice 1570 of 2009*, issued in *Government Gazette No. 32758 of 27 November 2009*, I include below my findings on the report on predetermined objectives, compliance with the PFMA and financial management (internal control).

Findings

Predetermined objectives

Usefulness of reported performance information

The following criteria were used to assess the usefulness of the planned and reported performance:

- **Consistency:** Has the entity reported on its performance with regard to its objectives, indicators and targets in its approved strategic plan/annual performance plan, i.e. are the objectives, indicators and targets consistent between planning and reporting documents?
- **Relevance:** Is there a clear and logical link between the objectives, outcomes, outputs, indicators and performance targets?
- **Measurability:** Are objectives made measurable by means of indicators and targets? Are indicators well defined and verifiable, and are targets specific, measurable, and time bound?

The following audit finding relate to the above criteria:

Planned and reported performance targets not specific/measurable/time bound.

For the selected objectives (enforcement and compliance and policy and legislation), 24% of the planned and reported targets were not:

- specific in clearly identifying the nature and the required level of performance;
- measurable in identifying the required performance;
- time bound in specifying the time period or deadline for delivery.

INTERNAL CONTROL

I considered internal control relevant to my audit of the financial statements and the report on predetermined objectives and compliance with the PFMA, but not for the purposes of expressing an opinion on the effectiveness of internal control. The matters reported below are limited to the deficiencies identified during the audit.

- **Leadership**

The internal policies and procedures of Competition Tribunal did not adequately address the processes pertaining to the planning of performance information at the overall performance management level.

Auditor - General

Pretoria

31 July 2010





Chairperson - Norman Manoim

At the same time we bid farewell to two other members who had served us well for the past 10 years, Marumo Moerane, who was also our deputy chairperson and Urmila Bhoola.

Out of our present complement of 10 tribunal members seven members were appointed for five year terms from 1 August 2009. Of the seven appointed, four members have served previous terms – Yasmin Carrim, Merle Holden and Medi Mokuena, whilst Andiswa Ndoni, Takalani Madima and Andreas Wessels have been appointed for the first time. Mbuyisela Madlanga is the new deputy Chairperson. I, along with Yasmin Carrim and Andreas Wessels were appointed as the three full-time members.

During the course of this year one of our part-time members Nicola Theron resigned to pursue her private interests. She too was a valued member and her contribution highly appreciated.

1. Introduction

This past year has been one of transition for the Competition Tribunal. There has been a significant change in the composition of our members following new appointments made last year and in the course of the year it was decided that the competition authorities would move from the administration of the Department of Trade and Industry to the Department of Economic Development with effect from 1 April 2010.

In July last year the term of office of our first chairperson David Lewis ended and it was my privilege to be appointed by the President to succeed him.

David Lewis deserves the accolade of being called one of the founding fathers of our new competition system. He was not only instrumental in devising the policy that informed the new legislation but he was an implementer as well. Setting up the new authorities was a daunting challenge and he provided the inspirational and determined leadership necessary to achieve this in the two terms of office he served as chairperson. He also helped put the competition authorities on to the international map eventually becoming chairman of the steering committee of the International Competition Network (I.C.N) a body representing all the national competition authorities.

2009 also marked the tenth anniversary of the coming into force of the Competition Act in September 1999. To mark the occasion the Competition Commission, Tribunal and the Mandela Institute at the University of Witwatersrand organised a conference for international and local delegates. In addition we published a book of retrospective pieces which serves as a valuable record of our history and jurisprudence.

The conference and book were well received and it was encouraging to receive the good wishes and support for the work the competition authorities have been doing from both local and overseas speakers

In the table below, we detail the number and type of cases heard as well as the number of hearing days comparing them to the previous financial year.

Type of case	2010/2009	%	2009/2008	%
Large merger	52	61.18	102	72.86
Procedural	23	27.06	23	16.43
Intermediate merger	-	-	2	1.43
Restrictive practice	10	11.76	13	9.28
	85	100	140	100

Chairperson's Report for the Year Ended 31 March 2010

As the table illustrates we have heard considerably fewer mergers than in the previous year. There are two reasons for this. One is that the merger notification threshold was raised in April 2009 which has reduced the number of mergers notified. The second is a reflection on the state of economic activity in the recession. Whilst some mergers are crisis driven, for the most part the frequency of mergers is a function of the health of the economy.

No mergers notifiable to the Tribunal were prohibited in the course of this year. However a number were approved subject to conditions. Notably four mergers were approved subject to public interest conditions relating to employment. This is a reflection on the fact that many current mergers involve job losses. Our approach has not been to decide what level of employment loss is acceptable. Rather we have intervened to hold parties to their indicated employment loss estimations where the employment loss has been significant or where there has been a process failure in terms of the way the employment loss has been negotiated with trade unions or representatives of employees.

One merger of note was that between Masscash and a firm called Finro. The merger involved firms which were close competitors in the grocery wholesaling business. For the first time in our merger history the Commission introduced sophisticated economic evidence, reliant on combining evidence of a survey of consumers with analysis of the data by a statistician and its incorporation into a model by an economist. Although the Commission was unsuccessful before us in its bid to get the merger blocked we commended it on its efforts in using these techniques to analyse a merger.

A number of important decisions came out this year in prohibited practice cases. In our second decision relating to the legality of a travel agent incentive scheme the tribunal found that a subsequent version of the scheme was still unlawful. A similar conclusion had been reached in respect of an earlier version of the scheme in a case decided in 2004. No remedy was imposed in this case as SAA had already paid a penalty in a consent order settlement with the Commission in 2006 but it had made no admission of liability. However since SAA's rivals wish to pursue a damages claim against it, they had to bring the case to the tribunal in order to declare the conduct unlawful – a prerequisite for bringing the case in the High Court for damages

Perhaps the most high profile of our decisions was made in the case brought against Pioneer Foods. The Commission alleged that Pioneer Foods was part of a cartel with other bakery firms to fix the price of bread. Two of the firms settled with the Commission by means of consent orders, whilst the third received leniency. The case thus went to trial against Pioneer only. The Tribunal found that Pioneer had been part of a cartel to fix bread prices in certain regions and imposed a fine of R 195 million. This is the first case in which a firm alleged to be part of a cartel has been the subject of a full hearing

Fortunes were different for the respondent in the long running complaint brought by JTI, the manufacturer of Camel cigarettes against BATSA, the manufacturer of, amongst others, Peter Stuyvesant and Dunhill. The case involved an assessment of whether marketing strategies embarked upon by BATSA as a dominant firm were exclusionary of rivals. After a complex case in which evidence was heard not only from economic, but also marketing experts, the Tribunal concluded that the marketing tactics were not unlawful.

Challenges

Whilst the system of adjudicating mergers is working expeditiously the same cannot be said for prohibited practice cases. Admittedly the resolution of litigated cases is no tardier than might be in the high court system or in comparative jurisdictions, but that should not make us complacent in seeking improvement. Delayed outcomes benefit the guilty at the expense of consumers, but they also prejudice the innocent by chilling what may be either pro-competitive or competitively neutral behaviour. The Tribunal will endeavour to see how it can play a role in expediting case outcomes, although simple solutions are not obvious nor is delay attributable to single cause

Movement to Economic Development

For the past 10 years the Department of Trade and Industry (dti) has been the department responsible for the administration of the Competition Act. It was decided that with effect from 1 April 2010 this function would devolve upon the newly established Department of Economic Development. We greatly appreciate the support we have received from the dti over these years but look forward to working with the new department.

Chairperson's Report for the Year Ended 31 March 2010

May 2010 be a year in which the benefits of intense competition are not confined to the stadiums.

2. Statement of Responsibility

The accounting authority is responsible for the preparation, integrity and fair presentation of the financial statements of the Tribunal of South Africa for the year ended 31 March 2010. The financial statements presented on pages 53 to 79 have been prepared in accordance with the South African Statements of Generally Accepted Accounting Practice including any interpretations of such Statements issued by the Accounting Practices Board, with the effective Standards of Generally Recognised Accounting Practices to the extent as indicated in the accounting policies, and include amounts based on judgments and estimates made by management. The accounting authority, in consultation with the executive committee, prepared the other information included in the annual report and is responsible for both its accuracy and its consistency with the financial statements.

The going concern basis has been adopted in preparing the financial statements. The accounting authority has no reason to believe that sufficient funding will not be obtained to continue with the official functions of the Tribunal. These financial statements support the viability of the Tribunal.

The financial statements have been audited by an independent auditor, the Auditor-General South Africa. 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 South Africa is presented on page 2.

The accounting authority initially approved and submitted the financial statements to the Auditor-General South Africa on 31 May 2010.

3. Nature of Business

The Tribunal is one of three institutions constituted in 1999 in terms of the Competition Act (Act 89 of 1998) to promote and maintain competition in the economy and to ensure compliance with the Act's provisions.

Since its inception the Tribunal has been listed as a national

public entity in terms of the Public Finance Management Act.

The Tribunal derives its mandate from the Act and has jurisdiction throughout South Africa. The Tribunal functions independently both of government and of the Commission, which is the investigative and prosecutorial arm of the competition authorities. The Tribunal's decisions are enforceable on a similar basis to those of the High Court, and are subject to appeal to or review by the Competition Appeal Court.

Details of the Act and of the Tribunal's rules of procedure can be found on the Tribunal website, on which the decisions in its cases are also posted.

The Tribunal's main functions are to regulate mergers and to adjudicate cases concerning restrictive practices. The eleven members of the Tribunal, appointed by the President are as follows:

- Mr. N Manoim- Chairperson (full-time)
- Adv. M. Madlanga - Deputy Chairperson (part-time)
- Y.Carrim (full-time)
- A.Wessels (full-time)
- A. Ndoni (part-time)
- L. Reyburn (part-time)
- Prof. M.Holden (part-time);
- T.Orleyn (part-time);
- M.Mokuena (part-time)
- T.Madima (part-time)
- N.Theron (part-time) (resigned in February 2010)

These members are appointed on a full-time or part-time basis depending on the needs of the Tribunal. Cases are heard by panels comprising three of its members.

Cases are typically brought before the Tribunal by the Commission, but in certain circumstances private parties may engage the Tribunal directly.

Chairperson's Report for the Year Ended 31 March 2010

When a matter is referred to the Tribunal it holds hearings. In a merger case its decision will be to approve the merger, with or without conditions, or to prohibit the merger. In prohibited practice cases the Tribunal may, if it finds the Act has been contravened, impose any of a wide range of remedies, including the imposition of an administrative penalty and an order of divestiture.

4. Objectives and Targets

Because of its quasijudicial nature the Tribunal is precluded from setting proactive objectives or embarking on focused interventions which target any particular sector or emphasise any specific criterion. Complaint referrals and notified mergers are the only determinants of the Tribunal's caseload. Each case is adjudicated on its merits and the Tribunal has no control over the number and types of cases brought before it.

Performance against certain administrative objectives and legislated turnaround times follows later in this report.

5. Financial Highlights and Performance

	2010	2009
Revenue	18,244	18,728
Other income	31	3
Interest received	1,537	1,869
Total Revenue	19,812	20,597
Gain on disposal of leased asset	18	-
Expenditure	(18,301)	(17,593)
Net surplus	1,529	3,004
Total assets	23,389	21,846
Total liabilities	2,052	2,068

Revenue for the year ended 31 March 2010 decreased by 3.81%. Filing fee income decreased by 40.97% while there was a 31.60% increase in the grant received from the Department of Trade and Industry.

In terms of a memorandum of agreement existing between the two institutions, the Commission pays the Tribunal 30% of the filing fees received by the Commission for large mergers and 5% of the filing fees received for intermediate mergers.

Early in my report I indicated that the Tribunal had heard fewer mergers than in previous years and that the merger notification thresholds had been raised. The net effect of these two factors has led to a reduction in the filing fees received by the Tribunal. The effect the threshold changes would have on filing fees was anticipated by the Tribunal and reflected in our budget, however this together with the effect of the economic downturn on merger activity resulted in even lower than expected income from filing fees.

An additional effect of the change in merger notification thresholds is that filing fees no longer continue to make up a major portion of the Tribunal's revenue and that in the future the Tribunal will need to rely more heavily on funding from the Department of Economic Development to fund budgeted expenditure. At present filing fees constitute only 26.24% of the Tribunal's revenue while the government grant received in the year under review constituted 65.76% of the revenue.

Given the economic climate the Tribunal attempted to and successfully managed to contain expenditure with the increase (net of capital expenditure) being 4.01% as opposed to a 14.04% increase in the prior year. The changes in expenditure are discussed more fully later in the report.

At the beginning of the financial year the Tribunal had accumulated surpluses of approximately R 19.8 m and these have increased by just over R 1.5 m during the current financial year.

In terms of Section 53 (3) of the Public Finance Management Act entities are not allowed to accumulate surpluses unless approved by the National Treasury. The Tribunal has received permission from National Treasury to retain the

Chairperson's Report for the Year Ended 31 March 2010

R19.8 m in accumulated surpluses and we will again request permission to retain the surpluses generated during this financial year. The Tribunal in its budget submissions for the MTEF has reflected a drawing down of these surpluses to fund budgetted expenditure.

While the Tribunal can and does receive income based on filing fees received by the Commission, it cannot rely on this as its sole income source and the Tribunal will therefore continue to seek approval from National Treasury to retain its surplus as well as seek grant funding from the government to ensure sustainability of the institution for the foreseeable future.

6. Events Subsequent to Financial Position Date

No events took place between the year end date, 31st March 2010, and the date on which the financial statements were signed that were sufficiently material to warrant disclosure to interested parties.

7. Executive Committee Members Emoluments

Employee costs

The related parties note (Note 27) in the annual financial statements reflects the total annual remuneration (cost to company) received by the full-time members and managers of the Tribunal. The Chairperson, one full-time member and all the managers have served on the executive committee at some point during the period under review.

Performance bonuses for staff members are payable for the year ending March 2010. These have been accrued for the period and are reflected in the table below. These amounts are included in trade payables and reflected in the notes to the annual financial statements.

The Tribunal is responsible for its employees' contributions to group life insurance as well as for the administration costs associated with the pension fund. These figures have been included in the stated total remuneration, as has any back pay received. Performance bonuses for staff members are reflected separately in the table below. Full-time Tribunal members do not receive performance bonuses.

Given that David Lewis served as Chairperson for the first four months of the year under review and my term of office as Chairperson began in August 2009 (until this time I had served as a full-time member) it is not very meaningful to compare the salaries received by these members during the year under review.

Full-time Tribunal members salaries are adjusted annually following adjustments made to the Judge President and Judges of the High Court. During the year under review full-time members were awarded an annual adjustment of seven percent increase bringing the annual package to R 1,686,966 for the Chairperson and R 1,461,993 for the full-time members. This adjustment was made in December 2009 effective 1st April 2009.

8. Property, Plant and Equipment

The Tribunal has adopted the policy prescribed by GRAP 17 relating to the assessing of the useful life and residual value of property, plant and equipment. Residual values and useful life are assessed at the end of each financial year. There has been no change in the policy relating to the use of property and equipment.

9. Executive Committee

The composition of the executive committee was as follows during the period under review.

- David Lewis, chairperson (until 31 July 2009)
- Norman Manoim, chairperson (from August 2009)
- Yasmin Carrim, full-time Tribunal member
- Janeen de Klerk, head of corporate services
- Lerato Motaung, registrar
- Rietsie Badenhorst, head of research

The executive committee continues to be responsible for the development and formulation of a strategic policy framework, performance strategies, and goals for the operational management and administration of the Tribunal.

The committee's main finance-related responsibility is to ensure that services are rendered efficiently and economically within the framework of existing operational policies and within the Tribunal's budget and in accordance with a three-year rolling strategic plan.

The committee met six times during the year under review.

10. Number of Employees

At the year end the Tribunal's personnel complement consisted of three full-time members and 13 staff members.

11. Fruitless and Wasteful Expenditure

An amount of R 3,368 is reflected as fruitless and wasteful expenditure in the current financial year. This amount reflects a penalty imposed by the Department of Labour for the late submission of return and amounts that SARS has indicated is owed by the Tribunal. The late submission was due to the late receipt of the return and no particular individual can be held responsible for this error. SARS has indicated that the Tribunal owes them R 3,368 for a PAYE shortfall in March 2007. The Tribunal paid this amount in April 2007. While we accept there may be a small penalty on this the Tribunal disputes the liability. We have however paid this amount over to SARS while we query and conduct our own investigation into this matter.

12. Management Fee Paid to the Competition Commission

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

A management fee of R 50,604 per month was paid for the period under review. The MOA and the management fee are reviewed annually.

No substantial changes have occurred in the nature of the billing from the Commission for the year under review.

13. Any other Material Matter - Soccer World Cup Tickets

During the period under review the Tribunal incurred no expenditure pertaining to the World Cup. However the 2010/2011 financial statements will reflect total expenditure of R 13,209.25.

This expenditure was used to purchase a total of 30 soccer shirts which were given to Tribunal staff and security staff . In addition a small amount of R 219.45 was used to purchase flags for the office.

On an annual basis the Tribunal funds the entry of staff member's participation in the "Discovery Walk the Talk" and purchases a T shirt for staff to use at this function and other corporate activities as part of team building . A decision was taken by the Executive to forgo this expense and instead use the money for Soccer T shirts which were worn on "Football Friday" by the staff. In addition staff wore the T shirts for photographs in the annual report which this year had a soccer theme.

14. Address

Business address Building C (Mulayo Building)
77 Meintjies Street
Sunnyside
0002

Postal address Private Bag X24
Sunnyside
0132

Norman Manoim



Pretoria

28 May 2010

Ten Years of Enforcement

Third Annual Competition Conference



On 1 September 2009 the Competition Tribunal, together with the Competition Commission and the Competition Appeal Court, celebrated ten years of existence. The celebrations took the form of staging a joint conference on competition policy and law with the Commission and the Mandela Institute of Law.

The conference was attended by more than 300 delegates representing the host institutions, competition law firms, economists, academics and international competition authorities.

The conference provided an opportunity to reflect on the development of the institutions during this period, to identify the jurisprudence that has been established, to review the institutions' position in the international arena of competition enforcement, and to survey the way forward.

In addition a ten-year review document, 'Unleashing Rivalry,' was published and distributed to stakeholders. The review

aimed to describe the main patterns and milestones in the development of the competition authorities, to note the key decisions made, and to discuss the implications of the first ten years of their activities.

The history of the competition system in its modern form was also documented through the reflections of many of role players – policy-makers, trade unionists, business people, journalists, legal and economics practitioners, and office-bearers past and present of the institutions.

A farewell lunch was held for the outgoing chairperson, David Lewis, when he had served in that office for ten years, the maximum period permitted under the Competition Act, having lead the Tribunal through its inaugural period of existence. He was complimented by various speakers for his achievements in establishing and piloting the Tribunal through its early years and gaining for it the respect of the business community and of those concerned with public policy locally and internationally.

David Lewis Farewell Gala



Members And Secretariat



Takalani Madima



Andiswa Ndoni



Norman Manoim



Yasmin Carrim



Andries Wessels



Marumo Moerane



Lawrence Reyburn



Nicola Theron



Urmila Bhoola



Medi Mokuena



David Lewis

The Members of the Competition Tribunal

The Competition Act provides for the appointment of Tribunal members for a five-year term by the President, acting on the recommendation of the Minister of Trade and Industry.

At the end of the financial year the Tribunal consisted of three full-time members, who include the chairperson, and seven part-time members.

Adjudicative panels consisting of three Tribunal members are appointed by the chairperson for each hearing.

The Act stipulates that members of the Tribunal must be South African citizens representing a broad cross-section of the country's population. In addition members are required to have qualifications and/or experience in economics, law, commerce, industry or public affairs.

Of the current ten members, eight have a legal background, one is an economist and one has a commerce background.

Two of the full-time members serve as executive members of the Tribunal and two serve as members of the Tribunal's Risk Management Committee.

Members of the Competition Tribunal

Chairperson

Norman Manoim (BA, LLB), from 1 August 2009
David Lewis (BCom, MA) until 31 July 2009

Deputy Chairperson (Part-time)

Mbuyiseli Madlanga (BJuris, LLB, LLM), from 1 August 2009
Marumo Moerane (BSc, BCom, LLB), until 31 July 2009

Full-time members

Yasmin Carrim (BSc, LLB)
Andreas Wessels (BCom Hons, MCom), from 1 August 2009

Part-time members

Merle Holden (BCom Hons, MA, PhD)
Urmila Bhoola (BA Hons, LLB, LLM), until 31 July 2009
Medi Mokuena (Dip Juris, LLB, LLM)
Thandi Orleyn (BJuris, BProc, LLB, honorary PhD)

Lawrence Reyburn (BSc, LLB)
Takalani Madima (LLM, MBA, PhD), from 1 August 2009
Andiswa Ndoni (BProc, LLB, Dip Business Management, Cert. Corporate Governance) from 1 August 2009
Nicola Theron (BCom Hons, Mcom, PhD) – until 28 February 2010

Training of Tribunal members

In order to remain informed and up to date on international competition practices the Tribunal has continued to provide members with opportunities to attend international conferences and participate in international competition bodies. This interaction allows members to interact with their international counterparts and share experiences.

Three full-time Tribunal members represented the Tribunal at three overseas conferences during the period under review.

With the appointment of a new chairperson and ten new or reappointed Tribunal members in August 2009 it was decided that the Tribunal would not send representatives to the annual Fordham Antitrust conference. Instead, an internal workshop was held at which new members were introduced to the work of the Tribunal. This workshop was held in November 2009 and was facilitated by David Lewis, the former Tribunal chairperson. The topics of the workshop included a selection of the main issues which confront competition adjudicators and the law and practice built up in South Africa regarding them.

Full-time members again delivered lectures on a regular basis to the University of the Witwatersrand, including lectures to:

- LLB students
- Post-graduate students in competition law, broadcasting and telecommunications
- Students participating in selected certificate courses offered by the business school of the University of the Witwatersrand.

In addition, Tribunal members presented five papers at various conferences, seminars and workshops.

During the period under review the former chairperson, David Lewis, served as vice- chairperson of the ICN and the Tribunal continued to make contributions to the working groups of the ICN.

Members And Secretariat

The Tribunal continued to maintain its membership of the OECD's Competition Committee and its involvement in the OECD's global forum on competition law and policy. Full-time members have represented the Tribunal at this committee's tri-annual meetings.

The ICN provides developed and developing countries with a platform to address practical competition policy and enforcement issues while the OECD Committee deals with contemporary issues in competition law.

The Tribunal Secretariat

The Tribunal's secretariat structure consists of three departments, namely research, registry and corporate services, headed by managers who report directly to the chairperson and assist him in his role as chief executive officer. These managers are also responsible for certain other managerial and administrative tasks while certain executive functions have been delegated to the other two full-time members.

The chairperson fulfils his responsibility as the Tribunal's accounting officer and administers the powers detailed in the Competition Act through his active involvement in the day-to-day management of the Tribunal.

The Tribunal's support services in the form of administrative, registry, logistics, research and financial management are provided by a secretariat of 14. The registry and administrative functions of the Tribunal are set out in the Tribunal's rules.

During the course of the year under review it was determined that the Tribunal's current information technology requirements and proposed future developments were such that it was necessary to create an information technology post, and this was filled in August 2009. Prior to the establishment of this position the Commission's information technology staff had provided the Tribunal with IT support.

While the Tribunal's current secretariat is large enough to deal with the Tribunal's present administrative functions and case-load, the executive is constantly reviewing the workload and structures to determine whether change or restructuring is required in order to increase efficiencies or remove backlogs.

The following personnel changes took place during the year:

- The human resources and accounts assistant resigned in April 2009 but is not being replaced at present because some internal restructuring has made it possible to deal with current work requirements
- The position of IT support and network assistant was created and filled in August 2009
- A case manager resigned in October 2009 and this vacant position was filled in February 2010
- The financial administrator resigned in February 2010 and at the year-end this position was vacant, a consultant having been temporarily employed to provide the necessary services.

Departmental heads

Janeen de Klerk (corporate services)

Lerato Motaung (registry)

Rietsie Badenhorst (research/case management)

Case managers

Romeo Kariga

Jabulani Ngobeni (resigned October 2009)

Londiwe Senona

Ipeleng Selaledi

Thandi Lamprecht (appointed February 2010)

Registry

Tebogo Mputle, registry administrator

Abigail Mashigo, registry assistant

David Tefu, registry clerk/court orderly

Corporate Services

Donald Phiri, accounts assistant (resigned April 2009)

Gladness Moorosi, financial administrator (resigned February 2010)

Colin Venter, IT support and network administrator (appointed August 2009)

Lufuno Ramaru, Tribunal administrator

Lethabo Monyeki, executive assistant

competitiontribunal



STAFF MEMBERS

1

N. Manoim

2

R. Badenhorst

3

T. Mputle

4

K. Kunneke

5

M. Shabangu

6

I. Selaledi

7

A. Wessels

8

Y. Carrim

9

J. de Klerk

10

L. Senona

11

D. Tefu

12

L. Motaung

13

L. Monyeki

14

T. Lamprecht

15

C. Venter

16

A. Mashigo

17

L. Ramaru

Corporate Governance

As a public entity the Tribunal is guided by the principles of good corporate governance supplemented by statutory duties set out in the Public Finance Management Act (PFMA) and the Competition Act.

In managing its activities the Tribunal applies best-practice corporate governance principles and strives to achieve transparency, accountability, efficient management and optimal use of its resources. Compliance with legislation and with corporate governance principles is monitored by the Tribunal's executive and audit committees. The Tribunal submits quarterly reports on governance issues to the Department of Trade and Industry (the dti).

The Tribunal was not required to adhere to the King I and King II codes of corporate practice but used the principles in the King I and II codes as guidelines for best practice. The King III code applies to all entities regardless of the nature of their incorporation or establishment. The Tribunal has governance practices in place but the introduction of the King III code led the Tribunal to undertake a high-level review of the Tribunal's

- Corporate governance framework
- Governance structures
- Compliance with the King III code and the Protocol on Corporate Governance for Public Entities and the PFMA.

The overall conclusion was that corporate governance at the Tribunal requires continued focus and further improvements. The Tribunal has begun work on filling the identified gaps.

Governance Structures

Executive Committee

The composition and objectives of the Executive Committee and a review of its activities during the year under review are set out on pages 8 and 9 of this report.

Six meetings of the Committee were held in the year under review and attendance was as follows:

Name	Number of meetings attended
D Lewis (until July 2009)	2
N Manoim (from August 2009)	4
Y Carrim	6
J De Klerk	6
R Badenhorst	6
L Motaung	6

In July 2009 the Committee held a strategic planning session in order to review administrative and operational activities over the previous ten years and to discuss the possible implications of the imminent changes in management when David Lewis' term ended.

Audit Committee

The Audit Committee, established in March 2000, currently consists of two executive members and four non-executive members. At year-end it was constituted as follows:

Executive members:

- David Lewis (until July 2009)
- N Manoim (from August 2009)
- Janeen de Klerk

Non-executive members:

- Jeff Rapoo – chairperson from July 2007
- Maleshini Naidoo – appointed September 2007
- Herman de Jager – appointed September 2008/ resigned March 2009
- Victor Nondabula – appointed September 2008
- Karen Teixeira – appointed November 2009

The Committee met four times in the year under review.

The average cost per audit committee meeting held was R 14,036.74 and the average annual cost per member was R 11,229.39.

Corporate Governance

Attendance by and fees paid to the non-executive members of the audit committee during the year were as set out in the table below:

Member	Meetings Attended	Fees Received
J. Rapoo	4	20,587.50
M. Naidoo	2	5,687.60
H. de Jager	3	9,163.00
V. Nondabula	3	9,163.00
K. Texiera	2	6,664.00
Other expenses		4,881.85
TOTAL		56,146.95
Average cost per member		11,229.39
Average cost per meeting		14,036.74

An audit committee charter developed at inception and revised annually specifies the committee's functions. Guidance for the agendas of meetings is provided by a compliance checklist.

The committee's main functions include:

- Assess the effectiveness of the Tribunal's internal controls.
- Oversee the combined assurance process.
- Assess the Tribunal's continued ability to meet its mandate.
- Ensure compliance with laws and regulations.
- Ensure the Tribunal endorses ethical norms and good financial management principles.

During the period under review the audit committee has approved the internal and external plans presented by the auditors and has reviewed the Tribunal's quarterly internal audit reports, annual report and financial statements for the year ending 31 March 2010.

Governance of Risk

Risk Framework

Risk Framework

The Tribunal has developed and embedded a risk management framework within the institution.

In terms of this framework the following structures have been established:

- Risk Committee (RC) – consists of the audit committee and is responsible for providing the accounting authority with independent counsel and advice.
- Risk Management Committee (RMC) – responsible for addressing the corporate governance requirements of risk management and monitoring the Tribunal's performance in risk management.
- Risk Coordination Committee (RCC) – responsible for the design, implementation and monitoring of risk management and its integration into the Tribunal's day-to-day-activities. This committee is headed by the Chief Risk Officer who is assisted in her duties by a Deputy Chief Risk Officer.

At the time of the submission of the Tribunal's strategic plan (December 2009) the top five risks identified were as follows:

Risk	Risk Category	Impact
Insufficient funding from the dti	Financial Stability	Critical
Lack of and untimely approval of strategic submissions to the dti	Operational	Critical
Inadequate performance information	Organisational	Critical
Ineffective and untimely reporting to the dti	Financial Stability	Critical
Late/non appointment of Tribunal members by the dti	Organisational	Critical

Corporate Governance

The Risk Committee held two meetings in the period under review. The table below shows the number of meetings held and attendees.

Name	Number of meetings attended
J Rapoo	2
V Nondabula	2
H De Jager	1
M Naidoo	1
K Teixeira	2
J De Klerk	2
A Wessels	1

In addition a risk management implementation plan and charter have been developed and all office bearers will be required to sign appointment letters.

The RMC is required to submit a report on the top five risks to the RC on a quarterly basis.

Information Technology Governance

The National Treasury has encouraged public entities to espouse to the principles of the King II code and since the King III code supersedes the King II code it is reasonable to assume that the National Treasury will endorse the principles it embodies.

The King III code emphasises that information technology (IT) should be seen as a strategic asset but that IT also poses certain risks to an entity. It is therefore imperative that these assets, related risks and constraints are managed effectively and that IT is managed in such a manner that it supports the entity's strategic objectives.

While the Tribunal does not have a documented IT governance framework, issues to be dealt with in such a framework exist and need to be consolidated into a documented governance framework.

Colin Venter, the IT support and network assistant, has begun work on developing an IT strategic plan and IT governance framework for the Tribunal. It is envisaged that the IT plan will cover a period of five years and will be revised on an annual basis.

In addition the Tribunal undertakes a biannual compliance review to ensure that it is compliant both with internal

policies and legislative requirements. The results of this review are presented to the executive committee.

It would be impractical for an entity the size of the Tribunal to establish an IT steering committee and for this reason all decisions pertaining to IT development are discussed at an executive level and as far as possible provided for in the annual budget. A quarterly report on all aspects of IT is presented to the executive by the IT support and network assistant.

Sustainability

The King III code recommends that entities should produce an integrated report – one in which sustainability reporting and disclosure is integrated with the entities financial reporting.

The issue of “going concern”, the presentation and commentary on financial results has been addressed elsewhere in this report

The Tribunal being a public entity is limited in its ability to engage in corporate social investment and in addition not being a manufacturer will have limited negative impact on the environment. We have however tried in our own small way to address these issues and to make whatever limited contribution we can.

The Tribunal has established a social responsibility programme which supports non-profitable organisations without regard to race, gender, disability, religion, ethnicity, age or sexual orientation. In the last financial year the social responsibility committee was involved in several events.

In July 2010 the Tribunal entered various teams to participate in the Discovery Walk the Talk event and indirectly contributed to the various charities supported through this event

In February 2010, the Tribunal contributed towards assisting a member of the cleaning staff who lost all her belongings due to fire. Staff made monetary and clothing contributions towards helping her to make her life better.

Again in February 2010 the Tribunal donated redundant computer equipment to the SOS Village in Kamagugu, Nelspruit.

Corporate Governance

Within the office place we have instituted and requested that staff adhere to practices that contribute to a “greener” environment which include changing the way in which we print so as to conserve paper, reusing “single side” printed pages for draft printing, collecting printer cartridges, batteries, light bulbs etc for separate “green” disposal and contracting with a paper recycling company for the disposal of old documents/papers generated through our work.

We hope to continue to find small ways that enable us as an institution to behave in an ethical manner towards society and to account to our stakeholders for economic, environment and social performance.

702 Walk the Talk



SOS Children’s Village Human Resource Social Responsibility



The Competition Act

The Tribunal's functions, powers, activities and procedures are prescribed by the Act and the rules of the Tribunal. Procedures are periodically reviewed to ensure compliance with the requirements of legislation and to ensure that the Tribunal's work proceeds effectively and efficiently.

The dti is provided with quarterly reports detailing turnaround times and targets in terms of set-down and the publication of decisions and orders.

The Public Finance Management Act (PFMA)

The Tribunal has been listed as a national public entity in Schedule 3A of the PFMA since 1 April 2001. The PFMA prescribes requirements for accountable and transparent financial management.

In accordance with the PFMA and Treasury regulations, the Tribunal has, during the period under review, submitted the following documents to the dti for approval:

- Strategic Plan for the period 1 April 2009 – 31 March 2014 (submitted on the 1 December 2008 and approved on 31 August 2009)
- Budget for the period 1 April 2009 – 31 March 2011 (submitted on the 1 December 2008 and approved on 31 August 2009)
- Business Plan for the period 1 April 2009 – 31 March 2011 (submitted on the 1 December 2008 and approved on 31 August 2009)
- Strategic plan for the period 1 April 2010 – 31 March 2015 (submitted on 30 November 2009 and still awaiting approval)
- Budget for the period 1 April 2010 – 31 March 2015 (submitted on 30 November 2009 and still awaiting approval)
- Business plan for the period 1 April 2010 – 31 March 2011 (submitted on 30 November 2009 and still awaiting approval)
- Request for approval to retain surpluses generated as at 31 March 2009 (submitted in June 2009 and approved in November 2009)
- Quarterly reports on the Tribunal's expenditure, budget variance, activities and performance against set targets

Internal Audits

In April 2009 the auditing firm KPMG was awarded a three-year contract to perform the Tribunal's internal audit function.

In its internal audit charter, KPMG defines its mission as being "to provide an innovative, responsive and effective value-added internal audit function by assisting management in controlling risks, monitoring compliance and improving the efficiency and effectiveness of internal control systems."

In the year under review, the following internal audits were performed:

- Loss of credibility/integrity review – September 2009
- Performance information review – November 2009
- Safeguarding of assets review – March 2010
- Expenditure management review – March 2010
- Corporate governance review – March 2010

In developing its internal audit plan KPMG balances risk and compliance. The plan is developed by taking the following into consideration:

- discussions with head of corporate services
- the Tribunal's strategic risk profile
- the Tribunal's core business processes
- the Tribunal's operating environment.

Potential internal audits are identified and prioritised based on those areas identified as high risk as well as areas where the Tribunal may be seeking to improve internal controls.

The internal audit plan is reviewed annually and presented to the audit committee for final approval.

External Audit

The office of the Auditor-General has completed the external audit for the period ending 31 March 2010.

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
- Unemployment insurance fund (UIF)
- Pay-as-you-earn (PAYE)

Compliance with Legislation

In terms of Section 24(1) of the Value-Added Tax Act, 1991, which governs the levying of value-added tax (VAT), the Tribunal was deregistered as a VAT vendor with effect from 1 April 2005.

In October 2005, the South African Revenue Service exempted the Tribunal from Section 10(1)(cA)(i) of the Income Tax Act, 1962.

Occupational Health and Safety

In terms of the Occupational Health and Safety Act (OHS Act) the Tribunal has a legislated requirement to ensure a healthy and safe environment for the Tribunal's employees.

A memorandum of understanding in place between the Tribunal and the Commission, provides for the Commission's head of security to be responsible for the implementation of the requirements of the Act. The Tribunal has appointed Lethabo Monyeki as its OHS officer.

The OHS officer undertakes a compliance review (legislative and safety aspects) and reports to the executive committee on a quarterly basis, thus bringing to its attention any issues that may compromise the safety of employees.

Other key OHS role players have been appointed and a programme has been started to ensure that these role players are adequately trained to perform their allotted functions.

In addition the Tribunal is in the process of updating its occupational health and safety policy to ensure that it is in line with the requirements of OHS Act.

Ethics

The Tribunal is committed to conducting itself in accordance with the highest standards of integrity and ethics and in compliance with the principles of honesty, objectivity and independence. For this reason the Tribunal's human resource policy was revised and approved in November 2009 to include the following:

- A code of conduct for employees, stating what is expected of them in their individual conduct and in relationships with others

- Confidentiality and non-disclosure provisions to ensure that employees understand that it is necessary for them to uphold the confidentiality of confidential aspects of the work and services of the Tribunal both during and after their employment with the Tribunal
- Conflict of interest provisions to clarify the rules with regard to the avoidance of conflicts of interest and the disclosure of any potential conflicts of interest that may occur.

Tribunal members, both full-time and part-time, managers and case managers are all required to complete a 'Financial Disclosure Form' annually, detailing their financial interests and this is used to reduce the possibility that conflicts of interest might occur.

Permanent employees and full-time members are also required to complete a disclosure form dealing with possible procurement or supply chain management conflicts.

A code of ethics and conduct is being developed for audit committee members and will be reviewed by the executive committee before being presented to the audit committee for final review and approval.

Staff Meetings

The Tribunal Employees Forum (TEF) comprises non-executive staff members and aims to provide an open, democratic channel through which staff members can raise issues of concern to them.

The TEF held nine meetings in the period under review.

During this period, the TEF gained two new members while three members resigned from the Tribunal.

Issues which were raised and discussed included union matters, performance reviews, job grading and remuneration, occupational health and safety, the employee assistance programme and the election of new TEF representatives.

Lethabo Monyeki and Tebogo Mputle were elected as the new TEF representatives on dealings with management. One meeting between management and the TEF representatives was held, with management being represented by Norman Manoim, Yasmin Carrim and Janeen de Klerk.

Staff Composition

At the beginning of the year under review, the Tribunal's staff complement consisted of 14 full-time staff members. There was one vacancy at year-end.

Eleven of the current staff members are female, nine are black and five are white. Six staff members have a bachelor's degree or higher qualification.

Training and Development

The Tribunal recognises that its employees are its most important resource for ensuring the long-term sustainability of the organisation and is committed to cultivating and nurturing a stable environment that is conducive to attracting, retaining and developing competent professional employees. Employees of the Tribunal have therefore been provided with opportunities for personal development and further education.

Training and development programmes provided in the year under review took the form of in-house training, external courses, workshops and conferences (national and international). During this period, a total of 103.5 person-days were devoted to the training of members of the secretariat, which excludes Tribunal members and Appeal Court judges. This represents an average of 7.39 training days per person.

Case managers attended the following workshops, conferences and seminars during the year under review:

- the ICN cartel workshop held in Egypt in October 2009 (attended by one case manager and the registrar)
- the EC summer school competition law course presented in London in August 2009 (attended by one case manager)
- the Fordham competition law refresher course held in New York in July 2009 (attended by the Head of Research)
- the consumer protection and competition policy workshop hosted by the Mandela Institute and the University of the Witwatersrand School of Law in May 2009 (attended by three case managers)
- the third annual Competition Commission, Competition Tribunal and Mandela Institute conference on competition law, economics and policy in South Africa held in Pretoria in September 2009 (attended by the head of research, the

registrar, the registry administrator and four case managers)

Staff members also attended the following:

- a project management course held in April 2009 (attended by the registry administrator)
- a supply chain management training course held in May 2009 (three staff members attended)
- a time management workshop held in August 2009 (one staff member attended)
- a supervisory management skills course held in Johannesburg in December 2009 (attended by the registry administrator)
- The 'Law via the Internet' symposium held in Durban in November 2009 (attended by the registry administrator and the IT support and network assistant)
- A PFMA course held in March 2010 (one staff member attended)
- A corporate governance training workshop held in February 2010 (one staff member attended)

A team-building workshop held in September 2009 was attended by three full-time members and 13 staff members.

The head of corporate services participated in an executive coaching programme during the period under review.

Corporate service staff members attended various payroll, caseware and Pastel courses to enhance their effective use of these software packages as management reporting tools.

A staff member representing the employees on the board of management of the Tribunal's pension fund attended a course on the Pensions Fund Act in February 2010.

The head of research and case managers continued to participate in telephonic ICN working groups dealing with unilateral conduct and mergers.

The Tribunal continues to encourage staff members to undertake further education and training through the Tribunal's bursary and study loan scheme, thus providing them with career advancement opportunities through general educational and vocational training courses.

The maximum study loan granted to staff members is R 8, 000 per year. Once confirmation is received that

Human Resource Development

students have passed, their loans are converted into bursaries.

By special decision of the executive committee loans in excess of R 8, 000 can be granted.

Study loans totalling R 16,025.45 were made to three staff members, and bursaries totalling R11,172.45 were awarded to four staff members during the year under review.

Internship

In 2009 the Tribunal collaborated for the first time with the Faculty of Law of the University of Pretoria in its 'Supervised Internship' programme. The Tribunal was pleased to welcome Daniel Leslie as its first intern in July 2009.

This programme is an elective course for the university's final-year LLB students in which they spend 120 hours, either full-time over a three-week period or part-time over a few months, at institutions where they gain practical exposure. On completion they are required to submit a 5,000-word report to the faculty. The intention is that students will be able to focus on substantial issues and at the same time develop an understanding of the practical

operations of institutions concerned with competition law.

Performance Management System

The aim of the Tribunal's performance management policy is to develop, manage, evaluate, and reward individual performance in order to contribute to the achievement of the Tribunal's overall goals and objectives.

The Tribunal's strategic objectives are aligned with the performance of individuals. Performance is managed in a manner designed to facilitate the achievement of these objectives and to ensure that employees are given opportunities for self-development.

The policy provides for biannual assessments by the relevant divisional manager and the Tribunal's chairperson.

The system assists the Tribunal to meet its statutory commitments and simultaneously promotes a climate in which staff members are motivated and their commitment to service excellence is enhanced. The development needs of staff members are identified and addressed during this process. In addition, salary increases and any bonuses awarded are linked to the outcome of the appraisals.

Before participating in SIS 420 I felt a bit undecided and on the fence at the thought of being part of this programme, as I failed to see the benefits in the long run. Also, my perception of the importance of Competition Law in the South African context was somewhat blurred.

In the first week of the internship programme, all questions were answered, the blur became crystal clear, as I was able to see that apart from playing a vital role in South Africa's economy, the Competition Tribunal is actually, in my opinion, the most effective regulatory system that the Government has ever put in place. For instance, the ongoing Sasol and bread cartel cases. My internship commenced at the time of the bread cartel case hearing and I found myself absorbed neck-deep in this case.

The corporate world was very challenging and demanding, but I stepped up to the plate and was comforted at the end of the internship that the impossible became quite possible. All that is required is motivation, ambition, maximum input, mental agility and a desire to succeed. These qualities were projected by two senior advocates that I was fortunate enough to observe closely during the bread cartel hearing as they battled it out - and consequently fired up my smouldering passion for litigation.

Being a final year LLB student I understand the mundane attitude towards work life, seemingly being just the prospect of serving articles or Puppillage at the Bar, but I have come to realise that the playing field is quite wide open as there are several options and numerous opportunities waiting to be explored.

This was an experience of a lifetime that I would not trade for the world, considering this programme's positive impact in my future. Apart from developing and fine-tuning my research skills and gaining immensely in the process, I have walked away with a clear vision of the career which I wish to pursue as I have been exposed to a great deal of real life. I would like to extend my appreciation to the Faculty of Law for a brilliant concept of a course that is as beneficial as it is rewarding, and of course, my wonderful hosts at the Competition Tribunal.

By Daniel Leslie (LLB IV)

Financial Review

The budget for the period under review reflected expenditure (inclusive of capital expenditure) of R 26.4 m and estimated revenue (generated from aliquot fees, interest and a dti grant) of R 18.71 m. It was anticipated that the budget shortfall would be met by using accumulated surpluses of R 7.69 m.

Revenue for the year amounted to R 19.83 m and was made up as follows:

Category	Amount (R million)	Percentage (2010)	Percentage (2009)	Percentage (2008)
Government grants	13.04	65.76	48.10	44.54
Filing fees	5.20	26.24	42.82	47.70
Other income	1.59	8.00	9.08	7.76
Total income	19.83	100	100	100

The grant received from the dti increased by 31.60% over that of the previous year and accounted for 65.76% of the Tribunal's revenue in the year under review. Filing fees received in terms of the memorandum of understanding with the Commission decreased by 40.97% from those of the previous year and accounted for 26.24% of the Tribunal's revenue.

The decrease in filing fees received is the combined effect of two causes. The first is reduced merger activity following the international economic crisis, and the second is the implementation as from April 2009 of higher financial thresholds for mergers requiring consideration by the Tribunal. The latter factor had been anticipated by the Tribunal and was taken into account when the 2008/2009 and 2009/2010 budgets were compiled.

In the future filing fees are expected to continue to form a reducing component of the Tribunal's revenue and the Tribunal will accordingly continue to request the Treasury's approval to accumulate any surpluses generated. It will also be necessary to look to the EDD and the Treasury for larger annual grants.

Total expenditure (net of capital expenditure) for the period

increased by 4.01% from R 17.59 m to R 18.30m.

The table below illustrates the nature of expenditure incurred by the Tribunal and the percentage change in each category in the year under review.

Expenditure Category	Percentage (2010)	Percentage (2009)	Percentage change
Personnel	54.70	53.62	6.11
Administration	17.82	17.76	4.41
Training	7.70	7.42	7.82
Professional services	16.42	18.99	-10.08
Other operating expenses	3.36	2.21	58.14
Total expenditure	100	100	4.01

Expenditure on professional services includes payments to the Commission in terms of the memorandum of understanding in place with the Tribunal, fees paid to part-time Tribunal members for participation in hearings, transcription services, legal fees, public relations and finance-related consulting services.

The table below sets out the contribution of each category to the 4.01% increase in total expenditure:

Expenditure category	Percentage
Personnel	81.74
Administrative	19.53
Training	14.48
Professional services	-47.80
Other operating expenses	32.05
Total	100

Personnel expenditure increased by 6.11% during the year under review and this increase is predominantly accounted for by the increase in total salaries paid to full-time Tribunal members. While Tribunal members received a 7 % annual increase the total amount paid by way of these salaries for the year under review increased by 12.95%, much of this increase being the result of leave entitlements paid out to David Lewis when his term of office came to an end, and company contributions paid for Tribunal members.

Financial Management

The table below illustrates the percentage change in each category of personnel expenses and also reflects the category's contribution to the total increase.

Category	% change	% contribution to change
Full-time Tribunal members	12.95	99.96
Other staff	0.01	0.04
Total	6.11	100

During the period under review there was a significant decrease in expenditure on professional services. This line item includes the fees paid to part-time members sitting on panels convened to hear matters brought before the Tribunal.

The table below illustrates the distribution of categories of expenditure within the line item 'Professional services'. The decrease is primarily related to the decrease in fees paid to part-time Tribunal members and to transcription services which in turn is attributed to the decrease in the number of cases heard by the Tribunal.

Category	Distribution	% change
Consulting	30.00	76.54
Recruitment	1.69	-29.89
Public Relations	11.51	-10.45
Part-time Tribunal member's fees	28.95	-40.28
Recording costs	7.64	-47.22
Facility fees	20.21	25.86
Total	100	-10.08

Fees paid to part-time Tribunal members decreased by 40.28% while the expenditure on other professional services increased by 13.24%. Part-time members sitting on a panel are paid a daily fee for the duration of the hearing and for preparation. In addition part-time members may be requested to write decisions, in which case a daily fee is applicable. In some instances a hearing may be cancelled shortly before it begins or while a case is part-heard. Part-time Tribunal members receive a daily fee if the notice of cancellation given was insufficient for them to take up non-Tribunal work. In the year under review part-time members were paid for a total of 113.50 days of work, whereas in the previous year this figure was 197. There were eight part-

time members who were each paid for an average of 14.81 days. Part-time members are paid R 7,000 per day.

The table below shows the distribution of fees paid over the last two years.

Category	2010	2009
Hearing days (including cancelled days)	64.00	131.50
Preparation days	24.50	56.50
Decision writing	25.00	9.00
Total days	113.50	197.00

In the year under review the Tribunal heard 85 matters over 75 days, whereas in the previous year 140 cases were heard over 123.5 days. This represents a decrease of 39.29% in the volume of cases and a 39.27% decrease in the number of hearing days. The average number of days per hearing in the past two years has been identical at 1.13 days per matter.

Each panel consists of three Tribunal members. The table below illustrates the allocation of hearing days expressed as person days between full-time and part-time members. In the year under review an increased part of the hearings was dealt with by full-time members and this also contributed to the decrease in fees paid.

Days	2010	%	2009	%
Hearing days	75.00		123.50	
Person days –full-time	173.00	76.89	244.00	65.86
Person days –part-time	52.00	23.11	126.50	34.14
Total person days	225.00	100	370.50	100
Per Tribunal member	20.46		37.05	

An increase of 11.80 % in consulting fees incurred for professional services rendered to the Tribunal resulted from the finalisation of a substantial IT tender, the use of an outside service provider to undertake a substantial review of the Tribunal's policies, and the costs of a consultant to provide financial services when the financial administrator was on sick leave.

Financial Management

Operating expenses rose by 60.22%, and while this is a large figure in comparative terms, the rand amount expended on this line item represented only 3.40% of total expenditure. The change is therefore insignificant in budgetary terms.

The increase was largely related to the need to obtain external legal advice when a company dissatisfied with a ruling of the Tribunal initiated legal proceedings against it. The matter was ultimately set aside because of irregular steps taken by the plaintiff.

The Tribunal's ability to budget accurately is limited by its inability to predict the number of cases that will be heard in any year.

In its initial years of operation the Tribunal experienced large budget variances, but in recent years actual expenditure has been more closely equated to the budget. The variances are nevertheless substantial in percentage terms.

In the year under review the Tribunal underspent its budget by 30.11%. Of the underspent amount 34.15% was attributable to the postponement of a major IT project for which budget approval was received late and to late approval for the retention of accumulated surpluses. Underspensing on training accounted for 21% of the underspent amount as a result of a decision made not to send Tribunal members to an overseas conference together and the scaling-down of an internal training session for incumbent Tribunal members

by the use of local experts rather than trainers from abroad. A further 9.13% of the underexpenditure arose from the diminished use of part-time Tribunal members for hearings, as mentioned earlier in this report.

There will always be a prospect that the Tribunal will need to employ counsel to oppose certain types of legal challenge and it is therefore necessary to retain a contingency budget for professional services in this regard.

Year	Actual expenditure (in R million)	Budget (in R million)	% of budget spent
2000	4,29	9,12	47.03
2001	6,35	9,08	69.93
2002	6,37	9,13	69.76
2003	7,36	9,33	78.88
2004	9,08	10,44	86.97
2005	9,25	11,54	80.15
2006	10,64	12,41	85.23
2007	13,22	15,81	83.62
2008	15,56	16,60	93.73
2009	17.71	20.35	87.03
2010	18.45	26.40	69.89



The Competition Tribunal's Corporate Services Unit

Communicating the Work of the Tribunal

There is an ongoing flow of media reports about the Tribunal, its work, its cases and its decisions. In the past year 369 media reports of this nature were monitored by the Tribunal. They are testimony to the fact that the public continues to remain informed about the competition system and specifically about the Tribunal's functions and operations.

Apart from reports about specific events, the media coverage included some informed appraisals of competition policy and the competition system generally.

Further information on the Tribunal's activities and decisions is available on the Tribunal's website www.comptrib.co.za, where all decisions and announcements released by the Tribunal are published.

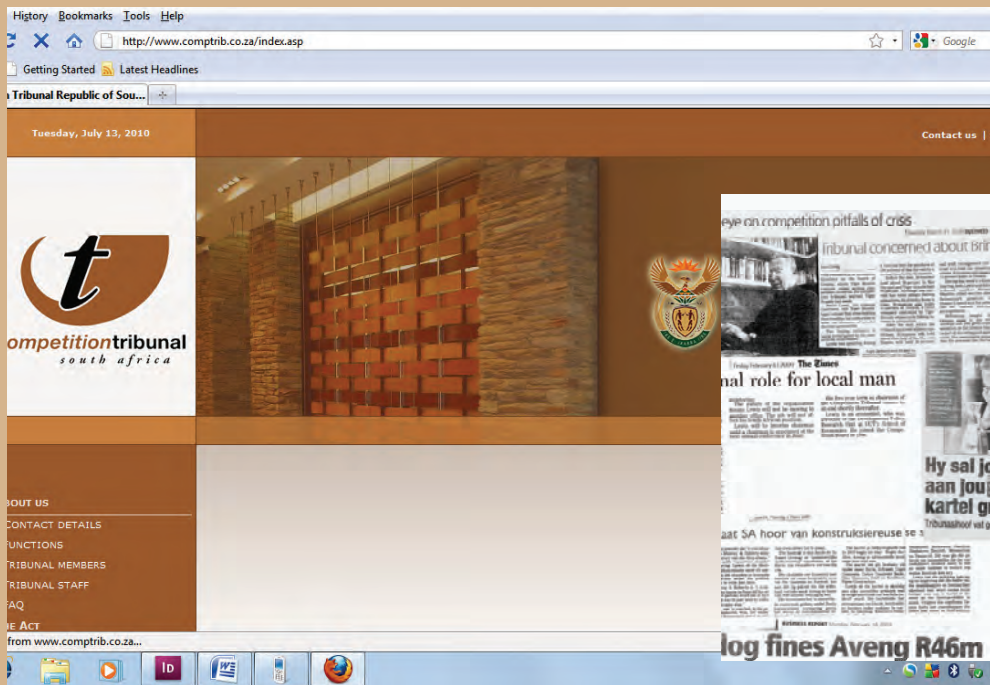
In the year under review 75 decisions were posted on the

website.

The website has links through which interested parties can obtain access to other competition-related sites, and to the Act, the rules and official forms.

The work of the Tribunal is further communicated through the presentation of university courses on competition law and the publication of policy papers and by participation in local and international conferences, meetings and seminars by full-time members and case managers.

The Tribunal Tribune, an internal newsletter, was produced three times in the past year. This newsletter includes brief articles on topical issues in competition regulation, and its distribution ensures that Tribunal members and other stakeholders remain informed on matters relating to competition and, in particular, cases heard by the Tribunal.





The Competition Tribunal's Research Unit



The Competition Tribunal's Registry Unit

Report on Output Targets for the Period 1st April 2009 – 31st March 2010

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
Policy and Legislative Development	Propose new regulations or amendments to regulations/ legislations	Amended or new regulations/ legislation	Participate in process when requested to by the dti	Not a target set by the Tribunal - we merely report on the number and the nature of interactions that took place	<p>The Chairperson and/or the Tribunal executive participated in the following processes during the year under review:</p> <ul style="list-style-type: none"> Newly appointed ministers requested Chairpersons presence at Parliament Orientation meeting – July 2009 Presented Annual Report to the Trade and Industry Portfolio Committee in October 2009 Interacted with the Department of Economic Development (EDD) with regard to the transfer of functions Met with the EDD Deputy Minister in January 2010 with regard to transfer of functions Following transfer of functions requested to present Strategic Plan to the EDD Portfolio Committee in March 2010 	No specific targets set – Tribunal responds to requests from the Department
	Input/ conduct research and contribute to various policy making processes	Position papers presented	Position papers finalised and presented to stakeholders	3 per annum	<ul style="list-style-type: none"> The chairperson delivered 5 papers at conferences/workshops during the current year Full-time members continue to deliver lectures to Wits law students on competition law The Chairperson addressed the Competition Commission's Strategic Planning session in June 2009 A case manager presented a paper at the 10 year conference 4 of these 6 papers were placed on the website 	Targets fully met
		Policy recommendations to be presented on request by other agencies/ stakeholders	Policy recommendations finalised	No target set respond to requests	<ul style="list-style-type: none"> No specific requests for policy recommendations were received by stakeholders apart from conference/workshop addresses 	No requests were made by agencies/ stakeholders for policy recommendations

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
	International best practice research and contribution	Participate in ICN conference/working group/research	Participation in working groups/conferences and position papers presented	2 per annum	<ul style="list-style-type: none"> The Chairperson and a full-time member attended and participated in the ICN conference held in June The Chairperson, full-time members and case managers participated in 15 dial up interactions with the ICN The Tribunal was represented at 2 OECD international conferences 	Targets fully met The chairperson was invited to present a paper at a conference and these date coincided with the OECD and the chairperson did not attend.
	Large Merger	Referrals processed	<ul style="list-style-type: none"> Matters on the roll from a previous period New matters referred Matters heard No. approved No. prohibited No. withdrawn No; removed from the roll No. pending a hearing No. pending reasons No. of orders issued No of reasons for order issued No of "dormant" matters 	No specific targets can be set Tribunal merely reports on the number and type received and current status of matters before it	<ul style="list-style-type: none"> 18 (6 still to be heard, 12 awaiting reasons) 49 52 (5 from a previous period) 52 (6 from a previous period and 5 conditionally) 0 1 1 1 4 52 60 (12 from a previous period) 3 mergers reflected as dormant as at March 2009 were removed from the roll during the period under review 	<p>No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties</p> <p>The Tribunal merely reports quarterly and annually on matters on the roll and their current status</p> <p>Matters in which there has been no activity for at least a year are referred to as dormant matters. Respective parties are contacted to determine whether they wish to continue with the matter or whether it should be removed from the roll</p>

Enforcement and Compliance

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
		Referrals processed	Turnaround times	Hearing set down within 10 days of referral Order issued within 10 days of hearing Written reasons for decision provided within 20 days of hearing	<ul style="list-style-type: none"> 33 of the 52 matters heard 52 of the 52 orders issued 20 of the 60 matters in which reasons were issued 	<p>Hearings are set down in agreement with the merging parties and all other parties concerned <i>Delays occur when parties, who are not ready for a hearing, request a later date.</i> Delays may also occur as the information provided is not sufficient and requests are made by the panel/parties for further information.</p> <p>Many of the mergers received are complicated matters and the writing of a decision is delayed by the nature of the transaction. <i>A number of matters have been heard by a panel of 3 part-time members and this has led to delays as the finalization of reasons has been dependant on the availability of the members</i> Delays also occur because the writing of reasons for contested mergers and uncontested mergers approved conditionally or prohibited are given priority <i>When uncontested mergers are approved with no conditions the need for written reasons within a stipulated timeframe is not urgent and so urgent and complex matters are prioritised</i></p>
	Intermediate merger	Requests for consideration processed	<ul style="list-style-type: none"> Matters on the roll from a previous period New matters received No. heard No. withdrawn No. of dormant matters 	No specific targets can be set Tribunal merely reports on the number and type received and current status of matters before it	<ul style="list-style-type: none"> 2 0 0 1 (following a prehearing) 1 matter received in August 2008 is being treated as "dormant" 	<p>No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties</p> <p>The Tribunal merely reports quarterly and annually on matters on the roll and their current status</p>

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
			Turnaround times	<p>Pre hearing set down within 10 days of notification</p> <p>Order issued within 10 days of hearing</p> <p>Written reasons for decision provided within 20 days of hearing</p>	<ul style="list-style-type: none"> No matters were heard during this period No matters were heard therefore no orders and no decisions issued 	
Enforcement and Compliance	Restrictive Practices – Complaint referral	Cases under consideration processed	<p>Complaint referrals from the Commission</p> <ul style="list-style-type: none"> Matters on the roll from a previous period No. new referrals No. heard No. of consent orders granted No. of cases where consent order not granted No. of decisions where relief was granted No. of cases dismissed (no relief granted) No. of cases withdrawn No. of reasons issued No. of cases pending No. of “dormant” matters 	<p>No specific targets can be set Tribunal merely reports on the number and type received and current status of matters before it</p>	<ul style="list-style-type: none"> 21 (hearings to continue in 1 matter 11 still to be heard, a decision pending in 1 matter and 8 “dormant matters added back onto roll) 19 7 (4 from a previous period) 5 0 1 1 (in a matter from a previous period pending a decision) 3 (2 from a previous period) 2 30 (29 matters pending a hearing and 1 matter pending a decision) 8 matters previously reflected as dormant have been added back onto roll as per parties instructions 	<p>No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties</p> <p>The Tribunal merely reports quarterly and annually on matters on the roll and their current status</p> <p>Matters in which there has been no activity for at least a year are referred to as dormant matters. Respective parties are contacted to determine whether they wish to continue with the matter or whether it should be removed from the roll</p>

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
			Turnaround times	<p>Prehearing conference set down within 20 days of close of pleadings</p> <p>Order and reasons for decision issued within 60 days of hearing</p>	<ul style="list-style-type: none"> 4 of 7 matters heard 5 of 7 orders issued (reasons were only issued in 2 matters) 	<p>These targets are set by the Tribunal internally and are not a target set by the rules.</p> <p><i>Delays occur as restrictive practices cases are of a complex nature and therefore the parties concerned require more time to prepare for hearings.</i></p> <p>The limited availability of parties also causes delays in setting down a matter</p> <p>Decisions in complaint referrals often involve reviewing substantial evidence and are thus complicated and the writing and issuing of decisions can therefore be delayed.</p> <p><i>Reasons are generally not issued in consent orders unless the order is not granted</i></p>
	Restrictive Practices – Complaint referral	Cases under consideration processed	<p>Complaint referrals from the complainant</p> <ul style="list-style-type: none"> Matters from a previous period New matters referred No. heard No. of decisions were relief was granted No. matters removed from the roll No. of cases withdrawn No. of reasons issued No. of cases pending No. of "dormant" matters 	<p>No specific targets can be set Tribunal merely reports on the number and type received and current status of matters before it</p>	<ul style="list-style-type: none"> 20 (18 still to be heard and hearings still to continue in 1, 1 matter referred back to the Tribunal by Competition Appeal Court and 2 "dormant matters" added back to the roll) 9 2 1 4 4 (3 being matters received in a previous period) 2 19 8 of 10 matters previously reflected as dormant have been removed from the roll following discussions with the parties 	<p>No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties</p> <p>The Tribunal merely reports quarterly and annually on matters on the roll and their current status</p> <p>Matters in which there has been no activity for at least a year are referred to as dormant matters. Respective parties are contacted to determine whether they wish to continue with the matter or whether it should be removed from the roll.</p>

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
			Turnaround time	Prehearing conference set down within 20 business days of close of pleadings	<ul style="list-style-type: none"> None of the new matters referred were set down within the stipulated time frame 	These targets are set by the Tribunal internally and are not a target set by the rules. <i>Delays occur as restrictive practices cases are of a complex nature and therefore the parties concerned require more time to prepare for hearings.</i> The limited availability of parties also causes delays in setting down a matter
				Order and reasons for decision issued within 60 business days of hearing	<ul style="list-style-type: none"> 1 of 2 matters 	Decisions in complaint referrals often involve reviewing substantial evidence and are thus complicated and the writing and issuing of decisions can therefore be delayed. <i>Reasons are generally not issued in consent orders unless the order is not granted</i>
	Restrictive Practices – Interim relief cases	Interim relief cases under consideration processed	Interim relief cases <ul style="list-style-type: none"> Matters on the roll from a previous period received No. of new matters received No of matters heard No. of matters withdrawn No.of matters removed from the roll No. of cases pending 	No specific targets can be set Tribunal merely reports on the number and type received and current status of matters before it	<ul style="list-style-type: none"> 4 (still to be heard) 5 1 3 2 4 (1 pending a decision and 3 pending hearings) 	No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties The Tribunal merely reports quarterly and annually on matters on the roll and their current status

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 –31 st March 2010)	Reasons for deviation & Corrective Action Plan
			Turnaround times	<p>Pre-hearing conference set down within 20 days of close of pleadings</p> <p>Order and reasons for decision issued within 40 days of hearing</p>	<ul style="list-style-type: none"> • 0 of 1 matter heard • No orders or reasons were issued 	<p>These targets are set by the Tribunal internally and are not a target set by the rules. <i>Delays occur as restrictive practices cases are of a complex nature and therefore the parties concerned require more time to prepare for hearings.</i></p> <p>The limited availability of parties also causes delays in setting down a matter</p>
	Procedural matters	Cases processed	<p>Procedural matters</p> <ul style="list-style-type: none"> • Matters on the roll from a previous period • New matters received • Type of case • No. heard • No matters withdrawn from the roll • No of orders issued • No. of reasons for orders issued • No. pending • No. of "dormant" matters 	<p>No specific targets can be set Tribunal merely reports on the number and type received and current status of matters before it</p>	<ul style="list-style-type: none"> • 8 (still to be heard) • 28 • 20 different types of procedural matters • 22 (6 from a previous period and hearings to continue in 1) • 1 • 21 (6 from a previous period) • 7 • 13 (12 still to be heard and 1 pending further hearings) • 4 matters previously reflected as dormant removed from the roll 	<p>No targets set as the Tribunal is an adjudicative body and is required to react to matters referred by the Commission or external parties</p> <p>The Tribunal merely reports quarterly and annually on matters on the roll and their current status</p> <p>Reasons in procedural matters are generally only issued if parties request reasons</p> <p>Matters in which there has been no activity for at least a year are referred to as dormant matters. Respective parties are contacted to determine whether they wish to continue with the matter or whether it should be removed from the roll</p>

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 –31 st March 2010)	Reasons for deviation & Corrective Action Plan
			Turnaround times	Hearings set down within 20 days of close of pleadings	<ul style="list-style-type: none"> 12 of the 23 matters heard were set down within the required timeframes 	These targets are set by the Tribunal internally and are not targets set by the rules. <i>Delays are caused by parties not being ready to argue the application</i> Procedural matters are often part of a larger complicated matter and this may have an impact on the setting down of the procedural matter and the main hearing
				Order/decision issued within 20 days of hearing	<ul style="list-style-type: none"> 19 of the 21 orders issued were issued within the specified timeframes 	Procedural matters involve complex points of law and often require extensive research time before arriving at a decision
				Written reasons for order/ decision given within 10 days of order/decision being issued	<ul style="list-style-type: none"> 5 of the 7 reasons were issued within the specified timeframes 	If decisions are complicated then more detail is often required when writing reasons – thus causing delays
	Taxation	Taxation of bills	Number of bills taxed	Target cannot be set – we merely report on bills taxed	<ul style="list-style-type: none"> 3 matters 	No targets set Tribunal merely reports on matters taxed
	Fines/Penalties imposed	Fines/penalties imposed	Number of fines imposed Value of fines imposed Type of fines imposed	Target cannot be set – we merely report on fines/ penalties levied	<ul style="list-style-type: none"> 4 fines were levied R291 544 524.31 Administrative penalties 	No targets set Tribunal merely reports on fines imposed

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
	Appeal Hearing by the Competition Appeal Court	Number of appeals/reviews brought before the CAC	<ul style="list-style-type: none"> Matters on the roll from a previous period New matters received No. of Tribunal decisions set aside No. of Tribunal decisions upheld No. of other appeals dismissed No. of other appeals upheld No. withdrawn 	No specific targets can be set Tribunal merely reports on the number and type received and current status of matters before the CAC	<ul style="list-style-type: none"> 5 9 2 2 1 2 2 	No targets set as the Appeal Court is required to react to matters referred to it by parties
			Turnaround times	Notice of appeal/motion for appeals or reviews received within 15 days of Tribunal order	6 of the 9 applications were filed within 15 days of the Tribunal decision/CAC judgement	No control over timeframes on applications for leave to appeal as there is nothing stated in the rules. In other cases parties should file a condonation application
Education & Awareness	Creating awareness. Educating public/advice and referrals	Information dissemination	<ul style="list-style-type: none"> Number of Tribunal Tribunes produced Number of Tribunal Tribunes distributed 	<ul style="list-style-type: none"> 3 per annum 75 copies per volume circulated (225 in total) 	<ul style="list-style-type: none"> 3 196 distributed electronically 	<ul style="list-style-type: none"> Target fully met No record was kept for hand deliveries
		Media reports	<ul style="list-style-type: none"> Media reports published in the per quarter and monthly average 10 year review 	<ul style="list-style-type: none"> Number of stories Monthly average Produce report for 10 year celebration 	<ul style="list-style-type: none"> 369 articles for the year Monthly average of 30.75 Report produced and launched at the 10 year conference 	<ul style="list-style-type: none"> Targets not set Tribunal merely reports on statistics Target fully met

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
		Reasons for decisions posted on website	Reasons issued posted on website	Number posted	<ul style="list-style-type: none"> 75 of 75 issued (60 large mergers, 4 complainant referrals, 7 procedural matters and 4 consent orders) 	Target not fully met
			Reasons posted within 72 hours	Number posted within 72 hours of notice	<ul style="list-style-type: none"> 70 	
			Reasons not posted within 72 hours	Number not posted within 72 hours	<ul style="list-style-type: none"> 5 	Reasons vary from the webmaster being on leave and non confidential reasons issued late.
	Training completed	Training completed	Identify training needs and service providers	Training identified within 4 weeks of performance appraisal process 1 training course per annum for each staff member	<p>Training is identified following performance appraisals and is reviewed continuously during the year.</p> <p>Each staff member attended at least 1 course (local and/or international) during the year (an average of 7.39 training days per person) <i>Secretariat staff spent 103.5 person days in training</i> Full-time members spent 43 person days in training</p>	Target fully met
			Number of seminars and conferences attended	Full-time member's chair/Registrar attends at least 6 overseas conferences. Part-time members attend at least 3 overseas conferences	<p>The Chairperson attended 2 overseas conferences. 1 full-time members attended 1 overseas conference each</p> <p>No part-time members attended any overseas conferences</p>	<p>A decision was made by the Executive not to send full-time or part-time members to the annual Fordham conference as a new Chairperson, a full-time member and 3 new part-time members were appointed effective 1st August 2009 and it was felt that it would be more beneficial for members to attend this conference at a later stage</p>
				Head of Research/Case Managers at least 6 overseas conferences	<p>Head of Research attended the Fordham Refresher course in New York Registrar and a case manager attended an ICN Cartel workshop in Egypt. 1 case manager attended the Summer School course in the United Kingdom</p>	<p>An ICN merger conference normally attended by case managers was determined not to be relevant to the Tribunal and it was decided not to attend this meeting The ICN cancelled one meeting (due to the economic downturn) and a telephonic conference was held. Case managers participated in this dial up conference</p>

Performance Indicators

Category	Activity	Output	Performance Indicator	Target	Target Status for the period (1 April 2009 -31 st March 2010)	Reasons for deviation & Corrective Action Plan
				3 CAC Judges to attend 1 overseas conference. 1 CAC judge to attend Fordham Refresher Course.	3 Appeal Court Judges attended 1 overseas conference each. No CAC Judge attended the Fordham Refresher course	Target fully met Attendance at this conference is by selection following an application process. One Judge applied and was not selected.
		Conferences and workshops conducted	Number of successful conferences and workshops	1 international conference to mark 10 year anniversary of competition authorities	The Tribunal together with the Commission and the Mandela Institute of Law hosted a conference to celebrate 10 years of competition enforcement in South Africa in September 2009.	Target fully met
				1 conference / workshop per year for Tribunal members/Registrar/ Head of Research and Case managers	3 Tribunal members and 13 staff members attended the Tribunal's teambuilding held in September 2009 7 Tribunal members and the Head of Research managers attended an internal training workshop held for newly appointed Tribunal members in November 2009	Target fully met
		Public able to access files and information	Number of files accessed	No target set – respond when required to	• 35	No targets set – Tribunal merely reports on files accessed

Cases Before the Competition Tribunal

In terms of the Competition Act all mergers above determined thresholds have to be notified to and evaluated by the Competition Commission. The Competition Act classifies mergers as large, 'intermediate' or 'small'.

All large mergers have to be decided by the Tribunal. On completion of an investigation the Commission makes a written recommendation to the Tribunal.

The thresholds for these classes are established by the Minister of Trade and Industry in terms of the combined assets and/or turnover of the merging parties. These thresholds have been reviewed twice, the most recent revision in April 2009 having been made in order to keep pace with inflation and economic growth.

The current thresholds are illustrated in the table below.

	Intermediate Merger	Large Merger
Assets or turnover of target firm	R 80 million	R 190 million
Combined assets or turnover of merging parties	R 560 million	R 6.6 billion

In addition the Act makes provision for the competition authorities to prohibit anti-competitive practices that allow dominant firms to abuse their market position.

In the year under review the Tribunal heard 85 cases, with written reasons being issued in 71 matters.

Type of case	Number heard	Reasons issued
Large merger	52	60
Procedural matters	23	7
Intermediate merger	0	0
Complaint referral from the Commission	7	2
Complaint referral from a complainant	2	2
Interim relief	1	0
Total heard	85	71

Employment features high on Tribunal agenda

In terms of the Act the Tribunal must take into account the effect a merger transaction will have on employment when considering the public interest in merger analysis. In recent decisions the Tribunal has indicated that it will intervene to impose conditions on public interest grounds where employment loss post merger was likely to be substantial and merger specific.

A recent transaction concerned a merger in the market for production and supply of gold internationally. In this transaction between Harmony Gold Mining Company Limited ("Harmony") and the primary target firm Pamodzi Gold Free State Limited a company placed in provisional liquidation, a total number of 3606 employees would have permanently lost their jobs. Harmony in an agreement with the unions undertook to re-employ 2400 workers within 24 months after the merger while only 1600 would lose their jobs as they would not be recalled by the merged firm. The Tribunal approved the merger and Harmony's undertakings were made conditions for approval in order to protect the interest of the employees.

A second recent case concerned a change from joint control to sole control in the financial services industry. Nedbank Limited ("Nedbank") a wholly owned subsidiary of Nedbank Group Limited acquired sole control of Imperial Bank Limited from Imperial Holdings. The transaction did not raise any competition concerns. However the Commission indicated that at least 464 permanent and temporary employees could be retrenched in January 2011 as a result of the transaction. The Tribunal in this case regarded the effect of the transaction on employment as considerable and imposed as a condition that the number of retrenchments would be limited to 260 positions in respect of permanent staff and 204 in respect of temporary staff. Further that no retrenchments would take place before January 2011 a condition for approving the transaction.

In a merger between Bidpaper Plus (Pty) Ltd ("Bidpaper") and Pretoria Wholesalers Stationers (Pty) Ltd ("PWS") the Tribunal approved the transaction but imposed a condition limiting retrenchments post the merger to no more than 24 employees because trade unions representing the employees of the merging parties indicated during the hearing that the effects of the merger on employment were not communicated to them and that the numbers were likely to be much higher than those that submitted by the merging parties.

Cases Before the Competition Tribunal

In a fourth transaction by which Wispeco acquired the Sheerline division of AGI the Tribunal prohibited the merged entity from making any merger-related retrenchments at Sheerline within one year of the date of its order. The merging parties had submitted to the Commission that they intended to retrench 40 to 50 employees in Sheerline but that this decision was not merger specific.

Large Mergers

As indicated earlier, the Tribunal considers all large mergers that have an economic effect within the Republic of South Africa and after consideration can:

- approve the merger transaction unconditionally;
- approve the transaction with conditions; or
- prohibit the transaction.

During the year under review the Tribunal had 67 mergers on its roll. Of these, 49 were received during the current period and 18 had been received in a previous period. Six of the 18 matters received in the previous period were awaiting hearings while the remaining 12 were awaiting reasons for decisions issued.

A total of 52 matters were heard (five from a previous period) and one was withdrawn. Of those heard, 48 mergers were unconditionally approved and four were approved subject to conditions.

Reasons were issued in 49 of the 52 matters heard during the year under review and reasons were issued in respect of 11 matters heard in a previous period.

At the end of the period there were five matters on the roll. One was still to be heard and four were awaiting the writing of the decisions. Details of these cases are set out in Appendix A.

Since its inception the Tribunal has ruled on 712 mergers of which 90.45% were approved without conditions. This represents an average of 64.73 merger decisions per year.

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	86	12	2
2006/2007	85	79	5	1
2007/2008	98	89	8	1
2008/2009	102	98	4	0
2009/2010	52	48	4	0
Total	712	644	60	8

Cases Before the Competition Tribunal

Tribunal Impose Behavioural Remedies

The Tribunal conditionally approved the acquisition by Chlor-Alkali Holdings (Pty) Ltd (“CAH”) of 50% of the shares in Botswana Ash (Pty) Ltd (“Botash”). Walvis Bay Salt Holdings (Pty) Ltd (“WBSH”), a CAH subsidiary, and Botash both produce and sell chemical grade salt. The transaction also has a vertical dimension given that NCP Chlorchem (Pty) Ltd (“NCP”), also a CAH subsidiary, uses chemical grade salt as an input in the production of chlor-alkali products, i.e. chlorine and caustic soda.

The proposed transaction raised significant competition concerns both on a horizontal and vertical level. Horizontally it was a merger to monopoly in the supply of chemical grade salt to the inland areas of South Africa. Currently Sasol Polymers (“Sasol”) is the only customer of chemical grade salt situated inland. The Tribunal however concluded that the competition concerns could be adequately remedied by appropriate behavioural conditions, which relate inter alia to volume-based maximum prices for chemical grade salt and other supply conditions for the remaining life of Botash’s salt mine (including any expansions to the existing mine). In reaching this conclusion the Tribunal considered the following factors particular to this case: (i) the existence at present of a single inland customer of chemical grade salt, namely Sasol, which has secured a favourable long term commercial supply agreement with Botash; (ii) the fact that at present there is no indication of potential future entrants into the inland markets that which would require the supply of chemical grade salt, and furthermore to the extent that there are new entrants in future, the imposed conditions provide for non-discriminatory supply obligations; (iii) Botash’s salt mine operations have a limited remaining life; (iv) Botash produces significant excess chemical grade salt volumes which mitigates against likely meaningful concerns from a refusal to supply perspective; and (v) the finite duration of Botash’s salt mining operations and thus of the imposed conditions, as well as the fact that there currently is only one affected customer, contribute to the administrability of the behavioural remedies imposed.

Confirmation of the Tribunal’s approach to the failing firm doctrine

On 30 October 2009 the Competition Tribunal approved the acquisition by Sanlam Limited of Emerald Insurance Company Limited and Emerald Risk Transfer (Pty) Ltd (together referred to as “Emerald”). Emerald, a wholly owned subsidiary of Super Group Limited (“Super Group”) was in some financial difficulty, as it was not maintaining the required minimum solvency level required by law, and was accordingly considered by the financial services board to be technically insolvent.

In the Competition Commission’s analysis of this case as well as during the hearing of oral evidence the Commission focused on Emerald’s financial position. The Commission invoked the argument that Emerald was a failing firm despite established Tribunal and international precedent that the onus is on the merging firms to provide the evidence necessary to invoke this doctrine.

The failing firm doctrine enjoys express statutory recognition in the Competition Act and the merging parties must show that the firm is failing, the reorganisation of the alleged failing firm is not a realistic option and that a less anticompetitive outcome than the proposed transaction is absent.

The Tribunal found no compelling evidence of a financial nature that Emerald was likely to fail and thus said that there was no factual basis to conclude that Emerald was either failing or likely to fail. The Tribunal also found that there was no evidence of a likely or substantial prevention or lessening of competition in any (potential) relevant market as a result of the proposed transaction, accordingly the Tribunal approved the transaction without conditions.

Turnaround Times In Large Merger Proceedings

Tribunal Rule 35 (1) specifies that the registrar is required to set down a proposed merger for hearing within ten business days of the filing of the merger referral, or alternatively a pre-hearing conference must be held within that period.

However, there are instances where set-down is delayed. These delays occur if the parties are not ready and request a postponement, or if insufficient information is provided and the panel or parties request additional information.

In the year under review, 33 of the 52 cases heard (63.46%) were given hearings within the ten-day period.

Cases Before the Competition Tribunal

Orders were issued in 52 cases, with all of these orders being made within ten days after the hearing.

Written reasons were issued in a total of 60 cases. Tribunal Rule 35 specifies that written reasons must be provided within 20 days of issuing an order. In 20 cases (33.33 % of the total) reasons were issued within this 20-day period. In the remaining 40 cases (66.67% of the total) written reasons were issued after the 20-day period.

A delay in the issuing of reasons can be caused by various factors, which include the following:

- Mergers are often complicated and decision-writing is delayed by the nature of the transaction.
- The finalisation of reasons is dependent on the availability of panel members.
- Priority is given to issuing reasons in the case of mergers that have been conditionally approved or prohibited.
- In complex cases the writing of reasons is a time-consuming task as the nuances of a matter and varying opinions of panel members need to be reflected in the reasons.
- When uncontested mergers are approved unconditionally there is no urgent need for written reasons within a fixed time frame.

Tribunal gives guidance on the use of economic modelling and customer survey and statistical data analysis in mergers

The Tribunal approved the merger between grocery wholesalers Masscash Holdings (Pty) Ltd and Finro Enterprises (Pty) Ltd trading as Finro Cash and Carry without conditions. Finro, a family-owned and family-managed wholesaler of grocery products owned one outlet in Port Elizabeth. Masscash, a subsidiary of Massmart, acquired a 75% interest in Finro. Massmart owns both a Makro store and a Weirs Cash and Carry outlet in that area.

The Commission recommended that the merger be prohibited, primarily because the merging parties were close competitors and the increase in concentration would have enabled the merged entity to significantly increase its prices after the merger. The Tribunal however found insufficient economic or other evidence that prices of goods sold to the spaza shops, small superettes, independent convenience stores, and the like in the Port Elizabeth area who buy from the grocery wholesalers would increase.

This was the first contested matter before the Tribunal that involved extensive economic modelling, customer survey and statistical data analysis. It lays a good foundation for the consideration of survey evidence, statistical analysis and the use of economic modelling tools to predict likely post merger unilateral price effects. The Tribunal accordingly set out detailed guidelines on the use of such economic evidence.

The Tribunal indicated in this case that it was highly supportive of the increased use of economic analysis in merger cases when this was supported by expert economic evidence. It said that well conducted customer surveys could provide very valuable insights into the dynamics of a particular relevant market, such as the degree of competition between rival firms in differentiated-goods markets. However, in this particular matter the Tribunal found that certain statistical data were insufficient and it would have preferred more in-depth interviews with small business owners on the potential effects of the transaction on SMMEs in line with the spirit and specific public interest provisions of the Competition Act.

Intermediate Mergers

At the start of the year two cases involving intermediate merger applications were already on the roll and were still to be heard. One was withdrawn in October 2009 and no new applications were received.

Details of these cases are given in Appendix B.

Small Mergers

In the period under review the Tribunal did not receive any small merger cases for consideration.

Cases Before the Competition Tribunal

Prohibited Practices

Complaint Referrals from the Commission

Allegations of anti-competitive conduct not sustained

The Competition Commission and JT International alleged that BATSA was dominant in the market for the supply of manufactured cigarettes in South Africa and that it had incentivised cigarette retailers, through BATSA's trade investment agreements and retailer incentive programmes, to secure preferential access to points of sale irrespective of the price and quality of competitor brands and customer demand, having the effect of substantially preventing or lessening competition.

The Tribunal, on 25 June 2009, dismissed the application by the Competition Commission and JT International to impose a fine on British American Tobacco South Africa (BATSA) for abusing its dominance. It found that although BATSA's conduct inhibited competition to some extent it was not so substantial as to extend to an abuse of its dominant position.

The Tribunal said *"... not only can we not identify consumer harm or find significant foreclosure arising from BATSA's promotional activities, we cannot even ascribe harm to competitors from the allegedly anti-competitive conduct."* It found that the market shares of JTI and other BATSA competitors remained constant or increased during the period of BATSA's conduct showing that the conduct had had a small effect. The Tribunal also concluded that it was difficult to state categorically the reason why JTI and other competitors failed to increase their market shares substantially as the introduction of BATSA's merchandising programs coincided with prohibition of above - the - line advertising and other forms of public sponsorships of cigarettes, it noted: *".. it would be difficult to conclude that the significant element of foreclosure, and therefore the cause of any harm, inferred or otherwise, comes from the conduct of BATSA rather than from decisions of the legislature whose manifest intent was to limit, indeed to eliminate, the promotion of cigarette sales"*.

In conclusion, the Tribunal noted that JTI should compete for its market share, rather than have the Tribunal order the elimination of critical platforms of competition.

At the end of the 2008/2009 financial year the Tribunal had 13 complaint referrals and eight matters reflected as dormant. At the request of the parties these eight were placed back on the roll.

In the year under review, the Tribunal received 19 new complaint referrals from the Commission and heard seven matters, four from a previous period. One matter was dismissed and three were withdrawn.

Five consent orders were granted and reasons were issued in two matters.

At the year-end 30 matters were pending, of which 29 awaited a hearing and one awaited a decision.

Cases Before the Competition Tribunal

Pioneer found guilty of cartel behaviour in baking industry

After a contested hearing the Tribunal found Pioneer guilty of fixing of prices and other trading conditions and dividing markets in the bread/baking industry. It ordered Pioneer to pay a total administrative penalty of R 195,718,614.

The case concerned two complaint referrals brought by the Competition Commission against Pioneer Foods and other bread manufacturers. During the Commission's investigation of the bread cartel Premier Foods was granted leniency in exchange for its co-operation with the Commission. Tiger Brands and Foodcorp subsequently entered into consent orders with the Commission in terms of which they pleaded guilty and paid fines of R 98,874,869 and R45,406,359 respectively. Pioneer however persisted in denying its participation in the bread cartel and was ultimately prosecuted by the Commission.

The Tribunal in coming to its decision found that *"In South Africa, price fixing agreements and agreements to divide markets between competitors are considered to be the most egregious offences under the Competition Act. It is for this reason that the South African legislature has sought to create a per se offence under section 4(1)(b) and has recently introduced an amendment to the Competition Act which intends to create criminal liability for persons participating in cartel activity. It also said that "Cartels are viewed as the most abhorrent anti-trust practices and have been described as a cancer to competition and harmful to consumers and economic development"*.

In the complaint as far as it concerned the Western Cape, the Tribunal imposed a penalty of 9.5% of the 2006 turnover of Pioneer's Sasko (bread division) which amounted to R 46,019,954. It found that the Western Cape contraventions persisted for a shorter period of time than the national contraventions. Since there was no mitigating circumstances in the national complaint the Tribunal imposed a penalty calculated as on 10% of Sasko's national turnover less that of the Western Cape. This amounted to R 149,698,660.

In considering whether there was any mitigating circumstances the Tribunal alluded to the fact that *"the product market pertains to a staple food for millions of South Africans, especially the poorest of the poor and any increases in prices would have a disproportionate impact on this sector. While we cannot determine the total or quantify the extent of the damage accurately, the result of this was that the poorest of all South Africans paid more for their bread than any other person. The fixing of agents' commissions and the agreement not to poach agents in the Western Cape led to higher costs of distribution into the informal sector and eliminated the negotiating power, if any, of these agents. The loss and damage to competition caused by the contravention in the inland region was likely to be greater due to the permanent nature of the bakeries' market division agreement"*.

The Tribunal also found that Pioneer's main witness was unreliable and that Pioneer's whole defence was based on falsehoods.

Complaint referrals from a complainant

The Tribunal received nine new referrals from complainants in the year under review, and had 20 matters on its roll from a previous period. Four matters were removed from the roll and four matters were withdrawn. Two matters were heard with reasons being issued in both instances. At the year-end 19 referrals remained to be heard.

Cases Before the Competition Tribunal

Tribunal does not have jurisdiction over wrongful exercise of public power by Government Departments

AECE manufacture and suppliers electronic equipment such as cap lamps, shot exploders and blasting systems to mines, products for which safety standards are crucial and for which approval by the Department of Mineral and Energy (“DME”) are necessary before they can be supplied to the mining industry. AECE alleged that the DME, without reasons, refused to grant approval to its products whilst approving the products of its competitors.

Before considering the merits of the case the Tribunal asked whether the Competition Act could be applied to State Action such as that of the DME. The complainant argued that it could because the DME could be considered a firm that, by regulating the mining industry, engaged in economic activity having an effect in the Republic.

The Tribunal did not agree. It found: “... that as a regulator, the DME neither has turnover or assets nor a market share in a relevant market. It is thus not a firm either in terms of the ordinary meaning of the word or in terms of what a firm means for the purpose of economics or of the Act, which in its prohibited practice regime has as its object the prevention of certain anticompetitive practices by firms who participate in markets not the review of the exercise of state power by state functionaries.” The Tribunal concluded that: “The business of the Competition Act is the wrongful exercise of market power a matter over which the Tribunal has jurisdiction. The business of administrative law is the wrongful exercise of public power a matter over which the Tribunal has no jurisdiction.”

Complainants can pursue a civil claim for damages against SAA in the High Court

The decision involved two complaints alleging that SAA’s incentive scheme consisting of override incentive agreements and trust agreements with travel agents during 1 June 2001 to 31 March 2005 induced travel agents not to deal with SAA’s rivals and contravened section 8(d)(i) of the Act.

An earlier complaint was the Comair complaint which resulted in a settlement agreement between the Commission and SAA in terms of which SAA paid a penalty of R 15 million. SAA however did not in the consent order admit to any contravention of the Act. The effect of this was that Comair, the affected party, could not seek damages against SAA in the High Court and would therefore first have to obtain a declaratory order from the Tribunal that the conduct of SAA constituted a prohibited practice. Comair approached the Tribunal for such an order in terms of sec 49D.

A second complaint, referred by Nationwide, dealt with SAA’s conduct from June 2001 to 31 March 2005, a period after that considered in the first Nationwide decision. Nationwide was of the view that the Commission had not referred and the Tribunal had not adjudicated all aspects of its complaint in the first Nationwide decision. The Tribunal found that Comair’s allegation of “ongoing conduct” from 1999 to 31 May 2001 had already been dealt with in the first Nationwide matter. Hence it could only consider the SAA’s conduct for the period 1 June 2001 until 31 March 2005, the period over which SAA continued to have override incentive agreements and trust agreements with travel agents in the domestic airline travel market.

The Tribunal found that during the period SAA was still overwhelmingly dominant in the scheduled domestic airline travel market and, in alliance with SAL and SAX, was presumptively dominant in the purchase of travel agent services for airline tickets. It found that “Through this incentive scheme, SAA sought to immunise its fares distributed through travel agents against competition and to extend its market power in that segment of the market. Travel agents had the ability to divert sales away from rival products and engaged in such practices in order to receive the handsome rewards for achieving the volume or revenue targets set by SAA. This inducement foreclosed SAA’s rivals from the domestic airline travel market, the impact of such foreclosure (was) likely to be greater in that segment of the air travel that was distributed by travel agents. Rivals could not match the financial incentive, in rand value, offered by SAA. SAA had concluded agreements with approximately 70-90% of the airline sales distributed through travel agents which suggested that the foreclosure of rivals in the domestic airline travel market was likely to be substantial.” The Tribunal also found that no credible evidence of any efficiencies achieved through this scheme was placed before it.

Cases Before the Competition Tribunal

The Tribunal declared SAA's override agreements and trust payments to travel agents in force from 1 June 2001 to 31 March 2005 in contravention of section 8(d)(i) of the Competition Act. This effectively paves the way for complainants, Comair and Nationwide, to pursue a civil claim for damages against SAA in the High Court.

The Tribunal also drew an adverse inference from SAA's failure to put before the Tribunal its strategic and relevant board documents for the period 2002-2005.

Interim relief

The Tribunal received five new interim relief cases and had four on the roll from a previous period. Three matters were withdrawn by the parties, two were removed from the roll and one matter was heard in the period under review. At year-end one matter was awaiting a decision and three matters were awaiting hearings.

Details of prohibited practice cases are given in Appendix C.

Decisions On Procedure Or Points Of Law

The Tribunal is frequently required to determine procedural issues, and the past year was no exception in this regard. Some of the procedural applications are summarised below.

In **The Competition Commission of South Africa v Astral Operations Ltd and Elite Breeding Farms** the Respondents requested discovery of notes on interviews conducted during the Commission's investigation, its investigation report and other internal memoranda on which the Commission had based its decision to refer the complaint. Astral argued that without access to the complete investigation record of the commission its right to a fair hearing would be compromised. The Commission refused access indicating that these documents constituted restricted information which it was not obliged to disclose in terms of rule 14(1)(d).

The Tribunal refused Astral access to these documents stating that *"because complaint proceedings are not criminal and do not carry the same consequences for individual liberty there is less concern that fairness would be compromised if docket access rights were interpreted more restrictively for a respondent than an accused"*. It also noted that whilst a respondent does not enjoy the fair trial rights of an accused, based on the Competition Appeal Court's decision in the Federal Mogul case, it is still entitled to fair proceedings. It therefore considered whether Commission Rule 14(d) restrictions are fair given the policy considerations of the Act and found that to the extent that rule 14(1)(d) restricts a respondent from access to certain classes of documents in the Commission's possession that restriction is not unfair and is informed by a rational need to preserve the integrity and effectiveness of the investigative process. Astral's application was dismissed on the basis that the lack of access to the material requested did not prevent it from receiving a fair hearing.

In the matter between **the Commission and Tiger Brands** (the bread cartel case) the Tribunal had to decide whether Pioneer could have access to documents in respect of which the Commission had claimed litigation privilege. Pioneer challenged the Commission's entitlement to claim this privilege.

The Tribunal said that *"We go through a process of pleadings, discovery, witness statements and oral testimony with rights of cross examination, to establish whether a case has been made against the respondent. Throughout parties enjoy procedural rights of fairness which we must safeguard. The entire process is suffused with the attributes of an adversarial system – the very system in which litigation privilege has long been recognised"*. The Tribunal therefore found that the Commission is entitled to claim litigation privilege in its proceedings and that no exception exists to deny such privilege to the Commission.

Cases Before the Competition Tribunal

In an exception application in [the Commission v Rooibos Ltd, National Brands Ltd, Coffee Tea and Chocolate Company \(Pty\) Ltd, Unilever SA Foods \(Pty\) Ltd, Joekels Tea Packers CC](#), Rooibos, in raising its objections, sought to compel the Commission to disclose more of its evidence than it was willing or able to do at that stage of the referral, before it had filed its answering affidavit.

The Tribunal, in this case, confirmed its approach to exceptions indicating that *"...We have previously approached the subject of exception at this stage [the stage when a respondent is required to file its answering affidavit] by recognising that notwithstanding the absence of express provision for them in our rules, we would be willing to consider hearing an exception when appropriate" but that it should be kept in mind that "...Our proceedings are adversarial but we also as an institution enjoy inquisitorial powers. We are guided by the need to conduct proceedings fairly and to the extent permissible, informally"*. The Tribunal dismissed the exception application raised by the Respondents finding, inter alia, that the Commission sufficiently set out the facts on which it relied. The Tribunal pointed out that Rule 15 of the Tribunal Rules required a concise statement of the grounds of complaint and the material facts or points of law relied on. This rule did not oblige the Commission to do more.

In the period under review, the Tribunal had 36 procedural matters on the roll. Of these, 28 were new applications and eight were matters received in a previous period.

A total of 21 matters (six from a previous period) were heard and one matter was removed from the roll. In 1 matter hearings are still to continue. Orders were issued in 21 matters (six from a previous period) and reasons were given in seven matters (three from a previous period)

An additional 13 matters are still to be heard.

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

Nature of procedural matter	Number of applications
Amendment applications	6
Application to set aside Commission's complaint	1
Amendment to consent order	1
Application to inspect	3
Consolidation application	1
Costs order	1
Counter application	1
Discovery application	3
Dismissal application	1
Dismissal and discovery application	1
Default judgement	1
Exception notice	1
Extension applications	1
Extension of time to file answer	1
Filing fee refund	3
Joinder application	1
Joinder and amendment application	3
Postponement application	2
Separation of issues	2
Tribunal directive	1
Condonation and amendment application	1
TOTAL	36

Details of these cases are given in Appendix D

The Competition Appeal Court



Hon. Mr Justice D Davis



Hon. Ms Justice N.C. Dambuza



Hon. Ms Justice L. Mailula



Hon. Mr Justice C.N. Patel



Hon. Ms Justice Z.L.L Tshiqi



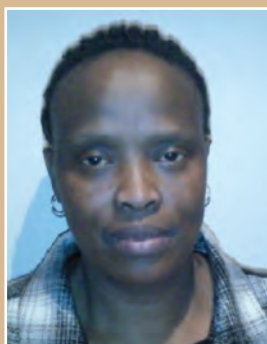
Hon. Mr Justice M.J.D. Wallis



Hon. Mr Justice D. Zondi



Hon. Mr Justice F.R. Malan



Hon. Ms Justice T. Ndita



Hon. Mr Justice P. Levinsohn

The Competition Appeal Court

The third institution established in terms of the Competition Act is the Competition Appeal Court (the Appeal Court), a specialised body that hears appeals from and reviews of the decisions of the Tribunal.

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

The registry function of the Appeal Court is performed by the Tribunal and the Tribunal's registrar acts as its registrar.

One judge attended a training course hosted by the Fordham University School of Law in June 2009 in New York, and three judges attended the Fordham annual conference on international antitrust and law policy in New York in September 2009.

Funding for the Appeal Court is received from the dti and its budget appears as a line item on the Tribunal's budget. The budget is managed by the Judge President and administered by the Tribunal's secretariat on behalf of the Appeal Court. The table below sets out the expenditure of the Appeal Court over the past seven years.

Year	Total expenditure (R '000's)
2004	284
2005	341
2006	363
2007	337
2008	434
2009	445
2010	322

Like the Tribunal it is difficult for the Appeal Court to accurately predict its expenditure as there is no indication of the number of matters that will be brought before it.

The budget is therefore drawn on the basis of expected matters and their associated costs, and some provision is made for the attendance of Appeal Court Judges at international competition conferences.

Cases Before The Appeal Court

In the period under review the Competition Appeal Court received nine applications. Two cases were withdrawn and six cases were heard (four from the previous period).

The Competition Appeal Court released seven decisions (five from the previous period).

There are currently five cases pending on the roll.

A detailed list of Appeal Court cases is given in Appendix G.



The Competition Appeal Court

Competition Appeal Court Judges

The judges constituting the Appeal Court during the year under review were:

Name	Court	Term of Office
The Honourable Mr Justice D Davis	Cape of Good Hope Provincial Division of the High Court	October 2007 - October 2012
The Honourable Ms Justice LM Mailula	Witwatersrand Local Division of the High Court	October 2007 - October 2012
The Honourable Mr Justice CN Patel	Natal Provincial Division of the High Court	October 2007 - October 2012
The Honourable Mr Justice D Zondi	Cape of Good Hope Provincial Division of the High Court	01 November 2009 - 30 November 2010
The Honourable Ms Justice NC Dambuza	Eastern Cape Division of the High Court	01 January 2010 - 31 December 2010
The Honourable Mr Justice M Joffe	South Gauteng High Court	01 October 2009 - 30 September 2010
The Honourable Mr Justice MJD Wallis	Kwazulu-Natal High Court	December 2009 - 31 December 2010
The Honourable Justice Ms T Ndita	Western Cape High Court	December 2009 - 31 December 2010
The Honourable Mr Justice P Levinsohn	Natal Provincial Division of the High Court	February 2008 - February 2009 Retired – December 2009
The Honourable Mr Justice FR Malan	Witwatersrand Local Division of the High Court	October 2007- October 2012 Appointed permanently to the SCA from January 2010
The Honourable Ms Justice ZLL Tshiqi	Transvaal Provincial Division of the High Court	February 2009 - February 2010 Appointed permanently to the SCA from January 2010

The Year in Pictures



FINANCIAL STATEMENTS



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The reports and statements set out below comprise the annual financial statements presented to the parliament:

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Financial Statements for the Year Ended 31 March 2010

Statement of Financial Position as at 31 March 2010

	Note(s)	2010 '000	2009 '000
ASSETS			
CURRENT ASSETS			
Inventory	13	14	25
Receivables from exchange transactions	14	897	77
Cash and cash equivalents	15	21,301	20,839
		22,212	20,941
NON-CURRENT ASSETS			
Property, plant and equipment	16	1,015	811
Intangible assets	17	132	94
		1,147	905
Total Assets		23,359	21,846
LIABILITIES			
CURRENT LIABILITIES			
Finance lease obligation	18	201	198
Payables from exchange transactions	19	1,338	1,313
Provisions	21	344	428
		1,883	1,939
NON-CURRENT LIABILITIES			
Finance lease obligation	18	169	129
		169	129
Total Liabilities		2,052	2,068
Net Assets		21,307	19,778
NET ASSETS			
Accumulated surplus		21,307	19,778

Financial Statements for the Year Ended 31 March 2010

Statement of Financial Performance for the Period Ended 31 March 2010

	Note(s)	2010 '000	2009 '000
REVENUE			
Revenue from non-exchange transactions			
Government grants	4	13,040	9,909
Revenue from exchange transactions			
Fees earned	5	5,204	8,816
Interest received	7	1,537	1,869
Other income included in revenue			
Recoupment of printing fees		31	3
Total Revenue		19,812	20,597
EXPENSES			
Personnel	8	10,009	9,433
Administrative expenses	9	3,266	3,124
Depreciation and amortisation of intangible assets	10	360	303
Impairment loss/ Reversal of impairments	30	20	6
Finance charges	11	49	59
General expenses	12	4,597	4,668
Total Expenditure		(18,301)	(17,593)
Gain or loss on disposal of assets and liabilities		18	-
Net surplus for the year		1,529	3,004

Financial Statements for the Year Ended 31 March 2010

Statement of Changes In Net Assets for the Period Ended 31 March 2010

	Accumulated funds '000	Total net assets '000
Balance at 01 April 2008	16,774	16,774
Changes in net assets		
Surplus for the year	3,004	3,004
Total changes	3,004	3,004
Balance at 01 April 2009	19,778	19,778
Changes in net assets		
Surplus for the period	1,529	1,529
Total changes	1,529	1,529
Balance at 31 March 2010	21,307	21,307

Financial Statements for the Year Ended 31 March 2010

Cash Flow Statement for the Period Ended 31 March 2010

CASH FLOWS FROM OPERATING ACTIVITIES

	Note(s)	2010 '000	2009 '000
Receipts			
Interest income		1,537	1,869
Other receipts		17,456	19,745
		18,993	21,614
Payments			
Finance charges		(49)	(59)
Other payments		(17,919)	(16,824)
		(17,968)	(16,883)
Net cash flows from operating activities	22	1,025	4,731
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	16	(638)	(337)
Proceeds from sale of property, plant and equipment	16	84	-
Purchase of other intangible assets	17	(51)	(59)
Net cash flows from investing activities		(605)	(396)
CASH FLOWS FROM FINANCING ACTIVITIES			
Movement in accrued interest		-	(3)
Movement in finance lease payments		42	57
Net cash flows from financing activities		42	54
Net increase/(decrease) in cash and cash equivalents		462	4,389
Cash and cash equivalents at the beginning of the year		20,839	16,450
Cash and cash equivalents at the end of the year	15	21,301	20,839

Accounting Policies for the Period Ended 31 March 2010

1. BASIS OF PREPARATION

The financial statements have been prepared in accordance with the effective Standards of Generally Recognised Accounting Practices (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 55 of the Public Finance Management Act (Act No. 29 of 1999).

Accounting policies for material transactions, events or conditions not covered by the GRAP reporting framework have been developed in accordance with paragraphs 7, 11 and 12 of GRAP 3 and the hierarchy approved in Directive 5 issued by the Accounting Standards Board. In terms of GRAP 3, judgement must be used when developing an accounting policy.

In applying judgement, GRAP 3 requires that management refers to and considers the applicability of the following sources in descending order:

- a) the requirements and guidance in Standards of GRAP dealing with similar and related issues; and
- (b) the definitions, recognition criteria and measurement concepts for assets, liabilities, revenue and expenses set out in the Framework for the Preparation and Presentation of Financial Statements.

In order to ensure full compliance with GRAP 1 we have included a note reconciling the budget to the statement of financial performance in the notes to the financial statements.

The annual financial statements have been prepared on the historical cost basis, except for the measurement of certain financial instruments at fair value less point of sale costs, and incorporate the principal accounting policies set out below.

These financial statements are prepared in accordance with the going concern principle.

In applying accounting policies management is required to make various judgements, apart from those involving estimations, which may affect the amounts of items recognised in the financial statements. Management is also required to make estimates of the effects of uncertain future events which could affect the carrying amounts of certain assets and liabilities at the reporting date. Actual results in the future could differ from estimates which may be material to the financial statements. The following significant judgements and critical estimates had been applied in respect of estimation uncertainty at the reporting date, that have a significant risk of causing material adjustment to the carrying amounts of assets and liabilities within the next financial year:

- Review of useful lives, residual values and impairment of property, plant and equipment and intangible assets – Refer note 1.6, 1.7 and 1.13. (Critical estimate)
- Provisions – Refer note 1.10. (Critical judgement and estimate).

These accounting policies are consistent with the previous period.

1.1 Presentation Currency

These financial statements are presented in South African Rands.

1.2 Revenue

Revenue is recognised to the extent that it is probable that the economic benefits will flow and can be reliably measured. Revenue is measured at fair value of the consideration receivable on an accrual basis. The following specific recognition criteria must also be met before revenue is recognised

Revenue from non-exchange transactions

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.

Revenue from exchange transactions

Filing fees

Filing fees in respect of mergers are recognised when the papers have been filed and the filing fees have been paid

Revenue on filing fees is recognised as economic benefits compulsorily receivable or receivable by entities, in accordance with laws or regulations, established to provide revenue to government, excluding fines or other penalties imposed for breaches or laws or regulations.

Interest income

Revenue is recognised as interest accrues using the effective interest rate.

Other income

Other income is recognised on an accrual basis.

1.3 Irregular Expenditure

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

The expenditure portion of any irregular expenditure is charged against surplus in the period in which they occur. This expenditure will be disclosed separately in the annual financial statements.

1.4 Fruitless and Wasteful Expenditure

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

The expenditure portion of any fruitless and wasteful expenditure is charged against in the period in which they occur. This expenditure will be disclosed separately in the annual financial statements.

1.5 Employee Benefits

Pension and post retirement benefits

Payments to defined contribution retirement benefit plans are charged as an expense as they fall due.

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

Contributions to the defined contribution plan are charged to the statement of financial performance in the year to which they relate.

Accounting Policies for the Period Ended 31 March 2010

1.6 Property, Plant and Equipment

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Costs include costs incurred initially to acquire or construct an item of property, plant and equipment and costs incurred subsequently to add to, replace part of, or service it. If a replacement cost is recognised in the carrying amount of an item of property, plant and equipment, the carrying amount of the replaced part is derecognised.

Property, plant and equipment are stated at historical cost less depreciation. Depreciation is calculated on a straight-line basis at rates considered appropriate to reduce the cost of the assets less their residual value over the estimated useful life. Useful life, depreciation policy and residual value are reviewed annually.

The period over which various categories of assets are depreciated is detailed below:

Item	Average useful life
Furniture and fixtures	15 years
Motor vehicles	5 years
Office equipment	15 years
IT equipment	
• Computer Equipment	3 years
• Server	10 years
Leased Assets	Period of the lease

The residual value and the useful life of each asset are assessed at each financial period-end.

Each part of an item of property, plant and equipment with a cost that is significant in relation to the total cost of the item shall be depreciated separately.

The depreciation charge for each period is recognised in surplus or deficit unless it is included in the carrying amount of another asset.

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

1.7 Intangible Assets

An intangible asset is recognised when:

- it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity; and
- the cost of the asset can be measured reliably.

Intangible assets are initially recognised at cost.

Expenditure on research (or on the research phase of an internal project) is recognised as an expense when it is incurred.

Financial Statements for the Year Ended 31 March 2010

An intangible asset arising from development (or from the development phase of an internal project) is recognised when:

- it is technically feasible to complete the asset so that it will be available for use or sale.
- there is an intention to complete and use or sell it.
- there is an ability to use or sell it.
- it will generate probable future economic benefits.
- there are available technical, financial and other resources to complete the development and to use or sell the asset.
- the expenditure attributable to the asset during its development can be measured reliably.

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses.

An intangible asset is regarded as having an indefinite useful life when, based on all relevant factors, there is no foreseeable limit to the period over which the asset is expected to generate net cash inflows. Amortisation is not provided for these property, plant and equipment. For all other intangible assets amortisation is provided on a straight line basis over their useful life.

The amortisation period and the amortisation method for intangible assets are assessed every period-end.

Reassessing the useful life of an intangible asset with a definite useful life after it was classified as indefinite is an indicator that the asset may be impaired. As a result the asset is tested for impairment and the remaining carrying amount is amortised over its useful life.

Amortisation is provided to write down the intangible assets, on a straight line basis, to their residual values as follows:

Item	Useful life
Computer software for server	10 years
Computer software	5 years

1.8 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

Leased assets

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

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

Contingent rentals are recognised as expenses in the periods in which they are incurred.

Leases under which the lessor effectively retains the risks and benefits of ownership are classified as operating leases. Payments made under operating leases are charged against revenue on a straight-line basis over the term of the lease.

1.9 Inventory

Inventories are measured at the lower of cost and net realisable value.

Accounting Policies for the Period Ended 31 March 2010

Net realisable value for consumables is assumed to approximate the cost price due to the relatively short period that these assets are held in stock.

Inventories are measured at the lower of cost and net realisable value on the first-in-first-out basis.

Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

The cost of inventory comprises of all costs of purchase, costs of conversion and other costs incurred in bringing the inventory to their present location and condition.

The cost of inventory is based on the first-in-first-out (FIFO) method and includes expenditure incurred in acquiring the inventory and other costs incurred in bringing them to their existing location and condition

When inventories are donated or issued to other entities for no cost/nominal values, inventories shall be measured at the lower of cost and net realisable value.

1.10 Provisions and Contingencies

Provisions are recognised when:

- the entity has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the present value of the expenditure expected to be required to settle the obligation.

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The reimbursement shall be treated as a separate asset. The amount recognised for the reimbursement shall not exceed the amount of the provision.

Provisions are not recognised for future operating deficits.

If an entity has a contract that is onerous, the present obligation under the contract shall be recognised and measured as a provision.

1.11 Financial Instruments

Classification

The Tribunal's principal financial instruments are receivables, cash and cash equivalents, payables and lease liabilities.

Classification depends on the purpose for which the financial instruments were obtained / incurred and takes place at initial recognition. Classification is re-assessed on an annual basis, except for derivatives and financial assets designated as at fair value through surplus or deficit, which shall not be classified out of the fair value through surplus or deficit category.

Initial recognition and measurement

Financial assets are recognised in the Tribunal's statements of financial position when the Tribunal becomes a party to the contractual provisions of an instrument.

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

Financial Statements for the Year Ended 31 March 2010

Financial assets are classified as financial assets at fair value through surplus or deficit, loans and receivables or held to maturity investment as appropriate. When financial assets are initially recognised they are measured at fair value.

The Tribunal determines the classification of its financial assets on initial recognition and, where allowed and appropriate, re-evaluates this designation at each financial year end.

Subsequent measurement

Financial instruments at fair value through surplus or deficit are subsequently measured at fair value, with gains and losses arising from changes in fair value being included in surplus or deficit for the period.

Loans and receivables are subsequently measured at amortised cost, using the effective interest method, less accumulated impairment losses.

Gains and losses arising from changes in fair value are recognised in other comprehensive income and accumulated in equity until the asset is disposed of or determined to be impaired. Interest on available for sale financial assets calculated using the effective interest method is recognised in surplus or deficit as part of other income. Dividends received on available for sale equity instruments are recognised in surplus or deficit as part of other income when the entity's right to receive payment is established.

Financial liabilities at amortised cost are subsequently measured at amortised cost, using the effective interest method.

Fair value determination

The fair values of quoted investments are based on current bid prices. If the market for a financial asset is not active (and for unlisted securities), the entity establishes fair value by using valuation techniques. These include the use of recent arm's length transactions, reference to other instruments that are substantially the same, discounted cash flow analysis, and option pricing models making maximum use of market inputs and relying as little as possible on entity-specific inputs.

Impairment of financial assets

At each end of the reporting period the entity assesses all financial assets, other than those at fair value through surplus or deficit, to determine whether there is objective evidence that a financial asset or group of financial assets has been impaired.

Impairment losses are recognised in surplus or deficit.

Impairment losses are reversed when an increase in the financial asset's recoverable amount can be related objectively to an event occurring after the impairment was recognised, subject to the restriction that the carrying amount of the financial asset at the date that the impairment is reversed shall not exceed what the carrying amount would have been had the impairment not been recognised.

Reversals of impairment losses are recognised in surplus or deficit except for equity investments classified as available for sale.

Impairment losses are also not subsequently reversed for available-for-sale equity investments which are held at cost because fair value was not determinable.

Asset carried at amortised cost

In relation to receivables a provision for impairment is made when there is objective evidence (such as the probability of insolvency or significant financial difficulties of the debtor) that the Tribunal will not be able to collect all the amounts due under the original terms of the invoice. The carrying amount of the receivable is reduced through use of an allowance

Accounting Policies for the Period Ended 31 March 2010

account. Impaired debts are derecognised when they are assessed as uncollectible.

Receivables

Trade receivables are measured at initial recognition at fair value, and are subsequently measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in surplus or deficit when there is objective evidence that the asset is impaired. Significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy or financial reorganisation, and default or delinquency in payments (more than 30 days overdue) are considered indicators that the trade receivable is impaired. The allowance recognised is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

The carrying amount of the asset is reduced through the use of an allowance account, and the amount of the deficit is recognised in surplus or deficit within operating expenses. When a trade receivable is uncollectible, it is written off against the allowance account for trade receivables. Subsequent recoveries of amounts previously written off are credited against operating expenses in surplus or deficit.

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. After initial measurement loans and receivables are carried at amortised cost using the effective interest method less any allowance for impairment. Gains and losses are recognised in surplus or deficit when the receivables are derecognised or impaired, as well as through the amortisation process.

Trade and other receivables are classified as loans and receivables.

Payables

Trade payables are initially measured at fair value, and are subsequently measured at amortised cost, using the effective interest rate method.

After initial recognition, payables are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in surplus and deficit when the liabilities are derecognised as well as through the amortisation process.

Cash and cash equivalents

Cash and cash equivalents in the statement of financial position comprise cash at banks and on hand and cash equivalents with an original maturity of three months or less. For the purpose of the cash flow statement, cash and cash equivalents consist of cash and cash equivalents as defined above, net of outstanding bank overdrafts.

Cash and cash equivalents are recognised at cost.

Bank overdraft and borrowings

Bank overdrafts and borrowings are initially measured at fair value, and are subsequently measured at amortised cost, using the effective interest rate method. Any difference between the proceeds (net of transaction costs) and the settlement or redemption of borrowings is recognised over the term of the borrowings in accordance with the entity's accounting policy for borrowing costs.

1.12 Comparative Figures

In order to conform to changes, comparative figures have been adjusted, where necessary. The comparative figures shown in these financial statements are limited to the figures shown in the previous year's audited financial statements and such other comparative figures that may reasonably have been available for reporting.

1.13 Impairment of Non-Cash Generating Assets

The entity assesses at each statement of financial position date whether there is any indication that an asset may be impaired. If any such indication exists, the entity estimates the recoverable amount of the asset.

The carrying amount of the Tribunal's non-cash generating assets are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication then the assets recoverable service amount is estimated. The recoverable service amount is the higher of the non-cash generating assets's fair value less the costs to sell and its value in use.

When the recoverable service amount of an asset is less than its carrying amount, the carrying amount is reduced to its recoverable service amount. The reduction is an impairment loss.

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

A reversal of an impairment loss of assets carried at cost less accumulated depreciation or amortisation other than goodwill is recognised immediately in surplus or deficit.

An impairment loss recognised in prior periods for an asset is reversed if there has been a change in the estimates used to determine the assets recoverable service amount since the last impairment loss was recognised. If this is the case, the carrying amount of the asset is increased to its recoverable service amount. The increase is a reversal in impairment loss. The increased carrying amount attributable to a reversal of an impairment loss shall not exceed the carrying amount that would have been determined (net of depreciation or amortisation) had no impairment loss been recognised in prior period.

A reversal of an impairment loss for an asset shall be recognised immediately in surplus or deficit.

An impairment loss is tested using the depreciated replacement cost approach.

1.14 Significant Judgements and Sources of Estimation Uncertainty

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Significant judgements include:

Provision for accumulated leave

Management the number of annual leave days due per employee as at year end and estimated a value for this provision by multiplying the number of days due per employee by an estimated value for the daily wage per employee as reflected in the payroll software.

1.15 Translation of Foreign Currencies

Foreign currency transactions

A foreign currency transaction is recorded, on initial recognition in Rands, by applying to the foreign currency amount the spot exchange rate between the functional currency and the foreign currency at the date of the transaction.

- At each statement of financial position date:
- foreign currency monetary items are translated using the closing rate;
- non-monetary items that are measured in terms of historical cost in a foreign currency are translated using the exchange rate at the date of the transaction; and
- non-monetary items that are measured at fair value in a foreign currency are translated using the exchange rates at the date when the fair value was determined.

Exchange differences arising on the settlement of monetary items or on translating monetary items at rates different from those at which they were translated on initial recognition during the period or in previous annual financial statements are recognised in surplus or deficit in the period in which they arise.

Cash flows arising from transactions in a foreign currency are recorded in Rands by applying to the foreign currency amount the exchange rate between the Rand and the foreign currency at the date of the cash flow.

1.16 Related Parties

A related party transaction is a transfer of resources or obligations between related parties, regardless of whether a price is charged. Parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions or if the related party entity and another entity are subject to common control.

Related parties include:

- a. Entities that directly, or indirectly through one or more intermediaries, control, or are controlled by the entity;
- b. Associates (International Public Sector Accounting Standard (IPSAS) 7, "Accounting for investments in Associates");
- c. Individuals owning, directly or indirectly, an interest in the reporting entity that gives them significant influence over the entity, and close members of the family of any such individual;
- d. Key management personnel, and close members of the family of key management personnel; and
- e. Entities in which a substantial ownership interest is held, directly or indirectly, by any person described in (c) or (d), or over which such a person is able to exercise significant influence.

The following are deemed not to be related parties:

- a. (i) Providers of finance in the course of their business in that regard; and
(ii) Trade unions in the course of their normal dealings with an entity by virtue only of those dealings (although they may circumscribe the freedom of action of the entity or participate in this decision-making process); and
- b. An entity with which the relationship is solely that of an agency.

2. CHANGES IN ACCOUNTING POLICY

The annual financial statements have been prepared in accordance with South African Statements of Generally Recognised Accounting Practice on a basis consistent with the prior period.

3. NEW STANDARDS AND INTERPRETATIONS

3.1 Standards and Interpretations Issued, but not yet Effective

The entity has not applied the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after 01 April 2010 or later periods:

GRAP 24: Presentation of Budget Information in the Financial Statements

The effective date of the standard is for years beginning on or after 01 April 2010.

The entity expects to adopt the standard for the first time in the 2010 annual financial statements.

The adoption of this standard is not expected to impact on the results of the entity, but may result in more disclosure than is currently provided in the annual financial statements.

	2010 '000	2009 '000
4. GRANTS AND TRANSFERS		
Government grant	13,040	9,909
5. FEE INCOME		
Fee Income received from the Commission	5,204	8,816
6. OTHER INCOME		
Recoupment of printing costs	31	3
7. INTEREST RECEIVED		
Interest received		
- Bank deposits	1,537	1,869

Financial Statements for the Year Ended 31 March 2010

	2010 '000	2009 '000
8. PERSONNEL		
Basic salaries	3,023	2,342
Performance awards	233	289
Medical aid - company contributions	104	90
Statutory Contributions	59	53
Insurance	56	43
Other non-pensionable allowances	214	177
Other salary related costs	24	20
Defined contribution pension plan expense	327	201
Executive committee members emoluments	5,969	6,218
	10,009	9,433
9. ADMINISTRATIVE EXPENSES		
Audit Committee members fees (inclusive of travel)	59	76
General and administrative expenses	703	781
External audit fees	501	271
Internal audit fees	412	285
Travel and subsistence	307	505
Unitary payments for building occupation	1,284	1,206
	3,266	3,124
10. DEPRECIATION AND AMORTISATION		
Depreciation		
Furniture and fittings	23	23
Motor vehicles	21	21
Office equipment	2	1
Computer equipment	106	80
Leased assets - office equipment	195	172
	347	297
Amortisation		
Computer software	13	6
11. FINANCE CHARGES		
Finance leases	49	59

	2010 '000	2009 '000
12. OTHER OPERATING EXPENSES		
Consultants, contractors and special services	3,004	3,341
Fines and penalties	-	1
Staff training and development	1,408	1,306
Legal fees	138	15
Maintenance, repairs and running costs	44	4
Fruitless and wasteful expenditure	3	1
Total	4,597	4,668
13. INVENTORY		
Consumable stores (office stationary)	14	25
Total	14	25
14. RECEIVABLES FROM EXCHANGE TRANSACTIONS		
Receivables	770	49
Prepayments	127	28
Total	897	77

Trade receivables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice.

15. CASH AND CASH EQUIVALENTS

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

There are no restriction of the use of cash.

Cash on hand	1	2
Cash at bank	21,300	20,837
Total	21,301	20,839

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.

Financial Statements for the Year Ended 31 March 2010

16. PROPERTY, PLANT AND EQUIPMENT

	2010			2009		
	Cost	Accumulated depreciation	Carrying value	Cost	Accumulated depreciation	Carrying value
Furniture and fixtures	364	(212)	152	358	(189)	169
Motor vehicles	209	(106)	103	209	(85)	124
Office equipment	23	(7)	16	17	(7)	10
IT equipment	590	(198)	392	452	(230)	222
Leased assets	567	(215)	352	741	(455)	286
Total	1,753	(738)	1,015	1,777	(966)	811

Reconciliation of property, plant and equipment - 2010

	Opening Balance	Additions	Disposals	Depreciation	Impairment loss	Total
Furniture and fixtures	169	6	-	(23)	-	152
Motor vehicles	124	-	-	(21)	-	103
Office equipment	10	9	-	(2)	(1)	16
IT equipment	222	295	-	(106)	(19)	392
Leased assets	286	328	(67)	(195)	-	352
	811	638	(67)	(347)	(20)	1,015

Reconciliation of property, plant and equipment - 2009

	Opening Balance	Additions	Depreciation	Impairment loss	Total
Furniture and fixtures	197	-	(23)	(5)	169
Motor vehicles	145	-	(21)	-	124
Office equipment	8	3	(1)	-	10
IT equipment	191	112	(80)	(1)	222
Leased assets	236	222	(172)	-	286
	777	337	(297)	(6)	811

Assets subject to finance lease (Net carrying amount)

	2010 '000	2009 '000
Leased assets	352	286

17. INTANGIBLE ASSETS

	2010			2009		
	Cost	Accumulated amortisation	Carrying value	Cost	Accumulated amortisation	Carrying value
Computer software	152	(20)	132	101	(7)	94

Reconciliation of intangible assets - 2010

	Opening Balance	Additions	Amortisation	Total
Computer software	94	51	(13)	132

Reconciliation of intangible assets - 2009

	Opening Balance	Additions	Amortisation	Total
Computer software	41	59	(6)	94

18. FINANCE LEASE OBLIGATION

	2010 '000	2009 '000
Minimum lease payments due		
- within one year	230	235
- in second to fifth year inclusive	187	138
	417	373
less: future finance charges	(47)	(46)
Present value of minimum lease payments	370	327
Present value of minimum lease payments due		
- within one year	197	198
- in second to fifth year inclusive	173	129
	370	327
Non-current liabilities	169	129
Current liabilities	201	198
	370	327

The Tribunal is leasing photocopiers and data cards on finance leases and there are no restrictions imposed on the Tribunal in terms of these leases. The obligation under the finance lease is secured by the lessor's title to the leased asset. The lease can be extended for a further period after the initial period has expired.

Financial Statements for the Year Ended 31 March 2010

19. PAYABLES FROM EXCHANGE TRANSACTIONS

	2010 '000	2009 '000
Creditors	605	197
Other accruals	733	1,116
	1,338	1,313

20. TRADE PAYABLES - TERMS AND CONDITIONS

Trade payables (exclusive of accruals) are paid within 30 days of date of invoice/text

During the period under review there were no breaches of contracts or agreements held with the Tribunal and it was not necessary to negotiate any new terms with suppliers.

21. PROVISIONS

Reconciliation of provisions - 2010

	Opening Balance	Additions	Reversed during the year	Total
Leave provision	428	344	(428)	344

Reconciliation of provisions - 2009

	Opening Balance	Additions	Reversed during the year	Total
Leave provision	203	428	(203)	428

22. CASH GENERATED FROM OPERATIONS

	2010 '000	2009 '000
Surplus for the year	1,529	3,004
Adjustments for:		
Depreciation and amortisation	360	303
Loss on sale of assets and liabilities	(18)	-
Impairment deficit	20	6
Movements in provisions	(84)	(443)
Changes in working capital:		
Inventory	11	(4)
Receivables from exchange transactions	(819)	1,021
Payables from exchange transactions	26	844
	1,025	4,731

23. FUTURE MINIMUM LEASE PAYMENTS

24. EMPLOYEE BENEFITS

Defined contribution plan

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 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.

25. INCOME TAX EXEMPTION

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

26. FINANCIAL RISK MANAGEMENT

The main risks arising from the Tribunal's financial instruments are market risk, liquidity risk and credit risk.

Credit risk

The Tribunal trades only with recognised, creditworthy third parties. It is the Tribunal's policy that all customers who wish to trade on credit terms are subject to credit verification procedures. In addition, receivables balances are monitored on an ongoing basis with the result that the Tribunal's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed in Note 14. There is no significant concentration of credit risk within the Tribunal.

With respect to credit risk arising from the other financial assets of the Tribunal, which comprise cash and cash equivalents, the Tribunal's exposure to credit risk arises from default of the counterparty, with a maximum exposure equal to the carrying amount of these instruments. The Tribunal's cash and cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is limited..

Exposure to credit risk

The maximum exposure to credit risk at the reporting date from financial assets was:

'000	2010	2009
Cash and cash equivalents	21,301	20,839
Other receivables	770	49
Total	22,071	20,888

Concentration of credit risk

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

2010 '000	AAA and government	Unrated
Cash and cash equivalents	21,301	-
Other receivables	-	770

2009 '000	AAA and government	Unrated
Cash and cash equivalents	20,839	-
Other receivables	-	49

Financial Statements for the Year Ended 31 March 2010

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

2010 '000	Neither past due nor impaired	Past due but not impaired - less than 2 months	Past due but not impaired - more than 2 months	Carrying value
Cash and cash equivalents	21,301	-	-	21,301
Other receivables	697	28	45	770

2009 '000	Neither past due nor impaired	Past due but not impaired - less than 2 months	Past due but not impaired - more than 2 months	Carrying value
Cash and cash equivalents	20,839	-	-	20,839
Other receivables	28	13	8	49

Market risk

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

Interest rate risk

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

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

Sensitivity Analysis

2010	Change in Investments	Increase/(decrease) in net surplus for the year	
		Upward change	Downward change
Cash and cash equivalents	1.00%	213	(213)
Finance lease	1.00%	(4)	4
2009			
Cash and cash equivalents	1.00%	208	(208)
Finance lease	1.00%	(3)	3

Liquidity risk

Liquidity risk is the risk that the Tribunal would not have sufficient funds available to cover future commitments. The Tribunal regards this risk to be low; taking into consideration the Tribunal's current funding structures and availability of cash resources.

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

2010	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Finance lease obligation	370	370	201	169
Payables	1,338	1,338	1,335	3

Notes to the Annual Financial Statements for the Period Ended 31 March 2010

2009	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Finance lease obligation	327	327	198	129
Payables	1,313	1,313	213	1,100

Financial instruments

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

Financial instrument	Classification	Carrying amount	Carrying amount
Cash and cash equivalents	Loans and receivables	21,301	20,839
Receivables	Loans and receivables	770	49
Payables	Financial liabilities	1,338	1,313
Finance leases	Financial liabilities measured at amortised cost	370	327

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

	2010 '000	2009 '000
Financial assets at amortised cost		
Receivables	770	49
Financial liabilities at amortised cost		
Payables	1,338	1,313
Finance leases	370	327

Financial Statements for the Year Ended 31 March 2010

27. RELATED PARTIES

	2010 '000	2009 '000
Related party		
Relationship		
The Competition Commission		Public entity in the National Sphere
The Department of Trade and Industry		National Department in the National Sphere
Related party balances		
Amounts included in trade payables regarding related parties		
The Competition Commission	-	7
The Department of Trade and Industry	23	4
Amounts included in trade receivables regarding related parties		
The Competition Commission	721	18
Related party transactions		
The Competition Commission		
Filing fees received as at year end	4,504	8,807
Facility fees paid as at year end	1,733	1,688
Employee costs received as at year end	155	107
Administrative costs received as at year end	-	17
Administrative costs paid as at year end	452	-
The Department of Trade and Industry		
Grants received as at year end	13,040	9,909
Administrative costs paid as at year end	56	35
Key Management Personnel		
Chairperson: D Lewis (31st July 2009)		
Package	773	1,581
Statutory contributions	8	13
Other salary related contributions	17	32
Total package	798	1,626
Full-time member/Chairperson: N Manoim		
Package	1,606	1,364
Statutory contributions	16	12
Other salary related contributions	55	29
Total package	1,677	1,405
Full-time member: Y Carrim		
Package	1,463	1,368
Statutory contributions	15	12
Other salary related contributions	55	37
Total package	1,533	1,417

	2010 '000	2009 '000
Head of Corporate Services: J de Klerk		
Package	752	661
Performance bonus	93	84
Statutory contributions	9	8
Other salary related contributions	28	27
Total package	882	780
Head of Research: R Badenhorst		
Package	460	425
Performance bonus	52	51
Statutory contributions	7	6
Other salary related contributions	22	21
Total package	541	503
Registrar: L Motaung		
Package	458	413
Performance bonus	52	51
Statutory contributions	7	5
Other salary related contributions	21	21
Total package	538	490

28. FRUITLESS AND WASTEFUL EXPENDITURE

Fruitless and wasteful expenditure	3	1
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An amount of R 3 368 is reflected as fruitless and wasteful expenditure in the current financial year. This amount reflects amounts that SARS has indicated is owed by the Tribunal for a PAYE shortfall in March 2007. The Tribunal paid this amount in April 2007 and therefore disputes the liability. The Tribunal has paid this amount over to SARS while we query and conduct our own investigation into this matter. The Tribunal expects this liability to be reversed.

29. EXTERNAL AUDIT FEE

Fees	501	271
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30. IMPAIRMENT OF ASSETS

Impairments

Property, plant and equipment	20	6
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This impairment arose from the disposal of the Tribunal server, a broken portable hard drive and a broken binding machine.

31. CONTINGENT LIABILITY

The Competition Tribunal was informed that applications for the retention of accumulated surpluses could not be made to National Treasury until the audit had been finalised. The Competition Tribunal has permission to retain surpluses generated as at 31st March 2009. On confirmation of finalisation of the audit the Competition Tribunal will request approval from the Department of Economic Development and National Treasury to retain the operating surplus of R 1.53 m generated as at 31st March 2010. As a result this amount (R 1.53 m) be reflected as a contingent liability in the Competition Tribunal's annual financial statements.

32. COMPARATIVE FIGURES

Certain comparative figures have been reclassified.

In Note 7 the statutory contributions and other salary related costs for 2009 were adjusted to exclude those salary related expenses and statutory payments paid to and on behalf of the Tribunal executives. The net effect was that “directors emoluments” increased. In addition cell phone allowances paid to the Tribunal executive were excluded from “cell phone expense” and included as part of “directors emoluments”

Salary provisions (with the exception of leave provisions) were previously reflected as provisions but as these amounts are known we have reclassified them as accruals.

	2010 '000	2009 '000
The effects of the reclassification are as follows:		
Statement of financial position		
Provisions previously stated	-	1,528
Decrease due to the reclassification of provisions as accruals	-	(1,100)
Provisions currently stated	-	428
Statement of financial performance		
Executive Committee members emoluments previously stated	-	6,118
Increase due to restating of statutory contributions	-	55
Increase due to restating of other salary related expenses	-	6
Increase due to inclusion of cellphone allowance	-	39
Executive Committee members emoluments restated	-	6,218
Administrative expenses previously stated	-	3,163
Decrease due to exclusion of cellphone allowance	-	(39)
Administrative expenses restated	-	3,124

33. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE

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

	2010 '000
Net surplus per the statement of financial performance	1,529
Adjusted for:	
Profit on sale of assets	(18)
Printing recoupment	(6)
Skills levy fund	(26)
Fair value adjustments	1
Increases / decreases in provisions	84
Impairments recognised	20
Transfer from retained income	7,685
Adjustments for items items capital expenditure reflected on budget:	
Leased equipment	(250)
Capital expenditure	(338)
Income in excess of budget:	
Filing fees from the Commission	(332)
Interest received	(737)
Under expenditure on budget:	
Personnel	(1,278)
Part-time Tribunal member fees	(726)
Local training	(439)
Overseas training	(1,224)
Professional Services	(219)
Recruitment costs	(100)
Administrative expenses	(475)
Facilities and capital	8
Competition appeal court	(445)
Under expenditure due to postponement of project:	
Development of Case Document Management System	(2,500)
Amotisation budget for software development	(214)

Report of the Audit Committee

We are pleased to present our report for the financial period ended 31 March 2010.

Audit Committee Members and Attendance

The Audit Committee of the Competition Tribunal (the "Committee") consists of the members listed hereunder and is required to meet 4 times per annum as per its approved terms of reference. During the year under review 5 meetings were held.

The Committee's meetings have regularly included the internal auditors and representatives from the Office of the Auditor-General South Africa.

Name of member		Attended	Held
J. Rapoo (Chairperson) (appointed 1st May 2007)	Non executive	4	4
H. de Jager (appointed 30th September 2008)	Non executive	3	4
M. Naidoo (appointed 1st September 2007)	Non executive	2	4
V. Nondabula (appointed 30th September 2008)	Non executive	3	4
K. Teixeira (appointed 16th November 2009)	Non executive	2	4
D. Lewis (Tribunal Chairperson 31st July 2009)	Executive	2	4
N. Manoim (Tribunal Chairperson 1st August 2009))	Executive	2	4
J. de Klerk (Head of Corporate Services)	Executive	4	4

Audit Committee Responsibility

The Audit Committee reports that it has complied with its responsibilities arising from section 55 (1)(b) of the PFMA and Treasury Regulations 27.1.7 and 27.1.10(b) and (c).

The Audit Committee also reports that it has adopted appropriate formal terms of reference as its audit committee charter, has regulated its affairs in compliance with this charter and has discharged all its responsibilities as contained therein.

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

The quality of in year management and monthly/quarterly reports submitted in terms of the PFMA and the Division of Revenue Act.

The Audit Committee is satisfied with the content and quality of monthly and quarterly reports prepared and issued by the Accounting Authority of the Tribunal during the year under review.

The effectiveness of internal control

The system of controls is designed to provide cost effective assurance that assets are safeguarded and that liabilities and working capital are efficiently managed. In line with the PFMA and the King III Report on Corporate Governance requirements, Internal Audit provides the Audit Committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the Internal

Report of the Audit Committee

Auditors, the Audit Report on the annual financial statements both any qualification and/or the emphasis of matter, and the management letter of the Auditor-General, it was noted that no significant or material non compliance with prescribed policies and procedures have been reported. Accordingly, we can report that the system of internal control for the period under review was efficient and effective.

Evaluation of annual financial statements

The Audit Committee has:

- reviewed and discussed the audited annual financial statements to be included in the annual report, with the Auditor-General and the Accounting Officer;
- reviewed the Auditor-General's management letter and management's response thereto;
- reviewed changes in accounting policies and practices; and
- reviewed significant adjustments resulting from the audit.

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

The Audit Committee concurs and accepts the Auditor-General's conclusions on the annual financial statements, and is of the opinion that the audited annual financial statements be accepted and read together with the report of the Auditor-General.

Chairperson of the Audit Committee



Date: 31 July 2010

Large Mergers

Case number	Acquiring firm	Target Firm	Decision
126/LM/Dec08	Steinoff Doors and Building Materials (Pty)Ltd and Steinbuild Properties (Pty)Ltd	Home centre (Pty)Ltd	Approved in previous period, reasons issued in this period
121/LM/Nov08	Shanduka Coal (Pty) Ltd	Springlake Holdings (Pty)Ltd	Approved in previous period, reasons issued in this period
108/LM/Oct08	DCD-Dorbyl (Pty) Ltd	Globe Engineering Works (Pty) Ltd	Approved in previous period, reasons issued in this period
01/LM/Jan09	Apexhi Properties Limited	Business Venture Investment no 1232 (Pty) Ltd	Approved in previous period, reasons issued in this period
05/LM/Jan09	Rio Tinto Plc and Rio Tinto Limited	BHP Billiton SA Holdings BV. And Richards Bay mining (Pty) Ltd and Richards Bay Titanium (Pty) Ltd	Approved in previous period, reasons issued in this period
12/LM/Jan09	MTN Group Limited	Newsshelf 664 (Pty) Ltd	Approved in previous period, reasons issued in this period
10/LM/Jan09	Old Mutual (South Africa) Limited	Medscheme Life Assurance Limited	Approved in previous period, reasons issued in this period
128/LM/Dec08	African Revival Investments Holdings (Pty) Ltd	Siyahamba Engineering (Pty) Ltd	Approved in previous period, reasons issued in this period
130/LM/Dec08	Business Venture Investments No. 1311 (Pty) Ltd	Sea Harvest Corporation Limited	Approved in previous period, reasons issued in this period
16/LM/Feb09	Premier Motor Holdings a division of Imperial Group	Key Truck & Car (Airport) (Pty) Ltd	Approved in previous period, reasons issued in this period
136/LM/Dec08	Basf Handels-Und Exportgesellschaft MBH	CIBA Holdings AG	Approved in previous period, reasons issued in this period
127/LM/Dec08	Aspen Pharmicare Holdings Limited	Fine Chemicals Corporation (Pty) Ltd	Approved in previous period, reasons issued in this period
17/LM/Feb09	Man AG	Volkswagen Caminhoese E Onibus Industrial E Comercio De Veiculos Comerciasis LtdA, Rua Volkswagen No.291, 7th 8 & 9	Approved
25/LM/Feb09	Pahana Investments 93 (Pty) Ltd	Pahana Investments 91 (Pty) Ltd	Approved
27/LM/Feb09	RZT Zelpy 5506 (Pty)Ltd	Seesa Limited	Approved
20/LM/Feb09	Masscash Holdings (Pty) Ltd	Sherewa Investments (Pty) Ltd	Approved
19/LM/Feb09	Main Street 581 (Pty) Ltd	Century Casinos Africa (Pty) Ltd	Approved

Appendix A

Case number	Acquiring firm	Target Firm	Decision
28/LM/Feb09	PSG Konsult Limited	Tlotlisa Securities (Pty)Ltd	Approved
131/LM/Dec08	Crest Chemicals (Pty) Ltd No. 1311	CH Chemicals (Pty) Ltd	Approved
29/LM/Mar09	Aquarius Platinum (South Africa) (Pty) Ltd	Rustenburg Platinum Mines Ltd and First Platinum (Pty) Ltd	Approved
21/LM/Feb09	Federated Timbers (Pty)Ltd t/a Builders Trade Depot	The Buildrite Group	Approved
32/LM/Mar09	Mogs (Pty) Ltd and Elbroc Mining Products (Pty) Ltd	Stope Technology Services (Pty) Ltd	Approved
02/LM/Jan09	Clidet no. 851 (Pty) Ltd	Sunshine Cash and Carry CC	Approved
03/LM/Jan09	Bidpaper Plus (Pty) Ltd ("Bidpaper")	Pretoria Wholesale Stationers (Pty) Ltd ("PWS")	Approved
39/LM/Apr09	Aquarius Platinum Limited	Ridge Mining Plc	Approved
22/LM/Feb09	JSE Limited	Bond Exchange of South Africa Limited	Approved
109/LM/Oct08	Lafarge South Africa Holdings (Pty) Ltd	Ash Resources (Pty) Ltd	Approved
38/LM/Apr09	Royal Bafokeng Resources (Pty) Ltd	Bafokeng Rasimone Platinum Mines Joint Venture	Approved
45/LM/May09	Investec Bank Limited	Stella Group Holdings (Pty) Ltd	Approved
36/LM/Apr09	Sappi Papier Holdings GMBH	M- Real Corporation	Approved
42/LM/May09	TSB Sugar RSA Limited	The Business of Illovo Sugar Limited's Pongola Mill	Approved
44/LM/May09	Clidet No.907 (Pty) Ltd	Boxmore Plastics International (Pty) Ltd	Approved
50/LM/Jun09	Tiger Consumer Brands Ltd & Tiger Food Brands Intellectual Property Holdings Company (Pty) Ltd	The Mayonnaise Business of Nestle (Pty) Ltd	Approved
40/LM/Apr09	Redefine Income Fund Limited	Apexhi Properties Limited and Madison Property Fund Managers Holdings Limited	Approved
52/LM/Jul09	Absa Capital Private Equity Fund	Parchment Trading 72 (Pty) Ltd	Approved
53/LM/Jul09	RFS Holdings B.V.	ABN Amro Holdings N.V.	Approved

Appendix A

Case number	Acquiring firm	Target Firm	Decision
51/LM/Jul09	ACUCAP Investments (Pty) Ltd	Old Mutual Life Assurance Company (SA) Ltd in Respect of the Property Letting Enterprise Known as "Bayside Mall"	Approved
49/LM/Jun09	Masscash Holdings (Pty) Ltd	Certain Stores owned and operated by Pick N Pay Retailers (Pty) Ltd and its wholly owned subsidiary named Score Supermarkets (Trading) (Pty) Ltd	Approved
33/LM/Mar09	Apexhi Properties Limited	Ambit Properties Limited	Approved
04/LM/Jan09	Masscash Holdings (Pty) Ltd	Finro Enterprises (Pty) Ltd T/A Finro Cash and Carry	Approved
74/LM/Oct09	TP Hentiq 6128 (Pty) Ltd	Partcorp Holdings Limited	Approved
62/LM/Sep09	Dip Holdco LLP	New Delphi	Approved
56/LM/Aug09	International Mineral Resources BV	Kermas South Africa (Pty) Ltd and Samancor Chrome Limited	Approved
58/LM/Aug09	Tsogo Sun Gaming (Pty) Ltd	The Millennium Casino Ltd	Approved
57/LM/Aug09	Santam Limited	Emerald Insurance Company Limited and Emerald Risk Transfer (Pty) Ltd	Approved
60/LM/Aug09	Reunert Limited	Siemens Enterprise Communications (Pty) Ltd	Approved
66/LM/Oct09	RZT Zelpy 5508 (Pty) Ltd	INM Outdoor (PTY) Ltd	Approved
68/LM/Oct09	Shoprite Checkers (Pty) Ltd	Transfarm (Pty)Ltd, Exfarm (Pty) Ltd, Group 2 Transport (Pty) Ltd, Medsnel Transport (Pty) Ltd, Pretoria IT Service (Pty) Ltd, Schulenburg Verbeek (Pty) Ltd and Wekmed Marketing (Pty) Ltd	Approved
67/LM/Oct09	Pareto Limited	Old Mutual Life Assurance Company (South Africa) Limited	Approved
83/LM/Dec09	Business Venture Investments no. 1347 (Pty) Ltd	Astor Group (Pty) Ltd and Three others	Approved
31/LM/Mar09	The Imperial Group (Pty)Ltd	Midas Group (Pty)Ltd	Approved
75/LM/Nov09	ABSA Bank Limited	Sanlam Home Loans(Pty) Ltd	Approved
80/LM/Nov09	Friedshelf 1058 (Pty) Ltd ("NEWCO")	Mananga Sugar Packers (Pty) Ltd	Approved

Appendix A

Case number	Acquiring firm	Target Firm	Decision
93/LM/Dec09	Barclays Bank Plc	Dywidag- Systems International Luxembourg	Approved
04/LM/Feb10	Sanlam Life Insurance Limited	Coris Capital Holdings (Pty) Ltd	Approved
94/LM/Dec09	Firststrand Limited	Makalani Holdings Limited	Approved
79/LM/Nov09	WBHO Construction (Pty) LTD	Roadspan Holdings (Pty) Ltd	Approved
70/LM/Oct09	Nedbank Limited	Imperial Bank Limited	Conditional approval
54/LM/Jul09	Remgro Limited	Venfin Limited	Conditional approval
71/LM/Oct09	Harmony Gold Mining Company Limited	Pamodzi Gold Free State (Pty) Ltd	Conditional approval
34/LM/Apr09	Chlor-Alkali Holdings (Pty) Ltd	Botswana Ash (Pty) Ltd	Conditional approval, reasons pending
69/LM/Oct09	Wispeco (Pty) Ltd	The Business of AGI Solutions (Pty) Ltd	Conditional approval, reasons pending
89/LM/Dec09	Investec Principal Investments, A Division of Investec Bank Limited	NCS Resins (Pty) Ltd	Approved, reasons pending
86/LM/Dec09	Optimum Koornfontein Investments (Pty)Ltd	Main Street 431 (Pty)Ltd	Approved, reasons pending
03/LM/Jan10	Grindrod (South Africa) (Pty) Ltd	Fuelogic (Pty) Ltd	Pending hearing
87/LM/Dec09	Sycom Property Fund Collective Investment Scheme in Property	Attfund Limited, in respect of various Property Letting Firms/Enterprise(s)	Withdrawn 26 Feb 10
27/LM/Feb09	RZT Zelpy 5506 (Pty)Ltd and	Seesa Limited	Pending hearing

Appendix B

Intermediate Mergers

Case number	Applicant	Respondent	Decision
13/AM/Jan09	Much Asphalt (Pty) Ltd and Gauteng Asphalt (Pty) Ltd, Road Seal (Pty) Ltd & Roadseal Properties (Pty) Ltd	Competition Commission	Withdrawn 05 Oct 09
88/AM/Aug08	Cape Gold Holdings (Pty) Ltd and Universal Recycling Company (Pty) Ltd	Universal Metal Shredding (Pty) Ltd	Pending hearing

Prohibited Practices

Complaint Referrals from the Commission

Case Number	Complainant	Respondent	Decision
05/CR/Feb05 55/CR/Jun05	Competition Commission & JT International SA (Pty) Ltd	British American Tobacco SA (Pty) Ltd	Dismissed
15/CR/Feb07 50/CR/May08	The Competition Commission	Pioneer Foods (Pty) Ltd t/a Sasko Bakeries	Found in contravention of the Act
97/CR/Sep08	Competition Commission	BMW South Africa (Pty) Ltd t/a BMW Motorrad & 13 Others	Granted a consent order
19/CR/Mar05	Competition Commission	Nationwide Airlines (Pty) (Ltd)	Withdrawn 29 Jun 09
80/CR/Jul07	Competition Commission	Mobile Telephone Networks (Pty) Ltd	Withdrawn 13 May 09
90/CR/Dec09	Competition Commission	Rainbow Farms (Pty) Ltd	Withdrawn 18 Jan 10
17/CR/Mar05	Competition Commission, Tracetec	Netstar (Pty) Ltd & 2 others	Decision pending
63/CR/Sep09	Competition Commission	Cape Gate (Pty) Ltd & Others	Pending hearing
61/CR/Sep09	Competition Commission	Arcelormittal South Africa Ltd, Scaw South Africa (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron and Steel Institute	Pending hearing
65/CR/Sep09	Competition Commission	RSC Ekusasa Mining (Pty) Ltd, Aveng (Africa) Ltd T/A Duraset, Dywidag-Systems International, Videx Wire Product (Pty)Ltd	Pending hearing
73/CR/Oct09	Competition Commission	Telkom SA Ltd	Pending hearing
76/CR/Nov09	Competition Commission	Geomatic Quarry Sales (Pty) Ltd t/a Quarry Co, Derby Concrete (Pty) Ltd t/a Denron, Robberg Quarry CC t/a Robberg Quarry, Denron Quarries (Pty) Ltd t/a Denron Quarries	Pending hearing
84/CR/Dec09	Competition Commission	Aveng (Africa) Limited t/a Steeledale, Capital Africa Steel (Pty) t/a Reinforcing Mesh Solutions, Vulcania Reinforcing (Pty) Limited, BRC Mesh Reinforcing (Pty) Limited	Pending hearing
88/CR/Dec09	Competition Commission	Gerardo Trading CC t/a Healthwise Distributors	Pending hearing

Appendix C

Case Number	Complainant	Respondent	Decision
92/CR/Dec09	Competition Commission	Bridgestone South Africa (Pty)Ltd, Maxiprest (Pty) Ltd, Autotruck & Tyres CC	Pending hearing
15/CR/Mar10	Competition Commission	Pioneer Foods & 16 Others (White Maize Milling)	Pending hearing
10/CR/Mar10	Competition Commission	Pioneer Foods (Pty) Ltd, Foodcorp (Pty) Ltd, Godrich (Pty) Ltd, Premier Foods (Pty) Ltd and Tiger Brands Ltd (Wheat milling)	Pending hearing
07/CR/Mar10	Competition Commission	Anix Trading 739 CC, Zedek Trading 799 CC	Pending hearing
06/CR/Mar10	Competition Commission	Chevron SA (Pty) Ltd & Others	Pending hearing
01/CR/Jan10	Competition Commission	Rainbow Farms (Pty)Ltd	Pending hearing
74/CR/Jun08	Competition Commission	Astral Operation Limited & Elite Breeding Farms	Pending hearing
103/CR/ Sep08	Competition Commission	Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Feltex Automotive (Pty) Ltd, Steinhoff International Holdings Ltd & KAP International Holdings Ltd Referral	Pending hearing
129/CR/ Dec08	Competition Commission	Rooibos Ltd, National Brands Ltd, Coffee Tea & Chocolate Company (Pty) Ltd, Unilever SA Foods (Pty) Ltd and Joekels Tea Packers CC	Pending hearing
23/CR/Feb09	Competition Commission	Rocla (Pty) Ltd & 9 Others	Pending hearing
15/CR/Feb09	Competition Commission	DPI Plastics (Pty) Ltd & Others	Pending hearing
111/CR/Oct07	Competition Commission	Komatiland Forests (Pty) Ltd & 10 others	Pending hearing
134/CR/ Dec07	Competition Commission	SA Breweries Ltd and 12 Others	Pending hearing
08/CR/Jul07	Competition Commission	Iscor Ltd & 6 Others	Pending hearing
31/CR/May05	Competition Commission	Sasol Chemical Industries Ltd, Kynoch Fertilizer (Pty) Ltd, Omnia Fertilizer Ltd	Pending hearing
19/CR/Mar05	Competition Commission	Nationwide Airlines (Pty) (Ltd)	Pending hearing
103/CR/ Dec06	Competition Commission	Clover Industries Ltd and 7 others	Pending hearing

Appendix C

Case Number	Complainant	Respondent	Decision
45/CR/May06	Competition Commission	Sasol Chemical Industries (Pty) Ltd, Yara South Africa (Pty) Ltd & African Explosives Chemical Industries Ltd	Pending hearing
18/CR/Mar05	Competition Commission	Assa Abloy (SA) (Pty) Ltd & 14 others	Pending hearing
09/CR/Jan07	Competition Commission	Allen Meshco (Pty) Ltd & 4 Others	Pending hearing
11/CR/Feb04	Competition Commission	Telkom	Pending hearing

Consent Orders

Case Number	Complainant	Respondent	Type	Fine
31/CR/May05	Competition Commission	Sasol Chemical Industries Ltd	Consent order	R 250,680,000.00
15/CR/Feb09	Competition Commission	Marley Pipe Systems (Pty) Ltd	Consent Order	R 31,078,213.02
23/CR/Feb09	Competition Commission	Concrete Units (Pty) Ltd	Consent Order	R 5,763,743.00
23/CR/Feb09	Competition Commission	Cobro Concrete (Pty) Ltd	Consent Order	R 4,022,568.29
15/CR/Mar10	Competition Commission	Keystone Milling Co. (Pty) Ltd	Consent Order	Pending hearing

Complaint Referrals from a Complainant

Case Number	Complainant	Respondent	Decision
48/CR/Jun09	AEC Electronics (Pty) Ltd	The Department of Minerals and Energy	Dismissed
80/CR/Sep06	Nationwide Airlines (Pty) Ltd, Comair	South African Airways (Pty) Ltd	Found in contravention of the Act
07/CR/Jan09	Surgi Sport Technologies CC	New Clicks Holdings Ltd	Withdrawn 21 May 09
30/CR/Mar09	Andre Allers of Electronic installers Associations of South Africa (trading as EIASA)	Makro Retail Stores, Game Retail Stores, Pick n Pay Retail Stores, Multichoices South Africa Stores	Withdrawn 30 Jun 09
13/CR/Feb04	Harmony Gold Mining Limited, Durban Roodepoort Deep Limited	Mittal Steel South Africa Limited, Macsteel International Holdings BV	Withdrawn 11 Sep 09

Appendix C

Case Number	Complainant	Respondent	Decision
49/CR/May07	Frederick Johannes van Zyl	Porsche Centre (SA)	Withdrawn
68/CR/Jul07	Chris Pearson Properties CC, Brad Pearson Properties CC, C&J Pearson Properties CC & Freefall Trading 211 (Pty) Ltd	Digital Service Centre Pentagraphix CC	Removed from roll
101/CR/Sep07	Egoli Tissue Ltd	Sappi Fine Papers (Pty) Ltd	Removed from roll
106/CR/Oct07	South African Towing	Recovery Association & Others and Ekurhuleni Metropolitan Municipality & 5 Others	Removed from roll
43/CR/May09	Preferred Provider Negotiators (Pty) Ltd	Iso Leso Optics Limited	Pending hearing
37/CR/Apr09	Jose Fernandes, O.J.L.De Sa, Henrique Leca	OBC Group (Pty) Ltd	Pending hearing
55/CR/Jul09	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Pending hearing
72/CR/Oct09	Johan Olivier	Nexor 210 CC, Ganter Pigeon Systems & South African National Pigeon Organisation	Pending hearing
78/CR/Nov09	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Pending hearing
81/CR/Nov09	Immobile Retail Investments (Pty) Ltd & 13 Others	ABSA Bank Ltd & 5 Others	Pending hearing
85/CR/Dec09	SAPEG (South African Petroleum and Energy guild)	BP SA (Pty) Ltd, Shell SA Refining (Pty) Ltd, Engen Petroleum (Pty), Total SA (Pty) Ltd, SAPREP (Management)	Pending hearing
91/CR/Dec09	1time Airline (Pty)Ltd	Lanseria International Airport (Pty)Ltd and Comair Limited t/a Kulula.Com	Pending hearing
16/CR/Feb07	Charter Property Sales	East Cape Property Guide	Pending hearing
39/CRMay05	Comair Ltd	South African Airways (Pty) (Ltd)	Pending hearing
26/CR/Feb09	Rukanani Distributors	Coca Cola Fortune (Pty) Ltd	Pending hearing
51/CR/May08	Tony McKeever	SA Rugby (Pty) Ltd	Pending hearing
77/CR/Jul08	Amatole Communication Services (Pty) Ltd	Cell C	Removed from roll
95/CR/Aug08	Five Star World T/A Five Star Tours	South African Airways	Pending hearing
100/CR/Sep08	Joshua Dlamini and Industrial Development Corporation	Competition Commission	Pending hearing

Appendix C

Case Number	Complainant	Respondent	Decision
125/CR/Nov08	Entelligence Limited	Google South Africa (Pty) Ltd & Google Ireland Ltd	Pending hearing
44/CR/May07	Charter Property Sales	The Saturday Star Property Guide	Pending hearing
64/CR/Jun07	Accurate Trading 34 (Pty) Ltd, Parsonage: Graham Stephen, Edser: Christopher Anthony, Moffett: Patrick John, Hughes: James Martin, Leonard: Raymond, Prologic Investments (Pty) Ltd	Nedbank Limited	Pending hearing
84/CR/Aug07	Raymond Leonard, Global Technology Investments (Pty) Limited, Accurate Trading 34 (Pty) Ltd & Accurate Trading 44 (Pty) Ltd	Nedbank Limited, Standard Bank of South Africa Limited & Gensec NSA Equity Fund Trust	Pending hearing
01/CR/Jan08	Peter Scott, Mr Video (Pty) Ltd	Nu Metro Home Entertainment, a division of Nu Metro Filmed Entertainment (Pty) Ltd	Pending hearing

Interim Relief

Case Number	Complainant/Applicant	Respondent	Decision
77/IR/Nov09	Directory Solutions cc	Trudon (Pty) Ltd formerly known as TDS Directory Operations (Pty) Ltd & Telkom SA Ltd	Decision pending
09/IR/Mar10	Gogga Tracking Solutions (Pty)Ltd	Vodacom Service Provider (Pty)Ltd	Pending hearing
14/IR/Jan09	Dimension Data (Pty) Ltd	Telkom SA Ltd	Pending hearing
64/IR/Sep09	Imperial Air Cargo (Proprietary) Limited	South African Airways (Proprietary) Limited	Withdrawn 14 Dec 09
46/IR/Jun09	Allen Lowell Few	Airports Company South Africa (Pty) Ltd	Withdrawn 01 Jul 09
59/IR/Aug09	Rollex (Pty) Ltd	Airports Company South Africa (Pty) Limited	Withdrawn 05 Nov 09
34/IR/Apr07	National Rental Association of South Africa	City Properties & Others	Removed from roll
112/IR/Nov07	Longain 1 Investments (Pty) Ltd t/a Flexicell	Vodacom Group (Pty) Ltd	Removed from roll
56/IR/Jun07	Multichoice Subscriber Management Services (Pty) Ltd	Telkom SA Ltd	Pending hearing

Procedural Matters

Case Number	Applicant	Respondent	Category	Decision
15/CR/Feb09	Competition Commission	Swan Plastics (Pty) Ltd	Default judgement	Removed from roll
31/CR/May05	Competition Commission	Yara SA (Pty) Ltd, Omnia Fertilizer Ltd	Counter application	Dismissed
31/CR/May05	Competition Commission	Yara SA (Pty) Ltd, Omnia Fertilizer Ltd	Amendment application	Granted
74/CR/Jun08	Competition Commission	Astral Operation Limited & Elite Breeding Farms	Discovery application	Dismissed
129/CR/Dec08	Competition Commission	Rooibos Ltd, National Brands Ltd, Coffee Tea & Chocolate Company (Pty) Ltd, Unilever SA Foods (Pty) Ltd and Joekels Tea Packers CC	Exception application	Dismissed
15/CR/Feb07 50/CR/Feb07	Pioneer Foods (Pty) Ltd	Competition Commission	Discovery application	Granted
31/CR/May05 45/CR/May06	Competition Commission	Sasol & Others	Consolidation application	Dismissed
23/CR/Feb09	Competition Commission	Rocla (Pty) Ltd & 9 Others	Amendment application	Granted
74/CR/Jun08	Competition Commission	Astral Operation Limited & Elite Breeding Farms	Joinder and Amendment applications	Granted
15/CR/Feb09	Competition Commission	DPI Plastics (Pty) Ltd & Others	Joinder and Amendment applications	Granted
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Dismissal and Discovery applications	Dismissed
63/CR/Sep09	Competition Commission	Cape Gate (Pty) Ltd & Others	Amendment application	Granted
63/CR/Sep09	Competition Commission	Cape Gate (Pty) Ltd & Others	Tribunal Directive	Pending further hearing
47/X/Jun09	Adcock Ingram Holdings Limited	Cipla Medpro South Africa Limited	Refund for filing fee	Granted
08/LM/Jan09	Grindrod Holdings SA (Pty) Ltd	P&O Ports Nationwide Cargo Terminals SA (Pty) Ltd	Filing fee Refund	Granted
103/CR/Sep08	Competition Commission	Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Feltex Automotive (Pty) Ltd, Steinhoff International Holdings Ltd & KAP International Holdings Ltd	Joinder and amendment application	Granted

Appendix D

Case Number	Applicant	Respondent	Category	Decision
103/CR/Sep08	Competition Commission	Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Feltex Automotive (Pty) Ltd, Steinhoff International Holdings Ltd & KAP International Holdings Ltd	Separation of issues	Granted
09/CR/Jan07	Competition Commission	Allen Meshco (Pty) Ltd & 4 Others	Postponement Application	Granted
97/CR/Sep08	Competition Commission	BMW South Africa (Pty) Ltd t/a BMW Motorrad & 13 Others	Amendment application	Granted
82/X/Nov09	Magna International Inc/Savings Bank of the Russian Federation	Adam Opel Gmbh	Filing Fee refund	Granted
69/LM/Oct09	Wispeco (Pty) Ltd	The Business of AGI Solutions (Pty) Ltd	Extension application	Granted
31/CRMAY05	Competition Commission	Omnia Fertilizer Ltd	Postponement application	Dismissed
23/CR/Apr09	Cape Concrete Works (Pty) Ltd	Competition Commission & Others	Separation of issue	Dismissed
103/CR/Dec06	Clover Industries Ltd, Clover SA (Pty) Ltd	Competition Commission & Others	Application to set aside Commission's complaint	Pending hearing
26/CR/Feb09	Rukanani Distributors	Coca Cola Fortune (Pty) Ltd	Condonation and Amendment application	Pending hearing
37/CR/Apr08	The New Reclamation Group(Pty) Ltd	Competition Commission	Amendment to Consent Order (Payment Period)	Pending hearing
63/CR/Sep09	Competition Commission	Cape Gate (Pty) Ltd & Others	Application to inspect	Pending hearing
103/CR/Sep08	Competition Commission	Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Feltex Automotive (Pty) Ltd, Steinhoff International Holdings Ltd & KAP International Holdings Ltd	Amendment application	Pending hearing
103/CR/Sep08	Competition Commission	Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Feltex Automotive (Pty) Ltd, Steinhoff International Holdings Ltd & KAP International Holdings Ltd	Joinder application	Pending hearing
55/CR/Jul09 73/CR/Oct09 78/CR/Nov09	Telkom SA Ltd	Competition Commission, Dimension Data (Pty) Ltd	Dismissal application	Pending hearing
61/CR/Sep09	Competition Commission	Arcelormittal South Africa Ltd, Scaw South Africa (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron and Steel Institute	Application to inspect	Pending hearing

Appendix D

Case Number	Applicant	Respondent	Category	Decision
61/CR/Sep09	Competition Commission	Arcelormittal South Africa Ltd, Scaw South Africa (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron and Steel Institute	Application to inspect	Pending hearing
61/CR/Sep09	Competition Commission	Arcelormittal South Africa Ltd, Scaw South Africa (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron and Steel Institute	Extension of time to file answer	Pending hearing
125/CR/Nov08	Entelligence Limited	Google South Africa (Pty) Ltd & Google Ireland Ltd	Amendment application	Pending hearing
80/AM/Oct04	Londoloza Forestry Consortium (Pty) Limited	Bonheur 50 General Trading (Pty) Limited & Others	Costs order	Pending hearing
134/CR/Dec07	Competition Commission and	SA Breweries Ltd & 12 Others	Discovery application	Pending hearing

Dormant Matters

Dormant matters are classified as matters where a period of one year has elapsed since the last filing.

The Tribunal is not obliged nor expected to expedite or be pro-active in dormant cases unless we are requested to do so by the parties to the litigation.

The Tribunal has recently introduced the following practice in respect of dormant matters - both parties in matters will be contacted and informed that the Tribunal intends to close the file in the registry and archive the material.

If a response is not received from either party indicating that they wish the matter to proceed, the file will be closed and archived offsite. In terms of our archiving policy records are kept for a period of 20 years.

At the end of the previous period there were 25 dormant matters. These were all followed up during the year under review and as a result at end of the current period under review there were no dormant matters identified and no further follow up required.

Competition Appeal Court Hearings

Appellant / Applicant	Respondent	Date of appeal	Decision
Mittal Steel South Africa Limited	Harmony Gold Mining Company Limited, Durban Roodepoort Deep Limited & Macsteel International BV	19 Apr 07	Matter remitted to the Tribunal for hearing
Omnia Fertilizer Limited	The Competition Commission	11 Jul 08	Appeal dismissed
AC Whitcher (Pty) Ltd	The Competition Commission, MTO Forestry (Pty) Ltd, Boskor Saagmeule (Pty) Ltd & Boskor Ripplant (Pty) Ltd	07 Jan 09	Appeal upheld with costs
Senwes Limited	Competition Commission	23 Feb 09 09 Mar 09	Appeal and cross appeal dismissed with costs
Woodlands Dairy (Pty) Ltd & Milkwood Dairy (Pty) Ltd	The Competition Commission	27 Mar 09	Tribunal's decision set aside
DCD Dorbyl (Pty) Ltd and Globe Engineering Works (Pty) Ltd		15 Apr 09	Withdrawn on 21 May 2009
The Competition Commission, JT International SA (Pty) Ltd	British American Tobacco SA (Pty) Ltd	17 Jul 09	Parties settled on 5 February 2010
Woodlands Dairy (Pty) Ltd & Milkwood Dairy (Pty) Ltd	The Competition Commission	04 Sep 09	Leave to appeal and cross appeal dismissed
Senwes Limited	Competition Commission	27 Nov 09 08 Dec 09	Leave to appeal dismissed with costs
The Competition Commission	Pioneer Foods (Pty) Ltd	24 Feb 2010	Pending hearing
South African Airways	Comair Limited & Nationwide Airlines (Pty) Ltd	10 Mar 2010	Pending hearing
Yara South Africa (Pty) Ltd	Competition Commission, Sasol Chemical Industries (Pty) Ltd and Omnia Fertilizer Ltd	15 Mar 2010	Pending hearing
Omnia Fertilizer	Competition Commission	17 Mar 2010	Pending hearing
Astral Operations Ltd & Elite Breeding Farms	Competition Commission	30 Mar 2010	Pending hearing

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