

# Annual Report

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# 2010 - 2011



**competitiontribunal**  
*south africa*



*tribunal*

## What We Do

The Competition Tribunal (the Tribunal) is an independent statutory body set up to adjudicate mergers and prohibited practices.

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# PART 1: REPORTS

## REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE COMPETITION TRIBUNAL REPORT ON THE FINANCIAL STATEMENTS

### Introduction

1. I have audited the accompanying financial statements of the Competition Tribunal, which comprise the statement of financial position as at 31 March 2011 and the statement of financial performance, statement of changes in net asset and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information, as set out on pages 58 to 82.

### Accounting authority's responsibility for the financial statements

2. The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with the South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA), and for such internal control as management determines necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor-General's responsibility

3. As required by section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), section 4 of the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and section 40(10) of the Competition Act, 1998 (Act No. 89 of 1998), my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with International Standards on Auditing and *General Notice 1111 of 2010* issued in Government Gazette 33872 of 15 December 2010. 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.
5. 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 judgment, 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.

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

### Opinion

7. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2011, and its financial performance and cash flows for the year then ended in accordance with SA Standards of GRAP and the requirements of the PFMA.

## REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

8. In accordance with the PAA and in terms of *General Notice 1111 of 2010*, issued in Government Gazette 33872 of 15 December 2010, I include below my findings on the annual performance report as set out on pages 37 to 48 and material non-compliance with laws and regulations applicable to the public entity.

### Predetermined objectives

9. There are no material findings on the annual performance report.

## COMPLIANCE WITH LAWS AND REGULATIONS

### Procurement and contact management

10. Certain goods and services with a transaction value between R10 000 and R500 000 were procured without inviting at least three written price quotations from prospective suppliers as per the requirements of TR 16A6.1 and National Treasury Practice Note 8 of 2007-08. Furthermore, no reasons for the deviations were recorded and approved by the accounting authority or delegated official.

# Reports

11. Certain payments were made to suppliers who did not submit an SBD 4, declaring whether the supplier or any person connected with the supplier is employed by the state or if the supplier is a legal person, whether the supplier has a relationship with persons/a person involved in the evaluation of the quotations as per the requirements of Practice Note 7 of 2009-10.

## Expenditure management

12. The accounting authority did not take effective and appropriate steps with certain aspects of the procurement processes to prevent irregular expenditure as per the requirements of section 51(1)(b) of the PFMA.

## INTERNAL CONTROL

13. In accordance with the PAA and in terms of *General Notice 1111 of 2010*, issued in *Government Gazette 33872 of 15 December 2010*, I considered internal control relevant to my audit, but not for the purpose of expressing an opinion on the effectiveness of internal control.

The matters reported below are limited to the significant deficiencies that resulted in the findings on compliance with laws and regulations included in this report.

## Financial and performance management

14. The non-compliance with SCM legislation could have been prevented had compliance been properly reviewed and monitored.

*Auditor - General*

Pretoria

29 July 2011



# Reports

## REPORT OF THE AUDIT COMMITTEE FOR THE YEAR ENDED 31st MARCH 2011

We are pleased to present our report for the financial period ended 31st March 2011.

The audit committee of the Tribunal (the committee) consists of the members listed hereunder and is required to meet 4 times a year as per its approved terms of reference. During the year under review the committee held 5 meetings.

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

**Table 1: Members of the audit committee**

Name of member	Status	Meetings required to attend	Meetings attended	Fees Received (excluding travel)
J. Rapoo (term ended July 2010)	Non executive	2	2	R 15 168
M. Naidoo (term ended September 2010)	Non executive	2	2	R 10 596
V.Nondabula (AC chairperson in January 2011)	Non executive	5	5	R 39 686
K.Teixeira (Risk chairperson-January 2011)	Non executive	5	5	R 39 542
M. Ramataboe (appointed - October 2010)	Non executive	3	2	R 10 596
N. Mhlongo (appointed - October 2010)	Non executive	3	2	R 10 596
S. Gounden (appointed - October 2010)	Non executive	3	2	R 10 596
N Manoim (Tribunal chairperson)	Executive	5	3	-
Janeen de Klerk (CFO)	Executive	5	5	-

### Audit committee responsibility

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

The 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, monthly and quarterly reports submitted in terms of the PFMA and the Division of Revenue Act

Monthly and quarterly reports on performance information and the Tribunal's finances were presented and reported in committee meetings and were monitored throughout the year. The committee is satisfied with the content and quality of the 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 PFMA and the King III Report on Corporate Governance requirements, an internal audit provides the 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 auditors, the audit report on the annual financial statements, both any qualification and/or the emphasis of the 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.

# Reports

However, it was noted that there were control deficiencies in procurement, contract management and expenditure management, as well as irregular expenditure, which management had disclosed. The Committee has noted management's commitment to correct the deficiencies. We will be closely monitoring management's implementation of the corrective actions in this regard.

## Evaluation of annual financial statements

The committee has:

- Reviewed and discussed the audited annual financial statements to be included in the annual report, with the Auditor-General and the accounting authority;
- Reviewed the Auditor-General's management letter and management's response thereto;
- Reviewed and discussed the performance information with management;
- Reviewed changes in accounting policies and practices;
- Reviewed the entities compliance with legal and regulatory provisions;
- Reviewed significant adjustments resulting from the audit.

The committee would like to highlight that the Competition Tribunal is highly dependent on the approval of the retention of accumulated surplus from the National

Treasury, as well as the approval of the annual grants from the Economic Development Department, in order to maintain its going concern status.

## Internal audit

We are satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the Tribunal and its audits.

## Auditor-General of South Africa

We have met with the Auditor-General to ensure that there were no unresolved issues. The committee concurs and accepts the Auditor-General's conclusions on the annual financial statements and is of the opinion that the audited financial statements be accepted and read together with the report of the Auditor-General.



**Chairperson of the Audit Committee**  
**Victor Nondabula**  
**Date: 29 July 2011**

## THE CHAIRPERSON'S REPORT

In almost all my 12 years with the Tribunal I've witnessed a consistent rise in the profile of the competition authorities together with the growing knowledge, by the public, that firms' competitive practices can have a direct impact on their lives. The reason for the high profile is the mixed fortunes that have accompanied some of the more significant prohibited practice cases that the Competition Commission (the Commission) has brought. For the Commission it has been a year of triumphs and disappointments.

On the triumphs side, the Commission has entered into some highly innovative settlements of prohibited practice cases which the Tribunal confirmed as consent orders. In the *Sasol* settlement the Commission made creative use of both structural and behavioural remedies to make the market for chemical inputs into the fertiliser markets more competitive. In *Pioneer* the Commission entered into an agreement that provided for pricing relief to consumers and investment support for new entry. We go into greater detail on these cases in our discussion on cases.

A healthy trend during this financial year has been the increase in prohibited practice cases that are being brought to us and the number which are settled as a result of consent agreements being entered into between the Commission and the particular respondent. While we lament the extent of allegedly anti-competitive conduct present in the market place, the fact that these cases are being referred to us is, in part, a measure of the success of the Commission's leniency policy for cartel cases and its increased focus on this area.

This increase in prohibited practice cases is best illustrated by our own hearings statistics. In the previous financial year we heard 10 prohibited practice cases, this year we heard 30. Fines imposed increased from R 292 m in 2009/2010 to R 788 m in 2010/2011. Of the number of prohibited practice matters we heard, consent orders or settlements, accounted for the bulk comprising 73.33% of the cases heard.

In *SPC* we made our most important decision to date on the calculation of fines. In this decision we rejected the purely arithmetic approach to fining and adopted a more discretionary approach. The fine we imposed on one firm in this case represented the highest percentage fine we have imposed so far, although it is not by any means the largest fine imposed. Recall that the Tribunal may fine a firm up to 10 % of its annual turnover.

The Tribunal will however where appropriate acquit firms where the Commission has not made out a sufficient case. Thus one firm alleged to be part of the same cartel in a particular region was acquitted. The Commission has since appealed this decision.

Significantly, our overall number of hearing days increased by 42% from last year. In the table below, we detail the number and type of cases heard comparing them to the previous financial year.

**Table 2: Number and type of cases heard compared to previous year**

Type of Case	2010/2011	%	2009/2010	%
Large Merger	55	47.42	52	61.18
Intermediate mergers	1	0.86	0	0
Procedural matter	30	25.86	23	27.05
Prohibited practice	30	25.86	10	11.76
	<b>116</b>	<b>100</b>	<b>85</b>	<b>100</b>

On the setback side for the Commission, various recent higher court decisions have led to a very strict interpretation of the powers of the Commission to refer complaints to the Tribunal. As a result a number of important complaint referrals brought by the Commission have been dismissed by the higher courts on procedural grounds and will not be tried on their merits before the Tribunal. These higher court decisions are binding on the Tribunal and will likely impact a number of other cases pending before us where respondents have indicated an intention to raise similar objections.

### New initiatives

Apart from our cases the Tribunal has been working in other areas. We have developed a case management system which will simultaneously manage case documents and provide a wide range of information required for case management and performance information reporting.

In an effort to have a more user-friendly and technologically updated interface with our stakeholders, we also revamped our website this year, launching the new look and functionality in February 2011.

### FAST FACTS FOR THE YEAR

- We issued decisions in 115 of the 116 cases we heard
- We issued decisions in all of the 55 large merger cases we heard
- Of the large merger cases filed, we heard 86% within 10 days of receipt
- We spent a total of 107 days in hearings
- We imposed more than R 787 million in administrative penalties
- We revamped our website, improving its look and feel and making it more user-friendly



# Reports

Details of the document management system and website launch appear in Part 4 of this report.

We have also improved our intern system so that we offer vacation jobs, not only for law students as we did last year. This year we had two interns in our finance and registry departments. Internships not only expose young students to the work environment but also enable them to make contacts and network. We intend to expand our internships in the coming financial year.

Another new initiative was to promote pro bono legal representation in competition cases.

Over the years we've observed that many small businesses and organisations are unable to afford the kind of representation necessary to represent them in competition cases.

In October 2010, Werksmans Attorneys hosted the launch of this initiative at their Johannesburg offices and it was well attended by many lawyers from the competition bar and the economic consultancy profession. We will continue to see how the program can be implemented in the course of next year and are grateful for the positive support of Pro-Bono and the Competition Committee of the Law Society for the Northern Provinces.

Our participation in international bodies continues. We remain involved in the activities of the International Competition Network and the OECD's competition forum.

One of our major concerns, for which we are looking to introduce reforms, is to expedite the hearings of cases. In an address I gave to the Law Society at the end of last year I spoke on the theme "Slow justice is no justice" and indicated how all parties to the system could contribute to improving the performance of the system. Whilst these ideas were viewed as provocative by some, on the whole the concept was sympathetically received. We have already put some ideas for expediting hearings into practice in merger hearings and look forward to doing so in other types of cases.

In our interaction with our line department, the Economic Development Department (EDD), which I am pleased to say has proved very positive, we have developed performance targets on which we report. Whilst it has proved difficult to do, given the fact that we are a purely adjudicative body, we have found appropriate targets to report on that neither compromise our independence nor prove meaningless.

Once again this year I am grateful to our Tribunal members, full-time and part-time, for their hard work and commitment. We are proud of the continuity in our staffing which helps keep an institutional memory and ensures an efficient service. Our case manager department is one exception as, due to the nature of this job, employee's leave after gaining a few years experience. As you will also read in Part 2, despite having had a few vacancies in this department at the beginning of the year we have since filled these vacancies with an enthusiastic new group.

With good staff, committed Tribunal members and a solid infrastructure we will be well-placed to meet the challenges of the coming year.

## Statement of responsibility

The accounting authority is responsible for the preparation, integrity and fair presentation of the financial statements of The Competition Tribunal of South Africa for the year ended 31 March 2011. The financial statements presented on pages 56 to 80 have been prepared in accordance with the South African Statements of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 55 of the Public Finance Management Act 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 Competition 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 is presented on page 4 and page 5.

The accounting authority initially approved and submitted the financial statements to the Auditor-General on 31 May 2011.

## 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 or to 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 10 members of the Tribunal, appointed by the President are as follows:

- Norman Manoim - chairperson (full-time)
- Mbuyiseli Madlanga - deputy chairperson (part-time)
- Yasmin Carrim (full-time)
- Andreas Wessels (full-time)
- Andiswa Ndoni (part-time)
- Lawrence Reyburn (part-time)
- Merle Holden (part-time)
- Thandi Orleyn (part-time)
- Medi Mokuena (part-time)
- Taki Madima (part-time)

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.

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.

### Objectives and targets

Because of its quasi-judicial nature the Tribunal is precluded from setting pro-active 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 case load. 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 are set out in Table 10 in the annual report.

### Financial highlights and performance

	2011	2010
	R'000	R'000
Revenue	20 576	18 244
Other Income	30	31
Interest Received	1 206	1 537
<b>Total Revenue</b>	<b>21 812</b>	<b>19 812</b>
Gain on disposal of asset	1	18
<b>Expenditure</b>	<b>(19 959)</b>	<b>(18 301)</b>
<b>Net Surplus</b>	<b>1 854</b>	<b>1 529</b>
<b>TOTAL ASSETS</b>	<b>25 187</b>	<b>23 359</b>
<b>TOTAL LIABILITIES</b>	<b>2 026</b>	<b>2 052</b>

Revenue for the year ended 31 March 2011 increased by 10.09%. Filing fee income increased by 33.57% while there was a 4.49 % increase in the grant received from the EDD.

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.

During the current financial year the Tribunal has continued to attempt to contain expenditure. Expenditure (net of capital expenditure) increased by 9.06%. 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 R21.31 m and these have increased by just over R1.85 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 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 budgeted 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.

## Events subsequent to financial position date

No events took place between the year-end date, 31st March 2011, and the date on which the financial statements were signed that were sufficiently material to warrant disclosure to interested parties.

## Executive committee members emoluments

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 managers are payable for the year ending March 2011. These have been accrued for the period and are included as trade payables and reflected in Note 27 in 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 reflected separately. Full-time Tribunal members do not receive performance bonuses.

Full-time Tribunal member's 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 five percent, bringing the chairperson's annual package to R 1 771 314 and R 1 535 093 for the full-time members package. This adjustment was made in December 2010 effective 1st April 2010.

## Property, plant and equipment

The Tribunal has adopted the policy prescribed by GRAP 17 relating to the assessment 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, plant and equipment.

## Executive committee

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

- Norman Manoim, chairperson
- Yasmin Carrim, full-time Tribunal member
- Janeen de Klerk, head of corporate services
- Lerato Motaung, head of registry
- 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.

## Number of employees

At the year-end the Tribunal's personnel complement consisted of three full-time panel members and 15 staff members.

## Fruitless and wasteful expenditure

There has been no fruitless and wasteful expenditure in the current financial year. In the previous financial year we reflected an amount of R 3 368 as fruitless and wasteful expenditure as SARS indicated that this related to a PAYE shortfall in March 2007 which was actually paid in April 2007. We have disputed this liability with SARS and are awaiting confirmation that our records will be corrected accordingly.

## 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 monthly management fee of R 32 395 was payable for the period under review. The MOA and the management fee are reviewed annually.

A unitary payment, based on amounts raised by the Department of Trade and Industry (the dti) and payable by the Commission, is made on a monthly basis by the Tribunal to the Commission in respect of the premises occupied by the Tribunal as well as related services provided by the dti. No formal written agreement exists between the dti and the Commission however the amounts raised by the dti are considered to be market related.

The MOA was amended to reflect that the Tribunal was now responsible for its own information technology management and matters pertaining to security and facilities management.

However this did not lead to substantial changes in the nature of the billing from the Commission for the year under review.

## **Any other material matter - Soccer World Cup T-shirts**

During the period under review the Tribunal incurred expenditure of R 13 209.25 that related to the Soccer World Cup.

This expenditure related to the purchase 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 T-shirts 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 2009/2010 annual report, which had a soccer theme.

### **Address**

#### **Business address**

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### **Irregular Expenditure**

The Tribunal procured the services of a law firm in the 2008/2009 and 2009/2010 financial year to undertake a substantial review of the Tribunal's human resources policies. While the correct procurement processes were followed in procuring their services for the policy review the Tribunal continued to retain their services during 2009/2010 and 2010/2011 for ad hoc legal advice and this deviation was not documented in writing and signed by the accounting authority. The irregular expenditure pertaining to this procurement amounted to R 101 542.36 in 2009/2010 and R 42 001.08 in 2010/2011.

The Tribunal has a number of service providers on its database that record and transcribe all the hearings conducted by the Tribunal. An internal decision was made to use one particular service provider as our preferred supplier for contested and large matters and other service providers are used for the less complicated matters thus reducing the risk of poor quality. Again while the Tribunal has adhered to procurement processes in terms of obtaining quotes we failed to document the use of a particular supplier as a preferred supplier. The irregular expenditure for 2009/2010 for this non-compliance amounts to R 176 736.48 and for 2010/2011 amounts to R 316 408.14.

In both these instances there was no deliberate intention to circumvent procurement processes but there was a failure to document the evaluation processes followed and the reasons for deviation and use of a preferred supplier. The accounting authority condoned this irregular expenditure (R 278 278.84 for 2009/2010 and R 358 409.22 for 2010/2011) post 31st May 2011 as satisfactory explanations for the choice of preferred supplier exist and there was no deliberate intention to not comply with legislation.

### **Materiality framework**

The Tribunal determined a planning materiality figure of R 145 000 for the current period in terms of a materiality framework. A figure of 1% of revenue (exclusive of government grants) and expenditure in the previous financial year was taken to represent the materiality figure.

Any loss or comparable quantifiable fact that exceeds the figure of R 145 000 must be disclosed in the annual report and financial statements if the disclosure is required by law and/or the fact could influence the decisions of the executive authority or legislature.

Material losses of a quantitative nature must be disclosed if they arose through criminal conduct or if they arose through irregular, fruitless or wasteful expenditure.

Material losses of a qualitative nature arising through criminal conduct must also be disclosed.

Disposal of a significant asset must be disclosed if it increases or decreases the operational functions of the Tribunal outside its approved strategic plan.

### **Going concern**

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

**Norman Manoim**  
29 July 2011



## PART 2: OUR PEOPLE

### MEET THE MEMBERS

The Competition Act provides for the President, acting on the recommendation of the Minister of Economic Development, to appoint members to serve on the Tribunal's adjudicative panel for a five-year term in the hearings that come before it. 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.

At the end of the financial year the Tribunal had three full-time members (which includes the chairperson), and seven part-time members. Out of these ten Tribunal members, the chairperson appoints a panel of three to hear each case.

Below is a profile of each of our Tribunal members, the faces behind the Tribunal's decisions. As you will see, 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.

#### Norman Manoim (BA, LLB), from 1 August 2009



##### *Chairperson and full-time Tribunal member*

Norman has been a full-time Tribunal member since its inception in September 1999. He was part of the team that drafted the Competition Act. Norman also lectures in competition law at Wits, part-time. Before joining the Tribunal, he was the managing partner of Cheadle, Thompson and Haysom Attorneys, in Johannesburg.

#### Mbuyiseli Madlanga (BJuris, LLB, LLM), from 1 August 2009



##### *Deputy chairperson and part-time Tribunal member*

Within the competition field Mbuyiseli was initially appointed to the Competition Appeal Court when it was newly established before being appointed part-time Tribunal member in April 2003. With effect from August 2009 he became the Deputy Chairperson of the Tribu-

nal. He has worked as a law lecturer at the University of Transkei, practised as an advocate and senior counsel, served and/or acted as a judge in various South African courts, including the Constitutional Court of South Africa. He is also a member of the Judicial Service Commission representing the advocates' profession.

#### Yasmin Carrim (BSc, LLB)



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

Before joining the Tribunal, Yasmin was Group Executive: Regulatory Affairs at MTN SA. She also served as a councillor at ICASA and, like Norman, was a director at Cheadle, Thompson and Haysom Attorneys. In line with her passion to advance human rights, Yasmin is a founding trustee of the Women's Legal Centre and

also serves as a director on the board of the Soul City Health Institute. In addition to her full-time Competition Tribunal membership, she is a part-time member of the National Consumer Tribunal.

#### Andreas Wessels (BCom Hons (Economics) cum laude, MCom (Economics) cum laude)



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

Andreas has more than 13 years experience in regulation of which more than 10 years are specifically in competition law and economics in South Africa and Europe. He has held various senior positions as economist, consultant and specialist advisor at the former Competition Board, the South African Competition Commission, the Netherlands

Competition Authority (NMa) and the National Energy Regulator of South Africa (NERSA).

#### Merle Holden (BCom Hons, MA, PhD)



##### *Part-time Tribunal member*

Merle is currently emeritus professor in the School of Economics and Finance at the University of KwaZulu-Natal. After graduating from the University of Natal she completed her graduate study at Duke University in the US. She was associate professor

# Our People

of economics at George Mason University in Virginia, US, before returning to South Africa in 1982. Her areas of specialisation include international trade theory and policy, open economy macroeconomics and competition policy. In addition to her academic career and numerous published works, she has served as a consultant to the World Bank and to UNCTAD.

## Medi Mokuena (Dip Juris, LLB, LLM)



### *Part-time Tribunal member*

Medi is the Managing Director of Mokuena Attorneys, a law firm she established in 1998. She is currently the chairperson of the audit committee of North-west Transport Investments (Pty) Ltd and South African Weather Services. She worked as a Company Secretary and Executive Assistant in the office of the Managing Director for the Landbank and as the Chairperson of the Meat Industry Trust. Prior to that she was a Group Company Secretary for Times Media Limited. She served her articles at Edward Nathan & Friedland.

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



### *Part-time Tribunal member*

Amongst her previous positions, Thandi was a senior partner at the law firm Eversheds, the National Director: CCMA and a director at the Legal Resources Centre. Her current board positions include the SA Reserve Bank, Toyota and Implats. She has contributed to the global fight against injustice of all kinds by conducting training in conflict resolution in Burundi, Rwanda, Sierra Leone and Ethiopia, by facilitating the World Conference against Racism and as co-author of the book 'Sexual Harassment in the Workplace'. Thandi is one of the founders of Peotona Group Holdings.

## Lawrence Reyburn (BSc, LLB)



### *Part-time Tribunal member*

Lawrence qualified as a patent attorney and worked in South Africa and Europe for several years in the intellectual property and commercial fields. He also gained his experience in competition law in South Africa and Europe and continued this interest on returning to South Africa in the period preceding the introduction of the current

Competition Act. Lawrence was the first general editor of the Butterworths publication: Competition Law of South Africa.

## Takalani Madima (LLM, MBA, PhD),



### *Part-time Tribunal member*

Taki practices law from the Cape and Johannesburg bars as an advocate and senior counsel. He was formerly acting judge in the Western Cape High Court and adjunct professor of law at UCT. He is a member of the Black Lawyers Association and is chairperson of Advocates for Transformation (Western Cape). Before joining the bar he worked at the Centre for Applied Legal Studies (Wits), Telkom, Ernst & Young and Transnet.

## Andiswa Ndoni (BProc, LLB, Dip Business Management, Cert. Corporate Governance)



### *Part-time Tribunal member*

Andiswa is currently Company Secretary and Legal Counsel for UBANK Ltd, a member of the Judicial Services Commission, a trustee for Anglo-Gold Ashanti Employee Share Ownership Scheme and an independent committee member for Risk and Governance at GEMS. Her previous positions include being CEO of the BLA Legal Education Centre, Director of the LSSA Practical Law School in East London and being the National President for the Black Lawyers Association.

# Our People

## MEET THE STAFF

The Tribunal secretariat is made up of 3 departments namely research, which is managed by Rietsie Badenhorst, registry, managed by Lerato Motaung and corporate services, managed by Janeen De Klerk. These managers report directly to the chairperson and assist him in his role as chief executive officer. The 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.

Through his active involvement in the day to day management of the Tribunal, the chairperson fulfils his responsibility as the Tribunal's accounting authority and administers the powers detailed in the Competition Act.

The entire Tribunal secretariat is made up of fourteen staff members who carry out the Tribunal's administrative, registry, logistics, research and financial management functions. While the Tribunal's current secretariat is large enough to deal with its present administrative functions and case-load, the executive committee is constantly reviewing the workload and structures to determine whether change or restructuring is required in order to increase efficiencies or remove backlogs.

To this end we are in the process of implementing an electronic case document management system and it will be necessary, following finalisation of this, to review the impact it may have on the Tribunal's procedures and capacity.

### Staff movement in the year

As mentioned in the chairperson's report, while the Tribunal has generally maintained a satisfactory level of staff continuity over the years, due to the nature of the research function staff tend to leave after gaining some professional experience. This year we said goodbye to Romeo Kariga, who resigned as case manager in April 2010, Mahashane Shabangu, who resigned as case manager in January 2011 and Thandi Lamprecht who resigned as case manager in February 2011.

We made the following appointments in the year:

- Mahashane Shabangu was appointed as case manager in April 2010;
- Kirsteen Kunneke was appointed as financial administrator in April 2010; and
- Thabani Ngilande, Tebogo Hlafane and Songezo Ralarala were appointed as case managers in March 2011.

## The teams

### Research



- Rietsie Badenhorst, head of research
- Londiwe Senona, case manager
- Ipeleng Selaledi, case manager
- Alicia Hlafane, case manager (appointed March 2011)
- Thabani Ngilande, case manager (appointed March 2011)
- Songezo Ralarala, case manager (appointed March 2011)
- Romeo Kariga, case manager (resigned April 2010)
- Thandi Lamprecht, case manager (appointed February 2010 and resigned January 2011)
- Mahashane Shabangu, case manager (appointed April 2010 and resigned February 2011)

### Registry



- Lerato Motaung, head of registry
- Tebogo Mputle, registry administrator
- Abigail Mashigo, registry assistant and driver
- David Tefu, registry clerk and court orderly

# Our People

## Corporate Services



- Janeen de Klerk, head of the corporate services
- Lufuno Ramaru, tribunal administrator
- Kirsteen Kunneke, financial administrator (appointed April 2010)
- Lethabo Mabilisa, executive assistant (absent)
- Colin Venter, IT support and network administrator (absent)

OECD Competition Committee. The Tribunal continues to benefit from its membership and exposure to these international bodies as the ICN provides developed and developing countries with a platform to address practical competition policy and enforcement issues while the OECD Competition Committee deals with strategic and contemporary issues in competition law.

## Local training

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; and
- students participating in selected certificate courses offered by the business school of the University of the Witwatersrand.

Tribunal members were also asked to chair various sessions at conferences, seminars and workshops.

## TRAINING OF TRIBUNAL MEMBERS AND STAFF

In order to remain informed and up to date on international competition practices the Tribunal has continued to provide members and staff with opportunities to attend local and international conferences and to participate in international competition bodies. These opportunities allow members and staff to interact with their counterparts in the competition field and share experiences.

In March 2011, the Tribunal held an internal workshop for Tribunal members and case managers. The purpose of the workshop was to review the work of the Tribunal to date and to discuss jurisprudence, processes and procedures. The workshop was presented by international competition experts Prof. Richard Whish and Prof. Eleanor Fox.

In addition to the above training, which related mainly to our core business of adjudicating competition cases, we continued to develop the skills of the Tribunal's support functions in areas such as corporate governance, health and safety, computer skills and project management.

## International training

During the period under review 3 full-time Tribunal members represented the Tribunal at 7 overseas conferences. The conferences included those of the International Competition Network (ICN) and the tri-annual meetings of the

Details and statistics of all the local and international training courses our members and staff attended this year are set out in Part 4 of this report.



- |                     |                       |                      |  |
|---------------------|-----------------------|----------------------|--|
| 1. Kirsteen Kunneke | 6. Andreas Wessels    | 11. Lerato Motaung   | 16. Londiwe Senona<br>(Absent: Lethabo Mabilisa) |
| 2. Janeen de Klerk  | 7. Thabani Ngilande   | 12. Tebogo Mputle    | (Absent: Colin Venter)                           |
| 3. David Tefu       | 8. Norman Manoim      | 13. Ipeleng Selaledi |  |
| 4. Lufuno Ramaru    | 9. Rietsie Badenhorst | 14. Abigail Mashigo  |  |
| 5. Songezo Ralarala | 10. Yasmin Carrim     | 15. Tebogo Hlafane   |  |



# PART 3: OUR CASES

## INTRODUCTION

The Tribunal is an independent statutory body set up to adjudicate mergers and prohibited practices.

As is evident from the table below, large mergers accounted for most of the cases the Tribunal heard in the year, followed by procedural matters then settlements between the Commission and respondent firms.

**Table 3: Types of cases heard and decided in the year**

Type of case	Number heard	Reasons issued
Large merger	55	51
Procedural matters	30	16
Intermediate merger	1	1
Complaint referral from the Commission	6	3
Complaint referral from a complainant	1	1
Consent order	22	0
Interim relief	1	2
<b>Total heard</b>	<b>116</b>	<b>74</b>

## MERGERS

Mergers are classified as either large, intermediate or small. Both large and intermediate mergers have to be notified to and evaluated by the Commission. However, the Commission can only decide the outcome of intermediate mergers and must refer all large mergers to the Tribunal for decision. On completion of a large merger investigation the Commission will make a written recommendation to the Tribunal for it to hear and decide.

After consideration the Tribunal can approve the merger transaction unconditionally, approve the transaction with conditions or prohibit the transaction outright.

The thresholds for these classes are established by the Minister of Economic Development in terms of the combined assets and/or turnover of the merging parties. These thresholds have been reviewed twice since the inception of the Competition Act, the most recent revision being in April 2009. The revisions were made in order to keep pace with inflation and economic growth. The current thresholds are illustrated in the table below.

**Table 4: Current merger thresholds**

	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

### Large mergers

Two large mergers stand out when we review our cases in the 2010/2011 financial year. The *Tsogo Sun / Gold Reef* merger received public attention when it was before the Tribunal, primarily because the Commission had recommended that the merging parties should sell-off one of their major casinos, as a condition to the deal, and the merging parties opposed this recommendation. In this case, the Tribunal had to consider if the Commission had presented enough evidence to support its theory of the potential competition harm that would arise after the merger. In the *Metropolitan / Momentum* merger, which also received much media attention because of the size of the merging firms and the public interest issues in the case, the Tribunal had to weigh up the job loss concerns against the benefits the merger would present.

Both cases are summarised below including the factors the Tribunal took into account in reaching decisions.

## Case Study

### *Tribunal encourages use of customer evidence in merger*

On 11 February 2011 the Tribunal unconditionally approved the merger between Tsogo Sun Holdings and Gold Reef Resorts. This decision followed an 8-day hearing in which the Competition Commission argued that Tsogo Sun and Gold Reef should only be allowed to merge on condition that they sold Silverstar Casino. The Commission based their argument on their view that Silverstar, which was part of the Gold Reef group at the time, was an effective competitive alternative to Montecasino (part of Tsogo Sun) and the merger would lead to the elimination of Silverstar as a competitor. The Commission submitted that, in the absence of effective competition, this would give the new merged entity an incentive to increase gaming prices or degrade its gaming product offering after the merger.

The merging parties however opposed this view arguing that consumers did not regard Silverstar and Montecasino as competitors and so there would be no need to maintain Silverstar as a “competitive alternative” to Montecasino. The merging parties argued that, after the merger, the merged firm would have no incentives to increase price or reduce the quality of its product offering.

The Tribunal, in its analysis of the case, emphasised the importance of getting the views of affected customers when trying to determine the potential competition effect a merger might have on a defined market. The Tribunal said that in the context of this merger the question of potential substitution between casino gaming and non-gaming leisure would have been best answered by the consumers of these services themselves, evidence which was not forthcoming despite the fact that casino gaming is a consumer market. The Tribunal reiterated that it “is highly supportive of the use of economic analysis in merger cases and that well conducted customer surveys can provide very valuable insights into market characteristics and dynamics, as well as customer behaviour and preferences, specifically in differentiated-goods markets.”

The Tribunal concluded that, based on the evidence presented to it, it could not determine if the merger would create a material incentive for the merged entity to post merger raise prices (in this context raise so-called casino “hold ratios”) or lower the quality of its offer. It therefore approved the transaction without any conditions.



### **FAST FACTS FOR THE YEAR**

- This year the Tribunal had 62 large mergers on its roll. Of these, we received 57 new mergers during this year and five were received in the previous year. One of the five was awaiting a hearing while the remaining 4 were awaiting reasons for decisions issued.
- We heard 55 matters (one from a previous period). Of those heard, 54 mergers were unconditionally approved and one was approved subject to conditions.
- We issued reasons in 47 of the 55 matters heard during the year and in four matters heard in the previous period.
- At year-end we had eleven matters on the roll. 3 are still to be heard, 1 is pending further hearings and 7 are pending reasons. Details of these are in Appendix A.
- Since our inception the Tribunal has ruled on 767 mergers (on average 63.92 merger decisions per year). We approved 89.44%

## Our Cases

### Case Study

#### Tribunal sets criteria for assessing job losses in a merger

On 14 October 2010 the Tribunal approved the merger between Metropolitan Holdings Limited (“Metropolitan”) and Momentum Group Limited (“Momentum”) on condition that the merged entity, MMI Holdings, had to ensure that there would be no retrenchments in South Africa, resulting from the merger, for 2 years after the merger implementation date. This condition however did not apply to senior management. The merging parties were also directed to advise their employees of this condition. This decision followed a hearing before the Tribunal in which the merging parties proposed to limit the number of merger related job losses to 1 000 in the first 3 years after implementing the merger. The merging parties also offered to provide support, such as core skills training to affected unskilled and semi-skilled employees, outplacement support and counselling, and to use their best endeavours to redeploy affected employees within the merged entity.



The Competition Commission, after assessing the merger, accepted the merging parties’ undertakings which had improved on the merging parties’ original undertakings and recommended to the Tribunal that the merger be approved subject to the implementation of these support measures.

The Tribunal, in its reasons, held that when the merging parties expect that there would be large retrenchments as a result of the transaction the parties had to justify the substantial loss of jobs flowing from the merger. The Tribunal indicated that the following criteria must be satisfied in deciding whether the retrenchments are justified:

- 1) That a rational process has been followed to arrive at the determination of the number of jobs to be lost, i.e. that the reasons for the job reduction and the number for jobs proposed to be shed are rationally connected; and
- 2) The public interest in preventing employment loss is balanced by an equally weighty but countervailing public interest for instance where the merger is required to save a failing firm, that justifies the job loss which is cognisable under the Act.

In considering the above elements the Tribunal found that the merging parties had arrived at the figure in an arbitrary manner and had failed to demonstrate that there was a rational connection between the efficiencies sought from the merger and the job losses claimed to be necessary to the merger. It therefore imposed a moratorium on all merger related retrenchments for a period of two years. The moratorium excluded senior employees and voluntary retrenchments or other forms of incentives for employees to resign such as early retirement packages, where the methods chosen were non-coercive.

#### 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, 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 of members or parties request additional information.

In the year under review, 49 of the 55 cases heard (86%) were given hearings within the ten day period.

We issued orders in 54 cases, with all of these orders being made within ten days after the hearing.

Tribunal Rule 35 specifies that written reasons must be provided within 20 days of issuing an order. We issued written reasons in a total of 51 cases. In 30 cases (58.82 % of the total) reasons were issued within this 20-day period. In the remaining 21 cases (41.18% 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; and
- when uncontested mergers are approved unconditionally there is no urgent need for written reasons within a fixed time frame.

#### Intermediate mergers

At the start of the year one intermediate merger application was on the roll. Four new matters were received, one matter was withdrawn in August 2010.

One matter heard was decided and three are pending hearings. Details of these cases are given in Appendix B.

## Our Cases

Occasionally, third parties that might be negatively impacted by a merger, approach the competition authorities with their concerns during the merger process. They do so with the purpose that the competition authority will either prohibit the merger outright or impose conditions on the merger that will minimise the negative impact of such a merger. This is what happened in the *Bedrock* merger which the Tribunal heard in this reporting period.

### Case Study

#### *Third party concerns addressed in merger conditions*

*On 21 July 2010 the Tribunal conditionally approved the acquisition by Bedrock of the Letaba, Numbi and De Kaap businesses from Mondi. This was an intermediate merger in which the Commission had identified certain competition concerns and, as a result, proposed that Bedrock divest the Numbi plantation. The merging parties however were not willing to do so and hence the Commission on 21 April 2010 issued a Merger Prohibition certificate. Consequently the merging parties on 5 May requested the Tribunal in terms of section 16(1) (a) to consider the Commission's prohibition.*

*Two main theories of harm emanated from concerns raised by Shefeera a third party who buys timber from Lethaba and Reatile a competitor of Bedrock in the supply of timber supports to the mining industry. Firstly, input foreclosure of hardwood timber to users thereof in downstream production processes and secondly, horizontal coordination between Bedrock and Reatile in the market for timber-based mining support products and services.*

*However, during the Tribunal's reconsideration process the Commission approached the Tribunal with a set of proposed behavioural remedies to address the input foreclosure and coordination concerns raised by Shefeera and Reatile. The Tribunal suggested certain further amendments and enhancement to the proposed set of remedies which the Commission took into account after which the Tribunal found the amended proposed remedies acceptable in the context of the transaction. Based on this the Tribunal conditionally approved the transaction.*

*The imposed behavioural conditions involve amongst other things adherence by Bedrock to two commercial timber supply contracts: first, a supply agreement entered into between Bedrock and Shefeera on 20 July 2010 which addresses Shefeera's input foreclosure concerns and second, a supply agreement entered into between Bedrock and Reatile on 20 July 2010 which addresses Reatile's input foreclosure and coordination concerns. The conditions further provide for a post merger price setting mechanism designed to eliminate any significant information exchange between Bedrock and Reatile as a result of the aforementioned supply agreements. This mechanism provides for an independent expert to determine Bedrock's timber supply prices to Reatile for the duration of the said agreements. More specifically, Bedrock and Reatile must disclose their pricing negotiation information to an expert only and not to the other party. The independent expert is also precluded from disclosing any information submitted to him/her to the party or any third party.*



#### **Small mergers**

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

#### **PROHIBITED PRACTICES**

##### **Complaint referrals from the Commission**

At the end of the 2009/2010 financial year the Tribunal had 29 complaint referrals on the roll. Four of these had their status changed to consent orders or settlements and one matter was split into two, making it 26 on the roll from a previous period.

We received 11 new complaint referrals. One matter from a previous period was withdrawn. Six matters were heard and three of these were decided while three matters are pending further hearings. The remaining 30 are pending an initial hearing.

An example of a complaint referral from the Commission is the concrete pipes cartel case, in which we imposed the maximum penalty allowed (10% of total turnover) on one of the cartel members.

## Case Study

### *Tribunal imposes maximum penalty on members of precast concrete products cartel*



*On 29 November 2010 the Tribunal imposed the maximum penalty allowed in the Competition Act on a member of a cartel in the concrete pipes industry. This was the first time that the Tribunal has imposed a penalty calculated on the basis of the total turnover of a company. In the past the Tribunal limited its penalties to the turnover relating to the products that were the subject of the cartel arrangements.*

*The Tribunal's decision was preceded by a complaint referral from the Competition Commission, on 13 February 2009, against 10 members of an alleged cartel in the market for precast concrete products. It accused them of fixing the selling price and dividing the market for the production of pipes, culverts and manholes. It also accused the cartel members of engaging in collusive tendering in respect of the supply of precast products to certain suppliers. The accused were: Rocla (Pty) Ltd and D & D (Pty) Ltd which it had acquired in 2006, Southern Pipeline Contractors (Pty) Ltd ("SPC"), Concrete Units (Pty) Ltd, Aveng Africa Ltd, Grallio (Pty) Ltd, Cobro (Pty) Ltd, Cape Concrete (Pty) Ltd Conrite Walls (Pty) Ltd, Craig Concrete Products (Pty) Ltd.*

*The Commission was informed of the cartel by Rocla in 2007 when it applied for leniency and was told that the cartel had been operating since 1973 until 2007 when it was disbanded. It had operated both nationally and regionally in Gauteng, KwaZulu Natal and the Western Cape.*

*Shortly after the Commission filed the complaint with the Tribunal four of the Respondents entered into the following settlement agreements:*

- Aveng paid a penalty of R46 277 000, representing 8% of Infraset's 2008 turnover*
- Concrete Units paid a penalty of R5 763 743, representing 7% of its 2008 turnover*
- Cobro Concrete paid a penalty of R4 022 568, representing 6.5% of its 2008 turnover*
- Cape Concrete paid a penalty of R4 371 386, representing 7% of its 2008 turnover*

*Three players remained. SPC and Conrite Walls acknowledged that they were part of the cartel but contested the size of the penalties sought by the Commission while Grallio denied involvement in the cartel and opposed the Commission's referral.*

*The Tribunal heard the case against SPC and Conrite Walls on 2-3 August 2010 and on 29 November 2010 imposed the maximum penalty of 10% of total turnover on SPC, amounting to R16.8 million and a slightly lower penalty of 8% of total turnover on Conrite Walls, amounting to R 6.1 million. SPC, who played an active role in the cartel and was a member of the cartel for 13 years, got a large penalty because it presented "a textbook example of a successful firm that could easily have entered into related concrete markets but elected not to because of its collusive arrangements with competitors" an act which had the effect of raising prices in the concrete products market. In Conrite Walls' case the Tribunal found mitigating factors noting that its role in the cartel was related only to markets in KZN and concerned fewer products.*

*In its judgment the Tribunal noted that the concrete pipes cartel was the "most enduring, comprehensive and stable cartel prosecuted to date... It operated in such secrecy that members were referred to by number and not name." The Tribunal also noted that the cartel members "enjoyed a quiet and hugely profitable life", as evidenced by the testimony of Aveng that, in their estimation, prices of concrete pipes fell between 25-30% after the cartel disbanded in 2007.*

*The Tribunal heard the matter against Grallio on 5, 6 and 12 August 2010 in a separate hearing and on 29 November 2010 the Tribunal dismissed the complaint against Grallio Precast stating that "Grallio's actions were diametrically opposed to the consensus of the cartel" and that the Commission had not shown that Grallio had been a party to the agreement or concerted practice.*

## Our Cases

### Complaint referrals from a complainant

The Tribunal received four new referrals from complainants in the year under review, and had 19 matters on its roll from a previous period. Five matters (four from a previous period) were withdrawn and seven matters were removed from the roll due to inactivity. One matter was heard with reasons being issued in this instance. At year-end ten referrals remained to be heard.

### Interim relief applications

The Tribunal received four new interim relief cases and had three on the roll from a previous period. Two matters were withdrawn, one matter was heard and decided and one matter heard in a previous period was decided. At year-end three matters were awaiting hearings.

### Consent orders

Consent orders are settlements that the Commission reaches with respondents in a prohibited practice case. Consent orders normally include an administrative penalty which the respondent must pay within a specified time. The Tribunal must confirm these agreements in order for them to be enforceable. After hearing a case for settlement, the Tribunal may confirm the settlement, refuse it or request that changes be made to it before confirmation.

At the beginning of the period there was one consent order on the roll from a previous period. As indicated above four complaint referrals had their status changed to "consent order" and a consent order was split into two – making it six consent orders on the roll at the beginning of the period.

18 new consent orders were received. 22 consent orders were heard, 21 were decided and 21 orders were granted and reasons were issued in two matters. At year-end there were three consent orders pending – two were pending a hearing while one was pending a further hearing.

The value of the settlements agreed to in consent orders totalled R 787 m.

Details of prohibited practice cases are given in Appendix C.

### CASES ON PROCEDURE OR POINTS OF LAW

The Tribunal is frequently required to determine procedural issues or points of law, and the past year was no exception in this regard. The Kansai / Freeworld Coatings case, discussed below, was one such case.

In the period under review, the Tribunal had 54 procedural matters on the roll. Of these, 40 were new applications and 14 were matters received in a previous period. One matter heard in a previous period was decided. Three matters were withdrawn, one matter was settled between parties and two matters were removed from the roll while 30 matters (eight from a previous period) were heard. 29 of the matters heard were decided, one matter is pending a decision and one matter is pending further hearings. Reasons were issued in 16 matters.

An additional 17 matters are still to be heard.

## Our Cases

### Case Study

#### *Tribunal considers legal test for proposed merger*

On 14 December 2010 the Tribunal issued its decision in the case brought by Freeworld Coatings against the Competition Commission and Kansai Paint. Freeworld had alleged that the Commission was wrong to not permit it to file a separate merger filing from Kansai Paint if and when the “proposed merger” between Freeworld and Kansai was notified. Usually merging firms file one common merger application to the competition authorities but, according to the Competition Act, the Commission may allow separate filings if it is reasonable and just to do so in the circumstances.



After hearing the case the Tribunal decided to send the matter back to the Commission for it to reconsider on the correct legal test.

In arriving at its decision the Tribunal found that the Commission’s legal test for deciding if a proposed merger existed between Freeworld and Kansai Paint was too strict. However, the Tribunal didn’t express a view on whether the Commission’s ultimate decision to refuse Freeworld a separate merger filing was wrong. The Tribunal found that the Commission had based its decision on the fact that intent to acquire control was insufficient to constitute a proposed merger and that only when the offer becomes binding should the merger be notified. The Tribunal said this was too strict and mechanistic legal test. It explained that according to the CAC’s decision in the Gold Fields/Harmony merger decision, one must “not be too mechanistic about facts when intention is accompanied by events subject to some contingency.” It also pointed out that the Commission’s Rule 28 gave the Commission the discretion, not only to determine whether it is reasonable and just to allow the separate filing, but also to give appropriate directions to give effect to the requirements of the Act.

This decision followed a hearing before the Tribunal in which Freeworld argued that Kansai Paint had, over time, made a systematic but unsolicited attempt to gain control of Freeworld. Freeworld also believed that the merger, if approved, would have given rise to significant competition problems given that these two firms were competitors and together would control a significant portion of the automotive paints market. Because Freeworld saw Kansai’s actions as an attempt at a hostile takeover and because the parties did not agree on the potential competition effect the takeover would have, Freeworld asked the Commission if it could file its merger documents separately from the acquiring firm, Kansai. The Commission’s view, however, was that Freeworld’s request to it was premature since the takeover actions it described did not amount to a “proposed merger” as required in the Competition Act. Kansai also believed the move was premature and said it hadn’t yet made an offer for the remaining shares in Freeworld.

After hearing submissions from Freeworld, Kansai and the Commission, the Tribunal referred the case back to the Commission for the Commission to revisit the decision it made and consider if, on the correct legal test, a proposed merger existed between the parties; and whether in light of that Freeworld should be allowed to file the merger separately from Kansai.

The nature of the cases on procedure or points of law are set out in the table below. Details of these cases are given in Appendix D.

# Our Cases

**Table 5: Nature of cases of procedure or points of law** **COMMUNICATING OUR CASES**

Nature of procedural matter	Number of applications
Access to confidential information	1
Amendment applications	7
Application to set aside summons	1
Amendment to consent order	1
Application to strike out	1
Application to inspect	3
Application for substituted service	1
Confidentiality application	1
Costs order	1
Discovery application	8
Dismissal application	6
Exception application	1
Extension applications	2
Extension of time to file answer	1
Failure to notify	1
Intervention application	2
Joinder application	2
Postponement application	1
Section 45 application	1
Separation application	1
Stay application	2
Suspension application	1
Review of Commission's decision	4
Tribunal directive	2
Condonation and amendment application	1
Variation of order	1
<b>TOTAL</b>	<b>54</b>

In an effort to promote the public's access to justice, the Competition Act requires the Tribunal to conduct its hearings in public and to conduct them informally. The Act also specifically frees the Tribunal from some of the more restrictive rules of procedure characteristic of the traditional court system, while still observing administrative law principles of fairness and due process.

Guided by the same principle, we consider it important to keep the public informed of the hearings that take place and invite them to attend. Being aware of the Tribunal's cases and witnessing the process raises the public's level of understanding and encourages them to participate in it. This doesn't only happen through attending the Tribunal's hearings, but also through the public participating in the broader debate on competition matters, which happens through the media.

As in previous years, in the year under review the Tribunal continued to raise the public's awareness of its cases and processes in order to inform them of the Tribunal's role and encourage public participation in the competition regime.

The Tribunal did this in the following ways:

- In addition to the legal process of inviting known interested stakeholders to participate in hearings, we invited the media to the merger and complaint hearings that took place in the reporting period. In this regard we sent out 84 media statements inviting the media to attend complaint and merger hearings or updating the media on changes to hearing dates. With due regard to confidentiality claims by parties to cases before the Tribunal, we made available case documents to the media when this was requested and responded to questions of process;
- We monitored the media coverage of the Tribunal in order to stay abreast of perceptions and to respond where necessary. While, informally, we regularly communicated with reporters to correct any reporting mistakes or misperceptions, formally we responded to one letter from a member of the public concerning the outcome of the Momentum / Metropolitan merger. The letter appeared in Business Day on 8 October 2010;
- While the Tribunal generally doesn't comment on ongoing cases or individual decisions through the media – in order to protect the integrity of the decision making process and the autonomy of the Tribunal – where appropriate we make our general insights known. In this regard we made available, to selected reporters, the chairpersons speech which he delivered at the Law Society breakfast on 19 October 2010 and this was covered by the media;



# Our Cases

- In addition to inviting the media to attend the hearings, we informed them of the outcome of Tribunal proceedings and sent out media statements when the Tribunal reached decisions in major cases.

While most of the Tribunal's cases received media coverage in the year under review, the cases which featured prominently in the media were:

- the Tribunal's decision in the Metropolitan/Momentum merger;

- the Tribunal's confirmation of the Commission's settlement with Pioneer Foods in the bread and milling cartel cases;
- the proposed large merger hearing between Wal-Mart and Massmart, which the Tribunal postponed till May 2011; and
- the hearing into the Commission's complaint against SAB. The Tribunal dismissed this case subsequent to the reporting period.

## COMMUNICATING THE WORK OF THE TRIBUNAL

**Battle brewing over beer price complaint**

**Marmello Masote**

THE director of the Port Elizabeth-based liquor wholesaler at the centre of a complaint before the Competition Tribunal against South African Breweries, has accused SAB of attempting to stall the price discrimination hearing.

Big Daddy's director Neco Pitsiladi said yesterday his aim was not to receive a discount but to ensure no more price discrimination took place.

The Competition Commission would be filing its response to SAB's application to have the case thrown out.

The Competition Tribunal will then need to make a ruling on whether it has jurisdiction.

**NICO PITSLADI**

The commission said it believed it had the right to add further particulars of complaint.

"I just don't understand why SAB discriminates on pricing does not discriminate on the retail level," said the timing of Pitsiladi's complaint was a sign of weakness.

"By then trying to get it thrown out they are trying to frustrate the process of going forward the case," he asked.

"He said this had a business negative impact," he added.

"If I, as a retailer can be helped by competition law, why can't I?"

on a weekend.

Publication: THE STAR BUSINESS REVIEW

**Massmart merger hearings put on ice**

**Unions force tribunal delay**

IN A DRAMATIC development in the ongoing saga over the proposed merger between Massmart and Wal-Mart, the Competition Tribunal has postponed the hearing until May 2011.

The tribunal's decision was a surprise, given that the merger had been approved by the Competition Commission in December 2009.

The delay is due to a request from the unions representing the employees of the two companies, who argued that the merger would result in significant job losses and a reduction in wages.

The unions argued that the merger would result in a loss of 10,000 jobs and a reduction in wages of up to 10%.

The tribunal's decision is a significant victory for the unions, as it gives them more time to prepare their case against the merger.

The tribunal will now have to consider the unions' arguments and decide whether to grant their request for a further delay.

The merger between Massmart and Wal-Mart is one of the largest in South African history, and has attracted significant media attention.

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The merger between Massmart and Wal-Mart is one of the largest in South African history, and has attracted significant media attention.

**Patel loses fight with Treasury - but will get funds**

**Patel loses fight with Treasury - but will get funds**

Development Minister Ebrahim Patel yesterday lost his battle with the Treasury over annual fees, but won the war to launch a more interventionist path in interpreting SA's evolving competition policy.

In a landmark agreement yesterday morning, the Competition Commission - accountable to Mr Patel's department - backed down and agreed to the Treasury's insistence that any money Pioneer Foods paid to settle the charges against it must go to the Treasury.

Pioneer will now pay a R1000m fine - the largest levied by SA's antitrust authorities - rather than a R250m fine and a further R250m into an antitrust start-up fund as it had agreed with the commission.

In a separate joint statement, however, the commission, the Treasury and the Department of Economic Development said the Treasury would pay R250m to create the antitrust fund.

The three parties also agreed the commission should be empowered "with the appropriate legal mechanisms to enforce its remedy orders" and would cooperate to change the laws to ease the way for competition authorities.

The body had that authority, Wit Teugene SC contended. "These powers are there, they are very wide. They may only be exercised for the purposes of the (Competition) Act, which are very wide," he said.

Pioneer chairman KK Combh shrugged off the fact that his company had overruled Sandhwa's recent R250m fine last May. "To me, it doesn't mean anything. We were going to pay the money in any case," he said.

**BusinessDay**

NEWS WORTH KNOWING

**Efficiency vs job losses**

The letter from Mike Sampson (Competition law is compromised, October 6) says that the Competition Tribunal is more concerned with job losses and size, rather than efficiency and the development of a strong and powerful insurance player.

**NORMAN HANCOCK**

PUBLISHED: 2010/10/08 07:37:34 AM

The letter from Mike Sampson (Competition law is compromised, October 6) says that the Competition Tribunal is more concerned with job losses and size, rather than efficiency and the development of a strong and powerful insurance player.

Mr Sampson was writing in response to the tribunal's statement that it would interrogate employment issues as a major concern when hearing the proposed merger between Metropolitan and Momentum (insurance companies). His suggestion is that efficiencies should be the only relevant consideration when assessing a merger.

While the writer correctly sets out some of the areas the competition authorities look at when assessing a merger, it is not true that the tribunal is more concerned with job losses than with efficiencies that a merger solely because it would lead to job losses. In its 11-year history, the tribunal has never prohibited a merger solely because it would lead to job losses. If one considers that in the period 1999 to 2009, the tribunal considered 660 large mergers, prohibited only eight of these and imposed conditions in 56 of them (including cases concerning employment conditions), this becomes evident.

Rather, the tribunal has imposed conditions on mergers in order to lessen the negative impact a merger could have on employment. Indeed, mergers may well result in job losses, but the tribunal's approach has been that: (1) this should not happen unnecessarily; (2) the numbers that could lose their jobs should be limited to what is absolutely necessary; and (3) where possible, the employees that might lose their jobs should be supported so they can more easily get back into the workforce.

competition tribunal south africa

# PART 4: OUR SYSTEMS

## CORPORATE GOVERNANCE

In the context of a public entity such as the Tribunal, corporate governance refers to the system of policies, processes, people and laws which ensure that the needs of all stakeholders are met. It implies that activities must be directed, controlled and managed using good business practices, accountability, objectivity and integrity. Good corporate governance requires the commitment of all.

The Tribunal, in determining and adhering to effective corporate governance, is guided by the principles encompassed in the King III code and is supplemented by statutory duties set out in the Public Finance Management Act (PFMA) and the Competition Act.

In managing its activities the Tribunal 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 EDD.

In the 2009/2010 financial year a high level review of the Tribunal's corporate governance framework, governance structures and compliance with relevant codes, protocol and legislation concluded that continued focus and further improvements were required. Consequently, during the financial year under review, the Tribunal embarked on various activities so as to achieve what would be an improved corporate governance environment. The sections below detail the corporate governance structures in place and highlight the progress made with regard to the development of a solid corporate governance structure and framework.

### Executive committee

The composition and objectives of the executive committee and a review of its activities during the year under review are set out in the chairperson's report on page 11.

### Governance structures



# Our Systems

The executive committee continues to meet but as meetings are often difficult to attend, given the hearings, we have this year opted for much more use of memo's and electronic communication. We meet at least quarterly or when substantial decisions need to be discussed and made. Four meetings of the committee were held in the year under review

## Audit committee

The Tribunal has had an established audit committee in place since March 2000. The current committee consists of five non-executive members. Standing invitees include the Tribunal chairperson, the head of corporate services, the internal auditors and the external auditors. At year-end it was constituted as follows:

- Jeff Rapoo – chairperson from July 2007 till July 2010 when his term ended
- Maleshini Naidoo – her term ended September 2010
- Victor Nondabula – AC chairperson from January 2011
- Karen Texiera – risk committee chairperson from January 2011
- Maemili Ramataboe – appointed October 2010
- Nala Mhlongo- appointed October 2010
- Sathie Gounden- appointed October 2010

The committee met five times in the year under review.

Attendance by and fees received by members (inclusive of travel paid to the non-executive members of the audit committee) during the year are set out in the table below.

**Table 6: Number of meetings attended and fees received by members**

Member	Meetings attended	Fees received
J. Rapoo	2	15 168
M. Naidoo	2	10 596
V. Nondabula	5	39 686
K. Texiera	5	30 542
M. Ramataboe	2	10 596
N. Mhlongo	2	10 596
S. Gounden	2	10 596
<b>Total fees</b>		<b>127 780</b>
<b>Other meeting costs</b>		<b>12 424</b>
<b>Training cost</b>		<b>83 040</b>
<b>Total costs</b>		<b>223 244</b>
<b>Average cost per member</b>		<b>31 892</b>
<b>Average cost per meeting</b>		<b>44 649</b>

If one takes into consideration all the costs associated with the development of members and the costs associated with meetings one can determine that, during the year under review, the average cost per audit committee

meeting held was R 44 649 and the average annual cost per member was R 31 892.

## *Functions*

The audit committee is constituted as a statutory committee of the Tribunal in respect of its statutory duties detailed in the PFMA and a committee of the executive committee in respect to all other duties assigned to it.

An audit committee charter sets out the committee's roles and responsibilities as well as all the requirements necessary for the committee to fulfil its function.

The committee has an independent role and its major responsibility is to assist the accounting authority of the Tribunal in fulfilling his obligations to demonstrate accountability and transparency as well as to ensure a high quality of service. The committee does not assume the functions of management, which remain the responsibility of the executives, officers and other members of senior management.

The committee's main functions include:

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

During the period under review the audit committee approved the internal and external plans presented by the auditors and reviewed the Tribunal's quarterly internal audit reports, annual report and financial statements for the year ending 31 March 2011.

## *Induction and Training*

During the current financial year the Tribunal developed an Audit and Risk Committee Manual. The purpose of this manual is to provide a comprehensive understanding of the powers, functions and duties of the audit and risk committee. It explains and provides guidance on the key principles and activities that should be considered by the respective committees. In addition the manual gives guidance to the committee members on the execution of their functions. The guide will also serve as an induction tool for new committee members.

Committee members participated in two training sessions facilitated by the Tribunal that dealt with the prescripts of King III, the PFMA, good governance practice and the role of audit committee members.

The committee will continue to perform a training needs analysis in order to ensure its members are kept abreast of changes in legislation, regulations and related codes of good governance and practice.

## Governance of risk

### 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 members 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.

The RC held three meetings in the period under review. The table below reflects the number of meetings each member of the RC attended.

**Table 7: Number of meetings attended by RC members**

Name	Number of meetings attended
J. Rapoo	1
V. Nondabula	3
M. Naidoo	1
K. Teixeira	3
M. Ramataboe	2
N. Mhlongo	2
S. Gounden	2
J. De Klerk	3
A. Wessels	2

A risk management implementation plan and risk charter have been developed and all office-bearers performing risk functions have signed appointment letters.

The RMC submits quarterly reports to the RC that identify any changes in the Tribunal's risk profile and provides details on the top 5 risks to the RC.

The top 5 risks identified as at March 2011 are detailed in Table 8

**Table 8: Top 5 risks faced by the Tribunal as at year-end**

Risk	Risk Category
Poor case management	Operational
Decision making compromised	Operational
Inadequate performance management	Organisational
Inadequate financial management	Financial Stability+Organisation +Regulatory+Statutory+Legal
Business interruption	Business Continuity planning

In the last quarter of the year Price Waterhouse Coopers undertook a high level review of the enterprise wide risk management processes in place at the Tribunal. The review focused on:

- risk governance;
- risk assessment;
- risk quantification;
- risk reporting and monitoring; and
- risk and control optimisation.

The conclusion of the high level review was that risk management process is at "developing" to "developed" maturity level. Price Waterhouse Coopers recommended minor improvements in the area of organisation and governance, risk measurement and reporting as well as risk communication and escalation.

### Training on risk

Risk assurance providers received training during the year that dealt specifically with their functions and responsibilities. This training took place during the RCC meetings.

As part of the risk embedding process, the risk management framework and risk register was workshopped with all staff in March 2011. Staff members were made aware of their role in terms of risk management and were given an opportunity to provide inputs into the risk management process.

It was emphasised that this was an ongoing process and their inputs could be made at any time during the year.

# Our Systems

## Governance of information technology

Sound corporate governance requires that consideration be given to the effective management and use of information technology. This is particularly important given the increasingly important role information and therefore information technology now plays in an entity's business processes as well as product and service delivery.

During the period under review the Tribunal spent considerable resources and time in the areas of IT governance and IT development. On the development side the Tribunal embarked on two major projects – the website upgrade and the development of electronic case document management software.

### Website upgrade

Our objectives in upgrading the Tribunal's website were to:

- keep abreast of technology;
- enhance the website's search facility and access to the Tribunal database for the user;
- increased speed and efficiency for the user;
- generate reports on website activity and the nature of the information being accessed; and to
- improve the look and feel of the website for the user.

The upgrade involved us changing hosts to an off-site service provider. We finalised and launched the new website in February 2011. The feedback we've received from users has been positive and it appears that we have met the objectives we set when undertaking the upgrade. In addition, the reports generated indicate that the upgrade was successful. While only two reports are available for the period under review it is interesting to note the following statistics:

- 2041 visitors in February 2011 and 1881 visitors in March 2011
- 3408 visits from 76 countries/territories in February 2011
- 3366 visits from 89 countries/territories in March 2011
- Average time on site in both months is close to 4.15 minutes with an average of 5.06 pages per visit

### Document management system

The IT focus for much of the second half of the year has been on the development and implementation of an electronic case document management software. In July 2011 BCX won the bid to develop and design this system and we anticipate that the system will be up and running by October 2011. Since the Tribunal's inception the Tribunal has managed all the processes and retention of documents relating to cases manually. Development of the electronic system has a threefold purpose:

- i) to electronically manage all processes related to the case function;

- ii) to store case documents in a manner that facilitates easy retrieval and safe storage; and
- iii) to provide required performance information for reporting purposes.

As at March 2011 the project is 30% complete and we look forward to its completion in the next financial year.

### Audit of our IT policies

KPMG, the internal auditors on contract in the Tribunal, undertook a high level gap analysis of the IT policies developed and implemented in the Tribunal. This analysis included a comparison with international standards of good practice and applicable legislation. Gaps identified were given a risk description and recommendations were made to management with regard to addressing these gaps.

Following on from this audit the Tribunal, together with the assistance of an outside consultant, has undertaken a significant review of current IT policies as well as the development of additional policies. These should be finalised by July 2011 and we are confident that the Tribunal will have in place a sound IT governance framework with policies that adhere to best practice and an IT strategy that addresses the IT needs of the Tribunal for the next 5 years.

While the small size of the Tribunal makes the establishment of a separate IT steering committee impractical, all major decisions pertaining to IT are motivated by the IT support and network assistant to the executive committee for approval. In addition a quarterly report on all aspects of IT is presented to this committee for review and a bi-annual compliance review is undertaken. This review assesses the level of compliance by the Tribunal to internal policies and legislative requirements. The audit committee of the Tribunal also performs oversight responsibilities in terms of IT governance.

Risks pertaining to IT are evaluated during the Tribunal's risk management process and included in the risk register if necessary.

## Governance and 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.

Sustainability refers to following three areas:

*“environmental sustainability” maintaining the quality and longevity of environmental resources;*

*“economic sustainability” refers to the overall financial model and productivity of an entity. The income and expenses of the entity must ensure its financial sustainability; and*

# Our Systems

*“social responsibility” refers to the social impact of a business but also includes adherence to ethical principles, giving back to society, health and safety, respect for human rights, equal opportunities, fair compensation, and ensuring a high quality of life. It involves eliminating unethical and corrupt behaviour. It involves providing a safe work environment and doing things for the local community, educating or helping others, participating in community groups or your local city and chamber of commerce.*

## Social responsibility

The Tribunal, being a public entity, is limited in its ability to engage in corporate social investment and, 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.

## Environmental sustainability

In order to contribute more effectively to environmental sustainability the Tribunal initiated a recycling project which we call “Go-Green”.

We have placed marked waste bins for specific materials around our offices. The Tribunal tracks the amounts we recycle monthly. These schedules reflect the types of material recycled as well as the amounts per material and total amount of recycled waste. Since the projects inception in September 2010 we have recycled 87.6 kg of waste with 73.74% of this being paper.

Around the Tribunal offices staff and visitors will notice recycling posters to make people more aware of the importance of recycling.

In addition the Tribunal is looking at replacing normal A4 printing and copying paper with recycled/environmental friendly paper. We are also currently in the process of developing a green policy to further promote awareness of the need to preserve our environment and to recycle waste materials.



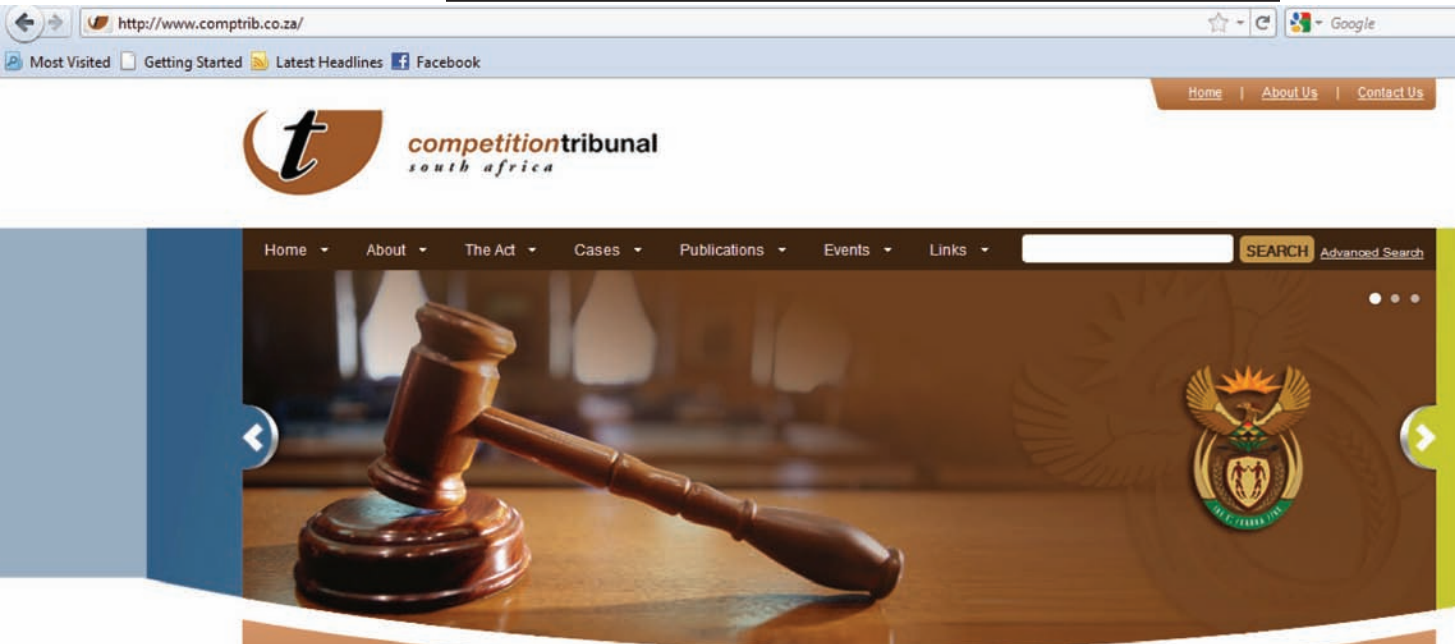
## Economic sustainability

The issue of financial stability as well as the presentation and commentary on the Tribunal's financial results is addressed in Part 6 of this report.

# Our Systems

## NEW AND IMPROVED FEATURES OF TRIBUNAL'S WEBSITE

- Timetable for all upcoming cases
- Better and faster search engine
- More flexibility to create special areas for specific cases and events
- Better information flow
- Larger capacity
- Press statements for all major cases
- Links with new versions of sister websites



competition tribunal south africa

Welcome to the Tribunal

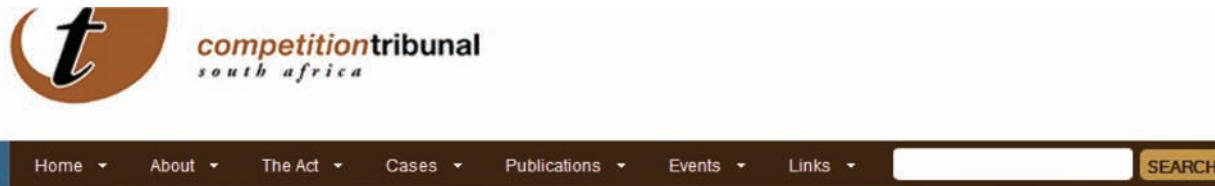
The Competition Tribunal has jurisdiction throughout South Africa and adjudicates

Recent Tribunal Decisions

[The Competition Commission vs Rand Merchant Bank, a division of First Rand Bank](#)

Tribunal Hearings

[What is happening with the Walmart Massmart merger?](#)



## Competition Act

Choose a sub-section
<a href="#">Competition Act</a>
<a href="#">Tribunal Rules and Flowcharts</a>
<a href="#">Merger Notification and Procedures</a>
<a href="#">Tribunal Forms</a>

[The Act](#) » Competition Act

### Competition Act

The purpose of the Competition Act is to promote and maintain competition in the Republic in order:

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

## COMPLIANCE WITH LEGISLATION

### The Competition Act

The Competition Act and the rules of the Tribunal prescribe the Tribunal's functions, powers, activities and procedures. 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 EDD is provided with quarterly reports detailing turn around times and targets in terms of set-down and the publication of decisions and orders.

During the current financial year the Tribunal has developed a first draft of procedural guidelines that will provide stakeholders with detailed guidance with regard to the procedures and processes required in the Tribunal.

### The Public Finance Management Act (PFMA)

In terms of the PFMA the Tribunal has been listed as a national public entity in Schedule 3A 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 EDD for approval:

- strategic plan for the period 1 April 2010 – 31 March 2015 (submitted and approved);
- budget for the period 1 April 2010 – 31 March 2011 (submitted and approved);
- business plan for the period 1 April 2010 – 31 March 2011 (submitted and approved);
- strategic plan for the period 1 April 2011 – 31 March 2016 (submitted and approved);
- budget for the period 1 April 2011 – 31 March 2012 (submitted and approved);
- annual performance plan for the period 1 April 2011 – 31 March 2012 (submitted and approved);
- request for approval to retain surpluses generated as at 31 March 2010 (submitted and approved); and
- quarterly reports on the Tribunal's expenditure, budget variance, activities and performance against set targets.

### Internal audits

The auditing firm KPMG, in terms of a three year contract awarded in April 2009, has been performing the Tribunal's internal audit function in the year under review.

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:

- internal audit for 2009-2010 follow up review;
- case management review;
- performance information review;
- information technology management review; and
- financial controls review.

KPMG develops an annual internal audit plan that balances risk and compliance. In developing the plan the following are taken into consideration:

- discussions with head of corporate services;
- the Tribunal's strategic risk profile;
- the Tribunal's core business processes; and
- 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 2011.

### 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); and
- Pay-as-you-earn (PAYE).

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

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

Lethabo Mabilisa has been appointed as the Section 16 (2) appointee and is responsible for the implementation of the requirements of the Act.



# Our Systems

The Section 16 (2) appointee reports, on a quarterly basis, to the executive committee and the risk committee on the compliance review (legislative and safety aspects) undertaken, in this way, she brings to their attention any issues that may compromise the safety of employees.

Other key OHS role players appointed were:

- an evacuation officer;
- a fire officer; and
- a first aider

The Tribunal has implemented a training programme that ensures that these role players are adequately trained to perform their allotted functions. 3 staff members attended 2 different training courses dealing with the OHS Act and the functions of health and safety representatives.

The Tribunal has also undertaken a review of its existing policies and procedures. The following procedural manuals (which include policies, processes and procedures) were finalised and approved:

- emergency response plan;
- occupational health and safety manual; and
- safety and security manual.

These documents are encompassed in one manual referred to as the Safety and Security Policy and Procedure Manual. The manual was workshopped with all Tribunal staff in February 2011 thus providing staff with an opportunity to clarify any queries they may have and provide any additional inputs.

## ETHICS

The Tribunal has a number of policies and procedures in place that enable it to maintain its commitment to high standards of integrity and ethics and compliance to principles of honesty, objectivity and independence.

A code of conduct for employees is in place. This code states what is expected of employees in their individual conduct and in relationships with others.

Procedures in place include:

- 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; and
- 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.

Financial disclosure forms are completed annually by Tribunal members (both full-time and part-time), managers and case managers. These disclosure forms ensure that financial interests are fully disclosed and thus 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.

The Audit and Risk Committee Manual referred to under *Governance Structures* deals with the manner in which the members of the audit committee should undertake their duties and responsibilities.

## STAFF MEETINGS

A forum comprising non-executive staff - the Tribunal Employees Forum (TEF) - provides an open, democratic channel through which staff members can raise issues of concern to them.

The TEF held five meetings in the period under review and issues 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.

During the year under review Lethabo Mabilisa and Tebogo Mputle were appointed as the TEF representatives for dealings with management, however, there were no meetings held between management and TEF representatives.

The forum has resolved that, going forward the TEF meetings will be held on a quarterly basis as opposed to monthly. Lethabo Mabilisa has been appointed the chairperson and Tebogo Mputle the secretary of the forum.

## HUMAN RESOURCE DEVELOPMENT

### Staff composition

At the end of the year under review, the Tribunal's staff complement consisted of 14 full-time staff members.

10 of the current staff members are female and 10 are black. 7 staff members have a bachelor's degree or higher qualification.

5 staff members have been employed with the Tribunal since its inception in 1999 and have served the Tribunal for more than 10 years. In recognition of their long service these staff members received an *ex gratia* payment in June 2010.

### Training and development

An entity's employees are its most important resource for ensuring the long-term sustainability of the organisation and the retention of institutional history. Bearing this in mind the Tribunal continues to provide employees with opportunities for further education and for personal development.

# Our Systems

It therefore continues to be committed to cultivating and nurturing a stable environment that is conducive to attracting, retaining and developing competent professional employees.

In the year under review training and development programmes took the form of in-house training, external courses, workshops and conferences (local and international). A total of 103.5 person-days were devoted to the training of members of the secretariat, which excludes Tribunal panel 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 annual ICN conference held in Turkey in April 2010 (attended by two Tribunal members and the head of research);
- the EC summer school competition law course presented in London in August 2010 (attended by one case manager);
- The Fourth Annual Competition Commission, Competition Tribunal and Mandela Institute conference on Competition Law, Economics and Policy in South Africa held in Johannesburg in September 2010, (attended by three Tribunal members, the head of research and four case managers);
- The ICN cartel conference held in Japan in October 2010 (attended by one case manager)
- the ICN merger workshop held in Rome in November 2010 (attended by one case manager and the chairperson); and
- the ICN unilateral conduct workshop held in Belgium in December 2010 (attended by the head of research and a Tribunal member).

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

The list of topics covered by the courses and workshops attended by various staff members is evidence of the fact that staff members are being exposed to a broad spectrum of areas of responsibility. These include:

- health and safety representatives responsibilities;
- preparation of audit files;
- competition law;
- project management;
- government tenders;
- governance, risk and compliance;
- King 111;
- PAYE;
- audit committee responsibilities;
- payroll risks;
- computer skills (Word 2007, Excel 2007 and One Note);
- records management; and
- the OHS Act and regulations.

We held a team building workshop in September 2010.

This workshop dealt with corporate governance and, through various role playing exercises, the role of each employee with regard to good corporate governance was emphasised. The workshop was attended by three full-time members and 13 staff members.

The head of corporate services continued to participate in an executive coaching programme during the earlier part of 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.

During the period under review National Treasury hosted various workshops on strategic planning, performance reporting and as well as CFO and risk management forums. The head of corporate services and the Tribunal administrator participated in these workshops and forums on a regular basis.

Finally, career advancement opportunities are available to staff members through the Tribunal's bursary and study loan scheme. The maximum study loan granted to staff members is R 8 000 per year. Once confirmation is received that 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.

During the year under review, the Tribunal gave study loans totalling R16 025.45 to three staff members and awarded bursaries totalling R11 172.45 to four staff members.

## INTERNSHIPS

The Tribunal's internship programme was expanded in 2010/2011 to include four students.

In the Research Department two internships were offered to final year LLB students from the University of Pretoria as part of the "supervised internship programme" – a joint collaboration between the Tribunal and the University of Pretoria.

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.

In addition, an internship was offered in the registry department to a South African student studying abroad and, in December 2010, the corporate services department managed the internship of a student studying commerce at the University of Johannesburg.

# Our Systems

Martin Motlhamme, the intern who was studying commerce at the University of Johannesburg, sent us a note on his internship experience with the Tribunal.

## Extract from intern report

*"The atmosphere of respect and harmony within the Tribunal staff is one of great superiority.....*

*It is something that I shall continue to value in my life for years to come. I feel that the work I did as a CS intern was fair and appropriate with regards to my Bcom studies. It basically covered most of the modules that I have in the Accounting course.*

*.....I also feel that the bar could be raised in bringing in more **challenging work**.....*

*There can be no complaints regarding workplace conditions at the Tribunal. The offices, open area, as well as the kitchen are spotlessly clean, all thanks to Mama Johanna and her colleagues.*

*As someone who did not really have a hectic workload, I cannot complain about space. It nice and safe to work in.*

*I also believe that work deemed 'small work', such as the Going Green Project, Stock take, Asset Verification as well as Financial Filing is very important and should be available for every CS intern should there be a programme for the division. It makes for good interaction with colleagues who do different work and play a different role within the Tribunal.*

*Otherwise, a lot cannot be expected from the Tribunal for much commercial/tasks as it is not a trading company, but a regulatory institution. Yet with ever changing times and working methods, it is a place worth considering, particularly for the auditing profession.*

*I enjoyed working with everyone at the Tribunal. Again, the underlying values that make a harmonious working environment, makes the Tribunal the place to be. Wonderful people".*

*Kind regards  
Martin Motlhamme*

## PERFORMANCE MANAGEMENT SYSTEM

The Tribunal's performance information policy provides for bi-annual assessments by the relevant divisional manager and the Tribunal's chairperson. The primary aim of this 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.

Performance is managed in a manner that ensures employees are given opportunities for self-development and is designed to facilitate the achievement of the Tribunal's

strategic objectives which are aligned with an individual's performance.

The net result is a system that 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.

During this process the development needs of staff members are identified and addressed. In addition, salary increases and any bonuses awarded are linked to the outcome of the appraisals.

# PART 5: OUR PERFORMANCE

## PERFORMANCE INDICATORS

The Tribunal was required to revise its strategic plan following the transfer of functions from the dti to the EDD in April 2011. The revised plan was tabled in Parliament in July 2010.

In the strategic plan the Tribunal identified 8 strategic objectives that enable it to operate within the context of its mandate - the Competition Act 1998.

The objectives are identified below:

- Timeous decisions of a high calibre
- Compliance with relevant legislation
- Effective communication of our work with the public
- Maintaining a good corporate image and reputation
- Courteous, efficient, informed interaction with customers
- Inculcating a proper value system
- Ensuring access to justice
- Fairness, objectivity and independence

These strategic objectives have been divided into 3 major categories as follows:

**Table 9: Strategic objectives**

<b>Policy and Legislation</b>	Compliance with relevant legislation Fairness, objectivity and independence
<b>Enforcement and Compliance</b>	Timeous decisions of a high calibre Courteous, efficient, informed interaction with customers
<b>Education and awareness</b>	Effective communication of our work with the public Inculcating a proper value system Ensuring access to justice Maintaining a good corporate image and reputation

Within each of these major categories specific activities and outputs have been identified. Performance indicators and targets have been assigned where possible for each output.

These objective, outputs, indicators and targets are tabulated in the matrix reflected on pages 37 to 48.

**Table 10: Performance Information Matrix - 1st April 2010 - 31st March 2011**

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Policy and Legislative Development</b>							
<b>Propose new regulations or amendments to regulations and legislations</b>	Amended or new regulations and legislation	Participate in process when requested to by the EDD	<i>Interactions assessed quarterly and number of processes Tribunal participates in is recorded</i>	While there were no requests to participate in processes dealing with changes in legislations during the current financial year the Tribunal participated in 11 meetings with the EDD	No target set by the Tribunal as the process is initiated by the Minister		
	Produce "procedural guidelines" document	Prepare draft guidelines for discussion	No specific timeframes were set	Draft guidelines have been prepared and submitted to the Chairperson for review	While a draft has been prepared the review will take some time as it is necessary to ensure that all necessary processes and procedures have been accurately documented		
		Finalise guidelines for distribution Post guidelines on Tribunal website Annually review and update guidelines document	No specific timeframes were set No specific timeframes were set No specific timeframes were set	Guidelines not finalised Guidelines not finalised Guidelines not finalised			
<b>Input/ conduct research and contribute to various policy making processes</b>	Position papers	Position papers finalised and presented to relevant stakeholders	3 papers per annum	1	The Tribunal was only requested to present one paper but they were invited to chair 3 sessions at the annual ICN conference		
		Position papers placed on website	No target set number presented will be posted on website	0	Due to an administrative oversight the paper was not posted on the website		
	Policy recommendations to be presented on request by other agencies/ stakeholders	Policy recommendations presented	No target set prepared on request	0	There were no requests for the Tribunal to make policy recommendations during the period under review		
<b>International best practice research and contribution</b>	Participate in ICN conference/working group/research	Participation in working groups/conferences and position papers presented.	Participate in at least 2 working groups/ conferences per annum	3 at Annual ICN conference 2 at ICN merger workshop 2 at ICN unilateral conduct workshop and 1 at ICN cartel workshop	Targets exceeded	See training budget	See training budget
	Participate in OECD Competition Committee meetings	Participate in meetings and provides specific input when requested	3 meetings per annum	Tribunal representatives attended 3 meetings of the OECD Competition Committee	Targets fully met	R 163	R 149

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Policy and Legislative Development</b>							
<b>Large Merger</b>	Referrals (Contested and uncontested)	Referrals from a previous period New mergers referred	<i>Tribunal merely reports on number and status of matters on a quarterly basis</i> Matters on the roll from a previous period New matters referred	5 (1 pending a hearing and 4 pending reasons) 57	No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties		
		Status of merger at the end of each period	<b>STATUS OF MATTERS</b> Matters heard No. approved with conditions No. approved unconditionally No. prohibited No. withdrawn No. pending hearing No. pending decision No. pending reasons No. of orders issued No. of reasons for order issued No. of dormant matters	55 (1 from a previous period) 3 51 (1 from a previous period) 0 0 4 (1 pending further hearing) 0 7 54 51 (4 heard in a previous period) 0	PT Tribunal members fees Recording Flights Accommodation Car hire Other	R 1 694 R 521 R 462 R 70 R 27 R 114	R 1 370 R 346 R 116 R 50 R 19 R 57
<b>Large Merger</b>	Referrals (Contested and uncontested)	Turnaround times	Hearing set down within 10 business days of referral  Order issued within 10 business days of hearing Written reasons for decision provided within 20 business days of hearing	49 of 55  54 of 54 30 of 51	Hearings are set down in agreement with the merging parties and all other parties concerned <i>Delays occur when parties are not ready for a hearing and 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  Target fully met  Many of the mergers received are complicated matters and the writing of a decision is delayed by the nature of the transaction.		

# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Enforcement and Compliance</b>							
<b>Intermediate merger</b>	Requests for consideration				<p>A number of matters have been heard by a panel of 3 part time members and this has lead to delays as the finalization of reasons has been dependant on the availability of the members</p> <p>Delays also occur because the writing of reasons for contested mergers and uncontested mergers approved conditionally or prohibited are given priority</p> <p>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</p>		
			Average turnaround times	<p>An average of 8.67 business days to set down a hearing after notification</p> <p>Average of 0.72 business days to issue an order following a hearing</p> <p>An average of 22.47 business days to issue reasons after an order has been issued</p>			
			<p>Tribunal merely reports on number and status of matters on a quarterly basis</p> <p>Matters on the roll from a previous period</p> <p>New matters received</p> <p><b>STATUS OF MATTERS</b></p> <p>Prehearings held</p> <p>No. heard</p> <p>No. approved conditionally</p> <p>No. approved unconditionally</p> <p>No. prohibited</p> <p>No. withdrawn</p> <p>No. pending hearing</p> <p>No. pending decisions</p> <p>No. pending reasons</p> <p>No of orders issued</p> <p>No. of reasons for issued</p>	<p>1</p> <p>4</p> <p>4 (1 matter had 2 prehearings)</p> <p>1</p> <p>1</p> <p>0</p> <p>0</p> <p>1</p> <p>3</p> <p>0</p> <p>0</p> <p>1</p> <p>1</p>	<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>		

# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Enforcement and Compliance</b>							
<b>Intermediate merger</b>	Requests for consideration	Turnaround times	Pre hearing set down within 20 business days of notification Average Turnaround times	2 of 3  An average of 20 business days to set down a pre-hearing following notification <i>An average of 1 business day from a hearing to issue an order</i>	Delays in prehearings may occur because parties are not all available on specific dates		
			Order issued within 10 business days of hearing Written reasons for decision provided within 20 business days of hearing	An average of 64 days to issue reasons following the issue of an order 1 of 1  0 of 1	Target fully met  Reasons for decisions may take time to write particularly if they deal with complicated issues		
<b>Prohibited Practices</b>	Cases under consideration	Type of referrals under consideration Referrals from a previous period New referrals received  Status of referral under consideration	<i>Tribunal merely reports on number and status of matters on a quarterly basis</i>  <b>Complaint referrals from a complainant</b> Referrals on roll from a previous period New referrals received  <b>STATUS OF MATTERS</b> No. heard No. of prehearings No. of consent orders granted No. of cases where consent order not granted No. of decisions where relief was granted No. withdrawn Matter removed from the roll No. of cases dismissed (no relief granted) No. of cases pending hearing/further hearing No. of cases pending a decision/order No. of cases pending reasons	19  4  1 2 0  0 0 5 7 1 10 0 0	No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties		



# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Enforcement and Compliance</b>							
<b>Prohibited Practices</b>	Cases under consideration	Turnaround times	<p>No. of orders issued No. of reasons issued No. of dormant matters</p> <p>The rules suggest that a prehearing conference set down within 20 business days of close of pleadings but allows for discretionary powers as adhering strictly to these timeframes may result in a matter being set down prematurely (before parties are ready)</p> <p>Average turnaround times</p> <p>Order and reasons for decision issued within 100 business days of hearing</p>	<p>1 1 0</p> <p>1 of 2</p> <p>An average of 16.5 business days from close of pleadings to send out a prehearing invite An average of 13 business days to issue an order following a hearing 1 of 1</p>	<p><i>Delays occur as restrictive practices cases are of a complex nature and therefore require more time to prepare for hearings.</i></p> <p>The limited availability of parties causes delays in setting down a matter</p> <p>Target fully met</p>		
<b>Prohibited Practices</b>	Cases under consideration	Type of referrals under consideration	<b>Complaint referrals from the Commission</b>		No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties		

# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Enforcement and Compliance</b>							
		Referrals from a previous period	Referrals on roll from a previous period	29 complaint referrals (CR) - 4 changed to consent orders (CO) in this period. 1 CO split into 2 and 1 CR split into 2 1 CO Total on roll - 26 CR and 6 CO 18 CO and 11 CR			
		New referrals received'	New referrals received	28 (6 CR and 22 CO) 8			
		Status of referral under consideration	<b>STATUS OF MATTERS</b> No. heard No. of prehearings held No. of orders issued 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. withdrawn Matter removed from the roll No. of cases pending hearing No. of cases pending further hearing No. of cases pending a decision/order No. of cases pending reasons No. of reasons issued No. of dormant matters	21 CO and 3 CR 21 0 2 1 CR 1 CR received in a previous period 0 30 CR and 2 CO 3 CR and 1 CO 0 0 3 0			

# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000	
<b>Strategic Objective: Enforcement and Compliance</b>								
<b>Prohibited Practices</b>	Cases under consideration	Turnaround times	The number of prehearing invitations that are sent out within 20 business days of close of pleadings in contested matters	3 of 8	Delays occur as restrictive practices cases are of a complex nature and therefore the parties concerned require more time to prepare for hearings. The rules allow for discretionary powers as adhering strictly to timeframes may result in a matter being set down prematurely The limited availability of parties also causes delays in setting down a matter			
			Average turnaround times - CR	An average of 77.25 business days to send out prehearing invite after close of pleadings				
			Average turnaround times - CO	An average of 123.33 business days to issue an order following a hearing An average of 13.5 business days to set down a hearing following notification of CO An average of 0.47 business days to issue an order following a hearing	2 of 3 CR and 21 of 21 CO's	Decisions in complaint referrals often involve reviewing substantial evidence and are thus complicated and the writing and issuing of decisions can therefore be delayed.		
<b>Prohibited Practices</b>	Cases under consideration	Type of referrals under consideration Applications from a previous period New referrals received Status of referral under consideration	Tribunal merely reports on number and status of matters on a quarterly basis		No targets set as the Tribunal is an adjudicative body and required to react to matters referred by the Commission or external parties			
			Interim Relief	3				
			Applications on roll from a previous period New referrals received	4				
<b>STATUS OF MATTERS</b>								

# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Enforcement and Compliance</b>							
<b>Prohibited Practices</b>			No. heard No. of decisions where relief was granted No. of decisions where no relief was granted No. of cases withdrawn No. removed from roll No. of cases pending No. of reasons issued No. of dormant matters	1 (from a previous period) 1 (heard in a previous period) 1 (received in a previous period) 2 0 3 (all pending hearings) 2 0			
	Cases under consideration	Turnaround times	No measure for set down as there are no prehearings in these matters and no rule with regard to set down Average turnaround times  Order and reasons for decision issued within 100 business days of hearing	An average of 19 business days to set down a hearing after close of pleadings An average of 9.5 days to issue an order following a hearing 2 of 2  Target fully met			
<b>Procedural matters</b>			Tribunal merely reports on number and status of matters on a quarterly basis Matters on the roll from a previous period New matters received <b>STATUS OF MATTERS</b> No. of types of matters No. heard No. granted No. dismissed No. pending hearing No. pending decision No. pending reasons No of orders issued No. of reasons for issued No. withdrawn	14 40  23 30 25 (11 partly granted) 4 17 1 0 29 (8 from a previous period) 16 3			
	Cases identified	Matters on the roll from a previous period New applications received Status of matter as at end of period  Type of application					

# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Enforcement and Compliance</b>							
<b>Procedural matters</b>			No. settled by parties No. pending further hearing No. of dormant matters No. removed from the roll	1 1 0 2			
	Cases identified	Turnaround times	Hearings set down at earliest date convenient to all parties	An average of 21.76 business days from close of pleadings to set down hearing <i>An average of 26.75 business days to issue an order following a hearing</i> An average of 6.25 business days to issue reasons following the issue of an order	Time frames for issuing of an order/decision cannot be easily determined - time varies depending on complexity <i>Procedural matters cover a broad category of different interlocutory matters that need to be considered ranging from the simplest to the most complex point of law</i> The time taken for issuing of decisions and written reasons will depend on the legal and factual complexity of a particular case		
<b>Taxation</b>	Taxation of bills	Number of bills taxed	Target cannot be set - we merely report on bills taxed	2		R 53	R 0
<b>Fines/Penalties imposed</b>	Fines/Penalties imposed	No. and type of fine/penalty imposed Value of fine imposed	Target cannot be set – we merely report on fines/penalties levied	24 - all administrative penalties R 787 708 814.50			
	Creating awareness/ educating public/advice and referrals	Information dissemination No. of Tribunals produced per annum No. of Tribunals distributed per issue	3 per annum 30 copies circulated Targets cannot be set	2 72	Due to lack of capacity in the research department there were only 2 Tribunals produced. 1 was distributed in the current year and 1 distributed after year end Target exceeded		

# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000	
<b>Strategic Objective: Education &amp; Awareness</b>								
Creating awareness/ educating public/advice and referrals		Number of stories per quarter	Quarterly reporting on number of articles, OR and advertising value of coverage	No longer measured	During the current year a new public relations consultant was appointed. In addition the Tribunal reviewed its public relations policy and is currently reviewing how best to report on media coverage	R 381	R 437	
		Monthly average Advertising Value PR Value		No longer measured No longer measured No longer measured				
Creating awareness/ educating public/advice and referrals	Reasons for decisions posted on website	Number of reasons issued		94	This figure includes consent orders and reasons issued. There were 73 reasons issued and 21 consent orders issued			
		Number of reasons posted on website		94	Target not fully met			
		Number of reasons posted within 72 hours	Post reasons within 72 hours	91 of 94				
		Number of reasons not posted within 72 hours		3				
		Electronic case document management system developed		Tender awarded in August - project start date originally April 2011 but delayed till end August 2011		Target not fully met but still in process	R 2 501	R 1 421
Access to justice		Revise and upgrade Tribunal's website	Website revised and updated and fully operational	Website revised and updated and fully operational	Target fully met	R 252	R 153	
		Identify organisations with whom to form partnerships	Identify at least 1 organisation in first year	Organisation identified - Pro Bono	Target fully met			
		Form partnerships with relevant organisations	Form at least 1 partnership in first year	1 partnership formed with Pro Bono	Target fully met			
		Implement activities with identified organisations in order to enhance effective output	Business plan to include specific timeframes and targets identified with organisation	No specific timeframes set for implementation				

# Our Performance

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000
<b>Strategic Objective: Education &amp; Awareness</b>							
		Set timeframes for activities to be implemented Host workshop with legal profession to inform them of partnership and its purpose <i>Market partnership through our website</i>	Report quarterly and annually on targets 1 workshop in initial; year of establishment <i>Article and relevant information to be posted on website</i>	Progress reported on in EDD dashboard and in Annual Report Workshop was held with Pro Bono and members of the legal and economic profession in October 2010 No article or information appears on the website	Target fully met  <i>The Tribunal is awaiting a response from the law profession as to whether the initiative can receive "pro bono status" before information can be published</i>		
<b>Creating awareness/ educating public/advice and referrals</b>	Training completed	Training needs and service providers identified  Number of courses attended  Number of conferences attended	Within 4 weeks of performance appraisal process  1 training course per annum for each staff member  Tribunal members/ chairperson attends at least 7 overseas conferences. Head of Research/ Registrar/Case Managers at least 5 overseas conferences	Training for staff members is discussed with managers at least once annually and following the performance appraisal process  The Tribunal secretariat spent a total of 56.25 days in training during the current year - an average of 5.01 days per staff member  7  6	Target fully met  Target fully met  Target fully met  Target exceeded	R 162  R 491  R 322	R 87  R 401  R 191
<b>Creating awareness/ educating public/advice and referrals</b>	Training completed  Internships offered and completed	Training needs and service providers identified  Number of seminars attended  Enter into programme with the University of Pretoria for internship programme	3 Appeal Court Judges to attend 1 overseas conference. Appeal Court judge to attend Fordham Refresher course 1 per annum	3 Judges attended the Fordham Conference in New York  No Judges attended Fordham Refresher attended Fordham conference instead Entered into programme with University	Target fully met  A decision was taken by CAC not to send a representative to the refresher course All targets fully met	R 415	R 258

Activity	Output	Performance Indicator	Target and milestone	Year to date	Reasons for deviation & Corrective Action Plan	Budget R'000	Actual R'000	
<b>Strategic Objective: Education &amp; Awareness</b>								
		Offer at least 1 internship with Tribunal per annum Report quarterly on nature and extent of internship programme Obtain report from interns with regard to internship and what they learnt	1 per annum  Report quarterly and annually on this process	4 (2 in Research, 1 in Corporate Services and 1 in Registry) Reported on in quarterly reports and EDD dashboard  Reports on internship included in Annual Report	Target exceeded			
<b>Creating awareness/ educating public/advice and referrals</b>	Conferences and workshops conducted	Number of successful workshops and conferences	1 conference / workshop per year for Tribunal members/Registrar/ Head of Research and Case managers	1 meeting held in March 2011	Targets fully met	R 287	R 149	
			1 internal Tribunal teambuilding meeting			Targets fully met	R 93	R 73
			1 Conference workshop per year for CAC judges			Targets fully met	R 51	R 35
<b>Creating awareness/ educating public/advice and referrals</b>	Public able to access files and information	No of files accessed	No target set-respond when required to (report on files accessed on quarterly basis)	48				
						<b>R 8 059</b>	<b>R 5 313</b>	



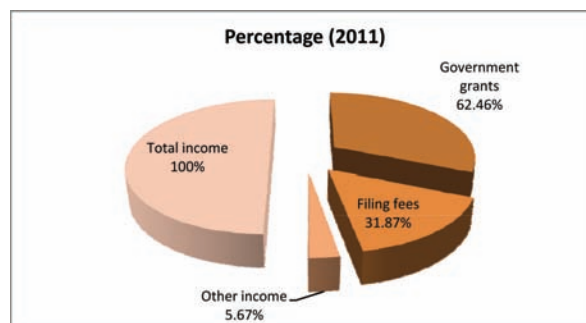
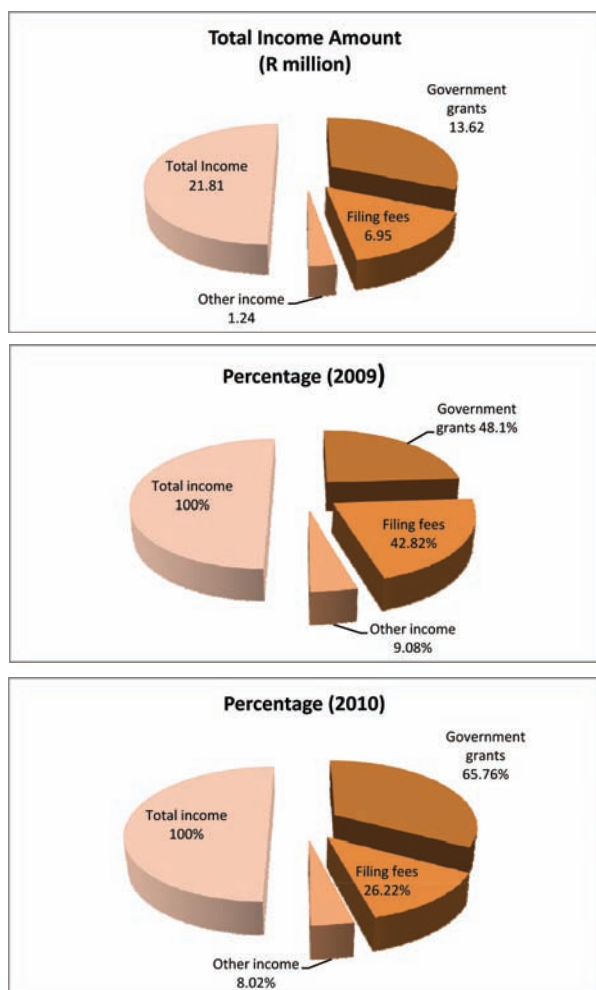
# PART 6: OUR NUMBERS

## FINANCIAL MANAGEMENT

The budget compiled by the Tribunal for the 12-month period ending 31 March 2011 reflected expenditure (inclusive of capital expenditure) of R 27.41 m and estimated revenue (generated from aliquot fees, interest and an EDD grant) of R 20.09 m. It was anticipated that the budget shortfall would be met by using accumulated surpluses of R 7.32 m.

Actual revenue for the year amounted to R 21.81 m and was made up as recorded in the following table:

**Table 11: Tribunal's total income over 3 years**



The grant received from the EDD increased by 4.49% over that of the previous year and accounted for 62.46% of the Tribunal's revenue in the year under review. Filing fees received in terms of the memorandum of understanding with the Commission increased by 33.57% from those of the previous year and accounted for 31.87% of the Tribunal's revenue.

The increase in filing fees was rather unexpected as in the budget the Tribunal anticipated that while filing fees would continue to form part of the Tribunal's income it would be a reducing component, particularly because financial thresholds for mergers had been increased in April 2009.

Despite the increase this year we still expect that in future filing fees will represent 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 9.06% from R 18.30 m to R 19.91 m.

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

# Our Numbers

**Table 12: Expenditure incurred in this financial year**

Expenditure Category	Percentage (2011)	Percentage (2010)	Percentage change
Personnel	55.39	54.69	10.46
Administration	18.80	17.82	15.02
Training	6.25	7.69	-11.44
Professional services	10.06	11.55	- 5.07
Part-time Tribunal members fees	6.91	4.86	55.04
Other operating expenses	2.59	3.38	-16.24
<b>Total expenditure</b>	<b>100</b>	<b>100</b>	<b>9.06</b>

Expenditure on professional services includes payments to the Commission in terms of the memorandum of understanding in place with the Tribunal, transcription services, legal fees, public relations and finance related consulting services.

The table below sets out the contribution of each category to the 9.06 % increase in total expenditure:

**Table 13: Category contributions to increase in total expenditure**

Expenditure category	Percentage
Personnel	63.15
Administrative	30.54
Training	-10.04
Professional services	-6.47
Part-time Tribunal members fees	29.54
Other operating expenses	-6.05
<b>Total</b>	<b>100</b>

Personnel expenditure increased by 10.46 % during the year under review and this increase is predominantly accounted for by the increase in the number of full-time staff members and in an increase in total annual salaries (inclusive of performance bonuses) paid to full-time staff members. Full-time staff members received a cost of living increase of 7.5%, performance bonuses paid increased by 8.7% and the average number of staff employed increased by 1 from 14 in March 2010 to 15 in March 2011.

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

**Table 14: Percentage change in personnel expenses**

Category	% change	% contribution to change
Full-time Tribunal members	0.28	1.33
Other staff	20.73	98.67
<b>Total</b>	<b>10.46</b>	<b>100</b>

During the period under review there was a 5.07% decrease in expenditure on professional services. The table on the next page illustrates the distribution of categories of expenditure within the line item 'professional services'.

# Our Numbers

**Table 15: Distribution of expenditure in professional services**

Category	Distribution	% change
Consulting	41.59	-5.51
Recruitment	0	-100
Public Relations	20.89	22.04
Recording costs	18.15	58.84
Facility fees	19.37	-35.98
<b>Total</b>	<b>100</b>	<b>-5.07</b>

The 22.04% increase in public relations cost rose as there was a period of two months when a handover (from old to new public relations consultant) took place and in addition the monthly fee paid to the consultant increased.

The increase in recording costs is mainly explained by an increase in case activity. The volume of cases increased by 36.47% during the period under review.

Fees paid to part-time Tribunal members increased by 29.63%. 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 183 days of work, whereas in the previous year this figure was 113.50. There were seven part-time members who were each paid for an average of 26.14 days per annum. Part-time members are paid R 7 000 per day. The table below shows the distribution of fees paid over the past two years.

**Table 16: Distribution of part-time members fees over 2 years**

CATEGORY	2011	2010
Hearing days (including cancelled days)	120.00	64
Preparation days	39.50	24.50
Decision writing	23.50	25.00
<b>Total days</b>	<b>183.00</b>	<b>113.50</b>

In the year under review the Tribunal heard 116 matters over 107 days, whereas in the previous year 85 matters were heard over 75 days. This represents an increase of 36.47 % in the volume of cases and a 42.67% increase in the number of hearing days. The average number of days per hearing was 1.08 days as compared to 1.13 days in the previous period.

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.

**Table 17: Allocation of hearing days between full-time and part-time members**

DAYS	2011	%	2010	%
Hearing days	106		75	
Person days, full-time members	242	76	173	76.89
Person days, part-time members	76	23.90	52	23.11
<b>Total person days</b>	<b>318</b>	<b>100</b>	<b>225</b>	<b>100</b>
Per Tribunal member	31.80		20.46	

# Our Numbers

In the period under review the Tribunal awarded a tender to Business Connexion Pty Ltd (BCX) to develop an electronic case document management system. Work on this project began in August 2010 and while expenditure on this has been high ( R 1.46 m) the costs incurred are reflected on the balance sheet (as intangible assets) as opposed to an expense in the income and expenditure statement. This expense includes software costs, development costs, legal costs and project management costs.

During the period under review we together with our “parent department” – the EDD - developed an economic indicator dashboard that is maintained and reported on quarterly. The dashboard is attached as Appendix G to this report. Through this the Tribunal is beginning to be able to determine the real “actual” operating costs associated with a hearing held at the Tribunal. At present the costs are calculated using only variable costs and do not include fixed costs such as the salaries of full-time members or case managers. If these were included the operating cost would increase in most cases.

These costs are reflected in the table below.

**Table 18: Operating costs associated with a hearing**

Operating cost	R'000	Number
Per order issued	17.71	111 issued
Per reason issued	26.56	74 issued
Per person day	6.18	318 person days
Per actual hearing day	18.37	107 hearing days
Per part-time member person day	25.87	76 person days
Per transcript page produced	0.24	8116 pages

In the year under review the Tribunal under-spent its entire budget (inclusive of capital expenditure) by 19.95%. 18.33% of under-spending was on capital expenditure which is primarily attributable to late start of the development of the electronic case management software referred to earlier. Under-spending on personnel expenses accounts for 30.13% of the under-spending while under-spending on training accounted for 11.33%. The under-spending on salaries occurred due to lower increases than anticipated being awarded to full-time members. Under-spending on training relates mainly to a more conscious effort by the Tribunal to reduce the costs associated with travel overseas by purchasing cheaper, less flexible tickets and the decision to host an internal Tribunal member’s workshop in Pretoria as opposed to a venue outside of Pretoria.

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. Table 19 shows the historic trend in budget spent over the last 10 years. The figures reflected in the table include capital expenditure.

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

# Our Numbers

**Table 19: Percentage of Tribunal's budget spent over time**

Year	Actual expenditure (in R million)	Budget (in R million)	% of budget spent
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	85.73
2007	13,22	15,81	83.62
2008	15,56	16,60	93.73
2009	17.71	20.35	87.03
2010	18.48	26.40	70.00
2011	21.94	27.41	80.04

# PART 7: COMPETITION APPEAL COURT

## 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 Judges constituting the Appeal Court during the year under review are in the table below.

**Table 20: Judges of the Appeal Court**

Name	Court	Term of Office
The Honourable Mr Justice D Davis	Western Cape High Court	October 2007 - October 2012
The Honourable Ms Justice LM Mailula	South Gauteng High Court	October 2007 - October 2012
The Honourable Mr Justice CN Patel	KwaZulu-Natal High Court	October 2007 - October 2012
The Honourable Mr Justice D Zondi	Western Cape High Court	January 2011 – December 2011
The Honourable Ms Justice NC Dambuza	Eastern Cape High Court	February 2010 – December 2020
The Honourable Mr Justice MJD Wallis	KwaZulu-Natal High Court	January 2011 – December 2011
The Honourable Justice Ms T Ndita	Western Cape High Court	January 2011 – December 2011

The Tribunal performs the registry function for the Appeal Court and the Tribunal's registrar acts as its registrar.

Funding for the Appeal Court is received from the EDD 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.

**Table 21: Appeal Courts expenditure over time**

Year	Total expenditure (R '000's)
2004	284
2005	341
2006	363
2007	337
2008	434
2009	445
2010	322
2011	424

# Competition Appeal Court

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 Appeal Court received 21 new applications and there were five on the roll from the previous period. Eight cases were heard (four from the previous period), eight judgments were handed down (four from the previous period), and three cases were withdrawn (one from the previous review).

There are currently 15 cases pending on the roll (12 pending hearings and three pending judgments).

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

## Competition Appeal Court Judges



The Honourable  
Mr Justice CN Patel



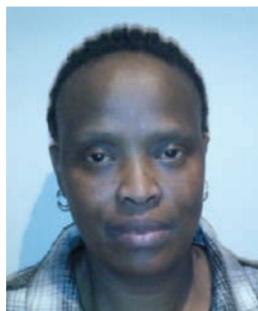
The Honourable  
Ms Justice NC Dambuzo



The Honourable  
Mr Justice D Zondi



The Honourable  
Ms Justice LM Mailula



The Honourable  
Ms Justice T Ndita



The Honourable  
Mr Justice D Davis



The Honourable  
Mr Justice MJD Wallis

# PART 8: ANNUAL FINANCIAL STATEMENTS

## INDEX

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

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Cash Flow Statement	60
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# Annual Financial Statements

## STATEMENT OF FINANCIAL POSITION FOR THE YEAR ENDED 31 MARCH 2011

	Note(s)	2011 '000	2010 '000
<b>ASSETS</b>			
<b>CURRENT ASSETS</b>			
Inventory	3	15	14
Receivables from exchange transactions	4	1 038	897
Cash and cash equivalents	5	21 264	21 301
		<b>22 317</b>	<b>22 212</b>
<b>NON-CURRENT ASSETS</b>			
Property, plant and equipment	6	1 292	1 015
Intangible assets	7	1 578	132
		<b>2 870</b>	<b>1 147</b>
<b>Total Assets</b>		<b>25 187</b>	<b>23 359</b>
<b>LIABILITIES</b>			
<b>CURRENT LIABILITIES</b>			
Finance lease obligation	8	123	201
Payables from exchange transactions	9	1 384	1 338
Provisions	10	461	344
		<b>1 968</b>	<b>1 883</b>
<b>NON-CURRENT LIABILITIES</b>			
Finance lease obligation	8	58	169
		<b>58</b>	<b>169</b>
<b>Total Liabilities</b>		<b>2 026</b>	<b>2 052</b>
<b>Net Assets</b>		<b>23 161</b>	<b>21 307</b>
<b>NET ASSETS</b>			
Accumulated surplus		23 161	21 307

# Annual Financial Statements

## STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 31 MARCH 2011

	Note(s)	2011 '000	2010 '000
<b>REVENUE</b>			
Revenue from non-exchange transactions	11	13 625	13 040
Other income included in revenue	12	30	31
Revenue from exchange transactions	13	6 951	5 204
Interest received	14	1 206	1 537
<b>Total Revenue</b>		<b>21 812</b>	<b>19 812</b>
<b>EXPENSES</b>			
Personnel	15	(11 056)	(10 009)
Administrative expenses	16	(3 752)	(3 266)
Impairment loss/ Reversal of impairments	17	(4)	(20)
Finance charges	18	(43)	(49)
General expenses	19	(4 660)	(4 597)
Depreciation and amortisation of intangible assets	20	(444)	(360)
<b>Total Expenditure</b>		<b>(19 959)</b>	<b>(18 301)</b>
Gain on disposal of assets and liabilities		1	18
<b>Net surplus for the year</b>		<b>1 854</b>	<b>1 529</b>

# Annual Financial Statements

## STATEMENT OF CHANGES IN NET ASSETS FOR THE PERIOD ENDED 31 MARCH 2011

	Accumulated funds '000	Total net assets '000
<b>Balance at 01 April 2009</b>	<b>19 778</b>	<b>19 778</b>
Changes in net assets		
Surplus for the year	1 529	1 529
Total changes	1 529	1 529
<b>Balance at 01 April 2010</b>	<b>21 307</b>	<b>21 307</b>
Changes in net assets		
Surplus for the year	1 854	1 854
Total changes	1 854	1 854
<b>Balance at 31 March 2011</b>	<b>23 161</b>	<b>23 161</b>

# Annual Financial Statements

## CASH FLOW STATEMENT FOR THE PERIOD ENDED 31 MARCH 2011

	Note(s)	2011 '000	2010 '000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Receipts</b>			
Interest income		1 206	1 537
Other receipts		20 745	17 456
		<u>21 951</u>	<u>18 993</u>
<b>Payments</b>			
Finance charges		(43)	(49)
Other payments		(19 584)	(17 919)
		<u>(19 627)</u>	<u>(17 968)</u>
<b>Net cash flows from operating activities</b>	<b>22</b>	<b><u>2 324</u></b>	<b><u>1 025</u></b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Purchase of property, plant and equipment	6	(813)	(638)
Proceeds from sale of property, plant and equipment	6	107	84
Purchase of other intangible assets	7	(1 465)	(51)
<b>Net cash flows from investing activities</b>		<b><u>(2 171)</u></b>	<b><u>(605)</u></b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Repayment of finance leases		(190)	42
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b><u>(37)</u></b>	<b><u>462</u></b>
Cash and cash equivalents at the beginning of the year		21 301	20 839
<b>Cash and cash equivalents at the end of the year</b>	<b>5</b>	<b><u>21 264</u></b>	<b><u>21 301</u></b>

# Annual Financial Statements

## ACCOUNTING POLICIES FOR THE PERIOD ENDED 31 MARCH 2011

### 1. BASIS OF PREPARATION

The annual financial statements have been prepared in accordance with the effective Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board.

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention unless specified otherwise. They are presented in South African Rand.

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

Revenue from non-exchange transactions refers to transactions where the Tribunal received revenue from another entity without directly giving approximately equal value in exchange. Both annual appropriation and statutory appropriation from the National Revenue Fund is classified as non-exchange revenue.

Revenue from non-exchange transactions is generally recognised to the extent that the related receipt or receivable qualifies as recognition as an asset and there is no liability to repay the amount in the event of non-performance.

##### 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 and there is no liability to repay the amount in the event of non-performance.

##### 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.

## 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.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses.

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

Item	Average useful life
Furniture and fixtures	
• Bought before 1st April 2010	15 years
• Bought after 1st April 2010	5 years
Motor vehicles	5 years
Office equipment	
• Bought before 1st April 2010	15 years
• Bought after 1st April 2010	5 years
IT equipment	
• Computer Equipment	3 years
• Server	10 years
Leased Assets	Period of the lease

# Annual Financial Statements

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.

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.

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 of items that are not ordinarily interchangeable and goods or services produced and segregated for specific projects is assigned using specific identification of the individual costs.

When inventory are sold, the carrying amount of those inventory are recognised as an expense in the period in which the related revenue is recognised. The amount of any write-down of inventories to net realisable value and all losses of inventories are recognised as an expense in the period the write-down or loss occurs. The amount of any reversal of any write-down of inventories, arising from an increase in net realisable value, are recognised as a reduction in the amount of inventories recognised as an expense in the period in which the reversal occurs.

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 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 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 judgments 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 judgment 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 judgments include:

### **Provision for accumulated leave**

Management took 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 Related parties**

Related party disclosures are prepared in accordance with IPSAS 20 Related Party Disclosures (IPSAS20). Related parties are identified as being those parties that control or have significant influence over the Tribunal and those parties that are controlled or significantly influenced by the Tribunal. Disclosure is made of all relationships involving control, even when there are no transactions between such parties during the year; all other related party transactions and management compensation.

Related party relationship exists with all national government departments, trading entities, major state owned entities (Schedule 2), national government business enterprises (Schedule 3B) and national public entities (Schedule 3A) within the National Sphere of Government due to the Tribunal's oversight of these entities.

All related party transactions are consistent with normal operating relationships between the entities, and are undertaken on terms and conditions that are normal for such transactions in these circumstances.

## **1.16 Standards in issue not yet effective**

Standards in issue but not yet effective, is disclosed in the financial statement as well as the impact on the financial statements in future periods. Refer to note 32.

# Annual Financial Statements

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE PERIOD ENDED 31 MARCH 2011

<b>2011</b>	<b>2010</b>
<b>'000</b>	<b>'000</b>

### 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 year.

### 3. INVENTORY

Consumable stores (office stationery)	15	14
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### 4. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Receivables	934	770
Prepayments	104	127
<b>Total</b>	<b>1 038</b>	<b>897</b>

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

### 5. 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	3	1
Cash at bank	21 261	21 300
<b>Total</b>	<b>21 264</b>	<b>21 301</b>

### 6. PROPERTY, PLANT AND EQUIPMENT

	2011			2010		
	Cost	Accumulated depreciation and accumulated impairment	Carrying value	Cost	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	422	(239)	183	364	(212)	152
Motor vehicles	210	(18)	192	209	(106)	103
Office equipment	72	(10)	62	23	(7)	16
IT equipment	982	(294)	688	590	(198)	392
Leased assets	584	(417)	167	567	(215)	352
<b>Total</b>	<b>2 270</b>	<b>(978)</b>	<b>1 292</b>	<b>1 753</b>	<b>(738)</b>	<b>1 015</b>

# Annual Financial Statements

## Reconciliation of property, plant and equipment - 2011

	Opening balance	Additions	Disposals	Depreciation	Impairment loss	Total
Furniture and fixtures	152	58	-	(27)	-	183
Motor vehicles	103	210	(103)	(18)	-	192
Office equipment	16	53	(3)	(4)	-	62
IT equipment	392	475	(1)	(174)	(4)	688
Leased assets	352	17	-	(202)	-	167
	<b>1 015</b>	<b>813</b>	<b>(107)</b>	<b>(425)</b>	<b>(4)</b>	<b>1 292</b>

## 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
	<b>811</b>	<b>638</b>	<b>(67)</b>	<b>(347)</b>	<b>(20)</b>	<b>1 015</b>

## Assets subject to finance lease (Net carrying amount)

	2011 '000	2010 '000
Leased assets	167	352

## 7. INTANGIBLE ASSETS

	2011			2010		
	Cost	Accumulated amortisation and accumulated impairment	Carrying value	Cost	Accumulated amortisation and accumulated impairment	Carrying value
Computer software	1 617	(39)	1 578	153	(21)	132

## Reconciliation of intangible assets - 2011

	Opening balance	Additions	Amortisation	Total
Computer software	132	1 465	(19)	1 578

# Annual Financial Statements

## Reconciliation of intangible assets - 2010

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

## 8. FINANCE LEASE OBLIGATION

	2011 '000	2010 '000
<b>Minimum lease payments due</b>		
- within one year	134	230
- in second to fifth year inclusive	60	187
	194	417
less: future finance charges	(13)	(47)
<b>Present value of minimum lease payments</b>	<b>181</b>	<b>370</b>
<b>Present value of minimum lease payments due</b>		
- within one year	123	201
- in second to fifth year inclusive	58	169
	<b>180</b>	<b>370</b>
Non-current liabilities	58	169
Current liabilities	123	201
	<b>181</b>	<b>370</b>

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.

## 9. PAYABLES FROM EXCHANGE TRANSACTIONS

Creditors	241	605
Other accruals	1 143	733
	<b>1 384</b>	<b>1 338</b>

## 10. PROVISIONS

### Reconciliation of provisions - 2011

	Opening Balance	Additions	Reversed during the year	Total
Leave provision	344	461	(344)	461

### Reconciliation of provisions - 2010

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

# Annual Financial Statements

	2011 '000	2010 '000
<b>11. GRANTS AND TRANSFERS</b>		
Government grant	13 625	13 040
<b>12. OTHER INCOME</b>		
Recoupment of printing costs	30	31
<b>13. FEE INCOME</b>		
Fee Income received from the Commission	6 951	5 204
<b>14. INTEREST RECEIVED</b>		
<b>Interest received</b>		
- Bank deposits	1 206	1 537
<b>15. PERSONNEL</b>		
Basic salaries	4 135	3 023
Performance awards	263	233
Medical aid - company contributions	139	104
Statutory Contributions	73	59
Insurance	67	56
Other non-pensionable allowances	115	214
Other salary related costs	37	24
Defined contribution pension plan expense	446	327
Executive committee members emoluments	5 781	5 969
	<b>11 056</b>	<b>10 009</b>



# Annual Financial Statements

	2011 '000	2010 '000
<b>16. ADMINISTRATIVE EXPENSES</b>		
Audit Committee members fees (inclusive of travel)	163	55
Audit Committee training	83	-
Audit Committee meeting expenses	7	4
General and administrative expenses	734	703
External audit fees	587	501
Internal audit fees	431	412
Travel and subsistence	380	307
Unitary payments for building occupation	1 367	1 284
	<b>3 752</b>	<b>3 266</b>
<b>17. IMPAIRMENT OF ASSETS</b>		
<b>Impairments</b>		
Property, plant and equipment	4	20
This impairment arose from the disposal of redundant computer equipment.		
<b>18. FINANCE CHARGES</b>		
<b>Finance leases</b>		
	43	49
<b>19. OTHER OPERATING EXPENSES</b>		
Consultants, contractors and special services	2 007	2 114
Staff training and development	1 247	1 408
Fees paid to part-time Tribunal members	1 380	890
Legal fees	18	138
Maintenance, repairs and running costs	8	44
Fruitless and wasteful expenditure	-	3
<b>Total</b>	<b>4 660</b>	<b>4 597</b>
<b>20. DEPRECIATION AND AMORTISATION</b>		
<b>Depreciation</b>		
Furniture and fittings	27	23
Motor vehicles	18	21
Office equipment	4	2
Computer equipment	174	106
Leased assets - office equipment	202	195
<b>Amortisation</b>	<b>425</b>	<b>347</b>
Computer software	19	13

# Annual Financial Statements

2011  
'000

2010  
'000

## 21. TRADE PAYABLES - TERMS AND CONDITIONS

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

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.

## 22. CASH GENERATED FROM OPERATIONS

Surplus for the year	1 854	1 529
<b>Adjustments for:</b>		
Depreciation and amortisation	444	360
Loss on sale of assets and liabilities	(1)	(18)
Impairment deficit	4	20
Movements in provisions	117	(84)
<b>Changes in working capital:</b>		
Inventory	1	11
Receivables from exchange transactions	(141)	(819)
Payables from exchange transactions	46	26
	<b>2 324</b>	<b>1 025</b>

## 23. EMPLOYEE BENEFIT OBLIGATIONS

### 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.

## 24. INCOME TAX EXEMPTION

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

## 25. 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 4. 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 counter party, 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.

# Annual Financial Statements

2011  
'000

2010  
'000

## Exposure to credit risk

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

Cash and cash equivalents	21 264	21 301
Other receivables	934	770
<b>Total</b>	<b>22 198</b>	<b>22 071</b>

## Concentration of credit risk

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

2011 '000	AAA and government	Unrated
Cash and cash equivalents	21 264	-
Other receivables	-	933

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

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

2011 '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	21 264	-	-	21 264
Other receivables	921	-	12	933

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

## 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.

# Annual Financial Statements

## Sensitivity Analysis

		Increase/(decrease) in net surplus for the year	
2011	Change in Investments	Upward change	Downward change
Cash and cash equivalents	1.00%	199	(199)
Finance lease	1.00%	(2)	2
2010			
Cash and cash equivalents	1.00%	213	(213)
Finance lease	1.00%	(4)	4

## 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:

2011	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Finance lease obligation	180	180	123	57
Payables	1 384	1 384	1 366	18

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

## 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	21 264	21 301
Receivables	Loans and receivables	993	770
Payables	Financial liabilities	1 384	1 338
Finance leases	Financial liabilities measured at amortised cost	180	370

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

### Financial assets at amortised cost

Receivables

2011 '000      2010 '000

993              770

### Financial liabilities at amortised cost

Payables

1 384            1 338

Finance leases

180              370

# Annual Financial Statements

## 26. RELATED PARTIES

Related party	Relationship
The Competition Commission	Public entity in the National Sphere
The Department of Trade and Industry	National Department in the National Sphere
Economic Development Department	National Department in the National Sphere

### Related party balances

	2011 '000	2010 '000
<b>Amounts included in trade payables regarding related parties</b>		
The Department of Trade and Industry	6	10
<b>Amounts included in trade receivables regarding related parties</b>		
The Competition Commission	967	721
<b>Related party transactions</b>		
<b>The Competition Commission</b>		
Filing fees received as at year end	6 950	5 204
Facility fees paid as at year end	1 756	1 891
Employee costs received as at year end	501	310
Administrative costs received as at year end	74	25
Administrative costs paid as at year end	-	452
<b>The Department of Trade and Industry</b>		
Grants received as at year end	-	13 040
Administrative costs paid as at year end	62	67
<b>Economic Development Department</b>		
Grants received as at year end	13 625	-
<b>Chairperson: D Lewis (31st July 2009)</b>		
Package	-	773
Statutory contributions	-	8
Other salary related contributions	-	17
Total package	-	798
<b>Full-time member/Chairperson: N Manoim</b>		
Package	1 770	1 606
Statutory contributions	16	16
Other salary related contributions	59	55
Total package	1 845	1 677
<b>Full-time member: Y Carrim</b>		
Package	1 535	1 463
Statutory contributions	10	15
Other salary related contributions	48	55
Total package	1 593	1 533

# Annual Financial Statements

	2011 '000	2010 '000
<b>Head of Corporate Services: J de Klerk</b>		
Package	878	752
Performance bonus	133	93
Statutory contributions	11	9
Other salary related contributions	30	28
<b>Total package</b>	<b>1 052</b>	<b>882</b>
<b>Head of Research: R Badenhorst</b>		
Package	537	460
Performance bonus	84	52
Statutory contributions	8	7
Other salary related contributions	23	22
<b>Total package</b>	<b>652</b>	<b>541</b>
<b>Registrar: L Motaung</b>		
Package	535	458
Performance bonus	74	52
Statutory contributions	8	7
Other salary related contributions	22	21
<b>Total package</b>	<b>639</b>	<b>538</b>
<b>27. FRUITLESS AND WASTEFUL EXPENDITURE</b>		
Fruitless and wasteful expenditure	-	3
<b>28. EXTERNAL AUDIT FEE</b>		
Fees	587	501
<b>29. CONTINGENT LIABILITY</b>		

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 2010. Permission to retain surpluses of R 1.9 m generated as at 31 March 2011 will be requested following confirmation of the audit.

## 30. COMPARATIVE FIGURES

Comparative figures have been presented and there has been no reclassification.

# Annual Financial Statements

	2011 '000	2010 '000
<b>31. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE</b>		
Reconciliation of budget surplus/deficit with the surplus/deficit in the statement of financial performance:		
Net surplus per the statement of financial performance	1 854	1 529
<b>Adjusted for:</b>		
Profit on sale of assets	(1)	(18)
Printing recoupment	(23)	(6)
Statutory levy refund	(7)	(26)
Fair value adjustments	-	1
Increases / decreases in provisions	(118)	84
Impairments recognised	4	20
Transfer from retained income	7 323	7 685
<b>Adjustments for items items capital expenditure reflected on budget:</b>		
Leased equipment	(197)	(250)
Capital expenditure	(2 984)	(338)
<b>Income in excess of budget:</b>		
Filing fees from the Commission	(1 191)	(332)
Interest received	(506)	(737)
<b>Under expenditure on budget:</b>		
Personnel	(304)	(1 278)
Part Time Tribunal member fees	(1 225)	(726)
Local training	(223)	(439)
Overseas training	(396)	(1 224)
Professional Services	(271)	(219)
Recruitment costs	(108)	(100)
Administrative expenses	(578)	(475)
Facilities and capital	(16)	8
Competition appeal court	(326)	(445)
<b>Under expenditure due project delay</b>		
Development of Case Document Management System	-	(2 500)
Support for Case Document Management System	(500)	-
Amortisation budget for software development	(207)	(214)
<b>Net surplus per approved budget</b>	<b>-</b>	<b>-</b>

## 32. NEW STANDARDS AND INTERPRETATIONS

### 32.1 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 2011 or later periods:

#### GRAP 24: Presentation of budget information in the financial statements

This standard requires a comparison of budget and actual amount and an explanation for material differences.

The adoption of GRAP 24 is not expected to impact on the results of the Tribunal, but may result in more disclosure than is currently provided in the annual financial statements.

#### GRAP 25: Employee benefits

The objective of GRAP25 is to prescribe the accounting and disclosure for employee benefits. The Standard requires an entity to recognise:

- a liability when an employee has provided service in exchange for employee benefits to be paid in the future; and
- an expense when an entity consumes the economic benefits or service potential arising from service provided by an employee in exchange for employee benefits.

# Annual Financial Statements

This Standard has been approved by the Board but its effective date has not yet been determined by the Minister of Finance. The effective date indicated is a provisional date and could change depending on the decision of the Minister of Finance.

It is unlikely that the GRAP 25 will have a material impact on the Tribunal's annual financial statements.

## GRAP 104: Financial instruments

The standard prescribes recognition, measurement, presentation and disclosure requirements for financial instruments. Financial instruments are defined as those contracts that results in a financial asset in one entity and a financial liability or residual interest in another entity. A key distinguishing factor between financial assets and financial liabilities and other assets and liabilities, is that they are settled in cash or by exchanging financial instruments rather than through the provision of goods or services.

The effective date of the standard is for years beginning on or after 01 April 2011.

It is unlikely that the amendment will have a material impact on the Tribunal's annual financial statements.

## 33. COMMITMENT FOR FUTURE CAPITAL EXPENDITURE

A contractual obligation exists for the development of a software package and related items with Business Connexion (Pty) (Ltd) (BCX). The total value of the contract is estimated at R 2.5 million over the next 2-3 years. The development of the software commenced during the current period and to date we have paid BCX just over R 900 000.00.

## 34. IRREGULAR EXPENDITURE

	2011 '000	2010 '000
Opening Balance	-	-
Add: Irregular Expenditure - current year	358 409	278 279
Less: Amounts condoned	-	-
Less: Amounts recoverable (not condoned)	-	-
Less: Amounts not recoverable (not condoned)	-	-
<b>Amounts awaiting condonation</b>	<b>358 409</b>	<b>278 279</b>
<b>Analysis of expenditure awaiting condonation per age classification</b>		
Current year	358 409	-
Prior years	-	278 279
	<b>358 409</b>	<b>278 279</b>
<b>Details of Irregular Expenditure - Current Year</b>		
	Disciplinary steps taken/criminal proceedings	
Procurement of services of labour law firm	None required	42 001
Procurement of transcription services	None required	316 408
		<b>358 409</b>

The Tribunal procured the services of a law firm in the 2008/2009 and 2009/2010 financial year to undertake a substantial review of the Tribunal's human resources policies. While the correct procurement processes were followed in procuring their services for the policy review the Tribunal continued to retain their services during 2009/2010 and 2010/2011 for ad hoc legal advice and this deviation was not documented in writing and signed by the accounting authority. The irregular expenditure pertaining to this procurement amounted to R 101 542.36 in 2009/2010 and R 42 001.08 in 2010/2011.

The Tribunal has a number of service providers on its database that record and transcribe all the hearings conducted by the Tribunal. An internal decision was made to use one particular service provider as our preferred supplier for contested and large matters and other service providers are used for the less complicated matters thus reducing the risk of poor quality. Again while the Tribunal has adhered to procurement processes in terms of obtaining quotes we failed to document the use of a particular supplier as a preferred supplier. The irregular expenditure for 2009/2010 for this non-compliance amounts to R 176 736.48 and for 2010/2011 amounts to R 316 408.14.

In both these instances there was no deliberate intention to circumvent procurement processes but there was a failure to document the evaluation processes followed and the reasons for deviation and use of a preferred supplier. The Accounting Authority condoned this irregular expenditure (R 278 278.84 for 2009/2010 and R 358 409.22 for 2010/2011) post 31st May 2011 as satisfactory explanations for the choice of preferred supplier exist and there was no deliberate intention to not comply with legislation.



# APPENDICES

## APPENDIX A – LARGE MERGER

Case number	Acquiring firm	Target Firm	Status
34/LM/Apr09	Chlor-Alkali Holdings (Pty) Ltd	Botswana Ash (Pty) Ltd	Approved in previous period, reasons issued in this period
69/LM/Oct09	Wispeco (Pty) Ltd	the Business of AGI Solutions (Pty) Ltd	Approved in previous period, reasons issued in this period
86/LM/Dec09	Optimum Koorfontein Investments (Pty)Ltd	Main Street 431 (Pty)Ltd	Approved in previous period, reasons issued in this period
89/LM/Dec09	Investec Principal Investments, A Division of Investec Bank Limited	NCS Resins (Pty) Ltd	Approved in previous period, reasons issued in this period
03/LM/Jan10	Grindrod (South Africa) (Pty) Ltd	Fuelogic (Pty) Ltd	Approved
05/LM/Feb10	Investec Bank Limited and	Clidet No.763 (Pty) Ltd	Approved
12/LM/Mar10	SA Corporate Real Estate Trust Scheme, represented herein by Absa Bank Limited as Trustees for the time being	Old Mutual Life Assurance Company (SA) Limited, in respect of The Property Letting Enterprise known as "Supply Chain"	Approved
13/LM/Mar10	Associated Motor Holdings (Pty) Ltd	Goscor Cleaning Equipment (Pty) Ltd & Uvundlu Investments (Pty) Ltd	Approved
11/LM/Mar10	Life Healthcare Group (Pty)Ltd	Amabubesi Hospitals (Pty)Ltd and Bayview Private Hospitals Ltd	Approved
27/LM/May10	Lexshell 140 General Trading (Pty) Ltd	Incwala Resources (Pty) Ltd	Approved
29/LM/Jun10	Paladin Capital Limited	Curro Holdings (Pty) Ltd	Approved
38/LM/Jul10	Brodsky Investments (Pty) Ltd; Capital Property Fund Limited; Resilient Properties (Pty) Ltd and Fortress Income 2 (Pty) Ltd	Murray and Roberts Limited	Approved
21/LM/May10	Acucap Properties Limited	Parkdev (Pty) Ltd	Approved
22/LM/May10	Acucap Properties Limited	Attfund Limited Respect of Shares and Claims in Tyger Hills Investments (Pty) Ltd	Approved
28/LM/Jun10	Newpark Towers (Pty) Ltd	Ferox Investments (Pty) Ltd, in respect of the Property Letting Enterprise known as "24 Central"	Approved
19/LM/Apr10	Redefine Properties Limited	Hyprop Investments Limited	Approved
25/LM/May10	MB Technologies Investments (Pty) Ltd	Ingram Micro (Pty) Ltd	Approved
39/LM/Jul10	South Africa Infrastructure Fund Trust	Infrastructure Concessions South Africa (Pty) Ltd	Approved

# Appendices

Case number	Acquiring firm	Target Firm	Status
36/LM/Jul10	FirstRand Limited	Barnard Jacobs Mellet Holdings Limited	Approved
40/LM/Jul10	Imperial Holdings Limited	Orcom Trading 35 (Pty) Ltd	Approved
30/LM/Jun10	Imperial Group (Pty) Ltd	Imperial McCarthy (Pty) Ltd	Approved
44/LM/Aug10	Depfin Investments (Pty) Ltd	Ixia Coal Funding (Pty) Ltd	Approved
34/LM/Jun10	Total South Africa (Pty)Ltd	Tosaco Commercial Services (Pty)Ltd	Approved
55/LM/Aug10	Resilient Properties (Pty) Ltd	Ilanga Lifestyle Centre (Pty) Ltd	Approved
45/LM/Aug10	Lodestone Investment Holdings (Pty) Ltd	Candy Tops (Pty) Ltd	Approved
47/LM/Aug10	Attfund Retail Ltd	Parkdev (Pty) Ltd and Siyathenga Properties Two (Pty) Ltd and Mini Cape Properties Holdings, in Respect of the Business Enterprise Known as Willowbridge South	Approved
49/LM/Aug10	Imperial Holdings Ltd	CIC Holdings Ltd	Approved
64/LM/Oct10	Macquarie Investment Holdings No.2 (Pty) Ltd	Macquarie Airfinance Limited	Approved
46/LM/Aug10	Nippon Telegraph and Telephone Corporation	Dimension Data Holdings PLC	Approved
61/LM/Sep10	Fountainhead Property Trust	FHP Managers (Pty) Ltd, in respect of the Constantia Valley Sale Property	Approved
54/LM/Aug10	Mogs (Pty) Ltd	Trident South Africa (Pty) Ltd	Approved
65/LM/Oct10	Atterbury Investment Holdings Limited	Abacus Property Holdings (Pty) Ltd	Approved
53/LM/Aug10	Aveng (Africa) Limited	Dynamic Fluid Control (Pty) Ltd	Approved
63/LM/Oct10	Business Venture Investments No 1347 (Pty) Ltd	DD's Cash and Carry (Pty) Ltd t/a JD's Cash and Carry (Pty) Ltd	Approved
59/LM/Sep10	The Spar Group Limited	Fraqur 165 (Pty) Ltd and Northern Light Trading 128 (Pty)Ltd	Approved
58/LM/Sep10	Clidet No. 1003 (Pty) Ltd	ICC Mayibuye (Pty) Ltd trading as Savemoore Cash and Carry	Approved
60/LM/Sep10	Swanvest 120 (Pty) Ltd	Indwe Broker Holdings Limited	Approved
66/LM/Oct10	Standard Bank Group Limited	Credit Suisse Standard Securities (Pty) Ltd	Approved
50/LM/Aug10	Absa Bank Ltd	Alexander Forbes Homeplan Joint Venture	Approved
57/LM/Sep10	Daybreak Farms (Pty) Ltd	Rossgro Chickens (Pty) Ltd	Approved
17/LM/Apr10	Bidpaper Plus (Pty) Ltd	Sprint Packaging (Pty) Ltd	Approved
70/LM/Nov10	Media 24 Limited	New Media Publishing (Pty)Ltd	Approved
79/LM/Dec10	Redefine Properties Limited and Bakford Properties (Pty) Ltd	Fedhurst Properties (Pty) Ltd, in respect of the Property Letting Enterprises Known as Commerce Square and Esher Place	Approved
80/LM/Dec10	Standard Chartered Private Equity (Mauritius) III Limited	Afrifresh Group (Pty) Ltd	Approved
78/LM/Dec10	Capital Property Fund, Represented by Property Fund Managers Limited	Pangbourne Properties Limited	Approved
76/LM/Nov10	Fountainhead Property Trust	All Top (Pty) Ltd and Breeze Court Investments 33 (Pty) Ltd, in respect of the Property Letting Enterprise known as "Lefika House"	Approved
07/LM/Jan11	Northam Platinum Ltd	Mvelaphanda Resources Ltd	Approved

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Case number	Acquiring firm	Target Firm	Status
04/LM/Jan11	Imperial Holdings Limited	Fourway Holdings (Pty) Ltd	Approved
41/LM/Jul10	Metropolitan Holdings Limited	Momentum Group Limited	Conditional approval
14/LM/Mar10	Unilever Plc	Unilever N.V. and Sara Lee Corporation	Conditional approval
67/LM/Oct10	AECI Limited, Acting Through its Division Plaaskem	Qwemico Distributors (Pty) Ltd	Conditional approval
01/LM/Jan11	Housing Impact Fund South Africa	Rand Leases Securitisation (Pty) Ltd	Approved, reasons pending
02/LM/Jan11	Main Street 796 Limited	Firststrand STI Holdings Limited	Approved, reasons pending
77/LM/Dec10	Unilever PLC	Alberto-Culver Company	Approved, reasons pending
03/LM/Jan11	Retail Africa Consortium Holdings (Pty) Ltd	Rapfund Holdings (Pty) Ltd and Retail Africa Wingspan Investments (Pty) Ltd	Approved, reasons pending
75/LM/Nov10	Growthpoint Properties Limited	Design Square Shopping Centre (Pty) Ltd, in respect of an 18% undivided share of the business enterprise known as Brooklyn Mall	Approved, reasons pending
06/LM/Jan11	Proudafrique 267 Trading (Pty) Ltd and	S Buys (Pty) Ltd	Approved, reasons pending
26/LM/May10	Tsogo Sun Holdings (Pty) Ltd	Gold Reef Resorts Limited	Approved, reasons pending
73/LM/Nov10	Wal-Mart Stores Inc	Massmart Holdings Limited	Pending further hearing
02/LM/Jan10	The South African Breweries Limited	Boland Beer Distributors (Pty) Ltd	Pending hearing
05/LM/Jan11	Hyprop Investments Limited	Attfund Retail Limited	Pending hearing
68/LM/Oct10	The JSE Limited and Momentum Managed Account Platform Holdings (Pty) Ltd	First Rand Alternative Investment Management (Pty) Ltd	Pending hearing

## APPENDIX B – INTERMEDIATE MERGERS

Case number	Complainant/Acquiring firm	Respondent/Target Firm	Decision
23/AM/May10	Bedrock Mining Support (Pty) Ltd	Mondi Ltd	Conditional approval
82/AM/Dec10	Softline (Pty) Ltd	Netcash (Pty) Ltd	Pending hearing
81/AM/Dec10	Pioneer Hi-Bred International Inc	Pannar Seed (Pty) Ltd	Pending hearing
10/AM/Feb11	MTO Forestry (Pty) Ltd, Boskor Sawmill (Pty) Ltd & Boskor Ripplant (Pty) Ltd	Competition Commission	Pending hearing
88/AM/Aug08	Cape Gold Holdings (Pty) Ltd and Universal Recycling Company (Pty) Ltd and	Universal Metal Shredding (Pty) Ltd	Withdrawn 04 Aug 10

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## APPENDIX C – PROHIBITED PRACTICES

### i) Complaint referrals from the Commission

Case Number	Complainant	Respondent	Status
88/CR/Dec09	Competition Commission	Gerardo Trading CC t/a Healthwise Distributors	Withdrawn 06 Aug 10
17/CR/Mar05	Competition Commission	Netstar (Pty) Ltd & 2 others, Tracetec	Found in contravention of the Act
23/CR/Feb09	Competition Commission	Rocla (Pty) Ltd & 9 Others (Grallio)	Dismissed
23/CR/Feb09	Competition Commission	Rocla (Pty) Ltd & 9 Others (Southern Pipelines Contractors Pty Ltd) (Concrete Walls (Pty) Ltd)	Southern Pipes fined R16,882,597.00 Concrete Walls fined R6,192,457.00
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Pending further hearing
15/CR/Feb09	Competition Commission	DPI plastics (Pty) Ltd, Petzetakis, Marley Pipes System (Pty)Ltd, Swan Plastics (Pty) Ltd, Amitech South Africa (Pty), Flo-Tek Pipes & irrigation (Pty) Ltd, Macneil Agencies (Pty) Ltd, Andrag (Pty) Ltd, Gazelle Plastics (Pty) Ltd	Pending further 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 further hearing
08/CR/Feb11	Competition Commission	Aveng (Africa) Ltd, Reinforcement Mesh Solutions (Pty) Ltd & 18 Others	Pending hearing
14/CR/Mar11	Competition Commission	Esorfranki Ltd & 5 others	Pending hearing
19/CR/Mar11	Competition Commission	Erf 179 Bedfordview (Pty) Ltd, Liberty Group Limited, Bedford Square Properties (Pty) Ltd & Wintwice Properties (Pty) Ltd	Pending hearing
24/CR/Mar11	Competition Commission	Concor (Pty)Ltd, Wilson Bayly Homes Ovcon (Pty) Ltd & Lennings Dec Rail Services (Pty) Ltd	Pending hearing
32/CR/Jun10	Competition Commission	Fritz Pienaar Cycles (Pty) Ltd, Cycle Lab (Pty) Ltd and others	Pending hearing
20/CR/Apr10	Competition Commission	Computicket (Pty) Ltd	Pending hearing
56/CR/Aug10	Competition Commission	Apollo Tyres South Africa (Pty) Ltd, Goodyear South Africa (Pty) Ltd, Continental Tyre South Africa (Pty) Ltd, Bridgestone South Africa (Pty) Ltd, South African Tyre Manufacturers Conference (Pty) Ltd (Car Tyres)	Pending hearing

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Case Number	Complainant	Respondent	Status
51/CR/Aug10	Competition Commission	SA Metal and Machinery (Pty) Ltd, National Scrap Metal (Pty) Ltd, Ben Jacobs Metals (Pty) Ltd, Power Metals Recyclers (Pty) Ltd, Universal Recycling Company (Pty) Ltd, Ton Scrap (Pty) Ltd, Scaw SA (Pty) Ltd, Scaw Metals Group (Pty) Ltd, Amalgamated Scrap Metals Recycling cc, Abbedac Trading (Pty) Ltd, Ben Jacobs Iron and Steel (Pty) Ltd, Cape Town Iron and Steel Works (Pty) Ltd and the New Reclamation Group (Pty) Ltd	Pending hearing
42/CR/Jul10	Competition Commission	British Airways PLC, South African Airways (Pty) Ltd, Air France Cargo-KLM Cargo, Alitalia Cargo, Cargolux International SA, Singapore Airlines, Martinair Cargo and Lufthansa Cargo AG	Pending hearing
35/CR/Jul10	Competition Commission	Giuricich Costal Projects (Pty) Limited, Grinaker-LTA (Pty) Limited	Pending hearing
48/CR/Aug10	Competition Commission	Sasol Chemical Industries Ltd (sec8) (Polymers)	Pending hearing
74/CR/Jun08	Competition Commission	Astral Operation Limited and 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	Pending hearing
111/CR/Oct07	Competition Commission	Komatiland Forests (Pty) Ltd & 10 others	Pending hearing
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
08/CR/Jul07	Competition Commission	Iskor 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
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 SA 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
15/CR/Mar10	Competition Commission	Pioneer Foods & 16 Others (White Maize Milling)	Pending hearing

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Case Number	Complainant	Respondent	Status
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
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
92/CR/Dec09	Competition Commission	Bridgestone South Africa (Pty)Ltd, Maxiprest (Pty) Ltd, Autotruck & Tyres CC	Pending hearing
06/CR/Mar10	Competition Commission	Chevron SA (Pty) Ltd & Others	Pending hearing

## ii) Complaint referrals from complainant

Case Number	Complainant/Applicant	Respondent	Decision
37/CR/Jul10	Phutuma Networks	Telkom SA & Competition Commission	Dismissed
26/CR/Feb09	Rukanani Distributors and	Coca Cola Fortune (Pty) Ltd	Withdrawn 07 May10
24/CR/May10	Dr Davies Pathologists Inc	Medi-Clinic Southern Africa Limited & Drs Dietrich Voigt, Mia and Partners	Withdrawn 31 May 10
37/CR/Apr09	Jose Fernandes, O.J.L.De Sa, Henrique Leca and	OBC Group (Pty) Ltd	Withdrawn 01 Apr 10
51/CR/May08	Tony McKeever	SA Rugby (Pty) Ltd	Withdrawn 15 Oct 10
125/CR/Nov08	Entelligence Limited and	Google South Africa (Pty) Ltd & Google Ireland Ltd	Withdrawn 21 Sep 10
95/CR/Aug08	Five Star World T/A Five Star Tours	South African Airways	Removed from roll
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 and	Nedbank Limited	Removed from the roll
84/CR/Aug07	Raymond Leonard, Global Technology Investments (Pty) Limited, Accurate Trading 34 (Pty) Ltd & Accurate Trading 44 (Pty) Ltd and	Nedbank Limited, Standard Bank of South Africa Limited & Gensec NSA Equity Fund Trust	Removed from the roll
01/CR/Jan08	Peter Scott, Mr. Video (Pty) Ltd and	Nu Metro Home Entertainment	Removed from the roll
72/CR/Oct09	Johan Olivier	Nexor 210 CC, Ganter Pigeon Systems & South African National Pigeon Organisation	Removed from the roll

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Case Number	Complainant/Applicant	Respondent	Decision
81/CR/Nov09	Immobile Retail Investments (Pty) Ltd & 13 Others	ABSA Bank Ltd & 5 Others	Removed from the roll
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)	Removed from the roll
21/CR/Mar11	Gerhardus Johannes Jacobs	The New Reclamation Group	Pending hearing
97/CR/Sep08	Fourier Holdings (Pty) Ltd	BMW South Africa (Pty) Ltd t/a BMW Motorrad & 13 Others	Pending hearing
100/CR/Sep08	Joshua Dlamini and Industrial Development Corporation	Competition Commission	Pending hearing
44/CR/May07	Charter Property Sales and	The Saturday Star Property Guide	Pending hearing
43/CR/May09	Preferred Provider Negotiators (Pty) Ltd	Iso Leso Optics Limited	Pending hearing
55/CR/Jul09	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Pending hearing
78/CR/Nov09	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	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

### iii) Consent orders

Case Number	Complainant	Respondent	Administrative Penalty (Fine)
07/CR/Mar10	Competition Commission	Anix Trading 739 CC	R20 000.00
07/CR/Mar10	Competition Commission	Zedek Trading 799 CC	R40 000.00
01/CR/Jan10	Competition Commission	Rainbow Farms (Pty)Ltd	R1 000 000.00
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	0
45/CR/May06	Competition Commission	Sasol Chemical Industries (Pty) Ltd,	0
15/CR/Mar10	Competition Commission	Keystone Milling Co. (Pty) Ltd	R6 730 349.00
06/CR/Mar10	Competition Commission	Masana Petroleum Solutions (Pty) Ltd	R13 000 000.00
23/CR/Feb09	Competition Commission	Cape Concrete Works (Pty) Ltd	R4 371 386.00

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Case Number	Complainant	Respondent	Decision
65/CR/Sep09	Competition Commission	Aveng (Africa) Ltd T/A Duraset	R21 900 000.00
48/CR/Aug 10	Competition Commission	SAfripol (Pty) Ltd	R16 474 573.11
51/CR/Aug10	Competition Commission	National Scrap Metals (Pty) Ltd	R17 730 973.60
10&15/CR/ Mar10	Competition Commission	Pioneer Foods (Pty) Ltd	R500 000 000.00
15/CR/Feb09	Competition Commission	Swan Plastics	R7 649 414.40
51/CR/Aug10	Competition Commission	Amalgamated Scrap Metals Recycling cc	R3 264 944.60
51/CR/Aug10	Competition Commission	Abbedac Trading (Pty) Ltd	R4 965 793.70
51/CR/Aug10	Competition Commission	Universal Recycling Company (Pty) Ltd	R18 061 596.75
15/CR/Feb09	Competition Commission	Flo-tek Pipes and Irrigation (Pty) Ltd	R5 049 433.26
48/CR/Aug10	Competition Commission	Sasol Chemical Industries Ltd (sec 4(1)) (Polymers)	R 111 690 000.00
83/CR/Dec10	Competition Commission	Liberty Group Limited	R 18 811 708.55
43/CR/Aug10	Competition Commission	Foskor (Pty) Ltd	0.00
33/CR/Jun10	Competition Commission	Power Metal Recyclers (Pty) Ltd	R12 773 587.55
52/CR/Aug10	Competition Commission	Spring Lights Gas (Pty) Ltd	Pending further hearing
15/CR/Mar10	Competition Commission	Carolina Rollermeulle (Pty) Ltd	Pending hearing
84/CR/Dec09 08/CR/Feb11	Competition Commission	Aveng (Africa) Limited t/a Steeledale (Mesh and Rebar)	Pending hearing



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## iv) 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	Granted
09/IR/Mar10	Gogga Tracking Solutions (Pty)Ltd	Vodacom Service Provider (Pty)Ltd	Dismissed
31/IR/Jun10	Managed Integrity Evaluation (Pty) Ltd	QVS Qualification Verification Services (Pty) Limited, University of Johannesburg, Tshwane University of Technology	Withdrawn 09 Jun 10
74/IR/Nov10	Gerhardus Johannes Jacobs	The New Reclamation Group (Pty) Ltd	Withdrawn 06 Dec 10
14/IR/Jan09	Dimension Data (Pty) Ltd	Telkom SA Ltd	Pending hearing
16/IR/Apr10	Karen Dorfling/Nuts about Biltong	Erf 632 Hennospark (Pty) Ltd	Pending hearing
12/IR/Feb11	Bedford Square Properties (Pty) Ltd	ERF 179 Bedfordview (Pty) Limited, Liberty Group Limited	Pending hearing

## APPENDIX D – PROCEDURAL MATTERS

Case Number	Applicant	Respondent	Type	Status
37/CR/Apr08	The New Reclamation Group(Pty) Ltd	Competition Commission	Amendment to Consent Order (Payment)	Withdrawn 14 May 10
26/CR/Feb09	Rukanani Distributors and	Coca Cola Fortune (Pty) Ltd	Condonation and Amendment application	Withdrawn 07 May 10
125/CR/Nov08	Entelligence Limited and	Google South Africa (Pty) Ltd & Google Ireland Ltd	Amendment application	Withdrawn 21 Sep 10
06/CR/Mar10	Competition Commission	Chevron SA (Pty) Ltd, Total SA (Pty) Ltd & Others (Bitumen)	Application to inspect	Settled between parties
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Application to strike out	Removed from roll
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Tribunal directive	Removed from roll
63/CR/Sep09	Competition Commission	Cape Gate (Pty) Ltd & Others	Tribunal directive	Partly granted
63/CR/Sep09	Competition Commission	Cape Gate (Pty) Ltd & Others	Discovery application	Partly granted
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	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 application	Granted

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Case Number	Applicant	Respondent	Type	Status
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	Partly granted
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	Partly granted
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	Partly granted
18/X/Apr10	Media 24 Ltd & Abraham Petrus van Zyl	Competition Commission & 3 Others	Application to set aside summons	Dismissed
91/CR/Dec09	1Time Airline (Pty) Ltd	Lanseria International Airport (Pty)Ltd and Comair Limited t/a Kulula.Com	Amendment application	Granted
62/X/Sep10	Freeworld Coatings Ltd and	Competition Commission, Kansai Paint Company Ltd	Review of CC's decision	Remitted to CC
97/CR/Sep08	Fourier Holdings (Pty) Ltd	BMW South Africa (Pty) Ltd t/a BMW Motorrad & 13 Others	Dismissal application	Granted
55/CR/Jul09 73/CR/Oct09 78/CR/Nov09	Telkom SA Ltd	Competition Commission, Dimension Data (Pty) Ltd	Exception application	Dismissed
63/CR/Sep09	Competition Commission	Cape Gate (Pty) Ltd & Others	Stay application	Granted
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Separation application	Granted
11/CR/Feb04	Competition Commission	Telkom Ltd (SAVA)	Amendment application	Dismissed
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Discovery application (Metcash)	Partly granted
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Discovery application	Granted
23/AM/May10	Bedrock Mining Support (Pty) Ltd	Mondi Ltd	Discovery application	Granted
23/AM/May10	Bedrock Mining Support (Pty) Ltd	Mondi Ltd	Confidentiality application	Partly granted
26/LM/May10	Tsogo Sun Holdings (Pty) Ltd	Gold Reef Resorts Limited	Extension application	Granted
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Discovery application (Picardi Rebel)	Granted
20/CR/Apr10	Competition Commission	Computicket (Pty) Ltd	Application for substituted	Partly granted

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Case Number	Applicant	Respondent	Type	Status
41/LM/Jul10	Metropolitan Holdings Limited	Momentum Group Limited	Variation of order	Partly granted
69/AM/Oct10	Competition Commission	WBHO Construction (Pty) Ltd & Edwin Construction (Pty) Ltd	Failure to notify	Confirmed
84/CR/Dec09	Competition Commission	Aveng (Africa) Ltd	Amendment Application	Granted
73/LM/Nov10	Wal-Mart Stores Inc	Massmart Holdings Limited	Extension application	Granted
73/LM/Nov10	Wal-Mart Stores Inc	Massmart Holdings Limited	Postponement application	Partly Granted
11/CR/Feb04	Competition Commission	Telkom SA Ltd (SAVA)	Access to confidential information	Granted
81/AM/Dec10	Pioneer Hi-Bred International Inc	Pannar Seed (Pty) Ltd	Intervention application	Pending further hearing
80/AM/Oct04	Londoloza Forestry Consortium (Pty) Limited	Bonheur 50 General Trading (Pty) Limited & Others	Costs order	Pending decision
82/AM/Dec10	Stratcol	Softline (Pty) Ltd, Netcash (Pty) Ltd	Intervention application	Pending hearing
13/X/Feb11	Caxton and CTP Publishers and Printers Limited	Competition Commission Paarl Media (Pty) Ltd Primedia (Pty)Ltd	Review of CC's decision	Pending hearing
13/X/Feb11	Caxton and CTP Publishers and Printers Limited	Competition Commission Paarl Media (Pty) Ltd Primedia (Pty)Ltd	Section 45 application	Pending hearing
10/AM/Feb11	MTO Forestry (Pty) Ltd, Boskor Sawmill (Pty) Ltd & Boskor Ripplant	Competition Commission	Suspension application	Pending hearing
103/CR/Dec06	Ladismith Cheese (Pty) Ltd	Competition Commission & Others	Dismissal application	Pending hearing
103/CR/Dec06	Parmalat SA (Pty) Ltd	Competition Commission & Others	Dismissal application	Pending hearing
11/CR/Feb04	Competition Commission	Telkom SA Ltd (SAVA)	Amendment application	Pending hearing
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 Others	Dismissal application	Pending hearing
32/CR/Jun10	Competition Commission	Fritz Pienaar Cycles (Pty) Ltd, Cycle Lab (Pty) Ltd and others	Amendment application	Pending hearing
71/SM/Nov10	The Association of System Operators	Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Review of CC's decision	Pending hearing
72/SM/Nov10	The Association of System Operators	Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Review of CC's decision	Pending hearing
10/CR/Mar10	Competition Commission	Paramount Mills (Pty )Ltd	Dismissal application	Pending hearing
02/LM/Jan10	South African Breweries Ltd	Boland Beer Distributors (Pty) Ltd	Discovery application	Pending hearing
91/CR/Dec09	1Time Airline (Pty) Ltd	Lanseria International Airport (Pty)Ltd and Comair Limited t/a Kulula.Com	Discovery application	Pending hearing

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Case Number	Applicant	Respondent	Type	Status
84/CR/Dec09	Competition Commission	Capital Africa Steel (Pty) t/a Reinforcing Mesh Solutions, Vulcania Reinforcing (Pty) Limited, BRC Mesh Reinforcing (Pty) Limited	Joinder application	Pending hearing
103/CR/Dec06	Clover Industries Ltd, Clover SA (Pty)	Competition Commission & Others	Dismissal application	Pending hearing
22/X/Mar11	Monsanto South Africa (Pty) Ltd & Monsanto International, SARL	Bowman Gilfillan, Pioneer Hi-Bred International Inc & Pannaar Seed (Pty) Ltd	Stay application	Pending hearing
73/LM/Nov10	Wal-Mart Stores Inc	Massmart Holdings Limited	Discovery application	Partly granted

## APPENDIX E – 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 it is 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 it wishes the matter to proceed, the file will be closed and archived offsite. In terms of the Tribunal's 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 the end of the current period under review there were no dormant matters identified. No further follow up is required.

## APPENDIX F – ECONOMIC INDICATOR DASHBOARD - 2010/2011

Metric	Key Performance Areas	Total
<b>Total budget</b>	Total budgeted funds as per the Annual Performance Plan	26 657 480
<b>Operating budget</b>	Budgeted direct operating expenses as per the Annual Performance Plan	2 847 391
	Actual direct operating Expenses as per the Annual Performance Plan	1 965 716
<b>Number of staff employed</b>	Total number of staff employed as at the end of the quarter	14
	Secretariat Support staff	8
	Case Management staff	6
<b>Matters on the roll</b>	Total number of active matters as at the end of the quarter	80
<b>Number of matters attended to</b>	Number of orders (decisions) issued during the quarter	111

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Metric	Key Performance Areas	Total
	Number of reasons issued during the quarter	74
<b>Hearing days</b>	Number of person days spent in hearings by all Tribunal members during the quarter	318
	% of person days spent in hearings by PT members during the quarter	24%
	% of person days spent in hearings by FT members during the quarter	76%
	Number of days spent in hearings per quarter	107
<b>Recordings</b>	Number of transcript pages (court record) produced during the quarter	8 116
	Number of transcript pages (court record) produced per actual hearing day	76
<b>Cost per matter</b>	Direct operating cost per order issued during the quarter	17 709
	Direct operating cost per reason issued during the quarter	26 564
	Direct operating cost per person day during the quarter	6 181
	Direct operating Cost per actual hearing day	18 371
	Direct operating cost per PT member person day	25 865
	Direct operating cost per transcript page produced during the quarter	242
<b>Support vs. Case Management staff</b>	Number of support staff per case management staff member	1
<b>Matters per Case management staff</b>	Average number of active matters per case management staff member as at the end of the quarter	13
	Average number of orders issued per case management staff member during the quarter	19
	Average number of reasons issued per case management staff member during the quarter	19
<b>Turnaround time – mergers</b>	Total number of new merger cases received during the quarter	57
	Number of cases set down within 10 business days of the filed merger	86%
	Number of orders issued within 10 business days of the last hearing date	95%
	Number of reasons issued within 20 business days of the order being issued	59%
<b>Turnaround time – opposed prohibited practices</b>	Total number of new opposed prohibited practice cases received during the quarter	15

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Metric	Key Performance Areas	Total
	Number of pre-hearings held	10
	Number of pre-hearing invitations sent out within 20 business days of close of pleading	40%
	Number of orders and reasons for decision issued	4
	Number of orders and reasons for decisions issued within 100 business days of the hearing date	75%
<b>Turnaround time – consent orders</b>	Number of consent orders issued this quarter	21
	Number of consent orders issued within 10 business days of the last hearing date	21
	% of matters where consent order issued within 10 business days	100%
<b>Turnaround time – procedural matters</b>	Total number of new procedural matters heard during the quarter	21
	Number of orders issued during the quarter	29
	Number of orders issued within 20 business days of last hearing day	28
	% of matters where orders issued within 20 business days of last hearing day	97%
<b>Turnaround time – interim relief matters</b>	Total number of new interim relief matters received during the quarter	4
	Number of reasons issued during quarter	2
	Number of reasons issued within 100 business days of the last hearing date	2
	% of matters where reasons issued within 100 business days of the last hearing date	100%
<b>Fines generated</b>	Total rand value of administrative penalties imposed during the quarter	787 708 815
<b>Operational priorities for 2011/12</b>	Development of a case management system	Work in progress and to be finalised end June 2011
	Upgrade and improve the Tribunal's website	Completed ongoing maintenance
	Publishing of procedural guidelines	Draft to be reviewed by Tribunal members
	Provision of internships to students	2

# Appendices

## APPENDIX G – COMPETITION APPEAL COURT HEARINGS

Case Number	Type	Applicant	Respondent	Status
91/CAC/Feb10	Appeal	Competition Commission	Pioneer Foods (Pty) Ltd	Leave to withdraw appeal and cross-appeal granted
92/CAC/Mar10	Appeal	South African Airways	Comair Limited & Nationwide Airlines (Pty) Ltd	Appeal dismissed with costs
93/CAC/Mar10	Appeal	Yara South Africa (Pty) Ltd	Competition Commission, Sasol Chemical Industries (Pty) Ltd and Omnia Fertilizer Ltd	Appeal upheld with costs
94/CAC/Mar10	Appeal	Omnia Fertilizer	Competition Commission	Appeal upheld with costs
95/CAC/Mar10	Appeal	Astral Operations Ltd & Elite Breeding Farms	Competition Commission	Withdrawn 13 Jul 2010
96/CAC/Apr10	Appeal	Trudon (Pty) Ltd	Directory Solutions CC & Telkom SA Ltd	Appeal succeeds with costs
97/CAC/May10	Appeal	Tracker Network (Pty) Ltd	Competition Commission, Tracetec (Pty) Ltd, Netstar (Pty) Ltd, Matrix Vehicle Tracking (Pty) Ltd and Vehicle Security Association of South Africa	Appeal upheld
98/CAC/May10	Appeal	Competition Commission and Tracetec (Pty) Ltd	Netstar (Pty) Ltd, Matrix Vehicle Tracking (Pty) Ltd, Tracker Network (Pty) Ltd and Vehicle Security Association of South Africa	Appeal upheld
99/CAC/May10	Appeal	Netstar (Pty) Ltd	Competition Commission, Tracetec (Pty) Ltd, Matrix Vehicle Tracking (Pty) Ltd, Tracker Network (Pty) Ltd and Vehicle Security Association of South Africa	Appeal upheld
100/CAC/Jun10	Appeal	Feltex Holdings (Pty) Ltd	Competition Commission, Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Steinhoff International Holdings Ltd, KAP International Holdings Ltd, Gomma Gomma (Pty) Ltd & Steinhoff Africa Holdings (Pty) Ltd	Judgment pending
101/CAC/Jun10	Review	Feltex Holdings (Pty) Ltd	Norman Manoim NO, Competition Commission, Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Steinhoff International Holdings Ltd, KAP International Holdings Ltd, Gomma Gomma (Pty) Ltd & Steinhoff Africa Holdings (Pty) Ltd	Judgment pending
102/CAC/Jun10	Appeal	Loungefoam (Pty) Ltd, Gomma Gomma (Pty) Ltd, Steinhoff International Holdings Ltd & Steinhoff Africa Holdings (Pty) Ltd	Competition Commission, Vitafoam (Pty) Ltd, Feltex Holdings (Pty) Ltd & KAP International Holdings Ltd	Judgment pending

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Case Number	Type	Applicant	Respondent	Status
103/CAC/Sep10	Appeal	ArcelorMittal SA Ltd	Competition Commission, Scaw SA (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	Pending hearing
103/CAC/Sep10	Review	ArcelorMittal SA Ltd	Norman Manoim NO, the Competition Commission, Scaw SA (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	Pending hearing
103/CAC/Sep10	Appeal	Cape Gate (Pty) Ltd	Competition Commission, Scaw SA (Pty) Ltd, ArcelorMittal SA Ltd , Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	Pending hearing
103/CAC/Sep10	Review	Cape Gate (Pty) Ltd	Norman Manoim NO, Yasmin Carrim NO, Medi Mokuena NO, Scaw SA (Pty) Ltd, Competition Commission, , ArcelorMittal SA Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron & Steel Institute& Competition Tribunal	Pending hearing
103/CAC/Sep10	Stay	ArcelorMittal SA Ltd	Norman Manoim NO, the Competition Commission, Scaw SA (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	Withdrawn 27 Oct 2010
103/CAC/Sep10	Stay	Cape Gate (Pty) Ltd	Norman Manoim NO, Yasmin Carrim NO, Medi Mokuena NO, Scaw SA (Pty) Ltd, Competition Commission, , ArcelorMittal SA Ltd, Cape Town Iron Steel Works (Pty) Ltd, South African Iron & Steel Institute& Competition Tribunal	Pending hearing
103/CAC/Sep10	Stay	ArcelorMittal SA Ltd	Norman Manoim NO, the Competition Commission, Scaw SA (Pty) Ltd, Cape Gate (Pty) Ltd, Cape Town Iron Steel Works (Pty) Ltd & South African Iron & Steel Institute	Pending hearing
104/CAC/Nov10	Appeal	Momentum Group Limited & Metropolitan Holdings Limited	The Competition Commission & National Education Health and Allied Workers Union	Withdrawn 01 Feb 2011
105/CAC/Dec10	Appeal	Southern Pipeline Contractors	The Competition Commission	Pending hearing
106/CAC/Dec10	Appeal	Conrite Walls (Pty) Ltd	The Competition Commission	Pending hearing
107/CAC/Dec10	Appeal	Competition Commission	Gralio Precast (Pty) Ltd	Pending hearing
97-99/CAC/Mar10	Leave to appeal	Competition Commission and Tracetec (Pty) Ltd	Netstar (Pty) Ltd, Matrix Vehicle Tracking (Pty) Ltd and Tracker (Pty) Ltd	Pending hearing



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Case Number	Type	Applicant	Respondent	Status
97-99/CAC/Mar10	Leave to appeal	Competition Commission and Tracetec (Pty) Ltd	Netstar (Pty) Ltd, Matrix Vehicle Tracking (Pty) Ltd and Tracker Network (Pty) Ltd	Pending hearing
108/CAC/Mar11		Phutuma Networks (Pty) Ltd	Telkom SA Ltd	Pending hearing



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