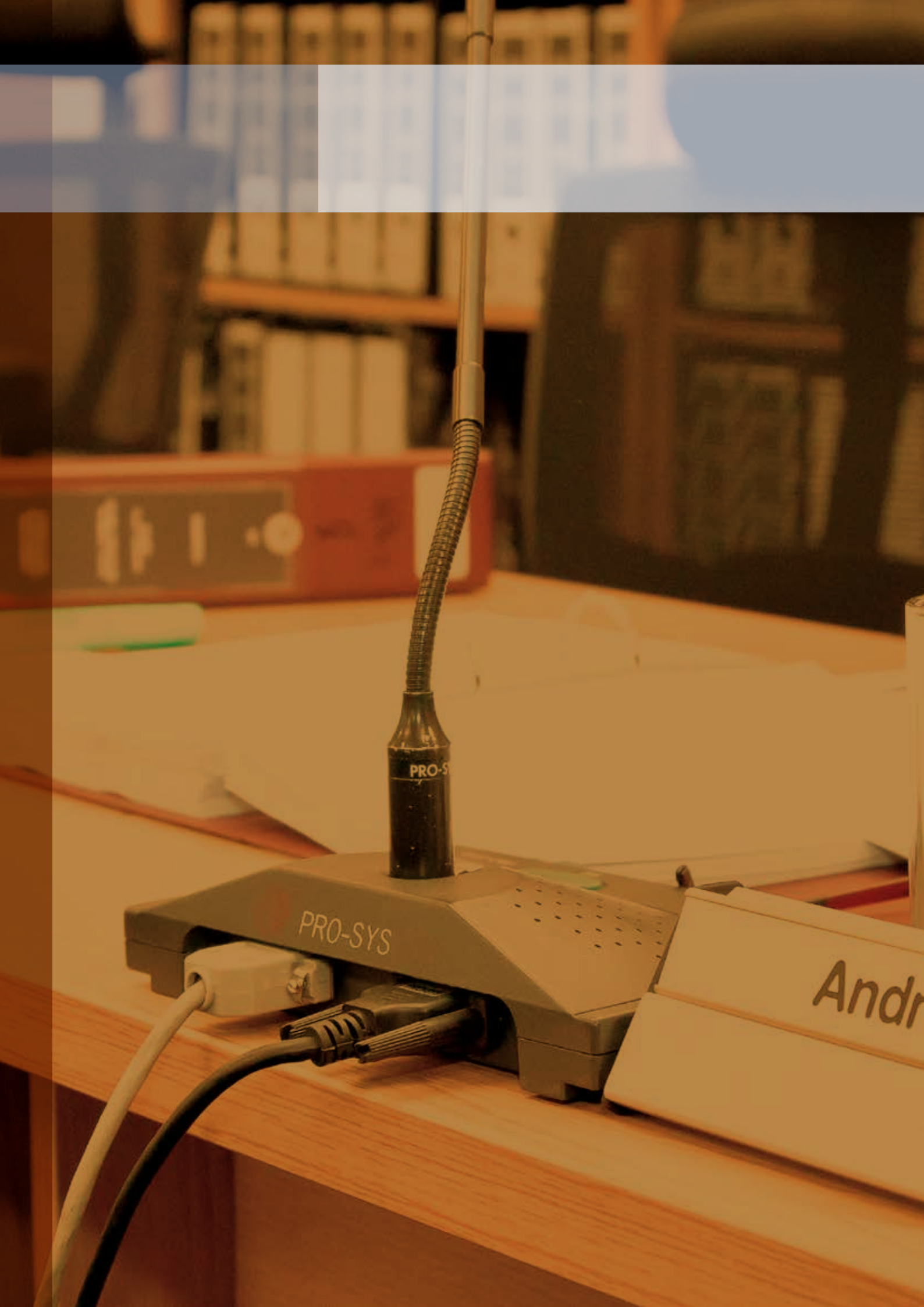




2012 ANNUAL 2013 REPORT



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south africa



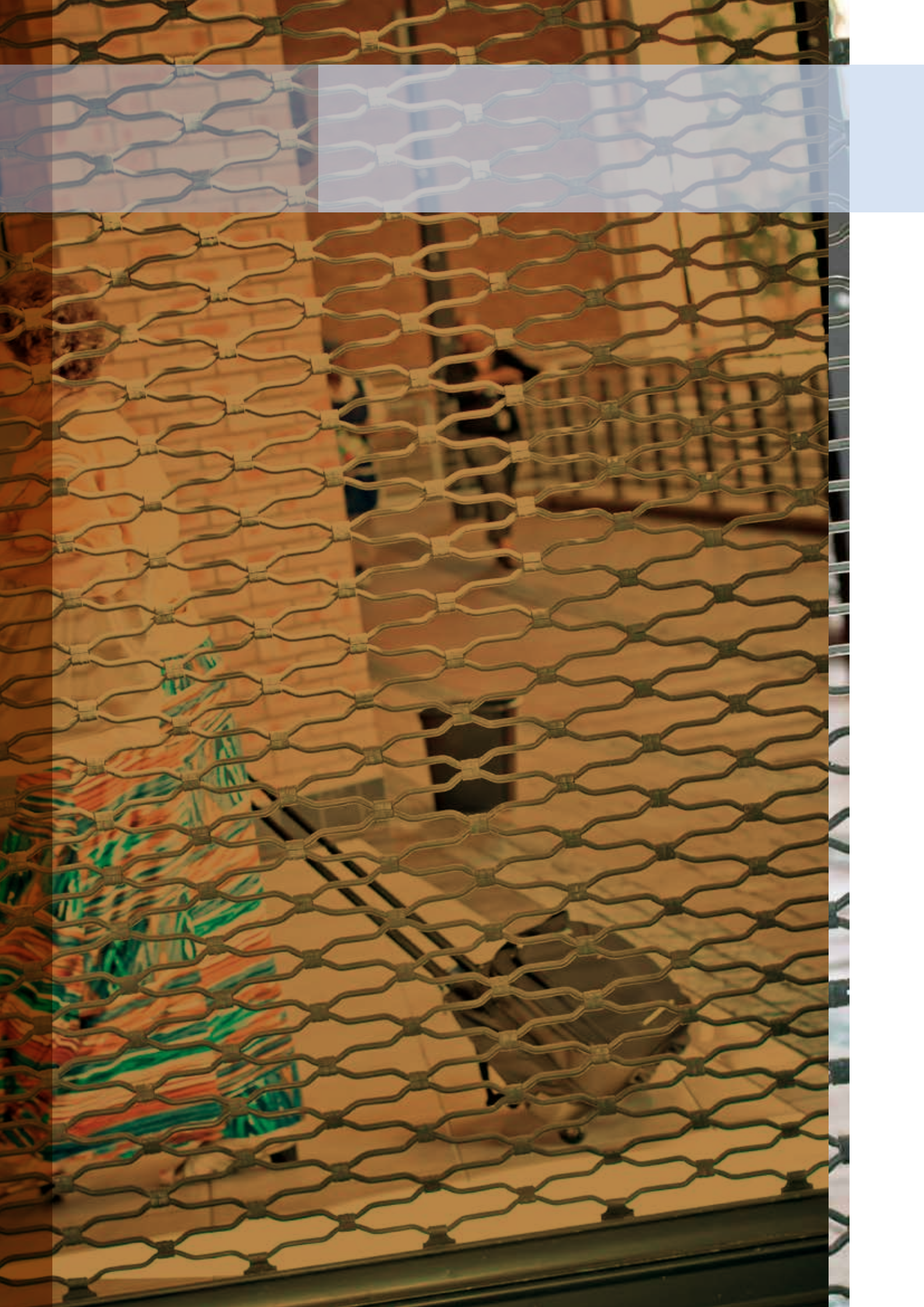
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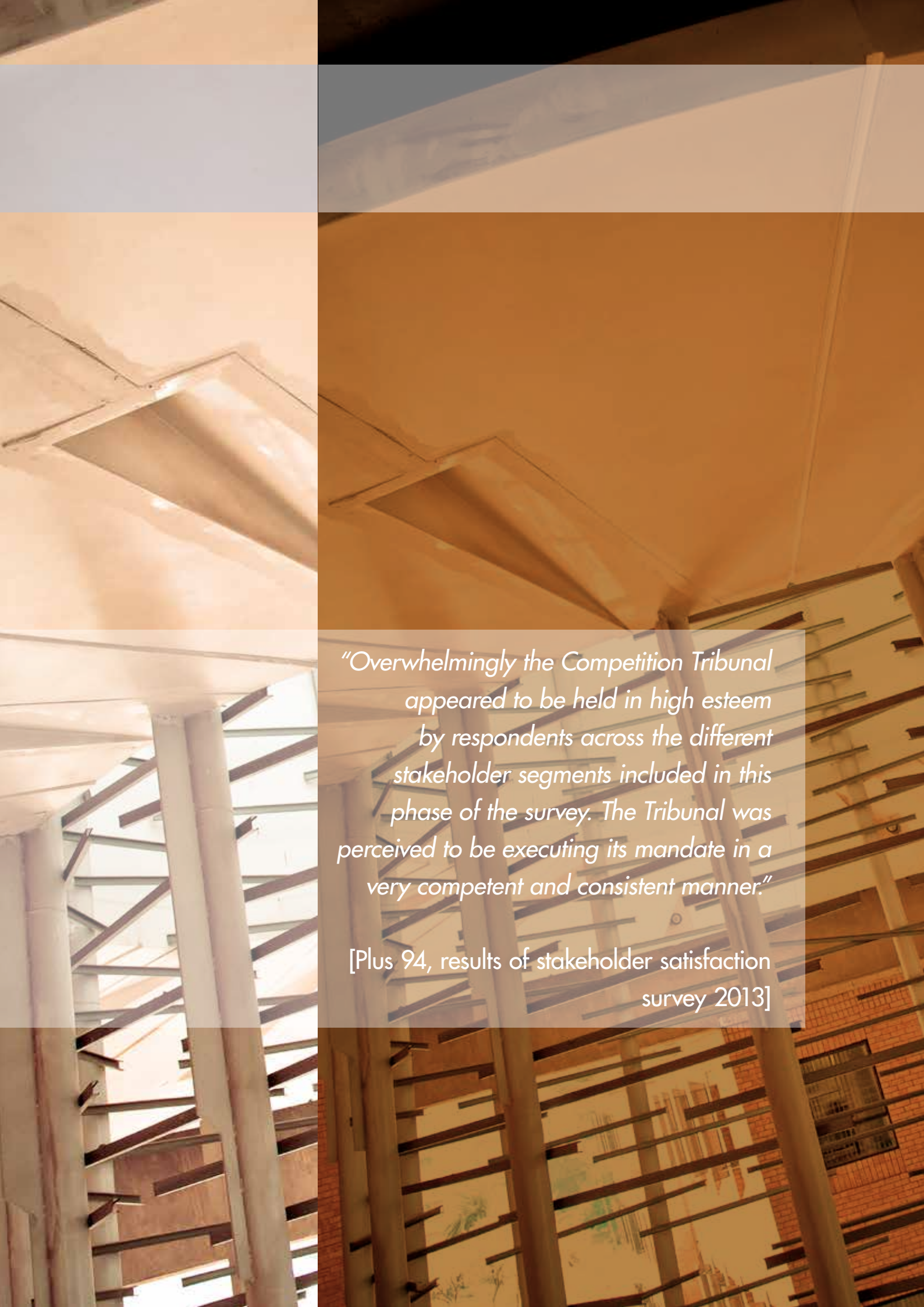
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ABBREVIATIONS

LIST OF ABBREVIATIONS AND ACRONYMS

The Act	The Competition Act 89 of 1998
The Tribunal	The Competition Tribunal of South Africa
The Commission	The Competition Commission of South Africa
Senmin	Senmin International (Pty) Ltd
Cellulose Derivatives	Cellulose Derivatives (Pty) Ltd
CMC	Carboxymethylcellulose
Media 24	Media 24 Limited
Natal Witness	Natal Witness Printing and Publishing Company (Pty) Ltd
Gold Circle	Gold Circle (Pty) Ltd
Kenilworth	Kenilworth Racing (Pty) Ltd
Life Healthcare	Life Healthcare Group (Pty) Ltd
JMH	Joint Medical Holdings Ltd
Nestlé	Nestlé SA
Paarl Coldest	Paarl Coldset (Pty) Ltd
Glencore	Glencore International AG
Optimum Coal	Optimum Coal Holdings Ltd
SAPIA	South African Petroleum Industry Association
SAPEG	South African Petroleum and Energy Guild
Telkom	Telkom SA Ltd
Petzetakis	Petzetakis Africa (Pty) Ltd
Vulcania	Vulcania Reinforcing (Pty) Ltd
RMS	Reinforcing Mesh Solutions
DSI	Dywidag Systems International (Pty) Ltd
Videx	Videx Wire Products (Pty) Ltd
RSC Ekusasa	RSC Ekusasa Mining (Pty) Ltd
SCA	Supreme Court of Appeal
SAVA	South African Vans Association
ISP	Internet service provider
VANS provider	Value added network service provider
CAC	Competition Appeal Court
HDI	Historically disadvantaged individual
ICN	International Competition Network
OECD	Organisation for Economic Cooperation and Development
CFO	Chief financial officer
EDD	Economic Development Department
PFMA	Public Finance Management Act
EXCO	Executive committee
RC	Risk committee
RMC	Risk management committee
RCC	Risk coordination committee
FPC	Fraud prevention committee
VAT	Value added tax
OHS	Occupational health and safety



“Overwhelmingly the Competition Tribunal appeared to be held in high esteem by respondents across the different stakeholder segments included in this phase of the survey. The Tribunal was perceived to be executing its mandate in a very competent and consistent manner.”

[Plus 94, results of stakeholder satisfaction survey 2013]

PART 1

PART 1: REPORTS

Report of the Auditor-General to Parliament on the
Competition Tribunal

Audit committee's report

Risk committee's report

Chairperson's report

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 financial statements of the Competition Tribunal set out on pages 72 to 101 which comprise the statement of financial position as at 31 March 2013, the statement of financial performance, statement of changes in net assets, the cash flow statement for the year then ended, the statement of comparison of budget and actual amounts and notes, comprising a summary of significant accounting policies and other explanatory information.

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 South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No.1 of 1999) (PFMA), and for such internal control as the accounting authority determines is 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. My responsibility is to express an opinion on these financial statements based on my audit. I conducted my

audit in accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA), the General Notice issued in terms thereof and International Standards on Auditing. 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.

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

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

Opinion

6. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2013, 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

7. In accordance with the PAA and the General Notice issued in terms thereof, I report the following findings relevant to performance against predetermined objectives, compliance with laws and regulations and internal control, but not for the purpose of expressing an opinion.

Predetermined objectives

8. I performed procedures to obtain evidence about the usefulness and reliability of the information in the annual performance report as set out on pages 36 to 37 and 60 to 61 of the annual report.
9. The reported performance against predetermined objectives was evaluated against the overall criteria of usefulness and reliability. The usefulness of information in the annual performance report relates to whether it is presented in accordance with the National Treasury annual reporting principles and whether the reported performance is consistent with the planned objectives. The usefulness of information further relates to whether indicators and targets are measurable (i.e. well defined, verifiable, specific, measurable and time bound) and relevant as required by the National Treasury Framework for managing programme performance information.

The reliability of the information in respect of the selected objectives is assessed to determine whether it adequately reflects the facts (i.e. whether it is valid, accurate and complete).

10. There were no material findings on the annual performance report concerning the usefulness and reliability of the information.

Additional matter

11. Although no material findings concerning the usefulness and reliability of the performance information were identified in the annual performance report, I draw attention to the following matter.

Achievement of planned targets

12. Of the eighteen planned targets, only ten targets were achieved during the year under review. This represents 44.44% of total planned targets that were not achieved during the year under review. For further details on the extent and reasons for deviations between planned targets and actual performance refer to the annual performance reports on pages 36 and 60.

Compliance with laws and regulations

13. I performed procedures to obtain evidence that the entity has complied with applicable laws and regulations regarding financial matters, financial management and other related matters. My findings on material non-compliance with specific matters in key applicable laws and regulations as set out in the General Notice issued in terms of the PAA are as follows:

Expenditure management

14. The accounting authority did not take effective steps to prevent irregular expenditure as required by section 51(1)(b)(ii) of the Public Finance Management Act.

Internal control

15. I considered internal control relevant to my audit of the financial statements and compliance with laws and regulations. The matters reported below under the fundamentals of internal control are limited to the significant deficiencies that resulted in the findings on compliance with laws and regulations included in this report.

Leadership

16. The accounting authority did not exercise sufficient oversight to ensure compliance with applicable laws and regulations with regard to supply chain management.

Financial and performance management

17. Management did not take adequate action to ensure compliance with supply chain management policies and procedures.

Auditor-General

Pretoria

31 July 2013



**AUDITOR - GENERAL
SOUTH AFRICA**

Auditing to build public confidence

Part 1: Reports

AUDIT COMMITTEE REPORT

We are pleased to present our report for the financial year ended 31 March 2013

Audit committee members and attendance

The audit committee of the Tribunal consists of the members listed in Table 1 and is required to meet four times per annum as per its approved terms of reference. During the year under review four meetings were held. The audit committee's meetings have regularly included the internal auditors and representatives from the office of the Auditor-General.

Audit committee responsibility

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

The audit committee also reports that it has adopted appropriate formal terms of reference as its audit committee charter, has regulated its affairs in compliance with this charter and has discharged all its responsibilities as contained therein. Accordingly the audit committee operates in accordance with the terms of the said charter and is satisfied that it has discharged its responsibilities in compliance therewith.

The effectiveness of internal control

The system of internal controls applied by the entity over financial and risk management is effective, efficient and transparent. In line with the PFMA and the King III Report on Corporate Governance requirements, internal audit provides the audit committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the internal auditors, the audit report on the annual financial statements, and the management report of the Auditor-General South Africa, it was noted that no matters were reported that indicate any material deficiencies in the system of internal control or any deviations therefrom. Accordingly, we can report that the system of internal control over financial reporting for the period under review was efficient and effective.

The quality of in year management and monthly/quarterly reports submitted in terms of the PFMA

The audit committee is satisfied with the content and quality of monthly and quarterly reports prepared and issued by the accounting authority of the entity during the year under review.

Evaluation of annual financial statements

The audit committee has:

- reviewed and discussed the audited annual financial statements to be included in the annual report, with the Auditor-General and the accounting authority;
- reviewed the Auditor-General's management report and management's response thereto;
- reviewed the entity's compliance with legal and regulatory provisions;

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

Internal audit

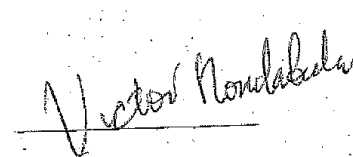
The audit committee is satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the entity and its audits.

Auditor-General of South Africa

The audit committee has met with the Auditor-General to ensure that there are no unresolved issues.

Table 1: Audit committee members and attendance

Name	Status of member	Number of meetings required to attend	Number of meetings attended
V.Nondabula (AC Chair - term ends October 2014)	Non-executive	4	4
K.Teixeira (Risk Chairperson - term ends October 2013)	Non-executive	4	4
M.Ramataboe (term ends October 2013)	Non-executive	4	4
N.Mhlongo (term ends October 2013)	Non-executive	4	4
S. Gounden (term ends October 2013)	Non-executive	4	4



Victor Nondabula
Chairperson of the audit committee
31 July 2013

RISK COMMITTEE REPORT

The risk committee of the Tribunal is responsible for assisting the accounting authority in discharging its responsibilities relating to the governance of risk. The risk committee reports that during the period under review it has adopted appropriate formal terms of reference, as per its charter, and has discharged the following responsibilities in compliance with the charter:-

- assisted the accounting authority to review the risk management policy and recommend same to the accounting authority for approval
- monitored the implementation of the risk management framework and through systems and processes designed for that purpose, ensured that:
 - management disseminates the risk management plan throughout the entity;
 - management ensures that the risk management plan is integrated into the daily activities of the business.
- based upon the advice of management, expressed to the accounting authority the entity's formal opinion on the effectiveness of risk management systems and processes
- reviewed the risk management report at each meeting with particular regard to:
 - ensuring that a process exists where risk management frameworks and methodologies are implemented to increase the possibility of anticipating unpredictable risk;
 - ensuring that a process exists where risk management assessments are performed on a continuous basis;
 - ensuring that management considers and implements appropriate risk responses;
 - ensuring that continuous risk monitoring by management takes place.

In supporting these objectives, the risk committee conducted the following activities:

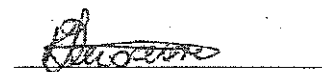
- overseeing the review of the entity's risk management policy;
- reviewing procedures to ensure that the entity risk management framework was properly implemented throughout the operations and that the requisite training was undertaken;
- assisting the accounting authority in determining the material strategic and operational risks, and the concomitant opportunities that could potentially impact or benefit the entity during the year under review.

The risk committee is satisfied that it has complied with its charter which has been formalised to include principles contained in King III.

The risk committee membership is made up of non-executive as follows:-

Chairperson: K. Teixeira
Members: V. Nondabula
S. Gounden
N. Mhlongo
M. Ramataboe

Executive management is represented by J. de Klerk and A. Wessels. The external auditors as well as internal auditors have a standing invitation to the meetings and were represented in most of the meetings during the year. Four quarterly meetings were held in this period.



Karen Teixeira
Chairperson of the risk committee
31 July 2013

Part 1: Reports

A portrait of Norman Manoim, a middle-aged man with short grey hair, smiling broadly. He is wearing a dark grey textured blazer over a white collared shirt. His hands are clasped in front of him. The background is a warm-toned brick wall. The image is split vertically down the middle.

Norman Manoim

Chairperson of the Tribunal

“Although the Competition Act and its institutions are now well into their 14th year of existence, ‘firsts’ are still a feature of our environment and the past financial year was no exception.”

CHAIRPERSON'S REPORT

1. Introduction

Although the Competition Act and its institutions are now well into their 14th year of existence, 'firsts' are still a feature of our environment and the past financial year was no exception.

This year the Tribunal heard its first exemption appeal; issued its first administrative fine in an opposed abuse of dominance case; and managed the first divestiture of assets flowing from a merger that had been prohibited after implementation.

But 'firsts' were not confined to our hearing room. We also went completely electronic for the first time and appointed an in-house economist.

Cases

This financial year we saw a decrease in the volume of cases heard, when compared to the previous financial year,

but an increase in complexity of the cases, particularly mergers. (It is worth noting that the last financial year had represented a substantial increase on the previous year. Also, more reasons were issued in the current financial year than in the previous year).

The increase in complexity in mergers is illustrated in two respects. Of the number of mergers heard last year, 17.65% were approved conditionally. In the present financial year that figure rose to 25%. Mergers that involve conditions are typically more demanding for an adjudicator. Secondly, the number of small and intermediate mergers increased from five in the previous year to seven. Since this category of mergers constitutes appeals made by merging parties against adverse decisions made by the Commission, it results in contested, and by implication more complex, proceedings before the adjudicator. (The Commission is entitled to approve small and intermediate mergers. These mergers only come to the Tribunal by way of an appeal from either

merging parties or the employees of the merging firms. This appeal is a full appeal with an expanded record and is referred to in the Act as a "consideration").

The number of prohibited practice cases and consent orders declined from last year. However the total amount of penalties levied increased to R731 470 807 in this year from R548 491 066 last year although involving fewer cases.

Table 2 compares the two financial years in terms of orders and reasons issued. We do not record pending cases in these figures as they are recorded in the financial year when the order is given.

Mergers

As Table 2 shows the number of mergers approved subject to conditions increased from 15 to 20. Partly this is a result of intermediate mergers that were appealed to the Tribunal, either after having been prohibited by the Commission or after the conditions for their approval were altered.

Table 2: Orders and reasons issued in the past two financial years

Heading	Orders issued 2012/2013	Reasons issued 2012/2013	Orders issued 2011/2012	Reasons issued 2011/2012
Type of case				
Large merger	69	76	80	72
Intermediate merger	7	8	5	4
Complaints from the Commission	4	4	2	2
Consent orders	14	-	27	-
Complaints from a complainant	2	2	-	-
Interim relief	-	-	-	-
Procedural matters	27	13	35	15
Exemption appeals	1	1	-	-
	124	104	149	93
Mergers decided	2012/2013	%	2011/2012	%
Approved	57	75.00	69	81.18
Approved with conditions	19	25.00	15	17.65
Prohibited	-	-	1	1.17
	76	100.00	85	100.00

Part 1: Reports

Whilst we overturned the Commission's decision to prohibit in five cases this should not be seen as an indication that the Commission's approach to mergers is too stringent or the Tribunal's approach is too permissive. Rather, the difference comes about because of the procedural difference between the two systems of regulating mergers. Under the Commission's administrative system, decisions are made based on documentary evidence and have to be made in a limited time period. In the Tribunal system, documentary evidence is complemented by oral testimony, the latter being particularly useful for determining disputes of fact. Whilst the Tribunal is bound to consider merger cases expeditiously it is not confined to a rigid statutory period as is the Commission for small and intermediate mergers. Another distinction is that merging parties typically only offer remedies during the Tribunal process. Thus the Commission is often faced with an all or nothing situation where a merger raises competition concerns, whilst the Tribunal has the opportunity to consider more nuanced outcomes.

A number of high profile cases were also heard this year including the Glencore / Xstrata merger that was notified in the United States of America, Australia, European Union, China as well as South Africa.

Gold Circle / Kenilworth involved a merger that saw the sale of the Western Cape racing assets to a new firm, which are to be managed by Phumelela, the owner of significant horse racing and betting assets in the country. The merger involved a complex enquiry not only into the nature of control of the new company but also the nature of competition in the horse racing industry. Although the Commission had prohibited the merger the Tribunal approved it subject to a public interest condition to protect employment.

In Nestle / Pfizer, a merger involving two firms producing infant formula products with strong brands, we imposed a novel set of divestiture conditions that involved the compulsory licence of a trademark by the acquiring firm and then provision for it to be re-licenced back to the acquiring firm after ten years. This approach indicates the need for competition authorities in smaller jurisdictions to impose remedies appropriate to their circumstances, but that still allow an international merger to be successfully implemented. In larger jurisdictions the merger had been approved unconditionally because there was greater competition in their domestic markets.

We also had to supervise a complicated divestiture. In Caxton and CTP Publishers and Printers v The Commission, Paarl Media and Primedia a small merger was initially approved by the Commission but later taken on review by a rival firm to the Tribunal who overturned the decision and referred it back to the Commission. The Commission on referral back decided to prohibit the merger. The merging parties appealed that decision but abandoned the appeal at the 11th hour just as it was to be heard by the Tribunal. The problem was what to do with the merger which had been implemented for over a year and where assets purchased had been integrated into the business of the acquiring firm or been dissipated. Eventually following several hearings brought at the behest of the same rival firm, a remedy for divestiture of the remaining acquired assets was devised and implemented by the merging parties through the appointment of an independent trustee.

Prohibited practices

In the Commission v Telkom case, which concluded in April 2012, the Tribunal imposed an administrative fine of R449 m, the highest ever imposed on a firm for an abuse of dominance, in an opposed case. Telkom was found to have engaged

in conduct designed to exclude its competitors, who were dependant on it for access to its infrastructure, from effectively competing with it in the market for internet service provision. Although both Telkom and the Commission filed notices of appeal they have since been withdrawn by mutual agreement, so the Tribunal's decision remains final.

The Tribunal also heard its first appeal against an exemption granted by the Commission. Although the Commission, which has the authority to grant exemptions, has granted several over the 13 years the Act has been in force, this is the first time a party has appealed against such a decision. In this case the Tribunal upheld the decision to grant several firms in the petroleum industry an exemption to allow them to co-operate in infrastructure sharing, to stabilise petroleum supply. Apart from the decision on the merits the Tribunal had to also decide certain procedural issues relating to this type of appeal.

The Tribunal also issued reasons in three major cartel cases heard in the previous year. Each case was precedent setting; dealing with issues such as the approach to the calculation of administrative penalties, when participation in meetings with competitors becomes illegal and when conduct by a cartel ceases to be actionable. Most of these decisions have been appealed and decisions from the CAC are pending.

Performance

Annual reports are also an opportunity for self-criticism. Our turnaround times, as the table that appears later in this report indicates, have fallen below the benchmarks we have set for ourselves. In large mergers only 51% of the reasons issued were issued within the required 20 business days while the target we set was 56%. In opposed prohibited practices we set a target of 80% of orders and/or reasons to be issued within

100 business days but we only achieved 33%. This is partially explained by the fact that we had three vacancies amongst our members for three of the four quarters of this financial year. We hope that the appointment of the new members and the creation of the office of in-house economist will improve our capacity to turn around reasons more quickly.

The Telkom case raises different issues about the performance of the system as a whole. The decision can only be regarded as having been finalised on the date of the withdrawal of the respective appeals to the CAC - 15 March 2013. However if we consider that the complaint in this matter first came to the Commission in May 2002 and to the Tribunal in February 2004 it means that the matter took nearly 11 years to resolve. Whilst this matter was complicated by challenges to the Tribunal's jurisdiction to consider the case that proved ultimately unsuccessful, it does raise questions about the current efficiency of the system. Since cases of abuse of dominance typically involve conduct that has led to serious market failure, remedial action by the competition authorities must be timeous if it is to avoid becoming academic.

Tribunal members and staff

For the first time since 2010 we had a full complement of 11 Tribunal members when three new members, Mondo Mazwai, Anton Roskam and Imraan Valodia were appointed to the Tribunal by the President in January 2013. We are delighted to have three such able professionals, two attorneys and one economist, added to our panels and look forward to working with them in the future.

On a sadder note we have had to bid farewell to one of our longest serving members. Lawrence Reyburn, who has been on the Tribunal for 10 years, completed his last term in March 2013. He

has proved invaluable as a member and we wish him well on his retirement.

For the first time we have created the position of an in-house economist whose task it is to provide high level economic input to panels hearing cases and to see to ongoing training of staff and members in economics. Whilst in-house economists are a feature of administrative agencies they are not common to adjudicative bodies, so we see this as a first. We welcome our first appointment: Andrew Sylvester.

Administration

We are proud to have finally implemented our electronic case management system. The product of three years work, it means all our cases, archives and financial documents are now retained electronically and can be analysed with powerful management tools to give us the information to assess our performance and the cases before us, at the click of a button, instead of through a laborious manual process.

We have also given a new look to all our media. Our regular newsletter the Tribunal Tribune has been overhauled and has a far more interesting and punchy feel to it. Our website is continually improving and this year we placed key case material on the website for high profile cases so the public could follow filings themselves as the case proceeds. Also the beneficiary of a 'new look', is our annual report, which has adopted a new theme based approach this year, building on the innovations started in last year's report.

Finally I want to thank our members and staff for another year of hard work and commitment.

2. 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 2013.

The financial statements presented on pages 72 to 101 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 South Africa is presented on page 8.

The accounting authority initially approved and submitted the financial statements to the Auditor-General on 31 May 2013.

Part 1: Reports

3. Nature of business

The Competition Act (Act 89 of 1998) provided for three institutions constituted to promote and maintain competition in the economy and to ensure compliance with the Act's provisions.

The Tribunal is listed as a national public entity in terms of the PFMA.

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

The Tribunal's website provides details of the Act, the rules of procedure that govern the adjudicative process as well as decisions for cases.

The Tribunal's main functions are to regulate mergers and to adjudicate cases concerning restrictive practices.

The 11 members appointed by the President on a full-time or part-time basis are as follows:

- Norman Manoim - chairperson (full-time)
- Yasmin Carrim (full-time)
- Andreas Wessels (full-time)
- Mondo Mazwai (part-time)
- Andiswa Ndoni (part-time)
- Lawrence Reyburn (part-time - term ended March 2013)
- Merle Holden (part-time)
- Anton Roskam (part-time)
- Medi Mokuena (part-time)
- Taki Madima (part-time)
- Imraan Valodia (part-time)

Cases are heard by panels comprising three of its members and 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.

4. Objectives and targets

The Tribunal is precluded from setting pro-active objectives or embarking on focused interventions which target any particular sector or emphasise any specific criterion as a result of its quasi-judicial nature. Complaint referrals and notified mergers are the only determinants of the Tribunal's caseload and the Tribunal has no control over the number and type of cases brought before it.

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

5. Financial highlights and performance

	2013 R '000	2012 R '000
Revenue	24 215	25 190
Other income	10	12
Investment Income	1 113	1 191
Total revenue	25 338	26 393
Expenditure	(26 790)	(23 287)
Net surplus/(deficit)	(1 452)	3 106
Total assets	27 160	28 932
Total liabilities	2 346	2 667

In reviewing our reported performance information it is recorded that we have failed to meet eight of our 18 identified targets. Reasons for not meeting these targets are given in these tables however a further explanation is required to put this in context. It would be wrong to assume that all the targets are of equal significance.

Of the 18 targets we are required to meet 11 relate to the core function of the Tribunal which is to hold hearings and adjudicate matters. The Tribunal successfully achieved five of these. Two of those not met related to the setting down of matters and three related to the issuing of orders or reasons. Delays occurred for any one of the following reasons:

- i) A shortage of Tribunal members (three vacancies) in the first two quarters meant that the existing Tribunal members had to sit on a number of matters and therefore spend significant time sitting in hearings and the writing of reasons is compromised;
- ii) parties are not ready for a specified date or request the matter be set down on a specific date;
- iii) the heavy case load and unavailability of Tribunal members to sit on panels.

The remaining three targets not met relate purely to operational issues and do not adversely affect any stakeholders. To give one example, the failure to place decisions on our website within 24 hours, does not prejudice the parties to the case, who have the most interest in the outcome, as they receive the decisions directly from us on the day the decision is assented to.

Despite these minor shortcomings I am confident that the Tribunal staff are continuously striving to meet and improve on the set targets as well as make improvements where required.

Revenue for the year ended 31 March 2013 decreased by 3.99%. Filing fee

income decreased by 15.96% while the grant received from the Economic Development Department increased marginally by 4.11%.

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 15.01%. The changes in expenditure are discussed more fully later in the annual report. Salaries account for 51.19% of expenditure.

At the beginning of the financial year the Tribunal had accumulated surpluses of approximately R26.26 m and these have decreased by just over R1.45 m during the current financial year.

In terms of Section 53 (3) of the PFMA entities are not allowed to accumulate surpluses unless approved by the National Treasury. The Tribunal has received permission to retain accumulated surpluses generated in prior financial years to fund the approved budget. The drawing down of these surpluses to fund budgeted expenditure is reflected in the MTEF. The current financial year reflects an operating loss and it is therefore not necessary to request retention of an operating surplus.

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 reflect the drawing down of surpluses to fund budgeted expenditure but will simultaneously seek additional government funding to ensure sustainability of the institution in the foreseeable future.

6. Events subsequent to financial position date

No events took place between the year-end date, 31 March 2013 and the date on which the financial statements were signed that were sufficiently material to warrant disclosure to interested parties.

7. Executive committee members emoluments

Employee costs

In terms of Treasury Regulation 28.1.1 the annual financial statements and the accounting authorities report must include the disclosure of remuneration in respect of the person in charge of the entity, the chief financial officer and person's serving on the public entity's senior management. This disclosure is detailed in the related parties note (Note 25) in the annual financial statements which reflects the total annual remuneration (cost to company) received by the full-time members and managers of the Tribunal. The chairperson, one full-time member and all the managers have served on the executive committee at some point during the period under review.

Performance bonuses for staff members are payable for the year ending March 2013. These amounts are included in trade payables and reflected in the notes to the annual financial statements.

The Tribunal is responsible for its employees' contributions to group life insurance. These figures have been included in the stated total remuneration, as well as any back pay received. Performance bonuses for staff members are reflected separately in the notes to the financial statements. Full-time Tribunal members do not receive performance bonuses.

Part 1: Reports

Full-time Tribunal members salaries are adjusted annually following adjustments made to the Judge President and Judges of the High Court. During the year under review full-time members were awarded an annual adjustment of 5.5% bringing the annual package for the Chairperson to R1 973 945.87 and R1 714 442.90 for full-time members. This adjustment was made in October 2012 effective 1 April 2012. In addition a once off adjustment of R122 783.93 was made to Yasmin Carrim for the current financial year. The deputy chairperson of the Tribunal resigned in March 2012 and Yasmin Carrim was compensated for *de facto* occupying this position.

8. 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, registrar
- Rietsie Badenhorst, head of research

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

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

9. Number of employees

At the year-end the Tribunal's personnel complement consisted of three full-time

members and 13 full-time staff members, one contract employee and two interns on a learnership in the Tribunal.

10. Irregular and fruitless and wasteful expenditure

The Tribunal has disclosed irregular expenditure of R268 738 that pertains to expenditure for services budgetted for and essential for the Tribunal to fulfill its mandate however this expenditure is deemed to be irregular as it is not fully compliant with procurement legislation.

These services include courier (R14 420), hotel accommodation (R33 848), travel (R189 785), refreshments (R14 893) and car rental (R15 803).

Valid reasons for using these services were noted. A deviation was signed effective 1st February 2012 to 30 June 2012 agreeing to the use of certain service providers while Corporate Services followed a procurement process to enter into a contract with various suppliers to procure these services. The process was delayed due to circumstances beyond the control of Corporate Services however a further deviation was not place in writing. Therefore services exceeding R2 000 where no quotes were obtained is reflected as irregular expenditure.

Management in the Tribunal was fully aware of all these deviations and they are only regarded as irregular because the deviation was not noted in writing. This is a housekeeping issue and no investigation or disciplinary action is required and all irregular expenditure has therefore been condoned by me as the accounting authority.

11. 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.

The management fee for the period under review was R42 494 per month. The MOA and 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.

There were no substantial changes in the nature of the billing from the Commission for the year under review.

12. Address

Business address

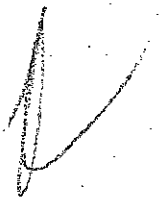
Building C (Mulayo Building)
77 Meintjies Str
Sunnyside
0132

Postal address

Pvt Bag X24
Sunnyside
0132

13. 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 Manóim

Chairperson

31 May 2013



*"The decisions made by the Tribunal
seemed to be respected by respondents,
with Tribunal members being said
to consistently provide well-reasoned
arguments for the decisions made in the
cases heard by the Tribunal."*

[Plus 94, results of stakeholder satisfaction
survey 2013]



PART 2

PART 2: CASE HIGHLIGHTS

Introduction

Mergers and acquisitions

Prohibited practices

Part 2: Case Highlights

INTRODUCTION

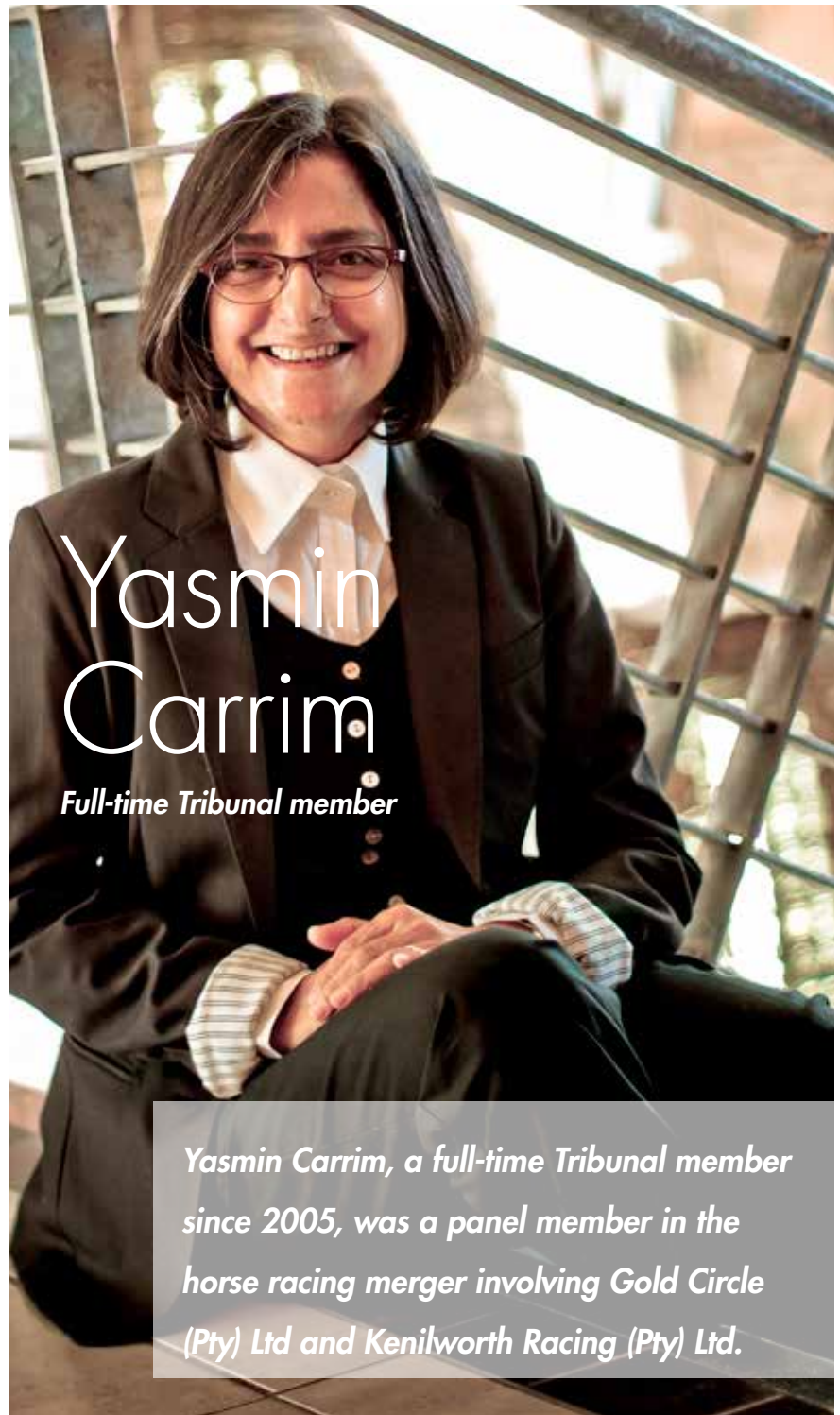
Merger regulation, as legislated in the Act, entails a forward looking approach which is aimed at preventing anti-competitive conduct before it occurs. This is in contrast to the regulation of prohibited practices which can only be stopped once they have occurred. Examples of prohibited practices are price fixing and abuse of dominance. Most of the Tribunal's work comprises the adjudication of mergers and prohibited practices, either as contested matters or as matters brought to it once all the parties to a case have agreed on the terms of a settlement. Less frequently the Tribunal also adjudicates on exemption applications. These are applications filed by firms that wish to engage in prohibited practices for reasons that are justifiable in terms of the Act. During this financial year, and for the first time since its inception, the Tribunal considered an exemption application. The application came as an appeal of a decision which the Commission had issued.

Below we discuss the mergers and prohibited practices the Tribunal heard in this year as well as the first exemption application which the Tribunal has had to consider.

MERGERS AND ACQUISITIONS

Why the merger process works

South Africa's merger control system provides for dual jurisdiction over mergers. Intermediate mergers, defined as such by reference to the merging firms' asset size or turnover, can be approved by the Commission. Large mergers must be approved by the Tribunal, although this always follows upon an investigation by the Commission who then make a recommendation to the Tribunal as to how the merger should be decided. In the past year the strengths of this



Yasmin Carrim
Full-time Tribunal member

Yasmin Carrim, a full-time Tribunal member since 2005, was a panel member in the horse racing merger involving Gold Circle (Pty) Ltd and Kenilworth Racing (Pty) Ltd.

dual system were demonstrated. The Commission had prohibited four intermediate mergers which were then appealed to the Tribunal. Following hearings, some of which were lengthy, the Tribunal approved them all but some of the approvals were subject to conditions. The reason for this change in outcomes

is that the two bodies have different processes. The Commission decides matters following an administrative procedure. It receives submissions in the form of documents, has meetings with parties on an *ex parte* basis and then makes a decision. The Tribunal is more formal. It hears cases like a court before

a panel of three members. Sometimes the proceedings are curtailed. In this case the merging parties appear and make oral submissions to supplement the Commission's record. In other cases, particularly where outcomes are contested, the cases are heard more formally in proceedings resembling those of a trial. Here proceedings can last several days and witnesses are called and can be cross examined by an adverse party. Given that the Tribunal then has to decide in a contested case whose version to prefer, particularly after the benefit of having oral evidence which has been the subject of cross examination or theories of harm the subject of debate, it is not surprising that it should reach a different outcome on occasion to that reached by the Commission.

A system of checks and balances

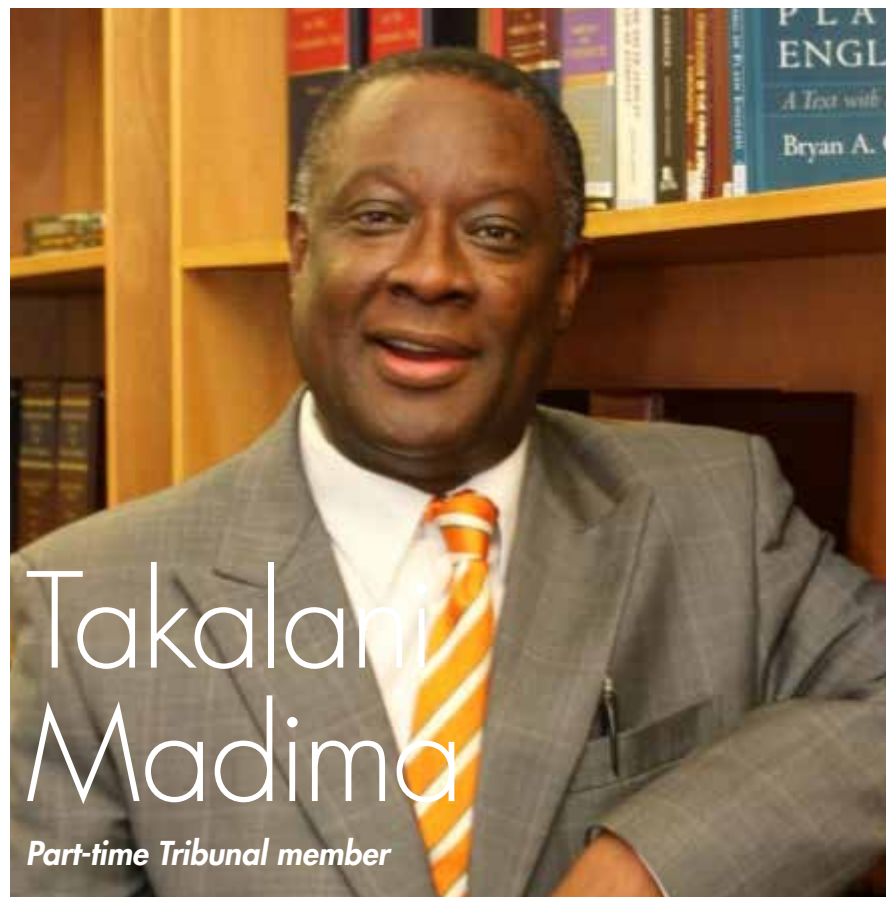
A perfect example of this was in the merger between Senmin International (Pty) Ltd and Cellulose Derivatives (Pty) Ltd. Cellulose Derivatives was the only producer of technical grade carboxymethylcellulose or CMC in South Africa. CMC is a white powderlike substance used in a variety of industrial applications including mining. Technical grade CMC is used in the mining industry. Senmin was one of only two distributors of CMC in South Africa. The other was GMA, a company which sourced most of its CMC requirements from Cellulose Derivatives.

The competition concern in this deal arose from the fact that GMA was a competitor of Senmin in the distribution of technical grade CMC, which both parties received from Cellulose Derivatives. With its competitor acquiring control over its supplier, GMA faced the potential threat of unfair supply conditions, since the new merged entity could easily benefit its own distributor when supplying CMC in the future. A key issue in dispute in this case was whether GMA could use an alternative product

to technical CMC. The merging parties said it could. GMA said it could not. This issue was then the subject of evidence given by GMA's director. He explained that the reason why other products were not suitable substitutes was that they had been tried in the past and failed. The Tribunal accepted this evidence and this became a crucial reason for approving the merger, but subject to a condition that guaranteed the supply, by the merged entity, of an annual minimum quantity of CMC to GMA. The adjudicative process here worked to determine a dispute of fact on a highly technical issue.

The adjudicative process also assists in determining seemingly irreconcilable disputes between intervening parties and the merging parties. In the Media 24 Limited acquisition of Natal Witness Printing and Publishing Company (Pty) Ltd, which we discuss later, the Tribunal allowed a rival publishing firm, which disputed many issues the merging parties had raised, to intervene in the case. A trial was the best form of deciding these disputes. The case took 12 days and involved 17 witnesses, including three experts.

Similarly in a merger in the horse racing industry two intermediate mergers, one



Part 2: Case Highlights

consequent on the other, saw Western Cape racing assets, namely race courses, totes and television rights, move from Gold Circle (Pty) Ltd to a new firm called Kenilworth Racing (Pty) Ltd which was to be managed by Phumelela. Phumelela was an owner of racing assets in seven provinces in the country. The Commission, after assessing the transaction, prohibited the merger. The merging firms then requested the Tribunal to consider the merger.

What was the true role of Phumelela in the merger? Did its assets compete with those of the Western Cape? Was the target firm a failing firm and, if it was, were there other less competitively compromised buyers for the assets? Did the merger lead to harm to the public interest in employment and in the participation of historically disadvantaged individuals in horse racing? All these were issues the Tribunal panel was faced with when deciding this merger.

Trial proceedings were the best way to decide these disputes. The Tribunal had hearings over 15 days and eventually cleared the merger subject to public interest conditions relating to employment.

The Tribunal cleared the health care merger between Life Healthcare Group (Pty) Ltd and Joint Medical Holdings Ltd after the Commission had initially prohibited it. The case raised intriguing legal questions about the relationship between merger control and prohibited practices. Life Healthcare, one of the three major private hospital groups, sought to acquire sole control over JMH, a hospital group that owned several private hospitals in the greater Durban area. Prior to the merger, Life Healthcare already had a 49% stake in JMH and after the merger it would increase its stake to 70%.

One of the issues raised by the merger was whether the merger would enable the merged firm to increase its bargaining position with funders once the merger was

TRIBUNAL APPROVES INFANT NUTRITION DEAL WITH CONDITIONS

On 11 February 2013 the Tribunal approved, with conditions, the South African leg of the global merger between Nestlé S.A. and the infant nutrition business of Pfizer Inc.

Infant formula, which was the subject of the merger, was a product with unique characteristics and in many instances was the sole source of nutrition for infants where breast feeding was not possible for medical reasons or by choice. In addition, given the fragile nature of newborns and infants, infant formula was often an emotional purchase for parents.

Nestlé's trade marks in the infant nutrition market included NAN, Lactogen and Nespray. They were widely sold in the overall infant formula market in South Africa, where Nestlé had a large market share. Pfizer Nutrition's main trade marks were S-26, SMA and Infasoy. Pfizer's products were largely targeted at pre-term babies, hungry babies, picky eaters and children with food allergies.

The merger was part of a world-wide series of transactions. In South Africa, where Nestlé already had a large market share, Nestlé was to acquire Pfizer Nutrition's business but, as a condition of approving the merger, sell to a third party (who was not yet identified at the time of the Tribunal's hearing) the rights to manufacture the products and, for a period of ten years, to brand them under the Pfizer Nutrition trade marks in terms of a 'transitional re-branding' programme. In effect this was a complex licensing arrangement under trade marks and other intellectual property. In that period the acquirer would introduce its own trade marks although still being entitled to

use the Pfizer Nutrition manufacturing technology. After a further 'black-out' period of ten years Nestlé would be entitled, if it so wished, to re-enter the market with products under the Pfizer Nutrition trade marks.

This was the first time the Tribunal had considered a transitional re-branding arrangement in a merger case.

Having imposed this transitional re-branding remedy on the merged entity, the Tribunal averted the likely price increases and/or quality deteriorations of the merging parties' infant nutrition products that could have taken place as a result of the merger. The objective of the transitional re-branding programme was to maintain, in the short term, the competitive landscape that existed before the merger while creating an independent and viable competitor to Nestlé in the medium to long term. In its reasons the Tribunal said the re-branding condition created an opportunity for the emergence of a viable, stand-alone competitor, independent of Nestlé and without any association or link to the Pfizer brands in the long run. The Tribunal found that the version of transitional re-branding finally proposed by the merging parties adequately addressed the competition concerns arising from the merger.

However the Tribunal made it clear that the adequacy and success of transitional re-branding, as a solution to a potentially anti-competitive outcome, would depend on the identity and characteristics of the purchaser of the divested business. Accordingly, the Commission would have to approve the purchaser. In its decision the Tribunal advised the Commission to review the licence agreement between Nestlé and the purchaser in order to forestall potential collusion in the infant nutrition markets.



approved because Life Healthcare, which already controlled other private hospitals in the Durban area, would acquire market power through the acquisition. The merging parties argued that the merger would have no effect on the tariffs funders paid because, prior to the merger, Life Healthcare had negotiated tariffs for JMH as well when it negotiated its tariffs. It argued it was entitled to do so as a joint controller of JMH. The Commission disputed that Life Healthcare had joint control and argued that the joint pricing was therefore collusive. The Tribunal found that Life Healthcare was in joint control of JMH. However, it said the fact that it was a joint controller did not entitle it to set prices with JMH as they were not part of a single economic entity as contemplated in the Act. The Act excludes firms that form part of a single economic entity from liability for collusion as they are considered to be part of the same corporate family. The Tribunal held that where firms were jointly controlled by the same firm they were not entitled to agree prices with one another unless they were part of the same single economic entity. On the facts of this case JMH was not part of the single economic entity that was the Life Healthcare group of companies. However as this was a merger case, not a prohibited practice case, the Tribunal made no finding on whether there had in fact been collusion. Despite this finding, on the facts, the Tribunal found that there was insufficient evidence to show that the merger would lead to an anti-competitive outcome and approved the merger without conditions.

Despite its approval of the deal the Tribunal was concerned about a lack of proper disclosure, by the merging parties, in an earlier merger notification involving Life Healthcare's acquisition of a Durban hospital group, Amahosp, in 2001. In that deal, Life Healthcare had described JMH as a competitor. This explanation was inconsistent with the version given in the present JMH merger where it was asserted

the two groups were not competitors but rather that Life Healthcare jointly controlled JMH. As a result the Tribunal requested the Commission to investigate why contradictory information had been given earlier in the Amahosp merger.

Levelling the field for small and emerging players

In the merger between Media 24 Limited and Paarl Coldset (Pty) Ltd, as the acquiring firms, and Natal Witness Printing and Publishing Company (Pty) Ltd, as the target, the Craib family wanted sell its 50% shareholding in Natal Witness to Media 24. Of particular relevance was that, at the time, Natal Witness had a 30% shareholding in Africa Web, a KwaZulu-Natal based "coldset" printer of community newspapers and commercial inserts. Media 24 already held a 50% stake and if it gained control of the Natal Witness it would be able to control Africa Web.

The concern in this case was that, with its control of Natal Witness and Africa Web, Media 24 would be able to frustrate competing publishers' access to printing services offered by Africa Web. This concern was heightened in KwaZulu-Natal and the Northern Eastern Cape where competition in printing services was limited. The merged firm published several community newspapers in the province and was intent on expanding in this area. Africa Web was thus to be controlled by a firm which competed with its customers for advertising, and the fear was that this might lead to them losing out on printing opportunities, increased costs or loss of prime printing slots. In particular some of the customers of Africa Web were small business and included newspapers which served historically disadvantaged communities.

The merger hearing was complex and involved hearing several different

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Mondo Mazwai

Part-time Tribunal member

Mondo Mazwai was appointed as a part-time member of the Tribunal with effect from 1 January 2013.

Mondo obtained her B Juris from the University of the Western Cape and her LLB from the University of KwaZulu-Natal whereafter she joined the law firm Cheadle Thompson and Haysom. She worked her way from candidate attorney in 1995, professional assistant in 1997 to associate partner in 1999.

Mondo joined the Commission at its inception, in 1999, as an investigator in the mergers and acquisitions department and was later appointed as a senior investigator in the enforcement and exemptions department. In 2003, she was appointed chief legal counsel of the Commission and later that year was also appointed as the Commission's acting deputy commissioner. Mondo joined the law firm Cliffe Dekker (now Cliffe Dekker Hofmeyr) in 2005 as a director in its competition department. In 2006 she was appointed as head of Cliffe Dekker's competition department, a position she held until 2011 when she took a one year sabbatical. Upon her return to professional work she was appointed as a part-time Tribunal member.

suggestions for outcomes. These ranged from a prohibition recommended by one intervener to partial divestiture of the Africa Web stake as recommended by the Commission. The merging parties argued that the merger would generate greater efficiencies as once they controlled Africa Web they would invest in the business, something they were unable to do before the merger due to shareholder paralysis. With improved investment, they argued, Africa Web would provide an enhanced service to its customers.

The Tribunal, however, concluded that neither a prohibition of the merger nor a partial divestiture of Africa Web would be necessary. However it was also not persuaded that the merger should not be approved without stringent conditions imposed on Africa Web to prevent the exclusion of small publications that competed with those of Media 24. The conditions the Tribunal finally imposed addressed both the possible exclusionary effects created by the merger and the public interest concerns, being the effects of the merger on small businesses and those controlled by historically disadvantaged individuals or HDI's. The Tribunal imposed the conditions for a period of five years and included the following requirements imposed on the merging firm:

- an investment in Africa Web to maintain its printing capacity and the installation of additional printing capacity at Natal Witness;
- access by small independent publishers to Africa Web's printing services at certain maximum prices and other conditions of supply;
- the separate governance of the merged entity's community newspaper publishing and printing businesses in the relevant geographic areas so that the strategic decisions on the publishing side did not drive the printing decisions;
- the future notification by Media 24 of

TRIBUNAL HEARS ITS FIRST EXEMPTION APPEAL

A firm may apply for its agreements to be exempted from the provisions of the Act if the competition restriction in its agreements is required to, amongst other things, contribute to the economic stability of an industry designated by the Minister of Economic Development, after consulting the Minister responsible for that industry

In its first exemption appeal decision the Tribunal, on 23 January 2013, dismissed Gas2Liquids' application to set aside the exemption granted by the Commission to the South African Petroleum Industry Association and its individual members. The exemption was for a set of agreements in the liquid fuel industry that it said required exemption to stabilise the supply of liquid fuels in South Africa.

During December 2005 the country experienced a series of disruptions to fuel supplies which ranged in severity from inconvenient to serious losses for some businesses. A task team was appointed to investigate causes and make recommendations. Amongst the causes identified were the tight supply of demand, scheduling of refinery shutdowns, poor communication amongst stakeholders and inadequate logistical infrastructure. The players in the market were also advised by the task team to apply for exemptions in order to coordinate supply lines and production shut-downs. The task team advised the players to apply for an exemption because such discussions and coordination's were likely to fall foul of the Act.

The Commission upon investigation found that the discussions, cooperation agreements and practices indeed contravened the Act and that these agreements and practices met the

criteria set out in the Act as they would contribute towards maintaining the economic stability of the petroleum and refinery industry by reducing the risks of fuel supply interruption. The Commission thus granted SAPIA an exemption. It also addressed concerns raised by the South African Petroleum and Energy Guild and others, of which Gas2Liquids was a member, by imposing a condition that SAPIA open up its membership to accommodate both existing and potential marketers in the petroleum and refinery market on fair, reasonable and transparent grounds. Gas2Liquids then appealed the Commission's decision to the Tribunal.

Before hearing the merits of the case the Tribunal was asked to determine whether Gas2Liquids had the required legal standing to bring the appeal and, if it did, what the nature of an appeal in terms of the Act was. The Tribunal found that Gas2Liquids had a substantial financial interest in the exemption and therefore had the legal standing but that the appeal was on a narrow basis, that is, restricted to the record only.

On hearing the merits of the case the Tribunal found that the "agreements provide for the regulation of a bottleneck infrastructure. By its very nature this is a scarce resource that has to be rationed amongst its users by way of them reaching agreement on coordinating access. The Commission's decision not to make the exemption dependant on it being extended to all players in the industry cannot be faulted. If it had, the very instability that premised the need for the exemption would again eventuate." It said that Gas2Liquids had not shown that the terms of exemption had gone beyond its stated objective and given SAPIA a "blank cheque" to engage in anti-competitive activity not justified. Therefore the appeal failed.

small mergers relating to community newspaper publishing and printing in the relevant geographic areas;

- an extension of the relationship between Paarl Media and the Media Development and Diversity Agency; and
- monitoring of the above conditions.

In addition to promoting access by small and historically disadvantaged publishers, to printing services, the conditions imposed by the Tribunal ensured that Africa Web remained a viable alternative printer for the small independent community newspapers in KwaZulu-Natal and the Northern Eastern Cape.

The effect of a merger on the public interest, in particular its impact on small businesses, was also a consideration in the merger between Glencore International AG and Optimum Coal Holdings Ltd.

In this case Glencore intended to purchase shareholding interests in companies which would have resulted in it holding 65.13% in Optimum Coal. Both Glencore and Optimum Coal competed in the thermal coal market. The Commission, in its investigation, found that Richards Bay Coal Terminal, which had exclusively been established for coal exportation, was experiencing allocation capacity constraints at the time. These constraints predominantly affected emerging junior coal miners who wanted to export coal but faced logistical challenges such as getting an allocation at Richards Bay Coal Terminal.

By acquiring Optimum, Glencore would also increase its port allocation. As such, third parties were concerned about this merger as they believed it could lead to Glencore using its increased port allocation as leverage in the trading market to the disadvantage of junior miners. In order to address these concerns the Tribunal ordered that Glencore reduce its coal allocation at Richards Bay Coal Terminal so that a certain tonnage in port

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allocations would become available for junior miners to utilise. In imposing these conditions the Tribunal ensured that small emerging firms got access to the coal export market.

Balancing job losses with economic efficiency

Mergers, by their nature, often lead to job duplication since the acquiring firm plans to integrate all or some of its employees with employees from the target firm. In most cases, retaining all the employees from both firms would lead to inefficiencies and potentially erode the benefits of merging in the first place. In order to realise these efficiencies, merging firms often cut costs by shedding jobs. However the Act requires the Tribunal to be mindful of the impact mergers are likely to have on job losses and to minimise this impact where appropriate.

In four mergers this year the Tribunal imposed conditions on merging parties to place moratoria on retrenchments for a period of two years following the approval of the merger. Collectively these mergers could have resulted in the loss of 350 jobs.

PROHIBITED PRACTICES

Cartels and abuse of dominance

All cartel cases are in some respects the same: competitors collude to fix prices, rig bids, allocate customers or divide markets in order to reduce competition among themselves and so ensure higher prices. However the same cannot be said for cartel cases heard in the Tribunal. In this year we wrote three cartel decisions with each raising unique sets of circumstances or points of law to be resolved. Along with cartel matters the Tribunal also heard cases relating to abuse of dominance, most notably the case against Telkom.

Tribunal calls for more courage to stop cartels

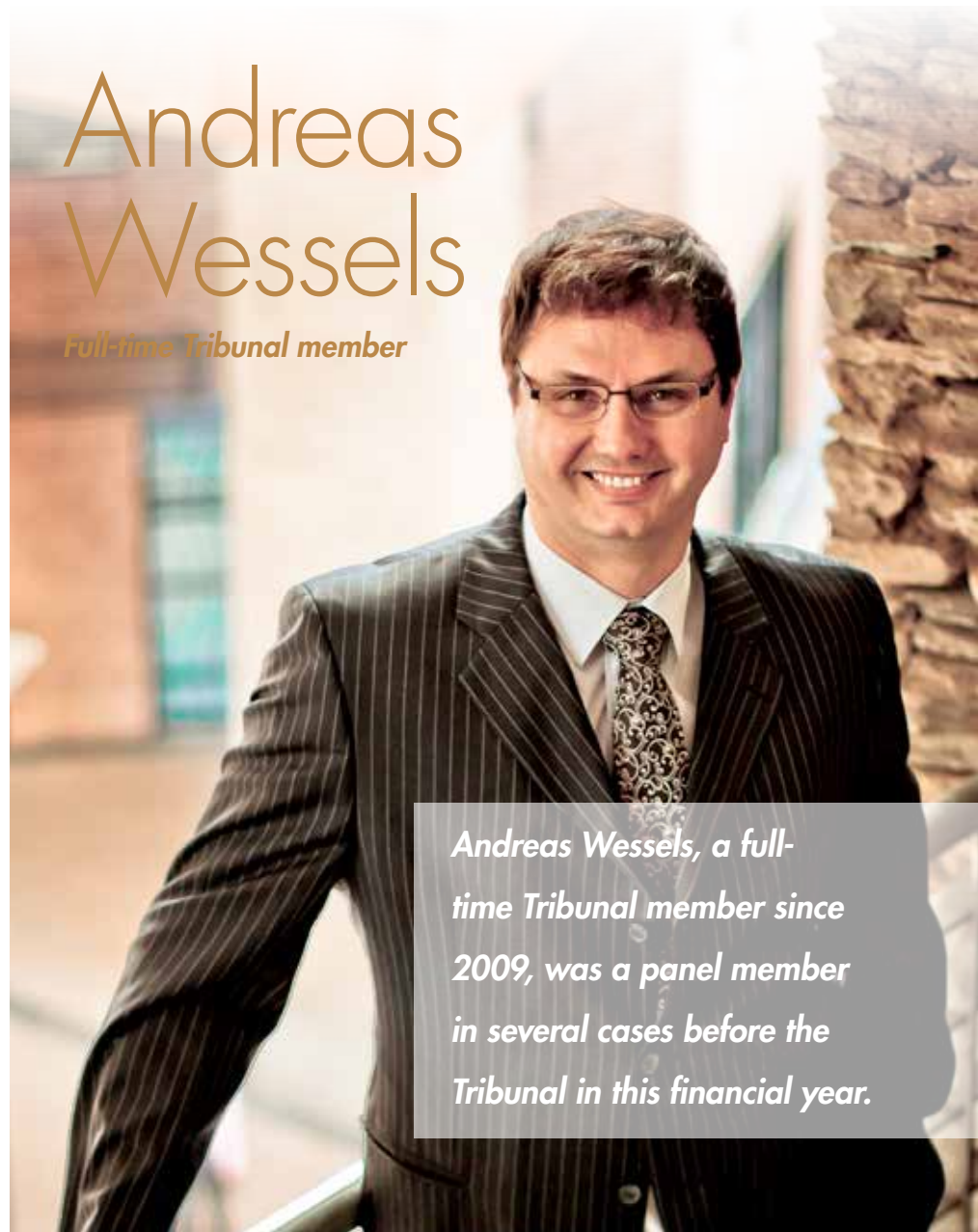
In perhaps the most unusual case of all the Tribunal heard how single-handedly, a woman executive in a male dominated industry, effectively brought an end to a decade's long cartel but never got immunity for her firm in doing so. Michelle Harding, former managing director of Petzetakis Africa (Pty) Ltd, not only told her own firm's employees that they had to stop colluding but she went further and called a meeting of the other cartel members to let them know she and Petzetakis employees would no longer be participating in the cartel.

In its finding the Tribunal applauded Harding's courage stating that *"enforcement against cartels requires more Hardings who are willing to take a moral stand and, as she put it in her testimony, 'stop the cancer' ... [Her testimony] demonstrated that redemption is possible even in the most unlikely environments – an industry riddled with collusive practices, betrayal and deception"*.

The Commission referred the complaint to the Tribunal after its investigation revealed that several firms in the plastic pipe manufacturing industry had had meetings in which they fixed prices, rigged tenders and divided markets by allocating contracts and customers.

Andreas Wessels

Full-time Tribunal member



Andreas Wessels, a full-time Tribunal member since 2009, was a panel member in several cases before the Tribunal in this financial year.

TRIBUNAL ADOPTS A NEW SIX-STEP METHOD FOR CALCULATING PENALTIES

Both the Commission and the Tribunal have, in the past, been criticised for not providing certainty on their respective approaches to calculating administrative penalties. The Tribunal is an adjudicative body and, as such, considers its case decisions to be the guideline firms and practitioners should consult to ascertain its approach. Moreover, competition enforcement in South Africa has only just entered its adolescent years so the competition authority's methodology is still very much in development.

Nevertheless the Tribunal took the opportunity, when it heard the wire mesh cartel case, to establish some principles for its approach to calculating

administrative penalties. Although the aim was to provide the Tribunal and its stakeholders with a measure of certainty, this approach is by no means cast in stone. The Tribunal has already applied the new six-step penalty calculation method in subsequent cases but it has stated in its decisions that it remains open to the possibility that new facts and new circumstances may well justify a deviation from this method of calculation.

The six-step method was influenced by the European Union 2006 guidelines on penalties as well as the Competition Appeal Court's 2011 decision in the case involving Southern Pipeline Contractors. The approach can be summarised as follows:

Step one: determination of the affected turnover in the relevant year of assessment.

Step two: calculation of the 'base amount,' being that proportion of the relevant turnover relied upon.

Step three: where the contravention exceeds one year, multiplying the amount obtained in step two by the duration of the contravention.

Step four: rounding off the figure obtained in step three, if it exceeds the cap provided for by section 59(2).

Step five: considering factors that might mitigate or aggravate the amount reached in step four, by way of a discount or premium expressed as a percentage of that amount that is either subtracted from or added to it.

Step six: rounding off this amount if it exceeds the cap provided for in section 59(2). If it does, it must be adjusted downwards so that it does not exceed the cap, as explained by the CAC in Southern Pipeline Contractors case.

According to the Commission, the cartel members met over a long period of time before the Act came into force and the meetings continued until 2007. One witness testified in the Tribunal hearing that when he joined the industry in 1969 the cartel was known to be in existence.

The respondents comprised manufacturers and suppliers of pipe products which collectively enjoyed the major share of the market. The pipe products were used for plumbing and in the civil engineering, mining and agricultural sectors in South Africa.

The Commission did not seek any penalty against the first respondent, DPI Plastics, because it received immunity from prosecution in terms of the Commission's corporate leniency policy. Marley Pipe Systems, Swan Plastics and Flo-Tek Pipes & Irrigation settled with the Commission, paying penalties of approximately R31 m, R7.6 m and R5 m respectively.

In its decision the Tribunal found that MacNeil Agencies, Amitech South Africa,

Andrag, and Petzetakis Africa had colluded to fix prices in contravention of the Act. Amitech South Africa and Petzetakis Africa were also found to have engaged in market allocation and collusive tendering in respect of their plastic pipe products. The Tribunal dismissed the case against Gazelle Plastics and Gazelle Engineering. Applying its six step approach to determining penalties (see above for the Tribunal's new approach to penalties), the Tribunal imposed a penalty of R2 m on MacNeil Agencies and R11.1 m on Amitech South Africa.

The testimony of Michelle Harding drew an 80% discount for Petzetakis, resulting in a penalty of R9.92 m. In this regard the Tribunal explained "*It is important to signal to the business community that the public disavowal of cartel arrangements will not go unrecognised when it comes to the imposition of a sanction*".

What a mesh!

What a mesh! was the appropriate headline the Mail & Guardian newspaper

used to describe the wire mesh cartel that the Tribunal encountered when it adjudicated a Commission complaint against Vulcania Reinforcing (Pty) Ltd and Reinforcing Mesh Solutions.

The Tribunal hearing came after the Commission investigated a complaint against four firms alleged to have been involved in a cartel of wire mesh producers. Wire mesh is a product used to reinforce concrete in the construction industry. As part of its investigation the Commission granted one firm, BRC Mesh Reinforcing Limited, conditional immunity in terms of its corporate leniency policy. A second firm, Aveng (Africa) Ltd trading as Steeledale Mesh, settled its case with the Commission and paid a penalty of R128 m, which represented 8% of its 2008 turnover.

During the Tribunal's hearing it emerged that between 2001 and 2008 the wire mesh cartel met regularly to agree on prices, the level of discounts and allocating customers.

Part 2: Case Highlights

Vulcania admitted that it had attended these meetings on several occasions but said that it played a passive role and did not intend to implement any of the agreements reached, hence it denied liability. Vulcania said that its attendance at cartel meetings was a sham calculated to make its competitors, on whose goodwill Vulcania depended for some of its supplies, believe that Vulcania was a member and thus obviate retaliation in the form of supply constraints. It was only after Vulcania had obtained an independent source for one of its input products that it ceased to attend cartel meetings in 2008.

The Tribunal found that, having participated in price-setting and customer allocation processes, Vulcania's conduct facilitated the cartel's customer allocation endeavours even if it never intended to implement the agreements reached. The firms in the room were given no reason to believe that Vulcania would compete for allocated customers or that they could compete for Vulcania's customers. It benefitted from the cartel because it was protected from potential competition. In this regard the Tribunal made a finding consistent with its comment in the plastic pipes cartel judgment where it said *"even passive attendance at a cartel meeting, where agreements are reached on pricing, will lead to an inference that the firm formed part of that understanding unless it had engaged in conduct to repudiate its involvement"*. Consequently the Tribunal found Vulcania had contravened the Act and ordered it to pay a penalty.

RMS admitted liability but denied the extent of its involvement in the cartel and whether a penalty could be competently imposed on it. By the hearing date RMS's business had been sold to another firm comprising of some of its former shareholders. Thus RMS was not trading and hence had no turnover at the time that the Tribunal heard argument on the imposition of a penalty. According to RMS, a penalty could not be levied on it as it had no turnover for the

relevant financial year which had to be taken into account for assessing the 10% cap on the penalty. However, the Tribunal said where there was, for any reason, no turnover in the *"preceding year"* as set out in the Act or where, because of financial engineering, there was minimal turnover not reflective of the ordinary business activity of the respondent firm during the course of the contravention, the Tribunal could have regard to the earliest preceding year of normal turnover. This was to avoid an absurdity or an outcome that would be repugnant to the intention of the legislation. It therefore ordered RMS to pay a penalty of R21, 6 m based on its turnover from the financial year ending June 2007.

Is rigging a reverse auction still collusive tendering?

In yet another unusual set of facts one of the key issues was whether three firms involved in the manufacture of roof bolts for the mining industry had contravened the Act by colluding to defeat a reverse tender from a large mining company, even though they did not collude on the terms of their ultimate contracts. On 19 September 2012 the Tribunal held that they did. But for the collusion, the Tribunal said, the price obtained by the customer would have been lower. It is bid rigging to collude to prevent a lower price not only to get a higher price.

The Tribunal found that Dywidag Systems International (Pty) Ltd and Videx Wire Products (Pty) Ltd contravened the Act by rigging an Anglo Platinum tender in 2004 and 2005. The Tribunal imposed penalties of R1.8 m and R4.7 m on DSI and Videx respectively. Videx and DSI were both firms that supplied steel roof bolts to the mining industry. These were used to provide roof and wall support in underground mines in order to prevent cave-ins and to keep mines accessible over extended periods of time. The Tribunal's decision came after a hearing that took place between October 2011 and February 2012. Prior to the hearing,

on 26 January 2009, the Commission initiated an investigation against firms in the mining roof bolts industry after Murray and Roberts Limited filed a leniency application on behalf of RSC Ekusasa Mining (Pty) Ltd, which at that time was its wholly owned subsidiary. In its leniency application Murray and Roberts alleged that RSC Ekusasa, Aveng (Africa) Ltd t/a Duraset, DSI and Videx had engaged in collusive practices. The Commission granted RSC Ekusasa leniency in terms of its corporate leniency policy.

The Commission alleged several contraventions on the part of the respondents which the Tribunal found to have been insufficiently proven or to have been brought outside the time limits set by the Act. However, with respect to the Anglo Platinum contracts, the Tribunal found that the Commission presented sufficient evidence of a contravention. In this instance Anglo Platinum had set up an online reverse auction – a bid in which sellers of a product bid one another's prices down – during 2004. Steel prices had gone up in 2004 and the respondents felt their profits had been eaten into by an inability to pass the price increases on to Anglo Platinum. Therefore instead of competing in the online reverse auction as Anglo Platinum had expected, the respondents got together and decided to rig the auction. They did this by each participating in the online auction but, unbeknown to Anglo Platinum, simultaneously maintaining telephonic contact to ensure that each party was following the same script. The plan, which ultimately succeeded, was aimed at ensuring that each firm retained its existing business with Anglo Platinum but at higher prices in order to offset the squeeze on their margins. Some eight months after the first reverse auction, in 2005, Anglo Platinum attempted a second reverse auction and the respondents colluded successfully yet again. The Tribunal concluded that, unlike the other incidents alleged by the Commission, the collusive effect of



Imraan Valodia

Part-time Tribunal member

Professor Imraan Valodia was appointed a part-time member of the Tribunal with effect from 1 January 2013.

Imraan is currently an associate professor in the School of Built Environment and Development Studies and also academic leader of development studies at the University of KwaZulu-Natal. His research interests include employment, the informal economy, gender and economic policy and industrial development. He has published widely in international journals on various topics and is also a National Research Foundation rated researcher.

Imraan serves on a number of economic policy advisory panels including the Employment Conditions Commission of South Africa and the Industrial Development Corporation. He has worked with international development organisations including the United Nation Research Institute for Social Development, the United Nations Development Programme, the World Bank, the British Department for International Development and the International Development Research Centre. He is a member of the international research network Women in Informal Employment: Globalising and Organising and the International Working Group on Gender and Macroeconomics. Imraan has recently participated in reviews of the employment creation fund and the employment promotion programme.

Part 2: Case Highlights



the respondents conduct in this regard subsisted beyond the cut-off date allowed by the Act. Accordingly the Tribunal found that Videx and DSI had contravened the Act by rigging the Anglo Platinum reverse auction in 2004 and 2005 and imposed administrative penalties on them.

Abuse of dominance

On 7 August 2012 the Tribunal imposed a penalty of R449 m on Telkom for abusing its dominance in the telecommunications market between 1999 and 2004, a period in which Telkom was a monopoly provider of telecommunications facilities. This is the largest penalty paid in a contested case involving allegations of abuse of dominance.

The Tribunal concluded that *“Telkom leveraged its upstream monopoly in the facilities market to advantage its own subsidiary in the competitive value added*

network market...Telkom’s conduct caused harm to both competitors and consumers alike and impeded competition and innovation in the dynamic VANS market”.

The Commission referred the Telkom case to the Tribunal in 2004 after it had received a complaint from the South African Vans Association and 20 other internet service providers. Telkom challenged this referral on various fronts, including jurisdictional grounds, in the High Court. After five years of litigation the Supreme Court of Appeal, in 2009, rejected the jurisdictional point and referred the matter back to the Tribunal for a hearing. The Tribunal’s hearing took place over several days from October 2011 to February 2012 with 12 factual and expert witnesses presenting evidence on behalf of Telkom and the Commission.

In its complaint referral the Commission alleged that Telkom refused to supply essential access facilities to independent value added network service or VANS providers, induced their customers not to deal with them, charged their customers excessive prices for access services and discriminated in favour of its own customers by giving them a discount on distance related charges which it did not advance to customers of the independent VANS providers. Through this conduct, the Commission alleged, Telkom sought to expand its exclusivity to services over which, in law, it did not enjoy a monopoly. Moreover, through the use of these contractual terms, Telkom sought to bypass the regulator, which was entrusted with enforcement of the Telecommunications Act, in order to obtain for itself the additional protection of private law remedies.

Telkom did not deny that it acted as alleged by the Commission but argued that it was justified in doing so because, by providing certain value added services, the VANS providers were engaged in illegal conduct. Telkom alleged that the VANS operators had adopted a business

model that effectively trespassed on Telkom’s exclusivity rights as set out in the Telecommunications Act and in its license. During the hearing Telkom conceded that its illegality defence would fail if the Tribunal were to find that Telkom’s interpretation of the regulatory framework – that is the extent of the services over which it had a legal monopoly – was incorrect. Telkom also conceded that the facilities bought by VANS from Telkom amounted to ‘essential facilities’ as contemplated in the Act.

The Tribunal found that Telkom had indeed refused to supply essential facilities to independent VANS providers and induced their customers not to deal with them, conduct which resulted in a substantial lessening of competition in the VANS market. The Tribunal stated that instead of competing on the merits, Telkom had devised a strategy claiming that the independent VANS were conducting business illegally. Through this strategy, which involved the freezing of its competitors’ networks, Telkom impeded the growth of its competitors and retarded innovation in the market place.

The Tribunal rejected Telkom’s argument that the Telecommunications Act and regulations meant that these firms could not provide these services as they were not licensed to do so. For this reason the Tribunal concluded Telkom had contravened section 8(b) of the Act which says that a dominant firm must not refuse to give a competitor access to an essential facility. However the Tribunal also concluded that the Commission did not present sufficient evidence to prove excessive pricing or price discrimination, as contemplated in sections 8(a) and 9(1) respectively of the Act.



Anton Roskam

Part-time Tribunal member

Anton Roskam was appointed as a part-time member of the Tribunal with effect from 1 January 2013.

Anton has a BA LLB from the University of the Witwatersrand, a higher diploma in labour law from the Rand Afrikaanse Universiteit and a MBA cum laude from the Wits Business School. He has been practicing as an attorney since 1993. Anton was the managing secretary of the sub-council on defence in the Transitional Executive Council from 1993 to 1994, an attorney at Cheadle Thompson and Haysom from 1994 to 2006, the managing director at the same firm from 2000 to 2005 and the establishment manager of the EDD from 2009 to 2010.

Anton currently practices as an attorney at the firm Haffegée Roskam Savage and specialises in administrative, constitutional and labour law. He has substantial experience in litigation, investigations, the drafting of legislation and legislative policy formation. He has also been on the Tokiso panel of mediators and arbitrators for several years and is an accredited commercial mediator with the Centre for Effective Dispute Resolution, which is based in the United Kingdom. Anton has published numerous academic and other articles and has lectured in labour law and industrial relations.

Looking back on ten years with Lawrence Reyburn

In March 2013 Lawrence Reyburn retired as a part-time Tribunal member, a position he took in 2003, four years after the competition authority was established. The Tribunal staff said goodbye to him over lunch soon after his term ended and reflected on the valuable contribution Lawrence, as he became known, made to the Tribunal and to the development of competition law over the last ten years.

At the time Lawrence joined the Tribunal he was ending a 38-year career as an intellectual property attorney, a career he started with the law firm Spoor and Fisher and, after a detour of a few years with a leading Italian law firm, Jacobacci-Casetta, continued at Webber Wentzel. Yasmin Carrim, a full-time Tribunal member who served as Lawrence's candidate attorney at the latter firm, recalled that when she joined Webber Wentzel Lawrence was the young, dashing, just-the-right-amount-of-grey attorney with a reputation for introducing alternative culture to the firm. Yasmin assumed his reputation had to do with being a rebel but soon came to know it was because he was considered to be the conscience of the firm. For much of his time Lawrence headed a team that worked to restore equity to authors and performers who had been deprived of a just reward for their talent and labour because of discrimination. Among these artists were the Manhattan Brothers, who had unwittingly sold off the copyright in their music and performances when they turned up as lads (think Beatles) at weekly recording sessions with the company then publishing their work. The Manhattan Brothers were the South African township songsters formed in the 1930's, who launched Miriam Makeba on her musical career with the famous 'click song' and other hits of that time, some now long-standing classics. Lawrence was doing the work *pro bono* because the Manhattan Brothers, although immensely successful musically under the leadership of the legendary Joe Mogotsi, had never had an opportunity to build their bank balances and by the 1980s had fallen on hard times.

It was this character trait in Lawrence that Norman, the Tribunal chairperson, referred to when he described Lawrence as having a "strong sense of justice". Norman recounted how, when the Act was still in its introductory stages and

was facing scepticism from many in the conservative legal and business communities, Lawrence publicly supported the objectives of the Act and so the Tribunal was grateful to have him join the regulation team. Norman said Lawrence brought values and perspective to the Tribunal's panel of adjudicators and he was always a prompt and constructive team player.

The perspective that Lawrence added to the Tribunal panel came from his experience in very different fields. Before studying law (part-time, at Unisa) he graduated with a B.Sc degree in mathematics and applied mathematics and worked for a time in nuclear physics research at the CSIR and later at the Atomic Energy Board. However he followed his heart into journalism with a four-year spell as a reporter and sub-editor at The Pretoria News and continued to apply his communications skills in a public relations function at Anglo American Corporation. He also worked for a time in socio-economic research at the Institute for Race Relations, doing a ground-breaking study on the position of traders in the rapidly developing townships of Soweto. While working as a court reporter for The Pretoria News, Lawrence did his first course in law in order to better follow the legal proceedings he had to report on. He didn't know it at the time but his legal studies, together with his science background and industrial experience, would become the logical basis for his long career that was to follow as an intellectual property lawyer with a specialist interest in economic issues.

Even in his retirement Lawrence plans to take up a new career but this time for his personal pleasure. He plans to take up playing the cello, a musical instrument which Yasmin described as being similar to Lawrence in some ways: "an instrument with a quiet depth and gravitas that an orchestra cannot do without".

In his comments at his farewell lunch Lawrence said that he had been privileged to have had a part in the early history of effective competition regulation in South Africa. With its capacity to level playing fields and encourage innovation and excellence of economic performance, the Act was setting in action forces that would ultimately bring about the transformation for which the country was crying out.

A portrait of Lawrence Reyburn, an older man with short grey hair and glasses, wearing a blue and white striped button-down shirt. He is sitting in a chair, looking slightly to the right of the camera with a gentle smile. The background is a well-lit interior space with a white wall featuring several recessed shelves. Some shelves contain decorative items like small figurines and a vase. The lighting is warm and soft, creating a professional yet approachable atmosphere.

Lawrence Reyburn

Outgoing part-time Tribunal member

"If anything is going to transform this country, it will be the processes that the Competition Act sets in motion." Lawrence Reyburn, April 2013.

Part 2: Case Highlights

Table 3: Annual Performance Plan for the year ended 31 March 2013

ANNUAL PERFORMANCE PLAN - THE COMPETITION TRIBUNAL - 1 APRIL 2012 - 31 MARCH 2013					
Strategic focus area 1:	Tribunal hearings and decisions				
	Budget	R16 184 912.88	Actual	R14 405 020.57	
Goal statement:	Hold hearings and adjudicate matters brought before the Tribunal				
Strategic outcome:	Promote and maintain competition within South Africa through the implementation of the Act.				
Strategic objective	Output	Performance indicators	Annual target	Annual performance	Reasons for deviations
Large mergers					
To promote and maintain competition within South Africa by holding hearings and adjudicating matters brought before the Tribunal that pertain to large and intermediate mergers, interim relief cases, procedural matters, opposed as well as unopposed prohibited practices, within the adopted delivery time frames.	Merger notices	Merger set down (heard) in accordance with delivery time frames	75% of mergers heard within ten business days of the filed merger	81%	Target exceeded for the year to date
	Orders	Orders issued to parties in accordance with the delivery time frames	98% of orders issued within ten business days of the last hearing date	100%	Target exceeded for the year to date
	Reasons for decision documents	Reasons for decisions issued to parties in accordance with the delivery time frames	56% of reasons for decisions issued within 20 business days of the order being issued	51%	Year to date figure below target. The Tribunal was unable to meet its targets due to a shortage of Tribunal members created by three vacancies. These vacancies have been filled and we expect our performance to improve in the new financial year.
Requests for consideration (intermediate mergers)					
	Merger notices	Merger set down(heard) in accordance with delivery time frames	75% of mergers heard within ten business days of receiving the Commission's record	57%	Year to date figure below target as the hearings are set down in consultation with parties and, if the parties are not available, the Tribunal cannot meet its target. Three out of the seven matters were out of time, one was due to the parties being in negotiations with the Commission. The other two matters were out of time by one day and three days respectively.
	Orders	Orders issued to parties in accordance with the delivery time frames	98% of orders issued within ten business days of the last hearing date	100%	Target exceeded for the year to date
	Reasons for decision documents	Reasons for decisions issued to parties in accordance with the delivery time frames	56% of reasons for decisions issued within 20 business days of order being issued	13%	Year to date figure below target. The Tribunal was unable to meet its targets due to a shortage of Tribunal members created by three vacancies. These vacancies have been filled and we expect our performance to improve in the new financial year.

ANNUAL PERFORMANCE PLAN - THE COMPETITION TRIBUNAL - 1 APRIL 2012 - 31 MARCH 2013

Strategic objective	Output	Performance indicators	Annual target	Annual performance	Reasons for deviations
Opposed prohibited practices					
	Notice of set-downs	Pre-hearing invitations sent to parties in accordance with the delivery time frames	90% of pre-hearing invitations sent to parties within 20 business days of close of pleadings	86%	In one matter in the third quarter the parties were notified of pre-hearing outside the 20 day period. This was an oversight. In total six out of seven matters were notified within the required timeframes.
	Orders and reasons for decision documents	Orders and reasons for decisions issued to parties in accordance with the delivery time frames	80% of orders and reasons for decisions issued within 100 business days of the hearing date	33%	A shortage of Tribunal members (three vacancies) in the first three quarters meant that the existing Tribunal members had to sit on a number of matters and therefore spend significant time sitting in hearings and the writing of reasons was compromised. These vacancies were filled in January 2013.
Consent orders					
	Orders	Orders issued to parties in accordance with the delivery time frames	75% of consent orders issued within 10 business days of the last hearing date	100%	Target exceeded for the year to date
Procedural matters					
	Orders	Orders issued to parties in accordance with the delivery time frames	85% of orders issued within 20 business days of the last hearing date	89%	Target exceeded for the year to date
Interim relief cases					
	Reasons for decision documents	Reasons for decisions issued to parties in accordance with the delivery timeframes	85% of reasons for decisions issued within 20 business days of the last hearing date	No reasons issued	No reasons issued



"Respondents viewed the Tribunal's document management systems positively, with some mentioning the great lengths that the Tribunal would go to in order to ensure confidentiality."

[Plus 94, results of stakeholder satisfaction survey 2013]



PART 3

PART 3: OPERATIONAL REVIEW

Introduction

Training and development

Administrative training and team building

Short term internships

Tanzanian study tour

Communicating the work of the Tribunal

Customer satisfaction survey

Corporate governance

Compliance with legislation

Occupational health and safety

Ethics

Part 3: Operational Review

INTRODUCTION

The operational review covers all of the functions that support the Tribunal in carrying out its core business. It comprises ongoing capacity building for the Tribunal's staff, the governance of the Tribunal's day to day operations and stakeholder awareness.

In an effort to improve our operational effectiveness the Tribunal has provided on-going training and development opportunities to staff thus enhancing the expertise of the Tribunal.

We have continued to offer short-term internships to students during their vacation period.

In this year we continued to adhere to sound corporate governance principles thus strengthening the Tribunal's organisational capability.

During the year under review we embarked on an organisational assessment in order to determine what changes may be required given the substantial growth in work load since our inception in 1999 and the implementation of our electronic case management system in February. The outcome of this assessment and proposed changes will be finalised in June 2013.

In February 2013 the Tribunal contracted with Plus 94 in order to undertake a survey amongst our key stakeholders with regard to their perception of the service the Tribunal offers. This is the first time, since its inception, that the Tribunal has undertaken such a survey. The survey focused on the Tribunal's core business and the results of this survey are detailed in this section.



Lerato Motaung

Lerato Motaung is the head of the registry department.

Andiswa Ndoni

Part-time Tribunal member



Andiswa Ndoni, a part-time Tribunal member, attended the Tribunal's internal workshop in March 2013.

TRAINING AND DEVELOPMENT

Training, particularly for the Tribunal members and the case managers, is identified as a strategic objective and includes in-house training, external courses, workshops and both local and international conferences.

The Tribunal recognises that training builds the skills and knowledge of each staff member and this contributes to a more productive, enthusiastic and motivated group. Providing employees with opportunities for further education and for personal development is necessary for the long-term sustainability of the entity.

Tribunal members and case managers attended the following workshops, conferences and seminars during the year under review:

- the annual International Competition Network conference held in the Brazil in April 2012. It was attended by two Tribunal members and the head of the research department;
- the EC summer school competition law course presented in London in August 2012. It was attended by one part-time Tribunal member and one case manager;
- the IRBA conference held in New York in September 2012. It was attended by a Tribunal member;
- the sixth annual Commission, Tribunal and Mandela Institute conference on competition law, economics and policy in South Africa held in Johannesburg in September 2012. It was attended by three Tribunal members, the head of the research department and four case managers;
- the competition committee meetings of the OECD in Paris in February 2013 and October 2012. The February 2013 meeting was attended by one Tribunal member. The October 2012 meeting was attended by the head of the research department;
- the ICN cartel conference held in Panama in October 2012. It was attended by one case manager;
- the ICN mergers conference held in Colombia in November 2012. It was attended by one case manager;
- a workshop presented by Eleanor Fox, a lecturer at the New York University School of Law, on recent developments in competition law in the United States. It was attended by four Tribunal members, the head of research, the Tribunal's economist, five case managers and the public relations consultant;
- an internal workshop presented by Richard Whish in March 2013. It was attended by three full-time Tribunal members, seven part-time members, the head of research, the economist and four case managers; and

Part 3: Operational Review

Ipeleng Selaledi



Ipeleng Selaledi a Tribunal case manager, was among those who attended the workshop presented by Professor Fox.

- a series of workshops entitled “Economic Foundations” presented by the in-house economist and attended by the head of research, the head of registry, four case managers and the registry administrator.

We elaborate on some of these workshops and seminars below.

ICN conference in Rio de Janeiro, Brazil

Norman Manoim, Yasmin Carrim and Rietsie Badenhorst attended the annual ICN conference held in Rio de Janeiro, Brazil in April 2012. During the conference panels discussed various competition issues identified by the working groups for mergers, unilateral conduct, cartels and advocacy during breakaway sessions. Participants in the conference reported on achievements and working groups adopted new work products at the conference.

Workshop by Eleanor Fox

On 28 November 2012 Professor Eleanor Fox, a lecturer at the New York University School of Law, presented a workshop that covered the following topics:

- a short update on recent developments and special problems in antitrust law;
- the United States approach to calculating fines for cartels;
- the new United States merger guidelines with a focus on determining the proper pre-merger counterfactual, an issue encountered in the Tribunal’s Life Healthcare merger.

The workshop was attended by four Tribunal members, the head of research, the Tribunal’s economist, five case managers and the public relations consultant.

Professor Fox started by setting out the United State’s antitrust community’s expectations from the second term of the

Obama administration which, in contrast to the Bush administration, was expected to continue its interventionist approach. Obama had promised to “reinvigorate” antitrust in his first term and, in Professor Fox’s view, he had delivered on the promise but not dramatically. She stated that in this term, mergers, monopoly, health care, pharmaceuticals, patents and state action protection were likely to become important issues.

Professor Fox then turned her attention to South Africa’s competition case law and discussed the assessment of counterfactual positions in mergers. She also touched on the enforcement of cartels, in particular the determination of penalties for cartels as carried out in the United States.

In the time remaining, Professor Fox focused on the interface between patents and antitrust in the United States. She talked about the leading cases highlighting infringements by patent holders and observed that the United States Department of Justice was taking an interest in anti-competitive uses of patents.

OECD competition committee meeting

In October 2012 Rietsie Badenhorst, head of the research department, attended the OECD competition committee meetings. These meetings are held twice a year and are attended by member countries as well as those that have observer status. South Africa has observer status.

The main topics discussed at the meeting included:

- the draft report by the secretariat on the implementation of the 2005 recommendation on merger review, competition and payment systems;
- the role of efficiency claims in antitrust proceedings;
- assessing the impact of competition policy, especially ex-post evaluation



Rietsie Badenhorst

*Rietsie Badenhorst,
head of the Tribunal's
research department,
attended the OECD
competition committee
meeting in Paris, France.*

of competition policy interventions in jurisdictions.

In addition various countries presented their annual reports to the meeting.

Economic foundations workshops

These workshops were presented by the Tribunal's in-house economist, in five sessions of two hours each, to the research department. The aim was to introduce fundamental economic concepts which arise regularly in competition cases. The topics covered were: supply; demand; welfare analysis and market structures; elasticity's and diversion analysis; and types of costs.

Taken together, these sessions built on the two core assumptions in micro-economics, namely that firms are profit maximisers and that consumers are utility maximisers. These incentives inform the neo-classical understanding of supply and demand and, with an understanding of cost structures and how firms interact, can be used to model welfare effects. This was done at a high level for mergers and to highlight the key differences between the benchmark models of market structure, namely a monopoly and perfect competition.

These sessions form the foundation for future sessions on merger analysis and the economics of abuse of dominance.

ICN merger workshop in Colombia

Thabani Ngilande attended the ICN merger workshop which was held in Colombia and was titled "*The role of economic evidence in merger analysis: taking stock of the past and shaping the future*". The workshop focused on the role of economic evidence in merger analysis. The workshop provided a forum for members of the merger working group to share experiences with regard to current practices on the use of economic analysis in merger cases.

Part 3: Operational Review

Topics discussed were related to economic evidence and merger analysis and included how economics could be used to better understand the specifics of the market(s) concerned, the development of a coherent and well-articulated theory of harm, how economics could help generate reliable evidence and how economic data could be efficiently gathered.

ADMINISTRATIVE TRAINING AND TEAM BUILDING

The training programme held in the Tribunal was dominated by training sessions related directly to competition law and economics but in this year we also ensured that staff

members were given an opportunity to attend training related to the various administrative functions of the Tribunal.

The training attended included:

- international conference on Microsoft exchange applications in the IT environment;
- the responsibilities of health and safety representatives;
- governance, risk and compliance;
- ethics in the workplace;
- CV drafting and interview preparation;
- supply chain management;
- records management;
- use of Pastel – the accounting software package used in the Tribunal;
- Microsoft office software courses; and
- technical IT training courses.

The Tribunal's annual team building workshop took place on 24 September 2012. This year the Tribunal decided to adopt a new approach to team building and to use the opportunity to explore our local history. Staff were taken on a tour which included visiting the historic home of Nelson Mandela and the Hector Petersen museum. This was a different way of bonding but one which all staff enjoyed and one where we had an opportunity to share a little of our history and our own experiences with each other. The workshop was attended by three full-time members and 17 staff members.

The National Treasury hosted various chief financial officer and risk forums which were attended by the head of corporate services. These forums allow chief financial officers and chief risk officers in the public sector to interact, share ideas and discuss compliance requirements amongst themselves.

Through the Tribunal's bursary and study loan scheme we continued to provide staff members with career advancement opportunities. Study loans are granted



Andrew Sylvester joined the Tribunal in January 2013 as its in-house economist. He presented the workshops on economic foundations.

to staff members and once confirmation is received that students have passed, their loans are converted into bursaries.

During the year under review, the Tribunal gave study loans totalling R43 916.40 to four staff members and awarded bursaries totalling R20 494.51 to three staff members.

SHORT TERM INTERNSHIPS

"As a young individual with little work experience internships are, in my mind, the best way to gain experience and the competitive edge needed in the pursuit of a career."

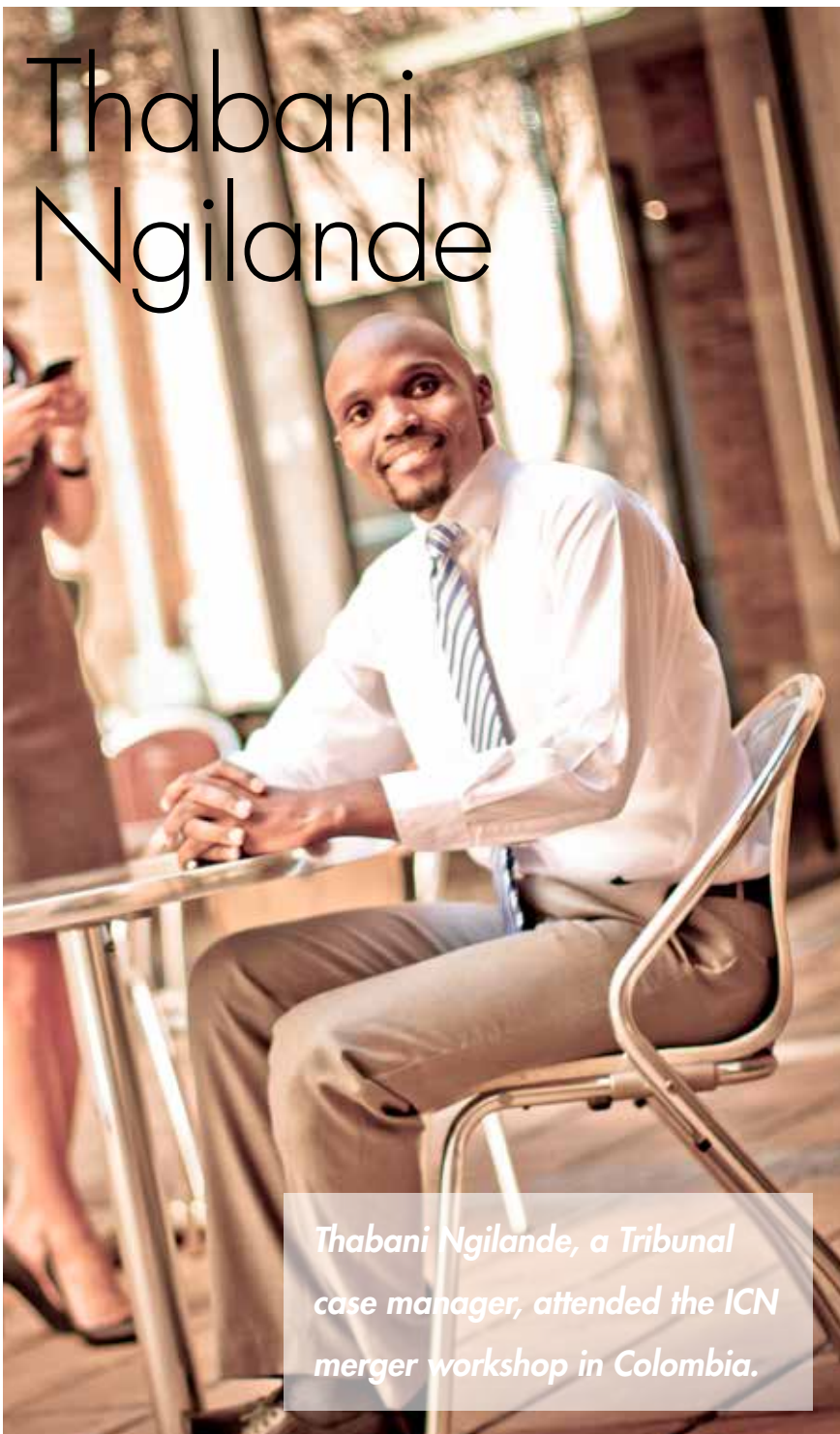
This comment by an intern is what motivates the Tribunal to continue with its internship programme. The Tribunal is a small entity and therefore has limited ability to provide long term internships or learnerships. Nevertheless, in this financial year, we continued to focus on this important aspect of our work and provided short term internships during the vacations to 11 students.

The research department once again entered into a joint collaboration with the University of Pretoria and offered an internship to a final year LLB student as part of the supervised internship programme.

The university's final year LLB students participating in this programme are participating in it as an elective course in which they spend 120 hours, either full-time over a three week period or part-time over a few months. Through this programme they are able to focus on substantive issues but simultaneously develop an understanding of the practical operations of the institution. On completion of their internship they are required to complete a 5 000 word report to the faculty.

The corporate services department managed the internship of these students who were all studying commerce, accounting and economics at the University of Johannesburg, University of Pretoria and the University of Cape Town. These students were given a wide range of tasks to complete thus providing them with broad exposure to the nature of the work undertaken by a regulatory authority and the compliance requirements a public entity needs to adhere to. At the same time these students gained some invaluable computer and administrative skills.

In addition the Tribunal created opportunities for the students to attend Tribunal hearings, audit committee meetings, risk management meetings and internally hosted workshops on work



Thabani Ngilande, a Tribunal case manager, attended the ICN merger workshop in Colombia.

Part 3: Operational Review

ethics, job interviews and CV preparation. We also used media, like videos or films, dealing with competition or economic issues, for example 'An Inside Job' and 'The Informant', as a basis for a workshop discussion.

During the July and December vacation the interns were very privileged to be invited to visit the National Treasury and meet and engage with the Accountant-General, Freeman Nomvula, as well as visit the Reserve Bank to attend a workshop with the deputy governor, Lesetja Kganyago.

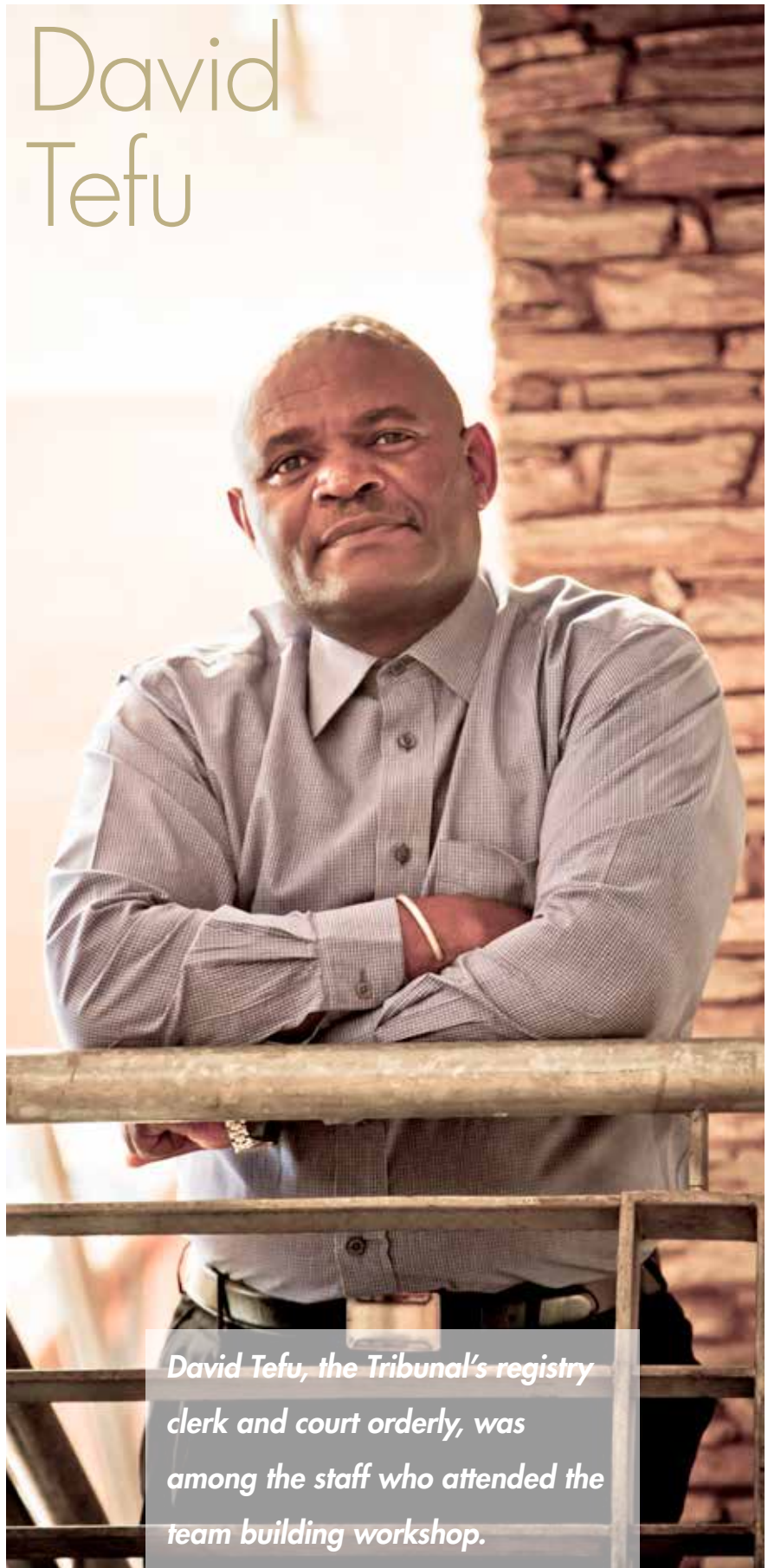
This was how some of the students described their internship experience at the Tribunal.

"Although there may be times where there is no space or challenging work, there are professionals that do their work with such diligence and level of professionalism that one can't help but leave the Tribunal and be inspired to work harder at varsity and aim for similar academic accolades as some of the staff of the Tribunal. The seminars and workshops leave one with new skills and perspective about the specific topic. So I believe it is a good environment, mainly because the staff is always keen to share, teach and inspire."

"I learnt how to take instructions and seek clarity when needed. This helped bridge my understanding and what was required in ensuring that tasks, as minor as they may seem to be, are completed correctly. I also learnt that every task fits in somewhere to make someone's job easier, as small as it is".

One intern, when asked why they liked to come back to the Tribunal, responded by saying it was a "stable, reliable institution which keeps connections going and appreciates efforts of all that have played a role in their team."

David Tefu



David Tefu, the Tribunal's registry clerk and court orderly, was among the staff who attended the team building workshop.

Tribunal Interns

**From left to right:
Ledile Mathiba, Sizwe Shakung,
Dazziryl Chabalala, Grethe Goosen.**



Another intern described the programme as *"giving me the confidence I needed to step into a full-time job, knowing I had some experience in a professional working environment."*

TANZANIAN STUDY TOUR

In February 2013 the Tribunal hosted staff of the Fair Competition Tribunal of Tanzania who were in South Africa for a study tour. Upon their return to Tanzania, members of the Fair Competition Tribunal expressed their gratitude for the manner in which we organised their study tour and for imparting knowledge on the Tribunal's filing system, the case management system,

conducting research, communicating our work to the public, our training strategy, records management and capacity building. The Fair Competition Tribunal said they gathered useful information which would assist them improve their performance and efficiency.

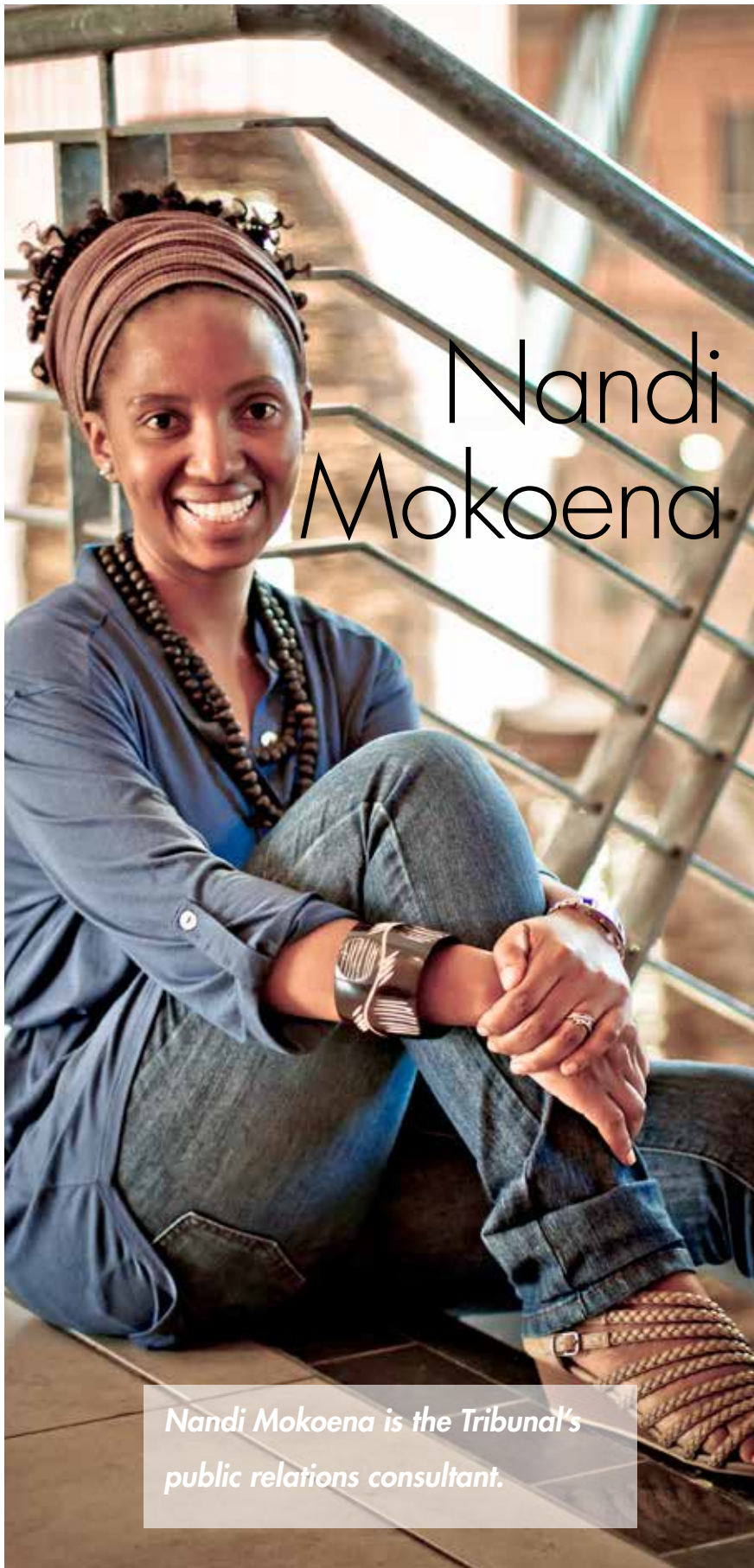
COMMUNICATING THE WORK OF THE TRIBUNAL

Why we communicate the Tribunals work

In an effort to promote the public's access to justice, the 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, the Tribunal considers 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 hearings, which is generally not a practical option, but also through the public participating in the

Part 3: Operational Review



Nandi Mokoena is the Tribunal's public relations consultant.

broader debate on competition matters, which happens through the media.

How we communicated the Tribunal's work this year

This year again the Tribunal's more prominent cases were well covered in the media. However the media's coverage of the Tribunal's work was affected by the Johannesburg Stock Exchange ruling in December 2012 which relaxed the requirement on companies to publish their financial statements in the print media. This ruling led to a loss of revenue for several business related print media and therefore led to a more stringent selection, by the media, of the stories each publication covered. In light of this the Tribunal has adopted a more pro-active approach in informing the media about upcoming cases, the outcome of cases and developments in competition generally.

At the same time the Tribunal is looking to increase awareness of its work through means other than the media. This process started with the Tribunal's customer satisfaction survey which revealed that, while the public may generally be aware of the competition regime, they are not as aware of the role of the Tribunal in the process. The results of the survey showed that the Tribunal needs to step up its efforts to create awareness amongst its stakeholders of the Tribunal's role within the competition regime. The Tribunal is therefore considering various options in this regard with a view to implementing awareness raising measures in the next financial year.

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 this financial year. In this regard we sent out media statements inviting the media to attend complaint and merger hearings. We

issued 92 media statements indicating the outcome of cases.

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.

For the Tribunal's most prominent cases this financial year, we made non-confidential witness statements available on the Tribunal's website.

The Tribunal website remains our primary method for communicating with the general public. During the 12 month period under review the website had an average of 4 518 visitors per month with 1 942 of these being new visitors. Each visitor appears to on average view five pages for approximately four minutes. Understandably the majority of the visitors to the website are from South Africa with 6.6% of them being from the government.

We have continued to post reasons for decisions on the website (96 were posted this year). Where cases have significant public interest we create a link leading to information pertaining to these cases thus ensuring that the media and interested parties have access to the latest information.

We monitored the media coverage of the Tribunal in order to stay abreast of perceptions and to respond where necessary. We did this by compiling a monthly report on the positive, negative and neutral media coverage the Tribunal receives. These reports assist the Tribunal in determining what its communication strategy should be in major cases.

While, informally, we regularly communicated with reporters to correct any minor reporting mistakes or misperceptions, formally we requested one correction in this financial year. This correction was in respect of a story, which originated from Reuters and appeared in Business Report

and Competition Policy International, an online publication. The story erroneously reported that the Tribunal had decided to appeal its own decision in the Telkom case, making the Tribunal seem confused and undecided. It was in fact the Commission and Telkom which had appealed the Tribunal's decision. Both publications published retractions of their stories the following day.

We continued to compile and send out the Tribunal Tribune, which is the Tribunal's newsletter. The newsletter is issued quarterly and contains the latest developments in the Tribunal's work as well as profiles of prominent competition personalities. The Tribune is distributed to key Tribunal stakeholders.

Cases that featured prominently this year

While most of the Tribunal's cases received media coverage in the year



Merle Holden

Part-time Tribunal member

Professor Merle Holden, a part-time Tribunal member, was a panel member in the horse racing merger involving Gold Circle (Pty) Ltd and Kenilworth Racing (Pty) Ltd

Part 3: Operational Review

under review, the cases which featured prominently in the media were:

- the Constitutional Court's decision in the case involving Senwes Ltd. On 12 April 2012 the Constitutional Court handed down a significant judgment in which it endorsed the powers of the Tribunal to adjudicate matters referred to it by the Commission. This was the first time the Constitutional Court had been called on to decide a matter concerning the competition authorities;
- the CAC decision in the Pioneer / Pannar seed merger. In its decision the CAC overturned the Tribunal's earlier prohibition of the deal and was critical of the Tribunal's approach in this case;
- the Tribunal's Telkom decision. Following a hearing the Tribunal found that Telkom had contravened the Act by abusing its dominance in the telecommunications market. The Tribunal imposed a penalty of R449 m against Telkom; and
- the horse racing merger. In this case the Tribunal approved a merger involving Gold Circle, Kenilworth and the Thoroughbred Horseracing Trust after the Commission had initially prohibited it. In the hearing the Tribunal allowed submissions from third parties, namely the Groom's Association and Africa Race Group. After the Tribunal's decision, media coverage stemmed from Africa Race Group's attempt to appeal the decision even though it was not a party or intervener in the Tribunal's proceedings.

CUSTOMER SATISFACTION SURVEY

Purpose

During this financial year the Tribunal embarked on its first stakeholder satisfaction survey. The aim of the survey was for the Tribunal to:

- understand its stakeholders basic needs;
- determine how the Tribunal is perceived;
- ascertain to what extent the Tribunal is or is not meeting its stakeholders needs; and
- ultimately improve the Tribunal's performance in the selected areas in which it interacts with external stakeholders.

Methodology

The Tribunal identified six functions that it wished to assess then determined which stakeholder groupings were relevant to the assessment of the six functions. Thereafter we drafted questions pertaining to each of these functions and stakeholders.

After a closed tender process we selected Plus 94, a research company, to conduct the survey on the Tribunal's behalf. Plus 94's task was to:

- advise on the functions, stakeholders and questions the Tribunal drafted;
- advise on the most appropriate survey design for the Tribunal's purposes;
- carry out the survey;
- collect the data arising from the survey;
- analyse and interpret the data arising from the survey; and
- present the survey results to the Tribunal.

Plus 94 carried the survey out in two phases: a qualitative phase and a quantitative phase. In the qualitative phase Plus 94 conducted ten in-depth, face to face interviews with a randomly selected stakeholder from each of the Tribunal's stakeholder groupings. The purpose of the in-depth interviews was to openly explore stakeholder expectations and experiences in order to determine the scope of the qualitative phase of the survey. The outcome of the qualitative phase enabled Plus 94 to further develop the questionnaire for the quantitative phase of the survey.



Nicola Ilgner, a case manager at the Tribunal, was among the staff assessed in the Tribunal's stakeholder satisfaction survey.



In the quantitative phase, Plus 94 carried out telephonic interviews with 50 stakeholders from the Tribunal's database. The stakeholders consisted of attorneys, reporters, economists, advocates, trade unions, regular clients of attorneys, the communications department of the Commission and the legal services department of the Commission. Plus 94 recorded the findings from these interviews and presented the results to the Tribunal.

Results of the survey

The survey revealed firstly that our stakeholders have a higher ideal level of expectation from the Tribunal's performance than the average expectation stakeholders have of government departments' performance. Our stakeholders expected the Tribunal's performance to be at the 86% level. Overall the stakeholders rated the Tribunal's actual performance at 75%.

Qualitative results

Plus 94 provided the summary below of stakeholder views of the Tribunal's services.

- Overwhelmingly the Tribunal appeared to be held in high esteem by respondents across the different stakeholder segments included in this phase of the survey. The Tribunal was perceived to be executing its mandate in a very competent and consistent manner.
- The Tribunal members were described as leading the proceedings of hearings in a fairly impartial way. The hearings process, although conforming to Tribunal rules, was said to offer some flexibility to all parties.
- The Tribunal hearings were said to be run as efficiently and expediently as possible, with Tribunal members allowing for diverse voices to be heard, within reason.
- The decisions made by the Tribunal seemed to be respected by respondents,

with Tribunal members being said to consistently provide well-reasoned arguments for the decisions made in the cases heard by the Tribunal.

- Respondents viewed the Tribunal's document management systems positively, with some mentioning the great lengths that the Tribunal would go to in order to ensure confidentiality.
- The Tribunal staff was acknowledged as exceeding expectations in delivering services to stakeholders, despite how few staff members the Tribunal had at its disposal. The commitment of the staff extended to the way in which information was efficiently communicated to the media by the Tribunal's public relations practitioner.
- The areas in which the Tribunal received criticism was in its location in Pretoria, the limited space of its hearing venue, lack of parking, limited language use in Tribunal hearings, inconsistent transcription services

and limited public awareness of the Tribunal and its function.

- Although the work of the Tribunal's public relations practitioner was commended, it appeared that there was insufficient awareness of the existence of the public relations practitioner.
- Overwhelmingly, respondents felt that it was essential for the public to be made aware of the work of the Tribunal.

Quantitative results

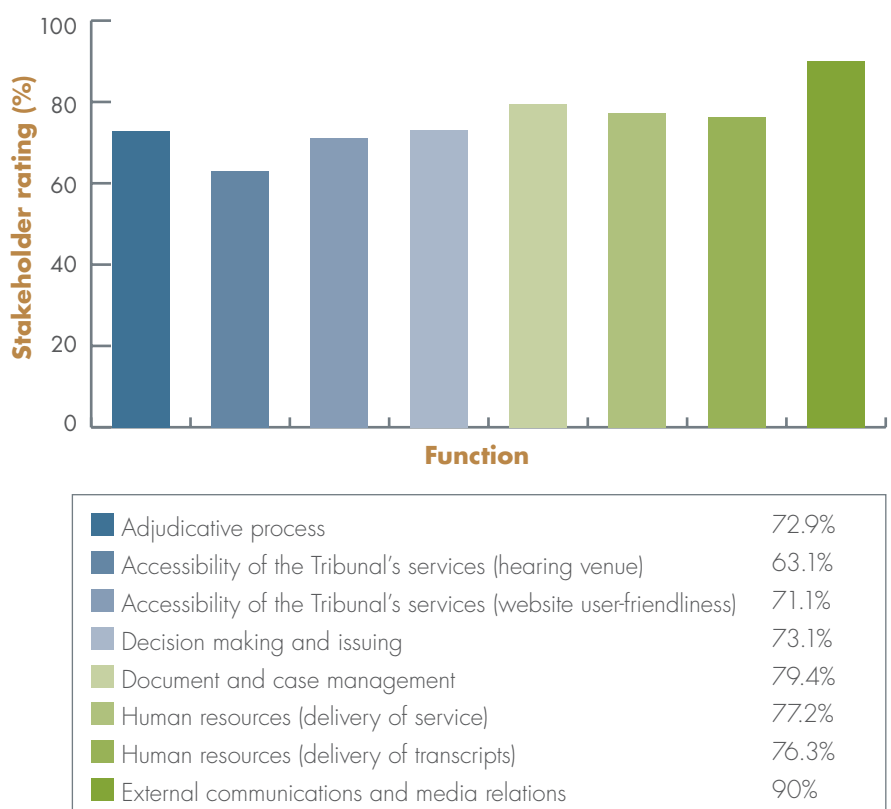
The overall results of the survey, in each of the six functions that were assessed, are set out in Figure 1 below.

CORPORATE GOVERNANCE

Introduction

In the Tribunal it is the corporate services department that is responsible for

Figure 1: Functions assessed and ratings in the stakeholder satisfaction survey



Part 3: Operational Review

Janeen De Klerk



Janeen De Klerk is the head of the corporate services department and chief financial officer.

maintaining the balance between the varying goals. This division, consisting of four permanent staff members, one temporary staff member and two learners, has the primary role of ensuring the smooth running of the administrative functions of the organisation.

Janeen de Klerk, the head of the corporate services department and chief financial officer, is assisted by Kirsteen Kunneke, who is the Tribunal's financial administrator; Colin Venter, who is responsible for all aspects of IT and facilities in the Tribunal; Lufuno Ramaru, who is the Tribunal administrator with a specific focus on compliance, governance and risk management; and finally the executive assistant, Ledile Mathiba, who is a temporary staff member providing administrative support to the Tribunal members. She is also responsible for logistic arrangements for Tribunal members when they attend hearings.

The Tribunal is guided by the principles encompassed in the King III code and supplemented by statutory duties set out in the PFMA and the Act. In line with

the requirements set out in these Acts, the Tribunal strives to achieve transparency, accountability, efficient management and optimal use of its resources.

The requirement for public entities to focus on and adhere to principles of good corporate governance has continued throughout this financial year. Transparent and controlled operations enable entities like the Tribunal to deliver a better service and therefore instil faith in the entity's stakeholders.

The key to maintaining and improving governance practices in the Tribunal is an effective, comprehensive and robust corporate governance framework. For this

reason we have continued to focus on ensuring that we have a system of policies, processes, people and rules which enable us to meet our stakeholders' needs. The commitment of all staff in the Tribunal results in effective governance systems.

The governance structures in the Tribunal are illustrated below.

The section following describes the structures in the Tribunal that monitor its compliance to legislation and corporate governance principles. In addition we highlight the progress made with regard to the development of a solid corporate governance structure and framework.



Executive committee

While the Tribunal does not have a board of directors it has established an executive committee under the leadership of the chairperson to give effect to the role set out for the Tribunal in the Act as well as other legislation such as the PFMA and relevant Treasury Regulations.

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.

The executive committee continues to meet but as meetings are often difficult to attend, given the hearings, we have continued to make use of memoranda and electronic communication. We meet at least quarterly or when substantial decisions need to be discussed and made. The executive committee held four meetings in the year under review.

Audit committee

The Tribunal's audit committee consists of five non-executive members with standing invitees including the Tribunal chairperson, the head of corporate services, the internal auditors and the external auditors.

Membership, attendance and fees received by the members are detailed in the audit committee's report in part one of this report.

This committee is constituted as a statutory committee of the Tribunal and it performs its statutory duties in terms of the PFMA. In respect of all other duties assigned to it and as set out in the Audit Committee Charter it functions as a committee of the executive committee. The charter, which is reviewed annually, details the committee's roles and responsibilities, as well as all the requirements necessary for the committee to fulfil its function.

A manual developed by the Tribunal

provides guidance to the committee on key principles and activities to be considered by them and it provides a comprehensive understanding of the powers and functions of both the audit and risk committees.

The committee is required to remain independent but simultaneously assist the accounting authority in fulfilling his obligations to demonstrate accountability and transparency.

During the period under review the audit committee has:

- approved the internal and external plans presented by the auditors;
- reviewed the Tribunal's quarterly internal audit reports, annual report and financial statements for the year

ending 31 March 2013;

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

The results of an annual self-evaluation performed by the committee concluded that they are performing effectively.

The committee is responsible to ensure that its members are kept abreast of



Tebogo Mputle is the registry administrator at the Tribunal.

Part 3: Operational Review

changes in legislation, regulations and related codes of good governance and practice. During the period under review the audit committee members participated in a number of workshops with an outside service provider. The purpose of these workshops was to update the manual referred to earlier and included a review of the audit committee calendar, the development of a audit committee checklist and the developing of draft agenda's that support the calendar and checklist.

Risk management

The Tribunal has an established, mature and well embedded risk management framework which consists of the following structures:

- the risk committee or RC – responsible for providing the accounting authority with independent counsel and advice;
- the risk management committee or RMC – responsible for addressing the corporate governance requirements of risk management and monitoring the Tribunal's performance in risk management;
- the risk coordination committee or 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.

RCC meetings are held quarterly and are also used to provide training to risk

assurance providers on their specific functions and responsibilities.

The RC evaluates the quarterly reports submitted by the RMC and discusses any changes in the Tribunal's risk profile.

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

The top five risks identified, as at March 2013, are detailed in Table 4 below.

In April 2012, a fraud prevention committee was constituted and it held four meetings during the period under review. The FPC is comprised of one member appointed by the audit committee (S Gounden: chairperson), one independent member appointed by the Tribunal (M. Menye: member) and one non-executive member from the Tribunal (A. Wessels: member).

The FPC reports functionally to the RMC and its primary objectives are to:

- assist the accounting authority in discharging his accountability for fraud management;
- provide the accounting authority with an objective and independent view of the effectiveness of the entity's fraud management systems, practices and procedures;
- provide the accounting authority with advice and direction in respect of fraud management; and
- provide recommendations for improvement in the entity's fraud management processes.

Governance of information technology

A component of corporate governance is IT governance, which refers to the rules and regulations under which an IT department functions and the mechanisms put in place to ensure compliance with those rules.

Colin Venter



Colin Venter is the Tribunal's IT support and network assistant.

Table 4: Top five risks faced by the Tribunal as at year-end

Risk	Risk Category
Poor case management	Strategic
Decision making compromised	Strategic
Business interruption	Strategic
Inadequate performance management	Strategic
Inability to attract and retain key critical positions within the organisation	Strategic

As the Tribunal has grown in size it has given increased consideration and allocated additional resources to the effective management and use of information technology.

The IT governance framework has been developed to include alignment between IT and business strategy, compliance, risk management, resource allocation, performance and value delivery.

Much of the previous financial year was spent developing a set of policies that meets best practice and, as a result, the IT focus in the period under review has moved towards ensuring that all the relevant controls are in place and, where necessary, to acquire software that assists the IT support and network assistant monitor compliance to policies, ensure that the controls are effective and highlight any vulnerabilities in the Tribunal's IT environment faces.

Any risks pertaining to IT that become evident or are identified during the course of normal business are referred to the Tribunal's risk management process for evaluation and included in the risk register if necessary.

Given its size, the Tribunal does not have a separate IT steering committee and the executive committee takes responsibility

for the approval of all major decisions pertaining to IT that are motivated by the IT support and network assistant.

Quarterly reports on all aspects of IT and a bi-annual compliance report are presented to the executive committee and the audit committee. These committees are therefore in a position to assess the Tribunal's level of compliance with internal IT policies and legislative requirements.

In February 2013, under the leadership of full-time tribunal member, Yasmin Carrim, the Tribunal's case management system (CMS) was officially launched and is now fully operational within the institution.

The perceived benefits of the CMS are:

- 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.

Basic case information for over 1 100 cases heard and completed by the Tribunal from September 1999 to the period ending 31 March 2011 has been loaded onto the system.

Historic documentation pertaining to all cases open as at 1 April 2011 was loaded which allows for easier access to relevant

case documents and enables the Tribunal to review its performance (turnaround times for set down, issuing of orders, issuing of reasons etc.) for the current period and historically. As all expenses pertaining to the adjudicative process are loaded into the system we are also able to determine the exact cost of our main mandate and can further drill down the information to give us costs per matter.

The system is therefore an extremely useful tool for the production of timeous and accurate case, performance and financial information while simultaneously allowing the Tribunal to track the progress of any matter before the Tribunal with the click of a button.

The CMS is one component of the Tribunal's vision to utilise IT systems for improving efficiencies in the delivery of our service. The Tribunal is one of the first few adjudicative bodies to implement such a system and we hope to showcase it to other public entities.

During the forthcoming financial year we will embark on a development plan for phase two which will further increase functionality and performance of CMS.

Screen shots of the type of information we can generate are included below.



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Governance and sustainability

Increased emphasis and focus on good corporate governance practice has also placed a responsibility on entities, both government and business, to produce what is referred to as an integrated report. Integrated reporting implies that the annual report must include financial and sustainability information in one report and provide a holistic view of an organisation while financial reporting represents a portion of the picture.

Through integrated reports stakeholders are informed of the extent to which the entities operations affect the environment and community it operates in and, similarly, how the environment and community affect the entities operations.

Sustainability by definition should include environmental, economic and social sustainability where:

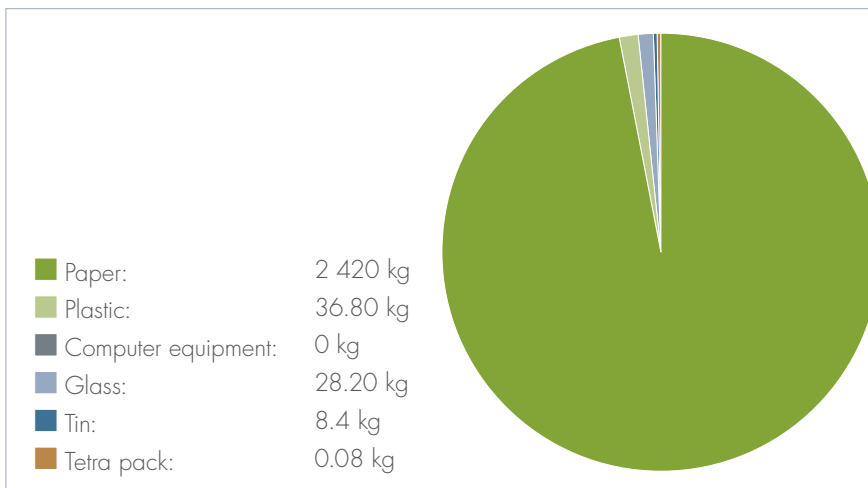
- environmental sustainability is the entity's ability to maintain the indefinite use of renewable and non-renewable resources;

- economic sustainability refers to the entity's ability to support defined levels of production or business activity; and
- social responsibility refers to the entity's obligation to act to benefit society at large. Social responsibility implies maintaining balance between material economic development and the welfare of society and environment.

Despite the Tribunal's small size and limited funding we continue to contribute to social investment and sustainability in every way we can. These contributions are detailed below.



Figure 2: Breakdown of material recycled by weight per item



Environmental sustainability

This year we continued with an office recycling project initiated in 2010 and for the period under review we recycled a total of 2 493.48 kg's of material. These materials included paper, plastic, electronic equipment, tin, glass and tetra packs. This represents an increase of 73.30% from last year.

Figure 2 below reflects the breakdown of material recycled by weight per item.

We continue, where possible, to replace normal A4 printing and copying paper with recycled or environmental friendly paper. In the period under review we developed and adopted 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 five of this report.

Social sustainability

As indicated earlier the Tribunal, as a public entity, is limited in its ability to



Kirsteen Kunneke is the Tribunal's financial administrator.

make contributions that would qualify as corporate social investment but we have made contributions towards the well being of the broader community.

The Tribunal has throughout this period continued to provide support to the Tshwane Home of Hope (a shelter for girls based in Sunnyside) through various office donations which have included couches, a printer and cartridges and staff donations of clothing, toiletries and tinned food.

In September 2012 the Tribunal joined forces with the Casual Day national office and other organisations to empower

persons with disabilities. The Tribunal purchased and wore the stickers with the 2012 Casual Day theme 'I'm on board', in support of people with disabilities.

COMPLIANCE WITH LEGISLATION

The Tribunal is governed by two legislative Acts – namely the Competition Act and the PFMA.

The Competition Act

The Tribunal's functions, powers, activities and procedures are prescribed by the Act and the rules of the Tribunal.

Policies, procedures and internal controls are reviewed to ensure compliance with the legislation and to ensure delivery on our mandate in an effective and efficient manner.

The Tribunal's strategic plan and annual performance plan detail turn-around times and targets for set down, issuing of orders and decisions. Quarterly reports on the achievement of these objectives are provided to the EDD.

The PFMA

Since 1 April 2001 the Tribunal has been listed as a Schedule 3A public entity in the PFMA.

The PFMA and the Treasury Regulations prescribe requirements for accountable and transparent financial management and, in accordance with these, the Tribunal submitted the following documents to the EDD for approval during the period under review:

- strategic plan for the period 1 April 2012 – 31 March 2017 (submitted and approved);
- budget for the period 1 April 2013 – 31 March 2014 (submitted and approved);
- annual performance plan for the period 1 April 2013 – 31 March 2013 (submitted and approved);
- request for approval to retain surpluses generated as at 31 March 2012 (submitted and approved); and
- quarterly reports on the Tribunal's expenditure, budget variance, activities and performance against set targets.

Internal audits

In April 2012 PriceWaterhouseCoopers were awarded a three year contract to perform the Tribunal's internal audit function.

Part 3: Operational Review

An internal audit plan that balances risk and compliance is developed and approved by the audit committee. The plan which is reviewed annually takes the following 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.

The plan prioritises audits based on areas identified as high risk or areas identified by the Tribunal as requiring improved internal controls. The plan is reviewed annually and presented to the audit committee for final approval.

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

- review of the information system processing environment;
- payroll management review and voluntary disclosure process follow up;
- risk management 2011/2012 follow up;
- risk management review;
- performance information review; and
- financial controls review.

External audit

The office of the Auditor-General has completed the external audit for the period ending 31 March 2013.

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 of 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 of 1962.

Lufuno Ramaru

Lufuno Ramaru, the Tribunal administrator, is responsible for the implementation of the OHS Act.

OCCUPATIONAL HEALTH AND SAFETY

The Occupational Health and Safety Act, places a legislative obligation on the Tribunal to ensure a healthy and safe environment for all its employees.

The implementation of the requirements of the OHS Act are the responsibility of the Tribunal's section 16(2) appointee, Lufuno Ramaru. In addition, quarterly (legislative compliance) and monthly (safety aspects) reviews are completed and the results thereof are reported to the executive committee and the risk committee thus ensuring that these committees' attention is focussed on issues that may compromise the safety of employees.

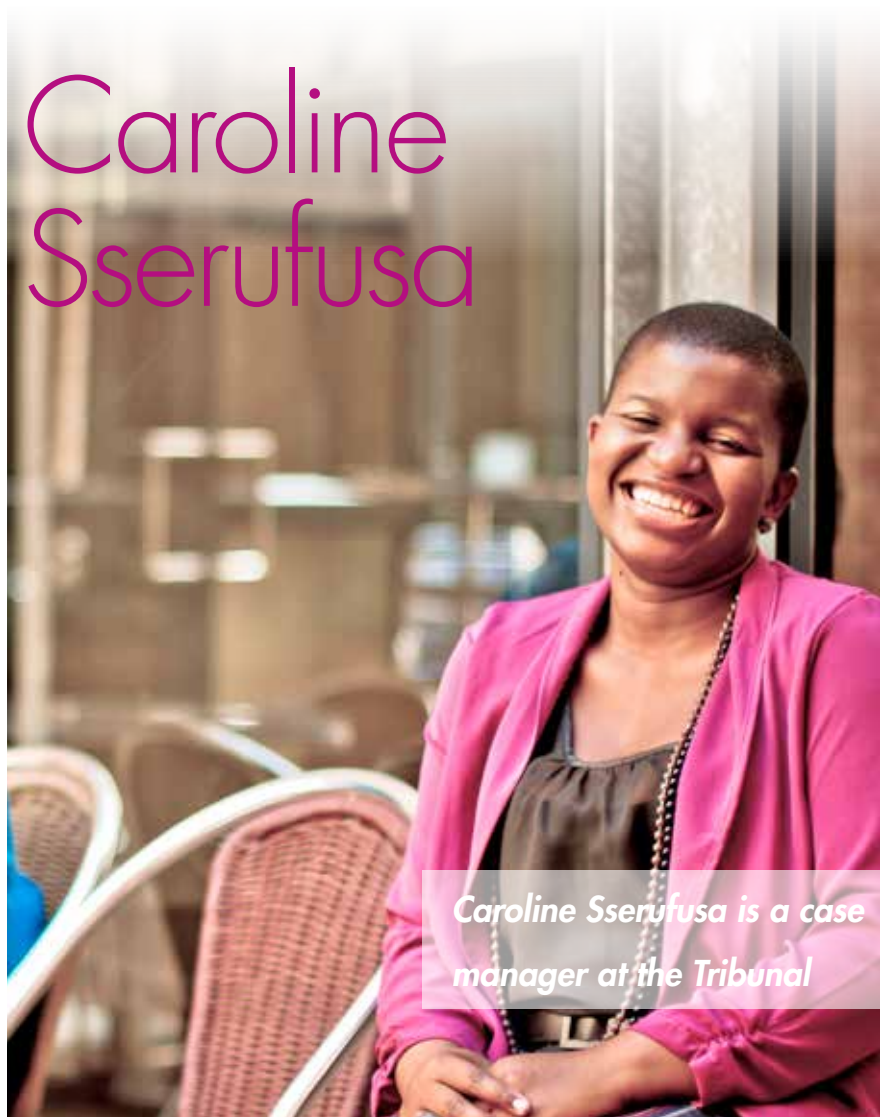
The Tribunal made the following key OHS role players' appointments:

- an OHS representative;
- an evacuation officer
- a fire officer; and
- a first aider.

It is the Tribunal's responsibility to ensure that these role players are adequately trained to perform their allotted functions. Pursuant to this, two staff members attended two different training courses dealing with the OHS Act and the functions of health and safety representatives.

ETHICS

Maintaining confidentiality and avoiding conflicts of interest are imperative for the Tribunal to remain committed to maintaining high standards of integrity and ethics. To support this commitment the Tribunal has internal policies and procedures in place that ensure that all employees comply with the principles of honesty, objectivity and independence. These include:



- a code of conduct stating what is expected of employees in their individual conduct and in relationships with others is in place;
- confidentiality and non-disclosure provisions to ensure that employees understand that it is necessary for them to uphold the confidentiality of confidential aspects of the work and services of the Tribunal, both during and after their employment with the Tribunal;
- conflict of interest provisions to clarify rules on how to avoid conflicts of interest and how to disclose any potential conflicts of interest that may occur;
- annual financial disclosure by Tribunal members (both full-time and part-time), managers and case managers thus ensuring that financial interests are fully disclosed and reducing the possibility that conflicts of interest might occur; and
- disclosure on possible procurement or supply chain management conflicts by permanent employees and full-time members.

Part 3: Operational Review

Table 5: Annual Performance Plan for the year ended 31 March 2013

ANNUAL PERFORMANCE PLAN - THE COMPETITION TRIBUNAL - 1 APRIL 2012 - 31 MARCH 2013					
Strategic focus area 2:	Stakeholder awareness				
	Budget	R592 231.60	Actual	R622 439.08	
Goal statement:	Communicate the activities and decisions of the Tribunal effectively				
Strategic outcome:	Educate and create awareness of competition matters to the Tribunal's stakeholders				
Strategic objective	Output	Performance indicators	Annual target	Annual performance	Reasons for deviations
To educate and to create awareness of competition matters to our stakeholders by communicating the activities and decisions of the Tribunal by way of the internet, press releases, the government gazette as well as internal publications within the adopted delivery time frames.	Reasons for decision documents	Turnaround time for all the reasons for decisions to be posted on the website after release	97% of reasons for decisions posted on the Tribunal website within 24 hours of release	79%	There were delays because the person responsible for updating the website was on leave and the reasons were not uploaded. Management will look at developing an action plan to improve on these figures
	Tribunal Tribune's produced	Tribunal Tribune's distributed to stakeholders	Three Tribunal Tribunes distributed by 31 March 2013	Three	The third Tribune was distributed on the first day of the new quarter. Delay was due to miscommunication in obtaining the approval for the final draft. This matter will be rectified going forward
			Tribunal Tribunes distributed to 50 stakeholders by 31 March 2013	69.33	Target exceeded
	Notice of final merger decisions	Merger decisions published in the government gazette	100% of the merger decisions issued sent to the government gazette for publication within 20 days of the final decision	74%	Delays occurred in the first and last quarter. Delays in the first quarter were due to an oversight of the person responsible and delays in the last quarter arose due to the government printers being closed over the festive season. Management is looking into processes that may be implemented to prevent future delays
	Press releases	Press releases of final decisions in merger cases issued to the media	Press releases issued for 75% of the final decisions in mergers issued by the Tribunal each quarter	93%	Target exceeded for year to date
	Press releases of final decisions in prohibited practice cases issued to the media	Press releases issued for 100% of the final decisions in prohibited practice cases issued by the Tribunal each quarter	92%	The target was exceeded in all quarters except the last quarter. This was due to miscommunication in not publishing a press release for two prohibited practice cases. This matter will be rectified going forward.	

ANNUAL PERFORMANCE PLAN - THE COMPETITION TRIBUNAL - 1 APRIL 2012 - 31 MARCH 2013

Strategic focus area 3:					
		Operational effectiveness			
	Budget	R1 570 216.19	Actual	R991 248.11	
Goal statement:	Enhance the expertise of Tribunal staff				
Strategic outcome:	Strengthen the Tribunal's organisational capability and performance to deliver on its legislative mandate				
Strategic objective	Output	Performance indicators	Annual target	Annual performance	Reasons for deviations
To enhance the expertise of Tribunal members and staff by sending them on planned international as well as local conferences and training courses.	Training feedback form	Conferences and training courses attended	Tribunal members and research staff attend 75% of the budgeted international and national conferences or workshops and training courses by 31 March 2013	85.37%	Target exceeded for year to date





PART 4

PART 4: THE COMPETITION APPEAL COURT

Introduction

Cases before the CAC

Part 4: The Competition Appeal Court

INTRODUCTION

The CAC is the third institution established in terms of the Act and is a specialised body that hears appeals from and reviews of the decisions of the Tribunal. CAC judges are appointed by the President, acting on the advice of the Judicial Services Commission. The judges

constituting the CAC during the year under review are detailed in Table 6 below.

The budget for the CAC is managed by the Judge President and administered by the Tribunal while funding is received from the EDD. The CAC's registry function is performed by the Tribunal with the Tribunal's registrar.

Figure 3 below sets out the expenditure pertaining to the operation of the CAC over the past ten years.

As is the case with the Tribunal it is difficult for the CAC 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

Figure 3: CAC expenditure over time

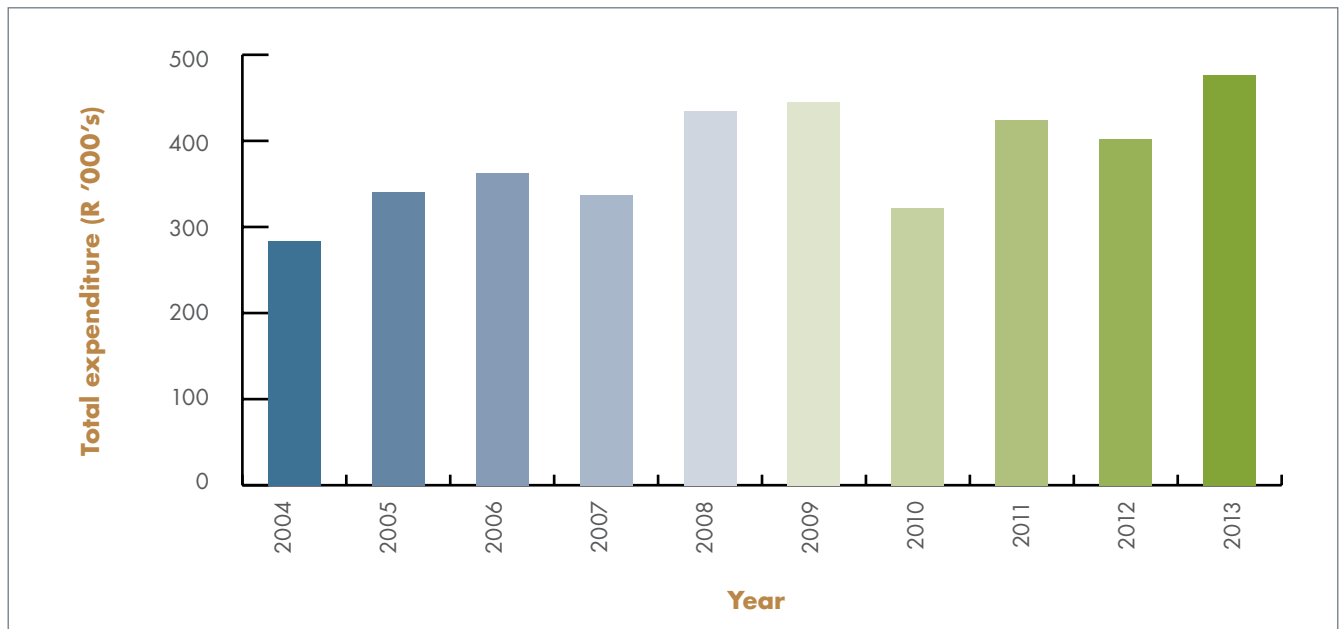


Table 6: Judges of the CAC

Name	Court	Term of Office
The Honourable Mr Justice D. Davis	Cape of Good Hope Provincial Division of the High Court	October 2007 – January 2013 January 2013 – April 2013
The Honourable Madam Justice L.M. Mailula	Witwatersrand Local Division of the High Court	October 2007 - January 2013 January 2013 – April 2013
The Honourable Mr Justice C.N. Patel	Natal Provincial Division of the High Court	October 2007 – October 2012
The Honourable Mr Justice D. Zondi	Cape of Good Hope Provincial Division of the High Court	May 2011 – May 2021
The Honourable Madam Justice N.C. Dambuza	Eastern Cape Division of the High Court	December 2010 – December 2020
The Honourable Mr Justice K.G.B. Swain	KwaZulu-Natal High Court	January 2012 – December 2012 December 2012 – April 2013
The Honourable Madam Justice M.B. Molemela	Free State High Court	January 2012 – December 2012 December 2012 – April 2013
The Honourable Madam Justice T. Ndita	Western Cape High Court	October 2012 – April 2013

associated costs, and some provision is made for the attendance of CAC judges at international competition conferences.

CASES BEFORE THE CAC

In the period under review the CAC received 13 applications, heard eight cases (five from the previous period), handed down 12 judgments (11 from the previous period), and three cases were withdrawn (two from the previous period).

There are currently 11 cases pending on the roll (eight pending hearings and three pending judgment).

There are two cases with no activities on the roll – one has been postponed *sine die* and the other one's time periods have been suspended pending settlement discussions between the parties (both from the previous period).

A detailed list of CAC cases is given in Appendix J.



"The Tribunal staff was acknowledged as exceeding expectations in delivering services to stakeholders, despite how few staff members the Tribunal had at its disposal."

[Plus 94, results of stakeholder satisfaction survey 2013]

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38992.44

PART 5

PART 5: FINANCIAL OVERVIEW

Financial management

Annual financial statements



Part 5: Financial Overview

FINANCIAL MANAGEMENT

The strategic framework guidelines require the Tribunal to allocate its budget across its objectives.

The Tribunal, in its annual performance plan, identified three strategic focus areas and a specific budget is allocated to each of these areas. The remaining budget, not directly related to these focus areas, is spent on facilities and capital and administrative support.

In addition to being responsible for its own budget the Tribunal is responsible for the administrative functioning of the CAC and therefore includes reports on this expenditure against budget with its quarterly report.

Table 7 below reflects actual expenditure against these six broad categories.

In the year under review the Tribunal spent 88.09% of its budget. The only area where there was an over spend was for stakeholder awareness. Part of the reason for this was that we had to increase the storage capability of the website database which was not an item we had budgeted for.

Fees paid to part-time Tribunal members for attendance, preparation and decision writing during the review increased by 6.57%. This is in line with the 6.30% increase in the number of days part-time members were paid for - a total of 344.20 days of work, whereas in the previous year

this figure was 323.80. Until January 2013 there were only five part-time members but the compliment increased to eight with three new appointments in January 2013 who were each paid for an average of 46.26 days per annum. Part-time members were paid R7 000 per day. Table 8 shows the distribution of hearing days over the past two years.

In the year under review the Tribunal heard 128 matters over 109.50 days, whereas in the previous year 154 matters were heard over 146 days. This represents a decrease of 16.89% in the volume of cases and a 27.06% decrease in the number of hearing days. The average number of days per hearing was 1.17 days as compared to 1.05 days in the previous period.

Each panel consists of three Tribunal members. Table 9 illustrates the allocation of hearing days expressed as person days between full-time and part-time members.

The decrease in the volume of cases explains the 8.10% under spending on the first, and main, strategic focus of the Tribunal.

The under spending on the facilities and capital budget is a result of the delay in the "go-live" date of the electronic case management system developed by the Tribunal and in terms of a contract with Business Connexion (Pty) Ltd. As a result of the delay it was not necessary to spend the funds allocated to operational support as we were in development phase. In addition there was under spending on amortisation as the intangible asset could not be "depreciated" until the development phase had concluded.

The budget compiled by the Tribunal for the 12 month period ending 31 March 2013 reflected estimated expenditure of R31.11 and estimated revenue (generated from aliquot fees, interest and an EDD grant) of R25.28 m. It was anticipated that the budget shortfall would be met by using accumulated surpluses of R5.83 m.

Table 7: Budget and expenditure for the reporting period

Category	Budget	Actual	% of budget spent
Tribunal hearings	R16 184 913	R14 405 020.57	89.00
Stakeholder awareness	R592 232	R622 439	105.10
Operational efficiency	R1 570 217	R991 248	63.13
CAC	R657 144	R475 880	72.42
Facilities and capital	R2 511 019	R1 746 267	69.54
Support Services	R9 596 522	R9 167 100	95.53
Total	R31 112 047	R27 406 314	88.09

Table 8: Distribution of hearing days over two years

Category	2013	2012	% change
Hearing days (including cancelled days)	176.50	176	0.30
Preparation days	128.00	108	25.93
Decision writing	39.70	39.80	0
Total days	344.20	323.80	6.30

Table 9: Allocation of hearing days between full-time and part-time members

Days	2013	%	2012	%
Hearing days	109.50		146	
Person days, full-time members	174.00	63.70	279	76.10
Person days, part-time members	151.50	36.30	159	23.90
Total person days	325.50	100	438	100
Per Tribunal member	29.23		43.80	

Actual revenue for the year amounted to R25.34 m and was made up as recorded in Table 10.

The grant received from the EDD increased by 4.11% over that of the previous year and accounted for 62.35% of the Tribunal's revenue in the year under review. Filing fees received in terms of the memorandum of understanding with the Commission decreased by 15.96% from those of the previous year and accounted for 33.22% of the Tribunal's revenue.

Filing fees during the current period under review represent a reducing component of the Tribunal's revenue and, based on

information received from the Commission, we expect this trend to continue. Accordingly the Tribunal has continued to request the Treasury's permission to use current accumulated funds to cover budgeted expenses. In addition it will 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 15.03% from R23.29 m to R26.79 m.

Table 11 illustrates the nature of expenditure incurred by the Tribunal and the percentage change in each category in the year under review.

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.

Table 12 sets out the contribution of each category to the 15.03% increase in total expenditure:

The biggest contributors to the increase in expenditure are personnel expenditure (which accounts for 31.13% of the increase) and administrative expenditure (which accounts for 26.39% of the increase). Early on in this section we discuss fees paid to part-time Tribunal members.

While 31.13% of the expenditure increase is due to an increase in personnel expenses, this line item only increased by 8.6% in the year under review. This is low when one considers that the cost of living adjustment was 7% and performance bonuses increased by 8.09%.

47.04% of the increase in administrative expenditure is the result of a 26.75% increase in lease expenses (the predominant expense being the facility fee paid to the dti for occupation on the dti campus) and 17.08% is due to the 11.34% increase in internal audit fees.

Earlier in this part of the report we referred to the increase in fees paid to part-time Tribunal members as a result of increased days allocated to hearings. This increase accounts for 41.04% of the 16.02% referred to in the Table 11. The remaining 58.96% is in respect of a "retainer" paid to Tribunal members for the reading of Tribunal and CAC decisions and other relevant decisions or articles they may be referred to thus ensuring they stay abreast of international and competition law. The fee is equivalent to 10 days (based on one day per month for the months February to November each calendar year) and

Table 10: Tribunal's total income over three years

Category	Amount (R m)	% (2013)	% (2012)	% (2011)
Government grants	15.80	62.35	57.50	62.46
Filing fees	8.42	33.22	37.95	31.87
Other income	1.12	4.43	4.55	5.67
Total income	25.34	100	100	100

Table 11: Expenditure incurred in this financial year

Expenditure Category	% (2013)	% (2012)	% change
Personnel	51.39	54.43	8.60
Administration	19.56	18.54	21.41
Training	5.51	4.46	42.00
Professional services	9.51	9.77	12.01
Part-time Tribunal members fees	3.63	10.31	16.02
Other operating expenses	10.40	2.49	67.91
Total expenditure	100	100	15.04

Table 12: Category contributions to increase in total expenditure

Expenditure category	%
Personnel	31.13
Administrative	26.39
Training	12.47
Professional services	7.80
Part-time Tribunal members fees	10.98
Other operating expenses	11.23
Total	100

Part 5: Financial Overview

is paid in two equal tranches – the first being at the beginning of the Tribunal’s financial year (April) and the second six months later (September). Members are not paid for reading of case law as part of their fee for hearing cases as it is assumed that they spend time keeping up with developments in the field.

Earlier in this section we referred to the under spending on our training budget due to a lack of capacity. Despite this under spending the expenditure on this line item was 42% higher than the previous financial year.

During the period under review the increase in professional services remained low at 12.01%. Table 13 illustrates the

distribution of categories of expenditure within the line item ‘professional services’.

While the 149.01% increase in expenditure on consulting services may seem excessive it must be noted that there was still under-expenditure on this line item and the increase is related to the expenditure incurred on the stakeholder survey and the organisational assessment, both of which began during this financial period.

Table 13: Distribution of expenditure in professional services

Category	Distribution	% change
Consulting services	33.93	149.01
Recruitment	0	0
Public relations	28.54	23.37
Transcription services	18.16	-87.54
Shared services with the Commission	19.37	15.16
Total	100	12.01

Table 14: Percentage of Tribunal’s budget spent

Year	Actual expenditure (in R m)	Budget (in R m)	% of budget spent
2000	4.29	9.12	47.03
2001	6.35	9.08	69.93
2002	6.37	9.13	69.76
2003	7.36	9.33	78.88
2004	9.08	10.44	86.97
2005	9.25	11.54	80.15
2006	10.64	12.41	85.23
2007	13.22	15.81	83.62
2008	15.56	16.60	93.73
2009	17.71	20.35	87.03
2010	18.48	26.40	70.00
2011	20.42	27.41	74.50
2012	24.39	26.42	92.32
2013	27.41	31.11	88.09

Table 15: Operating costs associated with a hearing

	Direct hearing costs R '000	Adjudication costs R '000	Number
Per order issued	28.24	121.19	124 issued
Per reason issued	33.68	144.50	104 issued
Per person day	10.76	46.16	325.50 person days
Per actual hearing day	31.98	137.24	109.50 hearing days
Per part-time member person day	23.11	99.19	151.50 person days
Per transcript page produced	250	1073	14 006 pages

Earlier in this section we noted that the Tribunal spent 88.09% of its budget this year. As it is difficult to predict the number of cases that will be heard in a year it is difficult for the Tribunal to budget accurately.

In its initial years of operation the Tribunal experienced large budget variances, but in recent years actual expenditure has been more closely aligned to the budget.

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.

What do our hearings cost?

The Tribunal has continued to report quarterly to the EDD on the economic indicator dashboard. The dashboard is attached as Appendix I to this report.

The dashboard enables the Tribunal, to some extent, to determine the actual operating costs associated with a hearing held at the Tribunal. At present we are able to calculate what we refer to as “direct hearing costs”. These are variable costs and do not include the salaries of full-time members or case managers. If these are included we arrive at what is referred to as “total adjudication costs”. These costs are reflected in Table 15.

Annual Financial Statements for the year ended 31 March 2013

Annual Financial Statements for the year ended 31 March 2013

The statements set out below comprise the annual financial statements presented to Parliament:

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Annual Financial Statements for the year ended 31 March 2013

STATEMENT OF FINANCIAL POSITION AS AT 31 MARCH 2013

	Note(s)	2013 R '000	2012 R '000
ASSETS			
Current assets			
Inventory	2	18	34
Receivables from exchange transactions	3	797	975
Cash and cash equivalents	4	22 465	24 322
		23 280	25 331
Non-current assets			
Property, plant and equipment	5	1 236	1 165
Intangible assets	6	2 644	2 436
		3 880	3 601
TOTAL ASSETS		27 160	28 932
Liabilities			
Current liabilities			
Finance lease obligation	7	105	86
Payables from exchange transactions	8	1 604	1 953
Provisions	9	544	611
		2 253	2 650
Non-current liabilities			
Finance lease obligation	7	93	17
		93	17
TOTAL LIABILITIES		2 346	2 667
NET ASSETS		24 814	26 265
NET ASSETS			
Accumulated surplus		24 814	26 265

Annual Financial Statements for the year ended 31 March 2013

STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 31 MARCH 2013

	Note(s)	2013 R '000	2012 R '000
REVENUE			
Revenue from exchange transactions			
Fees earned	10	8 417	10 015
Other income	11	1	11
Investment income	12	1 113	1 191
Gains on disposal of property, plant and equipment		9	1
Total revenue from exchange transactions		9 540	11 218
Revenue from non-exchange transactions			
Transfer revenue			
Government grants & subsidies	13	15 798	15 175
TOTAL REVENUE		25 338	26 393
EXPENDITURE			
Personnel	14	(13 710)	(12 646)
Administration	15	(5 256)	(4 344)
Depreciation and amortisation	16	(555)	(444)
Impairment loss/ Reversal of impairments	17	(64)	(17)
Finance costs	18	(26)	(12)
Other operating expenses	19	(7 179)	(5 824)
TOTAL EXPENDITURE		(26 790)	(23 287)
Operating (deficit) surplus		(1 452)	3 106

Annual Financial Statements for the year ended 31 March 2013

STATEMENT OF CHANGES IN NET ASSETS FOR THE YEAR ENDED 31 MARCH 2013

	Accumulated surplus R '000	Total net assets R '000
Balance at 01 April 2011	23 159	23 159
Changes in net assets		
Surplus for the year	3 106	3 106
Total changes	3 106	3 106
Balance at 01 April 2012	26 266	26 266
Deficit for the year	(1 452)	(1 452)
Total changes	(1 452)	(1 452)
Balance at 31 March 2013	24 814	24 814

Annual Financial Statements for the year ended 31 March 2013

CASH FLOW STATEMENT FOR THE YEAR ENDED 31 MARCH 2013

		2013	2012
	Note(s)	R '000	R '000
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts			
Grants		15 798	15 175
Interest income		1 113	1 191
Other receipts		8 596	10 089
		<u>25 507</u>	<u>26 455</u>
Payments			
Employee costs		(13 710)	(12 646)
Finance costs		(26)	(12)
Payments to suppliers		(12 833)	(9 469)
		<u>(26 569)</u>	<u>(22 127)</u>
NET CASH FLOWS FROM OPERATING ACTIVITIES	21	<u>(1 062)</u>	<u>4 328</u>
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchase of property, plant and equipment	5	(592)	(317)
Proceeds from sale of property, plant and equipment	5	21	7
Purchase of other intangible assets	6	(318)	(881)
NET CASH FLOWS FROM INVESTING ACTIVITIES		<u>(889)</u>	<u>(1 191)</u>
CASH FLOWS FROM FINANCING ACTIVITIES			
Increase in/repayment of finance leases		95	(78)
NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS		(1 857)	3 058
Cash and cash equivalents at the beginning of the year		24 322	21 264
CASH AND CASH EQUIVALENTS AT THE END OF THE YEAR	4	<u>22 465</u>	<u>24 322</u>

Annual Financial Statements for the year ended 31 March 2013

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

BUDGET ON ACCRUAL BASIS

	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
	R '000	R '000	R '000	R '000	R '000	
STATEMENT OF FINANCIAL PERFORMANCE						
REVENUE						
Revenue from exchange transactions						
Fees earned	9 075	-	9 075	8 417	(658)	See Note 30 for explanation of variances
Other income	-	-	-	1	1	
Interest received - investment	600	-	600	1 113	513	
Gains on disposal of property, plant and equipment	-	-	-	9	9	
Total revenue from exchange transactions	9 675	-	9 675	9 540	(135)	
Revenue from non-exchange transactions						
Government grants & subsidies	15 600	-	15 600	15 798	198	
TOTAL REVENUE	25 275	-	25 275	25 338	63	
EXPENDITURE						
Personnel	(15 835)	-	(15 835)	(13 710)	2 125	
Administration	(1 875)	-	(1 875)	(1 259)	616	
Depreciation and amortisation	(842)	-	(842)	(555)	287	
Impairment loss/ Reversal of impairments	-	-	-	(64)	(64)	
Finance costs	-	-	-	(26)	(26)	
Other operating expenses	(11 975)	-	(11 975)	(11 176)	799	
TOTAL EXPENDITURE	(30 527)	-	(30 527)	(26 790)	3 737	
Actual amount on comparable basis as presented in the budget and actual comparative statement	(5 252)	-	(5 252)	(1 452)	3 800	

Note: The Tribunal's MTEF submissions reflect a drawing down of accumulated funds to cover budget shortfall and as these accumulated funds are not reflected as revenue it appears as if we budget for a deficit.

Annual Financial Statements for the year ended 31 March 2013

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

BUDGET ON CASH BASIS

Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
R '000	R '000	R '000	R '000	R '000	

STATEMENT OF FINANCIAL POSITION

ASSETS

CURRENT ASSETS

Inventory	-	-	-	18	18
Receivables from exchange transactions	-	-	-	797	797
Cash and cash equivalents	-	-	-	22 465	22 465
	-	-	-	23 280	23 280

NON-CURRENT ASSETS

Property, plant and equipment	585	-	585	1 236	651
Intangible assets	-	-	-	2 644	2 644
	585	-	585	3 880	3 295

TOTAL ASSETS

	585	-	585	27 160	26 575
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LIABILITIES

CURRENT LIABILITIES

Finance lease obligation	-	-	-	105	105
Payables from exchange transactions	-	-	-	1 604	1 604
Provisions	-	-	-	544	544
	-	-	-	2 253	2 253

NON-CURRENT LIABILITIES

Finance lease obligation	-	-	-	93	93
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TOTAL LIABILITIES

	-	-	-	2 346	2 346
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NET ASSETS

	585	-	585	24 814	24 229
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NET ASSETS

Accumulated surplus	585	-	585	24 814	24 229
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Please refer to Note 29 - Reconciliation between Budget and Statement of Financial Performance to see detailed description of budget variances.

Annual Financial Statements for the year ended 31 March 2013

ACCOUNTING POLICIES FOR THE YEAR ENDED 31 MARCH 2013

1. BASIS OF PREPARATION

The annual financial statements have been prepared in accordance with the 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 Commission informs us that these amounts are now due to us. The Commission recognises these filing fees when the case is filed with them, any cases paid for but not filed or those that lapse for the periods stipulated in the Act are refunded by the Commission to the parties. Any fees due by the Commission to the Tribunal but not yet received are reflected as receivables by the Tribunal.

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.

Annual Financial Statements for the year ended 31 March 2013

Other income

Other income is recognised on an accrual basis.

1.3 IRREGULAR EXPENDITURE

Irregular expenditure as defined in section 1 of the PFMA means expenditure, other than unauthorised expenditure incurred in contravention of, or not in accordance with a requirement of any applicable legislation including the PFMA.

Irregular expenditure that was incurred and identified during the current financial and which was condoned before year end and/or before finalisation of the financial statements must also be recorded appropriately in the irregular expenditure register. In such an instance, no further action is also required with the exception of updating the note to the financial statements.

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end must be recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements.

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements must be updated with the amount condoned.

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority must be recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps must thereafter be taken to recover the amount from the person concerned. If recovery is not possible, the accounting officer or accounting authority may write off the amount as debt impairment and disclose such in the relevant note to the financial statements. The irregular expenditure register must also be updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto must remain against the relevant programme/expenditure item, be disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

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

Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid annual leave), are recognised in the period in which the service is rendered and are not discounted.

The expected cost of bonus payments is recognised as an expense when there is a legal or constructive obligation to make such payments as a result of past performance.

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.

Annual Financial Statements for the year ended 31 March 2013

1.6 PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment are tangible non-current assets that are held for use in the supply of goods and services or for administrative purposes, and are expected to be used during more than one period.

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

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

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

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

Items of entity are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the 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 or service potential that are attributable to the asset will flow to the entity; and
- the cost or fair value of the asset can be measured reliably.

Intangible assets are initially recognised at cost.

Annual Financial Statements for the year ended 31 March 2013

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 or service potential.
- 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 or service potential. Amortisation is not provided for these intangible assets, but they are tested for impairment annually and whenever there is an indication that the asset may be impaired. 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 reviewed at each reporting date.

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, internally generated	5 years
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.

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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

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or a residual interest of another entity.

The amortised cost of a financial asset or financial liability is the amount at which the financial asset or financial liability is measured at initial recognition minus principal repayments, plus or minus the cumulative amortisation using the effective interest method of any difference between that initial amount and the maturity amount, and minus any reduction (directly or through the use of an allowance account) for impairment or uncollectibility.

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Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation.

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates.

Derecognition is the removal of a previously recognised financial asset or financial liability from an entity's statement of financial position.

The effective interest method is a method of calculating the amortised cost of a financial asset or a financial liability (or group of financial assets or financial liabilities) and of allocating the interest income or interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the financial asset or financial liability. When calculating the effective interest rate, an entity shall estimate cash flows considering all contractual terms of the financial instrument (for example, prepayment, call and similar options) but shall not consider future credit losses.

The calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest rate (see the Standard of GRAP on Revenue from Exchange Transactions), transaction costs, and all other premiums or discounts. There is a presumption that the cash flows and the expected life of a group of similar financial instruments can be estimated reliably. However, in those rare cases when it is not possible to reliably estimate the cash flows or the expected life of a financial instrument (or group of financial instruments), the entity shall use the contractual cash flows over the full contractual term of the financial instrument (or group of financial instruments).

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable willing parties in an arm's length transaction.

A financial asset is:

- cash;
- a residual interest of another entity; or
- a contractual right to:
 - receive cash or another financial asset from another entity; or
 - exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity.

A financial liability is any liability that is a contractual obligation to:

- deliver cash or another financial asset to another entity; or
- exchange financial assets or financial liabilities under conditions that are potentially unfavourable to the entity.

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

Liquidity risk is the risk encountered by an entity in the event of difficulty in meeting obligations associated with financial liabilities that are settled by delivering cash or another financial asset.

Loan commitment is a firm commitment to provide credit under pre-specified terms and conditions.

Loans payable are financial liabilities, other than short-term payables on normal credit terms.

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. Market risk comprises three types of risk: currency risk, interest rate risk and other price risk.

Other price risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices (other than those arising from interest rate risk or currency risk), whether those changes are caused by factors specific to the individual financial instrument or its issuer, or factors affecting all similar financial instruments traded in the market.

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A financial asset is past due when a counterparty has failed to make a payment when contractually due.

Transaction costs are incremental costs that are directly attributable to the acquisition, issue or disposal of a financial asset or financial liability. An incremental cost is one that would not have been incurred if the entity had not acquired, issued or disposed of the financial instrument.

Financial instruments at amortised cost are non-derivative financial assets or non-derivative financial liabilities that have fixed or determinable payments, excluding those instruments that:

- the entity designates at fair value at initial recognition; or
- are held for trading.

Financial instruments at cost are investments in residual interests that do not have a quoted market price in an active market, and whose fair value cannot be reliably measured.

Financial instruments at fair value comprise financial assets or financial liabilities that are:

- derivatives;
- combined instruments that are designated at fair value;
- instruments held for trading. A financial instrument is held for trading if:
 - it is acquired or incurred principally for the purpose of selling or repurchasing it in the near-term; or
 - on initial recognition it is part of a portfolio of identified financial instruments that are managed together and for which there is evidence of a recent actual pattern of short term profit-taking;
 - non-derivative financial assets or financial liabilities with fixed or determinable payments that are designated at fair value at initial recognition; and
 - financial instruments that do not meet the definition of financial instruments at amortised cost or financial instruments at cost.

Classification

The entity has the following types of financial assets (classes and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Trade receivables	Financial asset measured at fair value
Cash and Cash equivalents	Financial asset measured at cost

The entity has the following types of financial liabilities (classes and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Finance Leases	Financial liability measured at amortised cost
Trade payables	Financial liability measured at fair value

Initial recognition

The entity recognises a financial asset or a financial liability in its statement of financial position when the entity becomes a party to the contractual provisions of the instrument.

The entity recognises financial assets using trade date accounting.

Initial measurement of financial assets and financial liabilities

The entity measures a financial asset and financial liability initially at its fair value plus transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability.

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The entity measures a financial asset and financial liability initially at its fair value [if subsequently measured at fair value].

Subsequent measurement of financial assets and financial liabilities

The entity measures all financial assets and financial liabilities after initial recognition using the following categories:

- Financial instruments at fair value.
- Financial instruments at amortised cost.
- Financial instruments at cost.

All financial assets measured at amortised cost, or cost, are subject to an impairment review.

Fair value measurement considerations

The best evidence of fair value is quoted prices in an active market. If the market for a financial instrument is not active, the entity establishes fair value by using a valuation technique. The objective of using a valuation technique is to establish what the transaction price would have been on the measurement date in an arm's length exchange motivated by normal operating considerations.

Valuation techniques include using recent arm's length market transactions between knowledgeable, willing parties, if available, reference to the current fair value of another instrument that is substantially the same, discounted cash flow analysis and option pricing models. If there is a valuation technique commonly used by market participants to price the instrument and that technique has been demonstrated to provide reliable estimates of prices obtained in actual market transactions, the entity uses that technique. The chosen valuation technique makes maximum use of market inputs and relies as little as possible on entity-specific inputs. It incorporates all factors that market participants would consider in setting a price and is consistent with accepted economic methodologies for pricing financial instruments. Periodically, an entity calibrates the valuation technique and tests it for validity using prices from any observable current market transactions in the same instrument (i.e. without modification or repackaging) or based on any available observable market data.

The fair value of a financial liability with a demand feature (e.g. a demand deposit) is not less than the amount payable on demand, discounted from the first date that the amount could be required to be paid.

Reclassification

The entity does not reclassify a financial instrument while it is issued or held unless it is:

- combined instrument that is required to be measured at fair value; or
- an investment in a residual interest that meets the requirements for reclassification.

Where the entity cannot reliably measure the fair value of an embedded derivative that has been separated from a host contract that is a financial instrument at a subsequent reporting date, it measures the combined instrument at fair value. This requires a reclassification of the instrument from amortised cost or cost to fair value.

If fair value can no longer be measured reliably for an investment in a residual interest measured at fair value, the entity reclassifies the investment from fair value to cost. The carrying amount at the date that fair value is no longer available becomes the cost.

If a reliable measure becomes available for an investment in a residual interest for which a measure was previously not available, and the instrument would have been required to be measured at fair value, the entity reclassifies the instrument from cost to fair value.

Gains and losses

A gain or loss arising from a change in the fair value of a financial asset or financial liability measured at fair value is recognised in surplus or deficit.

For financial assets and financial liabilities measured at amortised cost or cost, a gain or loss is recognised in surplus or deficit when the financial asset or financial liability is derecognised or impaired, or through the amortisation process.

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Impairment and uncollectibility of financial assets

The entity assess at the end of each reporting period whether there is any objective evidence that a financial asset or group of financial assets is impaired.

Financial assets measured at amortised cost:

If there is objective evidence that an impairment loss on financial assets measured at amortised cost has been incurred, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows (excluding future credit losses that have not been incurred) discounted at the financial asset's original effective interest rate. The carrying amount of the asset is reduced directly or through the use of an allowance account. The amount of the loss is recognised in surplus or deficit.

If, in a subsequent period, the amount of the impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment was recognised, the previously recognised impairment loss is reversed directly or by adjusting an allowance account. The reversal does not result in a carrying amount of the financial asset that exceeds what the amortised cost would have been had the impairment not been recognised at the date the impairment is reversed. The amount of the reversal is recognised in surplus or deficit.

Financial assets measured at cost:

If there is objective evidence that an impairment loss has been incurred on an investment in a residual interest that is not measured at fair value because its fair value cannot be measured reliably, the amount of the impairment loss is measured as the difference between the carrying amount of the financial asset and the present value of estimated future cash flows discounted at the current market rate of return for a similar financial asset. Such impairment losses are not reversed.

Derecognition

Financial assets

The entity derecognises financial assets using trade date accounting.

The entity derecognises a financial asset only when:

- the contractual rights to the cash flows from the financial asset expire, are settled or waived;
- the entity transfers to another party substantially all of the risks and rewards of ownership of the financial asset; or
- the entity, despite having retained some significant risks and rewards of ownership of the financial asset, has transferred control of the asset to another party and the other party has the practical ability to sell the asset in its entirety to an unrelated third party, and is able to exercise that ability unilaterally and without needing to impose additional restrictions on the transfer. In this case, the entity :
 - derecognise the asset; and
 - recognise separately any rights and obligations created or retained in the transfer.

The carrying amounts of the transferred asset are allocated between the rights or obligations retained and those transferred on the basis of their relative fair values at the transfer date. Newly created rights and obligations are measured at their fair values at that date. Any difference between the consideration received and the amounts recognised and derecognised is recognised in surplus or deficit in the period of the transfer.

If the entity transfers a financial asset in a transfer that qualifies for derecognition in its entirety and retains the right to service the financial asset for a fee, it recognise either a servicing asset or a servicing liability for that servicing contract. If the fee to be received is not expected to compensate the entity adequately for performing the servicing, a servicing liability for the servicing obligation is recognised at its fair value. If the fee to be received is expected to be more than adequate compensation for the servicing, a servicing asset is recognised for the servicing right at an amount determined on the basis of an allocation of the carrying amount of the larger financial asset.

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If, as a result of a transfer, a financial asset is derecognised in its entirety but the transfer results in the entity obtaining a new financial asset or assuming a new financial liability, or a servicing liability, the entity recognise the new financial asset, financial liability or servicing liability at fair value.

On derecognition of a financial asset in its entirety, the difference between the carrying amount and the sum of the consideration received is recognised in surplus or deficit.

If the transferred asset is part of a larger financial asset and the part transferred qualifies for derecognition in its entirety, the previous carrying amount of the larger financial asset is allocated between the part that continues to be recognised and the part that is derecognised, based on the relative fair values of those parts, on the date of the transfer. For this purpose, a retained servicing asset is treated as a part that continues to be recognised. The difference between the carrying amount allocated to the part derecognised and the sum of the consideration received for the part derecognised is recognised in surplus or deficit.

If a transfer does not result in derecognition because the entity has retained substantially all the risks and rewards of ownership of the transferred asset, the entity continue to recognise the transferred asset in its entirety and recognise a financial liability for the consideration received. In subsequent periods, the entity recognises any revenue on the transferred asset and any expense incurred on the financial liability. Neither the asset, and the associated liability nor the revenue, and the associated expenses are offset.

Financial liabilities

The entity removes a financial liability (or a part of a financial liability) from its statement of financial position when it is extinguished — i.e. when the obligation specified in the contract is discharged, cancelled, expires or waived.

An exchange between an existing borrower and lender of debt instruments with substantially different terms is accounted for as having extinguished the original financial liability and a new financial liability is recognised. Similarly, a substantial modification of the terms of an existing financial liability or a part of it is accounted for as having extinguished the original financial liability and having recognised a new financial liability.

The difference between the carrying amount of a financial liability (or part of a financial liability) extinguished or transferred to another party and the consideration paid, including any non-cash assets transferred or liabilities assumed, is recognised in surplus or deficit. Any liabilities that are waived, forgiven or assumed by another entity by way of a non-exchange transaction are accounted for in accordance with the Standard of GRAP on Revenue from Non-exchange Transactions (Taxes and Transfers).

Presentation

Interest relating to a financial instrument or a component that is a financial liability is recognised as revenue or expense in surplus or deficit.

Losses and gains relating to a financial instrument or a component that is a financial liability is recognised as revenue or expense in surplus or deficit.

A financial asset and a financial liability are only offset and the net amount presented in the statement of financial position when the entity currently has a legally enforceable right to set off the recognised amounts and intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.

In accounting for a transfer of a financial asset that does not qualify for derecognition, the entity does not offset the transferred asset and the associated liability.

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.

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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.

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.

Amortisation of internally generated software

The Tribunal developed an electronic document management software system that was officially signed off in February 2013 and became fully operative from this date. All development costs associated with this development (development costs, legal fees, technical support, project management etc.) were capitalised and the entire cost is amortised over 5 years from this "go live date".

Phase 2 of this project has begun and it will be treated as a separate asset. All costs associated with this Phase will be capitalised but only amortised at the time Phase 2 is completed.

1.15 BUDGET INFORMATION

Entities are typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect

Annual Financial Statements for the year ended 31 March 2013

through authorising legislation, appropriation or something similar.

General purpose financial reporting by the Tribunal shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

The approved budget is prepared on an accrual basis and presented by functional classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 01/04/2012 to 31/03/2013.

The annual financial statements and the budget are on the same basis of accounting therefore a comparison with the budgeted amounts for the reporting period have been included in the Statement of comparison of budget and actual amounts.

1.16 RELATED PARTIES

The entity operates in an economic sector currently dominated by entities directly or indirectly owned by the South African Government. As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

Management are those persons responsible for planning, directing and controlling the activities of the entity, including those charged with the governance of the entity in accordance with legislation, in instances where they are required to perform such functions.

Close members of the family of a person are considered to be those family members who may be expected to influence, or be influenced by, that management in their dealings with the entity.

Only transactions with related parties not at arm's length or not in the ordinary course of business are disclosed.

1.17 STANDARDS IN ISSUE NOT YET EFFECTIVE

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

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NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2013

2. INVENTORY

Consumable stores (office stationery)

	2013 R '000	2012 R '000
	18	34

3. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Receivables

Prepayments

Total

610	785
187	190
797	975

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

4. 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

Cash at bank

Total

3	-
22 462	24 322
22 465	24 322

5. PROPERTY, PLANT AND EQUIPMENT

	2013			2012		
	Cost	Accumulated depreciation and accumulated impairment	Carrying value	Cost	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	488	(253)	235	455	(224)	231
Motor vehicles	210	(60)	150	210	(39)	171
Office equipment	74	(32)	42	72	(21)	51
IT equipment	1 123	(500)	623	1 111	(492)	619
Leased assets	894	(708)	186	640	(547)	93
Total	2 789	(1 553)	1 236	2 488	(1 323)	1 165

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Reconciliation of property, plant and equipment - 2013

	Opening balance	Additions	Disposals	Depreciation	Impairment loss	Total
Furniture and fixtures	231	79	(11)	(60)	(4)	235
Motor vehicles	171	-	-	(21)	-	150
Office equipment	51	2	-	(11)	-	42
IT equipment	619	257	(1)	(192)	(60)	623
Leased assets	93	254	-	(161)	-	186
Total	1 165	592	(12)	(445)	(64)	1 236

Reconciliation of property, plant and equipment - 2012

	Opening balance	Additions	Disposals	Depreciation	Impairment loss	Total
Furniture and fixtures	183	111	(4)	(43)	(16)	231
Motor vehicles	192	-	-	(21)	-	171
Office equipment	62	2	(1)	(11)	(1)	51
IT equipment	688	148	(1)	(216)	-	619
Leased assets	167	56	-	(130)	-	93
Total	1 292	317	(6)	(421)	(17)	1 165

Assets subject to finance lease (Net carrying amount)

Leased assets	186	93
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6. INTANGIBLE ASSETS

	2013			2012		
	Cost	Accumulated depreciation and accumulated impairment	Carrying value	Cost	Accumulated depreciation and accumulated impairment	Carrying value
Computer software	2 815	(171)	2 644	2 498	(62)	2 436

Reconciliation of intangible assets - 2013

	Opening balance	Additions	Amortisation	Total
Computer software	2 436	318	(110)	2 644

Reconciliation of intangible assets - 2012

	Opening balance	Additions	Amortisation	Total
Computer software	1 578	881	(23)	2 436

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7. FINANCE LEASE OBLIGATION

Minimum lease payments due

- within one year
- in second to fifth year inclusive

less: future finance charges

Present value of minimum lease payments

Present value of minimum lease payments due

- within one year
- in second to fifth year inclusive

Non-current liabilities

Current liabilities

	2013 R '000	2012 R '000
	117	90
	98	18
	215	108
	(17)	(5)
	198	103
	105	86
	93	17
	198	103
	93	17
	105	86
	198	103

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.

8. PAYABLES FROM EXCHANGE TRANSACTIONS

Creditors	17	723
Other accruals	1 587	1 230
	1 604	1 953

Trade payables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice and therefore approximate fair value.

9. PROVISIONS

Reconciliation of provisions - 2013

	Opening Balance	Additions	Utilised during the year	Reversed during the year	Total
Leave provision	611	544	(172)	(439)	544

Reconciliation of provisions - 2012

	Opening Balance	Additions	Utilised during the year	Reversed during the year	Total
Leave provision	461	611		(461)	611

Annual Financial Statements for the year ended 31 March 2013

	2013	2012
	R '000	R '000
10. FEES EARNED		
Fee income received from the Competition Commission	8 417	10 015
11. OTHER INCOME		
Recoupment of Printing cost	1	6
Insurance refund	-	5
	1	11
12. INVESTMENT INCOME		
Interest received		
- Bank deposits	1 113	1 191
13. GOVERNMENT GRANT AND SUBSIDIES		
Economic Development Department	15 798	15 175
14. PERSONNEL		
Basic salaries	5 377	5 388
Performance awards	371	348
Medical aid - company contributions	294	185
Statutory Contributions	138	86
Insurance	77	74
Other salary related costs	43	73
Defined contribution pension plan expense	371	398
Executive committee members emoluments	7 039	6 094
	13 710	12 646
15. ADMINISTRATIVE EXPENSES		
Audit Committee members fees	204	133
Risk Committee Members Fees	128	114
Audit Committee training	48	17
Audit Committee meeting expenses	13	20
General and administrative expenses	1 055	1 046
External audit fees	519	349
Internal audit fees	711	639
Travel and subsistence	678	570
Unitary payments for building occupation	1 900	1 456
	5 256	4 344

Annual Financial Statements for the year ended 31 March 2013

16. DEPRECIATION AND AMORTISATION

Depreciation

	2013 R '000	2012 R '000
Furniture and fittings	60	43
Motor vehicles	21	21
Office equipment	11	11
Computer equipment	192	216
Leased assets - office equipment	161	130
	445	421

Amortisation

Computer software	110	23
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17. IMPAIRMENT OF ASSETS

Impairments

Property, plant and equipment	64	17
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This impairment arose from the disposal of redundant and broken furniture, office and computer equipment

18. FINANCE COSTS

Finance leases	23	13
Fair value adjustments on payables	3	(1)
	26	12

19. OTHER OPERATING EXPENSES

Consultants, contractors and special services	2 542	2 275
Staff training and development	1 476	1 039
Fees paid to part-time Tribunal members	2 793	2 402
Fraud prevention committee	36	-
Legal fees	134	12
Maintenance, repairs and running costs	198	95
Fruitless and wasteful expenditure	-	1
Total	7 179	5 824

20. 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.

Annual Financial Statements for the year ended 31 March 2013

21. CASH GENERATED FROM OPERATIONS

	2013 R '000	2012 R '000
(Deficit) / Surplus for the year	(1 452)	3 106
Adjustments for:		
Depreciation and amortisation	555	444
Gain on sale of assets and liabilities	(9)	(1)
Impairment deficit	64	17
Movements in provisions	(67)	150
Changes in working capital:		
Inventory	16	(20)
Receivables from exchange transactions	180	62
Payables from exchange transactions	(349)	570
	(1 062)	4 328

22. EMPLOYEE BENEFIT OBLIGATIONS

Defined contribution plan

The Competition Tribunal Pension Fund, which is governed by the Pensions Fund Act of 1956, is a compulsory defined contribution plan for all employees in the Tribunal. The fund is administered by Sanlam Retirement Fund Administrators. The Competition Tribunal is a participating employer on the Sanlam Umbrella Fund. The scheme offers the members various investment options for their pension fund contributions. As an insured fund, the Sanlam Umbrella Fund and thus the Competition Tribunal as participating employer, complies with regulation 28 of the Pension Fund Act of 1956.

23. INCOME TAX EXEMPTION

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

24. 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 3. 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 for the year ended 31 March 2013

Exposure to credit risk

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

R '000	2013	2012
Cash and cash equivalents	22 465	24 322
Other receivables	610	785
Total	23 075	25 107

Concentration of credit risk

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

2013	AAA and government	Unrated
R '000		
Cash and cash equivalents	22 465	-
Other receivables	-	610

2012	AAA and government	Unrated
R '000		
Cash and cash equivalents	24 322	-
Other receivables	-	785

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

2013	Neither past due nor impaired	Past due but not impaired - less than 2 months	Past due but not impaired - more than 12 months	Carrying value
R '000				
Cash and cash equivalents	22 465	-	-	22 465
Other receivables	568	-	42	610

2012	Neither past due nor impaired	Past due but not impaired - less than 2 months	Past due but not impaired - more than 12 months	Carrying value
R '000				
Cash and cash equivalents	24 322	-	-	24 322
Other receivables	761	-	24	785

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 for the year ended 31 March 2013

Sensitivity Analysis

2013	Change in Investments	Increase/(decrease) in net surplus for the year	
		Upward change	Downward change
Cash and cash equivalents	1.00%	225	(225)
Finance lease	1.00%	(2)	2
Other	%	-	-
2012			
Cash and cash equivalents	1.00%	243	(243)
Finance lease	1.00%	(1)	1

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:

2013	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Finance lease obligation	198	198	105	93
Payables	1 604	1 604	1 604	-
2012	Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
Finance lease obligation	103	103	86	17
Payables	1 953	1 953	1 953	-

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	Financial asset measured at cost	22 465	24 322
Receivables	Financial asset measured at fair value	610	785
Payables	Financial liabilities measured at fair value	1 604	1 953
Finance leases	Financial liabilities measured at amortised cost	198	103

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

Financial assets at fair value:

Receivables	610	785
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Financial liabilities at fair value:

Payables	1 604	1 953
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Financial liabilities at amortised cost:

Finance Leases	198	103
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Financial assets at cost:

Cash and cash equivalents	22 465	24 322
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Annual Financial Statements for the year ended 31 March 2013

2013	2012
R '000	R '000

25. RELATED PARTIES

RELATED PARTY	RELATIONSHIP
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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

Amounts included in trade payables regarding related parties

The Department of Trade and Industry	4	5
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Amounts included in trade receivables regarding related parties

The Competition Commission	560	960
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Related party transactions

The Competition Commission

Filing fees received as at year end	8 416	10 015
Facility fees paid as at year end	2 410	1 925
Employee costs received as at year end	14	77
Employee costs paid as at year end	133	-
Administrative costs received as at year end	45	-
Administrative costs paid as at year end	31	-

The Department of Trade and Industry

Administrative costs paid as at year end	54	68
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Economic Development Department

Grants received as at year end	15 798	15 175
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Full-time member/Chairperson: N Manoim

Package	1 999	1 787
Statutory contributions	19	18
Other salary related contributions	51	49
Total package	2 069	1 854

Full-time member: Y Carrim

Package	1 900	1 625
Statutory contributions	18	16
Other salary related contributions	48	45
Total package	1 966	1 686

Head of Corporate Services: J de Klerk (CFO)

Package	1 118	1 013
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Annual Financial Statements for the year ended 31 March 2013

	2013	2012
	R '000	R '000
Performance bonus	144	132
Statutory contributions	13	12
Other salary related contributions	28	26
Total package	<u>1 303</u>	<u>1 183</u>

Head of Research: R Badenhorst

Package	734	604
Performance bonus	86	78
Statutory contributions	9	8
Other salary related contributions	22	20
Total package	<u>851</u>	<u>710</u>

Registrar: L Motaung

Package	733	598
Performance bonus	86	78
Statutory contributions	9	8
Other salary related contributions	22	20
Total package	<u>850</u>	<u>704</u>

26. FRUITLESS AND WASTEFUL EXPENDITURE

Fruitless and wasteful expenditure	<u>-</u>	<u>1</u>
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27. EXTERNAL AUDIT FEE

Fees	<u>519</u>	<u>349</u>
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28. COMPARATIVE FIGURES

In Note 15 audit committee members fees previously included the fees paid to risk committee members and travel expenses associated with these meetings. These line items have been revised to detail separately fees paid to audit committee members, fees paid to risk committee members and all travel expenses are reflected in the line item referred to as audit committee meeting expenses. The reclassification has no effect on the statement of financial performance it is merely an additional disclosure under "administrative expenses".

Annual Financial Statements for the year ended 31 March 2013

2013	2012
R '000	R '000

29. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE

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

Net (deficit) surplus per the statement of financial performance	(1 452)	3 106
Adjusted for:		
Fair value adjustments	(3)	17
Impairments recognised / reversed	67	(1)
Profit/loss on the sale of assets	(12)	(1)
Increases / decreases in provisions	-	149
Printing recoupement and insurance refund	(1)	(11)
Transfer from retained income	5 837	3 296
Adjustments for items reflected as capital expenditure on budget:		
Leased equipment	(144)	(118)
Capital expenditure	(585)	(1 073)
Income in excess of budget:		
Filing fees from the Commission	658	(2 765)
Interest received	(512)	(491)
EDD Grant	(198)	-
Under expenditure on budget:		
Personnel	(2 119)	(108)
Part Time Tribunal member fees	353	256
Local training	(317)	(377)
Overseas training	(249)	(468)
Professional Services	(65)	(619)
Recruitment costs	(133)	(120)
Administrative expenses	(291)	(328)
Facilities and capital	(655)	(36)
Competition Appeal Court	(181)	(308)
Net surplus per approved budget	-	-

30. IRREGULAR EXPENDITURE

Opening balance	-	-
Add: Irregular Expenditure - current year	268 738	160 985
Less: Amounts condoned	(268 738)	(160 985)
Less: Amounts recoverable (not condoned)	-	-
Less: Amounts not recoverable (not condoned)	-	-
Amounts awaiting condonation	-	-

The Tribunal has disclosed irregular expenditure that pertains to expenditure for services budgetted for and essential for the Tribunal to fulfill its mandate. However this expenditure is deemed to be irregular as it is not fully compliant with procurement legislation. These services include courier (R14 420), hotel accomodation (R33 838), travel (R189 785), refreshments (R14 893) and car rental (R15 802). Valid reasons for using these services were noted. A deviation was signed effective 1st February 2012 to 30 June 2012 agreeing to the use of certain service providers while Corporate Services followed a procurement process to enter into a contract with various suppliers to procure these services. The process was delayed due to circumstances beyond the control of Corporate Services however a further writen deviation was not put in place. Therefore services exceeding R2 000 where no quotes were obtained are reflected as irregular expenditure.

Annual Financial Statements for the year ended 31 March 2013

Management in the Tribunal was fully aware of all these deviations and they are only regarded as irregular because the deviation was not noted in writing. This is a housekeeping issue and no investigation or disciplinary proceeding is required. All irregular expenditure has been condoned by the Accounting Authority. In all instances there has not been a deliberate intention to circumvent procurement processes but merely failure to document the deviation and the use of a preferred suppliers.

31. CHANGES IN ACCOUNTING POLICY

The annual financial statements have been prepared in accordance with Standards of Generally Recognised Accounting Practice on a basis consistent with the prior year.

32. NEW STANDARDS AND INTERPRETATIONS

32.1 Standards and interpretations early adopted

The entity has chosen to early adopt the following standard and interpretation:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
• GRAP 20: Related parties	01 April 2013	Not expected to impact on result but may require more disclosure than currently reflected in the statements

32.2 Standards and interpretations not yet effective or relevant

The following standards and interpretations have been published and are mandatory for the entity's accounting periods beginning on or after 01 April 2013 or later periods but are not relevant to its operations:

Standard/ Interpretation:	Effective date: Years beginning on or after	Expected impact:
• GRAP 18: Segement Reporting	01 April 2013	No impact
• GRAP 105: Transfer of function between entities under common control	01 April 2014	No impact
• GRAP 106: Transfer of function between entities not under common control	01 April 2014	No impact
• GRAP 107: Mergers	01 April 2014	No impact



"The Tribunal hearings were said to be run as efficiently and expediently as possible, with Tribunal members allowing for diverse voices to be heard, within reason."

[Plus 94, results of stakeholder satisfaction survey 2013]

PART 6

PART 6: APPENDICES

Appendix A: Large mergers

Appendix B: Requests for consideration of small or intermediate mergers

Appendix C: Interim relief applications

Appendix D: Complaints from the Commission

Appendix E: Consent orders or settlement agreements

Appendix F: Complaints directly from complainants

Appendix G: Exemptions appeals

Appendix H: Procedural matters

Appendix I: Competition Tribunal Dashboard for the period ending 31 March 2013

Appendix J: Competition Appeal Court cases

Part 6: Appendices

APPENDIX A: LARGE MERGERS

Case number	Acquiring firm	Target Firm	Status/Decision
106/LM/Dec11 013730	Nedbank Ltd	Emergent Investment (Pty) Ltd	Order issued in previous period but reasons issued in this period
104/LM/Nov11 013714	Humulani Investments (Pty) Ltd	Equipment Spare Parts (Africa) (Pty) Ltd	Order issued in previous period but reasons issued in this period
01/LM/Jan12 013813	Lodestone Brands (Pty) Ltd	Dynamic Brands (Pty) Ltd	Order issued in previous period but reasons issued in this period
70/LM/Aug11 013193	Actom Proprietary Ltd	Savcio Holdings (Pty) Ltd	Order issued in previous period but reasons issued in this period
09/LM/Jan12 013912	Zeder Financial Services Ltd	Agrico Machinery (Pty) Ltd in respect of Agricol Holdings Ltd	Order issued in previous period but reasons issued in this period
109/LM/Dec11 013771	Curro Holdings Ltd	The Rudell Holdings Trust, in respect of Woodhill College (Pty) Ltd and Woodhill College Property 9Holdings (Pty) Ltd	Order issued in previous period but reasons issued in this period
107/LM/Dec11 013755	Shanduka Resources (Pty) Ltd	Shanduka Coal (Pty) Ltd	Order issued in previous period but reasons issued in this period
02/LM/Jan12 013823	Imperial Holdings Ltd	Probe Group	Order issued in previous period but reasons issued in this period
17/LM/Feb12 014050	Unitrans Supply Chain Solutions (Pty) Ltd	Tanzer Transport (Pty) Ltd	Order issued in previous period but reasons issued in this period
07/LM/Jan12 013870	Bytes Technology Group South Africa (Pty) Ltd	Unisys Africa (Pty) Ltd	Order issued in previous period but reasons issued in this period
28/LM/Mar12 014720	The Buffshelf 18 Trust	The 921 properties situated in Burgersfort and Rustenburg (RSA) that are owned by subsidiaries of Impala Platinum Holdings Ltd	Order issued in previous period but reasons issued in this period
86/LM/Oct11 013441	Piruto BV	Optimum Coal Holdings Ltd and others	Order issued in previous period but reasons issued in this period
100/LM/Nov11 013672	Steinhoff International Holdings Ltd	JD Group Ltd	Order issued in previous period but reasons issued in this period
101/LM/Nov11 013680	Steinhoff International Holdings Ltd	KAP International Holdings Ltd	Order issued in previous period but reasons issued in this period
99/LM/Nov11 013664	Government Employees Pension Fund represented by Public Investment Corporation Ltd	Afrisam Consortium (Pty) Ltd	Order issued in previous period but reasons issued in this period
103/LM/Nov11 013706	Synergy Income Fund Ltd	SA Corporate Real Estate Fund	Approved
16/LM/Feb12 014027	Transnet SOC Ltd	Airports Company South Africa Ltd	Approved
15/LM/Feb12 014019	Pepkor Capital (Pty) Ltd	Flash Mobile Cash, Sharedphone International (Pty) Ltd and Take It Eazi Vending	Approved
12/LM/Feb12 013987	Anglo American PLC	De Beers SA	Approved
26/LM/Mar12 014704	Oakleaf Investments Holdings 76 (Pty) Ltd c/o Pembani Group (Pty) Ltd	Opiconsivia Investments 230 (Pty) Ltd c/o Afrisam Consortium (Pty) Ltd	Approved

Case number	Acquiring firm	Target Firm	Status/Decision
21/LM/Mar12 014423	Wilru Investments One Hundred and Thirty Four (Pty) Ltd	Exxaro Base Metals Namibia (Pty) Ltd	Approved
18/LM/Feb12 014084	Kagiso Media Ltd	Juta and Company Ltd, Imfundo Investments (Pty) Ltd and Juta Investments (Pty) Ltd	Approved
42/LM/Apr12 014944	Gold One International Limited	First Uranium Limited and its wholly owned subsidiary, Ezulwini Mining Company(Proprietary) Limited	Approved
15/LM/Mar11 012179	Media 24 Ltd and Paarl Coldset (Pty) Ltd	The Natal Witness Printing and Publishing Company (Pty) Ltd	Conditional approval
20/LM/Mar12 014415	Growthpoint Properties Limited	Liberty Group Limited	Conditional approval
54/LM/May12 015073	Business Venture Investments no 1624 (Pty) Ltd	Waco Africa (Pty) Ltd	Conditional approval
43/LM/Apr12 014951	Land and Agricultural Bank of South Africa	The Performing Corporate Lending Book Of Gro Capital Financial Services (Pty) Ltd	Approved
46/LM/Apr12 014985	Reit Investments (Pty) Ltd	Copper Moon Trading 249 (Pty) Ltd and 6 others	Approved
48/LM/Apr12 015008	8115222 Canada Inc	Viterra Inc	Approved
25/LM/Mar12 014696	Anglogold Ashanti Ltd	First Uranium (Pty) Ltd	Approved
49/LM/Apr12 015016	Jay and Jayendra (Pty) Ltd	Lesedi Nuclear Services (Pty) Ltd	Approved
27/LM/Mar12 014712	Rio Tinto International Holding Ltd and	Richards Bay Mining Holdings (Pty) Ltd, Richards Bay Titanium Holdings (Pty) Ltd	Approved
40/LM/Apr12 014894	Grindrod Holdings (South Africa) (Pty) Ltd	Safmarine Container Lines NV & Ocean Africa Container Lines (Pty) Ltd	Approved
44/LM/Apr12 014969	Redefine Properties Limited	Amber Falcon (Properties 6 (Pty) Ltd, known as Chris Hani Crossing	Approved
29/LM/Mar12 014753	Bucyrus Africa Underground (Pty) Ltd	The Mining Services Business conducted by Eqstra NH Equipment (Pty) Ltd	Approved
39/LM/Apr12 014886	Barloworld South Africa (Pty) Ltd	The Bucyrus Mining Services Business	Approved
55/LM/May12 015081	The Petroleum Oil and Gas Corporation of SA (SOC) Ltd	Certain Offshore oil and gas assets in SA held by Pioneer Natural Sources SA (Pty) Ltd and Petroleum South Cape (Pty) Ltd	Approved
58/LM/May12 015115	Avi Limited	Green Cross Manufacturers (Pty) Ltd, Green Cross Properties (Pty) Ltd and Green Cross Retail Holdings as (Pty) Ltd	Approved
32/LM/Mar12 014787	Boxer Super Stores (Pty) Ltd	The targets firms under the control of Metcash Trading Africa (Pty) Ltd	Approved
52/LM/May12 015040	Macsteel Services Centres SA (Pty) Ltd	Samson Property Investments SA (Pty) Ltd	Approved
47/LM/Apr12 014993	Redefine Properties Ltd	Hyprop Investment Ltd	Conditional approval

Part 6: Appendices

Case number	Acquiring firm	Target Firm	Status/Decision
69/LM/Jun12 015313	Sanlam Private Equity Division of Sanlam Life Insurance Ltd	Weldamax (Pty) Ltd	Approved
57/LM/May12 015107	DHN Drinks (Pty) Ltd	Sedibeng Brewery (Pty) Ltd	Approved
64/LM/Jun12 015230	Super Group Dealerships, a division of Super Group trading (Pty) Ltd	Zingaro Trade 112 (Pty) Ltd	Approved
75/LM/Jul12 015396	OEP East Balt Holdings LLC	East Balt Inc	Approved
66/LM/Jun12 015255	Momentum Group Ltd	Momentum Short-Term insurance Company Ltd	Approved
62/LM/Jun12 015198	MMI Holdings Ltd	Eris Property Group (Pty) Ltd	Approved
71/LM/Jul12 015347	PSG Consult Ltd	Western Group Holdings Ltd	Approved
74/LM/Jul12 015388	Morbei Trade Invest 180 (Pty) Ltd	Metcash Trading Africa (Pty) Ltd	Approved
61/LM/Jun12 015180	Redefine Properties Ltd	Standard Bank Properties (Pty) Ltd and Liberty Holdings Ltd	Approved
51/LM/May12 015032	Ferro Industrial Products (Pty) Ltd	NCS Resins (Pty) Ltd	Approved
72/LM/Jul 12 015354	Blue Falcon 188 (Pty) Ltd	Studio 88, Side Step and Fribee	Approved
68/LM/Jun12 015305	Richtrau No 229 (Pty) Ltd	Avusa Ltd	Conditional approval
74/LM/Sep11 013235	Life Healthcare (Pty) Ltd	Joint Medical Holdings Ltd	Approved
80/LM/Aug12 015511	Super Group Trading (Pty) Ltd	Digistics (Pty) Ltd	Approved
84/LM/Sep12 015610	Fairvest Property Holdings Ltd	a Portfolio of Commercial Properties of SA Corporate Real Estate Fund	Conditional approval
60/LM/Jun12 015172	Industrial Development Corporation of SA Ltd	Scaw SA (Pty) Ltd	Conditional approval
76/LM/Jul12 015404	Mondi Ltd	Mondi Shanduka Newsprint (Pty) Ltd	Approved
81/LM/Aug12 015529	Micawber 766 (Pty) Ltd	Pembani Group (Pty) Ltd	Approved
82/LM/Sep12 015552	Sycom Property Fund Collective Investment Scheme	AECI Pension Fund	Approved
86/LM/Sep12 015636	Unitrans Automotive (Pty) Ltd	Reeds Motor Group (Pty) Ltd and Reeds Motors Tableview (Pty) Ltd	Approved
88/LM/Oct12 015693	Humulani Investments (Pty) Ltd	MacNeil (Pty) Ltd	Approved
92/LM/Oct12 015735	Imperial Logistics, a division of Imperial Holdings Ltd	KWS Carriers CC	Approved
90/LM/Oct12 015719	Investec Property Fund Ltd	certain properties owned by various companies forming part of the S Giuricich Holdings (Pty) Ltd	Approved
85/LM/Sep12 015628	Samancor Chrome Ltd	NST Ferrochrome (Pty) Ltd	Approved
89/LM/Oct12 015701	Imperial Holdings Ltd and Imperial Group (Pty) Ltd	RTT Group (Pty) Ltd	Approved

Case number	Acquiring firm	Target Firm	Status/Decision
97/LM/Oct12 015834	Bonitas Medical Fund	Pro Sano Medical Scheme	Approved
70/LM/Jun12 015321	Absa Bank Ltd	The Private Label Store Card Portfolio of Edcon (Pty) Ltd	Conditional approval
93/LM/Oct12 015743	Barloworld Logistics (Pty) Ltd	Manline (Pty) Ltd	Approved
98/LM/Oct12 015842	SASOL Holdings USA (Pty) Ltd	Merichem Company	Approved
33/LM/Mar12 014795	Glencore International Plc	Xstrata Plc	Conditional approval
83/LM/Sep12 015560	Humulani Marketing (Pty) Ltd	High Power Equipment Africa (Pty) Ltd ("HPE")	Approved
110/LM/Dec12 016097	Vukile Property Fund Limited	Redefine Retail (Pty) Limited, in respect of an Undivided 50% Share in the Property Letting Enterprise Known as East Rand Mall	Approved
111/LM/Dec12 016105	Redefine Retail (Pty) Ltd	Sanlam Life Insurance Limited, In respect of the Property Letting Enterprise Known as East Rand Mall	Approved
95/LM/Oct12 015768	Steinhoff Door and Building Material (Pty) Ltd	Hardware Warehouse Ltd	Approved
65/LM/Jun12 015248	Nestle SA	the Nutrition Business of Pfizer Inc	Conditional approval
91/LM/Oct12 015727	Calulo Investments (Pty) Ltd	FFS Refiners (Pty) Ltd	Conditional approval Pending reasons
107/LM/Dec12 016055	Diageo Africa B.V	Newshelf 1167 (Pty) Ltd	Approved Pending reasons
016063 108/LM/Dec12	Super Group Holdings (Pty) Ltd (Super Group)	Safika Logistics Holdings (Pty) Ltd	Approved Pending reasons
016212	Redefine Properties Ltd	Rural Maintenance (Pty) Ltd	Approved Pending reasons
016170	Accelerate Property Fund Ltd	Fourways Precinct (Pty) Ltd	Conditional approval Pending reasons
016220	TP Hentiq 6132 (Pty) Ltd	Sectional Poles Business Division of Harrison & White Investments (Pty) Ltd	Approved Pending reasons
016253	Liberty Group Ltd	Liberty Active Ltd, Capital Alliance Life Ltd and Liberty Growth Ltd	Approved Pending reasons
115/LM/Dec12 016147	Professional Provident Society Insurance Company Ltd	The PPS Life and Disability Insurance Scheme	Approved Pending reasons
87/LM/Sep12 015644	Business Venture Investments no. 1658 (Pty) Ltd	Afgri Operation Ltd and Senwes Capital (Pty) Ltd	Pending hearing
103/LM/Nov12 015982	Boxmore Plastics SA (Pty)Limited	Winplas Proprietary Limited	Pending hearing
016196	Prestige Bullion (Pty) Ltd	Rand Refinery (Pty) Ltd	Pending hearing
016386	Newco, a Newly Incorporated Special Purpose Vehicle	Reatile Timrite (Pty) Ltd	Pending hearing

Part 6: Appendices

APPENDIX B: REQUESTS FOR CONSIDERATION OF SMALL OR INTERMEDIATE MERGERS

Case number	Complainant/Acquiring firm	Respondent/Target Firm	Decision
10/AM/Feb11 012096	MTO Forestry (Pty) Ltd, Boskor Sawmill (Pty) Ltd & Boskor Ripplant (Pty) Ltd	Competition Commission	Withdrawn 12 Jun 12
111/AM/Dec11 013797	Paarl Media (Pty) Ltd	Primedia (Pty) Ltd	Withdrawn 26 Jul 12
11/AM/Jan12 013953	Synergy Income Fund Ltd	Khuthala Alliance (Pty) Ltd	Order issued in previous period but reasons issued in this period
19/AM/Feb12 014167	Sunset Bay Trading 368 (Pty) Ltd	Jobling Investments (Pty) Ltd	Conditional approval
05/AM/Jan12 013854	Tedex Trading (Pty) Ltd	Sammeg Satellite (Pty) Ltd, Sammeg Cape (Pty) Ltd & Sammeg KZN (Pty) Ltd	Conditional approval
53/AM/May12 015057	DCD-Dorbyl (Proprietary) Limited	Elgin Brown and Hammer (Proprietary) Limited	Conditional approval
77/AM/Jul12 015412	Oceana Group Ltd	V & A Cold Store (Pty) Ltd	Conditional approval
10/AM/Jan12 013946	Thaba Chueu Mining (Pty) Ltd	Samquarz (Pty) Ltd	Conditional approval
14/AM/Feb12 014001	Senmin International (Pty) Ltd	Cellulose Derivatives (Pty) Ltd	Conditional approval
36/AM/Apr12 014845	Kenilworth Racing (Pty) Ltd	Gold Circle (Pty) Ltd	Conditional approval
113/AM/Dec12 016121	National Union of Metalworkers of SA	Marley Pipe Systems (Pty) Ltd and Petzetakis Africa (Pty) Ltd	Pending hearing

APPENDIX C: INTERIM RELIEF APPLICATIONS

Case Number	Applicant	Respondent	Decision
012492	Karen Dorfling Nuts about Biltong	Erf 632 Hennospark (Pty) Ltd	Removed from the roll
31/IR/Apr11 012484	Protea Technology (Pty) Limited, Protea Automation Solutions (Pty) Limited, Protea Electronics (Pty) Limited	Invensys Plc, Invensys Systems (UK) Limited, Eurotherm Limited, EOH Holdings Limited	Withdrawn 25 Jun 12
37/IR/Apr12 014852	Protea Coin Group (Security Services) (Pty) Ltd	Airports Company Of South Africa Ltd & 5 others	Withdrawn 26 Apr 12
100/IR/Oct12 015941	Protea Automation Solutions (Pty) Ltd	Invensys PLC and others	Pending hearing
32/IR/Apr11 012492	AutoBid (Proprietary) Limited	Transunion Auto Information Solutions (Proprietary) Limited	Pending hearing

APPENDIX D: COMPLAINTS FROM THE COMMISSION

Case Number	Complainant	Respondent	Status/Decision
84/CR/Dec09 010777	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	In contravention Fined R27 200 000.00
15/CR/Feb09 010009	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	In contravention Fined R23 020 000.00
65/CR/Sep09 010546	Competition Commission	RSC Ekusasa Mining (Pty) Ltd, Aveng (Africa) Ltd T/A Duraset, Dywidag-Systems International, Videx Wire Product (Pty) Ltd	In contravention Fined R6 613 803.00
11/CR/Feb04 003855	Competition Commission	Telkom SA Ltd	In contravention Fined R449 000 000.00
92/CR/Dec09 010850	Competition Commission	Bridgestone South Africa (Pty)Ltd, Maxiprest (Pty) Ltd, Autotruck & Tyres CC	Settled under 014860
27/CR/Apr11 012443	Competition Commission	Pentel South Africa (Pty) Ltd	Settled under 015420
19/CR/Mar11 012211	Competition Commission	Erf 179 Bedfordview (Pty) Ltd, Liberty Group Limited, Bedford Square Properties (Pty) Ltd & Wintwice Properties (Pty) Ltd	Settled under 015651
80/CR/Sep11 013318	Competition Commission	Omnia Fertilizer Limited and Another	Withdrawn 03 Oct 12
18/CR/Mar05 004994	Competition Commission	Assa Abloy (SA) (Pty) Ltd & 14 others	Withdrawn 25 Mar 13
111/CR/Oct07 008250	Competition Commission	Komatiland Forests (Pty) Ltd & 10 others	Withdrawn 22 Mar 13
73/CR/Aug11 013227	Competition Commission	Crown National Ltd, Dynamic Intertrade (Pty) Ltd	Withdrawn 02 Aug 12
016469	Competition Commission	Afrox Oxygen Ltd and Sasol Chemical Industries (Pty) Ltd	Pending hearing
016451	Competition Commission	Glass South Africa (Pty) Ltd & 5 others	Pending hearing
016295	Competition Commission	Shekinah Medical & Disposables CC Hosanna Medical & Disposables CC	Pending hearing
67/CR/Jun12 015289	Competition Commission	African Oxygen Ltd, Air Products (Pty) Ltd	Pending hearing
56/CR/May12 015099	Competition Commission	Copper Tubing Africa (Pty) Ltd and Maksal Tubes (Pty) Ltd	Pending hearing
41/CR/Apr12 014902	Competition Commission	British Airways PLC and Virgin Atlantic Airways Limited	Pending hearing
73/CR/Jul12 015362	Competition Commission	Fritz Pienaar Cycles (Pty) Ltd and others	Pending hearing
106/CR/Nov12 016006	Competition Commission	ArcelorMittal SA Ltd	Pending hearing

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Case Number	Complainant	Respondent	Status/Decision
105/CR/Nov12 016014	Competition Commission	Lambda Test Equipment CC, Aztec Components CC	Pending hearing
99/CR/Oct12 015859	Competition Commission	Chevron SA Ltd and Engine Ltd and Shell SA Ltd and Total SA Ltd and BP SA Ltd and Sasol Ltd and SAPIA	Pending hearing
96/CR/Oct12 015792	Competition Commission	Western Granite (Pty) Ltd and Columbia DBL (Pty) Ltd	Pending hearing
30/CR/Mar12 014761	Competition Commission	Vibro Bricks (Pty) Ltd, Cast Industries (Pty) Ltd, Bosun Brick Midrand (Pty) Ltd, MVA Bricks (Pty) Ltd, Murray & Roberts Building Products (Pty) Ltd t/a Concor Technicrete and Aveng (Africa) Ltd t/a Infraset	Pending hearing
31/CR/Mar12 014779	Competition Commission	Primedia (Pty) Ltd t/a Ster-Kinekor Theatres, Avusa Ltd t/a Nu-Metro Cinemas	Pending hearing
34/CR/Mar12 014803	Competition Commission	ArcelorMittal SA Ltd, Highveld Steel and Vanadium Corporation Ltd and South African Iron and Steel Institute	Pending hearing
08/CR/Feb11 012062	Competition Commission	Aveng (Africa) Ltd, Reinforcement Mesh Solutions (Pty) Ltd & 18 others	Pending hearing
14/CR/Mar11 012153	Competition Commission	Esorfranki Ltd & 5 others	Pending hearing
24/CR/Mar11 012377	Competition Commission	Concor (Pty)Ltd, Wilson Bayly Homes Ovcon (Pty) Ltd & Lennings Dec Rail Services (Pty) Ltd	Pending hearing
92/CR/Oct11 013938	Competition Commission	Media 24 Ltd	Pending hearing
15/CR/Mar10 011080	Competition Commission	Pioneer Foods & 16 others (White Maize Milling)	Pending hearing
10/CR/Mar10 011015	Competition Commission	Pioneer Foods (Pty) Ltd, Foodcorp (Pty) Ltd, Godrich (Pty) Ltd, Premier Foods (Pty) Ltd and Tiger Brands Ltd	Pending hearing
20/CR/Apr10 011163	Competition Commission	Computicket (Pty) Ltd	Pending hearing
56/CR/Aug10 011619	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	Pending hearing
51/CR/Aug10 011551	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

Case Number	Complainant	Respondent	Status/Decision
42/CR/Jul10 011445	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 011361	Competition Commission	Giuricich Costal Projects (Pty) Limited, Grinaker-LTA (Pty) Limited	Pending hearing
48/CR/Aug10 011502	Competition Commission	Sasol Chemical Industries Ltd (Polymers)	Pending hearing
73/CR/Oct09 010645	Competition Commission	Telkom SA Ltd	Pending hearing
63/CR/Sep09 010512	Competition Commission	Cape Gate (Pty) Ltd & others	Pending hearing
61/CR/Sep09 010496	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
74/CR/Jun08 009225	Competition Commission	Astral Operation Limited & Elite Breeding Farms	Pending hearing
103/CR/Sep08 009522	Competition Commission	Loungefoam (Pty) Ltd, Vitafoam (Pty) Ltd, Feltex Automotive (Pty) Ltd, Steinhoff International Holdings Ltd & KAP International Holdings Ltd	Pending hearing
09/CR/Jan07 007237	Competition Commission	Allen Meshco (Pty) Ltd & 4 others	Pending hearing
134/CR/Dec07	Competition Commission	SA Breweries Ltd & 12 others	Pending further hearing
08/CR/Jan07 007229	Competition Commission	Iscor Ltd & 6 others	Pending hearing
31/CR/May05 005124	Competition Commission	Sasol Chemical Industries Ltd, Kynoch Fertilizer (Pty) Ltd, Omnia Fertilizer Ltd	Pending hearing

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APPENDIX E: CONSENT ORDERS OR SETTLEMENT AGREEMENTS

Case Number	Complainant	Respondent	Type	Status/Decision
50/CR/May12 015024	Competition Commission	Oceana Group Ltd, Oceana Brands Ltd	Consent order	Confirmed Fined R34 750 050.00
45/CR/Apr12 014977	Competition Commission	Singapore Airlines Ltd	Consent order	Confirmed Fined R25 106 692.00
42/CR/Jul10 014928	Competition Commission	South African Airways (Pty) Ltd	Settlement agreement	Confirmed Fined R18 799 292.00
92/CR/Dec09 014860	Competition Commission	Bridgestone South Africa (Pty)Ltd, Maxiprest (Pty) Ltd	Settlement agreement	Confirmed Fined R9 355 970.39
27/CR/Apr11 015420	Competition Commission	Pentel South Africa (Pty) Ltd	Settlement agreement	Confirmed Fined R2 840 451.00
42/CR/Jul10 015545	Competition Commission	British Airways PLC	Settlement agreement	Confirmed Fined £8 1 116.50 (R12 204 730.00)
42/CR/Jul10 015537	Competition Commission	Air France - KLM	Settlement agreement	Confirmed Fined €1 816 525 (R18 634 640.06)
19/CR/Mar11 015651	Competition Commission	Erf 179 Bedfordview (Pty) Ltd, Liberty Group Ltd, Bedford Square Properties (Pty) Ltd & Wintwice Properties (Pty) Ltd	Settlement agreement	Confirmed Fined R272 18795
30/CR/Mar12 015966	Competition Commission	Bosun Brick Midrand (Pty) Ltd	Settlement agreement	Confirmed Fined R1 320 700.36
10/&15/CR/Mar10 016030	Competition Commission	Foodcorp (Pty) Ltd	Settlement agreement	Confirmed Fined R88 500 000.00
114/CR/Dec12 016139	Competition Commission	Trident Steel (Pty) Ltd	Consent order	Confirmed Fined R8 563 835.65
016279	Competition Commission	Air Products South Africa (Pty) Ltd	Consent order	Confirmed Fined R2 762 978.70
016337	Competition Commission	MVA Bricks (Pty) Ltd	Settlement agreement	Confirmed Fined R672 565.47
016402	Competition Commission	Egoli Gas (Pty) Ltd	Consent order	Confirmed Fined R1 62 7 910.76
73/CR/Jul12 016352	Competition Commission	Pedaling Dynamics CC t/a Dunkeld Cycles	Settlement agreement	Pending hearing
73/CR/Jul12 016360	Competition Commission	The New Just Fun Group (Pty) Ltd	Settlement agreement	Pending hearing
73/CR/Jul12 016378	Competition Commission	Cytek Cycle Distributors CC	Settlement agreement	Pending hearing
110/CR/Dec06 016485	Competition Commission	Senwes Ltd	Consent order	Pending hearing
52/CR/Aug10 011569	Competition Commission	Spring Lights Gas (Pty) Ltd	Consent order	Pending further hearing
74/CR/Jun08 015891	Competition Commission	Astral Operation Ltd & Elite Breeding Farms	Settlement agreement	Pending further hearing

APPENDIX F: COMPLAINTS DIRECTLY FROM COMPLAINANTS

Case Number	Complainant	Respondent	Decision/Status
91/CR/Dec09 010843	1Time Airline (Pty) Ltd	Lanseria International Airport (Pty)Ltd and Comair Limited t/a Kulula.Com	Withdrawn 17 May 12
55/CR/Jul09 010421	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Withdrawn 10 Apr 12
97/CR/Sep08 009456	Fourier Holdings (Pty) Ltd	BMW South Africa (Pty) Ltd t/a BMW Motorrad & 13 others	Withdrawn 20 Feb 13
39/CR/May05 005207	Comair Ltd	South African Airways (Pty) (Ltd)	Withdrawn 16 Oct 12
16/CR/Feb07 007302	Charter Property Sales	East Cape Property Guide	Dismissed
44/CR/May07 007583	Charter Property Sales	The Saturday Star Property Guide	Dismissed
78/CR/Nov09 010694	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Joined with 73/CR/Oct09
24/CR/Mar12 014688	Johan Venter	The Law Society of the Cape of Good Hope	Postponed sine die
43/CR/May09 010306	Preferred Provider Negotiators (Pty) Ltd	Iso Leso Optics Limited	Pending hearing
21/CR/Mar11 012328	Gerhardus Johannes Jacobs	The New Reclamation Group	Pending hearing
62/CR/Jul11 013045	Lateral Unison Insurance Brokers (Pty) Ltd	Lion of Africa Insurance (Pty) Ltd, AON South Africa (Pty) Ltd	Pending hearing
98/CR/Nov11 013649	Jacobus Petrus Hendrik du Plessis and Others	Linpac Plastics Ltd and others	Pending hearing
97/CR/Nov11 013631	Council for Medical Schemes	Board of Healthcare Funders and others	Pending hearing
38/CR/Apr12 014878	Omnia Group (Pty) Ltd	Sasol Chemical Industries Ltd	Pending hearing
59/CR/May12 015123	Autobid (Pty) Ltd	Transunion Information Solutions (Pty) Ltd	Pending hearing
79/CR/Aug12 015503	SA Airlink (Pty) Ltd	South African National Parks and Primkop Airport Management (Pty) Ltd	Pending hearing
102/CR/Nov12 015933	Peter Arthur Dykes, Cheryl Ramsamy, Phasudi Doctor Segogoba, Johan van Heerden	the Law Society of the Northern Provinces (Inc as the Law Society of the Transvaal)	Pending hearing
101/CR/Nov12 015958	Ian Walter Buchanan	The Health Professions Council Of South Africa & The Professional Board For Optometry	Pending hearing
016444	New Number Plate Requisites CC	Uniplate Group (Pty) Ltd	Pending hearing

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APPENDIX G: EXEMPTIONS APPEALS

Case Number	Applicant	Respondent	Decision
95/EA/Nov11 013599	Gas 2 Liquids (Pty) Ltd	Competition Commission and 16 others	Dismissed

APPENDIX H: PROCEDURAL MATTERS

Case Number	Applicant	Respondent	Category	Decision/Status
48/CR/Aug10 013524	Competition Commission	Sasol Chemical Industries Ltd (Polymers)	Discovery application	Order issued in previous period but reasons issued in this period
73/CR/Aug11 015271	Competition Commission	Crown National Ltd, Dynamic Intertrade (Pty) Ltd	Discovery application	Withdrawn 02 Aug 12
73/CR/Aug11 013979	Competition Commission	Crown National (Pty) Ltd and Dynamic Intertrade (Pty) Ltd	Amendment application	Withdrawn 02 Aug 12
73/CR/Jul12 015446	Pedaling Dynamics CC t/a Dunkeld Cycles	Competition Commission & 19 others	Dismissal application	Withdrawn 13 Feb 13
73/CR/Jul12 015453	The New Just Fun Group (Pty) Ltd	Competition Commission & 19 others	Dismissal application	Withdrawn 13 Feb 13
73/CR/Jul12 015487	Bowman Cycles (Pty) Ltd	Competition Commission & 19 others	Exception	Withdrawn 14 Feb 13
32/LM/Mar12 015263	Boxer Super Stores (Pty) Ltd	The Targets Firms under the control of Metcash Trading Africa (Pty) Ltd	Extension application	Granted
48/CR/Aug10 015206	Competition Commission	Sasol Chemical Industries Ltd (Polymers)	Postponement application	Granted
10/AM/Jan12 014746	Silicon Technology (Pty) Ltd	Thaba Chueu Mining (Pty) Ltd & others	Intervention application	Granted
10/AM/Jan12 014738	Sublime Technologies (Pty) Ltd	Thaba Chueu Mining (Pty) Ltd & others	Intervention application	Granted
111/AM/Dec11 013920	Caxton and CTP Publishers and Printers Limited	Paarl Media (Pty) Ltd, Primedia (Pty) Ltd, and the Competition Commission	Intervention application	Granted
19/AM/Feb12 014829	Competition Commission	Sunset Bay Trading and Jobling Investment	Discovery application	Partly granted
14/AM/Feb12 014910	Senmin International (Pty) Ltd	Cellulose Derivatives (Pty) Ltd	Discovery application	Settled between parties 23 May 12
74/LM/Sep11 014407	Competition Commission	Life Healthcare Group (Pty) Ltd and Joint Medical Holdings Limited	Discovery application	Settled between parties 21 May 12
15/LM/Mar11 013961	Caxton CTP Publishers and Printers Ltd	Media 24 Ltd & 3 others	Discovery application	Settled between parties 15 Mar 12
10/AM/Jan12 014811	Thaba Chueu Mining (Pty) Ltd	Samquarz (Pty) Ltd	Discovery application	Settled between parties 24 Apr 12
22/X/Mar12 014456	Pangbourne Properties Limited & 2 others	Competition Commission	Other procedural matter	Settled between parties 13 Feb 13
33/LM/Mar12 015917	Eskom Holdings SOC Ltd	Glencore International PLC & others	Intervention application	Settled between parties 16 Nov 12

Case Number	Applicant	Respondent	Category	Decision/Status
33/LM/Mar12 015974	NUMSA	Glencore International PLC & others	Intervention application	Settled between parties 16 Nov 12
48/CR/Aug10 015339	Competition Commission	Sasol	DV Discovery Application	Settled between parties 23 Oct 12
73/CR/Oct09 013300	Telkom SA Ltd	Competition Commission, Dimension Data, MTN & 2 others	Application for access to confidential information	Settled between parties 12 Jul 12
95/EA/Nov11 013607	Gas 2 Liquids (Pty) Ltd	Competition Commission and 16 others	Condonation application	Settled between parties 06 Jul 12
48/CR/Aug10 014308	Competition Commission	Sasol	DV Discovery application	Removed from the roll
55/CR/Jul09 73/CR/Oct09 78/CR/Nov09 013292	Competition Commission	Telkom SA Ltd	Application to compel filing of an answer	Settled between parties
36/AM/Apr12 015149	The South African Groom Association	The Competition Commission & others	Intervention application	Removed from the roll
78/CR/Nov09 014068	Telkom SA Ltd	Competition Commission, Dimension Data (Pty) Ltd t/a Internet Solutions	Exception application	Dismissed
55/CR/Jul09 73/CR/Oct09 78/CR/Nov09 015131	Dimension Data (Pty) Ltd t/a Internet Solutions	Telkom SA Ltd	Application for leave to amend	Dismissed
95/EA/Nov11 014936	Gas2 Liquids (Pty) Ltd	Competition Commission and 16 others	locus standi	Granted
63/X/Jun12 015222	SA Airlink (Pty) Ltd	SA National Parks, Primkop Airport Management (Pty) Ltd & the Competition Commission	Condonation application	Granted
78/X/Aug12 015479	Caxton and CTP Publishers and Printers Ltd and Johannes Albertus Kriel	Paarl Media (Pty) Ltd, Primedia (Pty) Ltd and the Competition Commission	Interdict application	Granted
74/LM/Sep11 015370	Life Healthcare (Pty) Ltd	Joint Medical Holdings Ltd	Application to admit evidence	Dismissed
31/IR/Apr11 015297	Protea Technology (Pty) Ltd, Protea Automation Solutions (Pty) Ltd, Protea Electronics (Pty) Ltd	Invensys Plc, Invensys Systems (UK) Ltd, Eurotherm Ltd, EOH Holdings Ltd	Application for cost order	Granted
79/FN/Sep11 013284	Competition Commission	Phelps Dodge National Cables Corp & 3 others	Failure to notify	Confirmed Fined R150 000,00
016246	Competition Commission	Pangbourne Properties Limited & others	Failure to notify	Confirmed Fined R75 000.00
94/LM/Oct12 015990	Kagiso Media Investments (Pty) Ltd	Marc Group Ltd	Filing fee refund	Granted
016071 33/LM/Mar12	Glencore International Plc, Xstrata Plc	Competition Commission & others	Postponement application	Granted
78/X/Aug12 016022	Caxton and CTP Publishers and Printers	Paarl Media (Pty) Ltd and others	Trustee's application	Granted

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Case Number	Applicant	Respondent	Category	Decision/Status
92/CR/Oct11 016048	Competition Commission	Media 24 Ltd	Discovery application	Partly granted
56/CR/Aug10 013052	Competition Commission	Apollo Tyres SA (Pty) Ltd	Exception application	Granted
73/CR/Oct09 015818	Telkom SA Ltd	Competition Commission	Discovery application	Dismissed
73/CR/Oct09 015800	Competition Commission	Telkom SA Ltd	Discovery application	Granted
59/CR/May12 015925	Autobid (Pty) Ltd	Transunion Information Solutions (Pty) Ltd	Condonation application	Granted
16/CR/Feb07 015776	Charter Property Sales	East Cape Property Guide	Condonation application	Dismissed
16/CR/Feb07 015594	Charter Property Sales	East Cape Property Guide	Other procedural matter	Dismissed
16/CR/Feb07 015586	Charter Property Sales	East Cape Property Guide	Amendment application	Dismissed
92/CR/Oct11	Competition Commission	Media 24 Ltd	Amendment application	Granted
73/CR/Jul12 015784	Omnico (Pty) Ltd	Competition Commission & others	Dismissal application	Pending decision
73/CR/Jul12 015438	Coolheat Cycle Agencies (Pty) Ltd	Competition Commission & 19 others	Exception application	Pending decision
73/CR/Jul12 015461	Cytek Cycle Distributors CC	Competition Commission & 19 others	Dismissal application	Pending decision
99/CR/Oct12 016238	Total SA (Pty) Ltd	Competition Commission and others	Discovery application	Pending hearing
101/CR/Nov12 015958	Ian Walter Buchanan	The Health Professions Council Of South Africa & The Professional Board For Optometry	Amendment application	Pending hearing
48/CR/Aug10 015826	Competition Commission	Sasol Chemical Industries Ltd (Polymers)	Discovery application	Pending hearing
61/CR/Sep09 015909	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	Stay application	Pending hearing
113/AM/Dec12 016162	National Union of Metalworkers of SA	Marley Pipe Systems (Pty) Ltd and Petzetakis Africa (Pty) Ltd	Condonation application	Pending hearing
109/X/Dec12 016089	Primeprac (Pty) Ltd and Murray & Roberts Retail Asset Management (Pty) Ltd	Competition Commission	Other procedural matter	Pending hearing
56/CR/Aug10 016154	Goodyear SA (Pty) Ltd	Competition Commission & others	Confidentiality application	Pending hearing
56/CR/May12 015685	Competition Commission	Copper Tubing Africa (Pty) Ltd and Maksimal Tubes (Pty) Ltd	Discovery application	Pending hearing
37/IR/Apr12	G4S Aviation Security (SA) (Pty) Ltd	Protea Coin Group (Security Services) (Pty) Ltd	Costs application	Pending hearing
56/CR/Aug10 015602	Continental Tyre SA (Pty) Ltd	Competition Commission	Application to inspect	Pending hearing

Case Number	Applicant	Respondent	Category	Decision/Status
56/CR/Aug10 015602	Goodyear SA (Pty) Ltd	Competition Commission	Discovery application	Pending hearing
35/X/Apr12 014837	The Trustees for the time being of the children's resources centre & others	Premier Food Limited and the Competition Commission	Application for CT 16 certificate	Pending hearing
20/CR/Apr10 012609	Competition Commission	Computicket (Pty) Ltd	Dismissal application	Pending hearing
15/CR/Mar10 012591	Blinkwater Mills (Pty) Ltd	Competition Commission	Dismissal (immunity)	Pending hearing
71/SM/Nov10 011791	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 011809	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
71/SM/Nov10 012625	Concorde	The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention application	Pending hearing
71/SM/Nov10 012625	Direct Transact	The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention application	Pending hearing
71/SM/Nov10 012625	Paycord	The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention application	Pending hearing
71/SM/Nov10 012625	EFT POS	The Association of System Operators and Competition Commission of SA, Lexshell 129 General Trading (Pty) Ltd & Nomad Information Systems (Pty) Ltd	Joinder/Intervention application	Pending hearing
72/SM/Nov10 012633	Direct Transact	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing
72/SM/Nov10 012633	ACET	The Association of System Operators and Competition Commission of SA, Comesa Financial Joinder/ Intervention applications Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing
72/SM/Nov10 012633	Paycorp	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing
72/SM/Nov10 012633	EasyPay	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing

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Case Number	Applicant	Respondent	Category	Decision/Status
72/SM/Nov10 012633	Drawcard	The Association of System Operators and Competition Commission of SA, Comesa Financial Exchange (Pty) Ltd & EMID Holdings (Pty) Ltd	Joinder/Intervention application	Pending hearing
21/CR/Mar11 012815	Gerhardus Johannes Jacobs	The New Reclamation Group	Amendment application	Pending hearing
61/CR/Sep09 012880	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 set aside complaint	Pending hearing
61/CR/Sep09 013060	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	Dismissal application	Pending hearing
91/X/Oct11 013532	Lexshell 849 and Piruto B.V	Competition Commission	Refund of filing fee	Pending hearing
14/CR/Mar11 013573	Competition Commission	Esorfranki Ltd & 7 others	Application for joinder	Pending hearing
15/CR/Mar10 013490	Competition Commission	Godrich Milling (Pty) Ltd	Dismissal application	Pending hearing
10/CR/Mar10 013508	Competition Commission	Godrich Milling (Pty) Ltd	Dismissal application	Pending hearing

APPENDIX I: COMPETITION TRIBUNAL DASHBOARD FOR THE PERIOD ENDING 31 MARCH 2013

Metric	Key Performance Areas	2012/2013
		Annual achievements
Total budget	Total budgeted funds as per the Annual Performance Plan	31 112 045
	Actual total expenditure	27 407 955
Hearing budget	% of budget spent	88,09%
	Budgetted total direct hearing costs	3 893 913
	Actual total direct hearing costs	3 502 315
	% of budget spent	89,94%
Adjudication budget	Budgeted total adjudication costs as per the Annual Performance Plan (includes PR)	16 777 144
	Actual adjudication costs	15 027 460
Number of staff employed	% of budget spent	89,57%
	Total number of FT staff employed	13
	Registry staff	3
	Secretariat Support staff (includes learner	4
	Case Management staff	6
Matters on the roll	Total number of active matters	103

Metric	Key Performance Areas	2012/2013
		Annual achievements
Number of matters attended to	Number of orders (decisions) issued	124
	Number of reasons issued	104
Hearing days	Number of person days spent in hearings by all Tribunal members	325,50
	% of person days spent in hearings by PT members	46,54%
	% of person days spent in hearings by FT members	53,46%
	Number of days spent in hearings	109,50
Recordings	Number of transcript pages (court record) produced	14 006
	Number of transcript pages (court record) produced per actual hearing day	128
Direct hearing cost per matter	Direct hearing cost per order issued	28 244
	Direct hearing cost per reason issued	33 676
	Direct hearing cost per person day	10 760
	Direct hearing Cost per actual hearing day	31 985
	Direct hearing cost per PT member person day	23 118
	Direct hearing cost per transcript page produced	250
Total adjudication costs per matter	Total adjudication cost per order issued	121 189
	Total adjudication cost per reason issued	144 495
	Total adjudication cost per person day	46 167
	Total adjudication Cost per actual hearing day	137 237
	Total adjudication cost per PT member person day	99 191
	Total adjudication cost per transcript page produced	1 073
Matters per Case management staff	Average number of active matters per case management staff member	17
	Average number of orders issued per case management staff member	21
	Average number of reasons issued per case management staff member	17
Turnaround time – large mergers	Total number of new large merger cases received	68
	Number of cases set down within 10 business days of the filed large merger	81,16%
	Number of large merger orders issued within 10 business days of the last hearing date	100,00%
	Number of large merger reasons issued within 20 business days of the order being issued	51,32%
Turnaround time – intermediate mergers	Total number of new intermediate merger cases received	4
	Number of intermediate merger cases set down within 10 business days of the filed merger	57,14%
	Number of intermediate merger orders issued within 10 business days of the last hearing date	100,00%
	Number of intermediate merger reasons issued within 20 business days of the order being issued	12,50%

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Metric	Key Performance Areas	2012/2013
		Annual achievements
Turnaround time – opposed prohibited practices	Total number of new opposed prohibited practice cases received	17
	Number of prehearings (with pleadings closed) held	5
	Number of pre-hearing invitations sent out within 20 business days of close of pleading	85,71%
	Number of orders and reasons for decision issued	6
	Number of orders and reasons for decisions issued within 100 business days of the hearing date	2
	% of orders and reasons for decisions issued within 100 business days of the hearing date	33,33%
Turnaround time – consent orders	Number of consent orders issued this quarter	14
	Number of consent orders issued within 10 business days of the last hearing date	14
	% of matters where consent order issued within 10 business days	100,00%
Turnaround time – procedural matters	Total number of procedural matters heard	32
	Number of orders issued	27
	Number of orders issued within 20 business days of last hearing day	24
	% of matters where orders issued within 20 business days of last hearing day	88,89%
Turnaround time – interim relief matters	Total number of new interim relief matters received	2
	Number of reasons issued during quarter	0
	Number of reasons issued within 20 business days of the last hearing date	0
	% of matters where reasons issued within 20 business days of the last hearing date	No reasons issued
Fines generated	Total rand value of administrative penalties imposed	731 470 806
Operational priorities for 2012/13	Development of a case management system	Hand over took place in February 2013 and system fully operative
	Customer Survey to be developed and assessed	Currently being conducted
	Provision of learnerships to students	3
	Provision of internships to students (excludes learnerships)	8

APPENDIX J: COMPETITION APPEAL COURT CASES

Case Number	Appellant/Applicant	Respondent	Notice of Appeal/Motion (+15)	Decision
121/CAC/Jul12	MacNeil Agencies (Pty) Ltd	Competition Commission	23 Jul 2012	Pending hearing
122/CAC/Aug12	Dimension Data (Pty) Ltd ta Internet Solutions	Telkom SA Ltd	02 Aug 2012	Pending hearing
124/CAC/Oct12	Videx Wire Products (Pty) Ltd	Competition Commission, Dywidag-Systems International, RSC Ekusasa Mining (Pty) Ltd and Avenge (Africa) Ltd t/a Duraset	05 Oct 2012	Pending hearing
118/CAC/Apr12 LEAVE TO APPEAL	Computicket (Pty) Ltd	Competition Commission	12 Nov 2012	Pending hearing

Case Number	Appellant/ Applicant	Respondent	Notice of Appeal/ Motion (+15)	Decision
125/CAC/Nov12	Phindiwe Abegail Kema	Kenilworth Racing (Pty) Ltd and Gold Circle (Pty) Ltd	29 Nov 2012	Pending hearing
126/CAC/Dec12	South African Grooms Association	Kenilworth Racing (Pty) Ltd and Gold Circle (Pty) Ltd	10 Dec 2012	Pending hearing
127/CAC/Dec12	Bopa-Net	Kenilworth Racing (Pty) Ltd and Gold Circle (Pty) Ltd	12 Dec 2012	Pending hearing
128/CAC/Mar13	Telkom SA Ltd	Competition Commission	06 Mar 2013	Pending hearing
102/CAC/Jun10 LEAVE TO APPEAL	Competition Commission	Loungefoam (Pty) Ltd, Gomma Gomma (Pty) Ltd, Steinhoff International Holdings Ltd & Steinhoff Africa Holdings (Pty) Ltd	03 Jun 2011	Pending judgment
119/CAC/May12	Vulcania Reinforcing (Pty) Ltd	Competition Commission	24 May 2012	Pending judgment
120/CAC/May12	Reinforcing Mesh Solutions (Pty) Ltd	Competition Commission	25 May 2012	Pending judgment
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	27 Sep 2010	The matter remitted to the Tribunal and appellants ordered to pay costs of Scaw including costs of two counsel
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	27 Sep 2010	The matter remitted to the Tribunal and appellants ordered to pay costs of Scaw including costs of two counsel
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	01 Oct 2010	Matter remitted to the Tribunal and appellants to pay costs of Scaw including costs of two counsel
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	01 Oct 2010	Matter remitted to the Tribunal and appellants to pay costs of Scaw including costs of two counsel
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	20 Oct 2010	Tribunal's order set aside and matter remitted to the Tribunal for further determination
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	27 Oct 2010	Tribunal's order set aside and matter remitted to the Tribunal for further determination

Part 6: Appendices

Case Number	Appellant/ Applicant	Respondent	Notice of Appeal/ Motion (+15)	Decision
113/CAC/Nov11 APPEAL	Pioneer Hi-Bred International Inc & Pannar Seed (Pty) Ltd	Competition Commission, African Centre for Biosafety & Biowatch SA	09 Nov 2011 17 Feb 2012 sup notice of appeal	Appeal upheld and the Commission to pay the appellants' costs including the costs of two counsel and the qualifying fees of the appellants' experts
112/CAC/Jul11 APPEAL	Paramount Mills (Pty) Ltd	Competition Commission	27 Sep 2011	Appeal dismissed with costs such costs to include the costs of two counsel, where two counsel were employed
93/CAC/Mar10 & 94/CAC/Mar10 LEAVE TO APPEAL	Competition Commission	Yara South Africa (Pty) Ltd, Omnia Fertilizer Ltd and Sasol Chemical Industries (Pty) Ltd	19 April 2011	Leave to appeal to the Supreme Court of Appeal is granted. Costs to stand over.
118/CAC/Apr12 APPEAL	Computicket (Pty) Ltd	Competition Commission	02 April 2012	Appeal upheld. Appellant awarded costs, such costs to include the costs of two counsel
114/CAC/Nov11 APPEAL	Competition Commission	South African Breweries Ltd & 13 others	28 Oct 2011	Appeal upheld. Respondents ordered jointly and severally to pay the costs of the appellant, which includes the costs of two counsel.
108/CAC/Mar11	Phutuma Networks (Pty) Ltd	Telkom Ltd	24 Mar 2011	Appeal dismissed with costs
113/CAC/Nov11 LEAVE TO APPEAL	Pioneer Hi-Bred International Inc & Pannar Seed (Pty) Ltd	Competition Commission, African Centre for Biosafety & Biowatch SA	05 Oct 2012	Leave to appeal to the Supreme Court of Appeal is granted.
107/CAC/Dec10 LEAVE TO APPEAL	Competition Commission	Gralio Precast (Pty) Ltd	30 Nov 2011	Postponed sine die
117/CAC/Dec11 REVIEW	Macsteel Service Centres (Pty) Ltd	Norman Manoim, Takalani Madima, Medi Mokuena, Competition Tribunal, Kagiso Tiso Holdings (Pty) Ltd, Kagiso Trust Investment (Pty) Ltd, Tiso Group Investment (Pty) Ltd, Venmac Investments (Pty) Ltd & the Competition Commission	29 Dec 2011	Withdrawn on 04 Apr 2012
115/CAC/Nov11 APPEAL	MTO Forestry (Pty) Ltd, Boskor Sawmill (Pty) Ltd & Boskor Ripplant (Pty) Ltd (Pty) Ltd and Steinhoff Doors & Building Materials (Pty) Ltd	Competition Commission, AC Whiicher (Pty) Ltd, PG Bison Ltd, Steinhoff Southern Cape (Pty) Ltd, Thesen Sawmill	24 Nov 2011	Withdrawn on 13 Jun 2012
123/CAC/Aug12	Telkom SA Ltd	Competition Commission	29 Aug 2012	Withdrawn on 15 Mar 2013
116/CAC/Dec11 REVIEW	Afgri Operations Ltd	Competition Tribunal, the Competition Commission and Minister of Finance	20 Dec 2011	Time periods suspended – pending the outcome of Afgri and Commission discussions



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Competition Tribunal

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