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This report is submitted by South Africa to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-6 December 2017.

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1. Executive Summary

1. The 2016/17 financial year brought significant developments to South Africa's competition regime, all of which are detailed below.

2. The Competition Tribunal of South Africa ("CTSA"), which is the adjudicative arm of the competition authorities, imposed an administrative penalty of R1,5 bn ($106 m) on the steel giant ArcelorMittal South Africa (ArcelorMittal) for anti-competitive conduct. This was the highest penalty ever imposed on a single firm for contravening the Competition Act no 89 of 1998, as amended ("the Act"). However it wasn't the penalty amount that made the ArcelorMittal case a significant one for the 2016/17 year but the far-reaching remedies the Competition Commission of South Africa ("CCSA") and ArcelorMittal agreed upon in order to settle the case against ArcelorMittal. As part of the settlement, ArcelorMittal undertook that for a period of five years, it would limit its EBIT (earnings before interest and tax) margin to a cap of 10% for flat steel products sold in South Africa. In addition, it committed to a R4.6 bn ($325 m) capital expenditure over the next five years. Although the full impact of this settlement will only be felt in the coming years we anticipate that these remedies will lead to a reduction in pricing and overall improvement in the competitiveness of South Africa's steel industry.

3. The largest merger ever considered by South Africa's competition agencies was the transaction between Anheuser-Busch InBev SA/NV ("AB Inbev") and SABMiller Plc ("SABMiller"). This was a large global transaction, which raised a number of competition and public interest concerns for the South African market. Several stakeholders, more particularly the Minister of Economic Development, were concerned about the potential impact of the merger on employment, small businesses, local beer and cider production, access to cold rooms and fridge space. In addition, the CCSA identified some competition concerns emanating from Coca-Cola and Pepsi's bottling arrangements, AB Inbev's shareholding in Distell Group Ltd (Distell) and potential foreclosure in the supply of tin metal crowns. Following an agreement between the Minister of Economic Development and AB Inbev addressing a wide range of public interest issues, the CCSA recommended that the CTSA approve the deal subject to several conditions designed to address the concerns mentioned above. The CTSA concurred substantially with the CCSA's recommendation. Among the conditions imposed was that AB Inbev had to divest its shareholding in Distell within three years of concluding the merger; the merging parties could not retrench any employee as a result of the merger; and AB InBev committed to make available, over a five-year period, an aggregate amount of R1 bn ($70 m) for investments in South Africa. This investment would be utilised for the development of South African agricultural outputs for barley, hops and maize, as well as to promote entry and growth of emerging and black farmers in South Africa.

4. The proposed merger between Imerys South Africa (Pty) Ltd (Imerys) and Andalusite Resources (Pty) Ltd ("Andalusite Resources") was the first intermediate merger in the history of the competition agencies to be prohibited by the Competition Appeals Court ("CAC"). The CAC hears appeals of competition cases from the CTSA. In doing so, the CAC concurred with the earlier judgments of the CTSA and the CCSA, who both found that the merger would adversely affect the entire andalusite supply chain in South Africa, particularly smaller firms that lacked the capacity, resources and bargaining power of their larger competitors to respond to the monopolistic market conditions that the merger would create. Andalusite is a mineral from which refractories are made. Refractories are used to line furnaces, kilns and other containers exposed to high

temperatures, abrasion and chemical attack in the course of manufacturing iron, steel, cement, ceramics and other products. Locally and internationally andalusite is used by, among others, steel producers. Given the importance of steel and related inputs for industrial development in South Africa, this case fell within the CCSA's priorities for the reporting period. The decisive prohibition of this merger by the CCSA, CTSA and ultimately the CAC prevented what would have been a significant lessening of competition in this market.

5. This financial year also added to the growing body of jurisprudence from South Africa's competition courts. Two cases are worth mentioning here: the Delatoy Investments (Pty) Ltd ("Delatoy") case and another case involving two bicycle wholesalers, Omnico (Pty) Ltd ("Omnico") and Coolheat Agencies (Pty) Ltd ("Coolheat"). The significance of the former decision was that, going forward, it will allow the CCSA to consider group turnover, rather than an individual company's turnover, when imposing an administrative penalty. It could also mean the CCSA might impute an administrative penalty on the parent company where its subsidiary has been found to have contravened the Act. The latter case clarified the CCSA's obligations when alleging a collusive agreement between parties. In this case the CAC also clarified the level of participation required from firms exchanging sensitive price or trading information, before those firms can be said to have contravened the Act.

6. In this financial year, the CCSA completed the market inquiry into the market for liquid petroleum gas ("LPG"). This was only the second market inquiry the CCSA has completed since its inception and the first since the market inquiry provisions were formally introduced into the Act. The LPG inquiry concluded with a range of recommendations designed to improve competitiveness in the industry.

7. Other highlights of the CCSA during the financial year were:

- The encouraging findings of five impact assessments the CCSA conducted in the agriculture, information and communication technology (ICT) sector, pelagic fish, academic textbook and citrus markets;
- The strengthening of relations with the competition agencies in the Brazil, Russia, India, China, South Africa (BRICS) community and the increasing influence South Africa is having on international competition developments;
- The CTSA and CCSA's continued role in uplifting South Africa's youth through their graduate trainee programmes and other training initiatives carried out through the year; and
- The CTSA's merit award for its 2015/2016 annual integrated report.

2. Changes to Competition Laws or Policy, Proposed or Adopted

Box 1.

1. Summary of new legal provisions of competition law and related legislation
2. Other relevant measures, including new guidelines
3. Government proposals for new legislation

2.1. A new weapon in the fight against cartels

8. In this financial year South Africa's minister of economic development announced that, from 1 May 2016, directors or persons with management responsibility who participate in cartel conduct or who are aware of cartel conduct and fail to take appropriate action can be criminally prosecuted. The new provision holds a "director of a firm" or a person "having management authority within the firm" personally and criminally liable for the collusion the company engaged in if the person (1) caused the firm to collude with other firms; or (2) "knowingly acquiesced" in the firm colluding with others. If convicted, the director or manager could face a fine up to R500 000 ($35 000) or up to 10 years imprisonment, or both.

9. However there is still some uncertainty about how the new law will affect the CCSA's ability to prosecute cartels in the long run. The reason for the uncertainty is that, by law, South Africa's competition authorities do not have criminal jurisdiction. This rests with the National Prosecuting Authority (NPA), which is a separate State entity formed under different legislation and operating within the Department of Justice. The competition authorities, comprising the CCSA and the CTSA, are established by the Competition Act and operate under the Economic Development Department.

10. Consequently, while firms can look to the CCSA's corporate leniency policy for some level of certainty on whether they will get immunity from prosecution if they confess their involvement in cartel conduct, the director(s) who might have taken part in the collusion will not know if they will get personal immunity from criminal liability until they have engaged with the NPA. This is the sole domain of the NPA. The NPA's prosecution can only proceed after a finding by the CTSA or the Competition Appeal Court (CAC) that the firm has engaged in cartel conduct or after the firm has admitted to having engaged in cartel conduct by virtue of a consent agreement.

11. As such there could be conflict between a firm's desire to confess under the CCSA's corporate leniency policy and the individual's desire not to incriminate himself ahead of a possible criminal prosecution.

12. Anticipating this conflict the new provision states that the CCSA (1) may not request the prosecution of the director if the [CCSA] has certified that the person is deserving of leniency; and (2) may make submissions to the [NPA] in support of leniency for the director if the [CCSA] has certified that the person is deserving of leniency.

13. The criminal provisions come after several interest groups have called for the strengthening of South Africa's competition laws. Given the widespread local condemnation of cartels in food, construction and intermediate products over the years, consumer groups, trade unions and other representatives of civil society have consistently requested tougher sanctions for the company directors involved. The recent construction cartel investigation in South Africa brought with it a new wave of calls to hold company CEOs personally responsible for the widespread corruption that had plagued the industry for decades.

14. What remains to be seen is whether the new provisions will send existing cartels underground or whether the new law will act as a sufficient deterrent to collusion. The CCSA is in the process of negotiating a memorandum of understanding (MOU) with the NPA in order to offer directors and managers a degree of certainty should they contemplate coming forward to confess their role in a cartel. The aim is to minimise the likelihood of sending existing cartels underground.

15. The ministry of economic development has announced its intention to strengthen the competition authority's ability to address abuse of dominance and excessive pricing as well.

2.2. Introducing certainty in the public interest

16. On 8 June 2016 the CCSA published its guidelines on the approach it follows and the types of information it requires when evaluating public interest considerations in terms of the Act. The CCSA did this in an effort to bring some certainty to stakeholders on the way the CCSA assesses public interest factors in merger regulation.

17. South Africa was among the first countries to openly introduce public interest factors as a stand-alone reason for approving, prohibiting or conditionally approving a merger notified with the CCSA. In 1998, when the Competition Act was enacted, these provisions drew scepticism and praise alike from both international and local stakeholders. Typically those who disagreed with the inclusion of public interest factors in the Act argued that the pure application of competition law had to be kept free from political, labour or socio-economic considerations. Supporters argued that the relevance of the then new competition authority depended on its ability to take account of the prevailing political, labour and socio-economic realities of South African consumers. In 2002 Dave Lewis, the former chairperson of the CTSA, cautioned that to leave public interest factors out of the Competition Act in South Africa's economic and political circumstance would be to lose relevance in the eyes of the public and ultimately "*consign the Act and the authorities to the scrap heap*".

18. Fourteen years later, public interest considerations in merger regulation are now a firmly entrenched part of the merger assessment process in South Africa with many mergers having been approved with public interest conditions attached to them. However, given the lack of international precedent in this area, the fluid political landscape and the unique circumstances presented by each item listed as a public interest factor in the Act, stakeholders have been calling for a guide to assist them in preparing their merger filings and to help them anticipate the information the CCSA will need when it considers public interest factors.

19. In the Act public interest considerations include the effect of the merger on (1) a particular industrial sector or region; (2) employment; (3) the ability of small businesses or firms controlled or owned by historically disadvantaged persons to become competitive; and (4) the ability of national industries to compete in international markets. The competition authorities are obliged in terms of the Act to consider both the impact that a proposed merger will have on competition in a relevant market and whether a proposed merger can or cannot be justified on public interest grounds.

20. According to the guidelines the CCSA will, in general, adopt the following steps when analysing each of the above public interest provisions:

- Determine the likely effect of the merger on the listed public interest grounds;
- Determine whether such effect, if any, is merger specific. A merger specific public interest effect is essentially an effect that is causally related to, or results / arises from, the merger.
- Determine whether such effect, if any, is substantial;
- In the first line of enquiry, consider any likely positive effects to justify the approval of the merger or determine whether a likely negative effect in the second

line of enquiry can be justified which may result in the approval of the merger, with or without conditions; and

- Consider possible remedies to address any substantial negative public interest effect.

21. In applying this approach, where an effect is found to be non-merger specific, the enquiry into that effect will stop at that stage. Likewise, where an effect is found to be merger specific but not substantial, the enquiry into that effect will stop at that stage.

22. In the first line of the public interest enquiry following from a negative competition finding, the CCSA will consider what the effects on the public interest are. If there are positive public interest effects, the CCSA will assess whether the claimed positive effects are merger specific and substantial such that the claimed positive effects could justify the approval of the anti-competitive merger. In such an instance, the merging parties will be given the opportunity to substantiate any substantial positive effects on public interest.

23. In the second line of enquiry following from a positive competition finding, the CCSA will determine what the public interest effects are. If the public interest effects are positive, then the enquiry will stop. The CCSA is likely to approve such a merger without conditions.

24. Following from a positive competition finding and if the public interest effects are negative, the CCSA will proceed to determine whether these effects are merger specific and substantial. If such effects are merger specific and substantial, the merging parties will be given an opportunity to provide arguments and information to justify any substantial negative public interest effects and ultimately this may lead to the approval of the merger. Where the arguments do not justify the negative public interest effects and approval of the merger, the CCSA may consider imposing remedies or prohibiting the merger depending on the substantiality of the public interest effects.

25. In preparing the guidelines, the CCSA followed a consultative process which entailed obtaining input from various stakeholders including legal practitioners, business, civil society, and also held workshops in order to discuss comments received and to get more input from stakeholders.

3. ENFORCEMENT OF COMPETIITON LAWS AND POLICIES

Box 2.

1. Action against anticompetitive practices, including agreements and abuses of dominant positions

1.1. Summary of activities of competition authorities and courts

1.2. Description of significant cases, including those with international implications.

2. Mergers and Acquisitions

2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws;

2.2. Summary of significant cases.

3.1. Actions against anti-competitive practices – Summary of CCSA activities

26. The CCSA's investigations against anti-competitive practices are carried out by two divisions, namely, the Enforcement and Exemptions Division ("E&E") and the Cartel Division ("CD"). E&E investigates restrictive vertical practices and abuse of dominance while the CD investigates restrictive horizontal practices. The tables and statistics below summarise the enforcement activities of these two divisions in the financial year.

Table 1. Enforcement and Exemptions cases received and finalised in 2016/17

Complaints received from the public	205
Complaints initiated by the CCSA	4
Screening cases carried over from last year	39
Complaints withdrawn	3
Complaints closed (non-referred) at screening stage	144
Complaints that became full investigations (excluding those referred to CD for full investigation)	22
Complaints closed (non-referred) after full investigation	11
Complaints referred to the CTSA for adjudication after full investigation	3
Screening cases carried over to the next financial year	43

Table 2. Cartel cases received and finalised in 2016/17

Total cases handled in the year	86
Total investigations carried over from the previous year	74
Completed investigations	33
Referrals to the CTSA	27
Non-Referrals	6
New cases initiated by the CCSA	26
New cases received from third parties	17
Corporate leniency applications received	6
Corporate leniency applications received last year	10
Corporate leniency applications carried over from last year	9
Granted corporate leniency applications	5
Denied corporate leniency applications	4

Table 3. Sectors with the most complaints: Enforcement and Exemptions

Sector	Number of complaints	Percentage
Telecoms	24	11.7%
Agriculture and forestry	18	8.8.%
Retail	16	7.8%
Transport	16	7.8%
Property	13	6.3%
Health	12	5.9%
Finance	12	5.9%
Clothing and textiles (school uniform)	11	5.4%
Other	83	40.4%
Total	205	100%

Table 4. Cartel investigations by sector

Sector	Number of complaints	Percentage
Food	12	11.8%
Intermediate industrial inputs	12	11.8%
Communication and information	9	8.82%
Construction and infrastructure	7	6.86%
Automotive	7	6.86%
Clothing and textiles	5	4.9%
Financial and insurance services	2	1.96%
Other	48	47.05%
Total	102	100

Table 5. Noteworthy Enforcement and Exemptions investigations in priority sectors

Priority sector	Case name and summary
Information and communication technology	Complaint by Cell C (Pty) Ltd against both Vodacom (Pty) Ltd and Mobile Telephone Networks (Pty) Ltd on on-net/off-net call rates in mobile telephony.
	Complaints against MultiChoice SA Holdings, MultiChoice Africa (Pty) Ltd and Supersport International (Pty) Ltd relating to exclusive broadcasting rights for content, especially premium sporting events.
Construction and infrastructure	The CCSA's complaint against Afrimat Ltd and its subsidiary for alleged excessive pricing of clinker ash aggregate.
	The CCSA's complaint against Blurock Quarries (Pty) Ltd and Procon Precast CC for alleged abuse of dominance in the supply of crusher dust and the manufacture and supply of bricks and blocks.
Food and agro-processing	A complaint lodged by Khoisan Tea Import and Export Pty Ltd against Rooibos Ltd for abuse of dominance in the procurement of rooibos from farmers.
	The CCSA's complaint against Holland HZPC and Western Free State Potato Growers Pty Ltd for an alleged exclusive dealing arrangement.

Table 6. Cartel investigations in priority sectors

Priority sector	Case name and summary
Food	CC vs Wilmar and others (price fixing and trading conditions for the supply of edible oils).
Industrial products	Various cases (4) involving price fixing, division of markets and collusive tendering along the paper manufacturing and packaging value chainCC vs PG Bison and Sonae (price fixing in particle boards)CC vs Glasfit and another (price fixing and market division of automotive glass).
Transport	CC vs Maersk and others (price fixing of freight rates from Asia to South Africa)CC vs Various automotive component manufacturers (price fixing, market division and collusive tendering in the market for the supply of automotive components).
Construction and Infrastructure	CC vs Cross Fire and others (price fixing and collusive tendering of fire sprinkler systems).

Table 7. Dawn raids conducted in the financial year

Firms raided	Industry	Allegations under investigation
Mpact Ltd and New Era Packaging (Pty) Ltd	Manufacture and supply of packaging paper	Price fixing, dividing markets and collusive tendering.
Hamburg Sud South Africa (Pty) Ltd; Maersk South Africa (Pty) Ltd; Safmarine (Pty) Ltd; Mediterranean Shipping Company (Pty) Ltd; Pacific International Lines South Africa (Pty) Ltd; and CMA CGM Shipping Agencies South Africa	Transportation of cargo	Price fixing.
DH Brothers t/a Willowton; Africa Sun Oil; FR Waring; Epic Foods; and Wilmar Oils & Fats	Manufacture and distribution of edible fats and oils industry	Price fixing and fixing of trading conditions.
Botha Roodt Market Agents CC; Subtropico (Pty) Ltd; RSA Group (Pty) Ltd; Dapper Market Agents (Pty) Ltd; DW Fresh Produce CC; Farmers Trust CC; Noordvaal Market Agents (Pty) Ltd; Marco Fresh Produce Market Agency; Wenpro Market Agents CC; RSA Group (Pty) Ltd; and; Fine Bros (Pty) Ltd	Fresh produce market	Price fixing and fixing of trading conditions.

3.2. Actions against anti-competitive practices – Summary of CTSA activities

27. The CTSA imposed administrative penalties in 28 matters in this financial year. The total penalties amounted to R1.63bn ($115 m). Out of the 28 matters in which administrative penalties were imposed, 23 were for cartel conduct covering price fixing, dividing markets and collusive tendering or a combination of these contraventions. In one matter penalties were imposed for minimum resale price maintenance and, in the remaining four, they were imposed for failure to notify a merger.

28. The following table shows the administrative penalties imposed per sector.

Table 8. Administrative penalties imposed by the CTSA, per sector

Sector	Percentage of total penalty	Amount
Administrative and support service	0.11%	R1 847 997$130 693
Agriculture, forestry and fishing	0.05%	R734 761$51 963
Construction	1.98%	R32 274 715$2 282 512
Financial and insurance activities	0.06%	R1 050 000$74 257
Human health and social work activities	0.61%	R10 000 000$707 213
Manufacturing	95.05%	R1 547 532 071
Professional, scientific and technical activities	0.02%	R393 626$27 838
Transportation and storage	1.01%	R16 448 049$1 163 228
Wholesale and retail trade – repair of motor vehicles and motor cycles	1.09%	R17 787 782$1 257 976

Table 9. Administrative penalties imposed, per section of the Act

Penalty	Percentage of total penalty	Section of the Act
R1 616 718 501$114 336 527	99.30%	Restrictive horizontal practices
R300 500$21 251	0.02%	Resale price maintenance
R11 050 000$781 471	0.68%	Failure to notify a merger

Table 10. Statistics for complaints of anti-competitive conduct for 2016/17, compared to the previous year

Type of case	2016/2017			2015/2016		
	Matters heard	Orders issued	Reasons issued	Matters heard	Orders issued	Reasons issued
Complaints from the CCSA	10	6	5	7	1	1
Consent order/settlement agreement	27	25	-	26	27	-
Complaints from the complainant	0	-	-	0	-	-
Interim relief	1	1	1	0	-	-

3.3. Description of significant cases of anti-competitive conduct

3.3.1. CTSA imposes its largest penalty to date

29. At R1.5bn ($106 m) the penalty the CTSA imposed on ArcelorMittal South Africa, for engaging in a range of anti-competitive acts, was the largest the CTSA has ever imposed. To offer a sense of the significance of this penalty against other fines the CTSA imposed this year: the total penalties for 28 matters heard amounted to R1.63bn ($115 m), which means the ArcelorMittal fine accounted for 92% of this figure.

30. The penalty was part of a settlement agreement between the CCSA and ArcelorMittal ending eight years of several investigations by the CCSA against the steel giant. ArcelorMittal admitted, in the settlement agreement, that it engaged in collusion with Cape Town Iron and Steel Works (Pty) Ltd ("CISCO"), Scaw South Africa (Pty) Ltd ("Scaw") and Cape Gate (Pty) Ltd ("Cape Gate") by fixing prices and discounts, allocating customers and sharing commercially sensitive information in the market for the manufacture of long steel products. It also admitted that it had fixed the purchase price of scrap metal with Columbus Stainless Steel (Pty) Ltd, Cape Gate and Scaw. In terms of the agreement ArcelorMittal undertook that, for a period of five years, it would limit its earnings before interest and tax ("EBIT") margin to 10% for flat steel products sold in South Africa. It also committed to R4.64bn ($325 m) capital expenditure over the same period. The CTSA confirmed this settlement agreement as an order on 16 November 2016. Of the penalties imposed by the CTSA this year 95.05% were in the manufacturing sector. This was largely attributable to the ArcelorMittal settlement.

3.3.2. Creative remedy imposed in predatory pricing case

31. Another long running case that the CTSA finalised in this financial year was the CCSA's complaint against Media24, a prominent multimedia company in South Africa, for engaging in predatory pricing. Media24's conduct was harmful to the market because it eventually led to the exit of a rival community newspaper in the Goldfields area leaving

advertisers and consumers with fewer alternatives. What made this case noteworthy however was not its duration but the CTSA's imposition of a creative remedy on Media24 in circumstances where the CTSA was legally precluded from imposing a monetary penalty on the firm. The CTSA has never had to determine a remedy for predatory pricing behaviour before. In order to restore competition to the Goldfields market the CTSA imposed what it termed a 'credit guarantee' remedy. This would allow current or new publications within the Goldfields area to approach Media24 for favourable credit terms effectively obliging the Naspers group, which owns Media24, to sponsor new entrants into the Goldfields market for a period of two years.

32. The CTSA's decision has since been taken on appeal and had not been heard by the end of the reporting period.

3.3.3. CTSA clarifies meaning of "a firm"

33. In April 2016 the CTSA had to decide what constituted a firm for purposes of the Act in order to decide who should be liable if Delatoy Investments (Pty) Ltd ("Delatoy Investments") was found to have engaged in collusive conduct. This case formed part of the 2013 fast track process that the CCSA used to finalise a large number of cartel cases in the construction sector at once. The participants in this cartel agreed to inflate their tenders by about R2 m ($141 000) and the winner, in this case Cycad Pipelines (Pty) Ltd, agreed to pay a loser's fee. In Delatoy Investment's case the loser's fee was paid to ATPD (Pty) Ltd, a company within the Delatoy Group. Although Delatoy Investments admitted that it had engaged in collusive tendering it claimed that it did not have any assets. The CTSA had to decide whether the other ten respondents in the Delatoy Group, including Delatoy Investments, could be regarded as a 'firm' for purposes of the Act in order to be held liable. The CTSA followed the EU approach and looked at the "functional approach of the entity" finding that the companies in the Delatoy group worked as a single economic unit and therefore should be considered a firm.

34. The CTSA considered a number of important factors, namely, the common shareholding within the Delatoy group; structural changes within the group; that the loser's fee was not paid to the perpetrator in the group; and the fact that the companies within the group were ultimately controlled by two common directors. Subsequent to this decision Delatoy Investments settled with the CCSA and paid a penalty of R4.14m ($293 000) for contravening the Act.

3.3.4. Passive participation deemed to be collusion

35. Another legal development concerning cartel matters was the CAC's clarification, on 19 December 2016, of a passive participant's liability in circumstances where he was part of collusive discussions even though he may not have actively engaged in them. The CAC had to determine if representatives of Omnico (Pty) Ltd ("Omnico") and Coolheat Agencies (Pty) Ltd ("Coolheat"), both bicycle wholesalers, contravened the Act when they were present in discussions amongst their competitors to agree on prices for bicycles and cycling accessories. The CAC found that indeed that they did contravene the Act despite their contention that they did not actively engage in these discussions. According to the CAC, Coolheat and Omnico were liable because, amongst other reasons, they did not distance themselves from the agreements reached nor could they prove that they priced differently from what was agreed in the discussions.

36. The CAC's finding confirmed the CTSA's earlier decision on 30 May 2016. In that case the CTSA imposed a penalty of R4.63 m ($327 000) on Omnico and a penalty

of R4.25 m ($300 000) on Coolheat. However on appeal the CAC reduced Omnico's penalty amount to R1.93m ($136 000) due to mitigating factors.

3.4. Mergers and Acquisitions – CTSA statistics

37. In the 2015/16 period the CTSA introduced a new performance measure used to establish how efficient the competition authorities were in assessing and deciding large mergers. It measures the time period between when a large merger is notified to the CCSA and the time the CTSA issues an order. This period is also referred to as the merger clearance period.

38. The Act stipulates that the merger clearance period for a large merger should be 60 business days. This allows 40 business days for the CCSA to investigate, ten business days for the CTSA to set the matter down and ten business days for the CTSA to issue the order.

39. Of the 102 large merger cases decided in this financial year 70.59% were cleared in less than 60 days. The average clearance period was 54 days, which is slightly longer than the average clearance period of 50 days in the previous financial year.

40. 105 mergers were decided during the period under review, which is almost 21.05% less volume than the prior year.

41. One merger was prohibited. This was only the tenth prohibition in the CTSA's history.

42. 19 of the 105 mergers decided were approved with conditions. This amounts to 18.10%, which is slightly less than the prior year's figure of 19.55%. Approving a merger with conditions means that the CTSA approves a merger subject to a "remedy" being imposed on the parties. These remedies take the form of conditions that address a defined set of public interest grounds, company behaviour or market circumstance. Public interest grounds are defined, in the Act, to include the effect of a merger on employment, on an industry, on the ability of small and historically disadvantaged businesses to become competitive and on the ability of national industries to compete internationally. More than one condition can be imposed on the merging parties.

43. Eight, or 42.10%, of the conditional approvals granted in the period under review imposed employment related conditions on the merging parties. This has come down from the 19 mergers, or 73.07%, in the prior year.

Table 11. CTSA merger statistics for 2016/17 compared to the previous year

Type of case	2016/2017			2015/2016		
	Matters heard	Orders issued	Reasons issued	Matters heard	Orders issued	Reasons issued
Large merger	103	102	108	129	124	119
Intermediate merger	4	3	2	11	9	5
Total	196	179	153	213	188	138

Table 12. Merger clearance period over two years

	Less than 60 days	60 days	More than 60 days	Average clearance period
2016/2017	70.59%	2.94%	26.47%	53.76 days
2015/2016	72.58%	0%	27.42%	50 days

Table 3.13. CTSA's comparative figures for mergers decided over two years

Mergers decided	2016/2017	Percentages	2015/2016	Percentages
Approved without conditions	85	80.95%	107	80.45%
Approved with conditions	19	18.10%	26	19.55%
Prohibited	1	0.95%	0	0%
Total	105	100%	133	100%

3.5. Mergers and Acquisitions – CCSA statistics

44. The Mergers and Acquisitions (M&A) Division assesses mergers filed with the CCSA to determine whether the merger is likely to substantially prevent or lessen competition in a market, and whether the merger can or cannot be justified on public interest grounds. Not all mergers that have an effect within South Africa have to be notified to the CCSA, only those that meet the thresholds set out in the Act. Mergers are classified as either small, intermediate or large, depending on the turnover or asset values of the merging firms.

45. The CCSA receives a filing fee for every intermediate or large merger filed. According to the Act it is not compulsory for small mergers to be notified and no filing fee is prescribed. However, the CCSA may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds. In terms of the guidelines on small merger notifications, which it issued in April 2009, the CCSA requires any party to a small merger to inform it of that merger if either party is under investigation by the CCSA for a contravention of the Act, or if there is an ongoing investigation in the relevant market.[1]

46. For operational efficiency, the CCSA classifies notified mergers as either phase 1 (non-complex), phase 2 (complex) or phase 3 (very complex) mergers, depending on the complexity of the competition or public interest issues it raises. The CCSA has published service standards for merger investigations, particularly the time periods it takes to complete an investigation. These service standards are necessary as the Act has set out timeframes for merger investigations, regardless of their level of complexity. Therefore, the service standards assist in managing our internal deadlines and stakeholders' expectations when notifying mergers with varying levels of complexity. The tables below set out the CCSA's statistics concerning merger regulation in the financial year.

[1] Subsequent to the financial year end the merger thresholds in South Africa were revised.

Table 14. Mergers notified and reviewed over four years

	2103/14	2014/15	2015/16	2016/17
Notified	320	395	391	418
Large	95	119	116	93
Intermediate	209	260	262	319
Small	16	16	13	6
Finalised	329	375	413	385
Large	95	108	129	109
Intermediate	214	251	270	270
Small	20	16	14	6
Approved without conditions	302	321	364	349
Large	84	86	108	91
Intermediate	201	221	246	252
Small	17	14	10	6
Approved with conditions	22	43	37	31
Large	10	18	15	13
Intermediate	11	23	21	18
Small	1	2	1	0
Prohibited	1	5	7	5
Large	0	2	2	1
Intermediate	0	3	2	4
Small	1	0	3	0
Withdrawn / No jurisdiction	4	6	5	3
Large	1	2	4	1
Intermediate	2	4	1	2
Small	1	0	0	0

Table 15. Average turn-around times in 2016/17 against service standards

Phase	Service standard	Total number of transactions (excluding withdrawn and no jurisdiction cases)	Average turnaround time
Phase 1	20	219	17
Phase 2	45	136	45
Phase 3 (small and intermediate)	60	26	56
Phase 3 (large)	120	11	116

Table 16. Merger decisions by sector

Sector	Percentage of merger decisions
Activities of households	0.26
Administration	2.08
Agriculture	3.90
Energy (electricity, gas, steam)	1.30
Finance	6.75
Health	5.19
Information and communication	7.27
Manufacturing	20.00
Mining	5.19
Property	20.26
Transportation and storage	4.94
Wholesale	12.47
Construction	2.08
Professional & technical activities	3.64
Other activities	4.68

3.6. Summary of significant mergers and acquisitions

3.6.1. AB InBev and SABMiller merger approved with conditions

47. On 30 June 2016 the CTSA approved, with conditions, the largest deal ever notified in South Africa. This was the global acquisition, by AB InBev, of the entire share capital of SABMiller. Both companies were vertically integrated with their operations spanning the manufacture and distribution of alcoholic beverages, particularly beer products. Owing to the many competition and public interest concerns the transaction raised, the CTSA approved the deal with a range of conditions aimed at minimising the possible negative effect of the merger on the South African market.

48. The conditions, which were agreed to by all parties involved, included the disposal of the SABMiller interest in Distell; the rights of rivals to access fridge space supplied to outlets by the merged firm; access of competitors to metal bottle crowns supplied by the SABMiller controlled entity Coleus Packing for an unlimited period, as long as the merged entity continued to control Coleus; supply conditions of input suppliers, particularly in respect of barley farmers; and the evergreen restriction on merger related retrenchments.

3.6.2. Public interest raised in beverage merger

49. Another deal that attracted significant media attention was the merger involving SAB Miller and the Coca-Cola Company. During May 2016 the CTSA heard the large merger involving the amalgamation of the bottling interests of SABMiller, Gutsche Family Investments and the Coca-Cola Company into one entity to be known as Coca-Cola Beverages Africa. This included SABMiller's interests in Appletiser and Lecol being transferred to the Coca-Cola Company. The CTSA approved the merger subject to conditions which were agreed between the merging parties, the minister of economic development, the Food and Allied Workers Union, the National Union of Food Beverage Wine Spirits and Allied Workers and the CCSA. These related to the merged entity's

head office remaining in South Africa, no job losses for three years, sourcing inputs locally for Appletiser, committing to a B-BBEE transaction, investing no less than R0.4m ($28 000) in small, medium and micro enterprises ("SMME's") and a further R0.4m ($28 000) in enterprise development for providing inputs to both Appletiser and Coca-Cola Beverages Africa along the supply chain, agreeing to certain conditions pertaining to owner-driver contracts and investing in local procurement of inputs.

3.6.3. Competition courts unanimously halt mineral merger

50. In the merger of Imerys South Africa (Pty) Ltd ("Imerys") and Andalusite Resources (Pty) Ltd ("Andalusite Resources") the CAC had to consider a merger previously prohibited by the CCSA and the CTSA. The CAC issued its decision on 2 March 2017 prohibiting the merger on the grounds that the transaction would have a negative impact on competition in the market. This followed the CTSA's prohibition of the deal on 31 October 2016 in which the CTSA concluded that the merger would adversely affect the entire andalusite supply chain in South Africa, particularly smaller firms that lacked the capacity, resources and bargaining power of their larger competitors to respond to the market conditions the merger would create. Moreover, the CTSA noted that there were no adequate conditions that could remedy the CTSA's concerns that the merger would be anticompetitive.

51. These two firms were the only manufacturers of andalusite in South Africa which meant that a merger between them would have resulted in a monopoly. Andalusite is a mineral from which refractories are made. Refractories are used to line furnaces, kilns and other containers exposed to high temperatures, abrasion and chemical attack in the course of manufacturing iron, steel, cement, ceramics and other products. Locally and internationally andalusite is used by, amongst others, steel producers. The CTSA heard the merger over 24 days, making it one of the longest running hearings of the financial year.

3.6.4. Asphalt companies abandon merger after CCSA's prohibition

52. Infrastructure is a priority sector for the CCSA because of its essential contribution to growth and development in South Africa. Economic growth depends on the availability of reliable infrastructure.

53. After assessing the merger proposed between Much Asphalt (Pty) Ltd (Much Asphalt) and five asphalt plants owned by Roadspan Holdings (Pty) Ltd (Roadspan), the CCSA concluded that this merger threatened the availability of quality asphalt, which was used in the laying of roads at competitive prices. The CCSA found that the new merged entity would be dominant in the market and would not face strong competitive forces that could supress an increase in price or a decrease in quality. It was also not going to be easy for new firms to enter the market. The CCSA was concerned that the structure of this market meant that the merger was going to make it easier for the companies to collude. The CCSA and the merging parties could not arrive at acceptable conditions to minimise these anti-competitive effects, therefore the CCSA prohibited this merger in September 2016. After that the merging parties applied to the CTSA for a reconsideration of the CCSA's decision, but later abandoned their application.

4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

4.1. Policy and Regulation

54. The CCSA regularly monitors the regulatory environment and provides competition assessment of government policies and regulation. To this end the CCSA made submissions on five of these policies, including the national integrated ICT Policy White Paper and the White Paper on the Audiovisual and Digital Content Policy for South Africa, which is discussed further below.

4.1.1. CCSA comments on the EDD directive to review the current domestic reference price and variable tariff formulae on wheat, maize and sugar

55. The International Trade Administration CCSA of South Africa (ITAC) on 31 August 2016, formally requested the CCSA to comment on the directive from the Minister of Economic Development directing ITAC to urgently review the current domestic reference price and variable tariff formulae on wheat, maize and sugar. The Minister's directive was made in view of the fact that wheat, maize and sugar were basic necessities used by South Africans and that the country was experiencing drought conditions coupled with large exchange rate fluctuations. The CCSA offered its insights into the competitive conditions prevailing in this industry, based on past research and investigations conducted, and made recommendations for amending the current tariff on a temporary basis.

4.1.2. CCSA considers the National Integrated ICT Policy White Paper

56. During the financial year, the CCSA considered the draft White Paper on the National Integrated ICT Policy and offered comments on the aspects that had a bearing on its operations. In particular, the CCSA commented on its roles and responsibilities, the sector regulator and the economic regulator, as well as on aspects concerning co-ordination, consultation and co-operation amongst regulatory bodies.

4.1.3. CCSA offers its view on audio-visual and digital content

57. In this financial year, the CCSA made submissions on the White Paper on the Audio-visual and Digital Content Policy for South Africa. Overall, the CCSA believes that the policy would aid the development of a growing, productive and pro-competitive environment in the South African broadcasting sector. Having considered the white paper with the benefit of past research and investigations in this sector, the CCSA made recommendations on the following areas:

- Understanding audio-visual content services;
- The distribution aspects of audio-visual content;
- The South African broadcasting system;
- Licensing;
- Competition; and
- South African music and TV content.

4.1.4. Engagements with ITAC on scrap metal

58. During the financial year the CCSA had engagements with ITAC on the potential impact of the preference price system (PPS) on competition in the scrap metal market. The pricing of scrap metal in South Africa was conducted under the PPS guidelines, which were aimed at curbing scrap metal exports to ensure that domestic end-users of scrap metal were able to access sufficient volumes of good quality scrap metal at reasonable prices.

59. The main concerns raised in these engagements pertaining to the scrap metal industry were transport costs, margins achieved and preferential supply arrangements between scrap dealers and customers. This engagement was not a once-off event and is set to continue in future according to the terms and provisions of the memorandum of understanding (MOU) between the CCSA and ITAC.

5. RESOURCES OF COMPETITION AUTHORITIES

Table 17. Annual budget

Item	2016/2017	2015/2016	Percentage (decrease) or increase
CCSA revenue	R289 million($20,4 m)	R 295 million($20,8 m)	(2%)
CCSA income from grant (government allocation and transfers)	R221 million($15,6 m)	R 228 million($16 m)	(3%)
CCSA income from filing fees	R57 million($4 m)	R 55 million($3,8 m)	4%
CTSA annual budget	R36 million($2,5 m)	R 38 million($2,6 m)	(5%)

Figure 1. Number of CCSA employees

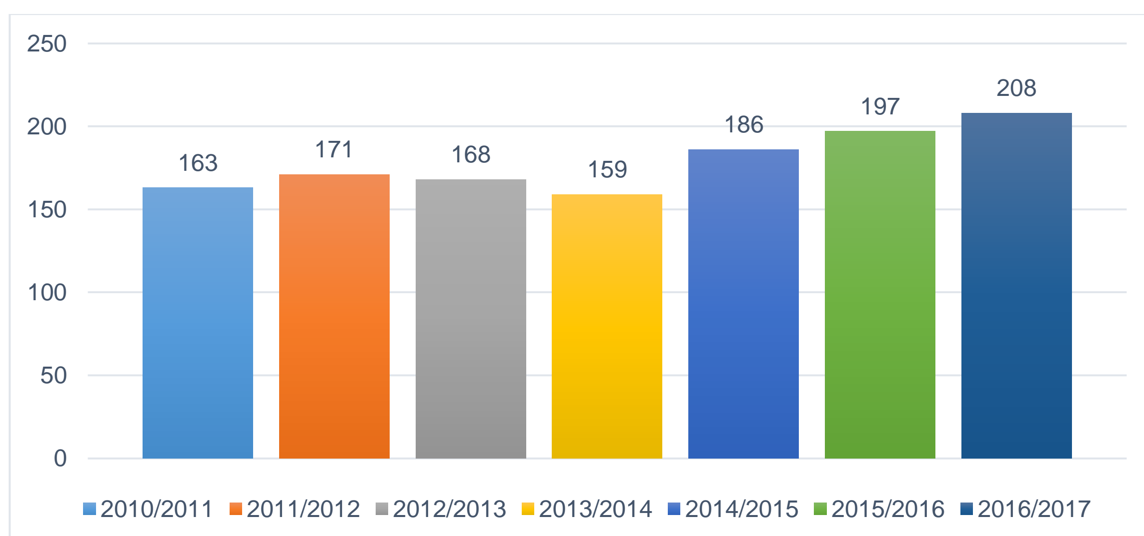

Table 18. CCSA employees arranged by expertise

Expertise	Number of employees
Lawyers	63
Economists	68
Other professionals	20
Support Staff	57
All staff combined	208

Table 19. CCSA human resources allocated by core function

Function	Number of employees
Cartels and enforcement	62
Mergers and acquisitions	19

Table 20. CTSA employees and members (judges) arranged by expertise

Expertise	Number of members	Number of employees
Lawyers	8	6
Economists	3	1
Support staff	-	16

6. Summaries of or references to new reports and studies on competition policy issues

6.1. Impact assessments

6.1.1. Agricultural support fund yields tangible results and future lessons

60. During this financial year, the CCSA conducted an assessment of an agricultural support fund that was set up in 2014 as part of the conditions to a merger between the then newly incorporated AgriGroupe Holdings and local agricultural commodity trading company AFGRI Ltd (AFGRI). The purpose of the impact assessment was to establish whether the fund's programmes adequately addressed the public interest concerns raised by third parties during the merger proceedings of 2014, specifically those relating to benefits that were available to black farmers through AFGRI prior to the merger, credit facilities and access to grain storage by emerging farmers.

61. Having assessed the impact of this fund and the other conditions to the merger, three years after their implementation, the CCSA found that the AFGRI Fund has been implemented in line with the agreements entered into by the government departments and the merging parties. Further, the various commitments with respect to emerging farmer support, the extension of credit and grain storage discounts have had a positive impact on emerging farmer beneficiaries.

CCSA's intervention in ICT market contributes to improved competitiveness

62. In July 2013, the settlement agreement reached between Telkom SOC Limited (Telkom) and the CCSA was confirmed by the CTSA in terms of a set of complaints lodged by competing network service providers between 2005 and 2007. The settlement agreement sought to remedy the alleged anti-competitive conduct by Telkom in the electronic communications market. An administrative penalty of R200 m ($14 m) was imposed by the CTSA on Telkom and structural and behavioural conditions were implemented, which included a change in pricing behaviour and a functional wholesale/retail separation of Telkom’s business operations.

63. The purpose of the CCSA’s impact assessment was to evaluate the efficacy of the settlement agreement in remedying the anticompetitive outcomes of Telkom’s conduct. The assessment found that, notwithstanding some contributing regulatory and market developments, the settlement agreement had a positive and significant impact on the market. From a behavioural perspective, the price commitments contained in the agreement resulted in significant savings for Telkom’s customers. The distribution of savings was skewed in favour of the upstream market compared to the downstream market, as intended by the settlement agreement. Structurally, the level of entry increased, particularly downstream, as competition tends towards services based competition. Telkom’s market share has also come under pressure, primarily in the upstream market, where price commitment reductions by Telkom and non-discriminatory behaviour for upstream input facilitated growth of Telkom’s competitors. Overall, these market outcomes were consistent with the pro-competitive goals of the settlement agreement.

6.1.2. Review of the academic textbook market shows mixed results

64. The objective of this study was to review the CCSA’s decisions in two previous merger transactions in the academic textbook market. The CCSA wanted to establish if it made the appropriate decisions when it prohibited the proposed acquisition of Juta Bookshops (Juta) by Van Schaik Bookstores (Van Schaik) in 2012 and when it approved the acquisition of Juta Bookstores by Protea Book House in 2013. The study also assessed whether an alternative decision may have led to more competitive market outcomes.

65. In both merger investigations, the relevant markets were found to be highly concentrated. However, unlike the Van Schaik/Juta transaction, the CCSA’s investigation found that the Protea/ Juta merger did not raise competition concerns, hence the unconditional approval of the merger. The study found, among other things, that in the years since the two mergers the market has seen a decline in academic book sales and an increase in prices. However, these outcomes were attributed to international factors, local protests and decreased subsidies for universities rather than to the CCSA’s decisions. On a positive note the study revealed that the bricks-and-mortar academic books market has opened up through the expansion of existing players and the entry of new market participants.

66. In light of the evidence gathered, the CCSA concluded that it made the appropriate decisions to prohibit the Van Schaik and Juta merger in September 2013 and approve the acquisition of Juta Bookstores by Protea in July 2014. An assessment of the evidence therefore confirms that no alternative decisions by the CCSA would have led to more competitive outcomes in the market.

6.1.3. Assessing the impact of the pelagic fish merger, three years on

67. The CCSA's study into the developments in the pelagic fish market since 2013, when the CAC approved the Oceana Group Ltd's (Oceana) acquisition of Foodcorp (Pty) Ltd's (Foodcorp) fishing business, revealed that the merger is unlikely to have had a significant effect on competition at the downstream marketing level of the canned pilchards value chain and on the end-consumers of canned pilchards, and that the merger is likely to have led to a positive impact on the public interest.

68. This was a merger that the CTSA had approved on condition that the merged entity would have to sell off its Glenryck brand of pelagic fish along with Foodcorp's total allowable catch (TAC) – a fishing quota allocated by the Department of Agriculture, Forestry and Fisheries (DAFF). The CTSA's reason for bundling the sale of the brand with the TAC was that the evidence presented throughout the merger hearing showed that the brand would not be a strong competitor in the market without the TAC. The merging parties appealed the CTSA's decision because they were not interested in pursuing the deal if it came without the TAC. The CAC approved the deal allowing Oceana to sell Glenryck off without the TAC. This took place in 2015 when Bidvest Namibia Fisheries (Bidfish) bought the Glenryck brand, without the TAC.

69. The CCSA's assessment showed that the Glenryck brand had performed poorly both before and after the merger, which means its performance cannot be attributable to the merger. Regarding its performance under Bidfish, the CCSA concluded that it was too early to tell how the brand was performing. As mentioned, Bidfish acquired the Glenryck brand in 2015. The study also showed that the merger did not have a significantly negative impact on the prices and brand choice available to consumers. Rather, canned pilchard prices have been affected by the prices of other competing proteins, and customers' ability to switch to or from these when they are cheaper or more expensive relative to canned pilchards. Regarding the positive public interest effects of the merger, the study showed that jobs that would have been lost at the Laaiplek facility were retained, new jobs were created, and the conditions of seasonal workers have improved.

6.2. African Competition Forum research

6.2.1. ACF and World Bank partner to increase knowledge

70. In June 2016, the World Bank published a report: *Breaking Down Barriers: Unlocking Africa's Potential through Vigorous Competition Policy,* a study it conducted in partnership with the ACF. This study reviewed the status of competition frameworks and implementation in Africa and zoomed in on three important sectors for Africa's competitiveness: cement, fertilisers, and telecommunications. More than 70% of African countries rank in the bottom half of countries globally in terms of intensity of local competition and prevalence of fundamental policies for market based competition. This report was a collaborative effort between the World Bank and members of the ACF, reflecting a shared vision for promoting competition policy and effective competition law enforcement across Africa.

71. Information for this report was gathered through questionnaires, to which 22 jurisdictions responded. This report expanded the scope of earlier ACF studies, considering not only the status of competition law enforcement and competition policy in each economy as a whole but also providing an overview of competition dynamics and challenges in selected markets of key sectors. Through this report, the ACF and World Bank sought to take a step forward in the application of region-wide analytical tools to

understand key risks to competition in vital input sectors, in particular cement, fertiliser, and telecommunications. Competition issues in road freight, air transport, and retail are also explored. The analysis showed that the effects of industry characteristics, regulations, and trade policies shaped the competitive dynamics of these sectors and often spanned borders. There was scope, therefore, for national and regional competition authorities to increase their impact by taking a regional perspective when assessing cases within their jurisdictions.

72. This report brought home the importance of strong co-operation between agencies involved in implementing competition policy. The study's findings on the range of competition policy frameworks in place across Africa – and the richness of experience in enforcing those frameworks – highlighted the great potential for peer-to-peer learning, both within the region and across regions. The evidence presented in this report showed how competition policy helped African countries boost inclusive growth and sustainable development.

73. The report found that eliminating competition constraints in food markets could lift families out of poverty. For example, a 10% reduction in the prices of principal food staples is estimated to have the effect of lifting approximately 500 000 people out of poverty in three countries. Fundamental market reforms to increase competition in key input services would also boost economic growth. For example, reforming professional services markets would deliver an additional 0.16–0.43% of additional annual growth in gross domestic product. While the benefits of competition were clearly observable in Africa, there was still considerable effort required to ensure effective implementation of competition laws and policies across the continent. This study provided an overview of factors to be considered in pursuing that effort.