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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SOUTH AFRICA

-- 2014 --

27-28 October 2015

This report is submitted by South Africa to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SOUTH AFRICA

Executive Summary

The annual report records the activities that took the Competition Commission South Africa through the period 01 April 2014 to 31 March 2015.

The period under review marked the year in which the competition authorities celebrated their 15-year anniversary. This milestone provided an opportunity to consider the impact of the institution's work on the economy and to set a new vision and strategic direction to undertake regulation for a growing and inclusive economy.

In the year under review, the Commission intensified its cartel enforcement by undertaking multiple raids, published Guidelines after engagements with stakeholders, conducted impact assessments to evaluate the impact of its work and analysed significantly more mergers than in the previous financial year. The Commission also undertook a great deal of work in the Private Healthcare Inquiry. The market inquiry is probing, amongst others, reasons for above inflation increases in private healthcare costs. The Commission also initiated a market inquiry in the Liquefied Petroleum Gas (LPG) market which seeks to understand the structural features of this market and factors such as the high switching costs and the generally low usage of LPG by households. The inquiry will contribute to a better understanding of constraints in this important energy market.

Tembinkosi Bonakele, Commissioner, Competition Commission South Africa

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

1. None

1.2 Other relevant measures, including new guidelines

Guidelines:

2. The Commission is empowered to publish guidelines to indicate its policy approach on any matter within its jurisdiction. In May 2015 the Commission issued “Guidelines for the Determination of Administrative Penalties” after taking into consideration the call by its stakeholders including the courts, for such guidance.

3. The Guidelines present the general methodology that the Commission will follow in determining administrative penalties for purposes of concluding consent orders, settlement agreements and recommending an administrative penalty in a complaint referral before the Tribunal. The Commission consulted a range of stakeholders and had regard to relevant case law in the drafting of these guidelines.

4. As a general approach, the Commission will apply the six-step methodology prescribed by the Tribunal in its jurisprudence when determining the administrative penalty that a firm will be liable to pay for contravening the relevant sections of the Act, namely:

Step 1: Determination of the affected turnover in the base year;

Step 2: Calculation of the base amount being that proportion of the affected turnover relied upon;

Step 3: Multiplying the amount obtained in step 2 by the duration of the contravention;

Step 4: Rounding off the figure obtained in step 3 if it exceeds the cap provided for by section 59(2) of the Act;

Step 5: Considering factors that might mitigate and/or aggravate the amount reached in step 4, by way of a discount or premium expressed as a percentage of that amount that is either subtracted from or added to it; and

Step 6: Rounding off this amount if it exceeds the cap provided for in section 59(2) of the Act.

5. The full text of these guidelines can be accessed at <http://www.compcom.co.za/wp-content/uploads/2015/01/Final-Guidelines-for-Determination-of-Admin-Penalties-MAY-2015.pdf>

Market Inquiries

- Healthcare

6. The Commission’s work in the market inquiry into Private Healthcare (“Healthcare Inquiry” or “Inquiry”), launched in 2014 is progressing well, with key milestones having been reached. Under the chairpersonship of former Chief Justice, Sandile Ngcobo, at the conclusion of the inquiry the Commission will have a better understanding of the complex dynamics in this market, particularly with regards to the cost drivers. The purpose of the Healthcare Inquiry is to determine whether or not there are anti-

competitive features in the South African private healthcare market and, if so, to identify them and their effects. The inquiry will probe, amongst others, the following issues:

- Factors driving costs, prices and expenditure in private healthcare;
- Market power and distortions of competition at various levels of the sector;
- Barriers to entry and expansion by firms at various levels of the sector;
- Factors limiting access by consumers to private healthcare, including affordability;
- Imperfect information as it affects consumers as well as firms in the sector;
- The impact of the regulatory framework (including various statutes, regulations and rules) on competition in private healthcare;
- The specific impact of interventions previously made by the competition authorities in regard to the healthcare sector; and
- The interaction between the public and private healthcare sectors.

7. The inquiry, which will culminate in the issuing of a report at its conclusion, will include the holding of public hearings during the 2015/16 financial year to unpack the key issues identified.

- Liquefied Petroleum Gas (LPG)

8. During the period under review the Commission initiated a market inquiry into the Liquefied Petroleum Gas (“LPG”) sector. The inquiry will probe issues arising in the following key themes to determine whether or not they prevent, lessen or distort competition in this market:

- Structural features of the market;
- High switching costs;
- Regulatory environment and its impact on competition; and
- Limited usage of LPG by households.

1.3 Government proposals for new legislation

9. None

2. Enforcement of competition laws and policies

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

2.1.1 Summary of activities of: - competition authorities; - courts;

10. In the year under the review, the Commission:

- The Commission intensified its cartel enforcement by undertaking multiple raids
- Initiated and investigated a total of 132 new cartel complaints and received six cartel complaints from members of the public.
- Concluded 36 settlement agreement which were confirmed as orders of the Tribunal;
- Referred 16 cartel cases to the Tribunal for adjudication;
- Completed three hearings at the Tribunal on abuse of dominance;
- Finalised three contested cartel cases in the Tribunal;
- Was involved in four appeal hearings in the Supreme Court of Appeal and the Competition Appeal Court respectively and in three High Court applications.
- Received 121 Corporate Leniency Applications
- Finalised 31 cartel investigations (15 were referred and 16 were non-referred)
- Granted four exemptions: one in the healthcare sector, one in the airline industry and two in the finishing industry.

2.1.2 *Description of significant cases, including those with international implications*

- Sasol excessive pricing case

11. During the year under review the Competition Tribunal made a ground breaking finding in favour of the Commission in an excessive pricing case against Sasol. The Tribunal imposed an administrative penalty of more than R500 million on Sasol, ruling that Sasol's prices for purified propylene and polypropylene to domestic customers, from January 2004 until December 2007, were excessive and in contravention of section 8(a) of the Act. Sasol lodged an appeal against the Tribunal ruling at the Competition Appeal Court (CAC). The CAC overruled the Tribunal's order, finding that Sasol's markup above the economic value of propylene and polypropylene was reasonable. The Commission is appealing the CAC judgement in the Constitutional Court, as it sets an adverse precedent in the computation of "economic value" by dominant firms. The appeal will give the Constitutional Court an opportunity to decide on the important matter of economic transformation which could impact materially on jobs and the growth in the sector.

- Phase 2 of the Construction Fast Track Settlement process

12. The Commission launched the Construction Fast Track Settlement process in February 2011, after uncovering widespread collusion in the construction industry. This was a special dispensation that the Commission offered to construction firms involved in bid-rigging, to enter into settlement agreements, on favourable terms, in exchange for voluntary disclosure of implicated projects. The first phase of this project was concluded in 2013 when the Commission concluded settlement agreements with 15 construction firms with penalties totalling R1.46billion collectively.

13. The Commission continued to investigate construction projects that were not settled under the Construction Fast Track Settlement under what is known as the 'Phase 2 Construction Investigation'. During this phase the Commission investigation included firms that:

- participated and settled certain projects under the Fast Track Settlement but refused to settle some projects in which they were implicated;
- participated in the Fast Track settlement but refused to settle projects they disclosed; and
- did not participate at all in the Fast Track settlement but were implicated by firms that participated and settled with the Commission

14. In terms of the Phase 2 Construction Investigation, the Commission imposed a penalty regime that resulted in higher penalties than those in phase 1, however, still encouraged firms that were willing to settle the implicated projects on terms better than when they would achieve if they prosecuted. During this phase the Commission finalised five settlement agreements. The firms who did not settle outstanding projects with the Commission were referred to the Tribunal for prosecution.

15. The dismantling of the cartel in the construction sector has set the industry on a new competitive trajectory. Purchasers of construction services, mainly Government, will as a result of the Commission's intervention in the sector, be able to obtain competitive prices. This will in turn reduce the costs to Government of rolling out its multi-billion rand infrastructure development projects. The dismantling of the cartel in the construction sector will also enable firms subjected to this collusive conduct to claim damages from the firms found guilty of collusion.

- Price fixing, market division and collusive tendering in respect of electric cables

16. In December 2014, the Competition Tribunal confirmed a settlement agreement between the Commission and ATC (Pty) Ltd (ATC) in respect of its involvement in a cartel with Aberdare Cables (Aberdare), Malesela Taihan Electric Cables (M-Tec) and Alcon Marepha (Alcon Marepha). This conduct occurred from 1998 to at least 2010.

17. ATC admitted having fixed prices, divided the market and tendered collusively with Aberdare when supplying power cables to mining companies and municipalities. It also admitted to having divided the market and tendered collusively with Aberdare, M-Tec and Alcon Marepha when supplying Eskom tenders Corp 89 and Corp 90 with electric power. Further, ATC admitted to colluding under the auspices of the Association Electric Cables Manufacturers of South Africa wherein members discussed and agreed on a quotation basis to escalate prices when bidding for short- and long-term tenders to supply power cables. This conduct amounted to price fixing, division of market and collusive tendering, which contravene sections 4(1)(b)(i), (ii) and (iii) of the Act. ATC agreed to pay an administrative penalty of R80 million, which represented 5% of its turnover for its 2010 financial year.

- Price-fixing in the pelagic fishing market

18. In July 2014, the Competition Tribunal confirmed a settlement agreement concluded between the Commission and Premier Fishing (SA) (Pty) Ltd (Premier) in respect of Premier's involvement in a cartel with other fish processors in the pelagic fishing market (CC vs Premier Fishing SA (Pty) Ltd, 2008Jul3827). Pelagic fish is canned fish, often consumed by the poor, and falls within the Commission priority sector of food. The cartel conduct was firstly in respect of price fixing of the catching fees that processors paid to skippers and crew for pelagic fish, and secondly, indirect price fixing of the price of canned fish in the context of processing agreements with other processors. The cartel conduct took place from 2001 to 2008. In terms of the settlement agreement Premier agreed to pay a penalty of R2 121 400 for contravening section 4(1)(b)(i) of the Act.

2.2 *Mergers and acquisitions*

2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws:*

19. During the year under review, the Commission received 395 merger notifications. This is a significant increase from the previous year's 320. The majority of mergers received were intermediate mergers. There was an unprecedented increase in mergers in the furniture retail markets, telecommunication industry and the dairy sector.

20. The Commission finalised 375 merger investigations, a marked increase from 329 in the previous year. Of the 375 cases finalized, 108 were large, 251 intermediate and 16 small mergers. Of the 375 finalised cases, 321 were approved without conditions, 43 with conditions, five cases were prohibited (compared with one in the previous year) and six cases were withdrawn after the Commission started its investigation or due to the Commission not having jurisdiction to investigate the mergers.

21. Of the 43 mergers approved with conditions, 39 had remedies aimed at addressing a public interest concern. This is a significant increase from 10 cases in the previous financial year. Most of the conditions imposed by the Commission were designed to remedy job losses, either through a moratorium restricting the number of job losses or retrenchments over a specific time period or by capping the number of job losses at a particular level.

22. Behavioural remedies to address competition concerns were imposed in three merger cases during the financial year. This is a significant drop from the 11 remedies imposed in the previous year. In the main, the three remedies were designed to address cross-shareholding (i.e. restrictions on directors to sit on the boards of competing firms and also limiting the exchange of competitively sensitive information) and to limit the restraint of trade in the sale agreement concluded between merging parties.

23. The Commission imposed one structural remedy on merging parties in the financial year. Details of this and other significant cases can be found below.

2.2.2 *Summary of significant cases.*

- Clover/Nkunzi

24. The Commission prohibited a merger between Clover SA (Pty) Ltd (Clover) and Nkunzi Milkyway Pty (Ltd) (Nkunzi) over concerns that the merger would have a negative impact on SMMEs as small farmers may not be in a position to negotiate better terms with Clover as they would with Nkunzi. The merging parties challenged the Commission's decision at the Tribunal, and the matter was settled with conditions aimed at addressing the public interest concerns identified by the Commission.

- Life Healthcare/Lowveld Hospital Group/Interstate Clearing

25. The Commission prohibited the proposed merger involving Life Healthcare Group (Pty) Ltd (Life Healthcare), Lowveld Hospital Group (Pty) Ltd (Lowveld) and Interstate Clearing (126) (Pty) Ltd. The Commission found that the merger would result in an immediate and significant increase in hospital tariffs for the Lowveld hospital once the hospital fee structure was changed from the current National Hospital Network (NHN)-based structure (which is used at Lowveld) to the Life Healthcare fee model. There was no credible technological, efficiency or pro-competitive gains submitted by the merging parties than could outweigh the competitive harm identified by the Commission. The merger also raised public interest issues, in that it had a significant negative effect on the healthcare sector in the city of Nelspruit.

The Commission's decision was challenged at the Tribunal but the parties later abandoned their application.

- Zimco Metals/Atlantis Metals

26. In the intermediate industrial input sector, the Commission found that the merger involving Zimco Metals (Pty) Ltd and Atlantis Metals (Pty) Ltd would lead to a monopoly in the lead anode market. However, if the transaction did not proceed, there would be substantial job losses as Atlantis would in all probability exit the market and Zimco would be a de facto monopoly. Through the proposed transaction, 101 jobs were saved. The Commission also found that the merger would have an impact on the local mining industry as mining companies used lead anodes in their production processes. The Commission approved the merger with conditions.

- Structural remedy in the Holcim/Lafarge merger

27. The Commission imposed a structural remedy in the Holcim Limited and Lafarge SA merger, in the cement industry. The Commission was concerned that Holcim's minority shareholding in Afrisam, though non-controlling and non-influential in nature, was sufficient to raise concerns around information sharing and possible collusion post-merger. This concern was exacerbated by the fact that Holcim had intimate knowledge of the Afrisam business as, until the beginning of 2014, Holcim used to provide Afrisam with technical assistance, which gave Holcim access to Afrisam's commercially sensitive information. Further, both Holcim and Lafarge have been implicated in cartel investigations in various international jurisdictions, including South Africa. In relation to South Africa, all the major cement manufacturers were implicated in the cartel. The Commission, therefore, imposed a condition that requires Holcim to divest its shareholding in Afrisam and that such shareholding should not be offered to any of the major cement manufacturers in South Africa. This condition was imposed to ensure that the merger does not create a structure that would be conducive to collusion. The Commission's decision was challenged at the Tribunal but the parties later abandoned their application.

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

Inputs into Policy & Regulation

- Financial Sector Regulation Bill ("Twin Peaks")

28. The Commission provided input into the first draft of the Financial Sector Regulation Bill (colloquially known as "Twin Peaks") in December 2013, and the National Treasury incorporated its input in the final version of the legislation. The "Twin Peaks" bill substantially alters the framework for regulating the financial sector. The first draft of the bill follows two policy papers that respond to lessons learnt in the 2008 global financial crisis: "A Safer Financial Sector to Serve South Africa Better" released with the 2011 Budget, and a "Roadmap for Implementing Twin Peaks Reforms", released on 1 February 2013. Following public comments on the first draft, National Treasury revised the Bill and published the second draft in December 2014. An analysis of the revisions indicates that the comments by the Commission and other stakeholders were positively considered. Some of the changes proposed by the Commission and accepted by National Treasury include:

- The definition of "Market Conduct Authority" was revised to "Financial Sector Conduct Authority" (FSCA). This removed potential confusion.

- The definition in the revised Bill of “financial sector regulator” is specific to the Prudential Authority (PA), the Financial Sector Conduct Authority (FSCA) and the National Credit Regulator (NCR);
- The definition of “organ of state” has been aligned to the definition in the Constitution and captures other regulators appropriately. A term and definition has also been added for “designated authority” to capture the role of other regulators of financial institutions; and
- Provisions were also added in the revised Bill (Section 29 (1)(f) and 53(1)(g)) so that each of the regulators may now enter into memoranda of understanding with the Competition Commission to cooperate and collaborate to promote sustainable competition in the provision of financial products and financial services.
- National Integrated ICT Policy discussion paper

29. In February 2015, the Commission submitted inputs to the Department of Telecommunications and Postal Services by way of comments on the National Integrated ICT Policy Discussion Paper. The submission covered various policy options seeking to address competition and access issues in several ICT and telecommunications markets, including broadband, broadcasting, infrastructure, local loop unbundling, and spectrum management, among others. The Commission’s submissions considered the likely impact of the various policy options that are being considered on competition and access with a view to ensuring that competition is enhanced and any risks are mitigated. The Commission also commented on the complementarity of the role of the sector regulator and competition authorities in addressing competition and access problems bedevilling the ICT and telecommunications sector.

- National Communications Task Team

30. The Minister of Communications set up a National Communications Task Team with the aim of reviewing, among others, the regulatory framework for the South African broadcasting industry. The Commission was asked to provide input on the dynamics of competition in the broadcasting sector in South Africa, with a particular focus on the Pay-TV segment. In making submissions, the Commission considered the likely competitive effects of the practice of exclusive contracts in respect of premium content, technology convergence and the facilitation of new entry and the competition implications of set-top box interoperability.

4. Resources of competition authorities

4.1 Resources overall (current numbers and change over previous year):

4.1.1 Annual budget (in your currency and USD):

	ZAR '000	USD '000
Total Revenue	248,381	18,558

4.1.2 Number of employees (person-years):

Figure 1: Staff compliment 2009/10 to 2014/15

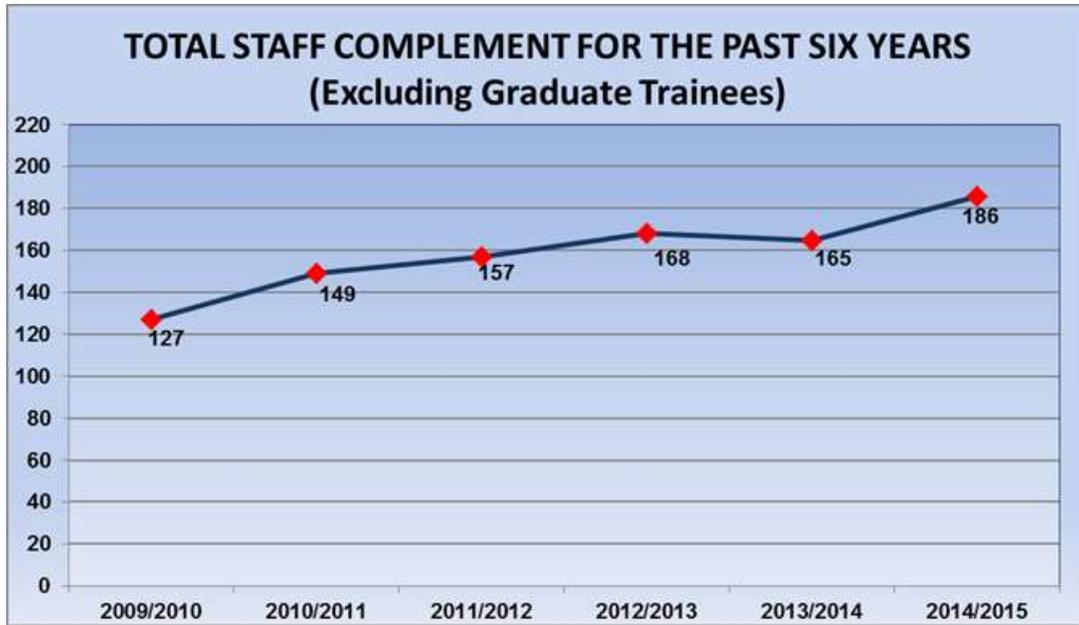


Table 1: Break down of Economists, Lawyers, Other Professionals and Support Staff

Category	Number of staff
Economists:	57
Lawyers:	63
Other professionals	7
Support staff:	59
All staff combined	186

4.2 Human resources (person-years) applied to:

Table 2: Staff dedicated to Enforcement Activities, Research, Merger Analysis, Market Inquiries and Legal Services

Division	Total Staff Compliment (Including Admin Staff)	Admin Staff
Mergers & Acquisitions	24	2
Enforcement & Exemptions	26	2
Cartels	19	2
Policy & Research	30	4
Healthcare Inquiry	12	5
Legal Services	20	2

4.3 Period covered by the above information:

31. 01 April 2014 to 31 March 2015

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

- Impact Assessments

32. “Impact assessments” refer to the economic studies the Commission undertakes to evaluate its work in markets. The purpose is to demonstrate to stakeholders the harm of anti-competitive conduct and the gains arising to the public from the Commission’s interventions. Impact assessments are carried out under three main categories:

- Estimation of the impact of anti-competitive conduct;
- Ex-post evaluation of specific enforcement interventions; and
- Evaluation of the broader impact

33. During the period under review the division completed the following four impact assessments:

- The Banking Enquiry Review;
- The Pioneer Agro-Processing Competitiveness Fund Assessment;
- The Massmart Supplier Development Fund Assessment; and
- The Milk Sector review.

34. Details of impact studies are provided in the ‘15 Years of Competition Enforcement’ publication which can be accessed via this link: <http://compcom.co.za/www15.cpt4.host-h.net/wp-content/uploads/2014/09/15-Years-of-Competition-Enforcement.pdf>

- Publications and conference papers

35. Commission staff published four articles in local and international peer-reviewed journals, as detailed in table 3 below. The Commission also presented a number of papers at international and local conferences on topics related to competition policy and economics as reflected in table 4 below.

Table 3: Articles published

Author(s)	Title and Publication
Liberty Mncube	The South African Wheat Flour Cartel: Overcharges at the Mill, <i>Journal of Industry, Competition and Trade</i> , 2014 (14) 4: 487-509
Hardin Ratshisusu	Limiting Collusion in the Construction Industry: a Review of The Bid-Rigging Settlement in South Africa, <i>Journal of Economic and Financial Sciences</i> , October 2014 7(S), pp 587-606
Thembaletu Sithebe & Tshekishi Kolobe	Is Vertical Separation a Prerequisite to Enhancing Competition in the South African Energy Industry?, <i>Journal of Economic and Financial Sciences</i> , October 2014 7(S), pp 527-546
Junior Khumalo, Jeffrey Mashiane & Simon Roberts	Harm and Overcharge in the South African Precast Concrete Products Cartel, <i>Journal of Competition Law & Economics</i> , 10(3), 621–646

Table 4: Papers presented at international conferences

Author/Presenter (s)	Title and Event
Selelo Ramohlola & Tapera G. Muzata	Review of Recent Competition Commission of South Africa's Experiences in the Telecommunications Sector Creation of Conditions for effective Competition and Suppression of Violations of Competition Law in Telecommunications Markets, Russia
Grace Mohammed	The Elusive Constructs of Barriers to Entry and Countervailing Power: Post-Merger Analyses, The SA Experience Eighth Annual Conference on Competition Law, Economics & Policy
Kholiswa Mnisi	Competition Policy Perspective: The Mis-regulation of the South African Fishing Industry Eighth Annual Conference on Competition Law, Economics & Policy
Magdaleen Van Wyk	Competition and Trade Policy - Frenemies? Eighth Annual Conference on Competition Law, Economics & Policy
Mziwodumo Rubushe	Fostering Competition and Saving State Resources by Combatting Bid-Rigging Eighth Annual Conference on Competition Law, Economics & Policy
Liberty Mncube, Thembaletu Sithebe & Katerina Barzeva	Is Breast the best? Evaluating the Price Effects of the Nestlé/Pfizer Merger in the South African Infant Milk Formula Market Eighth Annual Conference on Competition Law, Economics & Policy
Hariprasad Govinda, Junior Khumalo & Siphamandla Mkhwanazi	Competitive Outcome Post- Intervention of South African Cement Cartel 9th Anniversary International Conference on Competition and Regulation (CRESSE), Greece
Tembinkosi Bonakele	Airline Competition in South Africa OECD Round Table in Paris
Liberty Mncube	Generic Pharmaceuticals and Competition OECD Round Table in Paris
Romeo Kariga & Neelofah Ally	Can The Commission Fix Competition Problems with Market Enquiries? 1st Annual Competition and Economic Regulation (Acer) Week, Southern Africa
Ratshidaho Maphwanyana	The Cartel Decision-Making Equation and Cartel Deterrence: A South African Perspective 1st Annual Competition and Economic Regulation (Acer) Week, Southern Africa

SUBMISSION BY THE COMPETITION TRIBUNAL: 2014/2015

Executive Summary

1. Large mergers and consent order agreements (settlements) continued to make up the bulk of the Tribunal's work in 2014/15, together constituting 80.6% of our case load.
2. On average the Tribunal has seen a steady increase in the number of large mergers over the years. This trend is simply a reflection of the extent of consolidation and the growth in economic activity taking place in South Africa. It is worth noting that in the past 15 years the Tribunal has placed employment related conditions on more than 29 mergers and prevented more than 3803 job losses as a result of mergers.
3. The increase in the number of consent orders or settlements heard by the Tribunal bodes well for the administration of competition law in this country. It means that the Tribunal can focus on cases where there is a significant dispute of fact or law, ensuring that our resources are spent on the more significant cases.
4. Cases decided in this financial year compared to recent years:

Type of case	2013	2014	2015
Large merger	69	97	98
Intermediate merger	7	-	4
Complaints from the Commission	4	1	2
Consent orders/settlements	14	42	43
Private Complaints	2	1	4
Interim Relief	-	3	1
Procedural matters	27	42	23
Exemption appeals	1	-	-
Total	124	186	175

Norman Manoim
Chairperson
Competition Tribunal

1. Changes to Competition Laws and Policies, proposed or adopted

- Please refer to the South African Competition Commission's report.

2. Enforcement of Competition Laws and Policies

2.1 Action against anticompetitive practices, including agreements and abuse of dominant positions

2.1.1 The Tribunal confirmed 43 settlement agreements, issued orders in 6 complaint referrals, heard 1 interim relief cases and 23 procedural matters.

2.1.2 *Description of significant cases*

Horizontal agreements

Instances of bid-rigging in the construction industry continued to make a regular appearance in our settlement hearings. The construction industry settlements involved high value tenders between large firms that had been collusively rigged. This year we confirmed nine more settlement agreements in this industry with a collective penalty of R81 019 820.73. This case relates to bid-rigging and collusion in the construction of the stadiums for the 2010 FIFA Soccer World Cup in 2009. The Commission embarked on a fast track investigation in 2009 by inviting firms that were involved in collusive conduct and bid-rigging to disclose such conduct and engage in settlement negotiations with it. As a result 21 firms in the construction industry came forward with information on 300 projects worth an estimated R 47bn, of these 160 had prescribed in terms of the Act which left 140 projects susceptible for prosecution. It took the Commission with its limited resources close to four years to investigate these allegations.

We also heard a large number of collusive bidding cases involving low value tenders by relatively small firms in the furniture removal industry. However the extent of the behaviour revealed was disturbing. Although settlements continue to come in it is alleged that the practices involved over 60 furniture removal companies. In respect of the number of firms involved and geographical scope this is the largest cartel uncovered. The modus operandi followed by the cartel was Firm A would offer to obtain two other bids from its "competitors" on behalf of the customer when requested for a quote. Company A would then request its two "competitors" to submit cover bids such that company A was all but guaranteed being awarded the work.

Abuse of dominance

The Competition Commission v Sasol Chemical Industries

The excessive pricing case brought by the Commission against Sasol Chemical Industries Limited (SCI) was concluded in 2013 after 29 days of hearing. We issued our judgment in June 2014. The Tribunal found Sasol Chemical Industries or SCI, a subsidiary of Sasol, had charged domestic customers excessive prices for purified propylene and polypropylene between January 2004 and December 2007. It imposed a penalty of R 205.2m in the case of purified propylene and R328.8m in respect of polypropylene. The panel also imposed remedies for determining SCI's future pricing of both products that would see SCI's prices charged to local customers drop. Sasol successfully appealed the Tribunal's decision to the Competition Appeal Court, however, the Competition Commission has since appealed to the Constitutional Court.

2.2 *Merger and Acquisitions*

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.

The Tribunal approved eight large mergers with employment conditions in the past financial year. Two mergers need special mentioning here, namely the offer by Lewis Stores to buy all the viable stores owned by Ellerrine's Beares division, as part of the African Bank failure, and the merger between BB Investment Company and Adcock Ingram Holdings. Although neither of the mergers raised any competition concerns both raised important public interest concerns.

Some Statistics

- Total number of new large merger cases received – 84
- Large mergers approved with conditions – 18
- Intermediate mergers heard – 4
- All intermediate mergers were approved subject to conditions.

2.2.2 *Summary of significant merger cases*

1. Lewis Stores, a furniture retailer, acquired 63 Beares furniture stores from Ellerrines as part of business rescue proceedings instituted on 7 August 2014 in terms of the new South African Companies Act. The transaction was filed with the Tribunal on 6 November 2014. On request of the parties the Tribunal heard the merger on an urgent basis on 12 November 2014 and approved it on the same day. The transaction lead to a geographical overlap of 50 stores out of the 63 that were being acquired and in 4 towns the merged entity would have a monopoly. However, in light of the reality that, without the transaction Beares would exit the market as a competitor we concluded that it was unlikely that the transaction would lead to a lessening of competition. Moreover, there were substantial public interest factors that justified approving the merger. If Beares were to be liquidated 1159 employees would be retrenched. Approving the transaction meant that fewer retrenchments would take place since the transaction offered an opportunity to save 393 jobs and would create 126 new positions.
2. On 19 August 2014 the Tribunal approved an acquisition by Adcock Ingram Holdings (Pty) Ltd of a 34.5% shareholding in BB Investment Company (Pty) Ltd, a wholly owned subsidiary of Bidvest Group Ltd. There were no competition concerns arising from the merger but the deal raised employment concerns which came about as a result of Adcock embarking on a restructuring exercise. In this exercise, Adcock had initially identified a total number of 51 positions as being redundant.

However, the Commission was later informed by Bidvest that it intended to implement a turnaround strategy upon completion of the merger that could institute further retrenchments over and above the 51 positions. In order to safeguard any further negative effects on employment that would be introduced by Bidvest after the merger, the Commission recommended that the Tribunal approve the transaction subject to a condition that would limit the number of retrenchments at Adcock to only the 51

employees identified and that it impose a moratorium on “merger specific retrenchments” for a period of three years. The Commission also alleged that Bidvest had already acquired control over Adcock before filing the merger. After examining the facts before it, the Tribunal found that Bidvest had at least acquired material influence over Adcock before filing the transaction with the Commission and therefore concluded that the further retrenchments were merger specific. The Tribunal consequently approved the merger on condition that Adcock would not retrench any employees for one year from the day the deal was approved.

This decision was significant for two reasons. First, the Tribunal decided that mergers could have an impact on retrenchments even when they created no redundancies, if the policy of the firm towards retrenchments post-merger was significantly different to what it might have been without the merger. In this case the Tribunal found it was. Second, the Tribunal held that where there was no proper consultation with employees on the issue of whether mergers contemplated were merger specific or not, it would hold that consultation was inadequate. In the reasons the Tribunal explained that because of certain pre-existing factors the distinction between merger specific and operational retrenchments had become blurred and so it was prudent to prohibit all mergers for a period.

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

Please refer to the South African Competition Commission report.

4. Resources of the competition authorities

4.1 Resources overall (current numbers and changes over previous year)

4.1.1 *Annual budget – R 36.64 million/ US\$ 2.7 million*

4.1.2 *Number of employees*

- Economist: 1 Case Manager
- Lawyers: 6 Case Managers
- Support Staff: 16 employees
- All staff: 23 employees

4.1.3 *Human resources*

- The 7 Case Managers manage all restrictive practice cases and merger cases allocated to them.

4.2 Period covered by the above information

- 1 April to 31 March 2015

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

Please refer to the South African Competition Commission’s Report