



*competition commission*  
*south africa*

*annual report*  
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# *Foreword from the* **Minister of Trade & Industry**

During the past year, the impact of globalisation and the internationalisation of markets on our economy was clearly felt. Pressure on the exchange rate fed through into higher interest rates for business and consumers, but also created opportunities for exporters. The effects of exchange depreciation were particularly pronounced in the case of food prices, highlighting again the need for competitive domestic markets. The investigation into food price increases by the Competition Commission underscores the relationship between competition and consumer welfare. The broader work of the Competition Commission in promoting competitive domestic markets is critical in ensuring that South African consumers, especially the poor, have access to fair prices.

In view of the degree of internationalisation of the South African economy, partnerships and cooperation between the regional competition authorities become important in ensuring consistency and harmonisation of competition law regimes. The Competition Commission has been very active in this regard and within the broader framework of NEPAD. Initiatives have included the training of competition officials from the region and the formation of a regional forum for representatives of competition authorities of the Southern and Eastern African

Countries. The main purpose of this forum is to encourage closer co-operation between competition officials to discuss best practice and to ensure that competition law enforcement in the region contributes to the development of the regional economies. Co-operation initiatives have extended beyond the regional scope to developed countries as well. The Competition Commission has hosted training seminars in conjunction with the OECD and has also been instrumental in the formation of the International Competition Initiative, a forum for all competition officials to share ideas on methods to improve competition regulation.

The events of the past year have once more brought to the fore that the Competition Commission, with both its domestic and international agenda, is one of the key regulatory agencies in South Africa. I am confident that the Commission will continue its work into the future with as much enthusiasm, dedication, efficiency and effectiveness as it has demonstrated up to now.

*Mr Alec Erwin, MP*  
*The Minister of Trade and Industry*



*Mr Alec Erwin, MP*  
*The Minister of Trade and Industry*

## *Review by the* **Director-General**

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In ensuring effective regulation, it is not only the vigilance of the regulator that is important, but also its ability to communicate effectively with stakeholders and its efficiency. It was very heartening to see the approach adopted by the Competition Commission in this regard. As the first independent regulator to introduce service standards for itself and clarifying to stakeholders what they can expect from the institution, the Competition Commission is setting a standard for regulation and regulatory efficiency in South Africa.

In setting standards for itself, the Competition Commission considered the views expressed by stakeholders and also considered international best practice by benchmarking itself against competition regulators in other countries. This sets the scene for the establishment of regulatory excellence in South Africa and in an international context. The international context cannot be underestimated, as it is a key consideration for foreign investors.

The approach adopted also illustrates the willingness of the regulator to engage with business, big and small, and other stakeholders, including labour, and its responsiveness to criticism.

The Department of Trade and Industry congratulates the Competition Commission for its initiative to continuously improve its service delivery and to exceed expectations. We are confident that the Commission will continue to meet its challenges with the greatest of success.

*Dr Alistair Ruiters*

*The Director-General of the Department of Trade and Industry*



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*The Director-General of the Department of Trade and Industry*

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# 1. Commissioner's Overview

## 1.1 Reflecting on 2001/2002

The year under review will be noted for the Competition Commission's focused drive to investigate and prosecute anti-competitive practices. Anti-competitive practices, such as abuses of dominant positions and collusion, are very prevalent in our economy. They create barriers to entry, result in price increases for consumers and impede the efficient functioning of the economy. It is therefore critical that we increase our enforcement efforts in this regard. At the same time we have continued our activities in the area of mergers and acquisitions, and advocacy. We have reviewed and prohibited anticompetitive mergers that pose a threat to consumer welfare, and at the same time approved those that result in efficiencies, innovation and contribute to the competitiveness of the South African economy.

All these activities indicate the successful implementation of competition policy, and ensure that the interpretation of the Act is consistent with the objectives set out in the Act. In this regard, a number of key cases need to be mentioned.

The Commission succeeded in its first completed prosecution before the Tribunal. The Commission prosecuted Patensie Citrus, a company in which a number of farmers in the

Gamtoos Valley in the Eastern Cape hold shares. Prior to its incorporation, when government deregulated the agricultural sector, Patensie was a co-operative. In the prosecution, the Commission was concerned with various articles of association of Patensie, especially those requiring farmers to sell their whole crop to Patensie, even if they could obtain better prices in other markets. The effect of these clauses was that they protected Patensie from competition and "locked-in" the farmers, thus creating a captured market. The Tribunal, in upholding the Commission argument, ordered that the offending articles of association be removed. This enabled the farmers to find other markets for their products.

The prosecution of SAA is also continuing, with the matter referred by SAA to the High Court for review on administrative grounds. When this review process is completed, the prosecution in the Tribunal will go ahead. Action was also taken against Bernina Saskor for abusing its dominance. Bernina Saskor acknowledged its contravention of the Act and settled with the Commission.

*Adv. Menzi Simelane*  
*Commissioner: Competition Commission*

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The Commission also reached a settlement with Tourvest Holdings. In this case, the latter had finalised and implemented a merger without notifying the Commission. The Tribunal imposed a R200 000.00 fine in this regard.

With regard to our advocacy activities, the Commission engaged various stakeholders with a view to create an environment for greater understanding of competition issues. The Commission met on a regular basis with representatives of Trade Unions. This high level consultative forum enables the Commission and Labour to maintain contact and dialogue on issues affecting employment in mergers and acquisitions. The challenging issue this year has been the need for unions to be provided with more information on mergers. Some of the information that unions require is confidential. Whilst this issue is still to be finalised, unions are able to participate in mergers.

It is imperative that the Commission's internal processes, standards of service delivery and relationship with our stakeholders is effective. As part of this process an internal communication function was introduced in October 2001 which included an internal branding drive, workshops and a fun run.

The Commission also decided to focus the conference for 2002 on service standards. Stakeholders reviewed Commission processes and procedures at this consultative conference in March 2002.

The general theme was "Striving for Excellence". The programme focused on reviewing procedures and setting service standards in consultation and discussion with practitioners, business and trade unions. The aim was to bring the Commission more in line with international standards with objectives such as improving relationships with practitioners, addressing negative perceptions of the Commission, agreeing on standards with practitioners, obtaining feedback from practitioners and business, and adopting best practices that are operational, client responsive, and as efficient and consistent as possible. Originally 120 delegates were invited. However, due to interest 139 delegates eventually attended.

In the international arena, the Commission has increased its co-operation with competition authorities in the SADC region and internationally. As part of this commitment the Commission hosted the first meeting of the Southern and Eastern African Competition Forum with a workshop in Pretoria in November 2001, involving competition officials in Southern and Eastern African countries. The main objective of the Forum is to enhance voluntary co-operation on all aspects of competition policy. As more transactions take place in our respective economies, competition issues have also been raised. In this regard, the Forum enables competition officials to discuss common issues of interest, particularly non-confidential case information. In addition, together with the Tribunal, the Commission has been networking organisations for senior competition officials in order to address, amongst others, common practices relating to the enforcement of the members' respective competition laws. We have also contributed to the representations by the Department of Trade and Industry to UNCTAD and WTO on various competition issues, particularly the discussions on the framework for multilateral agreements.

In February 2002 a seminar on the enforcement of competition law in SADC countries was held in Pretoria under the auspices of the Organisation for Economic Co-operation and Development (OECD) which the Commission co-funded. The seminar allowed for the sharing of, among others, enforcement experiences among competition offices, improving the quality of economic and legal analysis, developing contacts among competition officials, and discussion and exchanges of ideas on a wide range of competition issues.

The year ending 31 March 2002 saw a significant decrease in the number of merger notifications with only two hundred and twenty (220), compared with four hundred and seven (407) in 2000/01. This decrease can be attributed to the change in the notification thresholds, which became effective in February 2001. It is interesting to note that although the number of mergers decreased generally, the number of large mergers increased from sixteen (16) to forty seven (47). In addition, the level of complexity of the cases increased during the past financial year. More and more cases require the involvement of team members from other divisions and the use of industry specialists and consultants in order to do thorough analysis.

Table 1 below gives an indication of the types of mergers filed in the year 2001/02. There was a decrease in conglomerate mergers, but an increase in management buy-outs. Management buy-outs are considered to be non-problematic and pro-competitive as they usually signify a new entrant into the market replacing another. Such entry does not change the concentration level of the market of the remaining players.

**Table 1: Mergers by type**

Type of merger	Percentage (%)	
	2001/02	2000/01
Purely horizontal	66.0	62.0
Purely vertical	9.5	9.0
Conglomerate	13.0	22.0
Management buy-out	10.5	2.0
Horizontal-vertical mix	1.0	5.0
<b>Total</b>	100	100

Merger cases of note include the prohibition by the Commission of the merger between Mondi and Kohler Cores and Tubes. The case also involved an objection by Diversified Cores and Tubes, a competitor to the merging parties. The transaction would have created the only vertically integrated entity in the core and tube manufacturing market, and by using its dominant position as the supplier of raw materials, the merged entity would have been able to raise the costs of its competitors and thus force them out of the market for the supply of cores and tubes. Furthermore, the Commission found that the merger would allow the foreclosure of new entrants from the market. The efficiencies that could be realised were not sufficient to outweigh the anti-competitive concerns raised by the proposed merger.

The Commission also recommended the conditional approval of the Unilever and Robertsons merger. The merger review revealed a horizontal overlap in various product markets in which the parties are strong competitors, particularly in soups and sauces. Unilever controls the Royco brand and Robertsons the Knorr brand. These two brands are



known for the many products that compete with each other and are largely used in many South African households. The analysis further found that the parties would, after the merger, have high market shares and that despite countervailing power, be able to exercise market power in a highly concentrated market. The Commission therefore recommended the divestiture of the Royco brand and some products in the Knorr brand. On review of the merger by the Competition Tribunal, the recommendations were confirmed.

The Commission prohibited the proposed merger between Astral Foods Limited (Astral) and National Chick Limited (Natchix). The latter had expanded its broiler activities to animal feed through Nutrex Holdings Limited. As a result, it became an effective competitor to Astral, which is also in the broiler and animal feed markets. As a strong competitor, Natchix had delivered benefits to customers by forcing other market participants to deliver better products at reasonable prices. The proposed merger would therefore have resulted in the removal of a very effective competitor, particularly in the market for day-old chicks. It must be noted further that Astral controls the supply of the Ross breed chicken and Natchix is its partner. Rainbow Chicken controls the supply of the Cobb breed chicken, which is produced for internal use in Rainbow activities. These two breeds of chickens are sold throughout South Africa. Basically Astral and Rainbow, with their control of the supply of the two breeds of chickens, would be a duopoly in the South African market with the removal of Natchix.

The parties appealed the decision. The Tribunal, noting the concerns of the Commission, approved the merger subject to certain stringent conditions, including the divestiture of the Nutrex feed mill to a third party, and the guaranteed supply of chicken for Astral customers.

The Enforcement and Exemption Division considered one hundred and twenty eight cases (128) in 2001/02 of which 35 were carried over from the previous year, and ninety three (93) new complaints were received. Most of these complaints involved sections 8 and 9 of the Act which deal with abuse of dominance by a dominant firm.

A number of cases were referred for prosecution to the Tribunal. These included a complaint against the major pharmaceutical manufacturers and their exclusive distributor, International Healthcare Distributors (IHD). The Commission concluded that the structural arrangement with IHD facilitated collusion by the manufacturers and resulted in them engaging in, inter alia, price-fixing and fixing trading conditions. It was the view of the Commission that these practices by the manufacturers substantially prevented and lessened competition in the market for the supply and distribution of various pharmaceutical products. This was one of the most serious contraventions of the Competition Act. The matter is currently in the High Court on review.



Another matter that has been referred to the Tribunal for prosecution involves South African Airlines which is alleged to be abusing its dominant position in the market. During June 1999 Nationwide Airlines (Pty) Ltd lodged a complaint with the Commission alleging, inter alia, that SAA was providing travel agent-incentive-overriding-commissions in respect of domestic travel, and that it was also providing incentive schemes by way of travel bonuses to travel agents' consultants. These exclusionary practices are in violation of Section 8 of the Act, in that they have the effect of excluding other competitors from either entering or expanding in a market. The consequence is that competition is substantially and negatively affected. The Commission referred the complaint to the Tribunal for prosecution. SAA has brought an application in the High Court against the Commission for review of the Commission's decision to refer the matter.

Exemptions from the application of Chapter 2 (the horizontal, vertical and abuse of dominance provisions) may be granted in the public interest. An exemption was granted in two cases where it was necessary to assist small business and a black economic empowerment firm to become competitive. A five-year exemption was granted to Ring Pharmaceutical Distributors which buys in bulk for 33 individually owned small pharmacies, and a five-year exemption was granted to Shell and Tepco for a joint venture agreement which would allow Tepco, a black empowerment company, to become competitive.

## 1.2 Meeting our objectives

The Competition Commission derives its mandate from the Competition Act, and in particular the six objectives of the Act. The Competition Commission has reviewed its activities for the year in relation to these objectives.

### **Objective 1: Promote efficiency, adaptability and development of the economy**

In order to meet the above objective, it is critical that the Commission is able to implement the Act effectively, ensure that the interpretation thereof is consistent and give meaning to the intention of the legislature, and achieve the objectives set out.

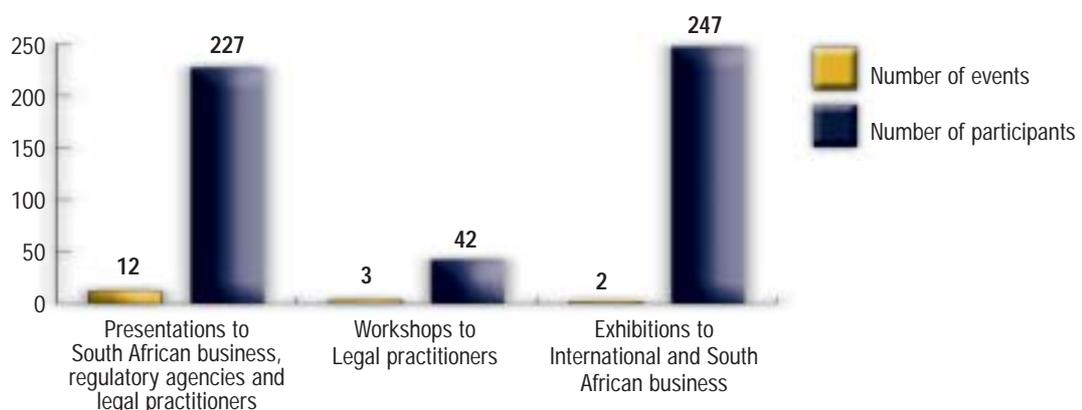
With the removal of section 3(1)(d) in the Competition Amendment Act 39 of 2000, the Competition Commission has jurisdiction over competition matters across all sectors. This means that the Commission shall have concurrent jurisdiction on competition matters with other regulatory bodies who have similar competencies. In order to facilitate

the concurrent jurisdiction, the South African Regulators' Forum was launched. The Forum will serve as a platform for regulators to discuss issues of common interest and to facilitate coherence and consistency in the application of competition policy and other government policies. The significance of this Forum is already apparent in that it has assisted in accelerating the process of negotiating memoranda of agreements between the Commission and other regulators in respect of concurrent jurisdiction.

The Commission and the Independent Communications Authority of South Africa (ICASA) have, in principle, concluded an agreement in terms of which concurrent jurisdiction will be exercised in respect of competition matters in the broadcasting and telecommunications sectors. This agreement, which was published for comment, was the first to be finalised. Others are due to be concluded in due course.

One of the mechanisms for promoting efficiency and development of the economy, is the promotion of voluntary compliance with the Act. As part of this advocacy initiative, the Commission conducts presentations, workshops and meetings with all stakeholders, particularly labour and business, either directly or through their representatives. Through these events, companies are alerted to the practical implications of the Act for their members and businesses respectively. For practitioners, it is aimed at highlighting the important aspects to consider when preparing a merger filing or drafting agreements for companies. Thus, presentations sometimes relate to specific issues or sectors, in order to address the concerns that companies may have in those sectors. Approximately thirty two (32) meetings and twelve (12) presentations were held on request by companies or practitioners in order to obtain clarity and guidance on the application of the Act to specific transactions, agreements or practices. This does not include case-related meetings on mergers and complaints. The positive impact of these events is seen through the improvement in the quality of filings and submissions to the Commission, which also contributes to our efficiency in respect of turnaround time.

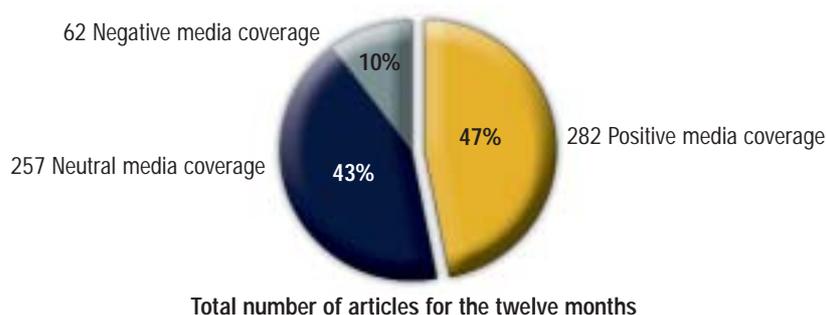
**Table 2: Events organised by the Competition Commission (April 2001 – March 2002)**



The Commission has also made presentations to the Portfolio Committee on Trade and Industry providing feedback on its activities and commenting on the Department of Trade and Industry's policy on Accelerating Growth and Development: The Contribution of the Integrated Manufacturing Strategy. A presentation on the Transport White Paper was also made to the Portfolio Committee on Transport.

The dissemination of information through the media plays a vital role in assisting to promote voluntary compliance with the Act. The media is essential in informing stakeholders about competition matters. During the period under review, thirty three (33) media releases were issued and approximately 120 media interactions were held. A breakdown of the type of coverage received is outlined in Table 3 below. From the data, it is clear that most of the articles generated were positive (47%), while a significant number of the articles were neutral (43%). Only a very small percentage (10%) were negative.

**Table 3: Media monitoring results (April 2001 – March 2002)**



In addition to the above and a quarterly in-house newsletter, the Commission also placed a number of advertorials in widely circulated publications, including the Labour Bulletin, The Black Business Quarterly, and The Business Bulletin. The Commission also did a profile feature in the Finance Week. Two additional publications - The Competition Act: A Consumer Guide and The Competition Act: A Guide for Trade Unions – were also produced and distributed to stakeholders.

The Policy and Research division has been involved in a number of sector studies including: broadcasting, state owned enterprises (CSIR and SABS), the information communication technologies (ICT) industries, banking industry, telecommunications, health care sector and ports, creating improved understanding of these sectors when reviewing mergers or other practices. Through this Division and the Commissioner's Office, the Commission made policy recommendations on the regulation of the sugar industry, Health Department regulations, Ports White Paper and directions on Telecommunications.

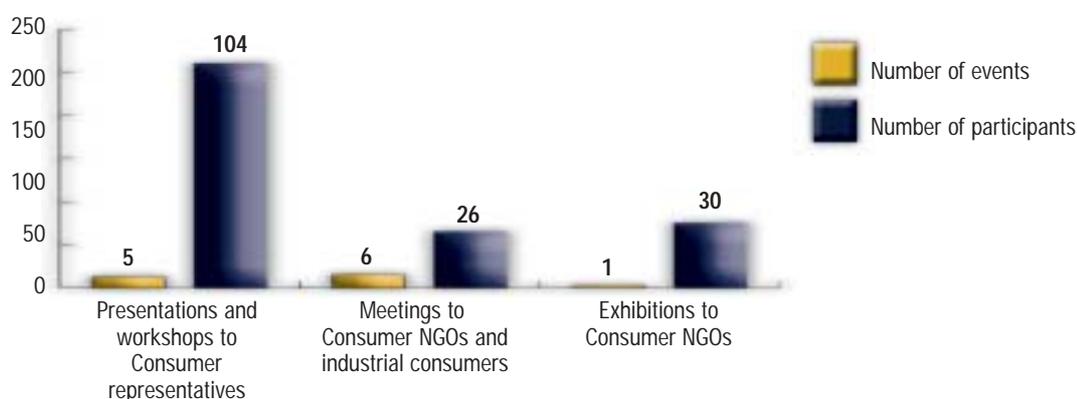
## **Objective 2: Provide consumers with competitive prices and product choice**

One of the main goals of competition policy is to monitor the structure of markets so that practices and mergers that have a negative impact on consumers are addressed. This will ensure that consumers benefit from the growth of the economy through product choice and competitive prices. The cases mentioned earlier in the overview contributed to achieving this objective. In addition, the education of consumers on the Competition Act plays an important role. Meetings, presentations, workshops and exhibitions are generally utilised as the main educational tools to assist stakeholder groups to understand the regulatory framework within which the Commission operates. Presentations and workshops were targeted at advocates of consumer rights, non-governmental organisations that play an active role in addressing public interest issues, empowerment forums and representatives of small and medium-sized enterprises. Workshops were in the form of detailed presentations and the resulting discussion sessions were aimed at work-

shopping the Act and familiarising stakeholders with the implications of the Competition Act on their activities.

The table below gives an indication of the activities performed by the Commission in raising awareness among consumers. Through this interaction with consumers, the Commission has seen improvement in the submission of complaints filed on prohibited practices. If the trend of quality submissions improves, this will impact positively on the turnaround times in our Enforcement and Exemptions division.

**Table 4: The number of events targeting consumer representatives and participants**



### **Objective 3: To promote employment and advance the social and economic welfare of South Africans**

In order to maximise the participation of trade unions and employee representatives in the proceedings of the competition authorities, the Commission embarked on initiatives in recognition of the fact that in most cases where companies merge, employees of the merging firms are generally affected. Many are retrenched as a result of the mergers. It is important, therefore, that labour is informed and educated on the impact of the Act on employment and that where mergers and acquisitions result in significant job loss, their views are taken into account.

One of the initiatives to achieve this included the establishment of a Consultative Forum between the Commission and General Secretaries of Trade Unions. The purpose of the Forum is to bring together senior trade union officials and senior Commission officials to discuss and debate issues of mutual concern in order to facilitate broader policy-oriented discussions on the impact of mergers on employment. It is hoped that this will also serve as a vehicle to facilitate a better working relationship between the Commission and trade unions, and assist the unions to build up capacity to make representations on mergers.

Two events reaching out to various trade unions and federations were held. The first event, a presentation to Ditsela, an educational organisation for trade unions, was attended by 26 trade unionists. The second was a general workshop attended by senior union officials from the three major federations and a number of independent trade unions. Ten (10) other training sessions were conducted in various areas around the country, which were targeted at a certain category within the labour movement, particularly those unions that are mostly affected by the mergers.

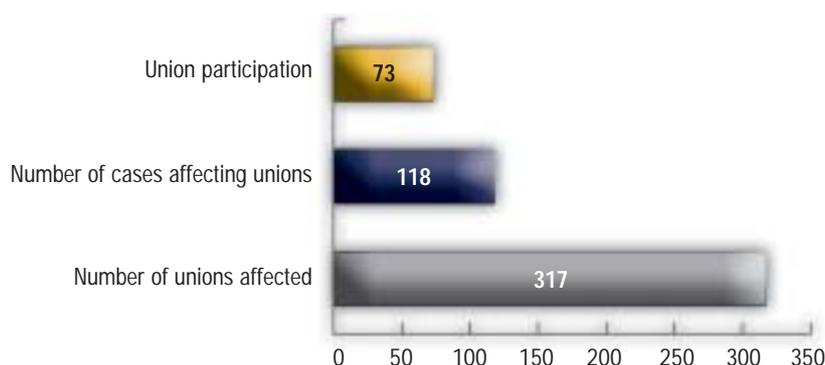
Therefore, senior representatives such as training and legal officers were invited to attend these sessions. In total, 257 trade union officials were reached through the above events and activities.

Trade union participation in merger cases has improved. Generally, it has been spread across different sectors of the economy. Such participation has involved the submission of representations on all aspects of merger review and not just employment issues. An example is the Unilever/Robertsons case where three different trade unions submitted a joint submission on, inter alia, job loss and price increases.

In order to reach more union officials, the following articles on union participation were printed in various publications to raise awareness and keep trade unions updated on issues. 'Trade unions and mergers and acquisitions' published in the South African Typographical Journal, 'SA's 'unique' consultative forum on competition issues' - SASBO News, 'Mergers and Acquisitions, it is a union's right to be informed' - Numsa Bulletin advertorial, 'Trade union participation during 2001' - South African Labour Bulletin.

The above activities have contributed significantly to improving the implementation of the Act and ensuring that the interests and concerns of labour on competition issues are considered and addressed. The table below indicates the cases where trade unions made representations. Most industries, such as mining, food and manufacturing have more than one trade union, hence the bigger number of unions affected. Only twenty (20) trade unions participated in all merger cases and only four (4) unions participated more than five times. Those are mostly unions who have benefited from presentations and training workshops on the Act.

**Table 5: Union participation in mergers that may affect employment**



The percentage of cases where job losses were anticipated as a direct result of the mergers filed, was 6% in 2000/01 and nearly 25% in 2001/02. This is a significant increase in the number of cases with anticipated job losses. Most of these were in the mining sector. The total number of job losses anticipated in all merger cases filed was seven thousand seven hundred and thirty five (7 735) and employment gain was estimated at two thousand two hundred and forty three (2 243) jobs. The mining sector accounted for 57.75% of the job losses, 19.6% to mergers in the manufacturing sector and 14.23% to mergers in the financial sector. The mining sector accounted for 78%, or one thousand seven hundred and fifty (1750) gains to employment due to merger activity, notwithstanding a net loss of two thousand seven hundred and ninety five (2 795) employment opportunities.

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Other sectors with employment gains were manufacturing and forestry. Forestry was the only sector with a net employment gain of one hundred and forty six (146) opportunities.

#### **Objective 4: To expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic**

International experience has shown that foreign direct investment is an important stimulus for promoting international competitiveness and for achieving higher and more sustainable levels of growth. The establishment and consistent application of competition policy has been identified as one factor that promotes foreign direct investment. It results in the transfer of modern technology and production techniques, skills, management and technical expertise and access to global markets, all of which strengthens a country's position in international markets.

The Commission recognises the need for South African firms to be able to compete in international markets and also the role foreign direct investment plays in economic growth and development. Both these considerations can only be achieved in an environment that is highly competitive and efficiently regulated.

The approach of the Commission on this issue is that domestic competition is of primary importance. Therefore, a national champion argument in mergers can only be sustained on public interest grounds if the merger will not have negative effects on South African consumers. Accordingly, the Commission has been cautious in its consideration of arguments that mergers should be allowed if they would lead to foreign competitiveness where this comes at the expense of local consumers. Where such mergers lead to efficiencies that will be passed on to consumers, or where the pricing behaviour of the merged entity will be constrained by the presence of, inter alia, import competition, the Commission will consider favourably those mergers as they will not result in the substantial lessening or prevention of competition.

Of a sample of one hundred and ninety (190) merger cases filed in the period April 2001–March 2002, approximately 7% contained an argument of international competitiveness as a reason for the merger. This, however, was not the main submission on which the mergers were analysed since some of them did not raise competition concerns in the general course. As such, the national champion argument was not considered. In the same sample, approximately 15% of the cases involved FDI into South Africa in that international firms purchased South African firms, or at least a shareholding in them, thereby introducing investment into the economy.

Examples of mergers that raised the argument of international competitiveness or that involved foreign direct investment are as follows:

- In the merger between Africa Glass Industries Limited and Sheerline Aluminium Systems (Pty) Limited, the Commission recognised that Africa Glass, a manufacturer of value-added glass components, exported products to several countries including the United Kingdom and the East. Its intention was also to export to the United States and to Germany. As a result of the merger with Sheerline, the design excellence available to it would enable Africa Glass to export to first world markets with high volumes of top quality products. This would enable Africa Glass to gain access to international markets and to increase competition within the domestic market.



- In another case, Acerinox, a company listed on the Madrid Stock Exchange, acquired the Columbus Stainless Steel business of Newco. Acerinox is a Spanish stainless steel importer whose products are imported into South Africa, while Columbus was a local manufacturer of stainless steel. Here, the Commission recognised that the merger would result in high levels of foreign direct investment that would assist Columbus in capital expansion, technical assistance in its manufacturing processes, access to Acerinox's distribution network, market information and intelligence, and access to technology and skills. The Commission further recognised that Columbus also sold stainless steel to the export market. However, it had faced several difficulties such as high pipeline costs, high tariff barriers in other countries and access to a more efficient distribution system. The transaction would enable Columbus to gain access to an efficient distribution system and to become globally competitive.

### **Objective 5: To ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy**

The Competition Commission continues to ensure the fulfilment of its obligation to protect the rights and interests of small and medium-sized businesses. The Act provides various mechanisms including the prosecution of anti-competitive practices and granting exemptions to small businesses or businesses owned or controlled by historically disadvantaged individuals.

A case in point was a complaint by an independent service provider alleging that Bernina-Saskor, sole importer and supplier of Bernina sewing machine parts in South Africa, had instructed its franchisees not to provide the complainant with Bernina parts. The Commission and the respondent agreed that the respondent had contravened the provisions of Section 8(d)(1) in that he required a supplier not to deal with a competitor and a Consent Order was concluded. In terms of the Consent order concluded with Bernina-Saskor the instruction to its franchisees would be withdrawn immediately, and henceforth all franchisees and service centres would supply all Bernina parts to any customer that satisfied the requirements without any limitation.

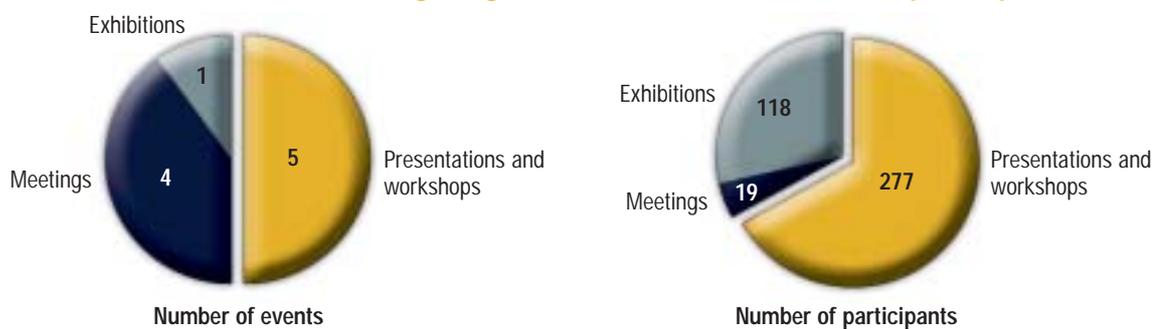
An exemption for five (5) years was granted to Ring Pharmacies, an association of thirty three (33) individually owned small and medium-sized pharmacies. The exemption was required to enable them as competitors to continue joint marketing operations in order to compete with established chains of pharmacies.

In the merger of Computershare and Mercantile Registry Services, the Commission gave a conditional approval. Ultra Registers (Pty) Ltd was set up in 2000 and formed an alliance with Mercantile, in terms of which Ultra would have access to Mercantile's STRATE-compliant system. In return Mercantile would hold a 45% shareholding in Ultra. The Competition Commission found that the merging parties, as strong competitors in the market, would dominate the share registry market in South Africa. However, because of the introduction of STRATE (Share Transactions Totally

Electronic), pro-competitive factors were considered, including the natural decline in the market. Therefore, the parties would not be able to abuse their market dominance. The two conditions imposed by the Commission were designed to assist Ultra to become more competitive. These were that Mercantile should sell its shareholding in Ultra back to Ultra and should provide Ultra access to the Mercantile system for a period until the end of December 2002, after which Ultra would have been able to establish its own system.

In a drive to raise awareness and to increase participation by public interest groups, presentations and workshops were held which were targeted at empowerment forums and representatives of small and medium-sized enterprises (SMEs).

**Table 6: The number of events targeting small/black businesses and participants**



**Objective 6: To promote greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons**

The acquisition by Shell of Tepco, is a good example of a case involving historically disadvantaged persons.

Shell is involved in the manufacturing and sale of petroleum and petroleum products directly and indirectly through subsidiaries and franchise outlets. Tepco, a wholly owned subsidiary of Thebe Investment Corporation, markets and distributes petroleum and petroleum products as its main business. It was the Commission's view that the proposed merger, which would remove Tepco as an independent player in the petroleum industry, would hinder the ability of a firm owned or controlled by historically disadvantaged individuals to become competitive. For this reason the Commission recommended its first conditional approval of a transaction. The conditions were that:

- Tepco should remain an independent company that may be jointly controlled by Thebe and Shell; and
- The Tepco brand must be maintained to ensure independence.

The Tribunal approved the merger unconditionally and overruled the Commission for various reasons, including the fact that Tepco could drain the financial resources of its parent company if it were forced to remain independent in the market.

Another case of note was the proposed merger between New Africa Investment Limited (NAIL) and Kagiso Media Limited. Both firms are listed on the Johannesburg Stock Exchange.

The Commission found that in all the product markets identified, there were no significant competition concerns, and that the concern that the proposed merger in respect of Radmark would strengthen Nail's vertical integration into the market for media marketing was unlikely to change the state of competition in that market because Nail already had a controlling interest in Radmark. The Commission was of the view that the transaction was unlikely to prevent or substantially lessen competition and therefore approved the transaction unconditionally.

### 1.3 Economy, Efficiency and Productivity of Resources

As a public institution, the Commission is concerned with economy and the efficient allocation of resources. The Commission has an obligation to government, parliament, and the general public to utilise its resources in the most economical and efficient manner, without compromising the quality of its outputs.

**Table 7: Cost per output**

Type of output	Total cost	Percentage of total
Merger investigations	13,349,780.34	32.35
Enforcement and exemption investigations	13,715,005.66	33.23
Advisory opinions	4,649,168.30	11.27
Education and information	2,977,556.57	7.22
Policy development	2,067,784.66	5.01
Legislative research and review	634,801.97	1.54
Communication	2,977,556.57	7.22
Capacity building	896,008.13	2.17
<b>Total</b>	<b>41,267,662.22</b>	<b>100.00</b>

From the above table it is clear that the Commission mainly allocates its resources to its core functions of merger investigations and enforcement activities. 32.35% of resources are allocated to merger investigations and 33.23% of resources to enforcement activities. The remainder of resources are allocated to compliance-related activities (11.27% to advisory opinions and 7.22% to education and information), policy development (5.01%), legislative review (1.54%), communication (7.22%) and capacity building (2.17%).

The Commission is a relatively new institution with its people as its greatest asset. Its expenditure on salaries and training make up a large portion of total expenditure with salaries amounting to 34,62% and direct training costs to 1.6% of total expenditure. R14,385,220 was spent on administration, amounting to 34,8% of total expenditure.

**Table 8: Cost per output for case-related activities**

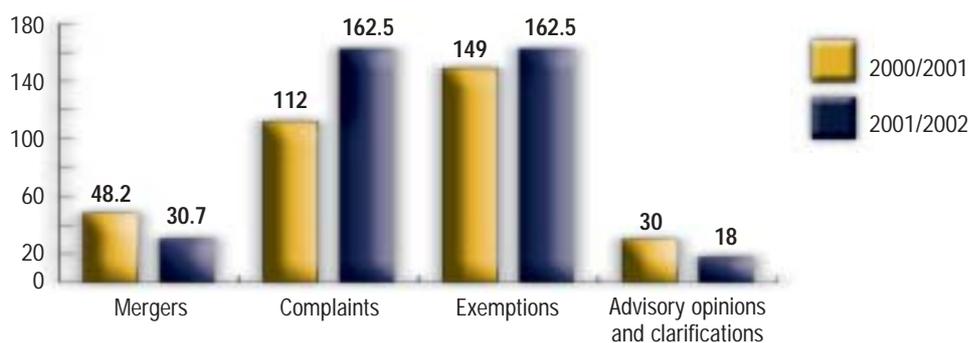
	Merger evaluations	Enforcement and exemption investigations	Advisory opinions and clarifications
Total Cost	13,349,780.34	13,715,005.66	4,649,168.30
Outputs	225	81	72
Cost per output	59,322.36	169,321.06	64,571.78

## Productivity

**Table 9: Overview of cases notified and finalised**

Case Type	Number of Cases notified			Number of Cases finalised			% Of Cases finalised			Total Number of Investigators			Average Number of Cases finalised per Investigator			Average number of cases finalised per Investigator per month		
	1999/2000	2000/2001	2001/2002	1999/2000	2000/2001	2001/2002	1999/2000	2000/2001	2001/2002	1999/2000	2000/2001	2001/2002	1999/2000	2000/2001	2001/2002	1999/2000	2000/2001	2001/2002
Mergers	331	407	220	236	414	225	71%	102%	103%	9	8.5	8.8	26	48.7	25.6	3.7	4.1	2.1
Complaints	122	114	93	37	128	75	30%	112%	81%	7	10	9	5	12.8	8.3	0.8	1.1	0.9
Exemptions	3	12	2	1	7	6	33%	57%	300%	1	4		1	2		0.08	0.17	
Advisory Opinions & Clarifications	71	123	78	59	132	72	83%	107%	92.3	2	2	2	30	66	36	4.3	5.5	3

**Table 10: Average turnaround times in business days**



The year 2001/02 saw a marked decrease in the number of mergers finalised. This can be wholly attributed to the decrease in merger notifications as a result of the higher thresholds. The Mergers and Acquisitions Division improved their service delivery on mergers with a decrease in the average turnaround time of 36% from 48,2 days to 30,7 days on average. The Division also finalised its fast-track procedure. This has led to a marked decline in turnaround times for non-complex matters.

In the Enforcement and Exemptions Division there was a drop in the number of cases finalised. This can be attributed to the fact that during the first half of the year there was a high staff turnover. The Division also had no fast-tracking procedure in place to deal with frivolous complaints. The Division started to develop fast-tracking procedures during the latter half of the year. The effect of this increased efficiency should show in the statistics for the following financial year.

The Compliance Division also improved their service delivery on Advisory Opinions by decreasing turnaround times from 30 to 18 days on average. This increased efficiency can be seen as a result of capacity building within the Commission as well as a ripening of the knowledge around the implementation of the Act.

## 1.4 Human Resource Management

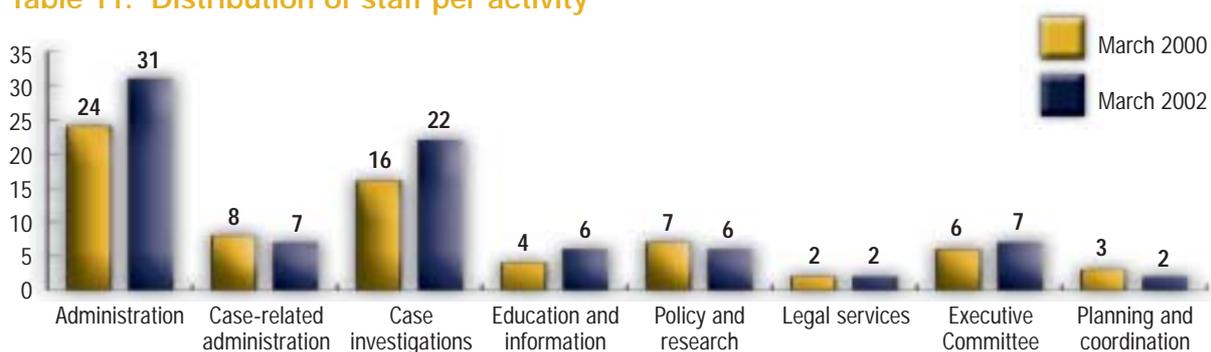
In the past year, the Commission has made considerable progress regarding human resources matters. A job-grading project was initiated to develop a new remuneration system. The project involved rewriting job descriptions, grading the jobs, and positioning the individuals within each grade. The second phase of this project, which will deliver competency management, will be undertaken during the 2003 financial year.

### Staff Composition

As at year-end, the Commission's ninety one (91) positions were 84% filled. The staff turnover rate was 18%, compared to 20% during 2001.

The Commission has, however, experienced a loss of staff to the private sector, amongst whom were the Chief Economist and the Divisional Manager for Enforcements and Exemptions (E&E).

**Table 11: Distribution of staff per activity**



### Employment Equity

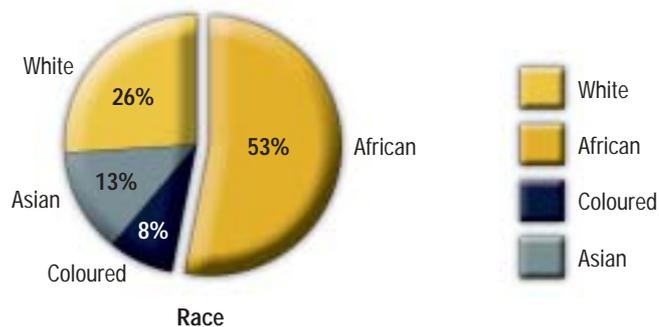
The Commission staff composition reflects the country's demographics at all levels of its employment profile. Table 12 below compares the Commission's employment equity targets to the status as at 31 March 2002.

**Table 12: Analysis of designated group representation**



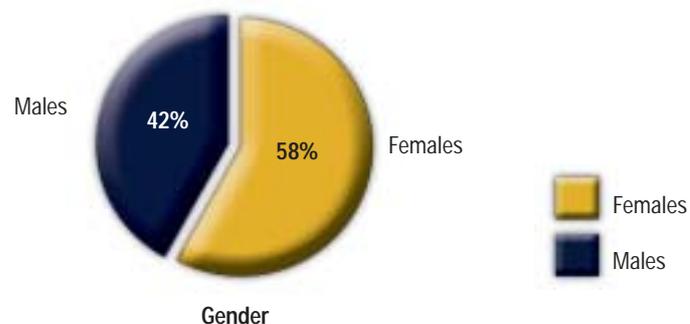
The Commission's employment equity plan for November 2002 reflects targets that are achievable. Between March 2000 and March 2002, excellent progress was made to ensure that the designated groups were well represented at senior management and professional levels. The Commission's breakdown of staff complement is depicted in Graph 1 below. As can be seen from the Graph, 74% of the Commission's staff members are from historically disadvantaged groups.

**Graph 1: Breakdown by race**



The percentage of female staff members is currently 58% of the entire workforce as depicted in Graph 2 below. The Commission is committed to retaining this ratio.

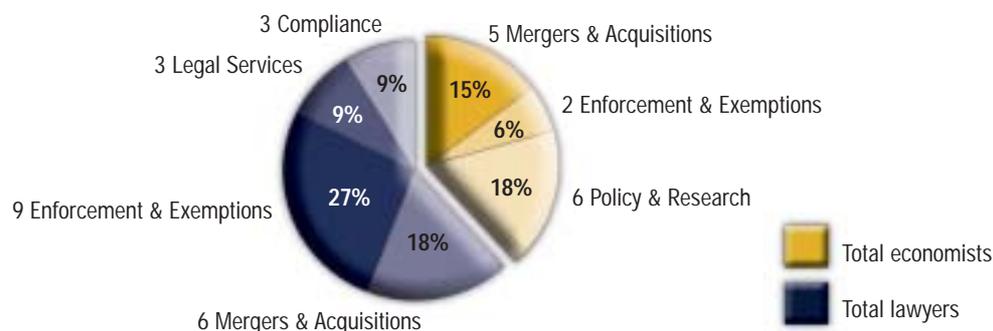
**Graph 2: Breakdown by Gender**



The Commission is pleased to report that designated groups are fully represented across all levels, despite the slight decline in employment numbers.

The Commission's technical staff is comprised of a mixture of both professional and administrative members who equally contribute to achieving the overall strategic objectives of the organisation. Economists and lawyers are crucial for the legal and economic analysis and investigation of merger cases, prohibited practices and compliance.

**Table 13: The breakdown of economists and lawyers in the various divisions is as follows:**



### Human Development

Training and development continue to receive priority with particular emphasis on skills development programmes, which remain critical to the success of the Commission.

The Commission aims to become a knowledge-based enterprise. Staff members are therefore encouraged to participate in the education assistance programmes that are offered. An analysis of employees who participated in the education assistance programmes as at March 2002 is provided below:

- 35% studying programmes in the legal, competition law and economic fields
- 41% studying in operational fields
- 24% pursuing Masters degrees
- 10% of senior staff members are currently attending an Intensive Presidential Strategic Leadership Development Programme offered by DIDGETA.

Staff members have also had the opportunity to obtain international training on competition-related matters in both the fields of law and economics. Commission staff members participated in the following international courses and programmes:

- Competition seminar workshop with the OECD
- Fordham Annual Conference held in New York
- ACCC investigation course in Australia
- Annual Competition Summer School in Cambridge.

**Table 14: The following table reflects the different types of training that staff members attended:**

Type of training	Number trained	% of total staff
Business Writing and Presentation Skills	23	30%
Policy Development	17	22%
Administration Related	16	21%
Competition Law Courses	14	18%
Train the Trainer	8	11%
Management Development and Corporate Governance	6	9%

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## Policy Review

The Commission undertook a major project in which all key Human Resources (HR) policies were reviewed to ensure compliance with current legislation, HR best practice, as well as ensuring that they contain no discriminatory practices.

Following this process, amendments have been made where the policies were not fully compliant, and new ones developed where applicable. We are proud to report that our policies reflect some of the best practices in South Africa.

## Climate Survey and Job Grading

As the designing of progressive HR policies does not necessarily ensure effective implementation, an in-house climate survey was initiated during 2001. This was based on the premise that good policies do not necessarily mean good implementation thereof. The survey gauged employee perceptions on various policies and procedures, including remuneration, recruitment, management style and practices.

As a result of the outcomes, a major remuneration project was undertaken to ensure that all positions are equitable. The job grading exercise involved evaluating all positions using the Peromnes Job Evaluation System. Positions were graded accordingly, and all staff were then individually placed within a grade taking into account their qualifications, experience and performance. The final phase included linking grades to market-related salaries, using the 25th percentile as a benchmark.

## 1.5 Information Technology, Administration and Finance

The IT department supplies all technology-related services to the Commission as well as quality software and hardware products and services designed to increase productivity. The department succeeded in creating a flexible technology environment capable of accommodating rapidly changing business needs.

The functionally enhanced and upgraded Case Management System (CMS) will provide easy access from any location using a standard internet browser to track and maintain case status, disseminate status reports, as well as exchange information regarding cases. During this period IT also upgraded the mail server and file servers to Windows 2000 and to Exchange 2000 respectively, to enable usage of the latest Microsoft Active directory technology.

A cell phone booster was installed in the Commission premises to enhance cell phone signals.

A technologically advanced fax server, with various new functions such as billing codes and web-enabled access, was installed. This ensured that fax costs were kept to a minimum and user activity monitored.

The main challenge for the future will be the migration toward new systems if enterprise applications are to be integrated with external offerings. Moving towards a paperless working environment is another challenge we are addressing.

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## Registry

The year under review saw the Registry section improve its case-scanning turnaround times from the previous year's 24 hours to 2 hours. This is a remarkable achievement as it contributed to the improved case finalisation turnaround times of the Commission. A total of 394 cases were processed, scanned, filed and archived. With the completion and implementation of the off-site storage contract between the Commission and an off-site storage company, 130 cases were moved to the off-site storage facility.

## Security and Facilities Management

Security of information assets, property and human resources are crucial to the effective functioning of the Commission. During the year under review, two major contracts were awarded for the provision of security and facility cleaning services.

## 1.6 Financial Overview

Effective and efficient financial support to the Competition Commission is important to realise the Commission's strategic objectives. Major improvements have been implemented, including the fact that Divisional Managers now own and are accountable for the expenditure and budget process. Strong cost control has been implemented throughout the year, fixed assets have been counted, there has been increased controls over electronic transfer payments, and proper month-end cut-off procedures have made meaningful month-end reconciliation possible.

### Financial Performance

The 27.5% decline in revenue is mainly due to the revised merger threshold that took effect during 2001. The revision, which included a two-tier fee structure for intermediate mergers and large mergers, implied that mergers with a combined turnover or asset value of less than R200m were no longer notifiable. In light of this, only 300 (220 from the 2001/02 financial year plus 80 from the 2000/01 financial year) merger cases were dealt with during the year, a figure much lower than the 407 handled in the previous year.

As a result of merger income decline, the state topped up the revenue with a grant of R8.6m, increasing the Commission's income to R37.6m.

The Commission's total expenditure increased from R40m in 2001 to R41,3m in 2002. The increase in expenditure arose from the filling of long outstanding vacancies and a less than anticipated increase in overhead costs. Although the expenditure exceeds the revenue by 10%, the Commission is financially sound as is evident from the accumulated surpluses as disclosed in the balance sheet.

## 1.7 The year ahead

The mandate of the Commission requires the realisation of various objectives, all of which are an important part of government's economic reforms. Meeting these objectives is thus a major challenge that requires dedication and patience.

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What this means for us at the Commission is that our focus on investigating and prosecuting anti-competitive practices must continue. We must double our efforts in our research and prosecution of hard-core cartels and firms that abuse their dominant positions in the market. As we know, hard-core cartels cause serious harm to our society through their activities which include price fixing, collusion and market allocation. All of these activities result in increased prices for consumers and for competitors, increased costs, and high barriers to entry. For the economy this results in little development, and high levels of inefficiencies. The elimination of these practices is therefore very important.

With regard to mergers, we have this year dealt with very complex transactions. Some of these have involved multinational firms whose operations into our economy have increased. Many of these mergers have been pro-competitive in that they promote efficiencies and contribute to the development in the economy. The Commission will also continue to prohibit those mergers that have a harmful effect on our economy by creating dominant firms, without providing efficiencies from which consumers can benefit.

To those competing firms who together form joint ventures or conclude agreements whose ultimate purpose is to enable them to become competitive or to increase the ownership stakes of historically disadvantaged individuals, the Commission will contribute by granting exemptions. These efforts will broadly contribute to achieving competitiveness between firms in the domestic market.

In order for our activities to be appreciated in their context, the Commission acknowledges the role that education and advocacy can play in this regard. We shall increase our outreach programmes to various stakeholders, particularly labour, small business, consumer groups and government departments. We have seen the benefits that come from constructive co-operation between the Commission and its stakeholders. We must strive to achieve the same benefits in the next year. The relationship with other regulators will further be strengthened by joint efforts in both advocacy programmes and enforcement activities.

I am confident that the Commission, through co-operation with stakeholders, will be able to meet the complex challenges posed by not only the economic issues that it must address, but also the expectations of government with regard to the objectives that are sought to be achieved. All our efforts must therefore focus on realising these objectives.

*Adv. Menzi Simelane*

*Commissioner: Competition Commission*

## 2. Executive Committee

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*From left to right, front row: Mr Nkongo Hlatshwayo (Mergers & Acquisitions), Adv. Menzi Simelane (Commissioner) and Ms Maleho Nkomo (Corporate Services).  
Back row: Ms Diane Terblanche (Enforcement & Exemptions), Mr Geoff Parr (Policy & Research), Ms Astrid Ludin (Compliance & Corporate Services) and Adv. Nelson Lolwane (Legal Services).*

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## 2.1 Competition Commission staff members





### ***3. Report of the Audit Committee of the Competition Commission***

This report has been prepared according to the Treasury Regulations for public entities issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and promulgated in Government Gazette No. 21249 on 31 May 2000. The Competition Commission is listed as a national public entity in Schedule 3A of the Act.

The Competition Commission constituted the Audit Committee in March 2000. The Audit Committee met twice during the year under review.

External representatives on the Committee are Mr T Mosololi (Chairperson), Mr T Verwey and Mr S Masuku. Ms M Nkomo and Mr J Dreyer represent the Commission.

Persons in attendance at Committee meetings regularly include the internal auditors, external auditors and representatives of the Office of the Auditor-General.

The Committee has reviewed the Competition Commission's annual financial statements for 2001/02 as audited by the Office of the Auditor-General and is satisfied that these statements are reasonable and accurate. The Committee reviewed all reports of the internal and external auditors and ensured that appropriate actions are taken by management.

The Committee has also reviewed the reports of the Office of the Auditor-General and the Internal Auditors, in the context of the Committee's understanding of the risks facing the entity, and is satisfied that the internal control managing the major financial risks are effective.

Thabo Mosololi

Chairperson: Commission Audit Committee



## ***4. Report of the Auditor-General*** **Financial Statements for the year ended 31 March 2002**

### **4.1 Audit assignment**

The financial statements as set out on pages 27 to 43, for the year ended 31 March 2002, have been audited in terms of Section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), read with Sections 3 and 5 of the Auditor-General Act, 1995 (Act No. 12 of 1995) and Section 40(10) of the Competition Act, 1998 (Act No. 89 of 1998), as amended. These financial statements, the maintenance of effective control measures, and compliance with the relevant laws and regulations are the responsibility of the Commissioner. My responsibility is to express an opinion on these financial statements, based on the audit.

### **4.2 Nature and scope**

The audit was conducted in accordance with Statements of South African Auditing Standards. Those standards require that I plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement.

An audit includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements,
- assessing the accounting principles used and significant estimates made by management, and
- evaluating the overall financial statement presentation.

Furthermore, an audit includes an examination, on a test basis, of evidence supporting compliance in all material respects with the relevant laws and regulations which came to my attention and are applicable to financial matters.

I believe that the audit provides a reasonable basis for my opinion.

### **4.3 Audit opinion**

In my opinion, the financial statements fairly present, in all material respects, the financial position of the Competition Commission at 31 March 2002 and the results of its operations and cash flows for the year then ended in accordance with generally accepted accounting practice and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA).

### **4.4 Emphasis of matter**

Without qualifying the audit opinion expressed above, attention is drawn to the following matters:

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#### 4.4.1 Matters affecting the financial statements

##### 4.4.1.1 Contingent liability – Retention of accumulated surplus funds

Attention is drawn to note 6.2 of the financial statements which states that in terms of Section 53(3) of the PFMA, written approval should be obtained from the National Treasury to retain accumulated surplus funds. Although approval has been requested to retain the surplus funds, it is uncertain whether approval will be granted to retain the surplus funds or a portion thereof.

##### 4.4.1.2 Contingent liability – Relocation of offices

Attention is drawn to note 6.2 of the financial statements with regard to the contingent liability arising from the anticipated relocation of offices. The final outcome is uncertain.

### 4.5 Appreciation

The assistance rendered by the staff of the Competition Commission during the audit is sincerely appreciated.



L A van Vuuren  
for Auditor-General

Pretoria, 18/07/02

## **5. Statement of the responsibility of the Commissioner**

The Commissioner is responsible for the preparation, integrity and fair presentation of the financial statements of the Competition Commission. The financial statements presented on pages 33 to 43 have been prepared in accordance with generally accepted accounting practice, and include amounts based on judgements and estimates made by management. The Commissioner also prepared the other information included in the annual report and is responsible for both its accuracy and its consistency with the financial statements.

The going concern basis has been adopted in preparing the financial statements. The Commissioner has no reason to believe that the Commission will not be a going concern in the foreseeable future based on forecasts and available cash resources. These financial statements support the viability of the Commission.

The financial statements have been audited by the Office of the Auditor General, which was given unrestricted access to all financial records and related data. The Commissioner believes that all representations made to the independent auditors during their audit are valid and appropriate.

The audit report of the Auditor-General is presented on page 25 to 26. The financial statements were approved by the Commission's Executive Committee on 16 April 2002 and are signed by the Commissioner.



Adv. M Simelane  
Accounting Authority

July 24, 2002

The Commissioner presents the annual report, which forms part of the audited financial statements of the Commission for the year ended 31 March 2002.

## 5.1 Nature of Business

The Commission derives its mandate from the Competition Act no. 89 of 1998, as amended. The main objectives, as determined by the Competition Act, are the following:

- Promote efficiency, adaptability and development of the economy;
- Provide consumers with competitive prices and product choices;
- To promote employment and advance social and economic welfare of South Africans;
- To expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- To ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
- To promote the greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

## 5.2 Financial Results

	R'000	R'000
	2002	2001
Revenue	37 596	51 870
Expenditure	<u>41 268</u>	<u>40 038</u>
Net (deficit)/surplus	<u>(3 672)</u>	<u>11 832</u>
<b>Total assets</b>	<u><b>44 271</b></u>	<u><b>51 970</b></u>
<b>Total liabilities</b>	<u><b>5 452</b></u>	<u><b>9 480</b></u>

## 5.3 Financial Performance

### 5.3.1 Revenue

Revenue decreased from R51,8m in 2001 to R37,6 m in 2002. The 27.5% decline is due to the revised merger threshold that took effect on 01 February 2001. The revision, which included a two-tier fee structure for intermediate mergers and large mergers, implied that mergers with a combined turnover or asset value of less than R200m were no longer notifiable<sup>1</sup>. In light of this, only 220 merger cases were handled during the year under review, a figure much lower than the 407 handled in the previous year.

Revenue includes government and other grants of R8,6m (R0.947m: 2001) and other income of R3,757m (R3,887m: 2001).

<sup>1</sup> Before 01 February 2001, R5 000 was payable for merger notifications where combined asset values were between R50m and R100m, R125 000 for combined asset values of between R100m and R1billion, R250 000 for the combined asset values of between R1bn and R3,5bn, and lastly R500 000 for combined asset values of over R3,5bn.

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### 5.3.2 Expenditure

Expenditure increased from R40m in 2001 to R41,2m in 2002. The Commission has managed to significantly maintain its costs. The increase of R1,23m was partly due to the increase in employment costs, but offset by the decrease in operational expenditure.

The expenditure exceeds the revenue by 10%.

## 5.4 Contingent Liabilities

### 5.4.1 Retention of Surpluses

In terms of Section 53(3) of the Public Finance Management Act (1999), prior written approval should be obtained from the National Treasury to retain accumulated surplus funds. The Commission has sought the relevant approval on a number of occasions, but no approval has as yet been granted to the Commission. If approval is not granted to retain all of the previous years' accumulated surplus funds, the Commission may be obliged to repay accumulated surplus funds to the National Revenue Fund as determined by the National Treasury. (Refer to note 6.2 in the 2002 financial statements in this regard).

## 5.5 Events subsequent to Balance Sheet

No material facts or circumstances, which will affect the financial position of the Commission as reflected in these financial statements, have come to our attention between the date of the balance sheet and the date of approval.

## 5.6 Executive Committee

The following staff members were representatives on the Executive Committee as at 31 March 2002:

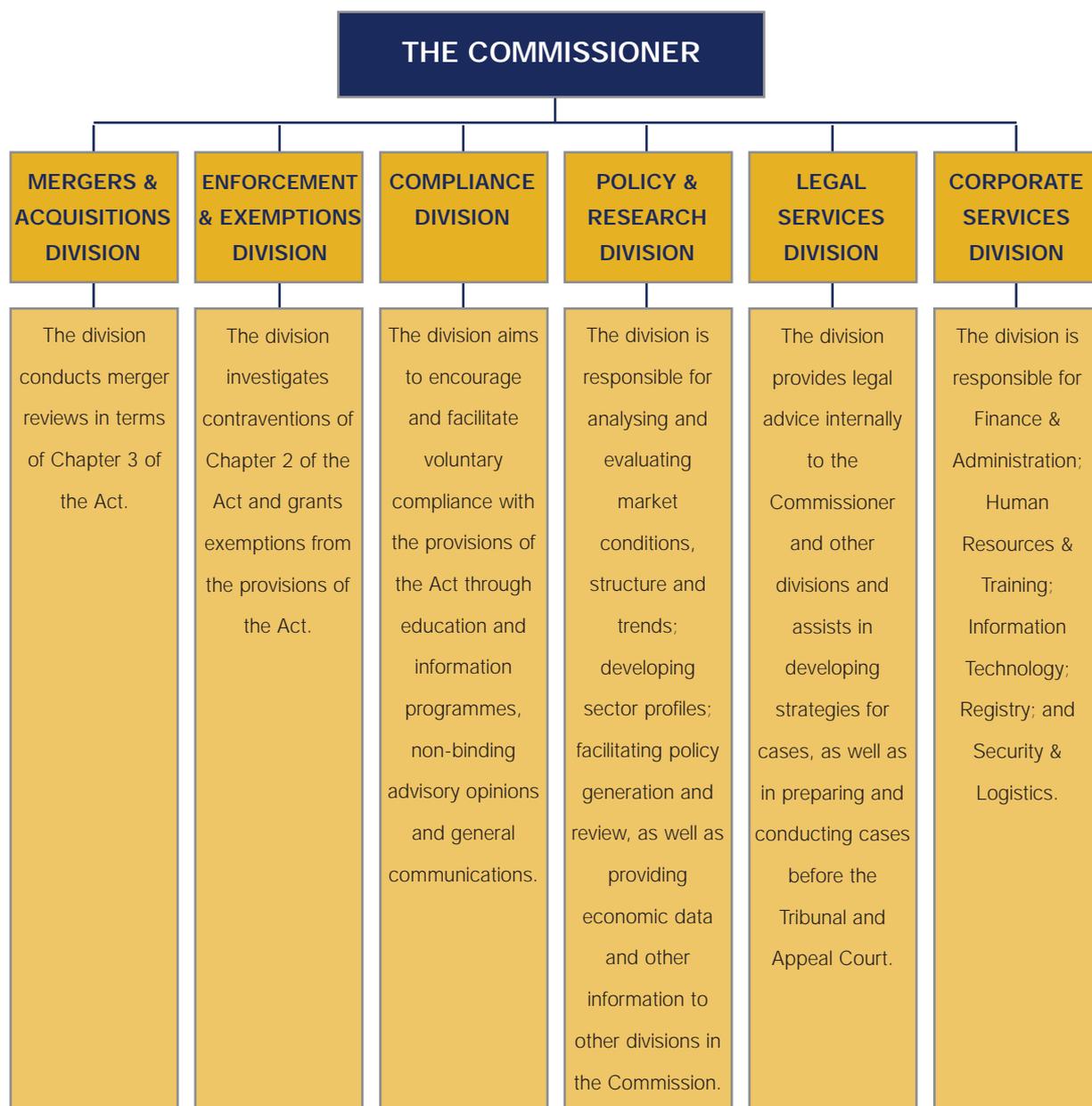
Adv. M Simelane	Commissioner
Mr. J Dreyer	Commission Secretary
Ms. A Ludin	Compliance
Ms. M Nkomo	Corporate Services
Ms. D Terblanche	Enforcement and Exemptions
Adv. N Lolwane	Legal Services
Mr. N Hlatshwayo	Mergers and Acquisitions
Mr. G Parr	Policy and Research

## 5.7 Commissioner's Remuneration

	<b>2002</b>	2001
Commissioner's Salary and allowances	<u><b>424 000</b></u>	<u>424 000</u>

## 5.8 Organisational Structure

The Commission's organogram as at year end is depicted below: -



## 5.9 Significant events

### 5.9.1 Relocation of Offices

The Commission will relocate its offices in approximately 3 years time as requested by the Department of Trade and Industry. A penalty for cancellation of the property lease agreement might be incurred when the Commission terminates the lease agreement. (Refer to note 6.2 in the 2002 financial statements in this regard).

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## 5.10 Factors influencing the Commission's Performance

The Commission has been faced with various challenges during the year. Except for the complexity of quantifying monetary or other actual benefits to consumers due to the Commission's task in preventing unfair competition, other challenges are discussed below.

### 5.10.1 Analysis of Merger Activity

The investigation of merger activity has proved to be more resource-intensive than before. Merger control is important to prevent the creation of undesirable market structures which facilitate anti-competitive activities. At the same time, mergers are critical for companies, especially smaller ones, to compete effectively both domestically and internationally.

To overcome this challenge, the Commission had to work closely with businesses, trade unions, consumers, key legislators and other stakeholders. This co-operation was necessary to enhance the Commission's methods of reviewing mergers. We will also be able to fast-track merger reviews, and provide decisions within a shorter period of time and without affecting business operations.

### 5.10.2 Restructuring of State Assets

The Commission's Policy and Research division has facilitated debate and input to strategic initiatives on this important issue.

Restructuring of state assets is essential for South Africa's competitiveness and economic development. Since the new government came into power, the restructuring of these assets as a stimulant to economic development and growth has been on the agenda. The introduction of competition in state enterprises is therefore critical for the successful restructuring of State Assets.

### 5.10.3 Challenges in the High Courts

Cases that have been referred to the High Court by third parties will form part of precedent setting. These cases must be challenged in order to create certainty for the future, notwithstanding the astronomical legal costs involved.

However, fewer cases will be referred to the High Court in the foreseeable future on administrative grounds. Instead, most cases will be heard and finalised at the Competition Tribunal.

### 5.10.4 Restrictive Business Practices

The South African economy is rife with anti-competitive activity. This is largely due to the ineffective competition regulatory environment that existed in the past.

The Commission investigated a number of cases involving abuses of dominance. Some of these cases involved cartel behaviour such as collusion. Cases involving large firms have been referred to the Competition Tribunal for prosecution, or are at the High Courts for review.

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### 5.10.5 Competitive Corporate Culture

Competition Law and the development of a culture of competition are relatively new in South Africa.

The historical framework, in which competition regulation was not very successful, resulted in restrictive business practices being employed by firms in order to gain competitive advantage over their rivals. Collusive and cartel behaviour continues to be a major area of concern in business activity in many sectors of our economy, in particular those characterised by dominant firms or oligopolies. There is, therefore, a dire need to reverse or change the behaviour and methods of doing business in South Africa so that the reliance by firms on unacceptable practices is eliminated.

### 5.11 Fruitless Expenditure

An amount of about R185 000 was paid to the SA Revenue Services in respect of penalties for late payment of VAT. Internal controls have now been put in place to prevent future recurrences.

### 5.12 Address

The Commission's registered offices are situated at:

Building B  
Glenfield Office Park  
Cnr. Glenwood Road and Oberon Street  
Faerie Glen  
TSHWANE

with the postal address

Private Bag X23  
Lynwood Ridge  
0040  
TSHWANE



Adv. M Simelane  
Accounting Authority

## 6. Financial Statements

### Balance Sheet as at 31 March 2002

	Notes	2002 R	2001 R
<b>ASSETS</b>			
<b>Non-Current Assets</b>			
Property, plant and equipment	1	6,486,304	8,627,358
<b>Current Assets</b>			
Trade and other receivables	2	563,879	2,860,826
Cash and cash equivalents	3	37,221,025	40,482,202
<b>Total Assets</b>		<b>44,271,208</b>	<b>51,970,386</b>
<b>EQUITY AND LIABILITIES</b>			
<b>Capital and Reserves</b>			
Accumulated funds		38,818,869	42,490,205
<b>Current Liabilities</b>			
Trade and other payables		2,711,363	7,912,886
Provisions	4	2,740,976	1,567,295
<b>Total Equity and Liabilities</b>		<b>44,271,208</b>	<b>51,970,386</b>

# ***Income Statement*** for the year ended 31 March 2002

	Notes	2002 R	2001 R
Revenue		25,239,347	47,035,901
Government and other grants		8,600,000	947,040
Other operating income		3,756,979	3,887,153
<b>Total Revenue</b>		<b>37,596,326</b>	<b>51,870,094</b>
<b>Less: Expenditure</b>		<b>41,267,662</b>	<b>40,038,180</b>
Employee cost		18,440,502	14,647,823
Depreciation		2,455,183	1,729,988
Fees paid to the Competition Tribunal		4,720,357	9,244,092
Other operating expenditure		15,651,620	14,416,277
<b>Net (deficit)/surplus for the year</b>	5	<b>(3,671,336)</b>	<b>11,831,914</b>

# ***Statement of Changes in Equity*** for the year ended 31 March 2002

	Notes	2002 R	2001 R
<b>ACCUMULATED FUNDS</b>			
<b>Balance at the beginning of the year</b>		<b>42,490,205</b>	<b>30,658,291</b>
Previously reported		41,942,253	
Adjusted for:			
Change in accounting policy	8	(194,635)	
Fundamental error	9	742,587	
(Deficit)/Surplus for the year		(3,671,336)	11,831,914
Previously reported			11,283,962
Adjusted for:			
Change in accounting policy	8		(194,635)
Fundamental error	9		742,587
<b>Balance at the end of the year</b>		<b>38,818,869</b>	<b>42,490,205</b>

# Cash Flow Statement

## for the year ended 31 March 2002

	Notes	2002 R	2001 R
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Cash receipts from customers		36,503,688	48,803,535
Cash paid to suppliers and employees		(42,805,958)	(45,757,668)
Cash generated from operations	12	(6,302,270)	3,045,867
Interest received		3,406,221	3,734,646
Interest paid		(34,363)	(312,682)
<b>NET CASH (OUTFLOW)/INFLOW FROM OPERATING ACTIVITIES</b>		<b>(2,930,412)</b>	<b>6,467,831</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Additions to fixed assets		(330,765)	(769,657)
<b>NET CASH OUTFLOW FROM INVESTING ACTIVITIES</b>		<b>(330,765)</b>	<b>(769,657)</b>
Net (decrease)/increase in cash and cash equivalents		(3,261,177)	5,698,174
Cash and cash equivalents at beginning of the year		40,482,202	34,784,028
Cash and cash equivalents at end of the year	3	37,221,025	40,482,202

# ***Summary of Accounting Policies*** **for the year ended 31 March 2002**

## **Basis of preparation**

The annual financial statements are prepared on the historical cost basis, in accordance with generally accepted accounting practice and incorporate the following principal accounting policies which have been consistently applied with those of the previous year in all material aspects, unless stated otherwise.

## **Property, plant and equipment**

Assets purchased for less than R2 000 are written off in the year of acquisition. Property, plant and equipment are stated at historical cost less accumulated depreciation. Depreciation is calculated on the straight-line method to write off assets over the estimated useful life.

The estimated useful life of assets are:

Leasehold improvements	5,5 years	Furniture and Fittings	10 years
Catering Equipment	5 years	Office equipment	5 years
Motor Vehicles	5 years	Computer Equipment	3 years

## **Employee benefits**

Contributions to the defined contribution pension plan are charged to the Income statement in the year in which they relate. No shortfalls have been charged against income for the period under review.

## **Revenue recognition**

Revenue comprises of filing fees and facility charges received and excludes value-added tax. Revenue from filing fees is recognised when the case is accepted by the Competition Commission. Facility fees are recognised on a monthly basis for services rendered by the Commission and infrastructure usage by the Competition Tribunal. Interest revenue is recognised on a time-proportion basis by reference to the principal investment and at the interest rate applicable.

## **Government and other grants**

Government and other grants are accounted for as income in the period received.

## **Financial instruments**

Financial instruments include cash and cash equivalents, trade receivables and payables. The carrying amounts reported on the Balance Sheet represent the fair value of these instruments.

Cash and cash equivalents consist of cash on hand, bank balances and short term investment accounts. Trade receivables consist of money owed to the Commission and trade payables consist of money owed to suppliers. Both will be settled within the normal operating cycle.

## **Provisions**

Provisions are raised when a present legal or constructive obligation exists as a result of a past event and it is probable that an outflow of resources will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

## **Comparative figures**

Comparative figures have been restated to show the effect of the change in accounting policy and fundamental error as indicated in notes 8 and 9.

# Notes to the Annual Financial Statements

	2002	2001
	R	R
<b>1 Property, plant and equipment</b>		
<b>Leasehold improvements</b>	<b>3,329,401</b>	<b>4,409,115</b>
Carrying amount at beginning of year	4,409,115	4,401,562
Cost	5,023,579	4,598,360
Accumulated depreciation	(614,464)	(196,798)
Additions	32,116	425,219
Disposals	-	-
Depreciation	(1,111,830)	(417,666)
Carrying amount at end of year	3,329,401	4,409,115
Cost	5,055,695	5,023,579
Accumulated depreciation	(1,726,294)	(614,464)
<b>Furniture and fittings</b>	<b>1,765,628</b>	<b>1,961,512</b>
Carrying amount at beginning of year	1,961,512	2,098,881
Cost	2,307,148	2,215,619
Accumulated depreciation	(345,636)	(116,738)
Additions	39,625	91,529
Disposals	-	-
Depreciation	(235,509)	(228,898)
Carrying amount at end of year	1,765,628	1,961,512
Cost	2,346,773	2,307,148
Accumulated depreciation	(581,145)	(345,636)
<b>Computer equipment</b>	<b>420,102</b>	<b>1,064,909</b>
Carrying amount at beginning of year	1,064,909	1,635,000
Cost	2,240,512	2,067,916
Accumulated depreciation	(1,175,603)	(432,916)
Additions	118,353	172,596
Disposals	(16,636)	-
Depreciation	(746,524)	(742,687)
Carrying amount at end of year	420,102	1,064,909
Cost	2,274,646	2,240,512
Accumulated depreciation	(1,854,544)	(1,175,603)
Balance carried forward	5,515,131	7,435,536

	2002 R	2001 R
Balance brought forward	5,515,131	7,435,536
<b>Office equipment</b>	<b>744,673</b>	970,880
Carrying amount at beginning of year	970,880	1,161,545
Cost	1,412,219	1,331,906
Accumulated depreciation	(441,339)	(170,361)
Additions	61,389	80,313
Disposals	-	-
Depreciation	(287,596)	(270,978)
Carrying amount at end of year	744,673	970,880
Cost	1,473,608	1,412,219
Accumulated depreciation	(728,935)	(441,339)
<b>Motor Vehicles</b>	<b>122,616</b>	70,948
Carrying amount at beginning of year	70,948	94,597
Cost	118,246	118,246
Accumulated depreciation	(47,298)	(23,649)
Additions	79,282	-
Disposals	-	-
Depreciation	(27,614)	(23,649)
Carrying amount at end of year	122,616	70,948
Cost	197,528	118,246
Accumulated depreciation	(74,912)	(47,298)
<b>Catering equipment</b>	<b>103,884</b>	149,994
Carrying amount at beginning of year	149,994	196,104
Cost	230,551	230,551
Accumulated depreciation	(80,557)	(34,447)
Additions	-	-
Disposals	-	-
Depreciation	(46,110)	(46,110)
Carrying amount at end of year	103,884	149,994
Cost	230,551	230,551
Accumulated depreciation	(126,667)	(80,557)
<b>Total</b>	<b>6,486,304</b>	8,627,358

	2002 R	2001 R
<b>2 Trade and other receivables</b>		
Trade debtors	563,879	701,237
South African Revenue Service (VAT)	-	2,159,589
	<b>563,879</b>	<b>2,860,826</b>
<b>3 Cash and cash equivalents</b>		
Bank balances	2,701,926	15,464,524
Call deposits	5,917,599	655,198
Fixed deposits	28,600,000	24,361,480
Cash on hand	1,500	1,000
	<b>37,221,025</b>	<b>40,482,202</b>
<b>4 Provisions</b>		
Bonuses	2,029,856	791,945
Accumulated leave	540,871	516,699
Internal audit fees	89,713	258,651
External audit fees	80,536	-
	<b>2,740,976</b>	<b>1,567,295</b>
<b>5 Net surplus</b>		
Net surplus is arrived at after taking into account the following items:		
<b>Income from:</b>		
Filing fees	24,220,806	46,010,462
Facility fees	1,018,541	1,025,439
Government grants	8,600,000	-
Other grants	-	947,040
Interest income	3,406,221	3,734,646
Other income	350,758	152,507
	<b>37,596,326</b>	<b>51,870,094</b>
<b>Expenses:</b>		
<b>Auditors' remuneration</b>		
Audit fees	250,515	62,426
(Over)/Under provision for 1999/2000	-	(11,913)
	<b>250,515</b>	<b>50,513</b>

	2002	2001
	R	R
<b>Commissioner's remuneration</b>	<b>424,371</b>	424,371
Commissioner's salary	424,371	424,371
<b>Depreciation</b>		
Computer equipment	746,524	742,687
Catering Equipment	46,110	46,110
Office equipment	287,596	270,978
Furniture & Fittings	235,509	228,898
Motor Vehicles	27,614	23,649
Leasehold improvements	1,111,830	417,666
	<b>2,455,183</b>	1,729,988
<b>Employee benefits</b>		
Contributions - Defined contribution pension fund	866,388	780,453
	<b>866,388</b>	780,453
<b>Rentals in respect of operating leasing</b>		
Land and buildings under operating lease	2,857,381	2,525,691
Less: recovered under sublease	(428,607)	(419,148)
	<b>2,428,774</b>	2,106,543
Office plant and equipment	125,067	121,552
	<b>125,067</b>	121,552
Rentals are charged against income as and when incurred.		
<b>Fruitless expenditure</b>		
Penalties paid to SARS	185,525	-
	<b>185,525</b>	-
The fruitless expenditure occurred due to late payments of VAT to the South African Revenue Services.		
<b>Interest paid</b>		
Accounts payable	34,363	312,682
	<b>34,363</b>	312,682

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## 6 Commitments & Contingencies

### 6.1 Future minimum lease payments

	Up to 1 year	Up to 5 years	More than 5 years	Total
Premises	R'000	R'000	R'000	R'000
<b>2002</b>	<b>3,083</b>	<b>16,115</b>	<b>27,552</b>	<b>46,750</b>
2001	2,777	14,518	32,231	<b>49,526</b>

The Competition Commission is leasing its business premises under an operating lease. The remaining period of the lease is 9,5 years. The lease agreement does not impose any restrictions.

	Up to 1 year	Up to 5 years	Total
Equipment	R	R	R
<b>2002</b>	<b>96,354</b>	<b>147,478</b>	<b>243,832</b>
2001	83,786	243,834	<b>327,620</b>

The Competition Commission is leasing equipment for a period of five years from 1 June 1999. The lease agreement is renewable at the end of the lease term and the Competition Commission does not have the option to acquire the equipment. The lease agreement does not impose any restrictions.

### 6.2 Contingencies

#### Litigations & claims

The Commission has a possible liability towards a former employee resulting from legal action taken by this employee. Although there can be no assurances, the Commission believes that based on current information, the legal proceedings will not likely result in a financial loss to the Commission.

#### Retained Income

In terms of Section 53(3) of the Public Finance Management Act, 1999, prior written approval should be obtained from National Treasury to retain accumulated surplus funds. The Commission has sought the relevant approval on a number of occasions, but no approval has as yet been granted to the Commission. If approval is not granted to retain all of the previous year's accumulated surplus funds, the Commission may be obliged to repay accumulated surplus funds to the National Revenue Fund as determined by National Treasury.

#### Relocation of Offices

The Commission will relocate its offices in approximately 3 years. A penalty for cancellation of the property lease agreement might be incurred when the Commission terminates the lease agreement.

## 7 Pension fund

The Competition Commission has made provision for a pension scheme that covers all employees. All employees are members of the defined contribution scheme administered by Sanlam Ltd. The scheme is currently invested in investment policies underwritten by Metropolitan Life. As an insured fund, the Competition Commission Pension Fund complies with regulation 28 of the Pension Funds Act of 1956, and is exempted from statutory actuarial valuation.

## 8 Change in Accounting Policy

The accounting policy in respect of stock was changed during the year in order to comply with generally accepted accounting practice. Stock consisted of stationary that was reflected on Balance Sheet in prior years. Stationary is now written off when purchased. Comparative figures have been restated in this regard.

	2002 R	2001 R
The effect of the change was as follows:		
Decrease in net surplus for the prior year	-	(194,635)
Decrease in stock	-	(194,635)

## 9 Fundamental error

The prior year figures have been adjusted with the correction of a fundamental error relating to the double provision for performance bonuses in the 2001 financial year.

	2002 R	2001 R
The effect of the change was as follows:		
Increase in net surplus for the prior year	-	742,587
Decrease in trade and other payables	-	(742,587)

## 10 Change in Estimate

Leasehold improvements were previously written off over a period of 12 years and are now written off over a period of 5,5 years, due to the anticipated future relocation of the Commission. The net effect of the change in estimate resulted in an additional depreciation charge of R687 836 to income. (Taxation - R Nil)

	R	R
<b>Change in estimate - Leasehold improvements</b>	<b>687,836</b>	-
Current depreciation charge	1,105,502	-
Previous depreciation charge	417,666	-

## 11 Financial risk management

### Interest rate risk management

The Commission invests surplus cash on fixed deposit for periods from 3 to 6 months. The interest rate for these deposits are fixed for the period of the investment. Other funds are kept in current and call accounts at variable interest rates.

### Liquidity risk management

The Commission maintains sufficient funds available in call and current accounts to meet its 3 month cash flow requirements. Temporary surplus cash is invested in fixed deposits.

### Credit risk management

The Commission invests temporary cash surpluses with major South African banks of high standing.

	2002 R	2001 R
<b>12 Reconciliation of net (deficit)/surplus to cash generated from operations</b>		
(Deficit)/surplus for the year	<b>(3,671,336)</b>	11,831,914
<b>Adjustments for:</b>		
Depreciation	<b>2,455,183</b>	1,729,988
Provisions	<b>1,173,681</b>	1,567,295
Interest received	<b>(3,406,221)</b>	(3,734,646)
Interest paid	<b>34,363</b>	312,682
Operating (loss)/profit before working capital changes	<b>(3,414,330)</b>	11,707,233
<b>Working capital changes</b>	<b>(2,887,940)</b>	<b>(8,661,366)</b>
Decrease in inventory	-	214,523
Decrease in accounts receivable	<b>2,313,583</b>	668,087
Decrease in accounts payable	<b>(5,201,523)</b>	(9,543,976)
Cash generated from operations	<b>(6,302,270)</b>	3,045,867

# 7. Corporate Governance Report

The Competition Commission is fully committed to the principles of openness, integrity and accountability as advocated in the King Code of Corporate Governance. This commitment provides stakeholders with the assurance that, after considering appropriate risk parameters, the institution's affairs are managed in an ethical, transparent and responsible manner.

The Competition Commission is constituted in terms of the Competition Act (Act 89 of 1998). The Competition Commission is independent and subject only to the Constitution and the law.

The powers of the Commission are vested in the Commissioner who, as Chief Executive Officer, is directly responsible to the Minister of Trade and Industry. The Commissioner is responsible for the general administration of the Commission and for performing any functions assigned to it in terms of the Act.

## 7.1 Corporate Governance Structure in the Competition Commission

In terms of the Competition Act the powers in respect of the functions of the Commission are vested in the Commissioner. The Act does not provide for the appointment of an independent board. Within the boundaries of the Act, it was therefore necessary for the Commissioner to identify structures to accommodate the practice of good Corporate Governance, of which one of the main elements is a body where collective decision-making takes place and where shared responsibility and accountability exist. In order to address this the Commissioner distinguished between two critical areas in regard to the powers vested in his position:

- Case-related issues; and
- Non case-related issues

### 7.1.1 Case-related Issues

The functions of the Competition Commission regarding cases are primarily investigative. The Commission therefore makes recommendations to the Competition Tribunal, an independent adjudicative institution, with regards to prohibited practices and large mergers. The Commission only makes decisions in respect of intermediate mergers and exemption applications. All decisions made by the Commission can be appealed. The Tribunal, as an independent institution reviewing Competition Commission findings in relation to cases, therefore fulfills the function of an independent Board. In respect of case-related matters there are therefore efficient checks and balances in place to ensure that the Commission does not abuse its power. For purposes of decision-making regarding cases the Commission consists of the Commissioner and all his deputies. If one Deputy Commissioner is appointed, then the Commission consists of the Commissioner and such appointed Deputy Commissioner.

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## 7.1.2 Non Case-related Issues

### Executive Committee

With regard to non case-related matters, however, the Tribunal plays no role. Other structures were created to comply with Corporate Governance best practices. To address this the Commissioner designated an advisory Executive Committee, under the chairmanship of the Commissioner, which is charged with a shared responsibility for the governance framework or for specific aspects of governance in the institution. All the executive members have been appointed for their business acumen and skills, and bring their experience and expertise to the Committee. This Executive Committee provides a forum for the generation of ideas as well as a more robust, pluralistic and adaptable decision-making framework. This provides for collective leadership under the authority of the Chief Executive Officer. This does not entail that the Commissioner, as Chief Executive Officer of the Commission, delegates his decision-making power to the Executive Committee as the Commissioner retains a veto right to any decision made by this Committee.

The Committee meets periodically and monitors the performance of the Commission. It addresses a broad range of key issues, and ensures that debates on matters of policy, case analysis and strategic planning are critical, constructive and informed. Over and above this, the Committee approves major capital expenditure for the Commission's discretion.

To further the participation of staff in the decision-making process of the Commission, a Management Committee that is comprised of managers and senior staff members in the Commission was established. The purpose of this forum is to involve senior staff members in the formulation and revision of Commission policies. This forum makes recommendations to EXCO on all the proposed new and revised policies.

## 7.2 Commission Secretary

Additionally, the Commission has appointed a Commission Secretary. The role of the Commission Secretary includes ensuring that the Commission complies with relevant legislation and regulations, conducts statutory audits and promotes the implementation of best practice in all areas of operation.

## 7.3 Management Reporting

On a monthly basis, the financial performance and key statistics are reported against approved budgets and compared with those of the prior years. Cash flow forecasts are updated monthly and expenditure is monitored on an ongoing basis.



*Mr Johan Dreyer*  
*Commission Secretary*

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## 7.4 Internal Controls

The Commission maintains internal controls and systems designed to provide assurance to the integrity and reliability of the financial statements and to adequately protect, verify and maintain accountability for its assets. These controls are based on developed policies and procedures, and are implemented by trained personnel with an acceptable level of segregation of duties. Management monitors the effectiveness of these internal controls and systems, with the assistance of an internal audit function.

The internal auditors confirmed that the monitoring procedures and processes are being applied effectively. All significant findings arising from audit activities are reported to the Audit Committee and the Commissioner.

The Commissioner, and external and internal auditors, are not aware of any occurrence of a material breakdown in the functioning of the above internal controls and systems during the year under review.

## 7.5 Audit Committee

The Audit Committee meets periodically and is chaired by a non-executive member. Both the internal and external auditors have unrestricted access to the Committee. The Audit Committee performs the following functions:

- Reviews the effectiveness of internal controls with reference to the findings of the external and internal auditors;
- Conducts reviews of critical accounting issues;
- Oversees compliance with Corporate Governance practices and specific disclosures in the annual financial statements;
- Conducts reviews of major audit recommendations;
- Review the annual financial statements.

### Members of the Audit Committee are:

Thabo Mosololi (Chairperson)	non-Executive
Sakhile Masuku	non-Executive
Tobie Verwey	non-Executive
Johan Dreyer	Executive
Maleho Nkomo	Executive

## 7.6 Employment Equity

Details of the Commission's employment equity policy appear in the Report on Employment Equity on pages 15 to 17 of the annual report.

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## 7.7 Environment, Health and Safety

The Commission views the occupational health and safety of its employees to be of primary importance. The Commission is committed to taking reasonable precautions to ensure a safe working environment.

We strive to conduct our business with due regard for environmental concerns, and are committed to developing operating policies to address the environmental impact of our business activities.

## 7.8 Code of Ethics

The Commission's management and employees are required to observe the highest ethical standards to ensure that business practices are conducted in a manner which is beyond reproach. These principles are incorporated in a formal Code of Ethics, which provides clear guidelines regarding expected behaviour of all employees.

The Commission provides equal opportunities to its employees irrespective of their gender or origin.

