Competition News
The official news letter of the competitioncommission
Edition 34 • March 2010
Towards a fair and efficient economy for all.

## In this Edition



# Supreme Court of Appeal confirm our jurisdiction in telecommunications

On 27 November 2009, the Supreme Court of Appeal (SCA) handed down its judgment in which it found, contrary to Telkom SA Ltd's assertions, that:

- the competition authorities had jurisdiction to hear the telecommunications cases brought against Telkom;
- the Competition Commission had followed proper procedures in the investigation and referral of the telecommunications cases; and
- the Commission had not displayed bias in reaching its decision to refer the telecommunications cases to the Tribunal for determination.

This judgment follows the Commission's investigation against Telkom, which started in 2002, and subsequent referral of this case to the Competition Tribunal in February 2004. In the 2002 complaint, the South African Value Added Network Services Association (SAVA) alleged that Telkom was abusing its dominance in the market by charging excessive prices and squeezing its rival's margins. Following an investigation, the Commission concluded that Telkom had indeed abused its dominance and referred this case to the Tribunal for adjudication.

Thereafter, Telkom sought a review of the referral in the Pretoria High Court on the basis that the Commission and the Tribunal did not have jurisdiction to deal with

By: Avish Kalicharan

the complaints as these would fall within the powers of the Independent Communications Authority of South Africa (ICASA). Telkom also raised additional arguments, namely (1) that the Commission failed to follow proper procedure, (2) did not refer the complaints timeously and (3) was biased in reaching its conclusion. The Commission opposed the application mainly on two grounds, i.e. that the decision to refer and the referral did not amount to administrative acts subject to review and that Telkom's objections to the referral should have been raised in the Tribunal and not the High Court. On 20 June 2008 the High Court ruled in favour of Telkom.

## The SCA hearing

The Commission then lodged an appeal to the Supreme Court of Appeal (SCA). On 2 November 2009 the SCA heard the matter and subsequently

## Editorial Note

In this edition, we focus on some of the Commission's major cases over the past few months, leading with the Telkom matter. Our findings in the Telkom investigation drew much attention when we made them public in October 2009. This was to be expected since telecommunications affects almost every aspect of modern life: the more we rely on it to make the world work, the more essential it becomes. For this reason telecoms costs must allow reasonable access where this is feasible. We believe that, in South Africa, there is considerable scope to improve consumer's access to telecoms services by reducing the costs to service providers and consequently to end consumers. We're making the case to the Tribunal that Telkom has abused its dominant position in telecoms in order to preserve its near-monopoly and extend it to related markets. We hope this case will be heard on the merits as soon as possible and that the outcome will be a real and immediate reduction in prices for this all-important sector.

Another matter that also raised many questions recently, for different reasons, was the Lanseria/Kulula case in which 1Time alleged that an arrangement between Lanseria and Kulula was anti-competitive. The fact that the World Cup tournament is around the corner was part of the reason for the interest this case attracted. 1Time felt that if it were allowed to provide an alternative flight service in Lanseria, it would provide consumers with a cheaper alternative come June 2010. We, however, found that the arrangement was not anti-competitive and the Lanseria/Kulula article sets out our reasons why. This is not to say the Commission is not concerned about the increase in airline ticket prices. On the contrary, we're investigating allegations of collusion on pricing strategies amongst domestic airlines at the moment and we consider this case amongst our priority investigations right now.

As usual, the newsletter is packed with interesting insights into how the Commission investigated and analysed both enforcement and merger cases, as well as the conclusions that we reached as a result. We also conducted our first ever Business Consultative Forum in November 2009, where we began to forge a mutual understanding with business in South Africa, outside an enforcement setting. You can read more about its outcomes in this edition. Through all our communication efforts, such as the Business Forum, this newsletter and a host of other initiatives, we hope you will gain a better understanding of competition and how it affects you directly in the many facets of your life.

**Nandi Mokoena**

delivered its judgment, in favour of the Commission, on 27 November 2009. The SCA held that the decision to refer and the referral by the Commission did not amount to an administrative action but were of an investigative nature and were accordingly not reviewable in terms of the Promotion of Administrative Justice Act of 2000 (PAJA).

With respect to the allegations of bias, Telkom argued that the Commission had relied heavily on the advice of the Link Centre and that the Link Centre, and some of the consultants at the Link Centre, were biased against Telkom in that they made critical statements about Telkom in public and also that the Link Centre was funded by some of the complainants in the matter. Furthermore, Telkom argued that the advisory board of the Link Centre was closely related to some of the complainants.

In this regard the SCA held that the Commission's reliance on the report of the Link Centre did not evidence bias on the part of the Commission. The Court recognised that the Link Centre report was one of the considerations which the Commission took in arriving at its decision, the others being the Commission's internal investigation and legal advice obtained from external legal counsel. Accordingly the SCA came to the conclusion that no illegality on the part of the Commission in referring the complaint was shown.

With respect to its claim that the Commission had not followed proper procedures, Telkom alleged that, firstly, there was no proper application of the Memorandum of Agreement (MoA) between the Commission and ICASA and that the complaints had lapsed due to it not being properly extended. The SCA ruled in favour of the Commission in these regards

due to the fact that it found that, on the issue of the MoA, the Commission and ICASA had co-operated and consulted extensively and there was substantial compliance with the terms of the agreement. In terms of the lapsing of the complaints, the SCA held that where multiple parties have lodged similar complaints, it is not necessary to obtain the consent of each and every party to extend the complaint. The SCA found that the extensions were obtained timeously and accordingly the complaints had been referred within the extended period.

The issue of jurisdiction was also decided in favour of the Commission and the Tribunal, and the SCA also ruled that the Tribunal would have been the preferred forum to adjudicate on the issues raised by Telkom. The result of the ruling is that the complaint will now be heard in the Tribunal on a date still to be decided.

## New complaint

While all this was pending before the courts, the Commission investigated and referred, to the Tribunal, a separate complaint against Telkom alleging conduct similar to that which SAVA had initially brought to the Commission. This time the complainants were MWEB, Internet Solutions, Internet Service Providers Association (ISPA) and Verizon. The Commission referred this complaint to the Tribunal on 26 October 2009 and at the time of submission of this article Telkom had not filed a reply to the complaint referral.

The impact of the SCA decision is, therefore, that Telkom now has two cases to answer before the Tribunal, that is the case the Commission referred in February 2004 and the one it referred in October 2009 – both of which allege that Telkom has abused its dominance in the provision of internet services to the detriment of consumers. During 2009, internet penetration in South Africa was reported to be in the region of 10%. Given the importance of improving internet access to consumers and business, the Commission believes that the sooner the Telkom cases are heard on the merits, the better for consumers.

# The 1time Airlines complaint against Kulula and Lanseria

On 30 November 2009, the Commission issued a Notice of Non-referral in the complaint filed by 1time Airlines ("1time") against Kulula Airlines ("Kulula") and the Lanseria International Airport ("Lanseria").

This decision followed a complaint which 1time lodged with the Commission. In this complaint, 1time alleged that, at the beginning of 2006, Kulula and Lanseria had entered into a 5 year Memorandum of Understanding (MOU) which gave Kulula:

- exclusive rights for one year to operate a domestic scheduled passenger airline service from Lanseria; and
- a 'right of first refusal' for the remaining duration of the agreement. The 'right of first refusal' clause required Lanseria to submit the flying schedule of any new operator, wishing to operate from Lanseria, to Kulula. If Kulula decided to exercise its 'right of first refusal', the new operator would not be allowed to operate and Kulula would have 12 weeks in terms of the agreement to fly the proposed routes or time slots, failing which Lanseria could allow the operator to operate.

1time alleged that the MOU was anti-competitive in that it effectively excluded 1time from taking off from Lanseria for a period of 5 years. The Commission investigated this complaint under Sections 5(1) and 8(c) of the Act.

The sections mentioned above required the Commission to define the relevant markets in which the parties operated. The Commission identified two distinct markets during its investigation, namely, the market for the supply of airport facilities in which

By: Shadrack Rambau

Lanseria operated upstream as well as the market for domestic scheduled passenger airline service operated by 1time and Kulula downstream.

A key issue for the market definition was to determine whether or not the (domestic) flights from Lanseria competed with flights from OR Tambo

International Airport ("ORTIA"). In determining the relevant market for purposes of this complaint, the Commission considered the following factors:

- international case precedents; and
- the degree of substitutability between airports located in different geographic areas as informed by passenger choices. This included an evaluation of the distance and travel times to Lanseria and ORTIA from selected suburbs in Gauteng, airfares and fare buckets between the two airports, as well as price correlation and stationary tests, which helped, amongst other things, to determine the constraints on the competitive behaviour of the areas under investigation.

The Commission concluded, from the above, that Lanseria and Kulula operated in separate markets and, as such, were both dominant in their respective markets. Logically this also implied that the MOU had the effect of substantially lessening competition in the market.

Although the Commission believed (1) that the respondents were dominant, (2) the MOU substantially lessened competition and that (3) the barriers to entry in the airline industry were high, the Commission also found that the MOU demonstrated some gains, which would benefit consumers in the long run and thus justified the continuation of the agreement.

In this regard, the investigation revealed that both Kulula and Lanseria made substantial investments in getting Kulula's operation off the ground. A significant amount of these investments were found to be irrecoverable (sunk costs). The Commission was of the view that Kulula would have probably chosen not to make these investments had it known that the opportunities for expropriation existed post investment.

Further investigation revealed that no scheduled passenger airline had previously succeeded in sustaining a domestic airline service at Lanseria. A number of airlines tried to operate a domestic scheduled passenger airline service from Lanseria but failed. Launching at Lanseria pointed to a high degree of risk for Kulula. The risk would not have been mitigated were it not for the MOU. The Commission, therefore, concluded that the MOU was necessary to minimise the risk, and enable Kulula to break even and recoup its investments at Lanseria.

The five (5) year duration of the MOU was also deemed to be reasonable for recoupment purposes. The Commission however had strong concerns that any renewal of the MOU in its current form would most certainly be problematic to competitive forces. It was for this reason that the Commission made it clear to both Kulula and Lanseria that a continuation of the MOU in its current form beyond the five year period (or 2011) was unlikely to bear up to the same scrutiny.

Upon being informed, 1time was not satisfied with the Commission's non-referral decision, and has since referred this complaint to the Competition Tribunal for determination.

# The role of information exchange in coordinated conduct

By: Reena das Nair

In line with its priority in curtailing cartel activity in the South African economy, the Competition Commission has recently extended its focus to practices that facilitate collusive agreements or that amount to stand-alone collusive or concerted outcomes. One such practice is the exchange of commercially sensitive information between competitors.

A key concern with information exchange is that it increases transparency, thereby reducing strategic uncertainty of rivals' behaviour. This could result in coordinated outcomes in certain markets. Information exchange could also facilitate better monitoring of rivals' actions which could assist in swifter and more targeted punishment of deviators from an existing agreement. Finally, information exchange could communicate or signal future intentions of rivals, allowing alignment of future behaviour or achieving agreement.

While the role of information exchange in some cartels has been only to facilitate an existing agreement on price, quantity, market or customer allocation between rivals, international jurisdictions have also ruled that the agreement to exchange information could in itself be anti-competitive (e.g. in the *UK Tractors* case). This is because in certain markets, particularly oligopolistic markets, the information exchange itself has the effect of stifling hidden competition by reducing incentives to engage in competitive behaviour. A player has no incentive to secretly discount to gain market share if it knows that this action is immediately visible to its competitors through the information exchange, who, given interdependencies in such markets, are likely to respond by also discounting. This has the effect of dampening competition and could amount to an agreement to allocate markets, such as where the arrangements ensure there is little or no incentive to attract customers away from a competitor.

It is difficult to put forward a 'one-size-fits-all' approach to information exchange given different market dynamics in each case. However, international case law has provided the following useful guidance on what types of information exchange are problematic under particular market conditions. The Commission continues to have consideration to this guidance in its ongoing investigations involving information exchange.

It is widely accepted that information exchange in concentrated markets is more problematic than in markets with many players. In concentrated markets, exchange of sensitive information results in increased transparency that reduces uncertainty about rival's actions. Other market characteristics to consider include the existence of barriers to entry (where greater barriers limit new entrants from disrupting the cartel), the nature of the product in question (where it is easier to sustain collusion if products are homogenous and if demand is inelastic), the nature of sales (whether sales are frequent or lumpy would influence how quickly deviations are detected) and the nature of competition in the market.

The type of information exchange that is considered most problematic is the exchange of company-specific, highly disaggregated, commercially sensitive information shared on a regular basis, such as exchange of prices (especially future pricing intentions), discounts, rebates, sales data, capacities, commercial strategies or customer details. This is especially so if the information is privately shared between competitors and not accessible to the general public. Information on individual firms' immediate past prices and/or quantities may allow identification of deviators from an agreement and could result in more effective punishment. The exchange of aggregated information in very concentrated markets may allow firms to identify one or two rivals who have been deviating from an understanding, especially when there is specialisation by product category or customer grouping.

The age of the information exchanged is also relevant. The European Commission has suggested that the exchange of future strategic information of individual companies is particularly problematic. Future intentions may also be communicated via 'cheap talk' (communication that does not commit parties to a course of action), which could be a useful means to achieve successful coordination (the US's *Airline Tariff Publishing Company* matter).

Historical information that has lost its commercial sensitivity is generally not considered harmful. The age of such information may vary across industries. The European Commission in the *UK Tractors* case considered information to be 'historical' if it dated back more than 12 months. In the same matter, it was suggested that more recent information (less than 12 months old) may be exchanged if aggregated over at least three players belonging to different industrial or financial groups. The US agencies, in guidelines on acceptable levels of information exchange in the health sector, considered the 'safety zone' to be information more than three months old, where there are five or more providers with no individual provider's data representing more than 25% of the information, and where no individual provider's data is identifiable.

Other types of information exchange are looked upon less unfavourably, including exchange on market demand, cost information, benchmarking studies, third party managed survey data, and publically available data as these exchanges may have considerable efficiency justifications. However, these would have to be assessed in context of the market affected.

Another consideration is the frequency in which the information is exchanged. This determines how quickly deviations can be detected and therefore punished. The shorter the time-lag between information exchanges, the more effective the cartel is.

Information could be exchanged directly between players or indirectly through customers (via price announcements, commitment clauses in sales contracts etc.). A mode of information exchange particularly relevant to South Africa is through trade associations. Trade associations often collect individual company statistics, collate and then disseminate aggregated information back to its members. Often this information is used for beneficial purposes to inform members of the state of the industry as well as of important trends and developments, but it could also be used to facilitate collusion.

Information flows, in any case, through free and competitive markets. And, there may be good efficiency justifications to exchange information in certain circumstances or industries (for instance, in risk markets like insurance and banking (the European *Asnef-Equifax* matter) or in innovation and technology markets). These include, amongst others, better informed investment decisions, spreading technological knowhow, organisational planning and learning, enhanced ability to adapt more quickly to demand changes and benchmarking that could lead to lower costs.

However, such efficiencies may often be realised without requiring the exchange of highly disaggregated and individualised company data. The exchange of information may also not necessarily have to be private to achieve some of the claimed efficiencies.

Many South African markets exhibit structural characteristics susceptible to collusion, as described. A number of markets, especially in the intermediate industrial products and food sectors, are duopolistic or oligopolistic in nature, with homogenous products and high barriers to entry. Former state intervention in industries with strategic importance to the country resulted in extensive information exchange that occurred through industry boards and trade associations. State-set objectives of many of these boards included collective planning, regulating markets and fixing prices. This often resulted in clear, well-understood focal pricing points or artificially divided markets.

Under these circumstances, and based on the foundations established historically, information exchange may facilitate ongoing collusion that is prevalent in many markets in South Africa today. Importantly, the effectiveness of the work of the Commission in uncovering and stopping cartel activity is undermined if cartel outcomes persist tacitly in markets where information exchange continues.

The Commission's approach in ongoing cases that involve information exchange, such as in the cement, steel, milling and fuel industries, has been to assess the context and market conditions under which such information is exchanged and the implications this has on effective competition in these markets. This, amongst other analysis, involves engagement with stakeholders that use the information to understand what it is used for and if there is an alternative means of achieving these same efficiencies that is less harmful to competition.

# Millers meet to mill the poorest of the poor

Following from the investigations into cartel conduct in bread, the Commission received information from both Premier Foods Limited and Tiger Brands Limited about cartel conduct in milling. Both companies cooperated fully with the Commission, including furnishing the Commission with credible evidence to confirm the existence of the collusion and their role and participation

By: Bongani Ngcobo

therein in exchange for leniency. The Commission's investigations into the milling industry have identified two separate areas of cartel conduct to date. One relates collusion with regard to milled white maize (primarily for mealie meal), and the other relates to the milling of wheat (into flour). As well as being quite distinct products, generally made using different milling machinery, there are different participants. While the four major milling companies (also those involved in bread) mill both white maize and wheat, there are many more producers of white maize. Hence the cartel agreements involve different parties and products.

## Wheat milling

Wheat milling process can be divided into three stages of which each stage has a specific type of machinery. Firstly, the breaking process where roller mills are used to gently crack the wheat kernel open to prepare the wheat for further processing, aiming to remove the bran from the endosperm. Second is the scraping process, here the endosperm is scraped from the bran to be refined by means of roller mills, sifting machine and purifying methods. Thirdly, there is the reduction process wherein the endosperm is finally refined by means of smooth roller mills and graded by sifting machines to produce flour for human consumption. Wheat can be classified as either hard or soft. The hard wheat is that which contains high protein and is used to bake bread, whereas the soft wheat has less protein and is an ideal ingredient for confectionaries and biscuits.

The wheat milling process produces brown and white flour which are both important ingredients for the production of bread, industrial flour which is supplied to non-integrated bakers, cake flour and wheat offal which is used in cereal production.

The Commission's investigation revealed that during the period around 1996 up to early 2007 the wheat milling companies directly fixed the selling prices of milled wheat products and allocated customers. This occurred through frequent meetings and other forms of communication. The conduct is a contravention of section 4(1) of the Act. In addition to Premier and Tiger, the respondents that are implicated in this complaint are Pioneer Foods Limited ("Pioneer"), Foodcorp (Pty) Ltd t/a Ruto Mills and Godrich Milling (Pty) Ltd. The Commission will be seeking the imposition of the maximum penalty against these firms for this conduct which has affected the poorest of the poor. As indicated earlier, Premier and Tiger have been granted conditional leniency and no relief will be sought against them in the Tribunal.

## Maize milling

The milling of white maize is also a three staged process, similar to the milling of wheat, and again with a specific type of machine. There is also a reduction process wherein the endosperm is finally refined by means of smooth roller mills and graded by sifting machines. The products thereof differ in particle size, composition and application. However, the main products that get to consumers are maize meal, samp, maize rice, maize flour and maize chop.

The number of participants in the maize milling industry is greater than that in wheat milling. There are millers who strictly mill white maize only and who are active in particular regions whilst others operate nationally. The Commission's investigation

established that around 1996 up to early 2007, the milling companies, both at national and at regional level, fixed the selling prices of milled white maize products in contravention of section 4 (1) (b) (i) of the Act. For example, there were regional 'chairmen' who were designated to run the meetings in particular areas and keep participants in line.

The respondents that are implicated in this complaint include Premier, Tiger, Pioneer Foods Limited, Foodcorp (Pty) Ltd t/a Ruto Mills, Godrich Milling (Pty) Ltd, Progress Milling, Pride Milling (Pty) Ltd, Westra Milling (Pty) Ltd, Brenner Mills Ltd, Blinkwater Mills (Pty) Ltd, TWK Milling and Keystone Milling.

Again, no relief will be sought against Premier and Tiger in these proceedings conditional on their full cooperation in prosecuting the remaining members of the cartel.

The Commission's evidence indicates long-running and extensive collusive conduct to fix the prices of products including mealie meal and wheat flour, directly harming consumers and especially impacting on those struggling to get by on low incomes. In the case of wheat flour, it also impacted on small and independent bakeries seeking to compete with the major bread producers, from whom they also had to buy their flour.

Finally, the Commission is continuing to investigate other aspects of the milling of wheat and flour, as well as bread baking. These investigations include into the role played by information exchange by the industry participants to ensure coordinated outcomes rather than competition in determining prices and supply.

# Collusion rife in the steel industry

By: Rizia Buckas

For the past two years the Competition Commission has been investigating various parts of the steel industry. In the later part of 2009 four separate cartel cases were referred by the Commission to the Tribunal, relating to: the production and supply of long steel products; the supply of wire and wire products, the supply of mining roof bolts; and, the supply of wire mesh. Investigations continue into other parts of the steel industry such as the downstream supply of reinforcing bar, steel plate, steel traders, and tinplate.

The cartels uncovered are associated with two major priorities of the Competition Commission. The first is into intermediate industrial products where there are high levels of concentration. The second is construction and related materials.

With regard to steel producers, the Competition Commission undertook search and seizure operations on the offices of the South African Iron and Steel Institute ("SAIS"), Highveld Steel and Vanadium Corporation ("Highveld") and Cape Town Iron and Steel Works ("CISCO") on 19 June 2008. This followed the Commission's initiation in April 2008 (ref 2008Apr3696), against the major steel producers and steel traders. The Commission's research had indicated that the producers of long steel had been charging prices to local customers at import parity price levels since 2002, notwithstanding the fact that South Africa is a net exporter of steel. The Commission had come to the conclusion that the ability of the five major long steel producers to maintain prices at such levels could have been the result of anti-competitive behaviour in the market. The long steel producers and merchants appeared, at that stage of the investigation, to have effected and maintained high prices for structural steel products such as reinforcing steel (used largely for engineering and construction purposes) through some kind of agreement.

Shortly after the search and seizure operations, the Commission received leniency applications from Scaw South Africa (Pty) Ltd ("Scaw") and Consolidated Wire Industries Limited ("CWI"). CWI is a joint venture company in which Scaw hold 50% plus one share, with the remaining issued share capital held by ArcelorMittal South Africa. The leniency applications largely confirmed the conduct that the Commission's research had indicated and, indeed, identified wider cartel conduct including in the area of wire products.

Leniency applications were received shortly thereafter for related steel products. Murray & Roberts subsidiary, RSC Ekusasa Mining, submitted an application identifying a cartel in the supply of mining roof bolts. Another Murray & Roberts subsidiary, BRC Mesh, submitted a leniency application identifying cartel conduct in the market for the manufacture of reinforcing mesh.

All these four cartel cases have now been referred to the Competition Tribunal in the last quarter of 2009, as follows.

On 1 September, 2009, the Commission referred contraventions relating to price fixing and dividing markets in respect of long steel products such as wire rod and rebar and sections against four major SA producers of long steel products: ArcelorMittal South Africa, Scaw, Cape Gate and CISCO, and the industry body SAISI for facilitating the conduct. No relief is sought against Scaw in light of its leniency application. The main long steel products that are relevant to this complaint of price fixing and market allocation are reinforcing bar (rebar), wire rod (required for mesh production) and sections (including rounds and squares, angles and profiles. The investigation confirmed that there has been a longstanding culture of co-operation amongst the steel mills regarding prices to be charged, and the discounts to be offered, as well as the fixing of certain trading conditions. Co-operation also extended to arrangements on market division which involved allocating customers, suppliers and specific types of goods and services to downstream contractors or merchants who had been awarded contracts on large construction projects.

On 7 September 2009, the Commission referred the wire products collusion case against Cape Gate, Allens Meshco, Hendok, Wire Force, Agriwire, Agri Wire North, Cape Wire, Forest Wire, Independent Galvanising and Consolidated Wire Industries. The conduct involved the fixing of prices by agreeing on a National Price List and dividing markets and customers for the supply of wire and wire products, as well as rigging bids for the supply of cable armouring wire. This relates to similar conduct to that covered in a complaint by Barnes Fencing Industries (BFI) in which it had alleged that Allens Meshco and Hendok and Wire Force and Agriwire were fixing prices for the supply of certain fencing materials, wire and other associated products. BFI had also alleged abuse of dominance and price discrimination on the part of ArcelorMittal South Africa. The BFI complaint was split into two separate referrals filed with the Tribunal in January 2007.

In September 2009 the Commission also referred the mining roofbolts cartel to the Tribunal, based on the leniency application filed by RSC Ekusasa Mining. This established a long-running cartel in the supply of mining roof bolts. The Commission's investigation also revealed that RSC Ekusasa, Aveng's Duraset division, Dywidag Systems International and Videx Wire Products had reached agreements to allocate customers and goods, and to collude on tenders in the supply of mining roof bolts until at least 2008. The firms involved in this contravention are the main suppliers of mining roof bolts to the major mines in the Republic including, Goldfields, Harmony, Anglo Platinum, Lonmin and Sasol Coal.

On 2 December 2009, the Commission referred the cartel in wire mesh. This involved BRC Mesh, a subsidiary of Murray and Roberts, Aveng (through the operations of its Steeledale division), Reinforcing Mesh Solutions and Vulcania Reinforcing. According to the Commission's case, cartel meetings covered price-fixing and the allocation of customers. Most of these Respondents have admitted to the conduct.

The overall picture that emerges from the cases referred thus far is of a widespread culture of collusion at various levels of the markets for steel products. This implies that end consumers were subject to compounding cartel conduct. For example, cartel conduct in the production and supply of primary long steel products indicates supra-competitive pricing at this level. The primary long steel is then converted into products such as wire, wire mesh and mining roof bolts where separate cartels imply further collusive margins being earned. Many long steel products are ultimately used in construction meaning that collusive conduct in these products increases the costs of infrastructure, which has been a key part of stimulating the local economy.

As already highlighted, the Commission continues to investigate anti-competitive conduct in other markets for steel products and expects to make more referrals in the coming months.

# Coordinated conduct in Bitumen

By: William Kganare

The Commission recently referred a case of coordinated conduct with regard to bitumen on the part of the primary producers of bitumen (the main oil companies) and the Southern African Bitumen Association (SABITA). This followed an application for immunity by Sasol Limited and its subsidiaries and Sasol Oil (Pty) Ltd and its subsidiaries under the Commission's Corporate Leniency Programme ("CLP"). This was brought around October 2008, and the Commission subsequently initiated a complaint in January 2009.

In essence, when the industry was deregulated and the competition law exemption lapsed on 31 August 2000, relating to agreeing price and adjustment formulas, the industry went ahead with such practices through a series of meetings and interactions between the main firms. This meant firms agreed the basis on which bitumen prices were to be determined and the mechanism by which they would be increased monthly through a Bitumen Price Adjustment Factor ("BPAF"). Refined bitumen is the residual (bottom) fraction obtained by fractional distillation of crude oil. Bitumen and modified bitumen products are used to tar and rehabilitate roads, waterproof products and to suppress dust. The government of South Africa is ultimately the main customer in the form of paying of road construction, whether locally, provincially or nationally.

After the exemption period lapsed in August 2000, primary producers were no longer allowed to legally meet to collectively determine changes to the Wholesale List Selling Price (WLSP), such as might arise from changes in raw material costs (i.e. import costs of crude oil), local manufacturing costs or exchange rate fluctuations and other factors.

Around 2001 to 2002 producers agreed on the basis for the bitumen price and the way it would be adjusted. In a number of meetings between 2002 and 2007, primary producers formally agreed to adopt the model which later transformed into BPAF. Also at these meetings, it was discussed and agreed how the bitumen price index would be incorporated in future deliberations. The intention was that for every month thereafter SABITA would notify primary producers (mostly by way of email) of the most recent BPAF adjustment factor and BPAF driven market price which would then be used by the primary producers to

set their own prices. SABITA then distributed e-mails on a regular basis to primary producers which reflected BPAF and an amount referred to as the 'Market Price' (which is essentially the WLSP) of base bitumen. This market price would be formulated by SABITA through the application of BPAF. The oil companies then agreed to a common approach to the determination of movement in the wholesale list selling price of bitumen.

SABITA members (primarily oil companies) agreed that the data used to calculate the monthly BPAF would be posted on the "members' only section" of the SABITA website. The site also allowed members exclusive access to strategic information on road inventories and budgets, general monthly information on BPAF as well as bitumen market statistics on a regional and quarterly basis. This practice appeared to have continued at least till July 2007, when SABITA ceased publication of BPAF on its website following competition concerns raised by members.

One rationale for this approach is that customers (typically contractors, who often entered into long term contracts) would be able to include the adjustment factor in negotiating contracts, so that adjustments could be passed onto the buyer so reducing the contractors' risk. However, there is an important difference between achieving such an outcome through the use of adjustment factors by buyers and sellers, and the agreements between competitors through which this was done.

In this case, the contractors may also be unconcerned as they are passing on the costs to the end customer, who is not aware that the price of a key input to the road being constructed is the outcome of collusive conduct between the bitumen producers.

# Merger Review

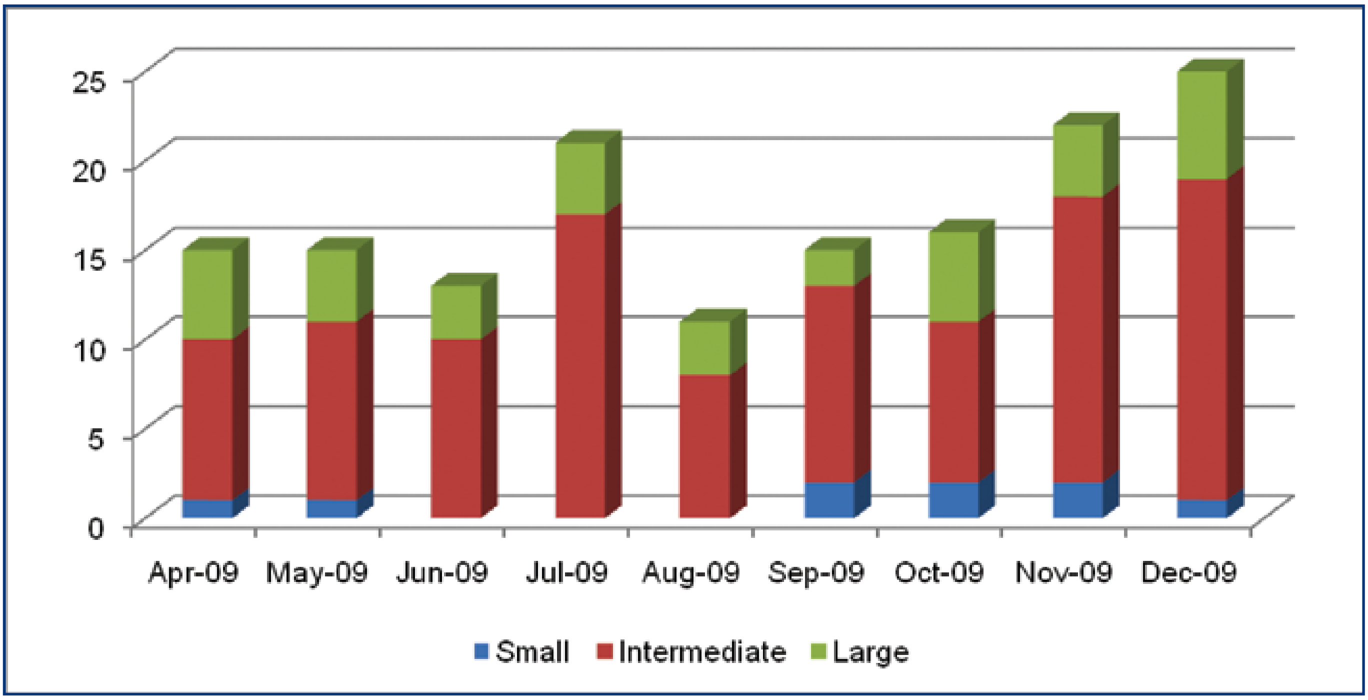
## Introduction

During the months of September to December 2009 the Commission experienced an increase in the number of merger notifications indicating, increased M&A activity in South Africa as opposed to earlier last year. The diagram below summarises monthly notifications to the Commission for the period April 2009 – December 2009.

During the last few months the Commission dealt with interesting and challenging matters. Every so often (and these days more often than in the past) the financial distress of some or other entity involved in the transaction is highlighted as a rationale for the transaction. This naturally has an impact to the analysis of the transaction. This article will profile two such cases.

## Sanlam & Emerald

The parties competed in the business of corporate short term insurance.



The Commission recommended the unconditional approval of this transaction which was endorsed by the Competition Tribunal. Relevant factors which formed part of the analysis of this transaction included, whether insurers providing either lead or follow cover to large risks where in separate markets, the impact of international insurers to South African premiums, the effectiveness of Emerald as a competitor and whether or not the criteria for the failing firm doctrine was met in this merger.

## Harmony & Pamodzi Free State

Harmony acquired the liquidated Pamodzi Free State gold mine President Steyn. No significant competition issues arose from the transaction, however, the transaction did result in the retrenchment of approximately 3600 employees. Employees of the President Steyn mine experienced significant hardship since the liquidation of the mine as they did not receive any salaries for the greater portion of 2009. The trade unions NUM and Solidarity entered into agreements with Harmony agreeing to the retrenchments of all employees, however, also agreeing to the systematically recall approximately 2000 employees over a period of 24 months after the transaction. Considering that Harmony did not intend to employ all previously employed staff of President Steyn mine, the net result of the transaction is that approximately 1600 employees would lose their jobs. Given the number of employees involved, the Tribunal made the agreements with the trade unions a condition of the merger and obliged the parties to report to the Commission on regular intervals.

## Chlor-Alkali & Botash

The proposed transaction involves the acquisition by CAH of 50% shareholding in Botash from Anglo, De Beers, AECI, FirstRand, Standard Bank and Nedbank collectively referred to as the selling shareholders. CAH controls WBSH a competitor of Botash in the market for the supply of chemical grade salt to the inland regions of South Africa. The parties also stand in a vertical relationship in that CAH is also active in the downstream chlor-alkali market (through NCP) in South Africa where chemical grade salt is the primary input in the manufacturing of products such as caustic soda and chlorine.

The Commission found that the merging parties are currently the only two players in the market for chemical grade salt in the inland region of South Africa. The transaction will therefore lead to the removal of the only competitor in the chemical grade salt market for the inland region of South Africa. The only inland customer of the merging parties, Sasol initially objected to the transaction averring that the proposed transaction would result in the removal of the only competitors of WBSH in the market for chemical grade salt and will enable WBSH to foreclose its downstream competitors or sell input materials at significantly higher prices.

The proposed acquisition of Botash will strengthen NCP in the downstream chlor alkali market given that they will have control over the price of the primary input in the chlor-alkali market.

The Commission concludes that the proposed transaction is likely to lead to a substantial prevention or lessening of competition in the affected markets. The transaction leads to the removal of the only / closest competitor in the chemical grade salt market for the inland regions of South Africa. Additionally, there is substantial ability as well as incentive to foreclose inputs into the production of caustic soda downstream. The barriers to entry appear to be high and the potential entrant is unlikely to offset any anticompetitive behaviour by the merged entity. The Commission accordingly recommended to the Tribunal the prohibition of the proposed merger.

Subsequent to the Commission's recommendation to the Tribunal, Sasol entered into a long term supply agreement with Botash. Considering that no other inland customers exist (and new entry is highly unlikely) and that Sasol has secured a favourable long term supply agreement the Commission amended its recommendation to approve the transaction to conditions compeling Botash to supply any new potential downstream entrant in the inland market with chemical grade salt at no less favourable terms than that of Sasol.

## Shoprite & Transpharm

Shoprite is a major grocery retailer in South Africa and like many other retailers has extended its product range to pharmaceutical products. Transpharm is a wholesaler of pharmaceutical products in South Africa and supplies pharmacies with a wide range of pharmaceutical products. The parties do not compete with each other, however they stand within a vertical relationship. The Commission investigated the possibility of the merged entities dominance in both the upstream and downstream market and accordingly concluded that the post merger position shall not result in any increased acquisition of market power and that the transaction does not bring to bear any foreclosure concerns. It is the Commission's view that the proposed transaction is unlikely to prevent or lessen competition in the upstream or downstream markets. Post-merger, the parties shall neither be dominant in the upstream market, nor shall they be dominant in the downstream market. The parties shall therefore not be able to exert any undue market power. The Competition Tribunal concurred with this conclusion and approved the merger without conditions.

# Aspen and GSK merger

By: Thabelo Masithulela

During 2009 the Competition Commission had to consider the transaction between Aspen Pharmacare Holdings Limited ("Apsen") and GlaxoSmithKline (GSK). In terms of the transaction filed in South Africa (which formed part of a broader international transaction) Aspen acquired control over the pharmaceutical business of GSK in South Africa. In return GSK became the single largest shareholder in Aspen holding 16% of the entire issued share capital of Aspen.

Aspen is a generic pharmaceutical company and GSK is an originator pharmaceutical company. The Commission analysed this transaction from two perspectives. Firstly the Commission analysed the existing product portfolios of the parties in order to determine whether the transaction would likely substantially prevent or lessen competition in any of the markets in which they currently compete. Secondly, the Commission analysed the potential future competition concerns that could arise from either parties' pipeline products.

With regards to the existing products of the parties the Commission identified and analysed product overlaps within 16 ATC3 categories. Of these overlaps the Commission identified three specific products in the Anti-Retroviral categories in which the merging parties compete and have a significant share of the market. These products are *Zidovudine, Lamivudine* and the combination (*Zidovudine Lamivudine*) 'a cocktail' including both products. The Commission however, found that a sufficient number of competitors will remain in these markets post merger which will be able to constrain the merged entity behaviour and therefore concluded that it is unlikely to substantially prevent or lessen competition in these markets.

With regards to the other 13 products the Commission found that it was unlikely that any competition concerns could arise as the merged entity's combined market shares would have been low and various other firms competed with them in these markets.

During the investigation GSK publicly announced its commitment to voluntary license an anti retroviral product "*Abacavir*" on a non-exclusive basis to Aspen. *Abacavir* is a GSK patented product which is used primarily for the treatment of children with HIV. Currently, GSK is the only supplier of this product in South Africa. The Commission expressed a concern with the merging parties in relation to their expressed commitment to licence *Abacavir* to Aspen and the uncertainty in relation to other generic firms. Subsequently, GSK decided to extend the voluntary licences to Adcock Ingram, Cipla Medpro, Ranbaxy, Biotech Laboratories and Feza Pharmaceuticals and provided the Commission with signed copies (by GSK) of the licensing agreements on 27 August 2009. The Commission is of the view that the undertakings and licensing offers made by GSK to the various generic firms will sufficiently address the potential competition concerns arising from this merger in relation to *Abacavir*. The Commission anticipates that the conclusion of these licenses will ensure that *Abacavir* will be priced more competitively as a result of increased generic competition.

The Commission did this analysis taking cognisance of the fact that the global pharmaceutical industry saw a trend of consolidation in the recent past. Several mergers between originator companies, (*Pfizer & Wyeth and Schering Plough & Merck*) and between originator and generic companies, (*Sanofi Aventis & Zentiva*) have taken place. There have also been a few mergers between generic companies (*Teva & Barr*). In addition the EC Pharmaceutical Sector Inquiry published in July 2009 explains in detail the current trend in the industry worldwide.[1] The report highlights that originator companies are undergoing a phase of transition with their blockbuster products expiring, R&D costs increasing, and novel medicines declining. These trends have reduced profits, and as a result, some originator companies have acquired generic companies to, "*diversify their product and risk portfolio as well as extending their geographic reach*". Another strategy for originator companies to diversify risk is to merge with other originator companies. This is generally motivated by economies in R&D efforts and complementary patent portfolios. The Commission considered the approach adopted by the European Commission in analysing the *Sanofi Aventis & Zentiva* merger.

The assessment of potential competition involved two aspects:

a) An assessment of whether generic firms will be disincentivised from entering and/or competing as aggressively against the originators' products post merger. This strategy is more likely when originator firms have blockbusters which are coming off patent in the medium term; and

[1] European Commission, Pharmaceutical Sector Inquiry: Final Report, 8 July 2009.

b) An assessment of reduction of the potential competition between the generic firms' pipeline products and originator firms' existing products, in that generic firms would have otherwise been likely to have launched products in direct competition with the originator firms.

With regards to the first aspect above the Commission's investigation revealed that in relation to GSK's products coming off patent only one significant blockbuster was identified as a potential issue. With regards to the second aspect above the Commission's investigation revealed that there are numerous products in Aspen's current pipeline (i.e. products that Aspen plans to launch), of which only a few are GSK originator products. Judging by the relatively small proportion of GSK's products less than 5% in Aspen's pipeline, it is unlikely that the overall generic strategy of Aspen will be affected by the merger, with respect to the majority of non-GSK products.

Considering the above the Commission is of the view that the merger is unlikely to have a substantial adverse effect on the potential competition between the parties in the indentified markets post merger.

# The Consolidation of Medical Schemes and cost of healthcare

Over the past decade, the South African healthcare industry has shown a trend towards the consolidation of medical schemes and its administrators resulting in a steady decline in the number of schemes and administrators in the industry. Some of the more recent acquisitions include the consolidation of Liberty Health Medical Scheme and Medicover Medical Scheme; BESTmed and TeleMed; Bonitas and BHP Billiton (South Africa) Medical Scheme; and Old Mutual (South Africa) and Medscheme Life Assurance Ltd.

The major driving forces behind consolidation appear to be the need to contain costs as well as the far reaching legislative changes that are set to remould the South African healthcare landscape. The recession has also become a key factor in the drive towards consolidation. A decline in investment and continued job cuts contribute towards the financial instability of schemes. A compounding factor is the ageing profile of the members of the schemes, as the older,

By: Maarten van Hoven

By: Nazeera Ramroop

present higher incidence of chronic diseases, HIV related illnesses and diabetes. Schemes fail in attracting and maintaining the younger and healthier population and therefore have exposed themselves to frequent and higher claims.

According to the Council of Medical Schemes ("CMS") Annual Report 2008-09, medical schemes came under financial pressure last year with 77 schemes of the total 119 schemes posting operating deficits. Twenty of these 77 schemes revealed operating deficits greater than R20 million. These operating deficits, together with the less than permitted solvency ratios, limited the scope for schemes to dip into their reserves in order to satisfy claims made to it. As a result of such financial woes, schemes were either liquidated or joined forces with other schemes.

Consolidation is a mixed blessing: Fewer schemes leave consumers with fewer choices. However, larger schemes present better economies of scale, improved stability of risk pools and facilitate the management of complex legislative provisions. In addition, larger medical schemes are able to more effectively negotiate prices with suppliers. Notwithstanding that better prices might be negotiated by these larger schemes the majority of the schemes remain ineffective which is reflected in the premium increases imposed by the schemes. Evidence of this ineffectiveness is borne out by the tariff increases for the period 2009 – 2010 by the following schemes:

- GEMS 10.8%;
- Bonitas 15.9%;
- Momentum 11.6%;
- Medshiled 15%;
- BESTmed 12.2%; and,
- Medihelp 14%.

As can be seen above these tariff increases are way above inflation thus placing access to medical care beyond the reach of millions of South Africans.

In addition to the tariff increases members are often exposed to illnesses which are not covered by prescribed minimum benefits and are accordingly forced by healthcare providers to make cash payments in order to obtain treatment. Even members with comprehensive cover are often required to make cash payments independently of the scheme to healthcare providers for undisclosed reasons (i.e. administration fee, admission charge etc.). Often these expenses cannot be recovered by the members from their schemes. Should this practice continue the industry could likely move away from an insured model to a de-insured model.

The role of administrators in this market also needs to be defined, considering that administrators are operating for profit. Administrators should act in the best interest of the schemes and members and actively contribute to the decrease in cost of healthcare. With the abundance of information at their disposal (relating to costs at all levels of the healthcare industry) these "*healthcare institutions*" should negotiate *better, harder and faster* for lower healthcare prices from providers.

Because costs have been spiraling out of control the Department of Health decided to intervene by proposing an amendment to the National Health Act No. 61 of 2003 to make provision for the creation of a Tribunal or a Central Bargaining Commission to regulate the fees levied by healthcare service providers. Unfortunately to date this amendment has not come into effect.

The CMS recently advised the Commission that they remain in favour of a central bargaining process between service providers and medical schemes to negotiate lower prices either bilaterally or collectively. Considering the problems of the past still persist, the need for urgent interventions as proposed by the CMS (and the Department) might well be the solution to future escalating medical costs.

# Wholesale merger approved by the Competition Tribunal

By: Sunél Grimbeek

On 21 May 2009 the Commission recommended to the Tribunal that the proposed acquisition of Finro Enterprises (Pty) Ltd trading as Finro Cash and Carry ("Finro") by Massmart Holdings Limited ("Massmart") be prohibited. In terms of this merger transaction Massmart, through its subsidiary Masscash, proposed to acquire 75% interest in the business of Finro. In its referral to the Tribunal the Commission recommended that the proposed acquisition be prohibited on the grounds that the merger would result in higher wholesale prices of grocery products to the detriment of low income consumers. The Tribunal has subsequently approved the transaction unconditionally after the hearing that was held on the matter in August 2009.

The main focus of the Tribunal's decision was on the analysis of potential anti-competitive horizontal unilateral effects arising in the relevant market as a result of the merger. The Tribunal concurred with both the Commission and the parties that the relevant market should be defined as the market for the wholesaling of grocery products, including a variety of food and non-food items in Port Elizabeth and its regional surroundings. It then proceeded in analysing whether the available evidence would lead to a substantial lessening of competition (SLC) in this market.

The Tribunal found that Finro is undoubtedly an effective competitor to Massmart in the Port Elizabeth grocery wholesale market. However, the Tribunal also stated that this factor and the fact that the market is highly concentrated post merger must also be assessed in the context of other evidence, considering that the relevant market in question is characterised by substantial differentiation with regards to individual firms having differences in product range and product mix, customer profiles, margins, location, delivery and credit terms. Post merger there will also remain several significant competitors in the relevant market, including three large wholesalers effectively competing with the merged entity as well as four smaller competitors.

The main area of dispute between the Commission and the parties in this merger was the calculation and determination of the extent to which the parties are close competitors in the relevant market. As the Tribunal noted in its decision, it is standard practice in differentiated-goods markets to determine diversion ratios as a quantitative measure of the closeness of competition between the individual parties to a merger and to then combine it with information about pre-merger gross margins to ultimately through economic modelling predict the potential price-raising consequences of a merger.

The Commission embarked on a customer survey with the aid of statistical experts to determine revenue diversion ratios (RDRs) and used these ratios together with the gross margins of the parties' wholesale outlets to through economic modelling predict the likely post merger price effects of the proposed deal. RDRs measures the amount of sales revenue that would divert in response to a small but significant price increase from a focal supplier to another supplier as a proportion of the total sales revenue. This simulation, based on an asymmetric model and assuming linear demand, shows a weak ability of the merged entity to increase prices, even when efficiency assumptions are initially ignored.

The Tribunal concluded that the Commission's economic simulation does not allow for 'off model' external supply-side factors, i.e. various potential reactions from incumbent firms in response to a price incentive and that this is a serious lack in the Commission's analysis. The Tribunal concluded that there were some deficiencies in the Commission's model used to predict potential price increases post-merger and that the Commission's model in the end predicts that the merging parties will in fact face an incentive to engage in an insignificant lessening of competition. Some problems were also identified by the Tribunal in the Commission's determination of the sample size used for the customer survey and the design of the questionnaire used in the survey, as it was not originally designed with the purpose of calculating RDRs.

Evidence was also provided during the hearing and accepted by the Tribunal that a number of constraints are indeed relevant which was disputed by the Commission in its recommendation that could collectively mitigate the merged entity's post merger ability to raise prices. These are the ability of incumbent firms to expand and/or reposition their competitive offering in response to a price incentive, for example rival firms may reposition or expand their product ranges, the significant direct supply of certain product lines by grocery manufacturers to grocery retailers and retailers' procurement of suppliers through buying groups which is a distinct alternative for the larger retailers.

Reference was also made in the decision to the potential impact on small businesses as a result of this acquisition. The Tribunal stated that it is evident for independent retailers to remain in the market and compete effectively with the large formal retail sector, they will need access to suitable product ranges at competitive prices, which is factor the Commission should take into account in future analysis of similar transactions.

In the Tribunal's final analysis it concluded that based on the Commission's weak simulated ability of the merged entity to unilaterally increase prices post merger, as well as the considerable collective threat of a number of mitigating factors there is no basis to conclude that consumers would as a result of this acquisition be worse off, either from a pricing or service delivery perspective. Although it concluded that there are indeed high barriers to entry in the relevant market, the Tribunal concluded that based on the available evidence the acquisition was unlikely to result in a substantial prevention or lessening of competition in the relevant market, either from a horizontal or vertical perspective. The Tribunal also provided some guidance in its decision for the future use of extensive economic modelling and customer survey and statistical data analysis.

# The Business Consultative Forum

By: Andile Mangisa

This first Business Consultative Forum hosted by the Competition Commission took place at the Westcliff Hotel, Johannesburg, on 19 November 2009.

The purpose of the Forum was to create a direct relationship between the competition authorities and the business community of South Africa - a relationship not based solely on enforcement action but on the mutual need to understand each other's motivations and the respective environments within which the Commission and business operate. The Commission decided to host this Forum following reports that business in South Africa was feeling increasingly paralysed by the fear of transgressing competition laws. As a result, there was a risk that business would become less and less competitive, even in legitimate circumstances – a phenomenon commonly referred to as "the chilling effect".

In his opening address Shan Ramburuth, the Competition Commissioner, addressed the chilling effect directly by stating that competition law should not only be seen as a deterrence but as a tool for promoting pro-competitive behaviour amongst business. The Commission urged business to bear the basic competition pitfalls in mind but to keep its focus on being competitive.

Dr Simon Roberts, the Commission's Chief Economist outlined the most serious of these pitfalls, namely price fixing, market allocation and collusive tendering. He added that being competitive meant lowering prices, being innovative, giving better deals to consumers and in that way gaining the upper hand on competitors. He pointed out that, unfortunately, too many firms opted to collude rather than compete effectively. Where firms had colluded, however, Ms Chantal Lavoie in the Commissioner's Office pointed out that such firms could apply to the Commission for leniency and subsequent immunity from prosecution and from a penalty. She urged firms to utilise this tool as it was beneficial in eradicating cartels and assisting firms to 'come clean'.

In order to help business understand the Commission's priorities and the basis for these Ms Wendy Mkwananzi, the Commission's Chief Legal Counsel, explained that the Commission had to be strategic in its approach. This enabled the Commission to direct its scarce resources to the areas that most needed them, which in this case was infrastructure, food, industrial products and finance. She also highlighted some of the Commission's cases within these sectors.

Given the widespread anticipation by business of the Competition Amendment Act, the Deputy Commissioner, Tembinkosi Bonakele, took the Forum through the amendments, particularly on the introduction of personal criminal liability. He stated that this provision would directly impact on firm managers and directors, imposing severe penalties on any such person found to have caused a firm to engage in collusion. He clarified, however, that the new law had not yet become effective.

The business community was represented at the Forum by, amongst others, Business Unity South Africa (BUSA), Business Leadership South Africa (BLSA), the Consumer Goods Council of South Africa and lawyers from various firms.

Prof Raymond Parsons, the Deputy CEO of BUSA expressed his appreciation for the Forum, stating that it was important for the Commission to engage in advocacy, share thoughts and concerns on how we can make competition law work, manage expectations arising from the Amendment Act and not shy away from vigorous debate. Ultimately, he said, this will forge a better understanding amongst us. He urged the Commission to mention what is happening in both the private and public sector when dealing with competition policy.

Mr Mthunzi Mncane who was representing retailers in the CGCSA implored business to comply with the law and stop complaining about it. He articulated his liking of what the Commission is doing but also shared that the supermarket investigation should have timelines, and the Commission should continue educating the public.


Seated (left to right): Keith Weeks; Tembinkosi Bonakele; Wendy Mkwananzi and Mziwodumo Rubushe.
Standing (left to right): Michael Spicer; Jerry Vilakazi; Shan Ramburuth; Norman Manoim; Prof. Raymond Parsons; Maarten van Hoven

From the perspective of a business previously found to be in contravention of the Competition Act, Mr Norbert Behrens from Sasol Limited advised business to detect contraventions early by, for example, developing compliance programmes.

Mr Michael Spicer of BLSA fully supported the activities of the Commission. He supported the amendments but frankly noted that complex monopoly is still vague and business is uncertain about it. He also expressed his view that Section 73 of the Amendment Act was unconstitutional. Webber Wentzel Attorneys corroborated what Michael said about the vagueness of complex monopolies.

Mr Norman Manoim, Chairperson of the Competition Tribunal emphasised "compliance" by business. He cautioned business that the United States of America had shown the way regarding law suits and SA would follow suit. He advised delegates to conduct clean business practices and not to be the first to be affected by criminalisation.

The event was indeed characterised by robust dialogue between the Commission and business and was a useful platform for the exchange of ideas. Mr Jerry Vilakazi of BUSA, in closing remarks, thanked everybody who attended the Forum. He also thanked the Commission for agreeing with BUSA to partner this event. He requested business to champion competition law and vouched that business would continue working with government to comply with the laws of the Republic. Finally, Mziwodumo Rubushe of the Commission also expressed his gratitude and the Commission's desire to continue such engagements with business in South Africa.

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