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Annual Report

2013/2014

**Presentation to Parliament's Portfolio Committee of
Economic Development**

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Background & Policy Framework



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- Before 1994, high levels of concentration of ownership control in the economy.
- Excessive state intervention with discriminatory laws.
- State sponsored firms, subsidies, tariffs, co-operatives.
- Restrictions on full and free participation.
- Economy was inefficient.
- Fertile ground for cartels and abuse of dominance.
- High levels of unemployment.
- Competition policy part of a package of economic transformation initiatives by democratic government.

Legislative Mandate



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- Competition Act 89 of 1998.
- Purpose of the Competition Act is to promote and maintain competition in order to:
 - Promote efficiency and development of the economy.
 - Provide consumers with competitive prices and product choices.
 - Ensure SMME's an equitable opportunity in the economy.
 - Advance economic welfare of South Africans.
 - Expand opportunities for South African participation in world markets.
 - Promote greater spread of ownership, in particular HDP's .

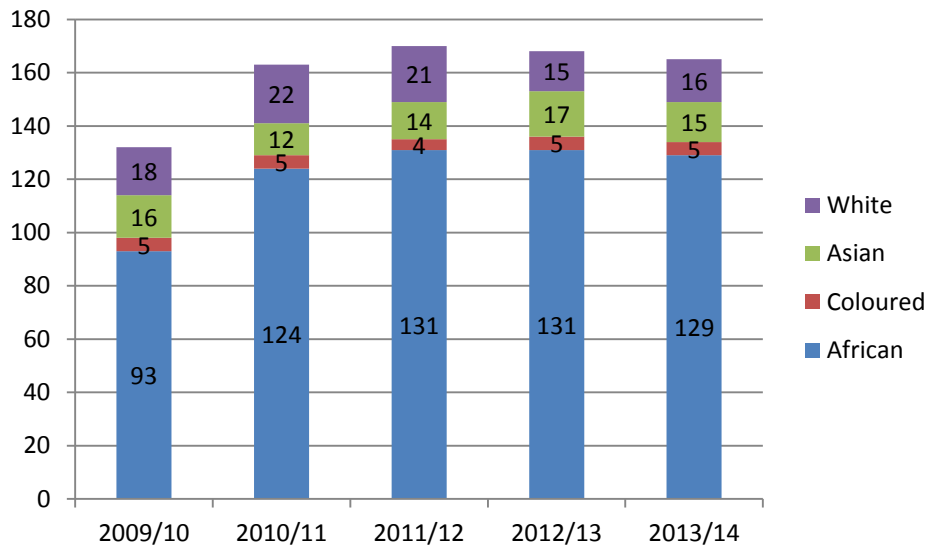
Organizational Overview



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- 165 staff complement + 17 graduates (182 total)
- An effective graduate program in place
- 94% of total staff under the age of 40
- 11.5% increase in staff complement between March 2010 and March 2014

Race



Gender

YEAR	NUMBER OF FEMALE STAFF	NUMBER OF MALE STAFF
2009/10	59	73
2010/11	84	79
2011/12	86	85
2012/13	90	78
2013/14	86	79

15 Years of Competition Enforcement



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- **Competition authorities celebrating 15 years of existence.**
 - Competition Commission, Competition Tribunal and Competition Appeal Court.
- **Characterised by three different eras:**
 - Institutional foundations and positioning in the regulatory environment;
 - Jurisprudence and policy development
 - Ground-breaking enforcement action – cartels and abuse of dominance cases.

15 Years of Competition Enforcement - cont.



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- **Anti Competitive Conduct Tackled in the last 15 Years:**
 - Basic Food Products affecting the poor – *Bread, Maize Meal, Baking Flour.*
 - Inputs for Infrastructure Development – *Steel, Cement and the Construction Bid Rigging.*
 - Essential inputs into Manufacturing – *Basic Chemicals and Polymers.*
 - Network Industries – *Banking and Telecoms.*
 - Blocked Mergers having an adverse competition impact on Public Interest considerations.
 - Health Sector – *Drastic reduction in prices for medicines i.e. anti*

15 Years of Competition Enforcement - cont.



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- **Commission Stature 15 Years On:**
 - Ranked amongst the best in the developing world.
 - SA ranked 8th by the WEF for effectiveness of anti-monopoly laws.
 - Has imposed heavy fines totalling R5bn in the last five years.
 - Play a key role in assisting sister authorities in the continent.
 - Represents South Africa in BRICS, OECD, UNCTAD, SADC and ICN.
 - Recently elected chair of the ACF.

Financial Performance Overview



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DESCRIPTION	2013/14 (R'000)	2012/13 (R'000)	VARIANCE %
Revenue	226 831	202 788	12%
Expenditure	198 841	174 833	14%
Surplus / (Deficit)	27 990	27 955	

- **Revenue**
 - Government grant increased from R 157 million to R177 million.
 - Fee income increased from R38 million to R44 million.
- **Expenditure**
 - Employee costs increased from R112 million to R121 million.
 - Administrative expenses increased from R3 million to R4 million.
- **Surplus**
 - Due to delays in the commencement of the health care market inquiry.
- **Audit Opinion**
 - Unqualified

Key Highlights – 2013/14



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- Construction Services cartel dismantled
- Private Healthcare Market Inquiry initiated
- Consumer savings in dismantled Cement Cartel
- Structural Remedies in Foodcorp/Oceana merger
- Abuse of Dominance and Cartel Cases in the Steel Industry
- Abuse of Dominance prosecutions in the Telecommunications industry
- New Penalty Calculation Methodology

Construction Services Cartel Dismantled



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- Commission received settlement applications from 21 firms
- Settlement applications revealed 300 projects/contraventions
 - 160 prescribed projects valued at R9,8 billion
 - 140 non-prescribed projects valued at R37,3 billion
- 15 firms settled with a total fine of R1,46 billion (excl. interest). 3 firms did not settle and 3 other firms were not liable to settle
- Commission now in Phase 2 of the project:
 - For firms that did not settle at all, partially settled or did not participate in the project.
 - Approx.24 firms are being investigated and prosecuted.

Private Healthcare Market Inquiry



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- The purpose of the Inquiry is to:
 - Examine costs, price, quality, and efficiency.
 - Evaluate and determine factors that led to increased prices and expenditure.
 - Evaluate how consumers access and assess information.
 - Conduct a regulatory impact assessment.
 - Make recommendations on appropriate policy and regulatory mechanisms.
- The inquiry commenced in January 2014 and is expected to wind up in November of 2015.

Health Inquiry Panel Members



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- **Justice Sandile Ngcobo** Former Chief Justice of the Constitutional Court – Chairperson.
- **Professor Sharon Fonn:** Full professor in the School of Public Health at the University of the Witwatersrand.
- **Dr Ntuthuko Bhengu:** Healthcare Policy/Cost Specialist.
- **Dr Lungiswa Nkonki:** Health Economics Specialist.
- **Cornelis (Cees) van Gent:** Former Director of Competition of the Dutch Healthcare Market Authority.

Consumer Savings in the Dismantled Cement Cartel



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- The Commission initiated an investigation into the cement industry in June 2008.
- All firms involved settled except NPC which is still defending the case.
- The Commission subsequently conducted an impact assessment arising from the cement cartel busting.
- The study was focused on direct financial benefits to consumers.
- This was to advance the objectives of the Act – “provide consumers with competitive prices and product choices”.
- The consumer savings ranged approximately between R4.5 billion to R5.8 billion for the 2010/13 period.

Structural Remedy Imposed in the Foodcorp/Oceana Merger



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- The Commission won a CAC case against a proposed merger between Foodcorp and Oceana.
- Sale of the fishing business of Foodcorp to Oceana would give rise to concentration where both the Glynrick and Lucky Star Brands would fall under one umbrella.
- Post-merger, Oceana would command 80% market share.
- The Commission imposed a condition that Foodcorp should divest its Glynrick brand and its fishing rights in the small pelagic fish before merger implementation.
- The order was confirmed by the CAC.

Abuse of Dominance and Cartel Cases in the Steel Industry.



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- Various customers and DTI were concerned about excessive pricing for steel.
- Commission is pursuing six cases of abuse of dominance plus cartels against Arcelor Mittal
- Commission is concerned about the impact of steel pricing to the downstream manufacturing companies.

Abuse of Dominance prosecution in Telecommunications



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- Commission investigated Telkom for abuse of dominance.
- Telkom was successfully prosecuted and a fine of R449 million was imposed during 2012/13 financial year.
- In 2013/14 Telkom settled a further case and paid R200 million administrative penalty
- In addition, remedies agreed included:
 - Functional separation between retail and wholesale division.
 - Transparent transfer pricing program.
 - Wholesale and Retail pricing commitments for the next five years estimated to yield R875 million savings to customers.
 - Telkom will also provide points of presence at strategic locations in the public sector.

New Penalty Calculation methodology



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- CAC Judgment – determination on the calculation of administrative penalties.
- Vulcania Reinforcing case related to Price Fixing and Market Allocation.
- New Methodology introduced by the Tribunal and endorsed by the CAC.
- A six step methodology was outlined.



Review of Merger Activity

- Number of merger notifications: 320
- Number of finalized cases 329:
 - 302 Approved without conditions,
 - 22 approved with conditions,
 - 1 prohibited
 - 4 withdrawn
- **Conditions attached to 22 mergers:** 10 were imposed to address public interest concerns; 12 behavioral remedies addressing competition concerns; 1 structural remedy.



Employment Conditions Imposed

- Of the 10 employment-related conditions:
 - 7 were to remedy employment issues
 - 2 conditions addressed harm on SMMEs
 - Another was imposed to encourage competitiveness of SMMEs
- Firms committed to create 2 429 new jobs and to save 2 231 existing jobs.
- Mergers reviewed resulted in 584 job losses.
- Commission's interventions on employment had a positive net effect 4076 on jobs

Merger Turnaround Times



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PHASE	TOTAL NUMBER OF MERGER TRANSACTIONS	COMMISSION'S SERVICE STANDARD- IN BUSINESS DAYS	AVERAGE TURNAROUND TIME- IN BUSINESS DAYS (2013/14)
Phase 1 (Non-complex)	191	20	21
Phase 2 (Complex)	102	45	39
Phase 3 (Very complex)	32	60	64
Total	325		

Advocacy and Stakeholder Relations



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- Trade Unions – three engagements undertaken with FEDUSA, COSATU and NACTU.
- Exhibitions – six exhibitions hosted, focusing on SMEs and Tertiary institutions.
- Advocacy Cases - Laher exclusive agreements and Ezemvelo wildlife licencing issues resolved.
- Presentations – 19 presentations made to various stakeholders on competition issues.

Advocacy and Stakeholder Relations



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- Bid-Rigging training workshops held for the following stakeholders:
 - Eskom and TRANSNET procurement staff.
 - Gauteng Liquor Board to assist the Board in applying competition principles when considering liquor licences.
 - Department of Justice (DoJ).
 - Inter-governmental Bid-Rigging Working Committee for training and implementation of the use of the Certificate of Independent Bid Determination (CIDB/SBD 9) in public sector procurement.
- Pursued collaborations with BRICS partners and participated in international forums such as the ICN, OECD, SADC and UNCTAD

Summary of Activities



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- The Commission investigated 170 enforcement complaints.
- Assessed 329 mergers.
- Considered 47 CLP applications.
- Had 39 cases at various stages of prosecution at the Tribunal.
- Judgments were made final at the Tribunal: 5 Cartels and 4 abuse of dominance cases.
- Concluded 44 settlement agreements with prosecuted parties (39 cartels, 3 abuse of dominance; 1 restrictive vertical).

Summary of Activities contd.



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- **This resulted in:**
 - 4076 Jobs saved
 - A contribution of R2.2 billion to the national fiscus on penalties levies
 - Consumer savings of approximately R5 billion in the cement case
 - The reconfiguration of the pelagic fish market
 - The reconfiguration of the Telecommunications industry, allowing for effective participation of smaller players
 - Greater participation of/prevention of harm to SMMEs

Conclusion: Vision 2030



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Competition Regulation for a Growing and Inclusive Economy

Strategic Goal 1

**“EFFECTIVE
COMPETITION
ENFORCEMENT AND
MERGER
REGULATION”**

*Use competition
instruments to achieve
our mandate.*

Strategic Goal 2

**“STRATEGIC
COLLABORATION
AND ADVOCACY”**

*Establish strategic
relationships to advance
competition policy.*

Strategic Goal 3

**“A HIGH-PERFORMING
AGENCY”**

*Optimize our human
capital, resources,
systems and processes.*



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THANK YOU