

Annual Performance Plan 2018/19

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Presentation to the Portfolio Committee on
Economic Development



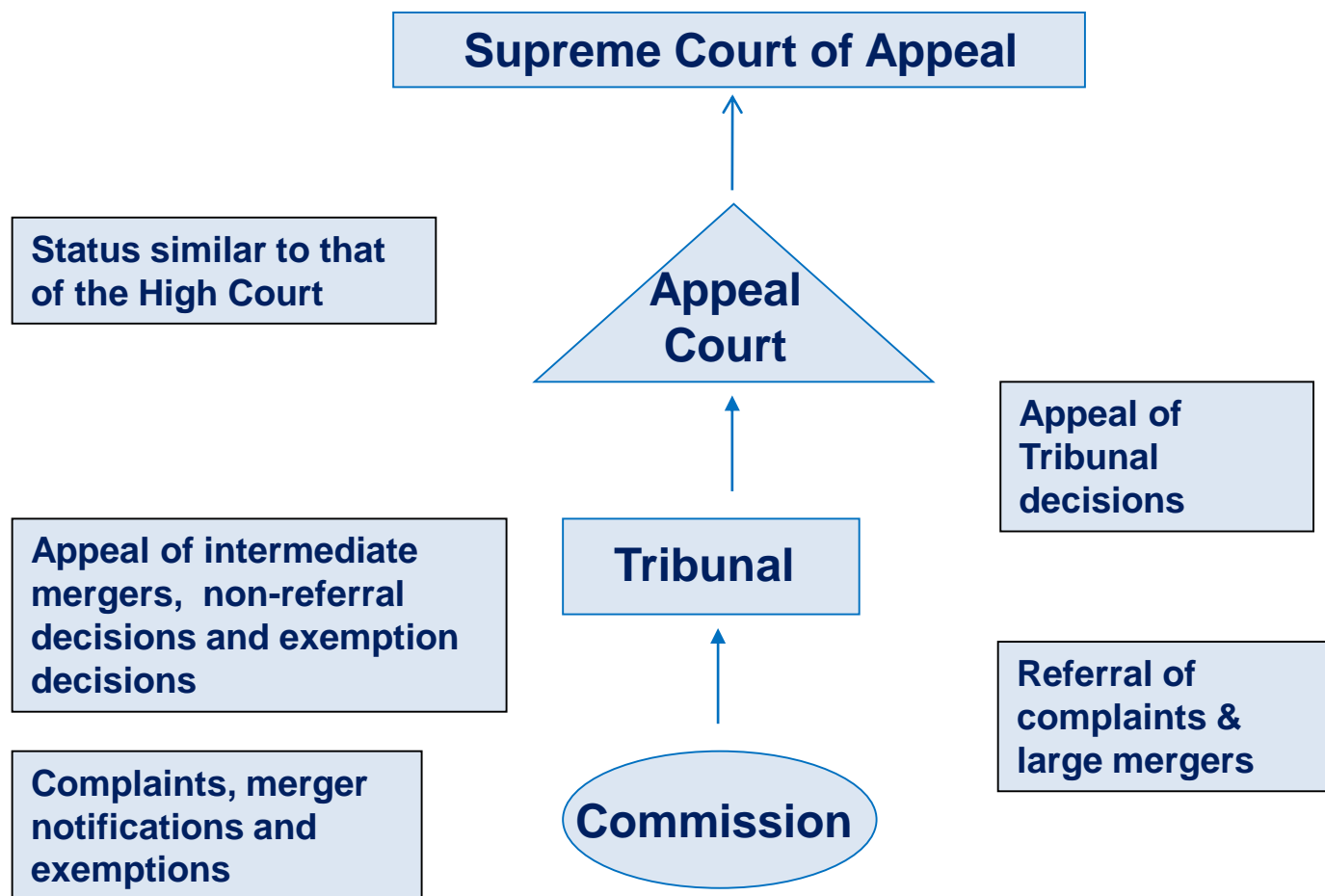
competition commission
south africa

Introduction



1. The Competition Authorities

- The Competition Commission is one of three statutory bodies constituted in terms of the Competition Act, No 89 of 1998.



2. Legislative Mandate

- The Commission investigates complaints, assesses mergers, evaluates exemption applications, undertakes market inquiries and advocacy, in order to achieve equity and efficiency in the South African economy.
- 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 HDI's.

3. Functions

1. Enforcement

- **Prosecution of anti-competitive behaviour**
 - Cartels
 - Abuse of dominance
 - Other prohibited conduct
 - Exemption Applications

2. Mergers & Acquisitions

- **Prevent concentration through merger control**
 - Review of Merger applications
 - Approvals, Approvals with conditions, Prohibitions

3. Market Inquiries

- General probe into state of competition in a market without investigating a particular firm.

4. Advocacy

- **Advocacy for pro-competitive conduct**
 - Case/ Sector Advocacy
 - Stakeholder Relations (incl. international)
 - Policy Reviews

Strategic Context



4. Vision 2030

- The Commission has a 15-year Vision which takes into account SA's socio-economic context.
- Vision 2030 is to regulate for a growing and inclusive economy, in line with the aims of the National Development Plan.
- Defines the Commission's role in the transformation of the South African economy and is a response to its socio-economic challenges of unemployment, poverty and inequality.
- The 2015-2020 Strategic Plan serves as a 5 year milestone towards the vision.

5. Strategic Goals

Competition Regulation for a Growing & Inclusive Economy



6. Location within Policy Context

- The Commission's vision and the outcomes of its strategic goals are in alignment with, inter alia:
 - **The National Development Plan**
 - Inclusive economic growth and the eradication of poverty and reducing inequality by 2030.
 - **The New Growth Path**
 - Job creation through job drivers, underpinned by macro and micro-economic policy drivers such as competition policy.
 - **The IPAP**
 - Manufacturing growth and beneficiation through sector designation and promotion.
 - **The MTSF Outcomes**
 - *“Decent employment through inclusive growth” and “An efficient, competitive and responsive economic infrastructure network”.*

7. Priority sectors (1)



1.
**Food and
agro-
processing**



2.
**Infrastructure
and
construction**



3.
Healthcare



4.
**Banking &
Financial
services**

8. Priority sectors (2)



5.
Energy



6.
**Intermediate
industrial
inputs**



7.
**Information &
communication
technology**

Key Features of the 2018/19 APP



9. Internal & External Context

- After years of stagnation, the economy is recovering and growth projections are being revised upwards.
- However, the fiscal environment is constrained.
- The Commission continues to play a critical role in unlocking some of the constraints to economic growth.
- The Commission is also a contributor to the national revenue fund, through the penalties arising from its successful prosecutions.
- The Commission requires an increase in its resources in order to be able to carry out its mandate and meet government's prioritisation of competition policy.
- The current funding model and budget allocation are not adequate to support the high (and increasing) volume of cases which the Commission has, nor to support the complex investigations and litigation it undertakes.
- The 2018/19 targets have in some instances been downwardly revised in light of inadequate funding.

10. Key Revisions

1. Downward adjustment of initiations for cartel investigations, having due regard to capacity constraints.
2. Adjustment in number of market inquiries due for initiation and completion.
3. Removal of advisory opinion services.
4. Adjustment in scoping studies and impact assessments undertaken.
5. Change of Division Names
 - 9 divisions as per the new organisational structure;
 - Changes to names of Economic Research Bureau (formerly P&R) and Market Conduct (formerly E&E);
 - Others are Cartels, Mergers & Acquisitions, Legal Services, Advocacy, Corporate Services, Finance and Office of the Commissioner.

The 2018/19 Program



11. Mergers

- The Commission has internal service standards for assessing mergers of varying complexities, guided by the timelines provided for in the Act.

	SMALL		INTERMEDIATE		LARGE	
	Service Standard	Competition Act	Service Standard	Competition Act	Service Standard	Competition Act
PHASE 1 (non-complex)	≤20 days	≤60 days	≤20 days	≤60 days	≤20 days	≤40 days + 15 days extension
PHASE 2 (complex)	≤45 days	≤60 days	≤45 days	≤60 days	≤45 days	≤40 days + 15 days extension
PHASE 3 (very complex)	≤60 days	≤60 days	≤60 days	≤60 days	≤120 days	≤40 days + 15 days extension

- The Commission will maintain efficiencies in the turnaround times of investigating Phase 1-3 mergers.
- The Commission will ensure that ≥75% of merger cases that are litigated or taken upon review in the courts, are won.
- It will continue monitoring the implementation of conditions imposed on parties (100%).

12. Cartels

- The Commission will initiate 8 new cartel investigations in 2018/19. This is a drop from the 2017/18 commitments of 25 initiations. The decline in initiations is due to resource constraints coupled by a high (increasing) & complex volume of cases.
- The Commission foresees that it will take longer to complete on-going investigations. There are more demanding obligations to complete investigations in a shorter period of time as per the efficiency targets below. Such obligations need to be supported with resources:
 - At least 50% within 12 months;
 - At least 60% within 18 months; and
 - At least 75% within 24 months.
- Some key on-going cartel investigations include automotive components manufacturers, manufacturers of edible fats & oil, suppliers of set top boxes, fresh produce agents & beef producers.
- The Commission aims to win $\geq 75\%$ of cartel cases in the Tribunal or the courts.

13. Market Conduct

- The Commission will complete $\geq 75\%$ of abuse of dominance investigations within 24 months.
- Some key on-going investigations include Transnet (Ports & Rail), School Uniform, Vodacom and Pharmaceutical drugs.
- The Commission will further initiate 2 new abuse of dominance investigations in the priority sectors.
- The Commission aims to win $\geq 70\%$ of such cases in the Tribunal or the courts.
- The Commission will further aim to complete (make a decision) $\geq 75\%$ of exemption applications within 12 months.

14. Litigation

- The Commission has 154 cases at various stages of prosecution in the Competition Tribunal and the courts, of which 121 are cartel cases.
- Cases before the Constitutional Court are: *Stanley's Removals, Hosken Consolidated Investment Ltd/ Tsogo Sun, Media 24, Caxton & CTP Publishers and printers vs. Multichoice (Pty) Ltd and SABC*.
- Some key abuse of dominance cases before the Tribunal/ courts include: Computicket, SA Airlink (Johannesburg-Umtata route), Afrimat, Wesgro, Rooibos and Potato seeds.
- Some cartel cases currently on the Tribunal or court roll include: 2010 FIFA WC Stadia Tender, banks that manipulated the rand, furniture removal companies, waste management companies, media companies, fats & oils companies & suppliers of asphalt.

15. Market Inquiries & Economic Research

- The Commission will initiate 1 market inquiry in 2018/19 and aim to complete 2.
- On-going market inquiries, all of which are at various stages, include
 - Private healthcare
 - Grocery retail
 - Data costs
 - Public transport
- The Commission will also undertake 1 scoping study into markets wherein there may be competition problems.
- One Impact Assessment, on previous interventions of the Commission, will be undertaken in 2018/19.
- The Commission also seeks to promote the teaching of competition law and economics in universities and will thus continue its partnerships with select universities.

16. Advocacy

- The Commission commits to publish 1 guideline to stakeholders in 2018/19 on the application of the Act.
- The Commission will also continue with outreach programs. Stakeholder groups targeted for engagement in 2018/19 include Government entities, Trade Unions and the Youth, among others. The aim of such engagements is education and awareness.
- Important advocacy cases which will be continued include Automotive Aftermarkets & School Uniform.
- The use of the media (print, radio, broadcasting and social media), is a strategic tool the Commission uses to reach varied types of audiences with its messages. There are targets developed in this regard.
- The Commission will continue its partnerships with BRICS and African counterparts. Commitments on collaborative research and other projects will strengthen the sharing of expertise and mutual capacity-building amongst the partners.

17. Resourcing a High-performing Agency

- Given the need for additional human capital, the Commission aims to put measures to retain its existing staff complement, with a targeted 90% retention rate.
- The Commission will further invest 1% of its Human Resource spending into Learning & Development, as part of its strategy to insource and “grow its own timber”.
- Further, the Commission aims to implement 70% of the approved organisational structure in 2018/19, in order to remove the capacity constraints currently experienced.
- The Commission has assessed the need for a responsive and efficient IT and knowledge management system (IMS) as part of its 5-year strategy. The implementation of a fully integrated, efficient and adequate ICT environment will be completed in 2018/19.

18. Finance (1)

- Table 1: Revenue

Revenue	2017/18	2018/19	2019/20	2020/21
R' 000	Forecast	Forecast	Forecast	Forecast
Merger fees	75 331	75 331	75 331	75 331
Interest	6 000	4 000	4 000	4 000
Other income	840	900	900	900
Grant	258 354	279 769	303 576	322 383
Total Revenue	340 525	360 000	383 807	399 714

- Table 2: Expenditure by Economic classification

Expenditure per economic classification	2017/18	2018/19	2019/20	2020/21
R'000	Budget	Budget	Budget	Budget
HR Costs	189 202	216 925	244 168	261 676
Operational Costs	151 323	143 075	139 639	138 068
Total Expenditure	340 525	360 000	383 807	399 714

19. Finance (2)

- We have provided an estimate of merger fees based on the actual cases filed in 2017/18 and the newly revised filing fees.
- The shortfall in revenue has in the past been funded by accumulated surpluses from the previous financial years, but these surplus funds have since 2017/18 depleted.
- The volume of merger applications are unpredictable, which poses a risk with regards to revenue.
- In anticipation of the additional workload and complexity of cases, the Commission requested additional funding, which was declined.
- The Commission will continue to manage resources towards a clean audit.

20. Conclusion

- The Commission is expected to continue doing well in 2018/19.
- The major and ongoing concern relates to increased workload induced by the Commission's success, which requires adequate capacity and resources.
- Failure to address capacity constraints means we can't do more – hence the downward forecast and projections. In turn, our strategic mandate and outcomes are negatively affected.

Thank You

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