Foreword from the Minister

The second year of the Competition Commission's operation was an exciting and challenging period. Great strides were made with the implementation and clarification of the Act. All stakeholders, including business, labour and consumers, now have greater certainty and understanding of the application of this important piece of legislation.

Mr Alec Erwin, MP
The Minister of Trade and Industry

Some initial implementation difficulties in the Competition Act emerged during the period under review. In particular, it became evident that amendments were required to the Competition Act, to its Rules and to the Thresholds. Several amendments were made, which came into force on 1 February 2001.

Many of the amendments, outlined in greater detail in the body of the Annual Report, were made in response to feedback received from stakeholders, in particular from business. The responsiveness of government to stakeholder inputs demonstrates our desire to promote better regulation.

The impact of the amendments on the work of the Competition Commission is already evident, particularly in its increased administrative efficiency, notably with respect to merger activity. The Commission's turnaround time on merger transactions now rivals that of the most highly regarded competition authorities in other jurisdictions. Furthermore, the amendments will enhance the effectiveness of the Commission, particularly through the removal of section 3(1)(d), which ousted the Commission's jurisdiction from a number of key sectors, such as telecommunications.

While I am confident that we have addressed the implementation difficulties in this round of amendments, I believe that we shall have to continue reviewing the Act on an annual basis, as with all new legislation. We shall also see increasing procedural challenges in the new financial year, a necessary process in determining the parameters of the law and the setting of precedent. Despite these potential constraints on the Competition Commission, I believe that the institution is ready to contribute in a significant way to the new integrated industrial strategy by promoting an adaptable, vibrant and efficient South African economy that is globally competitive and offers consumers product choice and competitive prices.

Mr Alec Erwin, MP

The Minister of Trade and Industry

Review by the Director-General

The Department of Trade and Industry established the Competition Commission, SA's first independent regulator, in 1999. The Commission has since established itself as an effective and able regulator, able to execute its mandate in terms of the Competition Act, and has already contributed positively to the efficient functioning of the economy.

During 2000, the Commission focused on enforcing the Competition Act. The list of cases dealt with provides an insight into the behaviour of firms in the economy. Using its powers to investigate prohibited restrictive practices, the Commission stopped activities that prevented small businesses from becoming competitive. The resolution of these cases supports small business growth. Such successes are particularly important when the businesses affected are owned or controlled by historically disadvantaged persons.

Dr Alistair Ruiters
The Director-General of the Department of Trade and Industry

The Commission has been very active in the area of mergers and acquisitions. Analysis of these activities highlights efficient or inefficient areas in the economy, as well as employment trends. A closer analysis of the recent mergers by the Commission provides useful information about certain sectors in the economy that are inefficient and not competitive. These sectors are likely to be the ones in which job losses occur. Some cases revealed very high concentrations of market share with a few firms, which can be linked to the high number of abuse of dominance cases investigated by the Commission. The Department of Trade and Industry uses analysis of these cases to formulate investment and economic growth strategies.

The Commission's main challenge is to continue with the vigorous enforcement and application of the Act. The demands of the new economy and globalisation further add to this challenge. The Commission's ability to meet these demands will spearhead and facilitate an environment for South African businesses to compete both in domestic and international markets. The growth of businesses will result in economic growth that will in turn benefit consumers.

Analysis of mergers and acquisitions have also been instrumental in getting business, labour and other stakeholders to share information. This process has contributed to improved understanding of each stakeholder's interests and concerns, and provided a platform for future co-operation.

I am confident the Commission will continue serving as an effective watchdog for consumers against anti-competitive behaviour, and that it will meet the challenges posed by globalisation and the new economy.

Dr Alistair Ruiters

The Director-General of the Department of Trade and Industry

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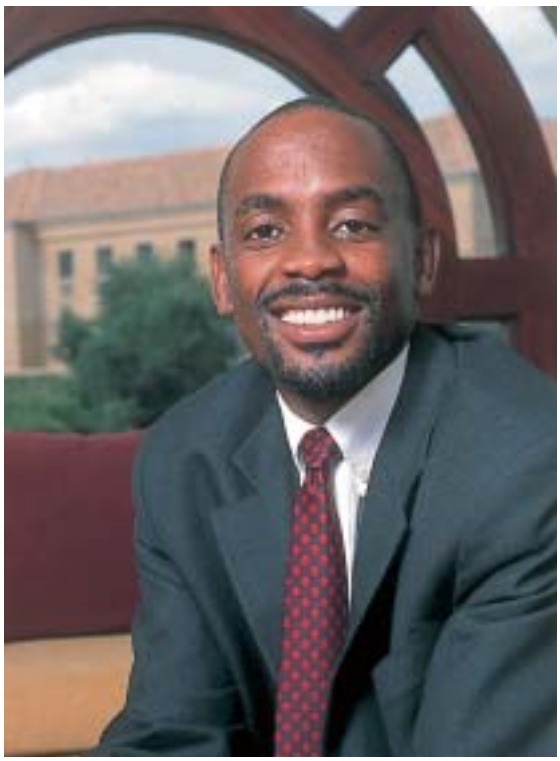
1. Commissioner's Overview

1.1 Reflecting on 2000/2001



Adv Menzi Simelane
Commissioner: Competition Commission

The year under review saw the Commission moving away from its establishment phase, which focused on building capacity, to enforcing the Competition Act. This meant focusing on the investigation of restrictive practice cases and analysis of mergers and acquisitions.

Regarding the investigation of complaints, the Commission's activities focused on finding the relevant evidence of the contraventions of the Act in order to build a case that would be successful in the Competition Tribunal. As expected in any investigation, the respondent parties did not readily cooperate with the Commission. Some of the information that the Commission needed was not provided and the parties claimed either that the information was confidential or did not exist. Although the opposition was expected, in some cases it became very obstructive. The Commission therefore had to rely on the complainants or other interested parties to provide more information. In some cases, the Commission had to resort to using the enforcement provisions of the Act in order to get the sensitive information material to proving the case. As a result, reluctant parties were summoned to appear before Commission investigators and answer questions under oath, or to submit the relevant information to the Commission within specified timeframes. In one extreme case, the Commission had to conduct a search and seizure operation at the premises of a respondent company that continuously made it difficult for the Commission to investigate the case. The respondent company in this case referred the case to the High Court of South Africa, where the Commission procedures and various provisions of the Act are being questioned on constitutional grounds.

The analysis of mergers and acquisitions proved no less difficult. The Commission adopted a vigorous and inquisitive approach in the analysis of mergers. Much of the attention was paid to mergers that had the effect of substantially lessening or preventing competition. Most of the Commission time was also spent trying to obtain relevant information from the merging parties. In many cases the parties were reluctant to give the information on the basis that it was irrelevant to the merger proceedings. This affected the ability of the Commission to finalise mergers within the time limits stipulated in the Act. At the same time, the merging parties insisted on the Commission finalising these mergers speedily.

One of the major cases that the Commission dealt with involved the proposed merger by three major oil companies of their distribution divisions. The transaction raised competition concerns in particular with respect

to competitors who also happened to be small and medium sized businesses owned by historically disadvantaged persons. The Commission's analysis of the merger therefore had to take into account the parties' representation that their joint venture would create technological and other efficiency benefits. However, the analysis did not reveal any benefit to consumers. In addition, the parties failed to show the Commission that the merger was necessary to achieve the efficiencies and other benefits that they believed would result from the merger. The Commission finally recommended to the Tribunal that the transaction be prohibited. Prior to the matter being heard by the Tribunal, the parties decided to cancel the proposal.

What the above cases indicate, is the processes engaged by the Commission in reviewing cases before it, and the extent to which the issues are interrogated in trying to determine a contravention of the Act or whether or not a merger is anti-competitive. In the coming year, the process is expected to continue albeit with less emphasis on using the compelling provisions of the Act. The Commission is confident that with many parties becoming more familiar and knowledgeable about the Act, many areas of uncertainty will be clarified resulting in less tension and confusion.

1.2 Meeting our Objectives

The Commission derives its mandate from the Competition Act and, in particular, the six objectives of the Act. The Commission has reviewed its activities for the year in relation to these objectives. A detailed summary appears in Annexure A on pages 89-92.

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

One of the important strategies that the Commission implemented to achieve this objective was to remove the impediments to the smooth and effective implementation of the Act. In this regard, the Commission held a

consultative conference in April 2000 on Competition and Regulation. The purpose of the conference was to discuss and identify the best mechanism for competition regulation in the South African economy having regard for international experience. One of the outcomes of the conference was consensus that competition regulation was best placed in an independant competition authority.

Consistency in the regulation of competition law in the economy was therefore critical. The High Courts' interpretation of section 3(1)(d) posed a serious risk to achieving such consistency, as their interpretation excluded the Commission's jurisdiction in important areas of the economy. The Commission therefore initiated a review of the legislation, and in consultation with the Competition Tribunal and the Department of Trade and Industry, recommended to the Minister that the Act be amended to delete section 3(1)(d). In addition to this proposal, the amendments included changes to the Commission Rules. This largely involved reconsidering the thresholds and the merger filing fees. These amendments became effective on 1 February 2001, which enabled the Commission to provide stakeholders with certainty on the parameters regulating competition.

A second conference was also held on 29 and 30 March 2001 to discuss The Impact of Technology and Globalisation on Competition Policy. In addition, a policy paper was produced on the Restructuring of Public Enterprises and others on the Regulation of Competition in Electricity and Telecommunications. These were used internally to provide staff with a guideline on how best to regulate competition in the economy.

As part of this process of providing certainty, the Commission provided businesses throughout the year with at least 90 advisory opinions on the areas of their business governed by the Act. Various presentations were also held on request from different stakeholders, including presentations to other regulators. These were Eskom, the Development Policy Research Unit (DPRU), the Euro Chamber, Sappi, Postal Regulator and the National Electricity Regulator. This process helped stakeholders to attain a greater understanding of the Act, and increased voluntary compliance.

Objective 2: Provide consumers with competitive prices and product choices

In order to achieve this objective, the Commission created a database on ownership concentration in selected sectors. The information in the database is particularly useful in merger analysis and contributes to informed decision-making. A combination of exhibitions and additional presentations were made to different consumer groups. These were made to nine Provincial Affairs Offices and one to the National Consumer Affairs Office. The exhibition was held in Durban in conjunction with the Department of Trade and Industry. Further, the Commission took out advertising space in Enterprise Magazine and Engineering News advising consumers on the Commission's functions and objectives and how consumers can use its processes to their advantage. Three editions of the Consumer Alert publication were issued.

Two dinners were held and a presentation made to executives and diplomats in addition to a guideline document on the competition effects on consumer issues. Handbooks and information kits on consumer education were

also issued. The Commission revised its procedures and guidelines relating to merger analysis and enforcement and exemptions.

The Commission additionally dealt with complex cases that impacted on consumers. Our Enforcement and Exemption Division investigated various cases involving prohibited restrictive practices in the form of abuses of dominance. Many of the firms that filed complaints were small businesses. The Commission resolved the majority of these cases by concluding consent orders with the contravening firms. One case involved a complaint against an association whose activities substantially lessened or reduced competition in the market for residential property in the Pietermaritzburg area. Through the Commission's investigations, the association pleaded guilty to contravening the Act, which removed a barrier to entry in this market.

The Commissioner initiated a complaint involving a health sector firm that contravened the Act by setting a minimum selling price on its range of weight management and nutritional products. Resale price maintenance is prohibited in terms of the Act, as it prevents consumers from obtaining products at cheaper prices. After investigations by the Commission, the firm also pleaded guilty to the contravention and concluded a consent order to replace the label on its products with a new one sans the minimum resale price maintenance.

These cases show that, through thorough investigation, the Commission can enforce the Act to prevent firms from engaging in practices that are not in the interests of consumers.

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

The participation of unions is very critical in the Commission's analysis of mergers, as they provide useful information on the effects of mergers on employment. In order for the unions' inputs to be informed, the Commission published two articles in the Labour Bulletin. There were 12 additional training sessions/workshops and three articles were written and published in the Cosatu Shop Steward and one in the Fedusa Debate.

The increase in merger activity in South Africa also means that at any point, a certain number of jobs will be lost in the economy. The Commission's only concern in this regard is with jobs lost as a result of a merger. A research paper was also produced on competition policy and employment.

In certain sectors, like mining, international competitiveness is very important. A depressed gold price forced companies to consolidate to save costs and increase productivity. These mergers meant job losses. In a recent merger between two gold mines, the Commission had to consider a situation in which 5000 jobs would be lost if the merger was not approved, but only 2000 if it were approved.

In making its decision, the Commission took into account the fact that the gold price was, and had been depressed for a while, and that the merged firms' high domestic market shares would not impact on the

international market for the production and sales of gold. The Commission approved the merger unconditionally on the basis that only 2000 of the potential 5000 jobs would be lost.

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

Over the past years, the government's economic strategy has been to create growth and employment through developing the domestic sectors and making the economy more competitive. This meant that an environment must be created to facilitate meeting these objectives. The Commission has, in dealing with different cases, recognised the role of foreign competition and the international participation by local firms as being critical to improving competitiveness in the economy. Increasing the accessibility of the Commission to foreign investors and the harmonisation and consistent application of international competition principles were some of the strategies employed by the Commission. In furtherance of the objective and these strategies, various presentations were held with the foreign business chambers.

In the motor vehicle manufacturing sector, the Commission approved the acquisition by the Ford Motor Company, of Land Rover Group Limited. Although this was an offshore acquisition, Ford is very active in South Africa through Samcor in the production of passenger vehicles and light commercial vehicles. This transaction therefore represented an opportunity for an increase in the export of international vehicle component parts to the rest of the world. In this category, Samcor revenue has increased sharply between 1994 and 1999. The involvement of Ford in Land Rover SA would hopefully expand its success to that operation.

In another case the Commission recommended approval of the acquisition by Trident Steel (Pty) Ltd of Baldwin Steel. Although the merger would result in high concentration in the product market for high grade steel blanks produced from improved surface finish (ISF), which is used in the manufacture of outer body panels of motor vehicles, the Commission was satisfied that there was sufficient import competition to constrain any exercise by the merging parties of their market power, and that their customers had enough countervailing power to keep the market competitive.

Presentations were made to a Vietnamese business delegation and to the Euro Chamber

in Sandton. These presentations provided useful information to foreign business and their representatives on the application of the Act, in particular regarding the application of competition policy internationally.

With regard to international co-operation, the Commission concluded a Co-operation Agreement with the Norwegian Competition Authority. In terms of this agreement an exchange of staff took place, which facilitated the exchange of information on the approach to the enforcement of competition law in the respective jurisdictions. Furthermore, at least six consultants were made available to assist in cases by the US Department of Justice and the Federal Trade Commission (FTC).

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

The Commission further saw an increase in the number of cases involving small and medium sized enterprises (SMEs). Many of these cases negatively affected the ability of these small businesses to participate in the economy, as a result of varying restrictive practices employed by established firms. Prime examples of these types of cases involved the agricultural sector and a franchise corporation. In the former, an independent farmer filed a complaint with the Commission against a former co-operative, now a private company, for abusing its dominance by requiring all shareholding farmers to sell their entire grape harvest to it, even if the farmers could get better prices elsewhere. Farmers who did not comply were penalised. The Commission completed its investigation and has referred the case to the Tribunal for prosecution.

In the franchise case, involving the 7 Eleven franchise, individual franchisees filed a complaint against the franchisor for various contraventions, including abuse of dominance. They alleged the franchisor enforced retailing certain products at specified prices, and required franchisees to purchase store improvement products from a nominated supplier, even though the products could be obtained cheaper elsewhere. This case has also been referred to the Tribunal for prosecution.

Both these cases illustrate a process by either supplier or competitors that systematically ‘squeezes’ small businesses out of markets. This significantly increases costs and prices. In the end, SMEs are forced to exit the market. Other cases currently under investigation are in the process of being finalised. In addition to these cases, the Commission held at least eight presentations to small and medium sized businesses on the Act, that were attended by 90 people.

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

A database on ownership concentration was prepared in order for the Commission to effectively evaluate ownership issues in merger analysis and also find an appropriate mechanism for giving effect to the above objective. Further, a policy brief was prepared on the effects of mergers on Small and Black Business. A dinner

and presentations were held with Black Business to discuss and share information on issues affecting them in the economy, in particular those issues that inhibit their ability to acquire ownership of businesses.

One of the other important cases that the Commission dealt with involving historically disadvantaged persons, involved a firm acquiring a cotton-ginning machine from a competitor that had decided to exit the market. The acquisition of the machine would have given the firm market dominance in the Northern Province, but the firm argued that it had a black economic empowerment partner representing a community in rural KwaZulu-Natal.

If the acquisition was approved, over 80 jobs would be created immediately, with thousands to follow later, while the machine would process at least 40 000 tons of cotton grown by black farmers in the area. The Commission had to balance the benefits to SMMEs against the fact that the proposed merger would entrench and even increase the acquiring firm's dominance in the Northern Province, (which constitutes at least 75% of the South African cotton market). To achieve that objective, the acquiring firm would remove the machine from the Northern Province and take it to KwaZulu-Natal where it was not represented.

In dealing with the acquisition the Commission required that the acquiring firm restructure the transaction to make the empowerment partners the acquiring firm, and change its role to that of a shareholder. This would have the effect of introducing a new competitor or entrant in the market, thus causing no competition concerns. After these changes were effected, the Commission approved the transaction unconditionally.

1.3 Economy and Efficiency of Resources

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

The Commission has over the past year sought to benchmark itself against other regulators, both domestically and internationally. A lack of common performance measures and/or methods of calculation have, however, hampered comparison with competition regulators in other jurisdictions.

Economy

The Commission has six main activities. These include merger evaluations; investigations; exemption evaluations; advisory opinions; policy and research; education and information; and legislative reviews. Activities which are case-related, such as economic analysis, providing legal opinions or representation, as well as case-related education and information activities, are allocated to the specific activities. The tables below illustrate the total cost per type of activity.

Table 1: Total Cost per Type of Activity

	Merger Evaluations	Investigations	Exemption Evaluations	Advisory Opinions	Education & Information	Policy & Research	Legislative Review
Salaries	2 661 918	2 432 599	429 282	412 142	1 092 176	1 061 621	146 422
Training & Development Costs	100 721	82 054	14 480	31 753	84 144	49 639	1 643
Administration	475 909	298 710	52 714	69 122	183 174	128 034	34 101
Professional Services	28 250	29 301	5 171	0	385 229	289 018	215 262
Economic Analysis & Information	844 018	811 905	16 512	11 646	68 874	81 837	7 764
Legal Services	1 064 202	1 030 355	230 063	335 885	0	119 959	0
Education & information	410 413	230 857	51 302	0	749 230	183 200	0
Overheads	4 331 075	2 254 349	368 091	384 340	816 300	1 030 041	91 650
Management	618 252	618 252	72 866	36 433	255 032	182 166	0
Total Cost	10 534 758	7 788 382	1 240 481	1 281 321	3 634 159	3 125 515	496 842
% of Total Cost	37.5%	27.7%	4.4%	4.6%	12.9%	11.1%	1.8%

Table 1 above shows clearly that most of the Commission's resources are focused on merger evaluations (38%) and investigations (28%). Salaries and training and development costs amounted to 29% of total cost, administration 4%, and professional services make up 3% of total cost.

Table 2: Percentage of Total Cost per Type of Activity

	Merger Evaluations	Investigations	Exemption Evaluations	Advisory Opinions	Education & Information	Policy & Research	Legislative Review
Salaries	25.3%	31.2%	34.6%	32.2%	30.1%	34.0%	29.5%
Training & Development Costs	1.0%	1.1%	1.2%	2.5%	2.3%	1.6%	0.3%
Administration	4.5%	3.8%	4.2%	5.4%	5.0%	4.1%	6.9%
Professional Services	0.3%	0.4%	0.4%	0.0%	10.6%	9.2%	43.3%
Economic Analysis & Information	8.0%	10.4%	1.3%	0.9%	1.9%	2.6%	1.6%
Legal Services	10.1%	13.2%	18.5%	26.2%	0.0%	3.8%	0.0%
Education & information	3.9%	3.0%	4.1%	0.0%	20.6%	5.9%	0.0%
Overheads	41.1%	28.9%	29.7%	30.0%	22.5%	33.0%	18.4%
Management	5.9%	7.9%	5.9%	2.8%	7.0%	5.8%	0.0%
Total Cost	100%	100%	100%	100%	100%	100%	100%

Efficiency

Table 3: Cost per Output for Case-Related Activities

	Merger Evaluations	Investigations	Exemption Evaluations	Advisory Opinions
Total Cost	R10 534 758	R7 788 382	R1 240 481	R1 281 321
Outputs	407 Mergers	132 Complaints	9 Exemptions	130 Advisory Opinions
Cost per Output	R25 884	R59 003	R137 831	R9 856

Table 4: Overview of Cases Notified and Finalised

Case Type	Number of cases notified		Number of cases finalised		% of cases finalised		Total number of investigators		Average number of cases finalised per investigator		Average number of cases finalised per investigator per month	
	1999/ 2000	2000/ 2001	1999/ 2000	2000/ 2001	1999/ 2000	2000/ 2001	1999/ 2000	2000/ 2001	1999/ 2000	2000/ 2001	1999/ 2000	2000/ 2001
Mergers	331	407	236	414*	71%	78%	9	8.5	26	48.7	3.7	4.1
Complaints	122	114	37	128*	30%	64%	7	10	5	12.8	0.8	1.1
Exemptions	3	12	1	7*	33%	57%	1	4	1	2	0.08	0.17
Advisory Opinions & Clarifications	71**	123	59**	132*	83%**	98%	2	2	30**	66	4.3**	5.5

* The number includes cases which were brought forward from the previous financial year.
** The numbers exclude clarifications provided.

Table 5: Turnaround Time

Case Type	Average Turnaround Time
Mergers	48,2 days
Complaints	112 days
Exemptions	149 days
Advisory Opinions & Clarifications	30 days

1.4 Human Resource Management

Due to the knowledge intensive nature of its work, the Commission staff is a key resource and effective human resource management is a critical factor in the Commission. The Commission has spent significant resources on staff training and development, and on developing strategies to retain and nurture staff.

Staff composition

The Commission has a total of 91 permanent posts. At the end of March 2001 the Commission had 82 permanent staff members.

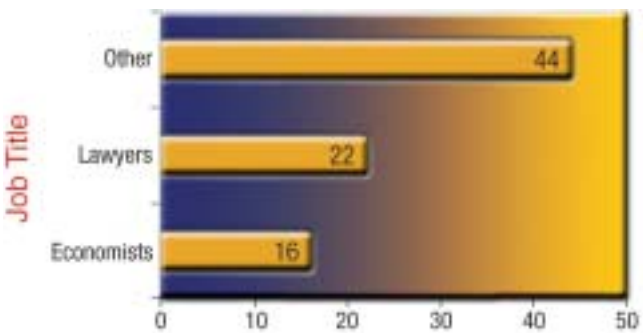
Table 6 below reflects the utilisation of staff with regard to the different activities of the Commission.

Table 6: Staff Utilisation

Activity	Number of personnel (excluding consultants not held against permanent posts, advisors and interns)		% of total staff complement	
	1999/2000	2000/2001	1999/2000	2000/2001
Administration	24	27	34	32
- Human resources	1	2	1	2
- Finance	3	5	4	6
- Support	20	20	29	24
Case-related administration	8	8	11	10
- Registry	5	5	7	6
- Information Technology	3	3	4	4
Case investigations	16	23	23	28
- Mergers	7	10	10	12
- Enforcement and Exemptions	7	12	10	15
- Compliance	2	1	3	1
Education and Information	4	5	6	6
- Education	3	3	4	4
- Communication	1	2	1	2
Research	7	8	10	10
Legal services	2	3	3	4
Executive Committee	6	5	9	6
Planning and coordination	3	3	4	4
Total	70	82	100	100

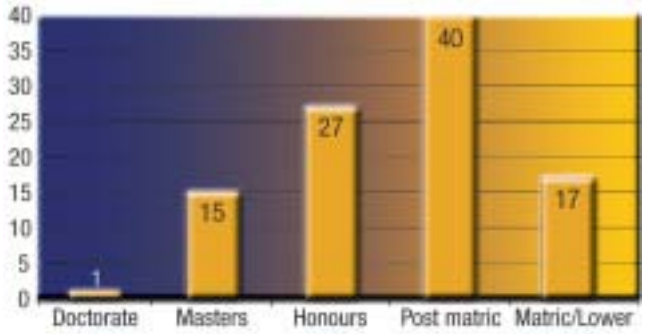
The table above reflects that 64% of the Commission's staff is directly involved in the core business of the Commission i.e. case investigations, research and education. This number includes staff directly involved in various investigations and administrative staff in the Registry and Information Technology departments which deal almost exclusively with case-related administration. In addition, members of the Executive Committee (Exco), who spend a large percentage of their time on analysing case reports, are included in this figure. Only 32% of staff is allocated to traditional administrative functions, of which 25% are located in divisions.

The Competition Commission comprises of staff with diverse qualifications and experience. Due to the nature of the work performed by the Commission, emphasis is, however, placed on the recruitment of economists and lawyers. The graph below depicts the number of lawyers and economists employed at the Commission as at the end of March 2001.



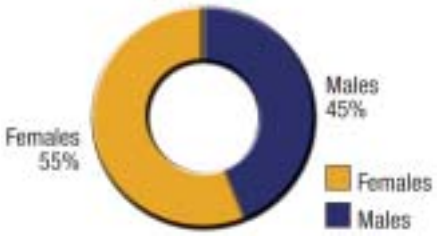
The Commission places great emphasis on appointing staff with the right skills mix. 83% of staff has a post matric qualification, and 43% of staff have a post graduate qualification. The aim of the Commission remains to ensure that at least 85% of all staff have at least a degree and is encouraging staff through a bursary scheme to both obtain degrees as well as post graduate qualifications. During the period under review 27 bursaries were awarded.

Type of Qualifications

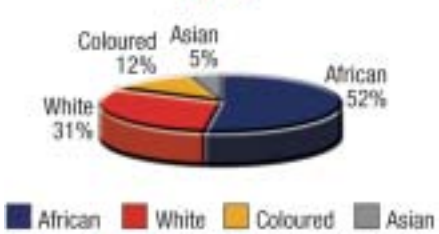


The Commission is an equal opportunity and employment equity employer, as is apparent from the diagrams below. As at 31 March 2001, 55% of Commission employees were female and 69% of employees were from a historically disadvantaged background.

Gender



Equity



Regulatory Compliance

The Commission submitted its Employment Equity Plan to the Department of Labour on 1 December 2000. The analysis of the various levels in the Commission revealed that the Commission has been progressive in ensuring that it complies with the requirements of the Employment Equity Act. In further promoting a work environment friendly to disabled persons, the Commission has placed a lift in the building for paraplegics.

The Commission also reviews its policies to ensure that there is compliance with legislation, to eradicate any form of discrimination and be in line with best practice. The maternity leave policy relating to UIF was amended to ensure fairness and equity so that all employees receive full remuneration during maternity leave, regardless of their position in the organisation.

Challenges

One of the challenges that has faced the Commission in the financial year ending March 2001 has been staff retention. A total of 14 staff members resigned from the Commission during the period. The breakdown per month is as follows:

MONTH	NUMBER RESIGNED
April 2000	1
May 2000	1
June 2000	0
July 2000	1
August 2000	0
September 2000	2
October 2000	2
November 2000	2
December 2000	0
January 2001	1
February 2001	4
March 2001	0
TOTAL	14

The Commission recognises that there is a need for a retention strategy. A Performance Management System was introduced to allow the Commission to reward high performers. In addition, a job grading exercise was initiated to promote external and internal equity. The Commission is further seeking to enhance the lifestyle environment of its employees and is investigating the feasibility of establishing a day-care facility.

Capacity Building and Seminars

To build capacity for assessing competition issues, and create awareness of such issues, the Commission launched a seminar programme in 2000. The programme aimed to inform staff and stimulate debate on issues of importance to competition authorities. Sixteen speakers gave presentations and debated important issues with staff of the Commission and Tribunal.

Speakers were drawn from the private and public sectors, academia, and even the United States of America. They were competition practitioners and consultants, industry specialists, academics, economists, and lawyers sharing varied points of view. While participation was initially limited to staff members, external parties from local universities and the private sector joined from August, adding new dimensions to the debates. Internal seminars were held to share the knowledge and experience of staff members. Topics discussed ranged from intellectual property to the health care industry, and also included some introductory lessons in basic economics.

International Conferences

In order to ensure that the Commission keeps abreast of international developments in competition law and its enforcement, staff attended a number of international conferences, including conferences in England, Sweden, Germany, Taiwan and in the United States of America.

1.5 Information Technology, Administration and Finance

Information Systems

Information Technology provides a secure, user-friendly and efficient information technology environment for all employees. The computer systems in the Competition Commission run on an NT platform with Windows NT workstation as the operating system. The network is a fully switched Ethernet with a network speed of 100Mbps. The Commission mainly uses Microsoft Office Suit for general office work.

Various technologies were introduced to support the Commission in its daily affairs. A document management system enables the Registry to scan and index all correspondence for online viewing. Electronic faxing, e-mail, and worldwide web services enable staff to execute tasks easily and efficiently. The information resource centre is fully electronic with all reference material available online. The Commission also has a web-based library index system. A database-controlled intranet was introduced.

The Commission uses a case management system to keep track and monitor the progress of cases registered with the Commission. The system is interfaced with the document management system, which enables the users to view all case-related documents online. This brings the Commission a step closer to a paperless office.

During February 2001, the Commission undertook to benchmark its information systems against those of the Canadian, US and Dutch competition authorities. The benchmarking exercise revealed that in many respects the Commission is in line with international competition authorities in respect of information systems and that in some respects our systems are more advanced. However, interesting variations and enhancements were discovered, particularly from the Canadian system, including a litigation toolkit, document tracking system, time tracking system, a project management report and a chronological sorting device.

Another interesting fact that emerged is the effective use of electronic filing and case hearing. The Canadian competition authority encourages law firms and other customers to file cases electronically and allows for submission by e-mail attachments, CD Rom for large or confidential documents, diskettes for confidential documents and scanning of documents. Data is protected by means of authentication, digital signature, password protection etc.

The Canadians also use their case management system for tribunal hearings. Flat screens are installed in the courtrooms and the court orderly brings the documents on the screen in no time. Even papers presented as evidence during the time of the hearing are placed on a document camera and screened on the computer screens or scanned at the time of hearing.

Security and Maintenance

Security in the Commission plays a vital role, in particular with respect to the safety of property, personnel, and information. In the past year, the Commission identified and evaluated risk and threats that may occur in the work place. A number of policies were introduced, including an Occupational Health and Safety Policy and Evacuation Plan. During the period under review, only one incident relating to a minor injury and no incidents of theft or security breaches were reported.

Registry

During the period under review, the Registry processed, scanned, filed and archived 542 cases, constituting 136,653 files in the Document Management System. During this period, the Case Management System was fully operative and there was no need to implement manual contingency plans for copying and delivering case documents to divisions. Case information was scanned into the system within 24 hours.

In addition to case-related information, the Registry also deals with non-case-related, general documentation, which is similarly scanned, filed and archived. Non-case-related information accounted for 73,582 files in the Document Management System (DMS). The DMS electronic access facility was not utilised during this period because the access control facility was not operational. However, it is envisaged that the electronic access facility will be fully utilised in the next financial year.

During the period under review, 2 324 letters were received and delivered internally, 914 letters were posted, 121 parcels couriered and 115 hand deliveries done. All documents and letters were delivered to staff within 2 hours of receipt.

Finally a policy and procedure on access to information was developed. The development of the policy became important as members of the public requested access to case files.

Financial Overview

During the period under review, the Commission implemented strategies to address the risk of impairment or loss of financial and physical assets. A fraud policy was drafted. Furthermore, all assets are bar-coded on receipt. The security policy contains a procedure to ensure that no assets leave the Commission without authorisation from the Divisional Manager, signed and recorded by the security department. Furthermore, internal procedures for Finance and Administration were adopted to ensure the control of cash movement and authorisation of transactions into the accounting system and the bank system.

The operating income of the Competition Commission for the period under review was R51 870 094. Fee income constituted 88.7% of the total operating income. 99.9% of the fee income was derived from merger filing fees and the balance derived from advisory opinions and exemption applications. In addition to fee income, the Commission received R947 040 from the Royal Norwegian Embassy in donor funds. Other income of R4 912 593 consists of the facility fees that are derived from services rendered by the Commission to the Competition Tribunal, as well as proceeds from the annual conference. At the end of the period, the Commission had an operating surplus of R11 283 962.

Total expenditure for the period amounted to R40 586 132. This includes capital expenditure of R8 627 358 for the financial year, which is broken down into more detail in the table below. Expenditure on personnel amounted to R16 683 559. Education and information expenditure for the period amounted to R1 467 983. Professional services include consulting services for the development of policies, research, as well as fees for legal work that was outsourced. Total expenditure for professional services for the period under review amounted to R2 865 639.

The major components of capital expenditure and income are tabulated below:

Capital Expenditure:

Leasehold improvement	R	4 409 115
Furniture and fittings	R	1 961 512
Computer equipment	R	1 064 909
Office equipment	R	970 880
Vehicles	R	70 948
Catering equipment	R	149 994
TOTAL	R	8 627 358

Income:

Donor funding	R	947 040
Filing fees	R	46 010 461
Other income	R	4 912 593
TOTAL	R	51 870 094

1.6 Corporate Governance

The Competition Commission is committed to good governance principles, and has put accountability processes in place to ensure ethical, transparent and responsible management within appropriate risk parameters.

The powers of the Commission are vested in the Commissioner who, as the Chief Executive Officer, is directly responsible to the Minister of Trade and Industry. The Commissioner put structures in place to allow collective decision-making and shared accountability in pursuit of good corporate governance.

Risk Management

The Executive Committee monitors and manages risk through management, various committees, and the risk management functions of the respective divisions. The process is guided by policies approved by the Executive Committee and the Commissioner, and is integrated within business and operational activities.

Business Planning and Performance Reporting

An annual business planning and budgeting process structures the Commission's business operations. Performance management and auditing processes underpin the monitoring of, and reporting on, the achievement of its business objectives.

The business plan, objectives and budget of the Commission, with projections to 2004, were submitted to the Department of Trade and Industry, and are supported by monthly reports on the Commission's activities and financial expenditure.

Commission Secretary and Committees

A Commission Secretary ensures compliance with relevant legislation and regulations, conducts statutory audits, and promotes the implementation of best practice in all areas of operation.

Committees were established to create structures to ensure accountability for performance, decision-making and reporting mechanisms. These include a Corporate Governance-, Audit-, Human Resources-, Tender- and an Information Technology Committee. These committees have specific terms of reference and are accountable to the Commissioner and the Executive Committee. Staff members are elected to these committees, which improve staff participation in decision-making and create a higher level of transparency in the Commission. These committees meet at least quarterly.

The Chairperson and the majority of the Audit Committee are independent outside members. Internal and external auditors have unrestricted access to the Audit Committee to ensure its independence. A Steering Committee co-ordinates between the internal and external auditors, the Commissioner, and Executive Committee.

The Commission is in the process of establishing a Health and Safety Committee as required by the Occupational Health and Safety Act, (Act 85 of 1993) and a Remuneration Committee to advise the Commissioner on remuneration issues. The Commission has adopted a code of business conduct to protect and promote its dignity and integrity.

1.7 The Year Ahead

The Competition Authorities held a conference on 29 and 30 March 2001 on The Impact of Globalisation and New Technology on Competition.

Recent years saw extensive international discussions on the extent to which the new economy will affect competition law and policy. In South Africa, the debate has centred on how the new economy will affect the application of competition law in developing countries.

One of the main questions is whether we need to formulate a new type, or version, of competition law to replace the century-old competition regime in dealing with the challenges posed by the new economy.

The new economy, evidenced by, inter alia, phenomenal growth in the information technology sector and increased use of the internet to conduct business transactions, clearly requires a different approach in applying competition laws. Information technology has facilitated synergy of business activities and enabled improved processing, which made some of the processes to which businesses are accustomed redundant. Merging parties generally claim their merger and acquisitions will achieve more synergies and cut costs, therefore, increase productivity and profitability.

In a developing country like South Africa, the Competition Commission's key role will be to ensure the Competition Act (as amended), remains a relevant tool to deal with multinational companies involved in transnational mergers and acquisitions. The Act must further deal with increased international cartel activities. The Commission must also be able to amend the Act to bring it in line with improved methods of dealing with prohibited restrictive practices or anti-competitive mergers.

The second role of the Commission would involve investigation of prohibited restrictive practices and analysis of mergers and acquisitions, most of which are offshore. The Commission must be able to detect in particular

practices involving international cartels, notorious for their anticompetitive practices, and the impact of their activities on the economies of developing countries. The Commission is well placed to deal with such activities through the Act, which empowers the Commission with sufficient instruments.

The new economy and growth encourages restrictive practices, but also ensures SMMEs access to markets. Government therefore needs to be vigilant in its strategy to develop SMMEs in key areas. The Commission also has to ensure consistency in applying South Africa's competition law.

The new economy, driven almost exclusively by the US, Japan and European Union member countries, has impacted tremendously on all sectors of the economy. Regulating the new economy is very challenging. The Commission's role is to engage in discussion around cases in the various forums, and also to participate in policy-making. This requires the Commission to have the necessary intellectual capacity internally and the willingness to take a leadership role where necessary.

The manner in which the Commission deals with these and other factors will determine how successfully it meets the challenges posed by the new economy. The Commission's success will be an important victory to give effect to the government's strategy to boost the economy.

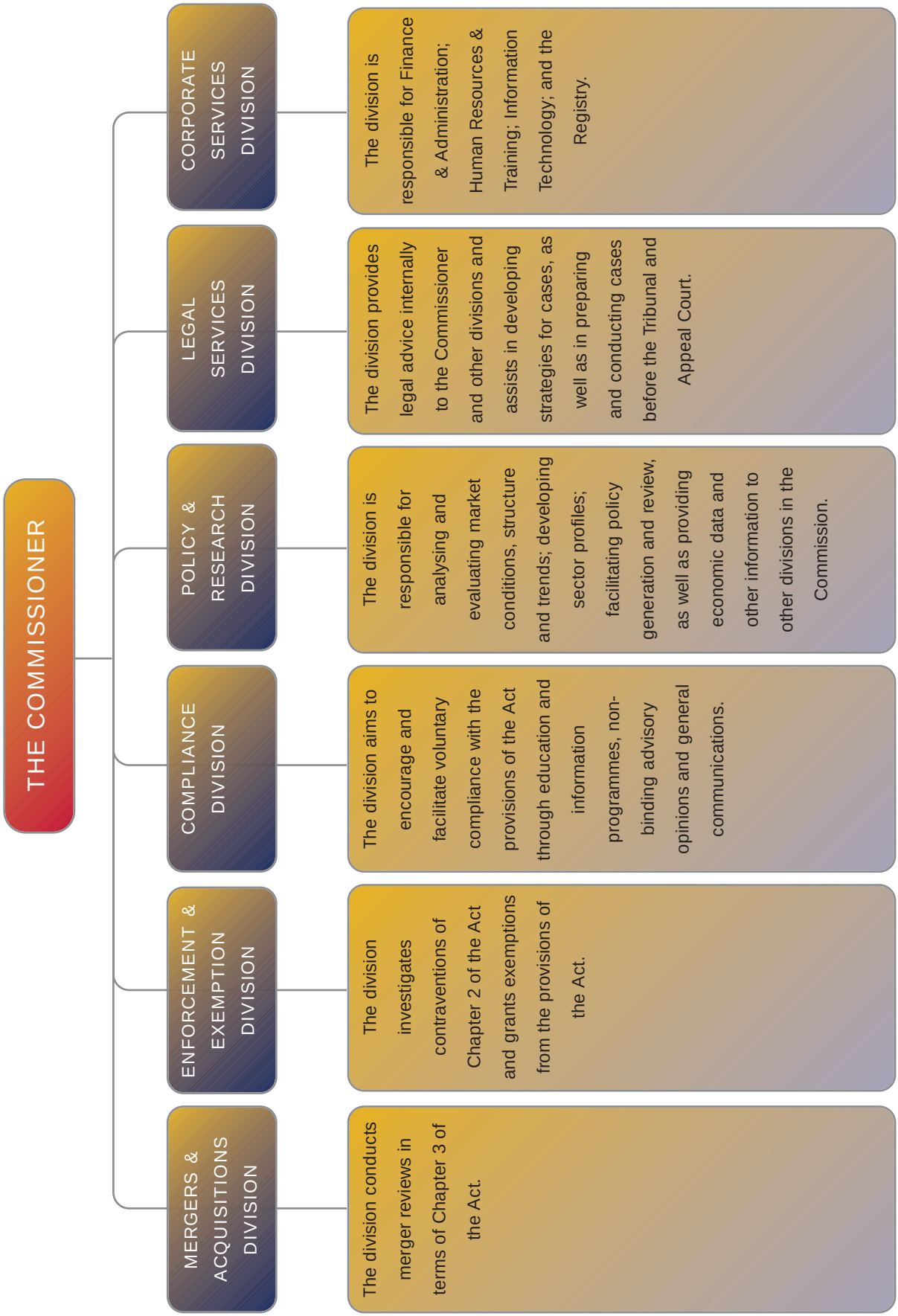
The Commission gratefully acknowledges the support of Mr Alec Erwin, the Minister of Trade and Industry; Dr Alistair Ruiters, Director-General of the Department of Trade and Industry; and Members of Parliament and portfolio committees for their support during the 2001 fiscus.

2. Executive Committee

From left to right: Adv Eksteen Maritz (Enforcement & Exemptions), Ms Astrid Ludin (Compliance & Corporate Services), Adv Menzi Simelane (Commissioner), Dr Minette Smit (Policy & Research), Adv Nelson Lolwane (Legal Services)

Insert: Mr Nkonzo Hlatshwayo (Mergers & Acquisitions)

3. Structure of the Competition Commission



4. Our Business

In terms of the Competition Act of 1998, the Competition Commission seeks to provide all South Africans with equal opportunity to participate fairly in the national economy, in order to promote a more effective and efficient economy. The Competition Commission is responsible for investigating complaints made against firms about restrictive practices and abuses of dominance, and for evaluating, approving or prohibiting mergers and acquisitions. In addition, the Commission conducts research, provides policy inputs, educates and informs stakeholders and conducts regulatory and legislative reviews.

4.1 Mergers and Acquisitions

The 2000/2001 fiscus saw a number of landmark cases affecting sectors ranging from the liquid fuels industry to gold mines and furniture sales. While the tables below show to what extent the Commission met its mandate in terms of the Competition Act, the statistics do not relate the complex and often difficult choices the Commission had to take to recommend a merger's approval or prohibition. The challenge in the next year is to continue building on our record of impartially promoting competition in South Africa, without losing sight of the public interest issues that may arise.

Merger activity

During the period under review, the Commission was notified of 407 mergers, which included 16 large mergers, 375 intermediate mergers and 16 small mergers. The small merger category only came into effect on 1 February 2001 with the amended Competition Act, which accounts for the small number. The table below illustrates the number of merger cases received and finalised during the period.

Table 7: Comparative Statistics

	1999/2000	2000/2001
1. Total number of cases notified	**331**	**407**
Large	20	16
Intermediate	175	375
Small	N/A	16
Transitional	136	N/A
2. Total number of cases finalised	**236**	**414**
Large	12	24
Intermediate	91	387
Small	N/A	3
Transitional	133	N/A
2.1 Total number of cases prohibited	**5**	**3**
Large	1	1
Intermediate	1	2
Transitional	3	N/A
2.2 Total number of cases withdrawn or no-jurisdiction	**231**	**37**
Large	11	1
Intermediate	90	36
Transitional	130	N/A
2.2 Total number of cases approved	**236**	**376**
Large	12	13
Intermediate	91	347
Small	0	16
Transitional	130	N/A

* The difference between the number of large mergers notified and finalised is due to cases that were lodged in the previous financial year, but finalised in the current year.

Features of mergers and acquisitions activity (1 April 2000 - 31 March 2001)

A sample of 285 finalised cases, covering the period April 2000 to February 2001, was examined. Most of these mergers were horizontal, involving firms that competed in identical markets. Conglomerate type mergers constituted 22% of the total. Such mergers are notifiable if they involve a change in ownership and therefore require investigation. As a pure conglomerate merger entails no product overlap or vertical integration, it is not always clear if this type of merger would raise competition concerns. However, conglomerates may diminish competition through their various spheres of influence, and conglomerates might engage in cross-product subsidisation to gain an unfair competitive advantage.

It is often difficult to assess whether a merger will bring foreign direct investment into South Africa. The most likely cases involve a foreign firm. Of the cases reviewed, 55 of the mergers involved acquisitions by a foreign firm. A recent KPMG survey noted that South Africa recorded US$7.6bn of cross-border inward and outward mergers and acquisitions since June 2000. Compared to the previous year, inward investment had declined, while outward investment increased in value. Nineteen of the cases under review anticipated a total of some 1518 job losses due to mergers, with 450 jobs created. Most of the jobs are expected to be lost in manufacturing, followed by the financial, health and recreational services sectors. A small number of jobs would be created mainly in the manufacturing of clothing and textiles.

A possible justification to allow a merger is the failing firm argument, with the implication that jobs can be saved. The failing firm argument was only used in 5% of the cases reviewed.

Table 8: Number of Cases by Merger Type

	April - December 2000	
	Number of mergers	Percentage
Type of merger:		
Purely Horizontal	178	62%
Purely Vertical	25	9%
Conglomerate	63	22%
Management buy-out	6	2%
Horizontal/ Vertical mix	13	5%
Total	285	100%

Acquisition by foreign firm	55	19%
Failing firm argument	13	5%
Anticipated job losses	19	6%

Table 9 compares the results from a sample study of 232 merger cases from September 1999 to March 2000, compared with the results from the present sample study.

Table 9: Comparing merger activity with the previous financial year

SECTOR	% of total (September 1999 - March 2000)	% of total (April 2000 - February 2001)
Mining and Construction	**6%**	**4%**
Financial Services	**13%**	**6%**
ICT 1	**14%**	**11%**
Transport	**10%**	**4%**
Manufacturing	**22%**	**33%**
Food and Beverages	5%	2%
Chemicals	5%	4%
Electrical Equipment	2.5%	3%
Paper and Packaging	2.5%	2%
Building Materials	4%	1%
Printing and Publishing	2.5%	1%
Equipment and Machinery	-	5%
Metal Products	-	3.5%
Transport Equipment	-	3.5%
Textiles and Fabrics	-	3%
Other Manufacturing	-	5%
Services	**13%**	**11%**
Real Estate	**4%**	**8%**
Wholesale 2	**-**	**12%**
Retail	**-**	**6%**
Other 3	**18%**	**5%**
TOTAL	**100%**	**100%**

This table reflects a significant increase in the proportion of mergers taking place in the manufacturing sector. Within manufacturing, sub-sectors such as chemicals, electrical equipment, paper, packaging, printing, and publishing have not seen more than a 1% change in merger activity. However, some sub-sectors that did not feature in the previous sample study include equipment and machinery, metal products, transport equipment, textiles and fabrics.

While merger activity increased in Manufacturing, it dropped in the Information and Communications Technology (ICT)[1] sector and Financial Services. These two sectors[2] together contributed more to merger activity than any other sector[3] from September 1999 to March 2000, but have since fallen into second place with manufacturing now leading the way. This renewed interest in manufacturing may be due to waning enthusiasm for information technology on a global level.

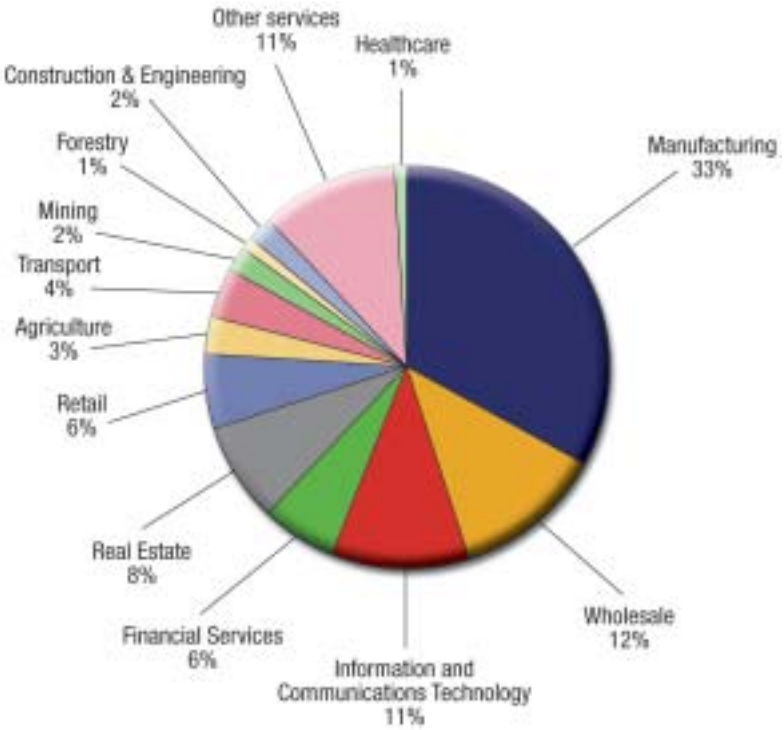
1 Information and communications technology (ICT) includes information technology and telecommunications.

2 Note: Finer divisions of wholesale and retail do not show persistent trends in any one sector. In the sample study covering September 1999 - March 2000 wholesale and retail would have been grouped under 'other'.

3 Other includes cases that are not significantly representative of particular sectors.

Nevertheless, ICT and financial services remain an important component of merger activity in South Africa and further consolidation can be expected in future. A significant increase in the number of mergers in the real estate sector is worthy of further investigation by Policy and Research.

Figure 1: Sectoral overview of merger activity



Case Overview

During the period under review, the Competition Commission prohibited three transactions, which included one intermediate merger and two large mergers, representing 0.78% of all intermediate and 12.5% of all large mergers finalised. Some of the more important cases are described below.

Glaxo Wellcome (Pty) Ltd and SmithKline Beecham (Pty) Ltd

The Commission initially prohibited the proposed intermediate merger between Glaxo Wellcome (Pty) Ltd and SmithKline Beecham (Pty) Ltd on competition and public interest grounds.

The transaction gave rise to competition concerns in respect of the private sector segments of the relevant markets identified, involving two therapeutic categories. These were Topical Antibiotics (D6A) and Anti-virals (excluding anti-HIV) (J5B).

The Commission's prohibition led to negotiations between the parties, the Commission and the Competition Tribunal. The parties agreed to the out-licensing of Polysporin, Cicatrin and Neosporin, which fell within the Topical Antibiotics (D6A) therapeutic class, on the terms and conditions set out in an undertaking. The parties also agreed to the outlicensing of Famir, which fell within the Anti-virals (J5B) therapeutic class.

These two undertakings addressed the competition concerns. The parties also provided the Commission with an undertaking that addressed the Commission's concerns regarding public interest issues. The Commission approved the merger once the necessary remedies were effected.

Tongaat-Hulett Group Ltd (THG) and Transvaal Suiker Beperk (TSB)

This merger posed special challenges for the Commission. The sugar industry is heavily regulated with limited competition and limited incentives for competition.

During its investigation the Commission received written assurances from the Department of Trade and Industry (DTI) that it intended to revise the Sugar Act of 1978 to implement measures which would promote rivalry in the domestic sugar industry.

The Commission considered the effect the merger would have on competition in the existing relevant market as well as potential future competition and recommended to the Competition Tribunal that the proposed merger be prohibited for the following reasons:

- The market was already concentrated and concentration levels would increase further. The proposed merger would have also facilitated a split between THG (direct consumption) and Illovo (industrial sales).
- Although there was limited price and non-price competition, the merger would substantially lessen any competition that existed at that stage.
- The high levels of concentration and possible negative effects thereof on competition would not be offset by any balancing factors such as competition from imported sugar, low barriers to entry, or significant countervailing power.
- Customers perceived TSB to be the "maverick" in the industry, and an effective competitor would be removed, especially considering the DTI's endeavours to make the domestic industry more competitive.

Seardel Investment Corporation Limited and Frame Group Limited

The Competition Commission unconditionally approved a merger between Seardel and Frame, in terms of which Frame would become a wholly-owned subsidiary of Seardel as the merger was unlikely to substantially prevent or lessen competition in the relevant textile markets. Furthermore, the merger raised no public interest concerns.

The Commission identified and defined three relevant markets as follows:

- The manufacture and supply of bed linen, duvets, pillows, curtains, etc. (the household textiles market)
- The manufacture and supply of men's, women's and children's apparel and foundation garments and
- The manufacture and supply of yarns and textiles.

Both Frame and Seardel manufacture bed linen, duvets, pillows, curtains, etc. for the household textiles market. There was, therefore, a horizontal overlap between the parties in this respect. Frame is also involved in the manufacture and supply of yarns and textiles. The Commission's investigations revealed that the household textiles market is highly competitive with many local suppliers, and a level of import competition currently at 30%.

With regard to vertical integration, the concern was the possible exclusion of other users from Frame's textiles supplies. The Commission received four sets of complaints from clothing manufacturers in this regard. The complaints related to the supply of textiles in general and, more particularly, to denim and worsted fabrics.

The Commission found that there were many local suppliers of the different types of fabric Frame manufactures. While there were only a few local suppliers of denim and worsted fabrics, these fabrics can increasingly be imported at competitive prices. Furthermore, the Commission found that import duties have been decreasing and are expected to continue decreasing until 2002. The Commission therefore concluded that there was sufficient import competition to discipline the price of denim and worsted fabrics, and that it was likely to continue disciplining price for the local market.

A complicating factor regarding the merger (and in particular, the supply of fabrics by Frame to other clothing manufacturers, i.e. Seardel's competitors) was that the USA had passed the Africa Growth Opportunity Act (AGOA). In terms of that Act, sub-Saharan countries can export clothing to the USA duty-free and quota free, for a period of five years from 1 October 2000. To qualify for such duty-free and quota free exports, the USA required that at least three levels of conversion of the clothing must be of sub-Saharan African origin. AGOA therefore creates a need for Frame's and other local suppliers' (or other sub-Saharan countries') textiles.

Although textiles can be imported and used for manufacturing for the South African clothing market, as is currently the case, clothing manufactured from this imported fabric will not be eligible for duty and quota free exporting to the USA market, as it falls short of the AGOA requirements.

The parties stated they did not intend to alter the relationship between themselves and that Frame would continue to supply Seardel's competitors after the merger. Seardel also indicated it would maintain its current method of supply, thus encouraging competition among textile producers. Frame undertook to continue supplying its current customer base, and to maintain its seven distribution channels aimed at SMMEs outlets.

The Commission considered whether Seardel/Frame would have an incentive to discontinue the supply of particularly denim and worsteds (as these appear to be the only fabrics where there are few suppliers), to clothing manufacturers, in the light of AGOA. The Commission found that orders placed with local clothing manufacturers by USA customers were ten times bigger than orders placed by local customers. The demand for fabrics was higher in the USA than in South Africa. The USA market was big enough to absorb all output generated by SA manufacturers. There was some capacity available in the industry, particularly regarding the manufacture of denim and worsted fabrics. Frame was running its denim plant at less than 60 % capacity. The worsted fabric manufacturers were running between 50% to 85% of full capacity.

If shortages were to develop in the textile market because of the increased demand due to AGOA, the Frame/Seardel operation has the capacity to increase its output in the textile industry. It would make economic sense to expand on the textile output level with regards to exports to the USA. Supplying their competitors (Seardel's) with inputs would still be profitable as the USA market is big enough to absorb all output generated by SA manufacturers.

As far as the effect on employment was concerned, the parties informed the Commission that there would be no job losses arising from the merger. The South African Textile Workers' Union (SACTWU), represents workers at both Seardel and Frame. SACTWU made comprehensive submissions to the Commission, in essence stating it had no objections to the proposed transaction. SACTWU viewed the merger as being in the best interests of the textile/clothing industry.

The Commission decided to approve the merger without conditions, as it would not prevent or lessen competition either at horizontal or vertical level. The merger also did not raise any public interest concerns.

Joint Venture between Shell SA (Pty) Ltd, BP Southern Africa (Pty) Ltd, Caltex Oil (SA) (Pty) Ltd and Trident Logistics (Pty) Ltd

On 15 December 2000, the Commission submitted its recommendation to the Tribunal to prohibit the proposed supply and distribution joint venture between Shell SA (Proprietary) Limited (Shell), BP Southern Africa

(Proprietary) Limited (BP), Caltex Oil (SA) (Proprietary) Limited (Caltex) and Trident Logistics (Proprietary) Limited (Trident). On 22 January 2001 the parties withdrew their application from the Tribunal. In light of this withdrawal, the Competition Commission's recommendation to prohibit the proposed joint venture remains in force.

The proposed transaction involved the consolidation of certain services of three major oil companies in South Africa, i.e. Shell, Caltex, and BP. Via a joint venture, the three parties would form Trident, to manage, contract, and provide logistical services on their behalf. Trident would provide these services with respect to supply and distribution, including services associated with refining, storage, and handling at depots, pipeline, rail, ship, and road transportation.

The proposed merger would have substantially lessened competition between the parties. More specifically, the Commission believed that it would have had the effect of substantially lessening competition in the markets for product exchange and hospitality services. The joint venture, in the Commission's view, would also essentially reduce the incentives for vigorous future competition, once momentum was given to the deregulation of the industry.

Furthermore, no efficiency, technology, or other pro-competitive gains would result from the joint venture that would outweigh or offset the potentially anti-competitive effects. The Commission found that the parties had failed to demonstrate which efficiencies were unique to the merger as opposed to gains that the parties would achieve without the joint venture. More importantly, they had failed to convincingly show that the efficiencies would benefit consumers in any manner. The Commission, therefore, was of the view that the parties had failed to demonstrate that efficiency gains that arose from the proposed venture were likely to outweigh the potential anti-competitive effects of the proposed venture.

The proposed joint venture also raised certain public interest concerns, specifically regarding employment and empowerment issues, within the context of the oil industry and the overall restructuring vision of Government. While the merger would benefit the parties in terms of one time cost savings, it would not contribute to the overall competitiveness of the South African oil industry.

One of the eleven cornerstones of future government policy on the liquid fuels industry is that black economic empowerment (BEE) should be reflected in the composition of the industry at all levels, and significant domestic black ownership, or control, in all facets of the industry.

The aim of competition legislation is not to protect competitors, but the competitive process. The effect of the proposed transaction on empowerment firms in the liquid fuel industry raised concerns within the context of the broader aims of the legislation, i.e. ensuring small and medium-sized enterprises have an equitable opportunity to participate in the economy, and the promotion of a greater spread of ownership, in particular the ownership stakes of historically disadvantaged persons.

The oil industry needs storage facilities to facilitate the economic movement of product from refinery to end consumer. Access to these facilities is particularly important to the BEE companies. The smaller, empowerment firms in the liquid fuels market are dependent on the other industry participants for both product exchange services and hospitality services, since they do not own any refineries or depots themselves. Similarly, access to these facilities and services would be crucial to any future new entrant into the industry. Within this context, the Commission found that the proposed joint venture would not facilitate the achievement of the proposed empowerment goals of Government and, furthermore, would not contribute to an overall competitive industry.

After due consideration the Commission concluded that there were no mitigating factors that would lessen the anti-competitive effects of the joint venture and also no public interest grounds.

J D Group Limited and Ellerine Holdings Limited

The Competition Act requires the Competition Commission to investigate whether a large merger is likely to prevent or lessen competition and to recommend its approval or prohibition to the Competition Tribunal.

In its investigation, the Competition Commission established that the relevant geographic market was local. Consumers generally only buy furniture in a 50km to 80km radius. It further found that small, independent furniture retailers could not be considered competitors of chain stores such as the JD Group and Ellerine, as small stores tend to operate on a cash basis, rather than a hire purchase basis.

Competition concerns were identified in 12 of the 18 local markets examined. In particular, the merged entity's market share would range from 40% to 60% in nine markets, and exceed 30% in the remaining three markets. These estimates are conservative, as the market shares were based on the number of stores, rather than turnover (which data was not available).

The Commission strongly felt the proposed merger would primarily affect low-income consumers who buy furniture on credit. The merger would significantly affect consumer choice, reduce competition in an already concentrated market, and create opportunity for possible future abuses of market power, primarily with respect to raising prices.

In conclusion, the Commission was of the view that the proposed merger would result in the removal of an effective competitor, and would have a seriously detrimental effect on low-income consumers.

The reasons underlying the Commission's recommendation to prohibit the merger were as follows:

- The Commission's investigation found that the transaction would have substantially lessened competition in the retail furniture market serving low and middle-income consumers buying on credit. It was found that the merged

entity, which would be twice the size of its nearest rival, would have significantly high market share in the already concentrated retail furniture market, where infrastructure and capital requirements are barriers to new entrants.

- It was further found that the efficiency gains resulting from the transaction could probably be achieved by the companies individually, and were not sufficient to offset potential anti-competitive effects.
- Finally, the Commission could not identify any mitigating public interest issues.

The Competition Tribunal upheld the recommendation of the Commission.

The Greater Johannesburg Metropolitan Council and Egoli Gas (Pty) Ltd

The Competition Commission approved the sale of Metro Gas to the Egoli consortium on 1 August 2000. The Commission held the transaction would not affect the market concentration in the provision of piped gas in the designated municipal area. Concerns about the potential impact of the privatisation on consumers were addressed by the fact that Egoli could not unilaterally raise prices, but had to negotiate any price increases with the Greater Johannesburg Metropolitan Council. The Commission also considered the argument that Metro Gas was a failing firm.

The Competition Commission engaged with both the South African Municipal Worker's Union (SAMWU) and the Independent Municipal and Allied Trade Union (IMATU) to identify and consider union concerns about the proposed sale. The union concerns related mainly to the strength of certain provisions of the Labour Relations Act, as well as a principal concern about the privatisation of utilities.

The Competition Commission was satisfied that an agreement had been reached between the parties and the unions that there would be no employment losses for a two-year period, that the transaction would not change the competitive market situation, and that consumers would not be subjected to unilateral price increases. On the basis of the above, the Competition Commission approved the transaction.

4.2 Prohibited Practices

The Competition Commission is required to investigate alleged contraventions of Chapter 2 of the Competition Act. Chapter 2 of the Act deals with restrictive horizontal and vertical practices and the abuse of dominance. The Commission must investigate all complaints and may initiate a complaint in cases where a reasonable suspicion of an alleged contravention exists.

Overview of complaints

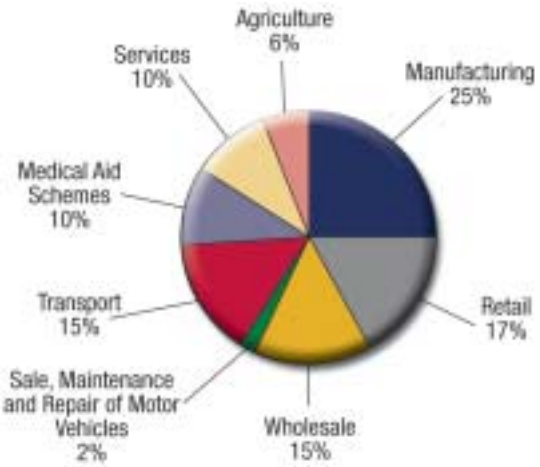
Table 10 below summarises the complaints dealt with by the Commission over the financial year 1 April 2000 to 31 March 2001. During this period, the Commission dealt with 176 complaints, of which 123 (69.9%) were resolved and 53 (30.1%) are still being investigated.

Table 10: Complaints dealt with in terms of Chapter 2 of the Act (1 April 2000 to 31 March 2001)

Provisions of the Act	Number of Complaints	% of Total	Number Resolved	% of Total	Number Under investigation	% of Total
Section 4	13	7.40	10	5.70	3	1.70
Section 4(1)(a)	8		7		1	
4(1)(b)(i)	5		3		2	
4(1)(b)(ii)					0	
Section 5	8	4.50	5	2.80	3	1.70
Section 5(1)	6		4		2	
Section 5(2)	2		1		1	
Section 8	57	32.40	41	23.30	16	9.10
Section (8)(a)	5		1		4	
Section (8)(b)						
Section (8)(c)	48		38		10	
Section (8)(d)(i)	2		1		1	
Section (8)(d)(ii)	1				1	
Section (8)(d)(iii)					0	
Section (8)(d)(iv)	1		1		0	
Section (8)(d)(v)					0	
Section (9)	8	4.50	5	2.80	3	1.70
Multiple Provisions	64	36.40	36	20.50	28	15.90
No Jurisdiction	26	14.80	26	14.80		
Total	176	100	123	69.90	53	30.10

Twenty-eight of the cases under investigation involved complaints alleging more than one contravention of the Act. Table 10 therefore understates the number of instances in which specific sections of the Act have arisen as complaints. For example, although there are only five cases with complaints pertaining only to contraventions of Section 5, Section 5(1) features in 18 of the cases involving multiple contraventions. Section 8(c), which relates to exclusionary acts by a dominant firm, features in nine of the 28 alleged multiple contravention cases. Section 4(1)(b)(i), regarding price fixing, arose in ten different cases. Multiple provisions refer to complaints in which more than one section of Chapter 2 of the Act is alleged.

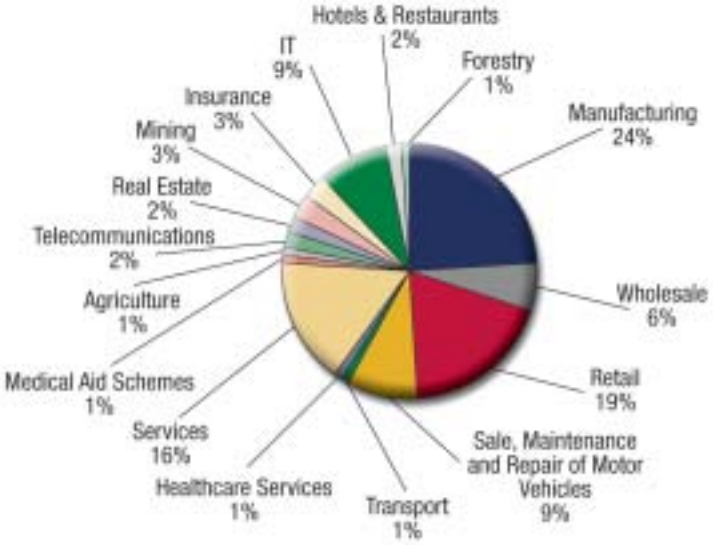
Figure 2: Sectoral breakdown of complaints under investigation



Sectoral distribution of complaints under investigation

Figure 2 represents a sectoral breakdown of a sample of 48 cases under investigation from the total of 53 cases under investigation. Most of these cases pertain to complaints of anti-competitive behaviour in the manufacturing sector (25%), followed by retail (17%) and wholesale and transport, both with 15%. There are a number of complaints at different levels in the pharmaceutical industry regarding restrictive vertical practices, as well as price discrimination. Abuse of dominance cases have also featured with regard to transport services. The Commission is in the process of referring ten of the cases under investigation to the Competition Tribunal for final determination.

Figure 3: Sectoral breakdown of resolved complaints



Sectoral distribution of resolved complaints

Figure 3 represents a sectoral breakdown of 94 samples drawn from the total of 127 concluded cases. This breakdown presents a similar picture as in the sectoral breakdown of complaints under investigation, with the manufacturing sector again leading (24%), followed by retail (19%) and the sale, maintenance and repair of motor vehicles (9%).

Case Overview

South African Raisins (SAR) vs. South African Dried Fruit Holdings Limited (SAD)

The SAR lodged this complaint against the SAD on 13 October 1999, alleging they were involved in practices that contravened certain sections of Chapter 2 of the Competition Act.

The complaint mainly related to the Articles of Association of SAD, which allegedly required its shareholders, or the producers of grapes-for-raisins, to deal exclusively with SAD. The Competition Commission accepted the complaint for further investigation on 13 January 2000, and found the SAD's conduct contravened Sections 8(d)(i) and 5(1) of the Act.

The complaint was subsequently marred by a series of legal actions in the Competition Tribunal, the High Court and the Supreme Court of Appeal of South Africa.

On the same day that the complaint was lodged, SAR filed an application for interim relief to stop SAD from requiring of, or inducing their shareholders to not deal with SAR, which the Tribunal granted in favour of SAR on 24 November 2000. SAD then filed a Notice of Appeal and Review with the Competition Appeal Court. In

response, SAR requested the Tribunal to declare the Notice of Appeal and Review invalid and of no force and effect. The Tribunal agreed with SAR's application and issued an order to that effect on 24 December 1999.

SAD then approached the High Court (Transvaal Provincial Division) requesting that the orders made by the Tribunal be declared null and void. Mr JP Ngoepe held the Act does not apply to the Raisin Industry, and therefore, that the Tribunal did not have the jurisdiction to make the above-mentioned orders. He declared the orders to be null and void, and of no force and effect. Essentially SAD's argument and the subsequent decision of the Court relied upon section 3(1)(d) of the Act.

SAR appealed to the Supreme Court of Appeal to have this judgement set aside, and a judgement was delivered in favour of SAR on 29 September 2000. The judgement found that Act 47 of 1996 does not exclude the jurisdiction of the Act, and that the Tribunal had jurisdiction to consider the matter.

Industry Background

The South African agricultural sector has been dominated by co-operatives and regulatory boards, such as SAD and the Dried Fruits Board. The main functions of the co-operatives were to co-ordinate the farming and marketing activities of their members (farmers).

These activities included the provision of finance, storage, purchasing, processing, packaging, distribution, selling, and export facilities. As a rule, members were required by law to sell their entire crops to the relevant co-operative which, in turn, committed itself to purchase the crops of its members.

This scenario did not allow for competition against the co-operatives. This system was dubbed single-marketing, with the Board performing a regulatory function, whereas the co-operative served as the single channel. At this stage, SAD was the only purchaser, processor, and exporter of grapes-for-raisins in South Africa.

The Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996) repealed The Marketing of Agricultural Product Act of 1968, thus withdrawing state recognition of all single-marketing channels. The main objectives of the Marketing of Agricultural Products Act were to increase market access for all participants, and promote efficient marketing of agricultural products. Some co-operatives, including SAD, circumvented the provision and

intention of Act 47 of 1996 by establishing companies with Articles of Association that perpetuated the old single-channel market through exclusive supply arrangements that effectively foreclosed the market to new entrants.

In accordance with this, SAD converted itself into a company in 1998, allocating shares in the new company to farmer-members. In 1997, SAR took steps to enter the raisin market by engaging in the buying, processing, packaging and distribution of grapes-for-raisins.

Evaluation of the Complaint

The Commission found that SAD was dominant as provided for in terms of the Act. SAD had a market share of approximately 90%. The question the Commission had to answer was whether SAD had engaged in exclusionary acts by virtue of their position in the market.

SAD had until November 2000 to employ Article 88(2), but still utilised Articles 88(3) and 88(5) of its Articles of Association to force their members to exclusively supply grapes-for-raisins to SAD. Article 88(2) provides that a producer who is a shareholder of the First Respondent and who delivers agricultural products of a specific type to the SAD group is obliged to deliver all its agricultural products of that type to SAD, failing which certain penalties would apply at the discretion of the board of directors of SAD.

Article 88(3) entrenches the power of the board of directors of SAD to impose a fine and provides that a shareholder who transgresses, is also liable for any loss or damage that the First Respondent may suffer as a result. Article 88(5) was introduced in September 1999 at a Special General Meeting to provide that all monies owed to SAD by a particular shareholder, would immediately become due and payable, where a shareholder did not comply with its obligations or undertakings towards SAD. The Commission concluded that enforcement of the above-mentioned Articles amounted to abuse of dominance in the market, effectively excluding other players from entering the market for grapes-for-raisins.

First, the farmers were required to sell all their crops to SAD. The directors of SAD had discretion to penalise farmers failing to comply. As SAD's shareholders accounted for about 90% of all producers of grapes-for-raisins, the act of requiring them to not freely deal with any other player in the market created a barrier to enter the market, and amounted to abuse of SAD's dominant position.

Second, Article 88(5) placed an exit barrier on the shareholders/farmers who contemplated leaving SAD in that they would be faced with instant payment of accumulated debts.

Vertical Restraint

The Commission found that the agreement between the farmers and SAD was vertical in that SAD purchased the grapes-for-raisins from the farmers (sellers or producers of grapes-for-raisins) in terms of the Articles of Association and then processed, packaged, distributed, and sold it.

Barriers to Entry

SAD specifically utilised the provisions of Articles 88(2) (and subsequent to the Newsletter of 29 November 2000), articles 88(3) and 88(5), (as presented above) to acquire the sole use of the input used in the manufacture of raisins. It did so by "locking in" the farmers (sellers or producers of grapes-for-raisins) in an exclusive supply agreement with SAD. This arrangement made it difficult and almost impossible for the farmers to supply their crops to SAR or any other potential entrant in the market, and served hardly any purpose beyond suppressing competition by creating an entry barrier to the market.

Nationwide Airlines (Pty) Limited vs South African Airways Limited

During 2000, Nationwide Airlines (Pty) Limited filed a complaint with the Competition Commission against certain practices involving South African Airways Limited. The Competition Commission finalised its investigation into most of the complaints, and has referred them to the Competition Tribunal for a decision.

The Commission dealt with:

- travel agent overriding incentives; and
- travel agent employee (consultants) travel incentives.

There is overwhelming evidence that suggests overriding incentives, when practised by a dominant firm, should not be permitted. The European Union, individual countries within the EU, and Canada have attempted to address this issue. The Commission was satisfied that SAA is dominant on the particular routes where Nationwide competes with it, namely between Johannesburg and Durban, and Cape Town and George. Moreover, SAA's turnover and assets exceeded the thresholds laid down.

Based on the above, it was concluded that the practice constituted a prohibited practice, in terms of both sections 8(c) and 8(d)(i) of the Competition Act of 1998. In the Commission's view, efficiency arguments raised by the parties did not outweigh the anti-competitive harm cased.

Mondi Limited vs Safcol Limited (Safcol)

A complaint was filed with the Commission alleging that Safcol had contravened an arrangement that it had entered into with the Competition Board as published in the Government Gazette on 21 August 1998 (Notice 1050, Gazette 19145). In terms of the transitional provisions published in Schedule 3 of the Act, this arrangement remained valid until 30 August 2000. The arrangement was substantively similar to the price discrimination provisions of section 9.

Evidence evaluated by the Commission confirmed that certain customers of Safcol, who were competitors of each other, were paying lower prices, and that Safcol was in breach of both the arrangement and section 9(1). It should

be pointed out that some contract holders used the long term or so-called evergreen arbitration clauses in their contracts with Safcol, to postpone paying similar prices as their competitors, which placed Safcol in a position where it contravened the arrangement and the Act.

The Commission was of the view that the arbitration clauses, although created to ensure fairness in pricing, in fact had the following effects:

- it placed the respondent in a situation where it could at any time as the result of arbitration, find itself in contravention of the Act
- it allowed for an abuse of process that may impact negatively on the competitive process
- it could impact negatively on smaller firms that cannot afford protracted legal procedures.

The Commission concluded that the arbitration clauses relating to price should be deleted from the contract as they gave rise to price discrimination. Prices may be set through negotiation and will always be subject to the sanction of the Competition Act, should Safcol abuse its market position. This will ensure compliance with the Act. The matter has been referred to the Competition Tribunal for a decision.

Search and Seizure Operation at PPC

The Competition Commission embarked on its first search and seizure operation during the year under review. The targets for the operations were Pretoria Portland Cement Pty Ltd (PPC) and Slagment Pty Ltd (Slagment). PPC manages Slagment on behalf of its three shareholders, PPC, Alpha and Lafarge SA. The Commission is investigating a complaint against the three parties of alleged collusive behaviour.

The Commission made several requests to the parties to submit information necessary for the investigation. Summons for information had previously been issued, but were later withdrawn at the request of PPC, who promised co-operation with the Commission. Despite these assurances, the required information was not submitted. As the Commission believed key information could be destroyed, a search and seizure operation was initiated. Warrants to enter the offices of the respective parties were obtained from a Judge of the Pretoria High Court on 2 August 2000.

In terms of section 46 of the Act, the Commission may initiate a search and seizure operation if “there are reasonable grounds to believe that:

- a prohibited practice has taken place, is taking place, or is likely to take place on or in those premises; and
- that anything connected with an investigation into that prohibited practice is in the possession of, or under the control of, a person who is on or in those premises.”

PPC objected to the actions by the Commission and appealed to the High Court. The Transvaal Provincial Division of the High Court of South Africa, however, passed the first High Court judgement on the Competition Commission's search and seizure powers in the Commission's favour. Mr. Justice Daniels held that a search and seizure warrant can be applied for at any stage of the investigation, and that other alternative remedies need not be exhausted before applying for the warrant. Neither is it required to give notice of the intended application, as that would in most cases defeat the object of the application. Nor is evidence of a crime required. Nothing more is required than information that there are reasonable grounds to believe that a prohibited practice (such as abuse of a dominant position) has, is, or is likely to take place on the premises.

Applying the above to the facts, the Judge held that all the relevant information was placed by the Senior Investigator before the judicial officer in applying for the warrant, and that no facts were misrepresented. Consequently the review application failed.

Scotprop complaint against Property Network

Scotprop, a new estate agency attempting to trade in the Pietermaritzburg area, filed a complaint against Property Network, an estate agents association in KwaZulu-Natal, on 18 September 2000. Scotprop alleged new entrants to the real estate market struggled to establish themselves as a viable alternative to the well-established market participants being members of Property Network.

In order to survive as an estate agent in Pietermaritzburg, an estate agent has two options:

- To be a well established independent estate agent, or
- To be a member of Property Network, because a seller of property who signs a contract with any of the members of Property Network has the benefit of having its property marketed by all other members of the Network. An estate agent who is not a member of the Network is prohibited from marketing the seller's property. This is further hampered by the restrictive nature of Property Network's membership criteria.

The Commission accepted the submission on 27 September 2000, and found the membership criteria of the participants in the Property Network Agreement to be restrictive. For instance, Clause 23 is restrictive in that it limits competition amongst the members, that is, "No participants shall be allowed to participate in any property listing system which, in the sole opinion of Property Network, constitutes competition with Property Network."

The Commission submitted a recommendation to the Tribunal for the approval of a consent order, which was approved and effected on Monday, 4 December 2000. It was agreed that:

- The existing membership criteria of the Property Network Participation Agreement have to be expunged and substituted with a new set of membership criteria agreed to by the Competition Commission. These new criteria are not restrictive as they allow for easy membership to the Property Network.

- The Provisions of Clause 23 of the Participation Agreement be expunged and eliminated;
- The Commission reserves the right to review and assess any anti-competitive effects which in future may arise within the context of the new Membership Criteria or the amended Participation Agreement in the Property Network Participation Agreement.

Competition Commission complaint against participants in the Alcoholic Beverages Industry

The complaint was based on information alleging restrictive practices involving the major players in Alcoholic Beverages Industry. The Commission's decision to initiate the complaint was based on evidence pertaining to general restrictive practices, conditions of trade, collusion, and the abuse of a dominant position.

The Commission will be investigating Rembrandt Limited and its subsidiaries Distillers Limited, Stellenbosch Farmers' Winery Limited (SFW), South African Breweries Limited, and KWV Limited.

In reaction to the recent announcement of a merger between Distillers Limited and Stellenbosch Farmers' Winery Limited (SFW), participants in the industry raised concerns about the dominant position the merger would give the parties, and emphasised the merger would substantially increase barriers to entry for new entrants into various markets within the industry. The Commission will also investigate these allegations.

Competition Commission complaint against Nutri-Health

The Competition Commission initiated a complaint against Nutri-Health based on Section 5(2) of the Competition Act, i.e. that the practice of minimum resale price maintenance is prohibited.

Nutri-Health is an international company specialising in weight management and nutritional products. It has been brought to the attention of the Commission that "Formula 2001", a weight management drug distributed by Nutri-Health, states the following on its packaging label: "Minimum selling price R91,00 per bottle." Nutri-Health immediately put measures in place and replaced all incorrect labels.

4.3 Exemptions

The Act makes provision in section 10 that a firm may apply to the Commission to be exempted from the application of Chapter 2 (the horizontal, vertical, and abuse of dominance provisions). This applies when either an agreement, or practice, or category of agreements or practices, meet the requirements laid down in section 10(3) of the Act.

It is incumbent on the applicant to show that any restriction or restrictions thus imposed on the firm(s) concerned is/are required to attain to any of the following objectives:

- the maintenance or promotion of exports
- the promotion of the ability of small businesses or firms controlled or owned by historically disadvantaged persons to become competitive
- a change in productive capacity necessary to stop decline in an industry or
- the economic stability of any industry designated by the Minister of Trade and Industry after consulting the Minister responsible for that industry.

Overview of exemption applications

During the period under review, nine applications for exemption were lodged, all relating primarily to restrictive horizontal practices. Three applications pertain to activities of pharmaceutical manufacturers, two relate to the healthcare services sector, and the remaining four applications are derived from companies involved in the manufacture of transport equipment, cement products, liquid fuels, and shipping lines. Four exemption applications were concluded by March 2001.

Section 10 exemption applications

South African Airways Limited (SAA) and Qantas Airways Limited (Qantas)

SAA and Qantas filed an application with the Commission for an exemption. The Department of Transport (Department) and the International Air Services Council (Council) are responsible for the regulation of international air services to and from the Republic of South Africa. The International Air Services Council has been created in terms of Section 3 of the International Air Services Act, 1993 (Act No. 60 of 1993). It is clear that the Department and Council have the responsibility to promote competition between air service providers. To this end, the Department endeavours to create bilateral air service frameworks that provide for the designation of more than one airline, negotiate sufficient capacity to enable further airlines to introduce services, and to establish a flexible tariff filing system to encourage price competition between airlines.

The South African and Australian Governments have since 18 July 1985 discussed and agreed to arrangements in respect of the air services between the two countries. A code share agreement is currently in place, specifically regarding routes to be flown and their frequency.

The agreement also provides for block sharing and code sharing between the two airlines. “The designated airline(s) of South Africa may terminate services at Perth or Sydney, and may, at its option, serve any point or points of choice in Australia through joint service, blocked space, or code share arrangements with any Australian carrier; (while) the designated airline(s) of Australia may terminate services at Johannesburg or at other nominated points in South Africa, and may, at its option, serve any point or points of choice in South Africa through joint service, blocked space, or code share arrangements with any South African carrier.”

The parties raised the question of jurisdiction, especially in relation to the Competition Act 1998, prior to the 2000 amendments coming into force on 1 February 2001. Since this exemption is granted for a period encompassing a period after 1 February 2001, and taking the comments above into account, the Competition Commission has concurrent jurisdiction. Both the Department of Transport and its minister support the agreement, clearly as being consistent with the objects of the IAS Act.

The application related to the granting of an exemption from Section 4(1)(b)(ii) of the Competition Act 1998 (the Act). The applicants specifically requested that their code sharing agreement on the South Africa-Australia route and other commercial agreements be exempted from the prohibition(s) contained in the Act. The agreement relates to a market sharing agreement between the parties.

The applicants indicated that there was a serious chance that SAA might exit the market, having made significant losses on the route due to, inter alia, fuel price hikes. It also pointed out that export earnings would be generated from the carrier’s continued presence on this route. Exemption was granted until 30 June 2002. This mirrors the period permitted by the Australian transport authorities.

The approval of the application is subject to the following conditions that the parties need to comply with:

- During the period of the exemption, both parties to the agreements must independently submit quarterly reports, detailing the following:
  - the actual highest and lowest fare charged over the period for all classes
  - the number of code share seats sold by each party on the other’s services
  - the volumes of cargo, rates charged for cargo, and the revenue derived from cargo as well as any increase and/or decrease in the said value, sales, and revenue.
- The parties to the agreements shall not share or pool revenues with each other under the code share or commercial agreements.

- The parties to the agreements must each independently establish and determine their own tariffs and fares on the code share flights, and market these flights separately.
- The parties to the agreements must show how exports have been promoted or maintained in terms of both seat and cargo volumes during the period for which the exemption has been granted, before any new agreement or extension of the existing agreement will be considered by the Commission.
- Any amendment to the agreement shall not be of force and effect until approved by the Commission.
- Parties must add a clause to their agreements stating that the agreements are subject to the above-mentioned conditions, and in so far as there is a conflict on any term of the agreement between the parties on the one hand and these conditions on the other hand, the conditions shall prevail.
- Nothing in this exemption shall preclude the Competition Commission from initiating action against any party for implementing the various agreements prior to the issue of the exemption.

Schedule 1 exemption applications

Professional associations may also apply for an exemption from the provisions of Chapter 2, but in terms of Schedule 1 of the Act. An exemption may be based on the following grounds:

- the rules must be binding on members (paragraph 6 of Part A of Schedule 1)
- the application must be by an association that is representative of the profession (paragraph (b) of Part B of Schedule 1)
- the rules do not substantially restrict competition (paragraph 1(a) of Part A of Schedule 1)
- in the event that they do restrict competition, and having regard to internationally applied norms, are reasonably required to maintain:
  - professional standards, or
  - the ordinary function of the profession (paragraph 1(b) of Part A of Schedule 1).

The Commission is obliged to procedurally consult with the responsible minister regarding the application (paragraph 3(c) of Part B of Schedule 1).

General Council of the Bar of South Africa (GCB)

The GCB applied for an exemption on behalf of itself and its constituent Bars. It was the first, and so far only, professional association to do so. Its constituent Bars are:

- The Society of Advocates (Witwatersrand Local Division)
- Society of Advocates of South Africa (Transvaal Provincial Division)
- Society of Advocates (Northern Cape Division)
- The Cape Bar
- North West Bar

- Society of Advocates of Natal
- Bisho Society of Advocates
- Eastern Cape Society of Advocates
- Society of Advocates of the Free State
- Society of Advocates of the Eastern Cape
- Society of Advocates of Transkei.

The Commission indicated that it was prepared to exempt the rules on condition that certain rules were either amended or scrapped.

The Commission has to exercise its discretion as to whether or not to grant an exemption (paragraph 2 of Part A of Schedule 1). The Act permits, in section 1(3), that any person interpreting or applying this Act may consider appropriate foreign and international law. The exemption was granted for binding rules only. It follows that certain rules may have to be amended to reflect this.

The Commission was satisfied that the GCB and its constituent associations are representative of the profession, in other words of those persons whose names appear on the role of the Department of Justice, as is provided for in the Admission of Advocates Act, 1964 (Act No 74 of 1964), who are said to be active in practising their profession in this country.

The Competition Commission invited the Minister of Justice and Constitutional Development to comment on the application. He indicated his support for the modification or scrapping of a number of rules, including the prohibition on taking briefs on association and concerted boycott actions. He did not express views on the other aspects addressed by the Commission.[4]

The applicants averred that the majority of the rules did not restrict competition. With the exception of those dealt with in this document, the Commission concurs with the applicants. Exemption of these rules is thus granted.
With regard to recommended fees, the Competition Commission is satisfied that:

- these rules restrict competition
- for as far as these fees are used in adjudicating complaints of overreaching it is binding in terms of maxima that may be charged
- regarding the nature of professional services and the ordinary function of the profession, the rules are necessary to maintain professional standards and are required for the ordinary function of the profession with regards to overreaching already referred to above.
- these rules are exempted.

4 The aspects on which the Minister did not have any comments related to advertising, contingency fees, and the venues from which members may practice.

With regard to contingency fees, the Commission was satisfied that:

- The current arrangements, whereby approval must be gained when a member wishes to enter into a contingency fee arrangement with a client, restricts competition, since the gaining of prior approval clearly inhibits a member's freedom to negotiate. It may retard the uses of such fees in the legal system. This restricts competition.
- The Competition Commission has considered whether this rule is necessary or reasonably required to maintain the professional standard or ordinary function of the profession. The Commission is not satisfied that this is the case.

Concerning the prohibition on advocates accepting briefs directly from clients, the Commission was of the opinion that this Rule was not justified.

- It restricts competition by limiting the client base of advocates to the said group and conversely limits efficient access of legal representation to the consumer. It furthermore increases cost to the consumer.
- The Commission recognised the arguments of the GCB in support of this restriction, but did not find them compelling with a view to maintaining professional standards and the ordinary function of the profession. It might be the ordinary function of the legal profession in certain Anglo-Saxon countries, but not in many others.
- The Commission has also taken cognisance of the fact that Government (the minister) does not support this restriction and aims to prohibit it in terms of pending legislation.

Regarding the prohibition on advertising the Commission indicated that it was not prepared to exempt this rule. The Commission, in support of international views[5], is convinced that restrictions on truthful advertising:

- Restrict access into the market for legal services. It denies the consumer the necessary transparency to optimise their expenditure for legal services.
- It could give rise to higher prices for services.
- Experience in other countries has shown that it is not:
  - reasonably required to maintain professional standards
  - nor is it required to maintain the ordinary function of the profession.

The Commission is, however, sympathetic to very stringent restraints on untruthful advertising. It would exempt a rule that prohibits untruthful or self-laudatory advertising.

Concerted boycott actions: provision is made in the Rules that a defaulting attorney's name should be placed on a defaulters list. When an attorney's name has been thus listed it is improper for any counsel to accept a brief from such attorney, or to proceed with any brief received from him (her). Moreover, this prohibition extends to partners of attorneys whose names have been placed on the default list. The Commission was not prepared to exempt this rule.

5 Inter alia an OECD document "Competition in professional services" dated 23 February 2000 that comprises the proceedings of a Roundtable on Competition in Professional Services that was held during June 1999. It contains inputs from Australia, Finland, Germany, Hungary, Ireland, Italy, Japan, Korea, Mexico, New Zealand, the United Kingdom, the United States, and the European Union.

US anti-trust would treat a concerted refusal to deal as a per se violation only where "the boycott in which competitors cut off access to a supply, facility, or market necessary to compete, or where the boycotting firms have market power." Other US cases have followed the rule of reason approach, effectively weighing up the concerted refusal to deal with the degree of dominance of those collectively involved in the action and the competitive harm that follows from this action. The major law firms in South Africa prefer to deal with advocates who are members of the Bar and to limit their own court appearances to lesser courts.

Most legal professionals therefore practise either as attorneys in the lower court, or as advocates in the high courts. There is very little crossover where attorneys practise at both the high and lower courts. The names of attorneys with LLB degrees may be placed on the roll and may apply to appear in a high court.

One may argue that advocates will dominate appearances in the high court, while the GCB members in turn represent those in practice, who also dominate the profession based on the numbers of professionals who regularly appear in the high court.

From the above it follows that exclusion from employing the services of members of a Bar, for whatever reason, may impact negatively on an attorney's ability to compete for clients, restricting competition at two levels, namely:

- between advocates; and
- between attorneys.

The GCB justifies the restriction on the argument that it cannot accept briefs directly from clients. The Commission is of the opinion that the argument is self-serving as the restriction directly from clients is of the GCB's own doing.

No convincing justification has been forwarded to support this rule, either to maintain professional standards, or the ordinary function of the profession. The minister also criticised this rule as amounting to coercion to pay. Constituent societies prescribe that members of the GCB shall practice from certain specified premises.
The Commission is not prepared to exempt this rule. It is of the opinion that the rule:

- restricts competition by not permitting a member to locate where it is most economically feasible
- removes members geographically from many of their clients or potential clients
- increases costs to the consumer
- is not required to maintain professional standards
- is not required to maintain the ordinary function of the profession.

With regards to the prohibition on association with other advocates the Competition Commission noted that a similar restriction does not apply in respect of other professional disciplines. Thus having regard to international experience (OECD document referred to earlier) the Commission is convinced that:

- it restricts competition
- it is not required to maintain professional standards or ordinary function of the profession.

The Commission is not persuaded by the arguments put forward by the applicants relating specifically to the exercise of disciplinary control over members.

The minister's views were that "the restraint upon the formation of partnerships impedes access to the profession and thus impacts negatively on competitiveness in the profession".

In respect of the prohibition on association with non-members, the Commission was of the view that professionals associate for a number of reasons. These could include pooling expertise to allow a one-stop service for clients. It should also curb overheads although some sharing of overheads already occurs in the profession. One finds in the attorney's profession many large, medium, and small law firms competing in the market. There is no evidence that the quality of service has declined. Moreover, the potential for savings to the clients is real.

Thus, with regards to the application the Commission expressed the opinion that the collective application of the rule:
- restricts competition
- is not required to maintain the ordinary function and professional standards of the profession.

It therefore refused to exempt this rule.

It is noted that the so-called two-counsel rule was changed in 1986 from an obligatory rule to what it is today, a recommended rule. The applicants have not argued for the retention of this rule as a binding rule, whilst the Commission would be acting ultra vires should it exempt this rule (see section on "binding rules" in previous paragraphs).

4.4 Policy and Research

Policy and research are important tools utilised by the Commission to determine economic research strategy, to assist on cases and to facilitate discussion on competition policy issues. The absence of relevant data on competition in the economy, as well as ownership and product market concentration, poses a continuous challenge, as the Commission has to obtain economic data through its own research initiatives. During the period under review, the Commission has made significant progress in collecting and analysing some of the necessary information. In addition, the Commission outsourced several sector studies to outside consultants. These include studies on aviation, electricity, agriculture, telecommunications, and water, which were all successfully completed during the year. The researchers involved presented summaries of their findings in seminars held at the Commission. Outlined below are some of the key findings derived from the Commission's own research, as well as from outsourced projects.

Ownership Concentration in South Africa

The main focus of the Ownership Project is improving the Commission's ability to access ownership concentration

information at the relevant market level. This type of data is particularly important in assessing conglomerate mergers, which accounted for 22% of the merger cases appearing before the Commission [6].

The African Statistics project[7] differs from conventional concentration measurements by not looking at concentration in particular markets (i.e. CR4, CR10, Herfindahl - Hirschman Index) or broadly defined stock exchange sectors focusing instead on the ultimate owners of the respective players. The African Statistics research, to date, has captured 59 sectors according to five-digit Standard Industrial Classification (SIC). In each sector, it diagrammatically captures the producers and their respective turnovers, employee complements and their ultimate owners.

The Commission re-captured the data in the format of an ownership database to make it more easily accessible. The database contains the specific industries according to their five-digit Standard Industrial Classification (SIC), the name and number of players active in each relevant market, and their respective turnovers and employment figures. The CR_1, CR_2, and CR_3, based on turnover figures[8] for each of the relevant markets, were also calculated. From the ultimate owners of each of the players in the database, the top ten owners were selected by identifying the most active owners in all 59 industries.

The following table shows the top ten companies in terms of ownership concentration. Anglo-American is the largest group, with 35% ownership stakes in the 59 sector database, followed by Sanlam with 22%, Old Mutual with 20%, Rembrandt with 18%, and the remaining six with ownership stakes of less than 10%.

Table 11: Top 10 Ownership Companies

Company	Number of ownership interests out of 59 sample sectors	Percentage ownership control
Anglo-American	21	35%
Sanlam	13	22%
Old Mutual	12	20%
Rembrandt	11	18%
Barlows	5	8%
Sasol	5	8%
Unilever	4	6%
Tiger Brands	3	5%
Parmalat	3	5%
Ellerine Holdings	2	3%

Ownership database

6 This figure is based on a sample study of 285 finalised cases for the period April 2000 - February 2001. A caveat is that the percentage can be overstated in that conglomerate mergers, in this context, is defined to include the merging of firms which produce similar, but not substitutable products which are defined on the level of relevant market definition.

7 The source document for the ownership project/database is the Africa Stats ownership study.

8 Market concentration ratio (CR) is defined as a percentage of total industry sales (or capacity, or employment, or value added, or physical output) contributed by the firms.

From the initial database, the following sectors showed a high level of conglomerate activity and are therefore areas of concern in the case of pure conglomerate mergers: [9]

- SIC 323 Paper and paper products
- SIC 332 Petroleum refineries/synthesisers
- SIC 335 Other chemicals
- SIC 338 Plastic products.

The following should be noted in interpreting and evaluating the results:

- In the data provided by African Statistics the financial years of the respective companies do not correspond in all cases. The turnover from which market shares are derived thus do not necessarily reflect turnover figures for corresponding months. In addition, some of the turnover figures are estimates.
- As a broad selection criterion, African Statistics attempts to capture players accounting for between 90% to 95% of the turnover in the relevant five-digit product market. Certain players may be omitted from the market to cause the ownership concentration to be biased upwards.

The initiation of the Africa Statistics project and the consequent compilation of an ownership database help ensure that the Commission is kept abreast on ownership trends in the economy and able to assess future conglomerate mergers more accurately.

A profile of the 1993 manufacturing wall chart

The Policy and Research Division of the Commission compiled a database on the Structure, Conduct, and Performance (SCP) relationship in the manufacturing sector. The 'wall-chart' research project has used the SCP analytical structure to assess the degree of competition in the manufacturing sector.

The following variables were used to profile the manufacturing industries (1993 data). The CR4, CR10, and HHI for structure; and Price-Cost-Margin (PCM), Advertising Expenditure (AE), and capital labour ratio (C/L) for conduct. The following process was used to identify industries that need further investigation from a competition policy point of view:

- The 53 industries were ranked from high to low according to their level of CR4, CR10, and HHI for structure; and PCM, AE, and C/L for conduct, respectively.
- The respective rankings of both structure and conduct variables were then combined, averaged, and re-ranked.
- The top ten that ranked the lowest (i.e. from one), were regarded as areas of potential competition concern.

9 Sectors of concern are classified in terms of a broad three-digit Standard Industrial Classification (SIC). A pure conglomerate merger in this instance refers to one conglomerate merging with another.

A comparison of the top ten rankings in both structure and conduct shows overlap in the five industries specified in the table below. These industries accordingly warrant closer inspection by the competition authority.

Table 12: Five overlapping industries in terms of both structure and conduct

SIC	Industries
306	Tobacco products
332	Petroleum refinery/synthesisers
359	Office machinery
364	Accumulators, primary cells, and primary batteries
372	Television and radio apparatus for telecommunications

As an extension of the analysis, complaints received within the manufacturing industries were reviewed to consider any possible correlation between the structure, conduct, and complaints received. Table 13 below presents an overview of complaints within the top industries in terms of structure and conduct rankings.

Table 13: Complaints that fell under the top industries according to structure conduct ranking

SIC	Industries	Structure	Conduct	Total manufacturing complaints received (48)
306	Tobacco products	XX	XX	-
332	Petroleum refinery/synthesisers	XX	XX	-
359	Office machinery	XX	XX	-
364	Accumulators, primary cells, and primary batteries	XX	XX	-
372	Television and radio apparatus for telecommunications	XX	XX	-
341	Glass and glass products	X	-	1
331	Coke oven products	X	-	-
361	Electric motors, generators and transformers	X	-	-
371	Electric valves, tubes and components	X	-	1
387	Transport equipment not elsewhere classified	X	-	-
376	Watches and clocks	-	X	-
335	Other chemical products	-	X	13
334	Basic chemical	-	X	1
323	Paper and paper products	-	X	4
302	Dairy products		X	-
305	Beverages		X	-
Total				**20**

- Paper and paper products, and tobacco share the same conduct ranking.
- Chemical products and dairy products share the same conduct ranking.

XX (overlap in structure and conduct)

X (no overlap)

A total of 48 manufacturing complaints were received over the period September 1999 to March 2001. Of the 48 complaints received, 20 (41%) fell within the top industries according to structure conduct rankings. Most complaints were in the other chemical products (SIC 335) industry, which constitutes pharmaceuticals, medicinal

chemicals, polishing and cleaning detergents. Four of paper and paper products (SIC323) complaints also fell within the top industries, followed by glass and glass products (SIC341), electric valves, tubes and components (SIC371), and basic chemicals (SIC334) with one complaint each.

Competition policy and employment

The South African Competition Act is distinctive from most other competition legislation in its consideration of public interest issues, one of these being the promotion of employment. The Competition Commission has an obligation to evaluate, amongst others, the impact of mergers and acquisition activity on employment. In light of the fact that studies indicate that more competitive industries employ on average five times more workers than concentrated industries, it is crucial to monitor the impact of merger activity - that by nature increases concentration in a market - on employment.[10] The Policy and Research division analysed the relationship between concentration ratios (CR4)[11] and job losses/gains as a result of merger activity in manufacturing industries for a sample of 125[12] cases notified with the Commission for the period September 1999 to September 2000.

The table below reflects the following:

- In 125 cases evaluated a net loss of employment of 197 jobs occurred.
- 77% of the overall employment losses were within industries where the combined market share of the leading four firms in the industry was between 60% and 100% (33.6% of the cases in the sample).
- Merger activity in competitive industries with low levels of concentration (34.4 % of the cases in the sample) contributed to only 18% of the overall job losses.
- An almost equal number of cases in concentrated industries (CR4 above 60%) and more competitive industries (CR4 below 40%) led to almost four times more job losses in the concentrated industries.
- 100% of the overall employment gains were within the low and medium concentrated industries (CR4 in the range of 20 to 60%).

Table 14: Employment gains or losses as a result of Mergers and Acquisition activity in SA manufacturing

Distribution of CR4 (5-Digit SIC)	Number of cases	% of total cases	Employment losses	% of total losses	Employment gains	% of total gains	Net losses/ Gains
0.0-0.2	8	6.4	0	0	0	0	0
0.2-0.4	35	28	135	18	30	6	-105
0.4-0.6	40	32	34	5	500	94	+ 466
0.6-0.8	30	24	298	41	0	0	- 298
0.8-1.0	12	9.6	260	36	0	0	- 260
Total	**125**	**100**	**727**	**100**	**530**	**100**	**-197**

Note: Data compiled from a sample of 125-merger cases.

10 Vumendlini, V. (1999). Product market concentration and employment levels in South African manufacturing, unpublished honours dissertation, University of the Orange Free State, Bloemfontein.

11 Defined as the sum of the market shares of the top four firms in an industry.

12 Only cases that relate to the manufacturing sector were included in the sample as concentration data is only available for manufacturing.

Competition in the Electricity Supply Industry (ESI) in South Africa

The study concentrated on the restructuring of the industry and examined several regulatory options being considered, as well as the potential for introducing competition into certain parts of the industry, especially generation. Much of the study translated the often-complex technical aspects of electricity supply into a format amenable to further analysis by economists and lawyers at the Commission. The report will inform the Commission's involvement in the future regulation of the industry, in co-operation with the National Electricity Regulator (project completed by Prof Anton Eberhard of UCT).

Competition in the Water Sector in South Africa

A study was commissioned to examine competition in the supply of water in South Africa. The study confirmed that water supply is likely to be a natural monopoly within each rainfall catchment area, but that competition can be introduced into certain ancillary services, such as water purification and wastewater recovery. The study highlighted certain methods of pricing water by means of regulation, as well as the need for cross-subsidisation of low-income water users (project completed by Mr Anthony Leiman and others of the DPRU at UCT).

Competition in the Telecommunications Sector in South Africa

A description of the various parts of the industry illustrated how technologies are converging between telecommunication, broadcasting, and Information Technology. The analysis teased out the relationship between the different services offered and the pricing of those services, given the existing and planned market structures. The complex problems of access to the local network by new entrants, interconnection pricing, and price regulation were fully addressed in the report (project completed by Mr James Hodge of UCT).

Competition in the Aviation Industry in South Africa

The state of competition on domestic routes was examined to survey airlines' involved market shares, competitive strategies, performance, and to review the relevant legislation and the role of the Airports Company of South Africa (ACSA) (project completed by Prof James Blignaut and others of University of Pretoria).

Competition in the Agricultural Sector in South Africa

A comprehensive survey of the various agricultural produce markets was undertaken for the Commission, to evaluate the extent of competition in the wake of deregulation. The study showed that the performance of several sub-sectors has suffered as a result, although this was partially attributable to world declines in prices for certain agricultural commodities. It was suggested that many local players were unprepared for the rigours of free market

competition, and the need to be more directly involved in the marketing of their produce. The lack of agricultural statistical data hampered the survey (project completed by Prof Herman van Schalkwyk of UOFS).

Information Resource Centre

The Commission's Information Resource Centre has grown its core competition law collection from a meagre number in September 1999 to 398 items.

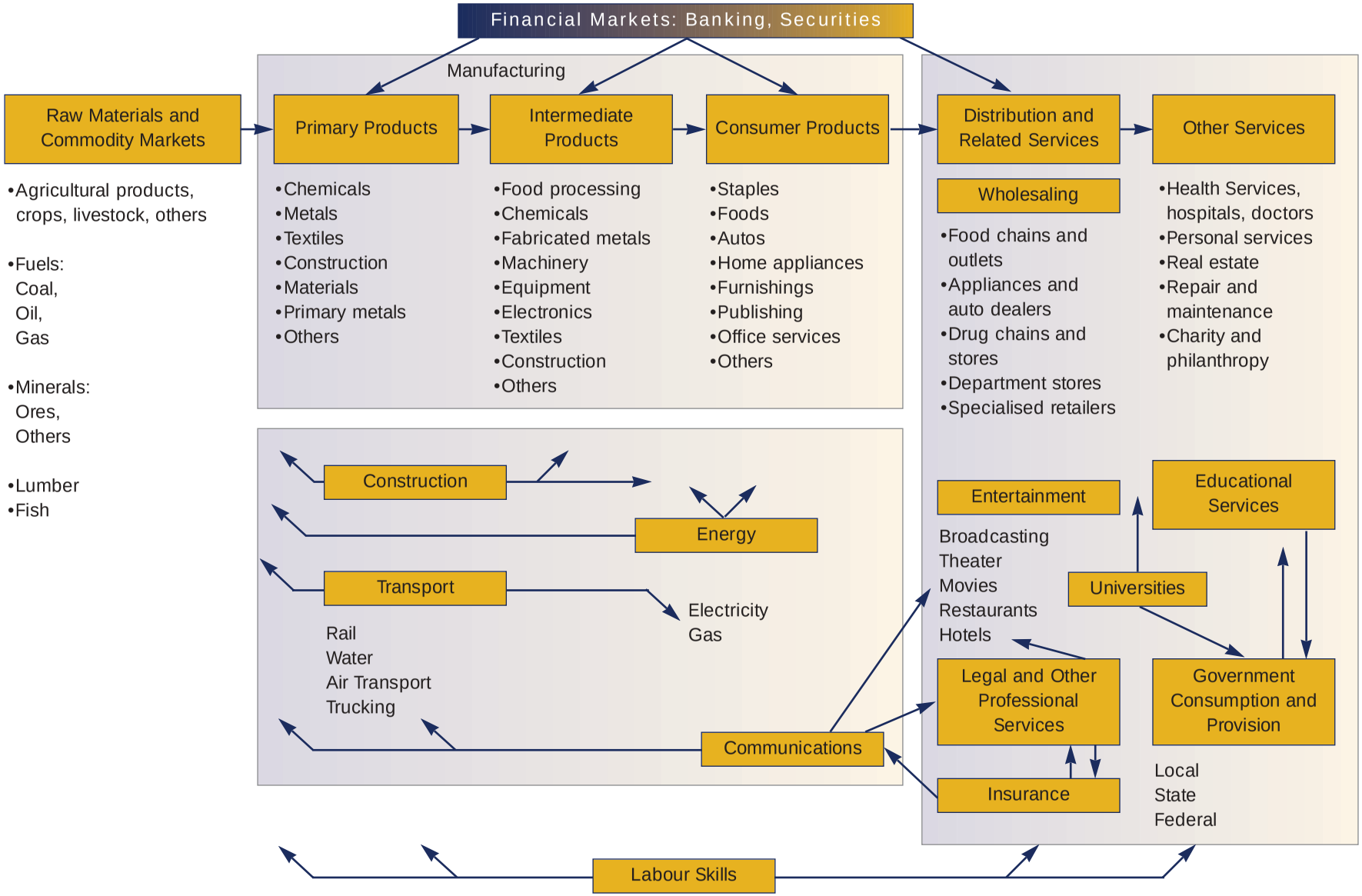
Two factors featured high in importance in compiling the collection. First, as there is limited jurisprudence of competition law in South Africa, foreign jurisdictions had to be searched for relevant case law. Secondly, items were selected to maintain end-user focus.

After careful consideration, ABA anti-trust law developments, published by the American Bar Association in the USA, and European Competition Law, published by Kluwer in Europe, were chosen as the core items. These acquisitions have given end-users comprehensive access to European and American anti-trust law. Further purchases include an index to legal and business periodicals which serves a twofold purpose: it acts as an index to the competition law journals the Commission subscribes to, and it provides reference to further articles.

During April 2000 the Information Resource Specialist visited the Canadian Competition Bureau, the Office of Fair Trading in the UK, and the Competition Directorate at the European Union. The objective was to establish benchmarks for best practices whereupon the collection and services of the Information Resource Centre could be built. Contacts were established which have proven very useful on consultation.

During 2000-2001, 398 records were added to the catalogue, and a database of relevant websites containing 653 references was developed.

Impact of the Commission's activities on the economy



4.5 Education, Information and Advice

The Competition Act requires the Commission to implement measures to ensure market transparency and to develop public awareness of the provisions of the Act. Despite efforts to educate and inform the specific stakeholders and the general public about the provisions of the Competition Act, the levels of awareness and understanding are still relatively low. To address the information needs of stakeholders, the education and information activities of the Commission aim to meet three objectives:

- promote voluntary compliance with the provisions of the Act by public and private enterprises
- promote participation by public interest groups recognised in the Act in competition proceedings
- build a public profile for the Commission.

Promoting voluntary compliance

The Commission's approach to the enforcement of the Competition Act is to promote firstly voluntary compliance by companies with the Act. To this effect, the Commission provides advisory opinions to clarify the Commission's approach to transactions and business practices, presentations on the Act, and training sessions for practitioners.

Advisory Opinions

An advisory opinion is a written clarification of the Commission's position with respect to a set of facts submitted by external parties. It aims to clarify the provisions of the Act and to provide guidance to business on the position the Commission is likely to take in respect of certain agreements, transactions, or practices.

The opinions provided are based entirely on the information submitted by the requestor, taking into account relevant case law, previous opinions and the policies of the Commission. The Commission does not offer advisory opinions on whether a particular practice or agreement will qualify for an exemption or whether a merger is likely to be approved by the Commission. Advisory opinions provided are not binding on the Commission or the respective parties.

Overview of Advisory Opinions and Clarifications provided

The Commission received 125 written requests for clarification on various sections of the Act. Sixty-seven of these requests were advisory opinions, while 58 were treated as clarifications, for which no payment is required. A request is treated as a clarification when the issue has been dealt with sufficiently in the past and has been clarified to legal practitioners, when a government department requires policy input or when a request relates primarily to a complaint. 16.4% of the advisory opinions dealt with prohibited practices (Chapter 2), while 78% were on mergers and acquisitions (Chapter 3). Only 2% dealt with both Chapters 2 and 3.

The number of advisory opinions requested in the financial year ending March 2001 was lower than in the previous financial year (67 requests as opposed to 71), indicating that the provisions of the Act had become clearer to practitioners and businesses. However, a number of fundamental issues relating to the application of the Act had been clarified in the previous financial year. Requests relating to similar issues or emanating primarily from complaints were thus treated as clarifications. There was a clear increase in the number of clarifications requested, highlighting greater awareness of the Competition Act. A shift towards more questions around prohibited practices was also discernible. In the previous financial year, only 6% of requests for advisory opinions (four requests) related to prohibited practices, as opposed to 16% (11 requests) in the current financial year.

Table 15: Number of Compliance Cases received by the Commission per Month

Month	Advisory Opinions	Clarifications	Total
April	2	2	4
May	15	6	21
June	5	4	9
July	9	4	13
August	2	5	7
September	8	8	16
October	8	11	19
November	5	5	10
December	5	3	8
January	0	4	4
February	3	1	4
March	5	3	8
Total	67	56	123

Table 16: Number of advisory opinions dealing with specific chapters of the Act

Chapter 3	52	78%
Chapter 2	11	16%
Combination	2	3%
Other	2	3%
Total	67	100%

Frequently Asked Questions

Fifty-five out of 67 (84%) requests for advisory opinions related to the merger provisions of the Act. From the table above it is clear that the number of requests for advisory opinions declined during February and March 2001. This can be linked to the new thresholds and the declining number of notifiable mergers. The following are some of the questions raised by the firms and attorneys with respect to mergers.

Mergers and Acquisitions

Definition of Control

While section 12(2) provides some degree of certainty on control, there has been a debate on interpretation of this provision. In terms of section 12(2)(a), a person with more than half of the share capital in a company has de jure control. The question is therefore what the view of the Commission would be in instances where a minority shareholder alleges to have the ability to materially influence the policies of that company in spite of the fact that the other shareholder holds more than 50% of the shares.

Similarly, it is argued that in a situation where two parties have 50/50 control in a firm, if one party relinquishes its part of control to the other 50% shareholder, this should not be considered as a merger as the acquirer already has control. The parties further argued that one should not distinguish between the types of control and that 50% control that existed put the party in control already.

The above arguments also highlight the need for greater clarity on the Commission's approach in cases of conflict between de jure and de facto control. If one alleges de facto control, evidence needs to be submitted to prove that such control existed. It is a fact that certain supply, loan, and distribution agreements may confer control, but need to be considered carefully, as not every agreement will confer control.

Joint Ventures

More questions have been raised on the Commission's view on joint ventures. It is clear that not all joint ventures would constitute mergers. However, joint ventures that result in the transfer of assets, shares, or interests from one party to the joint venture into the joint venture company of the other party may constitute a merger. Whether or not joint ventures constitute a merger, the Commission still has to consider them carefully, as some of them may result in anti-competitive behaviour such as collusion between competitors and price fixing.

The identification and acquiring of the target firms to the transaction, as well as the calculation of the asset value and turnover, have presented problems for parties filing with the Commission in joint venture transactions. In addition, questions were raised about the point at which notification is required for joint venture companies - at the formation of the joint venture company, or at the point when the parties transfer assets, shares or interests into the joint venture. Similarly, with options and pledge agreements, is the point of notification when the agreement is signed, or is it when the pledge of option is exercised.

Notification of Property Transactions

A large number of requests for clarification related to the notifiability of property transactions. Property companies required the Commission to exempt all property transactions from notification requirements in view of their special nature. Property companies argue that since most of the property transactions take place between a developer and

a large financial institution, virtually any transaction will exceed the R50 million asset requirement. They also argue that the notification requirements impose undue burdens in terms of time and resources.

The companies further argued that the notification requirements would increase the costs of doing business in the property industry, and would make investors shy away from the local property industry. The companies also alleged that most of the information required by the Commission for notification purposes, such as the market share of competitors, would be time consuming and sometimes impossible to obtain. Some argued further that property transactions do not pose any competition concerns at all and, as a result, there is no need to notify them. Therefore, the companies argue that these undesirable consequences could not have been intended by the legislature.

It appeared from the above arguments that the main concern of the property companies is the costs of notifications and the time it takes, and not that the transactions are not notifiable transactions. The decision on whether or not a transaction raises competition concerns lies with the competition authorities. It is therefore important to note that notifiability of transactions is triggered when there is a change in control, and thresholds are met.

While the Act clearly provides the role and functions of the Commission, the Commission received calls to intervene in transactions that do not constitute mergers in terms of the Act. The Commission is only empowered to analyse a transaction if it falls within the definition of a merger and meets the threshold determined by the minister. Certain restructuring processes of companies may impact negatively on public interest issues such as employment, but the Commission will be acting ultra vires if it intervenes in transactions that do not fall within its jurisdiction.

Multiple Transactions

Finally, the Commission's approach towards multiple transactions was sought. In cases where transactions are interdependent and indivisible, the question is whether parties must file a notification and pay the filing fee for each transaction, or only submit one filing and one fee.

Prohibited Practices

Most of the 11 advisory opinions provided this year related to certain clauses in distribution, supply, and agency agreements, most of which came from the producers and suppliers. Parties would request the Commission to indicate if certain clauses in the agreements would constitute prohibited practices in terms of the Act. Some of the parties who requested opinions in this regard were parties to the same agreements and wished to get out of such agreements, or review them to ensure that they are in line with the Act, while some wanted to lodge complaints against the other party.

Professional Associations

The Commission received three queries from professional associations regarding their rules and the recommended

fees that are used in the professions they represent. Most of these associations were advised to request exemptions from the Commission in the prescribed manner. Some asked how to get the minister to designate a particular industry as contemplated in the exemption provisions of the Act. The associations also complained that the filing fee required for an exemption in terms of the Rules is too high and that as associations, they cannot afford to pay fees.

Collaboration Agreements

Another question was raised on the Commission's attitude towards joint purchasing vehicles or collaboration agreements. Such agreements may be restrictive, as they may reduce the number of independent purchasers. It may further lead to common purchase prices for products which may account for a significant portion of demand, thereby constituting indirect fixing of purchase prices or trading conditions. Depending on the market shares of the competitors and the obligation imposed on a seller, the practice may have adverse effects on competition in a market.

Providing opinions on this part of the Act requires one to have a lot more information at hand and it has been difficult in some cases to indicate with certainty if certain practices would constitute a contravention of the Act. For instance, in providing an opinion on the abuse of dominance, one would need information regarding the market shares of companies, their geographic locations, and the other competitors in that market. Such information is normally not obtainable from the parties. Therefore, the Commission provided most opinions by highlighting different scenarios and indicating what the Commission's attitude would be if a particular scenario prevailed.

Presentations, workshops and meetings

In order to promote voluntary compliance with the law by business, both public and private, the Commission also conducts presentations, workshops and meetings. The table below provides a breakdown of these activities:

Table 17: Number of events and participants involving corporate and legal stakeholders

Meetings	9	30	Practitioners, corporate members, associations, regulators
Presentations	12	326	South African Business, regulatory agencies, government departments and universities
Presentations	3	60	Foreign businesses and chambers of commerce
Dinners	1	12	Foreign businesses and chambers of commerce
Workshops	3	59	Legal practitioners
Training sessions	1	4	Government departments
Exhibitions	1	66	South African Business
Total	**30**	**557**	

Promoting Participation by Public Interest Groups

The Competition Act recognises a special role for a number of social factors. These include trade unions, consumers, small and medium-sized enterprises, and businesses owned by the historically disadvantaged. The Commission conducts presentations and training on the application of the Act and the role of particular stakeholders and follows up with stakeholders on specific cases. The Commission has appointed liaison officers to communicate directly with these stakeholders.

Trade Unions

In terms of the Competition Act, it is compulsory for companies to notify trade unions of their intention to merge. Trade unions may participate in the merger proceedings and may file a Notice of Intention to Participate with the Commission. This Notice entitles trade unions to participate before the Tribunal.

In order to promote trade union participation, the Commission contacts relevant trade unions to verify whether the unions have been notified by the merging parties, to clarify the Commission's processes, and to ascertain whether the unions wish to participate in proceedings. In addition, the Commission conducts training and presentations to trade union officials on the Competition Act and proceedings.

The table below demonstrates the level of participation by trade unions in mergers. As is clear from the table, trade unions participated in approximately 18% of merger cases (72 notices in respect of 407 cases). 21% of trade unions contacted by the Commission indicated their interest in participating in proceedings by lodging a Notice of Intention to Participate.

Table 18: The Level of Participation by Trade Unions in Mergers

April	8	2	20
May	6	8	10
June	7	6	15
July	10	10	45
August	7	7	32
September	5	3	39
October	6	5	27
November	20	11	54
December	17	11	33
January	5	3	12
February	5	3	12
March	9	3	40
Total	**105**	**72**	**339**

The decrease in trade union participation during December to January can be attributed to the festive season holidays. As a result of interaction with trade unions, a number of requests for training were received. Training sessions and presentations are provided on request. Table 19 below provides details:

Table 19: Number of events and participants involving trade unions

Event	Union	Officials	Participants
Training Workshop	National Union of Metal Workers of SA	Regional Organisers	17
Training Workshop	South African Transport & Allied WU	National Co-ordinators	15
Training Workshop	SA Commercial Catering & Allied WU	National Organisers	12
Training Workshop	SA Commercial Catering & Allied WU	Regional Organisers	12
Training Workshop	Chemical, Energy, Paper, Printing & Allied WU	Regional Organisers	14
Training Workshop	NUMSA Wits Central West	Regional Organisers	12
Presentation	Transport and General WU	National Office Bearers	12
Presentation	SA Commercial Catering & Allied WU	Regional Educators, Collective Bargaining Co-ordinators, National Office Bearers, National Negotiators	33
Presentation	National Union of Metal Workers of SA	National Executive Committee	60
Total			**187**

Consumer Organisations

Consumer welfare remains the thrust and essence of the implementation of competition policies and laws worldwide. The Commission has, in terms of the Act, a mandate to promote consumer welfare. In line with this, the Commission developed the following objectives: (i) to increase awareness of the provisions of the Act amongst groups representative of consumer interests in various sectors of the South African economy; (ii) to educate and inform consumers about the application of the Act; (iii) to adopt advocacy positions in regulated industries with the aim of protecting public interests; and (iv) to network with institutions seeking to promote consumer welfare. The Consumer Education Unit became operational in March last year and has since adopted a vigorous approach to raise awareness of the Act and its provisions. Below is a breakdown of tools, activities and strategies engaged upon in order to fulfil the required objectives during the past financial year.

Introductory meetings, presentations and workshops

Introductory meetings were used as a general tool to raise awareness about the existence of the Act and the related institutions and were targeted at organisations whose participation remains crucial to certain processes within the Commission. As an initial step, the Commission conducted seven introductory meetings with organisations, including the South African National Consumer Union, the National Consumer Forum, Consumer Institute of South Africa, the Department of Trade and Industry's National Consumer Affairs Office, and the South African Bureau of Standards.

The Commission further conducted provincial road shows in all nine provinces, targeting advocates of consumer rights and institutions that play an educational and supportive role to public interest groups. The workshops were in the form of detailed presentations aimed at familiarising provincial consumer officials with the provisions of the Act.

Information materials and publications

Three publications were developed to enable consumer groups to keep track of processes within the Commission.

- A flyer, Consumers and Competition, highlights the significance of competition in enhancing consumer welfare and outlines the procedures for participation, and the services offered by the Commission to consumer groups.
- A Simple Guide to Consumer Participation, introduces consumers to concepts such as mergers and acquisitions, restrictive practices and abuse of dominance. It takes consumers through examples of cases and provides a step-by-step guide to participation.
- The Consumer Alert is a simple publication with information on cases filed with and accepted by the Commission as legitimate claims. Consumer Alert aims to allow consumers to respond to cases by making submissions, filing affidavits, filing complaints, and alerting the Commission to any contravention of the Act that might be taking place. Three issues of this publication were distributed and copies are available on the Commission's web site.

Publications have generally emphasised the application of the Act and have been used to encourage participation in cases. The impact has been participation by consumer groups in at least three cases, two of which were complaints and one a declaration of material interest.

Networking Activities

The Commission has also participated in various forums, conferences, and exhibitions in an attempt to network, share ideas, and build a comprehensive database of stakeholder groups. The Commission participated in a week-long international conference on Competition Policy: a Consumer Welfare Challenge, held in Taiwan in June 2000, the World Consumer Congress, held in Durban in November 2000, and a Consumer Exhibition, also in Durban, during the same time. Approximately 132 information packs were distributed during the exhibition alone and 29 organisations, both local and international, were added onto our database as a result of these activities.

Table 20: Number of Events and Participants involving Consumer NGOs and Government Departments

Introductory Meetings	4	20	Consumer NGOs, government departments
Presentations & Speeches	11	285	Consumer NGOs, government departments
Exhibitions	1	132	Consumer NGOs, government departments
Total	**16**	**437**	

SMEs and Emerging Businesses

Another special interest group identified by the Act are small and medium-sized enterprises and businesses owned or controlled by the historically disadvantaged. 72% of complaints of alleged prohibited practices received by the Commission are filed by small and medium-sized enterprises. The most common averred contravention is the abuse of dominance and market foreclosure.

Table 21: Number of Events and Participants involving Small and Emerging Businesses

Type of Event	Number of events	Number of participants	Stakeholders
Presentations	5	78	Small Business service providers and associations
Presentations	2	114	Black Business organisations
Dinners	1	12	Black Business representatives
Total	**8**	**204**	

In order to ensure that SMEs and emerging entrepreneurs are familiar with the provisions of the Act, the Commission makes presentations on the Act to groups of SMEs. In addition, the Commission has also sought to engage emerging business through a range of interactions, including hosting of a dinner. Finally, the Commission is available to assist SMEs through meetings and one-on-one consultations.

Building the public profile of the Commission

Impact Assessment

It is important that the Commission's communication initiatives are targeted at the correct stakeholder groups and that understanding of the Act, its applications, and our role in the economy is clearly understood. In order to monitor this communication and to develop new improved ways of communication an Impact Assessment Study was conducted in March 2001. A preliminary report of 293 interviews conducted indicated, amongst others, that respondents thought that competition between companies is important for a healthy economy. A significant number of respondents thought that there was healthy competition between South African companies, but agreed that a regulator is necessary to regulate competition between companies. The survey also revealed that there was significant support for the Commission and its activities and that there was a sense that the institution is an effective regulator. However, there was also a sense that the institution is not as efficient as it should be. The full report, sampling 1000 people, will be finalised by the end of April 2001. The Commission will take account of the findings in its activities for the next financial year.

Publications and web

To facilitate understanding of the Commission and the Act, and to build the profile of the Commission, three quarterly newsletters were issued to legal practitioners, labour and consumer groups, government organisations,

and small and medium enterprises. Some 1500 copies were distributed quarterly and 500 at exhibitions, presentations, and briefing sessions. The newsletter focuses mainly on some of the key cases, reports on mergers and acquisitions, and enforcement and exemption activity, as well as on research into specific industries.

Three additional publications were produced during the period under review, namely The Competition Act: An Introduction; Prohibited Practices: A Guide; and a pocket size version of the Competition Act, Rules and Thresholds. These publications aim at providing user-friendly information to the various stakeholder groups and are distributed at presentations, training sessions, exhibitions, and other special events.

The Commission also launched its website in October 2000. Key features of the site include the electronic lodgement and downloading of forms, a subscription function and updated information on events, amendments to the Act, and media releases. The Commission's newsletters and other publications are also placed on the site.

Enquiries

The Commission has a call centre aimed at assisting with general enquiries pertaining to the Commission and the Act. In the last year 479 enquiries have been received. Enquiries are also forwarded to the call centre via the general Commission e-mail.

Conferences

During the period under review, two conferences were held. The first annual competition conference on Competition and Regulation was convened in early April 2000, bringing together 250 parliamentarians, sector regulators, trade union officials, consumer organisations, academics, business representatives, and legal practitioners.

The conference provided a platform for debate about whether the Competition Authorities should have jurisdiction over industries already regulated by other regulatory agencies or not. The Minister of Trade and Industry, Mr Alec Erwin, emphasised the pivotal role that the Competition authorities play in transforming the economy - an economy inherited in 1994 that was rigid, protected, locked up in inefficient institutions, highly monopolised and concentrated. Minister Erwin confirmed that competition regulation and the functioning of the Competition Commission are key instruments in economic transformation. Mr Jeff Radebe, Minister of Public Enterprises, supported the view that competition authorities and regulatory agencies could co-exist effectively.

The conference also provided a forum to discuss the role of competition in various sectors and to debate the role of a competition authority in the regulation of public utilities, such as electricity and telecommunications, the importance

of competition in sectors which have been deregulated or privatised, as well as the extent to which competition and public interest considerations need to be balanced in specific sectors such as the financial services and broadcasting sectors.

The conference facilitated public debate around the proposed amendment to the Competition Act to remove section 3(1)d, which would give the Commission jurisdiction over all competition issues in the economy. The Act was successfully amended.

A second conference held on 29 and 30 March 2001 focused on the impact of technology and globalisation on competition. One hundred and ninety delegates attended the conference. The Minister of Trade and Industry, Mr Alec Erwin, again emphasised the important contribution by the Competition Commission in providing valuable information on the SA economy and investment processes on the actual conduct of economic factors and trends towards the various mergers and other practices. Mr Tito Mboweni, Governor of the Reserve Bank, addressed delegates at the conference dinner on the importance of competition in the curtailment of monopoly conduct and the positive impact that increased competition has on inflation.

The first day of the conference focused on the interface between competition policy and international trade, as well as the competition regulation of international business practices. Conference delegates were addressed by a range of international and South African speakers, including business representatives and academics. Discussions centred on key instruments of trade policy (namely domestic subsidies, anti-dumping, regional trade blocs, and measures to promote market access), their compatibility with competition policy and the implications of their use on a global scale. The conference further examined the desirability and possibility of regulating cross border mergers from the perspectives of the regulator, business, and the consumer and was preceded by a presentation on international cartels from the US Department of Justice.

The second day's proceedings focused on the impact of the new economy on old competition policy and questioned whether this policy should not be reviewed and adapted for the new economy/technological developments. An in-depth presentation on the well-known Microsoft case was presented and a panel discussion followed debating whether regulating competition in the new economy stifles innovation. Topics such as intellectual property, e-commerce, fast moving technologies, and industry promotion versus regulation were discussed. While industry representatives argued that the new economy needs to be regulated differently, especially from a competition perspective, international competition law enforcers were of the view that traditional competition principles still apply.

Media relations

An important element in promoting voluntary compliance with the Competition Act is the dissemination of information on proceedings through the media. Media relations are thus essential in building the public profile of the Commission as an effective and fair regulator.

During the period under review, seven media releases were issued and two media briefings were held. Four-hundred-and-thirty-two media articles were generated. A breakdown of the type of coverage received is outlined below. From the data, it is clear that a significant number of articles generated were positive (38%), while most of the articles were neutral (59%). Only a very small percentage (3.5%) was negative.

Table 22: Media monitoring results (June 2000 - March 2001)

Month	Positive media coverage	Negative media coverage	Neutral media coverage	Total number of articles
July	7	2	37	46
August	36	6	51	94
September	19	1	27	47
October	25	2	38	65
November	25	2	22	49
December	13		16	46
2001				
January	8		8	16
February	10	1	20	31
March	21	1	19	41
Total for the nine months	**164**	**15**	**253**	**432**

In addition to the above media articles, the Commission placed a number of advertisements in relevant publications, including the Labour Bulletin, the Black Business Quarterly, the SA Trade Journal and McGregors Stock Exchange handbook. A series of articles appeared in the Labour Bulletin, outlining the principles of the Competition Act and its implications for labour.

4.6 Legislative Review

The Amendments to the Competition Act, No 89 of 1998

The Competition Second Amendment Act, (Act No. 39 of 2000) came into effect on 1 February 2001. A number of amendments were made in both the amended Act, as well as the Competition Commission Rules and Competition Tribunal Rules. The following amendments are of great significance:

Section 3 (1)(d)

In terms of the new Amendment, the Competition Commission has concurrent jurisdiction with other regulators. Section 3(1)(d) of the Act ousted the jurisdiction of both the Commission and the Tribunal on all industries that were under public authority. This created an anomaly as the Competition Commission had exclusive jurisdiction over all competition issues in terms of Section 65(3).

The high point of this conflict on jurisdiction became evident in the Nedcor/Stanbic case. The Tribunal disapproved the merger on the grounds that it would result in the concentration of the already concentrated banking industry, therefore lessening competition. The parties to the merger made an application challenging the jurisdiction of the Tribunal. This was granted in favour of the parties on the strength of Section 3(1)(d), which the court said ousted the jurisdiction of the competition authorities as the banking industry was under public regulation.

The amendments to the Act that came into force on 1 February 2001 has now rectified this anomaly. Section 3(1A)(a) gives the Commission and the Tribunal concurrent jurisdiction to adjudicate on competition matters related to industries that are under public regulation.

Section 3(1)(A) in particular provides for the establishment of concurrent jurisdiction in respect of an industry or sector of an industry that is subject to the jurisdiction of another regulatory authority, which also has jurisdiction in respect of the conduct regulated in terms of Chapter 2 or 3 of the Act. The Act further provides that the manner in which the concurrent jurisdiction is exercised in terms of this Act and any other public regulation, must be managed, to the extent possible, in accordance with any applicable agreement concluded in terms of Section 21(1)(h) and Section 28(2)(1) and (2).

The Commission is devising practical procedures to implement concurrent jurisdiction and is considering entering into binding agreements, which shall set out guidelines with all such regulators on the procedure to be followed.

It is also important to note that, if the amended Act is in conflict with the legislation governing public regulation of these industries, the principles on interpretation of statutes will be applied. The Competition Act No. 89 of 1998, as amended, will prevail. As the latest legislation, it is deemed to have repealed previous legislation. This will no doubt affect all the industries under regulation.

Because of this amendment, it is now incumbent on such public regulators to implement necessary changes to ensure full compliance with the Competition Act.

Definition of a Merger

The definition of a merger in terms of Section 12 (1) of the Act created difficulties for practitioners. The difficulty arose from the meaning that was to be given to the words 'significant interest'. In the Act, a merger was defined as "direct or indirect acquisition, or direct or indirect establishment of control, by one or more persons over all 'significant interests' in the whole or part of the business of a competitor, supplier, customer, or other person".

The principal issue became the determination of the meaning of the words and whether the assessment of significant interest should be weighed on the size of the company vis-à-vis the proportion being disposed. Neither the Act nor South African courts provided definition or guidance hereto.

The amended Act has rectified this problem by omitting these words. Section 12(1) now defines a merger as "when one or more firms directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another firm".

Small Mergers

The Act did not concern itself with mergers that fell outside of the thresholds. The Act, as amended, has introduced a new concept on mergers, what it terms "small mergers". Small mergers are defined as those mergers that fall below the minimum threshold set out by the minister in terms of Section 1(1)(a) of the amended Act.

The significance of the amendments is that, in terms of both the Act and the amended Act, there is no duty on parties to small mergers to notify the Commission of such mergers. The amended Act now gives the Commission powers to require parties to small mergers to notify the merger within six months from the time the merger was implemented, if the Commission is of the opinion that a merger may substantially prevent or lessen competition, or that such merger is not justifiable on public interest grounds.

With regards to small merger activities, the Commission needs to take a vigilant stance and ensure these mergers are properly scrutinised. The Commission will also rely on the unions and players in the industries affected by such mergers to bring these to the attention of the Commission.

Notification Requirements

In terms of Section 13(1) of the Act, parties to a merger were required to notify a merger in no more than seven days of the following taking place:

- conclusion of the agreement

• public announcement of the proposed merger
• acquisition by one firm of the other firm's controlling interest.

In the amendments, the legislature has done away with this requirement. The seven days notification requirement became too onerous for the merging parties to comply with. It was too short for the parties to prepare their documents to ensure full compliance with the notification requirements. In most instances the parties would not be ready to file within the period stipulated. The Commission also experienced problems as the parties filed insufficient papers causing delays to the investigation.

The only requirement is in terms of Section 13A(3) of the amended Act, that the parties may not implement a merger before it is approved by the Commission or by the Tribunal.

The Commission Rules regarding notification have also changed. In the Act parties could only pay their filing fees five days after notification. This has now been amended and parties now have to pay the filing fees prior to notification or upon notification.

Previously the Commission Rules allowed the merging parties (acquiring firm and the target firm) to file separately. The party that did not file first could file eight days after the first party's filing had taken place. In terms of the amendments in the Tribunal Rules, the merging parties are now required to file simultaneously.

Thresholds

In terms of Section 11 of the Act, the minister could only change thresholds after five years. This has also been changed. The minister can now make a new determination at any time.

Exemptions

In terms of Section 10(2) of the Act, parties could write to the Commission for advice as to whether a practice they are engaged in was a prohibited practice in terms of Chapter 2 or not. In the event that the practice did not constitute a prohibited practice, the Commission could respond by way of what was termed a "letter of comfort". In this case the party would not be required to apply for an exemption.

In the amended Act this "comfort letter" practice has fallen away. Parties must now file an application for exemption and the Commission must either grant or refuse the application.

In terms of the new Commission Rules the parties applying for exemption must clarify what practice or agreement they are applying for. In the event the application lacks such clarity, the Commission may request further

information from the parties. If the parties do not respond within 20 business days of such request, the Commission may deem the application as having been abandoned by the parties. The Commission may then close the file without making a decision.

Amendment to the Rules - Thresholds and Fees

During the period May to November 2000 the Competition authorities embarked on a process of reviewing and assessing the merger thresholds set in 1999. This involved merger trends since the 1998 Act came into operation and assessing present thresholds and fees to balance concerns raised by the business sector and other stakeholders, and ensuring effective control of mergers with potential anti-competitive effects.

The following changes were made:

- A simultaneous increase in the combined turnover or asset value threshold to R200 million and an increase in the primary target turnover or asset value threshold to R30 million.
- A two-tier fee structure of R75 000 for intermediate mergers (combined turnover or asset value of less than R3,5 billion) and R250 000 for large mergers (combined turnover or asset value of more than R3,5 billion).
- Fees are VAT exclusive and will be reviewed annually in order to accommodate increases in costs.

The main considerations for revising the thresholds and fees were the following:

- The Commission received a large number of merger notifications involving relatively small target firms. These mergers are mainly due to conglomerate re-structuring and unbundling and are largely unproblematic from a competition point of view.
- The Commission concluded that it was possible to reduce the regulatory and financial burden on businesses to notify especially those involving smaller businesses, without compromising its ability to monitor trends in merger activity in the economy or address anti-competitive effects of particular mergers.
- During the Authorities' first year of operation, the income generated through merger notifications far exceeded expectations. An important consideration in the development of the original fee structure was that the Competition Authorities should, within a relatively short period of time, be self-funding. However, the desirability of the cross-subsidisation of activities, with the broader regulation of competition in the South African economy predominantly being funded through merger notification fees, was re-evaluated. The new fees were formulated after an assessment of the administrative and other costs that relate to merger evaluation. Funding for the other activities of the Commission will in future be obtained from the Department of Trade and Industry.

5. Corporate Governance Report

5.1 Introduction

The Competition Commission is committed to the good governance principles of openness, integrity and accountability. This assures stakeholders that, within appropriate risk parameters, the institution's affairs are managed in an ethical, transparent and responsible manner.

The Competition Commission is constituted in terms of the Competition Act, 1998 (Act 89 of 1998). The Competition Commission is independent and subject only to the Constitution and the law. The Commissioner, who is the Chief Executive Officer of the Competition Commission, is responsible for the general administration of the Commission and for carrying out any functions assigned to it in terms of the Act. The Commissioner is directly responsible to the Minister of Trade and Industry.

5.2 Corporate Governance Structure in the Competition Commission

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

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

Case-related Issues

The functions of the Competition Commission in respect of cases are primarily investigative. The Commissioner therefore makes recommendations to the Competition Tribunal, an independent adjudicative institution in respect of prohibited practices and large mergers. The Commissioner only makes decisions in respect of intermediate mergers and exemption applications. All decisions made by the Commissioner can be appealed. The Tribunal, as an independent institution reviewing Competition Commission findings in relation to cases, therefore fulfils the function of an independent Board. This creates efficient checks and balances to prevent the Commissioner from abusing his power.

Non-case-related Issues

The Tribunal plays no role in non-case-related matters. To comply with Corporate Governance best practices, the

Commissioner designated an advisory Executive Committee that is charged with shared responsibility for the governance framework, or for specific aspects of governance in the institution. This Executive Committee provides a forum for the generation of ideas as well as a more robust, pluralistic and adaptable decision-making framework. The Executive Committee consists of senior management that assists the Commissioner in decision-making in regard to cases as well as administrative issues. This provides for collective leadership under the authority of the Chief Executive Officer. This does not entail delegation of the Commissioner's executive role, as Chief Executive Officer of the Commission, who retains a veto right to any decision made by this committee. The Committee adheres to normal board procedures and meets twice a week to discuss case-related and administrative issues. Minutes are taken of all meetings and resolutions.

5.3 Risk Management

Risk is managed and monitored within a risk management framework by the Executive Committee through management, various committees, and the risk management functions of the respective divisions. Guided by policies approved by the Executive Committee and the Commissioner, who also constantly monitors the implementation of these policies, the risk management functions are integrated within the business and operational activities where the specialised skills of the business process are vested. These systems and procedures are continuously reviewed and appraised.

An external firm acts as the internal auditors of the Commission and provides an independent appraisal function to assist the Commissioner to evaluate the adequacy and effectiveness of controls implemented by management.

To improve the management of, and access to policies and procedures, corporate information is stored on an intranet service which gives staff throughout the Commission rapid online access to a cohesive central data bank of documents and information.

5.4 Business Planning and Performance Reporting

The Commission manages and monitors its business operations through an annual business planning and budgeting process. Performance management and auditing processes underpin the monitoring of, and reporting on, the achievement of its business objectives.

The Business Plan, objectives and budget of the Commission, which include projections for the next three years, were submitted to the Department of Trade and Industry. Monthly reports on the Commission's activities and financial expenditure are forwarded to the Department of Trade and Industry.

With the replacement of the Reporting by Public Entities Act by the Public Finance Management Act, and the new Treasury Regulations for Public Institutions, the Commission will increase its reporting, especially on risk, performance, and financial issues.

Mr Johan Dreyer
Commission Secretary

5.5 Commission Secretary

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

5.6 Committees

Committees were established to create structures to ensure accountability for performance, decision-making and reporting mechanisms. These include Corporate Governance-, Audit-, Human Resources-, Tender- and Information Technology Committees. These committees have specific terms of reference and are accountable to the Commissioner and the Executive Committee. Staff members are elected to these committees, which improve staff participation in decision-making and create a higher level of transparency in the Commission. These committees meet at least quarterly.

The Chairperson and the majority of the Audit Committee are independent outside members. The internal and external auditors have unrestricted access to the Audit Committee to ensure that its independence is not impaired. Meetings are held at least quarterly and are attended by the external and internal auditors. A Steering Committee was established to co-ordinate between the internal auditors, external auditors, the Commissioner, and Executive Committee. Meetings were held on 23 May 2000 and 6 December 2000.

An Employment Equity Committee was established to represent employees from designated and non-designated groups across all levels in the Commission. This committee formulates and advises on the implementation of an employment equity plan to eliminate unfair discrimination and create a diverse and representative workforce. The committee will also collect information and analyse the Commission's policies, practices, procedures, and identify any employment barriers which could adversely affect employees.

Members of the Audit Committee

Sakhile Masuku	CA (SA)	External
Peter Modiselle (Chairperson)	CA (SA)	External
Thabo Mosiselli	CA (SA)	External
Tobie Verwey	B. Com. FIAC, FICA, AIMTA	External
Minette Smit	Ph.D (Economics)	Internal
Johan Dreyer	BA	Internal
Astrid Ludin	BA Hons, MA (International Affairs)	Internal

The Commission is also in the process of establishing a Health and Safety Committee as required by the Occupational Health and Safety Act, No. 85 of 1993. The Committee will manage the Commission's occupational health and safety policy as well as the emergency plan, in compliance with the Act, and will meet at least every three months. A Remuneration Committee will also be constituted once a year to advise the Commissioner on remuneration issues.

5.7 Code of Conduct

After a thorough consultation process with staff, the Commission adopted a code of business conduct. This code sets standards for staff that contributes to the protection and promotion of the dignity and integrity of the Commission.

Financial Statements for the year ended 31 March 2001

6.1 Audit Assignment

The financial statements as set out on pages 76 to 88 for the year ended 31 March 2001, have been audited in terms of section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), read with sections 3 and 5 of the Auditor-General Act, 1995 (Act No. 12 of 1995) and section 40(10) of the Competition Act, 1998 (Act No. 89 of 1998), as amended. These financial statements, the maintenance of effective control measures, and compliance with relevant laws and regulations are the responsibility of the Commissioner of the Competition Commission. My responsibility is to express an opinion on these financial statements and the compliance with relevant laws and regulations, applicable to financial matters, based on the audit.

6.2 Regularity Audit

6.2.1 Nature and scope

Financial audit

The audit was conducted in accordance with generally accepted government auditing standards, which incorporate generally accepted auditing standards. These standards require the audit to be planned and performed to obtain reasonable assurance that the financial statements are free of material misstatement. An audit includes:

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

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

Compliance audit

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

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

6.2.2 Audit opinion

Financial audit

In my opinion, the financial statements fairly present, in all material respects, the financial position of the

Competition Commission at 31 March 2001, and the results of its operations and cash flows for the year then ended in accordance with generally accepted accounting practice and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Compliance audit

Based on the audit work performed, nothing has come to my attention that causes me to believe that material non-compliance with laws and regulations, applicable to financial matters, has occurred.

6.3 Systems and Internal control

Without qualifying the audit opinion expressed above, attention is drawn to instances of non-compliance with implemented systems and internal control measures that were identified during the year under review, which were brought to the attention of management by way of a management letter. The following are the more significant areas in which there were instances of non-compliance with implemented systems and control measures:

- Stock
- Debtors
- Income
- Creditors.

Due to the aforementioned, extended audit, tests were performed to obtain reasonable audit assurance in the respective areas, which contributed to a substantial increase in the audit fees for the year.

Management has, however, indicated that appropriate steps will be taken to ensure compliance with implemented systems and internal control measures at all times.

6.4 Appreciation

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

L A van Vuuren
for Auditor-General

Pretoria, 28 July 2001

7. Review by the Commissioner for the period 1 April 2000 to 31 March 2001

Introduction

The maintaining of accounting and other records as well as an effective system of internal control are the responsibility of the Commissioner. I am of the opinion that this requirement has been complied with.

The Commissioner is also responsible for the preparation of financial statements of the Competition Commission as at year-end and the operating results for the period. The external auditors are expected to report on the annual financial statements. The Competition Commission's annual financial statements are prepared on the historical cost basis and accounting policies set out therein. These policies have been complied with on a continuous basis.

Approval

The annual report set out on pages 1 to 75 and the financial statements as set out on pages 76 to 88 were approved by me on 27 July 2001. In my opinion, the annual financial statements fairly reflect the financial position of the Competition Commission as at 31 March 2001 and the results of its operations for the period then ended.

After Balance Sheet Activities

No material facts or circumstances have arisen between the date of the balance sheet and the date of approval, which affect the financial position of the Competition Commission as reflected in these financial statements.

Going Concern

I am of the opinion that the Competition Commission is financially sound and operates as a going concern.

Adv Menzi Simelane

Commissioner

as at 31 March 2001

	Notes	2001	2000
		R	R
ASSETS			
Non-Current Assets			
Property, plant and equipment	1	8,627,358	9,587,689
Current Assets		43,537,663	38,527,464
Inventory	2	194,635	214,523
Trade and other receivables	3	2,860,826	2,651,912
Prepayments		-	877,001
Cash and cash equivalents	11.2	40,482,202	34,784,028
Total Assets		52,165,021	48,115,153
EQUITY AND LIABILITIES			
Capital and reserves			
Accumulated funds		41,942,253	30,658,291
Current liabilities		10,222,768	17,456,862
Trade and other payables	4	8,655,473	15,328,557
Provisions	5	1,567,295	2,128,305
Total equity and liabilities		52,165,021	48,115,153

Income Statement
for the year ended 31 March 2001

	Notes	2001	2000
		R	R
Revenue		47,035,901	26,021,621
Government and other grants		947,040	24,603,433
Other Income		3,887,153	2,799,423
Total Revenue		51,870,094	53,424,477
Less: Expenditure		40,586,132	31,729,052
Administrative Costs		16,665,627	10,570,955
Operating Costs		23,920,505	21,158,097
Net surplus for the year	6	11,283,962	21,695,425

Statement of Changes in Equity
for the year ended 31 March 2001

	Notes	Accumulated funds
		R
Balance at 31/3/1999		8,962,866
Surplus for the year	10	21,695,425
Balance as at 31/3/2000		30,658,291
Surplus for the year		11,283,962
Balance as at 31/3/2001		41,942,253

Cash Flow Statement
for the year ended 31 March 2001

	Notes	2001	2000
		R	R
CASH FLOWS FROM OPERATING ACTIVITIES			
Cash receipts from customers		48,803,535	48,460,152
Cash paid to suppliers and employees		(45,757,668)	(14,093,315)
Cash generated from operations	11.1	3,045,867	34,366,837
Investment income		3,734,646	1,527,576
Interest expense		(312,682)	0
NET CASH INFLOW FROM OPERATING ACTIVITIES		6,467,831	35,894,413
CASH FLOWS FROM INVESTING ACTIVITIES			
Additions to fixed assets		(769,657)	(10,191,279)
NET CASH OUTFLOW FROM INVESTING ACTIVITIES		(769,657)	(10,191,279)
Net increase in cash equivalents		5,698,174	25,703,134
Cash and cash equivalents at beginning of period		34,784,028	9,080,894
Cash and cash equivalents at end of period	11.2	40,482,202	34,784,028

Summary of Accounting Policies for the year ended 31 March 2001

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

Property, plant and equipment

Assets costing less than R2,000 are written off in the year of acquisition. Property, plant and equipment (owned or leased) are stated at historical cost less depreciation. Depreciation is calculated on the straight-line method to write off the cost of each asset over its estimated useful life as follows:

Computer Equipment	3 years	Furniture and Fittings	10 years
Catering Equipment	5 years	Motor Vehicles	5 years
Office Equipment	5 years	Leasehold Improvements	12 years

Inventory

Inventory is valued at the lower of cost or net realisable value.

Pensions and other post-retirement benefits

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

Revenue

Revenue comprises of filing fees and facility charges received and excludes value-added tax. Revenue from filing fees is recognised when the case is accepted by the Competition Commission. Facility fees are recognised on a monthly basis for services rendered by the Commission for infrastructure usage by the Competition Tribunal. Interest is recognised on a time proportion basis, taking into account the principal investment and the effective rate over the period to maturity.

Government and other grants

Government and other grants are accounted for in the period to which they relate.

	2001 R	2000 R
1 Property, plant and equipment		
Leasehold improvements	**4,409,115**	**4,401,562**
Carrying amount at beginning of year	4,401,562	0
Cost	4,598,360	3,200
Accumulated depreciation	(196,798)	0
Additions	425,219	4,595,160
Depreciation	(417,666)	(196,798)
Carrying amount at end of year	4,409,115	4,401,562
Cost	5,023,579	4,598,360
Accumulated depreciation	(614,464)	(196,798)
Furniture and fittings	**1,961,512**	**2,098,881**
Carrying amount at beginning of year	2,098,881	3,636
Cost	2,215,619	3,636
Accumulated depreciation	(116,738)	0
Additions	91,529	2,211,983
Depreciation	(228,898)	(116,738)
Carrying amount at end of year	1,961,512	2,098,881
Cost	2,307,148	2,215,619
Accumulated depreciation	(345,636)	(116,738)
Computer equipment	**1,064,909**	**1,635,000**
Carrying amount at beginning of year	1,635,000	232,684
Cost	2,067,916	232,684
Accumulated depreciation	(432,916)	0
Additions	172,596	1,835,232
Depreciation	(742,687)	(432,916)
Carrying amount at end of year	1,064,909	1,635,000
Cost	2,240,512	2,067,916
Accumulated depreciation	(1,175,603)	(432,916)

	2001 R	2000 R
Office equipment	970,880	1,161,545
Carrying amount at beginning of year	1,161,545	13,553
Cost	1,331,906	13,553
Accumulated depreciation	(170,361)	0
Additions	80,313	1,318,353
Depreciation	(270,978)	(170,361)
Carrying amount at end of year	970,880	1,161,545
Cost	1,412,219	1,331,906
Accumulated depreciation	(441,339)	(170,361)
Vehicles	70,948	94,597
Carrying amount at beginning of year	94,597	118,246
Cost	118,246	118,246
Accumulated depreciation	(23,649)	0
Additions	0	0
Depreciation	(23,649)	(23,649)
Carrying amount at end of year	70,948	94,597
Cost	118,246	118,246
Accumulated depreciation	(47,298)	(23,649)
Catering equipment	149,994	196,104
Carrying amount at beginning of year	196,104	0
Cost	230,551	0
Accumulated depreciation	(34,447)	0
Additions	0	230,551
Depreciation	(46,110)	(34,447)
Carrying amount at end of year	149,994	196,104
Cost	230,551	230,551
Accumulated depreciation	(80,557)	(34,447)
Total	8,627,358	9,587,689

	2001 R	2000 R
2 Inventory		
Inventory comprises:		
Consumables	194,635	214,523
	194,635	214,523
3 Trade and other receivables		
Trade debtors	701,237	2,651,912
Receiver of revenue	2,159,589	-
	2,860,826	2,651,912
4 Trade and other payables		
Trade creditors	8,655,473	15,328,557
	8,655,473	15,328,557
5 Provisions		
External audit fees	0	140,852
Internal audit fees	258,651	84,111
Performance bonus	791,945	1,634,670
Accumulated leave	516,699	268,672
	1,567,295	2,128,305
6 Net surplus		
Net surplus is arrived at after taking into account the following items:		
Income from:		
Filing fees	46,010,462	26,021,621
Facility fees	1,025,439	-
Government and other grants	947,040	24,603,433
Other income	3,887,153	2,799,423
	51,870,094	53,424,477
Auditors' remuneration		
Audit fees	62,426	140,852
(Over)/Under provision for 1999/2000	(11,913)	2,811
	50,513	143,663

	2001 R	2000 R
Depreciation		
Computer equipment - owned	742,687	432,916
Catering Equipment - owned	46,110	34,447
Office equipment - owned	270,978	170,361
Furniture & Fittings - owned	228,898	116,738
Motor Vehicles - owned	23,649	23,649
Leasehold improvements - owned	417,666	196,798
	1,729,988	974,909
Staff costs		
Defined contribution plan account	390,227	347,735
Rentals in respect of operating leasing		
Land and buildings under operating lease	2,525,691	1,957,016
Less: recovered under sublease	419,148	277,624
	2,106,543	1,679,392
Plant and equipment	121,552	50,471
	121,552	50,471

The Competition Commission is leasing its business premises under an operating lease. Rentals are charged against income as and when incurred. The remaining period of the lease is 11 years. The lease agreement can be terminated at the end of three years or five year period. The lease agreement does not impose any restrictions.

Future minimum lease payments

Premises	Up to 1 year R000	Up to 5 years R000	More than 5 years R000	Total R000
2001	2,777	14,518	32,231	49,526
2000	2,501	13,079	36,447	52,028
	5,278	27,597	68,678	101,554

The Competition Commission is leasing equipment for a period of five years from 01 June 1999. The lease agreement is renewable at the end of the lease term and the Competition Commission does not have the option to acquire the equipment. The lease agreement does not impose any restrictions.

	Up to 1 year	Up to 5 years	More than 5 years	Total
Equipment	R	R	R	R
2001	83,786	243,834	0	327,620
2000	72,858	327,620	0	400,478
	156,644	571,454	0	728,098

7 Commitments

	2001	2000
Capital Commitments	R	R
Leasehold Improvements	0	385,000
Equipment	0	193,000
Furniture	0	200,000
	0	778,000
Funds to meet these commitments will be provided from:		
DTI Grant & Own funds	0	778,000

8 Pension fund

The Competition Commission has made provision for pension scheme covering all employees. All employees are members of the defined contribution scheme administered by Sanlam Ltd. Scheme assets primarily consists of listed shares and property unit trusts, and fixed income securities. The Competition Commission Pension Fund is governed by the Pension Funds Act of 1956. The first actuarial valuation report is due on 1 June 2002.

9 Contingent liability

A cash deposit of R500 000 is ceded as security for an ACB salary and creditors facility of R650 000 granted to the Commission .

10 Change in accounting policy

The accounting policy in respect of accumulated leave was changed during the year in order to comply with the requirements of generally accepted accounting practice. Accumulated leave will be provided for in future and annually adjusted to reflect the status of the provision at year-end. Comparative figures have been restated in this regard.

The effect of the change was as follows:		
Decrease in net surplus for the year	(248,028)	(268,672)

for the year ended 31 March 2001

		2001	2000
		R	R
11			
11.1	Reconciliation of net surplus to cash generated from operations		
	Net surplus for the year	11,283,962	21,695,425
	Adjustments to:		
	Depreciation	1,729,988	974,909
	Investment income	(3,734,646)	(1,527,576)
	Interest expense	312,682	0
	Operating profit before working capital changes	9,591,986	21,142,758
	Working capital changes	(6,546,119)	13,224,079
	Decrease/(Increase) in inventories	19,888	(214,523)
	Decrease/(Increase) in accounts receivable	668,087	(3,436,749)
	(Decrease)/Increase in accounts payable	(7,234,094)	16,875,351
	Cash generated from operations	3,045,867	34,366,837
11.2	Cash and cash equivalents		
	For the purpose of the cashflow statement, cash includes cash on hand and deposits held on call with banks.		
	Bank balances	40,481,202	34,783,028
	Cash on hand	1,000	1,000
	Cash and cash equivalents for the year	40,482,202	34,784,028

Annexure A
Detailed summary of activities

Detailed summary of activities for the year ended 31 March 2001

The Commission believes that it has achieved the objectives set out in the Competition Act. The following tables summarise the extent to which we have achieved these objectives :

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

Predetermined objectives	Targets	Achievements
Conferences, seminars, and policy papers on competition and privatisation	Two conferences	Conference on Competition and Regulation held in April 2000; Conference on the Impact of Technology and Globalisation on Competition Policy held in March 2001.
Policy Paper on Regulation Competition and Privatisation	Policy Papers: • Agriculture • Electricity • Water • Aviation/Airlines	Policy Papers completed on Agriculture, Electricity, Water, and Aviation/Airlines.
Regulators Forum	8 Presentations	The number of presentations were revised because some took place in the previous financial year and therefore not repeated because of the formation of the Regulators Forum which would take place in the new financial year. Two presentations were held with the National Electricity Regulator and the Postal Regulator.
Provide advisory opinions	60 Advisory opinions	130 Advisory opinions and clarifications with 66 advisory opinions provided to regulators and other stakeholders.
Presentations on Competition Act to stakeholders	20 Presentations to business associations and corporates. To be done on request of Business Associations and Corporates.	It was estimated that there would be many requests for these presentations. Nine presentations were requested by the different stakeholders and this took place with an average of 25 persons attending.
Amend Competition Commission Rules and Regulations	Proactively give inputs to improve the rules and regulations.	Section 3(1)(d) of the Act deleted with effect from 1 Feb 2001; Changes to the Commission rules regarding filing fees and thresholds.

Objective 2: Provide consumers with competitive prices and product choices

Predetermined objectives	Targets	Achievements
Develop database for measuring and monitoring competition in the SA economy.	Develop database on economic indicators for different industries.	Database on ownership concentration in specific sectors.
Industry Studies	• Sugar • Airlines • Aluminium • Agriculture	Industry studies completed
Best Practice Guidelines	• Predatory Pricing • Banking	Guidelines completed
Seminars	12 Issue specific seminars to be held.	16 External and 12 internal seminars respectively.
Phase 2 of Case Management System implemented	Functional enhancements of Phase 1 or flexible and customised reporting systems developed.	Tender was issued and accepted to develop Phase 2 of the CMS. Draft scope of the project drawn up. Phase 2 therefore not ready for implementation. However, the functional enhancement of Phase 1 has been increased. As a result, the use of Phase 1 of CMS optimised.
CMS Training	Phase 1 and 2	Formal training of Phase 1 completed. Ongoing on-the-job training completed. Training for Phase 2 to be done after the development
Develop and review frameworks for the assessment of competition matters.	Update and revise internal procedures or guidelines for evaluation of mergers, exemptions, and enforcement cases.	Internal procedures and guidelines revised.
Effective enforcement of Chapter 2 and 3 of the Act.	60 Chapter 2 investigation reports; 350 Chapter 3 merger reports.	132 Enforcement cases; 407 merger cases; 9 exemption cases.
Educate consumer groups about the application of the Act.	10 Presentations to consumer groups; 7 Training workshops; advertisements in targeted publications.	9 Provincial presentations held; 1 presentation to the National Consumer Affairs Office; 1 presentation at the National Consumer Forum Conference; 3 advertisements placed in the Consumer Alert.

Objective 3: Promote employment and advance the social and economic welfare of South Africans

Predetermined objectives	Targets	Achievements
Analyse relationship between competition policy and labour in the market	Research paper on Competition and Labour Market.	Research paper completed on Competition and Labour Market.
Database on merger cases	Update database on merger cases.	Database on merger cases updated.
Evaluate the impact of mergers on employment	350 Evaluations on merger effect on employment.	A sample of 125 mergers was evaluated in terms of effect on employment. More were not evaluated because most of the information is repeated and never added value to the analysis. Also, there were not enough resources to work on all the cases.
Educate and inform trade unions on the application of the Act	12 Trade union workshops. 350 Trade union contact reports. Advertising in trade union publications.	9 Workshops/presentations held with trade unions. 312 Trade union contact reports were completed. In other mergers, there were no trade unions involved. 4 Articles published in the Labour Bulletin, Fedusa Debate, and Cosatu Shop Steward.

Objective 4: Expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic.

Evaluate claims of international competitiveness of SA companies in merger analysis.	Exempt SA export cartels from Chapter 2 of the Act. Evaluation of international competitiveness claim in merger analysis.	An export cartel exemption was not filed. Evaluation of international competitiveness considered where the parties have raised it, e.g. Tongaat/Hulett, Baldwin Steel/Trident Steel, and Ford Motor Corporation/ Landrover cases.
Give priority to merger cases that promote foreign direct investment. Educate and inform foreign business representatives and their legal representatives about the provisions of the Act.	Prioritised evaluation. 10 Presentations to foreign Business Chambers	Cases involved in foreign direct investment approved e.g. Metso/Svedla and Ford/Landrover cases. 3 Presentations were done. The rest could not be done due to the unavailability of representatives of the foreign business chambers.
Establish relationships and conclude agreements with international competition authorities.	To establish an ongoing working relationship with international competition authorities.	Co-operation agreement concluded with the Norwegian Competition Authority. Ongoing relationship established with the USFTC DOJ, OECD, ACCC, Zambian Competition Authority, Zimbabwe Competition Authority and government officials of SADC countries dealing with competition matters.

Objective 5: Ensure that small and medium sized enterprises (SMEs) have an equitable opportunity to participate in the economy

Predetermined objectives	Targets	Achievements
Finalise investigations on franchising cases.	10 Reports on abuse of dominance cases; 2 Reports on franchising areas; press briefings and releases on cases finalised.	2 Franchising cases finalised and referred to the Tribunal for prosecution; various cases on abuse of dominance finalised; various adverts and media releases were published during the year under review. Press releases tabled in attachment.
To conduct media strategy on cases.	Press briefings on releases of finalised cases.	Regular press briefings and releases published.
Inform and educate SMEs regarding the application of the Act.	SMEs training workshops.	9 Presentations were held to SMEs on the Act and one presentation was done to NAFCOC.

Objective 6: Promote a greater spread of ownership, in particular, to increase the ownership stakes of historically disadvantaged persons

Predetermined objectives	Targets	Achievements
Create awareness of ownership structure in industries. Develop a database on ownership structures in industries.	Develop a database on ownership structures in the different industries in South Africa.	Database developed.
Develop framework for the evaluation of black economic empowerment in case analysis	Proper evaluation of black economic empowerment issues in case analysis.	The framework is not done because the Government report/policy on black economic empowerment was not released to the public as scheduled.
Educate and inform emerging entrepreneurs about the application of the Act	See objective 5 on SMMEs.	1 Dinner held for BEE/SMEs.

Financial Performance

The operating income of the Competition Commission for the period under review was R51.9 million against a budget of R38 million. This variance was mainly due to increased merger activity, resulting in an unforeseen increase in fees due to the Commission. The Commission also received an unconditional and un-budget grant from the Royal Norwegian Embassy.

Total expenditure for the period amounted to R40.6 million compared with a budget of R42 million. The 3.4% under-expenditure was a result of vacant positions that would only be filled in the new financial year, impacting directly to lower budget operational expenditure.

The surplus of R11.3 million is an indication that the Commission is in a sound financial position.