COMPETITION NEWS

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FURNITURE REMOVAL CARTEL TARGET GOVERNMENT

AGENCIES ALSO UNDER ATTACK

The Commission continues to adopt a 'zero tolerance' stance towards cartel conduct (collusion) because this phenomenon has the most severe impact on competition and consumers.

South Africa has been characterised as being wrought with pervasive anti-competitive behaviour and one such area is the provision of furniture removal services particularly for government and its agencies.

The industry has entrenched, ubiquitous coordination and endemic practices of collusive conduct, according to a Commission industry-wide investigation launched in 2010.

The Commission found that in the furniture removal industry, a general requirement is that the removal of furniture of government employees requires at least two quotes in order to be financed by government.

In this regard, furniture removal companies had an arrangement that the company approached first would source the second quote on behalf of the client from its competitor. The first company would stipulate the price at which its competitor should price the tender. The company that requested the quote would also ask its competitor to send its quote directly to the customer. This type of quote is known as a cover quote. It is a price provided by a company that wishes to win a tender to another company that does not wish to do so.

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EDITORIAL NOTE

Welcome to the latest edition of Competition News. We are excited to present a new look-and-feel to the Commission's flagship publication, which is bursting with fresh content and a new style which embraces storytelling. We trust you will enjoy every word.

This edition presents a strong focus on cartel conduct, particularly bid rigging. As consumers of goods and services, South Africans are entitled to competitive prices and product choices. Collusive tendering, commonly called "bid rigging", destroys the very basis of competitive bidding and results in artificially high prices and reduced quality. It also stifles development and innovation. This is most harmful to consumer welfare and has a particularly detrimental effect on the country's poorest and most vulnerable citizens.

In addition, bid rigging in public procurement is a massive blight on the local economy. As the government is the largest procurer of goods and services, it allocates a massive portion of taxpayers' money to public procurement. This means a large chunk of the local economy is used for purchasing goods and services for the country and its people. It is crucial then, that procurement processes (particularly tendering) remain untainted, effective and efficient to ensure that contracts are awarded to suppliers who offer the best value for money.

This edition's cover story features the Stuttaford Van Lines (Stuttaford) matter and focuses on furniture removal companies involved in colluding on tenders issued by government departments and large corporates. Stuttaford faces 649 counts of tender collusion – the highest number of counts faced by any one company in the Commission's history. We also focus on other furniture removal companies that have been referred to the Tribunal for prosecution on price fixing charges relating to e-toll levies charged to customers.

In collusion cases that made both local and international headlines, we have included articles on matters involving international car shipping companies as well as global manufacturers of airbags, seatbelts and steering wheels. Two separate price fixing cases involving fresh produce market agents and football agents also come under the spotlight. We also provide an update on the much publicised banking forex matter.

Two initiations also garnered widespread public interest over recent months. The Commission has identified the healthcare sector, and in particular, pharmaceuticals as a priority sector for its enforcement efforts. In 2017, the Commission initiated three investigations against pharmaceutical companies for suspected abuse of dominance in the provision of specific cancer medicines in South Africa.

The Commission also initiated an investigation against Vodacom Group (Pty) Ltd for abuse of dominance after the company secured an exclusive contract with National Treasury to be the sole provider of mobile telecommunication services to the government.

We are also delighted to include a special feature on mergers along with the regular Mergers Quarterly Report. Towards the middle and the end of 2017, the Commission investigated and subsequently prohibited three hospital mergers. These mergers involved two of the three biggest private hospital groups in the country.

This edition also includes two opinion pieces which have been published in national newspapers. Deputy Commissioner, Hardin Ratshisusu, reflects on significant deepening of co-operation within BRICS while the Commission's Head of Communication, Sipho Ngwema, considers guidelines to lower the cost of school uniforms.

We trust you will spend many hours enjoying the rich content presented in this edition of Competition News. We extend our thanks and appreciation to everyone who has contributed through sharing their knowledge, opinions and expertise.

Happy reading!

Disclaimer: *The articles, views and opinions expressed in this edition are those of the authors and do not necessarily reflect the official policy or position of Competition Commission (SA).*

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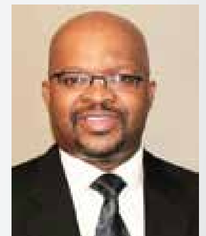

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UPDATE ON COMMISSION ONGOING INVESTIGATIONS

PHARMACEUTICAL COMPANIES

The Commission has identified the healthcare sector, and in particular, pharmaceuticals, as a priority sector for its enforcement efforts. This is due to the likely negative impact that anti-competitive conduct in that sector would have on consumers in general and specifically the poor and vulnerable.

On 13 June 2017, the Commission initiated three investigations against pharmaceutical companies for suspected abuse of dominance in the provision of specific cancer medicines in South Africa. The initiations were against Roche Holding AG (Roche) and Genentech Inc. (Genentech); Pfizer Inc. (Pfizer) and Equity (Pty) Ltd (Equity); and Aspen Pharmacare Holdings Ltd (Aspen).

The investigation against Roche relates to the provision of lifesaving breast cancer medicine in South Africa. The Commission has reason to believe that Roche and its USA-based biotechnology company, Genentech, have and continue to engage in excessive pricing, price discrimination and/or exclusionary conduct in the provision of breast cancer medicine in South Africa.

Pharmaceutical giant, Pfizer Inc., is suspected of excessive pricing of lung cancer medication in South Africa. Of relevance to the Commission's investigation is a lung cancer treatment of which Pfizer is the only provider in the country. The Commission has information that gives rise to a reasonable suspicion that Pfizer has and continues to engage in excessive pricing conduct.

The Commission continues to investigate Roche, Genentech and Pfizer. However, based on information gathered to date, the Commission decided not to refer the complaints against Aspen and Equity.

In respect of Aspen, the investigation revealed that prices of identified relevant drugs are generally lower in South Africa compared to a basket of selected countries. The investigation also revealed that use of the relevant drugs in South Africa is low compared to a country like Italy which pursued excessive pricing case(s) against Aspen for the same drugs. In relation to Equity, the investigation revealed that high prices charged by Equity was as a result of high cost incurred in importing the product from Germany.

COMMISSION LAUNCHES ABUSE OF DOMINANCE INVESTIGATION AGAINST VODACOM

The Commission initiated an investigation against Vodacom Group (Pty) Ltd (Vodacom) in October 2017, for abuse of dominance after the company secured an exclusive contract with National Treasury to be the sole provider of mobile telecommunication services to the government.

Before Vodacom entered into the exclusive four-year agreement with National Treasury, all government departments could purchase mobile telecommunication services from any mobile network operator.

The Commission has information that there are 20 government departments which will be subjected to the new Vodacom contract. Other departments, including state owned entities and municipalities, will be incentivised to adopt the new contract.

The Commission has reasonable grounds to suspect that the exclusive contract may constitute an exclusionary abuse of dominance by Vodacom in contravention of the Competition Act.

.... Continued from page 1

Stuttaford Van Lines faces the largest number of charges as one single company, in the history of anti-cartel enforcement by the Commission after the company was referred to the Tribunal for prosecution.

The case emanates from the 2010 investigation which uncovered widespread and deep-rooted anti-competitive and collusive conduct in South Africa's furniture removal market. All the companies found to have colluded with Stuttaford Van Lines have already concluded settlement agreements with the Commission.

Stuttaford was charged with 649 counts of collusive tendering in August last year, in relation to hundreds of government tenders issued for furniture transportation. An investigation revealed Stuttaford had colluded with its competitors from at least 2007 and entered into discreet collusive agreements relating to the furniture removal tenders.

In relation to other cases involving the furniture removal industry, over 16 companies have concluded settlement agreements with the Commission to date. Some companies have also, over time, been referred to the Tribunal for prosecution.

All the companies found to have colluded with Stuttaford have subsequently settled with the Commission. These are JH Retief Transport CC, Cape Express Removals (Pty) Ltd, Patrick Removals (Pty) Ltd and De Lange Transport (Pty) Ltd.

In October 2012, the Commission issued invitations to furniture removal companies to settle instances of collusive conduct which they were involved in. This resulted in a series of consent agreements.

The companies that reached agreements with the Commission were Core Relocations for collusive tendering in the market for furniture removal services from 2007 to December 2012. In terms of that settlement, Core agreed to pay an administrative penalty of R211 750.56.

In relation to other cases involving the furniture removal industry, over 16 companies have concluded settlement agreements with the Commission to date. Some companies have also, over time, been referred to the Tribunal for prosecution.

This collusion involved tenders issued for furniture transportation by the Presidency, Parliament, the SA Secret Service, the SA Police Service, the National Prosecuting Authority, SARS, the Reserve Bank, the Department of Justice, the Public Protector as well as SOEs and private companies.

Other tenders included those issued by the Department of Defence, the Department of Minerals and Energy, the Department of Social Development, the Department of Land Affairs, the Department of Health, the Department of Water Affairs, the Department of Sport & Recreation, the Department of Public Works, the South African Social Security Agency, the Government Employees Pension Fund, Eskom, Sasol, the National Ports Authority as well as various mines, churches, universities and banks.

The Commission is asking the Tribunal to fine the company 10% of its annual turnover on each of the 649 charges.

Core colluded with JH Retief, Cape Express, Pro Pack and Sifikile on tenders issued by the SANDF. The Commission found that Core had engaged in 44 instances of collusive tendering.

- Cape Express Removals, administrative penalty R645 710.00 for 1774 instances of collusion;
- Competition Commission and JH Retief Transport, administrative penalty R4 273 060.80 for 3487 instances of collusion; and
- Pro Pack Removals, administrative penalty R454 127.60 for 548 instances of collusion.

Stuttaford Van Lines refused to settle.

PUBLIC PROCUREMENT

The South African government is the largest procurer of goods and services, allocating a massive portion of taxpayers' money to public procurement. This means a large chunk of the local economy is used for purchasing goods and services for the country and its people.

According to an October 2008 Policy Brief published by the Organisation for Economic Co-operation and Development (OECD) titled "Fighting Cartels In Public Procurement", public procurement is a key economic activity of governments, accounting for an estimated 15% of gross domestic product (GDP) worldwide on average. This figure is higher in some countries.

Whether the figure has increased or not over the past ten years, the point is that: the public sector – through its public procurement policy - can affect the structure of a market, according to the OECD. It is crucial then, that procurement processes remain untainted, effective and efficient to ensure that contracts are awarded to suppliers who offer the best value for money.

The Policy Brief states: "It is therefore important that the procurement process is not affected by practices such as collusion, bid-rigging, fraud and corruption. Anticompetitive conduct affecting the outcome of the procurement process is a particularly pernicious violation of competition law. Through bid-rigging practices, the price paid by public administration for goods or services is artificially raised, forcing the public sector to pay above market rates. These practices have a direct and immediate impact on public expenditure and therefore on taxpayers' resources."

The Competition Tribunal's growing roll of cartel cases is evidence that cartel conduct continues to be a major problem in South Africa and a blight on the economy. Ultimately, cartel conduct restricts economic growth, stifles new businesses and increases prices for cash-strapped consumers.

The Commission's fight against cartels has yielded fines in excess of R6 billion since 2006 and uncovered hundreds of these illegal alliances across most sectors of the economy. And the battle against cartels continues.

"Reducing collusion in public procurement requires strict enforcement of competition laws and the education of public procurement agencies at all levels of government to help them design efficient procurement processes and detect collusion," states the Policy Brief.

ELEVEN FURNITURE REMOVAL COMPANIES & MOVERS ASSOCIATION CHARGED FOR FIXING E-TOLL LEVY CHARGED TO CUSTOMERS

Eleven furniture removal companies and their movers' association were referred for prosecution to the Tribunal in September last year, for price fixing involving the e-toll levy they charge customers who transport belongings on Gauteng e-toll roads and highways.

The Respondents are: Northern Provinces Professional Movers Association of South Africa (NPPMA); Stuttaford Van Lines Gauteng Hub (Pty) Ltd; Pickfords Removals SA (Pty) Ltd; A & B Movers (Pty) Ltd; Brytons Removals (Pty) Ltd; Amazing Transport (Pty) Ltd; Key Moves CC; Bayley Worldwide CC; Selection Cartage (Pty) Ltd; Elliot Mobility (Pty) Ltd; Crown Relocations (Pty) Ltd; and Magna Thomson (Pty) Ltd.

The furniture removal companies held a meeting under the auspices of the Association and agreed to add an average levy of R350 when transporting furniture on Gauteng e-toll roads. This constitutes price fixing and is in contravention of the Competition Act.

The Commission's investigation, launched in February last year, revealed the following:

- The companies held a meeting in January 2014 under the auspices of the NPPMA where they agreed to add an average levy of R350 to each quote when transporting furniture on Gauteng e-toll roads;
- The purpose of the agreement was to pass on to consumers the added costs incurred when transporting furniture using highways in Gauteng because of e-tolls; and
- The agreement has been in existence since 22 January 2014 and is on-going.

The agreement between the furniture removal companies constitutes price fixing and is in contravention of section 4(1)(b)(i) of the Competition Act, No 89 of 1998, as amended. The Commission is seeking an order that the companies and the NPPMA contravened the Competition Act. In addition, the Commission is seeking an order that they be held liable to pay an administrative penalty equivalent to 10% of their respective annual turnover.

The furniture removal companies held a meeting under the auspices of the Association and agreed to add an average levy of R350 when transporting furniture on Gauteng e-toll roads. This constitutes price fixing and is in contravention of the Competition Act.

FURNITURE REMOVAL CASES TIMELINE

November 2010

The Commission launched an investigation in 2010, into 69 furniture removal companies for colluding on tenders issued by government departments (including the SANDF and SAPS) and corporates such as Eskom and PPC. The investigation found that the collusion involved 3500 relocation tenders between 2007 and 2012.

2011 and 2013

The Commission's complaint was amended in 2011 and 2013 to include more companies.

October 2014

The Tribunal confirmed the Commission's settlement agreements with Cape Express and Propack Removals.

November 2014

A new complaint into collusion in the furniture removal industry was initiated after the Commission uncovered evidence that companies continued to collude despite cases being referred to the Tribunal for adjudication.

The Commission raided four companies, one for the second time in five years. These included Stuttaford Van Lines, Pickfords Removals SA, Afriworld and Cape Express Removals.

June 2015

By June 2015 the Commission entered into settlement agreements with 15 furniture removal companies.

July 2015

The Tribunal confirmed the Commission's settlement agreements with:

Matthee Furniture Removals (involved in 192 incidents of collusion);
De Wet Human Transport, trading as Viking Transport (involved in 24 instances of cover pricing);
Superdoc Thirteen, trading as Low Line Furniture Removals (involved in 113 cases of cover pricing);
Transfreight International (involved in 59 instances of cover pricing);
JH Retief Transport (involved in 3 487 instances of cover pricing); and
Joel Transport (involved in 12 instances of cover pricing)

ADMINISTRATIVE PENALTIES PAID BY FURNITURE REMOVAL COMPANIES

Company	Settlement amount
Cape Express Removals (Pty) Ltd	R645 710.00
Propack Removals CC	R454 127.60
Patrick Removals (Pty) Ltd	R2 230 409.00
JH Retief Transport CC	R4 273 060.80
Lowe Line CC	R249 616.00
Matthee Furniture Removals CC	R159 205.00
Transfreight International CC	R607 492.27
De Wet Human t/a Viking Transport CC	R188 064.48
Joel Transport (Pty) Ltd	R150 582.45
Crown Relocations (Pty) Ltd	R849 873.36
Reliable Removals CC	R90 563.88
DEL Transport CC t/a De Lange Transport	R210 415.45
Western Transport Services	R39 260.37
A&B Movers CC	R199 301.00
Execu Move CC	R831 513.78
H&M Removals CC	R196 364.15
Advance Transport	R709 073.12
Core Relocations	R211 750.56
Key Moves	R216 249.00

February 2016

The Commission presented its case against Key Moves CC to the Tribunal. Key Moves colluded with a rival on tenders issued by the SANDF and admitted it engaged in cover pricing. It agreed to co-operate with the Commission's old and new investigations and agreed to pay a fine.

March 2017

The Commission launched a new investigation into collusion in the furniture removal market.
August 2017

Stuttaford Van Lines (Pty) Ltd was charged with 649 counts of collusive tendering, in relation to hundreds of government tenders issued for furniture transportation. This includes tenders issued by the Presidency, Parliament, the SA Secret Service, the SA Police Service, the National Prosecuting Authority, SARS, the Reserve Bank, the Department of Justice, the Public Protector as well as SOEs and private companies.

Stuttaford faces the largest number of charges, as one single company, in the history of anti-cartel enforcement by the Commission. The Commission asked the Tribunal to fine the company 10% of its annual turnover on each of the 649 charges.

September 2017

Eleven furniture removal companies and the movers' association to which they belong were referred for prosecution to the Tribunal, for price fixing involving the e-tolls levy they charge customers who transport belongings on Gauteng e-toll roads and highways.

The accused are: Northern Provinces Professional Movers Association of South Africa (NPPMA); Stuttaford Van Lines Gauteng Hub (Pty) Ltd; Pickfords Removals SA (Pty) Ltd; A & B Movers (Pty) Ltd; Brytons Removals (Pty) Ltd; Amazing Transport (Pty) Ltd; Key Moves CC; Bayley Worldwide CC; Selection Cartage (Pty) Ltd; Elliot Mobility (Pty) Ltd; Crown Relocations (Pty) Ltd; and Magna Thomson (Pty) Ltd.

DOS AND DON'TS WHEN TENDERING

DO'S

- participate in tender and other business activities independently from your competitors;
- conduct your market facing activities independently from your competitors;
- regular competition law compliance training for all relevant personnel;
- ensure industry association meetings have agendas circulated before hand – if any problematic items are included, note your objections in writing;
- ensure that industry association meetings are minuted – object and ensure that objections are recorded and leave the meeting if problematic topics are discussed – ensure that your departure is recorded in the meeting minutes;
- ensure that joint bids are approved of in writing by the client and that Chinese walls are in place to prevent non-bid specific exchanges of competitively sensitive information;

DON'TS

- discuss or co-ordinate on any aspect of a tender with your competitors;
- discuss or exchange any competitively sensitive information with competitors
- use industry associations as a platform for cartel conduct
- use joint bids as an opportunity to discuss or exchange non-bid specific information

BID RIGGING: HOW TO PREVENT, DETECT AND REPORT COLLUSIVE TENDERING OR BID RIGGING

01 WHAT IS COLLUSIVE TENDERING

Collusive tendering, commonly called "bid rigging", is an agreement amongst competitors not to compete on the bids they submit after being invited to tender. For these purposes, firms will be regarded as competitors if they are in the same line of business.

Collusive tendering or bid rigging may take many forms, for example:

- complementary bidding: It occurs when firms or individuals agree to submit bids that involve a competitor agreeing to submit a bid that is higher than the designated winner; a competitor submits a bid that is known to be too high to be accepted or a competitor submits a bid that contains special terms that are known to be unacceptable to the purchaser. Cover bidding or complementary bidding is designed to give the appearance of genuine competition.
- bid suppression: this form involves agreements amongst competitors in which one or more companies agree to refrain from bidding or to withdraw a previously submitted bid so that the designated winner's bid will be accepted;
- bid rotation: In bid rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e lowest qualifying) bidder.

Supply chain management practitioners should note that collusive tendering is often accompanied by an agreement to cede portions of a tender to the losing bidder should the tenders not be awarded as had been agreed upon by the firms involved.

All forms of collusive tendering are prohibited by section 4(1)(b)(iii) of the Act, which states that: *"An agreement between, or concerted practice by firms or a decision by an association of firms is prohibited if it is between parties in a horizontal relationship and if it involves collusive tendering".*

02 WHY DO YOU NEED TO KNOW

As a consumer of goods or services you are entitled to competitive prices and product choices. Collusive tendering undermines this right in that it:

- destroys the basis of competitive bidding;
- often leads to increased prices;
- often leads to reduced quality;
- stifles development and innovation; and
- is harmful to consumer welfare.

Preventing, detecting and reporting collusive tendering will help you to avoid falling victim to artificially high prices and/or reduced quality. If you do become a victim, this will also help you take appropriate action. Competition helps you to get value for money.

03 HOW TO PREVENT COLLUSIVE TENDERING

Request the Certificate of Independent Bid Determination (SBD 9)
On the 21 July 2010, the National Treasury issued a Practice Note in terms of Section 76 of the Public Finance Management Act on Prohibited Practices including a Certificate of Independent Bid Determination ("CIBD").

What is a Certificate of Independent Bid Determination
It is a declaration by bidders that they have prepared and submitted their bids independently of any other competing bidder. It also provides for additional penalties for collusive tendering or bid rigging.

Why the CIBD
The aim of the CIBD is to prevent bid rigging. The objective of the CIBD is to inform bidders about the illegality of bid rigging and to provide for additional penalties.

What does the CIBD provide for?
It provides that the bidder must declare that the accompanying bid has been arrived at independently from, and without consultation, communication, agreement or arrangement with any competitor.

However communication between partners in a joint venture or consortium will not be construed as collusive bidding. It also provides for a declaration that there has been no consultation; communication; agreement or arrangement with any competitor regarding:

- Prices
- geographical area where product or service will be rendered (market allocation)
- methods, factors or formulas used to calculate prices;
- the intention or decision to submit or not to submit, a bid;
- the submission of a bid which does not meet the specifications and conditions of the bid; or
- bidding with the intention not to win the bid.
- In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

How to use the CIBD
The CIBD must be issued by the purchaser as part of the standard bid documentation. Bidders must sign the CIBD and submit it to the purchaser. Wherein the bidder has not signed the CIBD, he must do so within seven days.

Penalties
Bids that are suspicious will be reported to the Competition Commis-sion for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

Seek justification for a failure to bid
Where you expected a certain firm to bid and found it didn't, try to obtain the reasons why such firm did not bid. This could reveal an agreement between it and its competitors not to compete.

Look out for suspicious bidding patterns
Suspicious bidding patterns come in many forms. Some of these are listed below. Being aware of these patterns and dealing with them early can help prevent the harmful effects of collusive tendering.

04 HOW TO DETECT COLLUSIVE TENDERING

Collusive tendering is often present in bids which display one or more of the following **suspicious bidding patterns**:

- bids received at the same time;
- bids with similar or unusual wording;
- common mistakes across different bids;
- similar contact details across different bids;
- identical prices quoted in bids;
- prices with an equal dfference between each bid;
- less detail than expected;
- failure to bid;
- lowest bidder not taking contract;
- drop in prices at entry of new or infrequent bidder;
- work subcontracted to a supplier that had a higher bid;
- last minute changes, such as reduced discounts; and
- suspiciously high bids without logical cost differences.

05 HOW TO REPORT COLLUSIVE TENDERING

If you suspect or detect collusive tendering amongst firms, you can lodge a complaint with the Commission. You can do this by completing a Form CC1, with a description of the alleged conduct, and submitting this to the Commission.

The prescribed Form CC1 is available on the Commission's website.

The Commission will investigate the complaint and determine if collusive tendering indeed took place. Should this be the case, the Commission will refer the matter to the Competition Tribunal for adjudication.

If a firm is found to have contravened the Act, the Competition Tribunal may penalize it by up to 10% of the firm's annual turnover in the Republic and its exports.

06 HOW TO GET REDRESS

The Act provides that any person harmed by conduct found to be a prohibited practice may claim damages from the firm that engaged in such conduct.

This means that if you have fallen victim to collusive tendering, you can claim damages from the firm found to have engaged in this conduct. You will need a certificate from the Tribunal confirming that the conduct engaged in by this firm is prohibited collusive tendering. Thereafter you can bring a claim for damages in the civil courts.

The Act also provides that a person who has suffered a loss or damage as a result of a prohibited practice, when instituting proceedings, must file with the Registrar or Clerk of the Court a notice from the Chairperson of the Competition Tribunal or Judge President of the Competition Appeal Court in the prescribed form certifying that the conduct constituting the basis for the action has been found to be a prohibited practice in terms of this Act; stating the date of the Tribunal or Competition Appeal Court finding and setting out the section of this Act in terms of which the Tribunal or Competition Appeal Court made its finding.

AIRBAGS, SEATBELTS & STEERING WHEELS MAKER PAYS ALMOST R150M FOR COLLUSION

One of the world's largest manufacturers of airbags, seatbelts and steering wheels admitted in October 2017 to having contravened the Competition Act and agreed to pay a fine totalling almost R150 million. The penalty is among the highest imposed by the Commission in 2017.

Autoliv Inc. (Autoliv) sells automotive safety supplies to car manufacturers worldwide and operates in 27 countries. The company concluded a settlement agreement with the Commission and admitted to involvement in prohibited practices including price fixing, market division and collusive tendering with its competitors, namely: TRW Inc, Takata Group, Toyoda Gosei Co Ltd and Tokai Rika Co Ltd.

The settlement followed a Commission investigation (launched in 2012) into collusive conduct against manufacturers of airbags, seatbelts and steering wheels - including Autoliv and its competitors - for allegedly fixing prices, dividing markets and colluding on tenders issued by car manufacturers such as the BMW Group and VW Group for the manufacture and supply of airbags, seatbelts and steering wheels.

Autoliv admitted that it colluded with its competitors on tenders issued by the BMW Group and VW Group. The collusive conduct affected tenders issued by the BMW Group and VW Group for the following vehicles: VW Polo, MQB platform (VW Golf), Audi A1, A3, A6, A7, A8, Q3, VW 120Up, VW Eos convertible, Passat, Porsche Cajun/Macan, F15/F16 platform (BMW X5/X6), PL6 platform (5,6 and 7 series) and M Sport.

Autoliv agreed to pay an administrative penalty of R149 960 540 (one hundred and forty nine million nine hundred and sixty thousand, and five hundred and forty rand).

The Commission's investigation against the other firms continues and its doors remain open for engagements.

Meanwhile, the Business Day reported in November 2017 that the European Commission had fined Autoliv, Tokai Rika, Takata, Toyoda Gosei and Marutaka a total of €34m for breaching competition laws. In addition, it was reported that in 2015 Autoliv had reached an $81m settlement agreement in America and that the company had paid a settlement to Canadian authorities worth $3.2m.

BMW is set to pursue damages claims in South Africa against several international car shipping companies which were found guilty or pleaded guilty to contravening competition law, including MOL and K-Line. The company says it is also aware of the Autoliv matter. BMW has already sued several suppliers for damages and reached settlements with others

Business Report • 8/03/2018

SECOND INTERNATIONAL CAR SHIPPING COMPANY FACES PROSECUTION IN TRIBUNAL

In a separate but related matter, the Commission earlier this year referred K-Line to the Tribunal on 15 charges relating to price fixing, market division and collusive tendering.

A Norwegian car shipping company was referred for prosecution to the Tribunal in September this year, on seven charges relating to collusive tendering, price fixing and market division.

The charges against Hoegh Auto liners Holdings AS (Hoegh) stem from an investigation that found pervasive anti-competitive conduct in the market for the provision of transportation services of motor vehicles, equipment and/or machinery by sea to and from South Africa, in contravention of section 4(1)(b)(i) and (ii) of the Competition Act.

In a separate but related matter, the Commission earlier this year referred K-Line to the Tribunal on 15 charges relating to price fixing, market division and collusive tendering.

Hoegh stands accused of colluding with a Japanese car shipping company, Mitsui O.S.K Lines Ltd (MOL). From around 2009, MOL and Hoegh engaged in prohibited practices in that they agreed and/or engaged in concerted practices as competitors to fix prices, divide markets and tender collusively. The charges entail the following:

- Collusive activities from around 1997 involving a tender issued by Auto Alliance Thailand to transport Mazda motor vehicles from Thailand to South Africa;
- Collusive activities from around 2004 involving tenders issued by Toyota South Africa to transport vehicles from South Africa to Europe and North Africa;
- Collusive activities from around 2008 involving tenders issued by Daimler AG to transport Daimler motor vehicles from South Africa to North America and vice versa;
- Collusive activities from around 2009 involving a tender issued by the Ford Motor Company to transport vehicles to Europe;
- Collusive activities from around 2010 involving a tender issued by Renault-Nissan Purchasing Organization to transport Nissan motor vehicles from India to South Africa;
- Collusive activities from around 2010 involving a tender issued by Maruti Suzuki to transport Suzuki vehicles from India to South Africa; and
- Collusive activities from around 2010 involving tenders issued by Japanese manufacturers such as Mazda, CAT, Hitachi and Komatsu to transport motor vehicles and construction machinery from Thailand and Japan to South Africa.

MOL previously approached the Commission in terms of its Corporate Leniency Policy and was subsequently granted leniency for its involvement in the cartel conduct in exchange for information and full cooperation in the matter.

In referring the matter against Hoegh to the Tribunal, the Commission is seeking an order declaring that the company is liable for the payment of an administrative penalty equal to 10% of its annual turnover on each of the charges.

Two other firms, also listed as respondents in the K Line matter, made admissions and concluded settlement agreements with the Commission as follows:

- Nippon Yusen Kabushiki Kaisha Ltd (NYK), a Japanese company, paid an administrative penalty of R103 977 927.00; and
- Wallenius Wilhelmsen Logistics AS (WWL), a Norwegian company, paid an administrative penalty of R95 695 529.00

UPCOMING EVENTS 2018

16-20 JUL
ACER WEEK IN PARTNERSHIP WITH UJ
Johannesburg, South Africa

5-7 SEP
12TH ANNUAL CCSA CONFERENCE
Johannesburg, South Africa

11-12 OCT
ACF BIANNUAL CONFERENCE
Marrakech, Morocco

1-2 NOV
ICN UNILATERAL CONDUCT WORKSHOP
(Stellenbosch or George, South Africa)

ACER

The fourth Annual Competition and Economic Regulation Week in southern Africa will bring together competition practitioners and economic regulators from across southern Africa. Over the past three years, ACER has become an important platform for competition authorities and regulators across the region to share knowledge, keep abreast of key developments in competition policy and economic regulation across the region, and to build networks for collaboration between agencies.

ACER IV is co-hosted by the University of Johannesburg's Centre for Competition, Regulation and Economic Development, the National Energy Regulator of South Africa and the Competition Commission of South Africa. It is comprised of three professional training programmes and a 2-day conference.

The training programmes include an advanced course on economics analysis for competition enforcement, an introduction to key legal and economic principles for economic regulation and competition policy, and a brand-new training programme on economic regulation for regional industrial development. The conference will provide a critical platform for discussing the role of competition policy in tackling inequality and concentration across southern Africa and on how we can develop an effective regime for assessing regional mergers and prosecuting cross-border cartels in an increasingly integrated regional market.

Keynote speakers include Professor Frédéric Jenny (Professor of Economics at ESSEC Business School in Paris, former Judge at the Supreme Court of France (Cour de Cassation) and Chairman of the OECD Competition Law and Policy Committee), Dr Javier Tapia (Judge at the Competition Tribunal of the Republic of Chile) and Tembinkosi Bonakele (Commissioner, Competition Commission of South Africa).

For further details, contact Grace Nsomba at gnsomba@uj.ac.za or visit the CCRED page at https://www.competition.org.za/acerweek2018/

ACF

The African Competition Forum's bi-annual conference will be hosted by the Moroccan Competition Authority, the Conseil de la Concurrence. The ACF is a continent-wide network of national and regional competition authorities and currently has 36 members across the continent. The bi-annual conference will focus on competition enforcement in small and developing economies, agency effectiveness for younger authorities, and enforcement and advocacy efforts in key markets such as telecommunications, air travel, agro-chemicals and construction materials.

ICN UNILATERAL CONDUCT WORKSHOP

The Competition Commission of South Africa has been appointed as vice-Chair of the International Competition Network's Working Group on Unilateral Conduct. The CCSA will host the annual Unilateral Conduct Working Group Conference in the Western Cape, South Africa. The Workshop will provide an in-depth analysis of either predation or excessive pricing and will comprise three high-level plenary discussions and three breakout sessions. The plenaries will focus on the appropriate test for the conduct, the second plenary will focus on efficiency defences and the third plenary will focus on appropriate remedies. The breakout sessions will be case-based to facilitate discussion and participation.

INQUIRIES

- HEALTHCARE
- GROCERY
- TRANSPORT
- DATA

Market inquires play a significant role in the state of competition and the socio-economic welfare of South Africans.

The Competition Act was amended in 2009 to provide the Commission with formal powers to conduct market inquires. According to the amendment that came into effect on 1 April 2013, the Commission has power to initiate market inquires, if there is reason to believe that there is a prevention, distortion or restriction of competition in any market.

The commission has initiated four inquires (Healthcare, Grocery Retail, Data Services and Public Passenger Transport Market Inquiry) and completed two (Banking and Liquefied Petroleum Gas).

Healthcare Market Inquiry

The purpose of the HMI is to determine whether or not there are anti-competitive features in the private healthcare market.

In 2016, HMI published its Revised Statement of Issues (RSOI) that outlines the panel's current thinking, based on its reading of the submissions received and the evidence gathered to date. It also highlights the HMI's priority focus areas for the remaining research and analysis it has embarked on.

In the analysis phase, HMI collected significant data and information from eight key stakeholder groups that include hospital groups, pathology providers, radiology providers, registered medical schemes, administrators of medical schemes, health insurance product providers and Government.

The Commission has appointed retired Chief Justice Sandile Ngcobo; Professor Sharon Fonn; Dr Ntuthuko Bhengu; Dr Lungiswa Nkonki and Mr Cornelis (Cees) van Gent as chairman and panellists respectively, to lead the market inquiry into the private healthcare sector in South Africa.

The five-member panel will preside over the market inquiry, to oversee public hearings, review submissions, draft the inquiry report and produce its final recommendations. In addition, the panel was supported by a team of investigators comprising of the Commission's economists, lawyers and expert consultants.

The HMI held its first set of the public hearing, comprising six different hearings, from February 2016 until March 2016. These hearings were held in Pretoria, Cape Town and Durban.

There were oral submissions that were given by scheme administrators, managed care organisations, brokers, health insurers, regulators, policymakers, funders, financiers, medical schemes, medical service providers comprising of hospital groups, practitioners, consumers and consumer groups at the public hearings.

HMI will be publishing a Provisional Report on 30 April 2018. The final report is scheduled to be published on 31 August 2018. There will be further engagement with stakeholders, particularly around implementation of the recommendations in the final report. The Panel has taken the steps to reassure stakeholders of the integrity of the process.

Grocery Retail Market Inquiry

In 2015 the Commission initiated a market inquiry into the Grocery Retail Sector. The Commission has reason to believe there is a restriction of competition in the grocery

retail sector that is adversely affecting consumers and households. The inquiry includes all traders that sell consumer goods.

The inquiry probes six major areas. These are the impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers; the impact of long term exclusive leases on competition in the sector; the dynamics of competition between local and foreign owned small and independent retailers; the impact of regulations, including inter alia municipal town planning and bylaws on small and independent retailers; the impact of buyer groups on small and independent retailers; and the impact of certain identified value chains on the operations of small and independent retailers.

The inquiry focuses on grocery stores, supermarket chains, informal businesses, wholesale groups and outlets. Professor Halton Cheadle chaired the public hearings alongside panel member Lulama Mtanga. The retail inquiry public hearings were held in Western Cape, Gauteng, KwaZulu-Natal from May to November 2017. All the transcripts, speaking notes and administrative timetables from the inquiry are available on the Commission website www.compcom.co.za.

The public hearings provided a platform for stakeholders to present their views on aspects of the market that obstruct competition, as well as matters that adversely affect the market. It also provided an opportunity for the retail panel to probe issues of concern in the grocery sector.

The Commission has amended the completion date for the inquiry to 28 September 2018. The Commission has decided to amend the completion date to allow for sufficient time for further consultations with key stakeholders and to finalise the report.

Public Passenger Transport Inquiry

The Commission is conducting a market inquiry into the land based public passenger transport sector following numerous complaints relating to public transport in the country. The purpose of the inquiry is to understand the general state of competition. In essence, the Commission seeks to understand the market dynamics across the entire value chain.

The scope of the inquiry includes price setting mechanisms, price regulation, transport planning, allocation of subsidies, route allocation, licensing requirements among other things. The Commission has identified road and rail public passenger transport as relevant for this inquiry including minibus, localised and metered taxis, app-based taxi services, Metrorail, and the Gautrain. The public and market participants are encouraged to participate in the inquiry by providing evidence and information that will assist the Commission in coming up with recommendations.

INQUIRES GO THROUGH FOUR DIFFERENT PHASES:

- Information gathering;
- Analysis of information;
- Provisional findings;
- Final report.

Data Services Market Inquiry

The Commission has launched a market inquiry into data services. The inquiry commenced on 18 September 2017. In essence, the purpose of the inquiry is to understand features in the market and the value chain that may cause or lead to high prices for data services. This inquiry will cover all market participants involved at any point in the value chain in data services that are provided to customers such as government, businesses and end-consumers in South Africa.

The main objective of the inquiry is to obtain a clear understanding of the data services value chain, including the interaction and commercial relationships between different levels of the value chain, and the relationship with other parts of the ICT sector and the broader economy.

The data service market inquiry is being conducted in response to a request from the Minister Ebrahim Patel, Economic Development Department. The concerns of Minister Patel relate to high data costs in South Africa and the importance of data affordability for the South African economy and consumers.

The purpose of the Competition Act, is to promote and maintain competition in the Republic in order

- to promote the efficiency, adaptability and development of the economy;
- to provide consumers with competitive prices and product choices;
- to promote employment and advance the social and economic welfare of South Africans;
- to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;
- to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.
- to detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, that tends to prevent, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic; and
- to provide for consistent application of common standards and policies affecting competition within all markets and sectors of the economy."

The inquiry will include participation by business and trade associations, government departments, public entities, regulatory authorities, consumers and consumer groups, and any other stakeholder that may be able to provide information relevant to the market inquiry. Members of the public are encouraged to participate fully in the inquiry process. A report will be published by the Commission at the conclusion of the inquiry.

BEEF SUPPLIER AND JUICE MAKER PROSECUTED FOR DIVIDING MARKETS

The Commission's investigation into Beefcor and CFP revealed that the two companies entered into agreements that constitute market division by allocating customers in contravention of section 4(1)(b)(ii) of the Competition Act, No 89 of 1998, as amended.

Beefcor (Pty) Ltd (Beefcor) and Cape Fruit Processors (Pty) Ltd (CFP) are accused of dividing markets by allocating customers, in contravention of section 4(1)(b)(ii) of the Competition Act 98 of 1998. This matter was referred to the Tribunal in Sept 2017.

Beefcor, a feedlot operator, supplies beef and various other beef products. It also operates a cattle abattoir. Beefcor is also involved in the processing of wet peels and citrus peel pulp, which are by-products of fruit juice production that it uses to produce in the production of livestock feed pallets.

CFP is a manufacturer of fruit juices and is also a processor of wet peels and citrus peel pulp which is a by-product of fruit juice production.

Both Beefcor and CFP are competitors in the processing of wet peels and citrus peel pulp used as inputs in the production of livestock feed. Wet peels and citrus peel pulp are by-products of fruit juice production.

> Beefcor (Pty) Ltd (Beefcor) and Cape Fruit Processors (Pty) Ltd (CFP) were charged in September this year with dividing markets by allocating customers, in contravention of section 4(1)(b)(ii) of the Competition Act 98 of 1998.

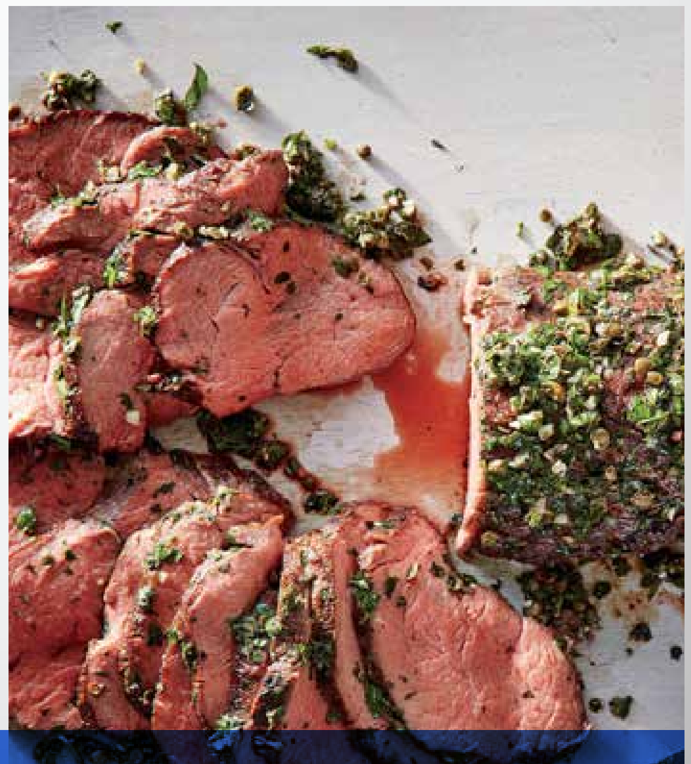
The investigation into Beefcor and CFP stems from a separate probe by the Commission into Beefcor's alleged involvement in the fixing of prices of weaner calves. The so-called Feedlots Investigation yielded the information relating to Beefcor and CFP.

The Commission's investigation into the two companies revealed that Beefcor and CFP entered into two bilateral agreements, namely, a Use Agreement and a Supply Agreement in terms of which they agreed to the following:

- Not to compete with each other in the processing of wet peels and citrus peel pulp used to produce livestock feed (wet peels and citrus peel pulp are by-products in the production of fruit juice); and
- CFP will not sell the wet peels and citrus peel pulp to any other entity without the express written permission of Beefcor.

The agreement has been in existence from at least 2016 and is on-going. This agreement constitutes market division by allocating customers in contravention of section 4(1)(b)(ii) of the Competition Act, No 89 of 1998, as amended.

In referring the matter to the Tribunal for adjudication, the Commission is seeking an order declaring that Beefcor and CFP have contravened the Competition Act and that they are liable to pay an administrative penalty equivalent to 10% of their respective annual turnover.



KRUGERRAND
DEALERS NO LONGER REQUIRED TO BE ASSOCIATION MEMBERS

It is no longer a requirement for existing or prospective Krugerrand dealers to be members of the South African Association of Numismatic Dealers (SAAND). This formed part of a settlement agreement between the Commission and Rand Refinery (Pty) Ltd in August, which paved the way for the first black South African to be appointed as a dealer of bullion Krugerrand.

The Commission earlier investigated allegations that Rand Refinery had made it a condition for anyone who wishes to be appointed as a dealer of bullion Krugerrand to be a member of SAAND, a voluntary association in the South African numismatic industry. The investigation found that the requirement for SAAND membership could be used to raise barriers to entry for prospective dealers of Krugerrand coins in the local numismatic industry.

> Mokhoanatse became a primary bullion Krugerrand dealer some nine months after his initial application had been rejected.

The investigation had been launched after the Commission received a complaint from Edward Mokhoanatse that the requirement for SAAND membership was exclusionary.

In terms of the settlement agreement, Rand Refinery undertook to remove all clauses, in relation to the requirement, from its application forms as well as its website. Rand refinery settled on the basis of no admission of liability.

The consent agreement was also subsequently confirmed as an order of the Tribunal.

Mokhoanatse became a primary bullion Krugerrand dealer some nine months after his initial application had been rejected.

Rand Refinery and the South African Mint jointly manage the business of the bullion Krugerrand through an incorporated joint venture, Prestige Bullion (Pty) Ltd (Prestige Bullion). Rand Refinery has therefore been tasked by Prestige Bullion to manage the sales and marketing of bullion Krugerrand in South Africa and abroad. To this end, Rand Refinery is the sole supplier of bullion Krugerrand to primary dealers locally and abroad.

WESTERN CAPE HIGH COURT DISMISSES FIRE SPRINKLER INSTALLERS CHALLENGE

In a morale booster for the fight against cartels, in February this year the Western High Court dismissed with costs an application by Whip Fire to set aside the Commission's search warrant and return all electronic data and documents.

Fire Whip, a company based in Brakenfell Cape Town, challenged the search warrants on the basis that there were no initiation documents and that the Commission's allegations were "vague and baseless". They also claimed, among others, that the integrity process of the searches was questionable.

In August last year, the Commission carried out the largest cartel investigation raid in South Africa as it has reasonable grounds to believe that the ASIB and its members entered into agreements and/or are engaged in a concerted practice to fix prices and trading conditions, divide markets and tender collusively.

Several Gauteng companies have admitted to the conduct and have settled with the Commission. In early August 2017, the Commission carried out simultaneous and co-ordinated search and seizure raids at the premises of the Automatic Sprinkler Inspection Bureau (ASIB) as well as 24 fire control and protection services companies which are members of the ASIB.

The raids constituted the largest number of premises raided in a single cartel investigation in South Africa.

The companies – situated in Athlone, Milnerton, Stellenbosch, Century City, Westlake, Bellville, Brakenfell, Montague Gardens, (WC) Pinetown, Springfields, Chartsworth, Stamford Hill, Windemere, Morning Side (KZN), East London, PE (EC), Houghton (GP) - are involved in the supply, installation and maintenance of fire control and protection systems.

The Commission has reasonable grounds to believe that the ASIB and its members have agreements and/or are engaged in a concerted practice to fix prices and trading conditions, divide markets and tender collusively.

> This is part of an ongoing investigation and prosecution in the sector which has already led to several Gauteng companies admitting to the conduct and settling with the Commission.

ASIB members are required to adhere to various rules and standards which constitute an agreement to exclude non-members from the market who use legally prescribed and acceptable standards in the country i.e. the South African National Standards developed by the South African Bureau of Standards (SABS).

The ASIB rules and standards involve the following, among others:

- Installation of fire control and protection equipment is reserved for ASIB members only and excludes non-members;
- As above, inspection of installed fire control and protection systems excludes any competent entity outside the ASIB;
- The ASIB prohibits members from subcontracting work to non-members;
- Members are discouraged from operating in regions where they are not registered;
- ASIB refuses to provide clearance to any installations that have not been carried out by its listed members;
- The ASIB lists companies as approved suppliers of pipes, pumps and sprinklers. This means non-registered entities do not get supplies; and
- The ASIB divides installers into different categories, thereby restricting competition among installers of fire control and protection systems.

This is part of an ongoing investigation and prosecution in the sector which has already led to several Gauteng companies admitting to the conduct and settling with the Commission.

The companies which were raided are: ANS Fire Protection Services CC; Arksun Fire Equipment CC t/a Fire Equipment; BH Fire Protection Services CC; Belfa Fire (Pty) Ltd (Belfa Coastal Cape); Belfa Fire (Pty) Ltd (Belfa Coastal Natal); Bhubesi Fire Projects (Pty) Ltd; Chubb Fire and Security (Pty) Ltd (KwaZulu Natal); Country Contracts CC; Cross Fire Management (Pty) Ltd; Eagle Fire Control CC; Fire and General CC; Fire Check CC; Fire Control Systems KwaZulu-Natal CC; Fire Design CC; Fire Sprinkler Installations CC; Fire Sprinkler Installations CC; FireCo (Pty) Ltd (FireCo Cape); FireCo (Pty) Ltd (FireCo KZN); Jasco Fire Solutions (Pty) Ltd (Jasco Cape); OVG Fire Management (Pty) Ltd (OVG Cape); QD Fire Cape CC; Specifire (Pty) Ltd; Whip Fire Projects (Pty) Ltd; and Ramsin Industrial Supplies CC t/a Fire Unlimited.

AFRION ADMITS TO CARTEL CONDUCT AND SETTLES

Afrion Property Services CC (Afrion) admitted to engaging in cartel conduct and agreed to pay and an administrative fine of R327 201.85 in a consent agreement reached with the Commission.

Afrion – a company specialising in supplying, installing and maintaining fire control and protection systems in South Africa and Africa – is one of several fire control and protection systems companies referred to the Tribunal for prosecution.

A Commission investigation found the companies fixed prices, divided markets and tendered collusively when bidding for tenders to install fire control and protection systems in new and existing buildings.

As part of the settlement agreement, Afrion admitted it engaged in price fixing, market division and collusive tendering in contravention of section 4(1)(b) of the Competition Act. In addition to paying the fine, Afrion agreed to implement a competition law compliance programme.

BRENNER MILLS ADMITS PRICE FIXING

- AGREES TO PAY R12 MILLION FINE

In July this year, yet another maize milling company admitted to price fixing, in a case which has seen large industry players implicated in collusion and several companies paying millions in fines.

Brenner Mills (Pty) Ltd admitted to colluding with other maize milling companies between 1999-2007 to fix the price of milled white maize as well as the dates when new pricing would be implemented. The company agreed to pay a fine totaling R12 000 872.00 (twelve million eight hundred and seventy two rand).

> The case dates back to 2007 when the Commission received a corporate leniency application from Premier Foods, which was corroborated by a further leniency application filed by Tiger Brands in the same year.

The Commission launched an investigation against Tiger Brands, Pioneer Foods, Foodcorp, Pride Milling and Progress Milling. Other industry players were later also investigated and include Blinkwater, Godrich, TWK, Keystone, Westra, Carolina Mills, Brenner, Paramount, NTK, Kalel, Bothawille and Allem Brothers.

To date, the Commission has concluded settlement agreements with Foodcorp (Pty) Ltd (which paid an administrative penalty of R88 500 000.00); Pioneer Foods (Pty) Ltd (which paid a penalty of R500 000 000.00), Carolina Roller Meule (Pty) Ltd (which paid a penalty of 4 417 546.00); and Keystone Milling (Pty) Ltd (which paid a penalty of R6 730 349.00) and Blinkwater Mills (which paid a fine of R10 112 504.20).

Tiger Brands Limited and Premier Foods (Pty) Ltd were earlier granted conditional immunity in terms of the Commission's corporate leniency policy.

Chemical Companies Pay R37m For Price-Fixing

In October 2017, the Tribunal confirmed a settlement agreement between the Commission and two chemical companies that agreed to pay administrative penalties totaling some R37 million.

The companies - involved in the manufacture and supply of key chemical input materials used to make detergents, cosmetics and toiletries in South Africa – admitted to price fixing and dividing markets.

Investchem (Pty) Ltd (Investchem) and Akulu Marchon (Pty) Ltd (Akulu) are manufacturers and suppliers of a range of surfactant products widely used in the detergent, cosmetics and toiletry industries. Surfactants (surface active agents) are one of many different compounds that may act as detergents, wetting agents, emulsifiers, foaming agents and dispersants.

In December 2014 the Commission conducted a search and seizure operation at the premises of both companies as part of an investigation into cartel activities. The investigation uncovered, among others:

- Between 2003 and 2013 Investchem and Akulu Marchon, competitors in the same market, agreed to fix prices for surfactants; and
- Investchem and Akulu Marchon also divided the market by agreeing not pursue each other's customers.

These agreements contravened section 4(1)(b)(i) and (ii) of the Competition Act.

Investchem agreed to pay an administrative penalty amounting to R23 423 155.00 (twenty three million four hundred and twenty three thousand and one hundred and fifty five Rand) while Akulu agreed to pay an amount of R13 905 600.40 (thirteen million nine hundred and five thousand and six hundred rand and forty cents). Both Investchem and Akulu also agreed to future conduct that ensures the cartel conduct does not recur and that their respective customers are treated fairly and without discrimination.

CAPE BRICK ADMISSION
FINALISES WESTERN CAPE BRICK CARTEL CASE

A six-year-long Western Cape brick cartel case was successfully concluded in July this year following an admission by the remaining company implicated in the matter.

> Good Hope Brick (Pty) Ltd t/a Cape Brick admitted to allocating customers and fixing prices in the masonry brick market in the Western Cape, in contravention of the Competition Act.

In a settlement agreement with the Commission, the company agreed to pay an administrative penalty of R300 000.00 (three hundred thousand rand) as well as to implement a competition law compliance programme.

The matter dates back to 2012 when the Commission launched an investigation against Cape Brick, Columbia DBL (Pty) Ltd (Columbia) and Inca Concrete Products (Pty) Ltd (Inca). The investigation revealed that the companies, being competitors in the market for the manufacturing of bricks, had agreed to fix prices and allocate customers of concrete and masonry products to each other.

Cape Brick, Columbia and Inca drew up and regularly exchanged customer lists, indicating their preferred customers. They would then formulate a final customer list which indicated which customer belonged to which firm. The list was regularly updated. In order to sustain the arrangement, the companies also agreed on prices they would quote customers allocated to each of them. This was done to ensure that each firm would supply its allocated customers.

Columbia DBL was earlier granted conditional immunity in terms of the Commission's Corporate Leniency Policy in 2013. In that same year the company was liquidated. In November 2014, Inca settled its conduct with the Commission and paid a fine of R800 000.00 (eight hundred thousand Rand).

National brick manufacturer and five others charged for price fixing, dividing markets

Corobrik (Pty) Ltd - a local company that makes and supplies bricks, pavers and blocks of clay and concrete – faces prosecution in the Tribunal with five other brick manufacturers in separate cases involving price fixing and dividing markets.

This follows a Commission investigation against Corobrik, Era Bricks (Pty) Ltd (Era Bricks), Eston Brick and Tile (Pty) Ltd (Eston Brick), De Hoop Brickfields (Pty) Ltd (De Hoop), Clay Industry CC (Clay Industry) and Kopano Brickworks Ltd (Kopano) for alleged price fixing and market division in the manufacturing and supply of bricks, pavers and blocks of clay and concrete.

The Commission found that Corobrik had entered into separate bilateral agreements with the companies, in terms of which they agreed to divide the market by allocating specific products and/or customers in contravention of section 4(1)(b)(i) and (ii) of the Competition Act.

In the case involving Corobrik and Era Bricks, the Commission found that the two companies concluded a Memorandum of Agreement in terms of which they agreed that:

- Era Bricks would not supply its products directly to customers in competition with Corobrik, but instead would sell directly to Corobrik who would then sell to customers in the open market;
- Era Bricks would not manufacture or sell any bricks other than the types it was manufacturing and selling to Corobrik. In addition, it would not manufacture or sell any competitive product capable of being utilised in the brick industry in substitution for bricks; and
- In the event that Era Bricks has excess products, Corobrik agreed not to sell such excess products at prices that are lower than those charged by Era Bricks.

Corobrik and Eston Brick concluded a Distributorship Agreement wherein Eston Brick agreed it would not supply its products directly to customers in competition with Corobrik. Instead, it would supply its products to Corobrik which would then sell directly to customers. Corobrik secured the same agreement with Clay Industry and Kopano respectively, through separate Distributorship Agreements. Corobrik and De Hoop agreed to the same arrangement through a Distributorship and Restraint of Trade Agreement.

The matters were referred to the Tribunal in July 2012 for prosecution and the Commission is seeking orders, in each matter, declaring the companies liable for the payment of an administrative penalty. This means Corobrik could potentially be liable for the payment of five separate administrative penalties – each one equal to 10% of its annual turnover.

COMMISSION BLOCKS
THREE HOSPITAL MERGERS

Towards the middle and the end of 2017, the Commission investigated and subsequently prohibited 3 hospital mergers. These mergers involved two of three biggest private hospital groups in the country, namely Mediclinic Southern Africa (Pty) Ltd (Mediclinic) and Netcare Hospitals (Pty) Ltd (Netcare).

These hospital mergers related to multi-disciplinary services as well as specialist psychiatric services. Over the years, the healthcare sector has seen a significant amount of market consolidation mainly brought about by the acquisition of "independent" private hospitals by the big three private hospital groups.

Consequently, when faced with a hospital merger, the Commission takes a deep look into the merger bearing in mind the existing levels of concentration and what that is likely to mean for the cost of healthcare in South Africa.

Mediclinic/Matlosana merger

In July 2017, the Commission recommended that the Tribunal prohibit the proposed large merger where Mediclinic sought to acquire Matlosana Medical Health Services (Pty) Ltd
(MMHS). Mediclinic is a private hospital group offering acute multi-disciplinary private healthcare services across the country.

MMHS owns and manages two multi-disciplinary private hospitals in Klerksdorp, namely Wilmed Park Private Hospital (Wilmed) and Sunningdale Hospital (Sunningdale). MMHS also owns and operates a psychiatric hospital, Parkmed Neuro Clinic (Parkmed) and also operates a nursing training school (Caerus Nursing School) in Klerksdorp.

Following its investigation, the Commission concluded that the proposed merger is likely to substantially prevent or lessen competition in the market for the provision of private healthcare services in Klerksdorp and the surrounding areas.

Moreover, the proposed merger is likely to lead to price increases primarily because Mediclinic's pricing structure is higher than National Hospital Network (NHN) pricing structure to which MMHS belongs. This matter is currently before the Tribunal with the hearing scheduled in May 2018.

Netcare/Lakeview merger

In September 2017, the Commission prohibited a small merger whereby Netcare acquired Lakeview Hospital in December 2016. Given that it was a small merger the transaction was already implemented and Netcare Hospital already owned and controlled the Lakeview Hospital.

The Commission nonetheless requested the parties to notify the transaction in terms of section 13 of the Competition Act No. 89 of 1998 as amended (Act) as it was of the opinion that the transaction may substantially prevent or lessen competition.

Like Mediclinic, Netcare is a provider of private healthcare services and operates private hospital facilities across the country. The Lakeview Hospital is a multidisciplinary independent private hospital, which offers medical services such as obstetrics, gynaecology, paediatrics, dentistry, orthopaedics and dermatology.

Of relevance to the transaction is that Netcare operates the Netcare Linmed Hospital within the Benoni area where the Lakeview Hospital operates. Following a tariff analysis of the Netcare and Lakeview Hospitals, the Commission found that there is a significant difference in tariffs for insured patients between Netcare and the Lakeview Hospital with Netcare having higher tariffs.

The Commission also found that the merger would likely result in the removal of the Lakeview Hospital as an effective competitive constraint in the Benoni area by removing a cheaper alternative for the provision of healthcare in the Benoni area. This matter is currently before the Tribunal with the hearing scheduled in April 2018.

Netcare/Akeso

In October 2017, the Commission recommended that the Tribunal prohibit the proposed large merger where Netcare intends to acquire the Akeso Group (Akeso).

Akeso is a group of in-patient clinics that provide individual, integrated and family orientated treatment for a range of mental health, psychological and addictive conditions throughout South Africa.

The Commission found that the proposed merger will result in significant combined market shares in the provision of mental healthcare services in the local Gauteng market. In particular, Netcare will have the highest number of mental healthcare beds following the merger and therefor likely to increase tariffs. Further, the Commission found that other hospitals within the local market are small independent hospitals who are unlikely to place a competitive constraint on Netcare.

Netcare does not currently operate its own standalone mental healthcare facility and is likely to charge high tariffs once it creates its own new tariff file following the merger.

The matter is currently before the Tribunal and was partially heard in February 2018.

SA GIVES APPROVAL FOR HISTORIC MERGER

In what has been described as a historic merger, America's two largest chemical makers received all regulatory approvals required from various jurisdictions, including from South Africa.

The Commission had recommended to the Tribunal that the proposed large merger, between DowDuPont Inc. (DowDuPont) and the Dow Chemical Company (Dow) and E.I. Du Pont de Nemours and Company (DuPont), be approved with conditions.

DowDuPont was a newly incorporated holding company for the purposes of the transaction, controlled by both Dow and DuPont.

Dow is a diversified chemicals company headquartered in the USA. It is the ultimate parent company of the Dow Group, which is broadly active in the research, development, production and distribution of plastics and chemicals, agricultural sciences, hydrocarbon and energy products and services.

In South Africa, Dow's activities include the distribution of sunflower seeds, agrochemicals, material science products and food texturisers. Dow does not manufacture any of these products locally but imports them into South Africa from it is manufacturing operations in different parts of the world.

The DuPont Group researches, develops, produces, distributes and sells a variety of chemical products, polymers, agrochemicals, seeds, food ingredients and other materials. In South Africa, DuPont is involved in the distribution of various seeds including maize and sunflower seeds. DuPont is also involved in the distribution of agrochemicals.

> The Commission had recommended to the Tribunal that the proposed large merger be approved with conditions.

Although there was no direct overlap arising in respect of the commercialisation of hybrid and GM hybrid maize seed in South Africa, since Dow does not have maize seed commercial operations in the country, the Commission found that the proposed transaction would likely result in the removal of potential competition in the maize seed market. This is so because Dow had plans and a strategy to enter the South African commercial maize seed market in a significant way. There are no other potential entrants who are likely to significantly constrain the incumbents, DuPont and Monsanto, in this instance.

The Commission also found that the proposed transaction was likely to lead to a substantial prevention or lessening of competition post-merger in the market for development and supply of insecticides for chewing insects for citrus (in Limpopo, Western Cape, Mpumalanga, Eastern Cape, KwaZulu-Natal and the Northern Cape), deciduous fruits (Western Cape, Northern Cape, North West and Limpopo), vegetables (nationally) and tomatoes (in Limpopo, Mpumalanga and the Eastern Cape).

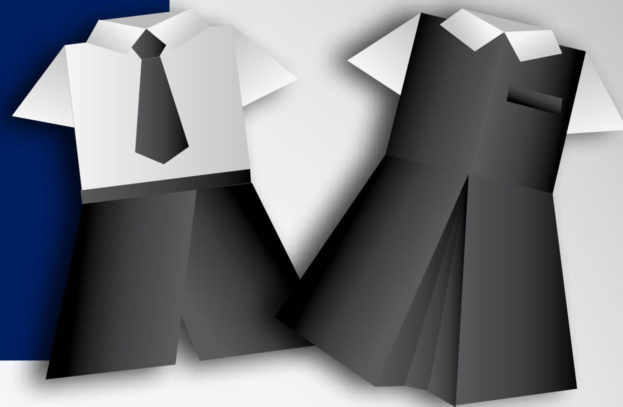
In order to address the concerns relating to maize seed, Dow was required to make available 81 maize hybrids and 7 maize inbred lines to other third parties for licensing of these hybrids and in-breds in South Africa. Secondly, Dow was required to license its PowerCore and Enlist traits in South Africa within 2 years of approval of the merger. These conditions ensure that other smaller maize seed producers will be able to license and introduce new and different hybrids into South Africa from this access to the germplasm materials of Dow which is situated in other regions such as Argentina. This will likely also improve maize seed varieties available to South Africa farmers, other than from the current two main suppliers DuPont and Monsanto.

In relation to insecticides, the merging parties were required to divest DuPont's global and entire insecticide business, including the R&D associated with developing such products. The divestment includes the insecticides supplied to South Africa, which implies that the production and supply of these insecticide products will be taken over by a different third party. Since Dow and DuPont are large global crop protection manufacturers, the divestiture ensures that the manufacturer will be a separate entity, and more importantly for South Africa, the condition requires that the purchaser of this divested business is specifically required to continue to supply the insecticides in South Africa. Farmers will continue to benefit from the availability of these insecticides in South Africa at competitive prices from a different supplier who is not either Dow or DuPont.

Following enhancements to the proposed maize seed remedy, the Tribunal approved the merger subject to a detailed set of licensing conditions.

EXCESSIVE SCHOOL UNIFORM PRICES A BARRIER TO QUALITY EDUCATION

By Sipho Ngwema



South Africa is riddled with stories of discrimination and restrictive practices. One such scourge that persistently troubles our nation is the imposition of artificial barriers to entry to vital essential services like education. In a country where people have been blocked through a system that institutionalised discrimination, we need to be extra cautious and sensitive to conducts that impose hurdles to access to fundamental services like quality education.

The Competition Commission is concerned about discriminatory and obstructive practices that breed unjust restrictions on free participation in the economy, thus lessen or prevent competition.

In a quest to facilitate open access to quality education and to eliminate restrictive conduct that creates unnecessary barriers for small business, last year the Commission launched an investigation into the school uniform industry in order to eradicate this behaviour.

The investigation would contribute to better access and will hopefully lower the overall financial burden that has been inflicted on parents. This is because high prices of school uniform increase the cost of schooling and may even exclude learners of parents who cannot afford expensive school uniform from accessing education.

Therefore there is a need for the Commission, the Department of Basic Education and all relevant stakeholders in education to ensure that schools adhere to generic school items.

More importantly, parents must not abdicate their oversight responsibilities and ensure that they remain at the heart of school activity and protect their own interests. In turn, the Commission will continue its advocacy and enforcement work in this regard.

There is general consensus that school uniform plays an important role in the schooling system. It not only ensures equality among learners, but also makes education accessible for learners from different socioeconomic backgrounds as it is arguably more cost effective than branded clothing.

Some people even argue that it emboldens discipline, makes learners identify with a particular school and therefore builds a sense of community and of belonging.

However, the high prices and the restricted supply of school uniform remain a great concern. Many schools, public and private, enter into exclusive agreements with a single supplier of school uniform, compelling parents to only purchase school uniform from that sole supplier.

This kind of arrangement creates monopoly suppliers of school uniform, leaving parents with no choice, but to buy from that one supplier. What is worse is that this conduct has now creeped into the villages and townships. School children are compelled to change uniform in order to create business for new exclusive suppliers.

Even though there have been interventions by the Department of Basic Education (DBE) which led into signing into effect and publishing of a 2015 circular by the Minister of Basic Education, these concerns remain. The circular set out the following guidelines for the procurement of school uniform.

- School uniform should be as generic as possible
- Exclusivity should be limited to items that the school regards as necessary to obtain from preselected suppliers
- Schools should follow a competitive bidding process when appointing suppliers
- Schools should appoint more than one supplier in order to give parents more options
- Agreements concluded with suppliers should be of limited duration

We are aware that the circular reached a number of schools, and some of those school are already following the guidelines and changing their procurement processes to become more competitive. The Commission is also aware, through a survey it conducted in 2017, that the circular did not reach many schools in the country.

In fact the Competition Commission's investigation into the pricing and the procurement of school uniform follows a big outcry by parents regarding the exorbitant prices of school uniform, and the lack of alternative suppliers of school uniform.

Through the investigation, we have established that many schools do enter into exclusive and evergreen agreements with school uniform retailers. We also see a trend where more and more school uniform items are becoming unique to a particular school, through a combination of distinctive colours, the design and branding of specific school uniform items. The use of more and more unique school uniform items, however, adds to the high cost of school uniform, whereas the opposite is true if schools have more generic school uniform items. Generic school uniform items tend to be more competitively priced because there is more choice in terms of suppliers, as these can be easily accessed from many alternative suppliers, including large retail chain stores.

It is our view that if schools adhere to the guidelines set by the circular, it can be expected that the price and the overall cost of school uniform will naturally decrease. We would see fewer unique school uniform items and more firms, including firms owned by previously disadvantaged individuals entering and offering more competition in the supply of school uniform.

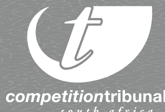
Parents would be able to purchase school uniform from various suppliers at competitive prices. More importantly, this would contribute to lowering the overall costs for parents. This is because high prices of unique school uniform increase the cost of schooling, and may even exclude learners of parents who cannot afford school uniform, from accessing education.

Therefore there is a need for the Commission, the DBE and any other stakeholder in the education sector to ensure that schools adhere to the guidelines. The Commission will continue its advocacy and enforcement work in this regard to make sure that nobody is unfairly excluded.

- Opinion piece published in The Sowetan.

SIGNIFICANT DEEPENING OF CO-OPERATION WITHIN BRICS

By Hardin Ratshisusu



This year, Brasilia will bring together the heads of competition authorities within BRICS as Brazil's Administrative Council for Economic Defense (CADE), the equivalent of our Competition Commission, hosts the 5th BRICS International Competition Conference on 8 - 10 November 2017. When South Africa hosted the 4th conference in Durban in November 2015, the focus was on the role of competition policy in promoting inclusive growth in our economies. Since then BRICS competition authorities have made significant progress through practical cooperation on investigations and general research.

Under the theme, *Towards a Successful Second Decade of Cooperation*, the conference agenda this year aptly focuses on deepening cooperation in merger regulation, approaches to the 4th industrial revolution and broad competition policy developments within BRICS. Competition policy and enforcement takes centre stage within BRICS as it is regarded as an integral tool for growth and development.

At the 9th BRICS Summit held this year in Xiamen China, the Xiamen Declaration of the Leaders of the BRICS nations recognised, "the importance of competition protection to ensure the efficient social and economic development of our countries, to stimulate innovative processes and to provide quality products to our consumers." The Xiamen Declaration further noted "the significance of the interaction between the Competition Authorities of our countries, in particular, in identifying and suppressing restrictive business practices that are of a transboundary nature."

Cooperation amongst BRICS competition authorities is a central tenet premised on the understanding that competition policy and regulation is essential in seeking to achieve common goals such as less concentrated markets, competitive rivalry in which firms freely enter or exit markets, innovative firms and inclusive growth. Following the signing of a memorandum of understanding in 2016 by the heads of BRICS competition authorities, the Commission participates in various working groups in important sectors including pharmaceuticals, automotive and food value chains alongside its BRICS partners. Some significant work programmes from these working groups are worth mentioning.

The working group on pharmaceuticals seeks to address and facilitate access to affordable healthcare. This is a priority in developing nations particularly as these nations are likely to be net importers of originator medicines which are protected by intellectual property. This invariably raises the cost of healthcare which has a domino effect across the entire economy. The BRICS working group on pharmaceuticals is undertaking work in relation to the global cost of essential medicines based on different disease burdens experienced by BRICS nations with the view to drawing up solutions on preventing bottlenecks and ensuring that the interplay between intellectual property and competition regulation does not stifle competitive rivalry but also yields fair and affordable prices for medicines.

In the automotive markets, the Commission drew lessons from the Federal Antimonopoly Service of Russia (FAS Russia) in developing a draft code of conduct for the automotive industry to reduce barriers to entry relating to access to services and parts in the entire automotive supply chain including aftermarkets. This draft code of conduct was recently published in the government gazette calling for comments from the public. There is undoubtedly further scope for close cooperation with other competition authorities in cross-border investigations of alleged collusion in the sale of components for cars to various carmakers. South Africa is particularly affected by this conduct as Government has committed significant incentives through the Automotive Production and Development Programme to attract global carmakers to our shores.

The conference will also see the launch of a study into global food value chains which will encompass work relating to genetics, animal feed, seeds, technology and innovation and retail, all within the context of global mergers and acquisitions. This work was conducted by various academics in BRICS nations who have developed the study, mainly attached to the University College London's Centre for Law, Economics and Society (CLES), the HSE-Skolkovo Institute of Law and Development and the University of Johannesburg's Centre for Competition, Regulation and Economic Development (CCRED).

It has become evident that BRICS nations have the potential to influence the global agenda and narrative in relation to competition regulation and policy and its role in seeking to achieve developmental goals. The response of BRICS nations to issues such as global consolidation in markets relating to seeds and agro-processing has the potential to signal and drive competition policy towards a developmental agenda. This is so because mega-mergers such as those between Dow/ DuPont, ChemChina/ Syngenta and Bayer/Monsanto, allow for BRICS nations to consider competition within a broader but complementary context recognising that such transactions may, for instance, impact jurisdictions in Europe significantly differently than it would BRICS economies.

In January 2018 South Africa will become Chair of BRICS and in assuming this role, the Commission will play its part in promoting the competition agenda including the need to promote approaches to competition policy and regulation which align to specific needs and demands in emerging markets such as BRICS. The Commission will seek to pursue this agenda by reinforcing the need for deeper cooperation in relation to, amongst other goals, global competition developments and policy, investigations into cross-border anticompetitive conduct and the establishment of the BRICS Competition Research Centre.

It is with great pleasure that we head to Brasilia to gain knowledge and experience as well as share developments from our jurisdiction on competition policy and regulation. BRICS competition authorities are indeed deepening cooperation.

Deputy Commissioner
Competition Commission of South Africa

- Opinion piece published in the Business Report

5th BRICS International Co petitio onfe
8 - 10 Novem r 2017

M&A QUARTERLY
PERFORMANCE REPORT: QUATER 3 (Q3)

**Contributors: Grashum Mutizwa, Boitumelo Makgabo, Mogau Aphane, Phillipine Mpane, Ratshidaho Maphwanya, Amanda Mfuphi*

A. OVERVIEW OF Q3

1. The Commission received 98 merger notifications during Q3 and finalized 110 mergers in the same period. There was a noticeable decline (21%) in number of cases notified between Q2 and Q3. The current Q3 number of cases is below the cases notified in Q3 of 2016/17.

2. The number of mergers by decision shows that out of the finalised 110 merger in Q3, 85 of these transactions (80%) were approved without conditions, 18 were approved with conditions (16%), 4 were prohibited and 3 were withdrawn. There has been consistency in number of conditional approvals in Q2 and Q3 at 18 cases.

3. In Q3, mergers from sectors which grew (at quarter-on-quarter annualised rate) the most are Finance, Construction, Health and Wholesale. The sectors which decelerated in the most are Manufacturing and Transportation and Storage. The finalised mergers in Q3 were in Property (20%), Manufacturing (11%), Wholesale (24%), Finance (12%), and Information Communication Technology (7%) sectors. Property and Manufacturing are the sectors that routinely record the highest number of merger notifications, as was the case in Q3. The data on acquisitions does not however show a consistent trend on the ultimate acquiring firm/s. The data indicates that acquisitions are being made by different ultimate acquiring firms across all sectors of the economy.

4. There were 4 (four) merger prohibited in Q3 and these are discussed in more detail later on in this report under a section that deals with Key cases.

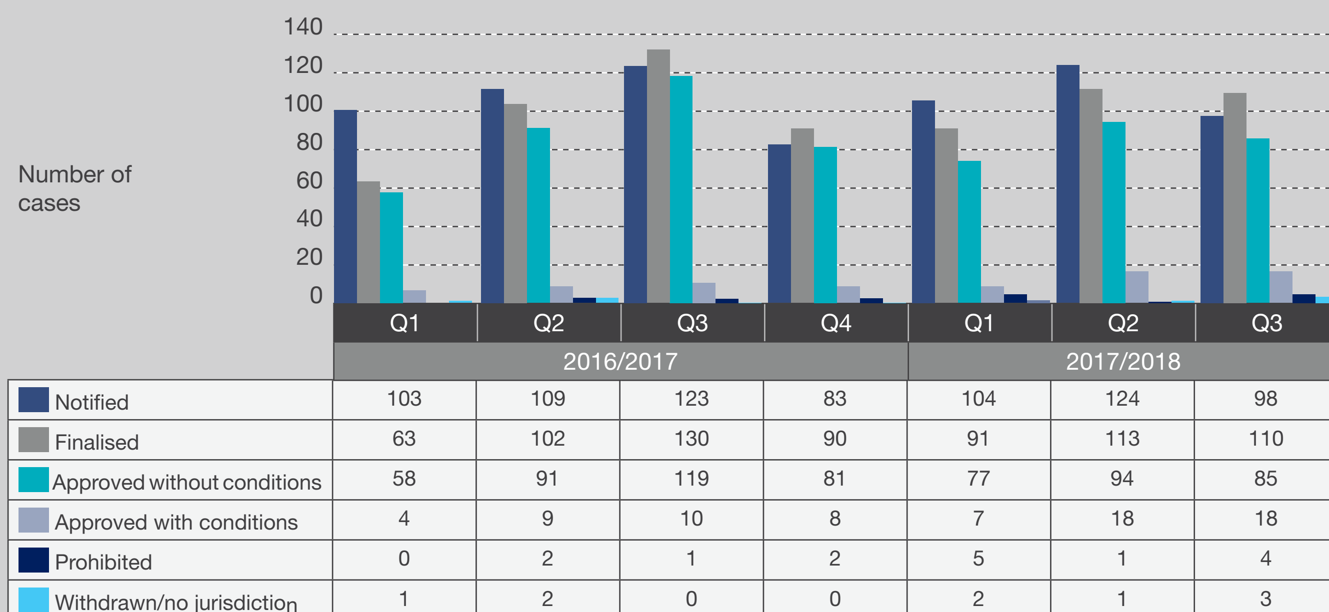
5. At the commencement of Q3, the Monitoring Unit was monitoring 153 cases where conditions have been imposed. At the end of Q3, 5 cases were closed and 21 new cases were added to the monitoring list. At the end of Q3, the Unit is therefore monitoring 169 cases. The number of conditional approvals in Q3 Slightly increased when compared to the 18 conditional approvals in Q2.

6. In terms of future outlook, in spite of the economic downgrade, the number of merger notifications continue to gradually rise in line with trends experienced in prior years in which there was no economic downgrade. Regardless of the economic outlook, there has been a marked decline in the number of business rescue and liquidations transactions in Q2. The mooted merger between PPC and Afrisam that has continuously been publicised in the papers has not been filed yet and may be notified in Q4 if it is still proceeding.

B. Q2 STATISTICS

7. 7. The Commission received 98 merger notifications during Q3 and finalized 110 mergers in the same period. There was a noticeable decline (21%) in number of cases notified between Q2 and Q3. The current Q3 number of cases is below the cases notified in Q3 of 2016/17. The number of finalized cases also decreased by 2.7% form Q2 in Figure 1 below.

SUMMARY OF Q3 MERGER STATICTICS

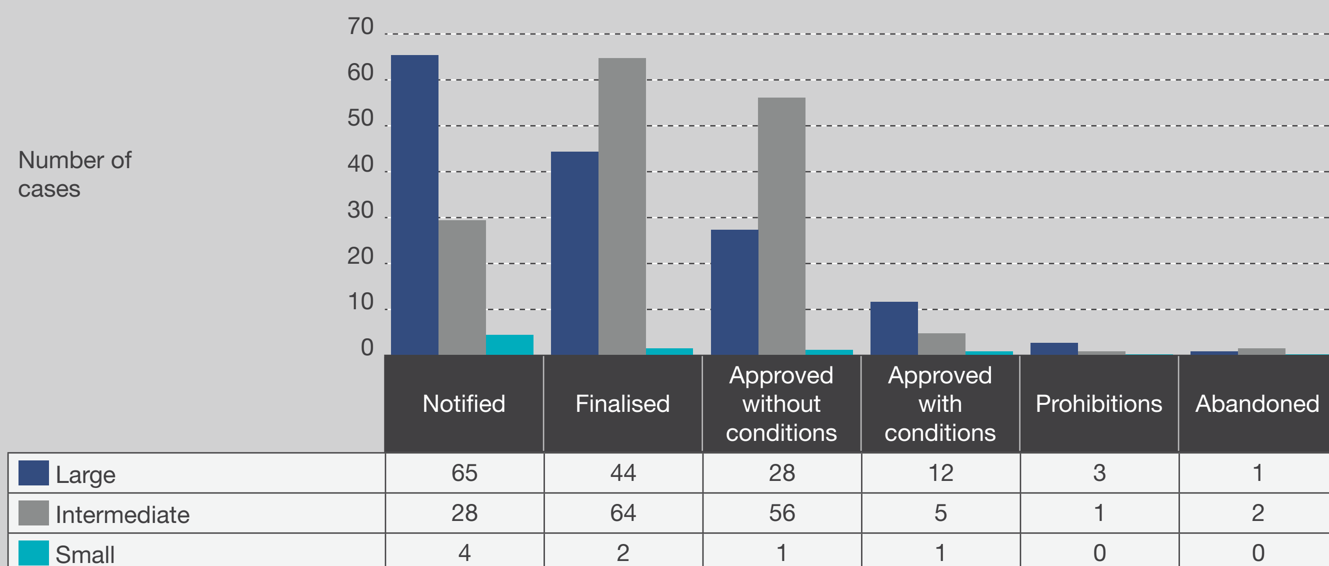


	Q1	Q2	Q3	Q4	Q1	Q2	Q3
	2016/2017				2017/2018		
Notified	103	109	123	83	104	124	98
Finalised	63	102	130	90	91	113	110
Approved without conditions	58	91	119	81	77	94	85
Approved with conditions	4	9	10	8	7	18	18
Prohibited	0	2	1	2	5	1	4
Withdrawn/no jurisdiction	1	2	0	0	2	1	3

Figure 1: Quarterly summary of mergers notified and finalised in Q3

Source: M&A's construction

Q2 CASES BY MERGER CATEGORY



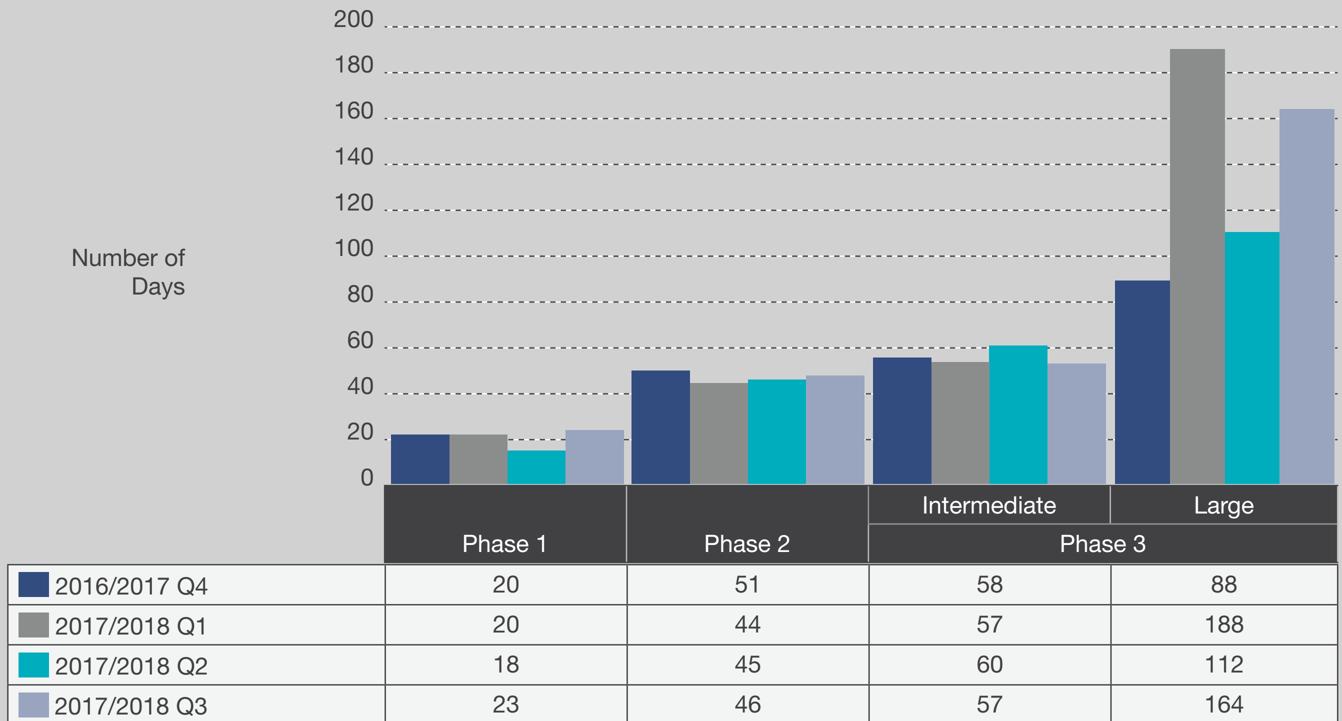
	Notified	Finalised	Approved without conditions	Approved with conditions	Prohibitions	Abandoned
Large	65	44	28	12	3	1
Intermediate	28	64	56	5	1	2
Small	4	2	1	1	0	0

Figure 2: Q3 cases by merger category

Source: M&A's construction

8. Figure 1 provides an overview of the cases notified and finalized by the Commission in Q2, whereas Figure 2 further breaks down the cases by category. In Figure 2 above, the number of mergers by decision shows that out of the finalised 110 mergers in Q3, 85 of these transactions (77%) were approved without conditions, 18 were approved with conditions (16%) and 4 were prohibited (4%) and 3 (3%) was withdrawn. There has been a consistency in number of conditional approvals at 18 cases in Q2 and Q3.

9. Figure 3 highlights the turnaround times for the different cases finalised in Q3.



	Phase 1	Phase 2	Phase 3 Intermediate	Phase 3 Large
2016/2017 Q4	20	51	58	88
2017/2018 Q1	20	44	57	188
2017/2018 Q2	18	45	60	112
2017/2018 Q3	23	46	57	164

Figure 3: Summary of average turnaround times

Source: M&A's construction

10. The Division has not met the turnaround times for phase 1 and phase 2 cases as prescribed in the service standards. Noticeable, the Phase 2 standard was just missed by 1 (one) day at 46 day and Phase 1 by 3 days. The Division requires to continue watching this standard as it has been elusive in some quarters. Analysts did not to meet the Phase 2 standard although the number of conditional approvals (18) in the same as Q2. This may be related to increasing work load mainly due to P&R's withdrawal of resources on Phase 3 cases as well as shrinking resources in the division as there are many vacant positions that are yet to be filled. The timeline for Phase 3 large mergers in Q3 were severely affected mainly by 1 (one) case being the acquisition of Akeso by Netcare which the Commission ultimately recommended a prohibition. Although this negatively affected the turn-around time, the impact is huge given structural challenges in the health sector that may be partially addressed through this recommendation.

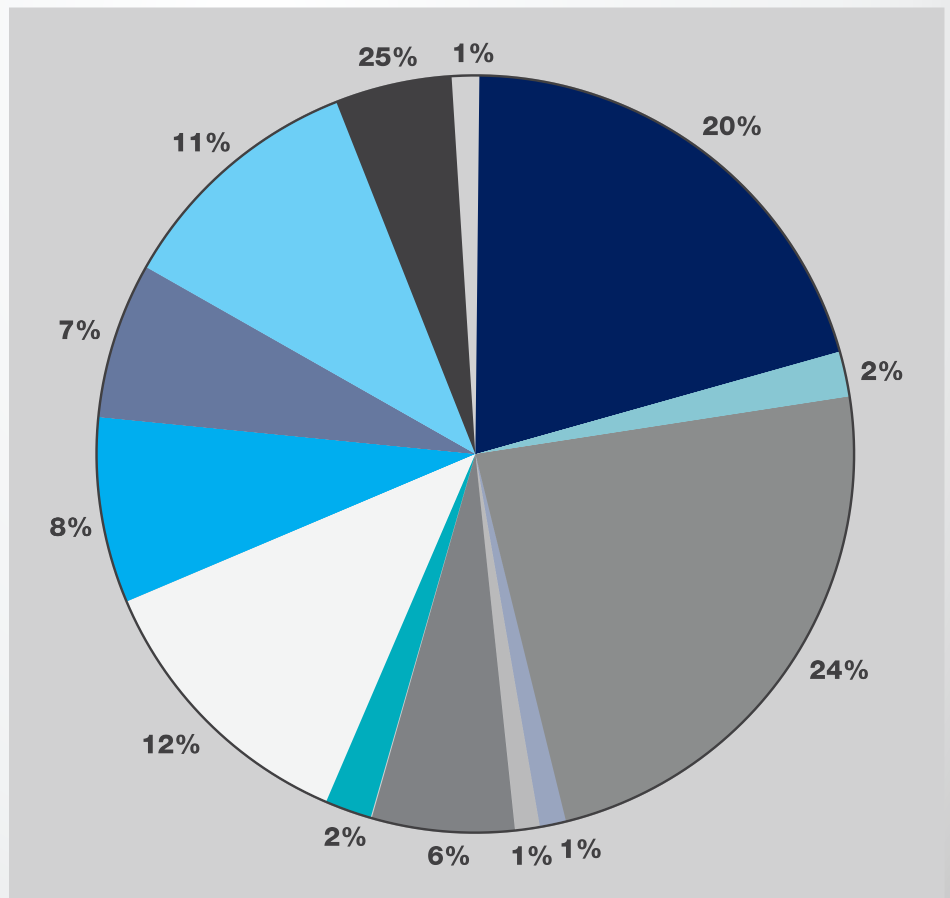


Figure 4: Mergers finalised by sector, Q2

Source: M&A construction

Property: 20%
Transportation & Storage: 2%
Wholesale: 24%
Professional & Technical Activities: 1%
Agriculture: 1%
Construction: 6%
Administration: 2%
Finance: 12%
Health: 8%
Information Communication: 7%
Manufacturing: 11%
Mining: 25%
Other Activities: 1%
Household Activities: 0%
Accommodation: 0%
Electricity, Gas, Steam: 0%

C. M&A ACTIVITY AND SECTOR INSIGHTS IN Q3

11. As pointed out earlier, a total of 110 mergers were finalised by the Commission in Q3. Figure 4 shows that the finalised mergers in Q3 were in these main sectors Property (20%), Manufacturing (11%), Wholesale (24%), Finance (12%), and Information Communication Technology (7%). Property and Manufacturing are the sectors that routinely record the highest number merger notifications, as was the case in Q3.

12. Figure 5 below shows that in Q3, the sectors which grew (at quarter-on-quarter annualised rate) the most are Finance, Health, construction and Wholesale. The sectors which decelerated in the most are Property and Transportation and Storage.

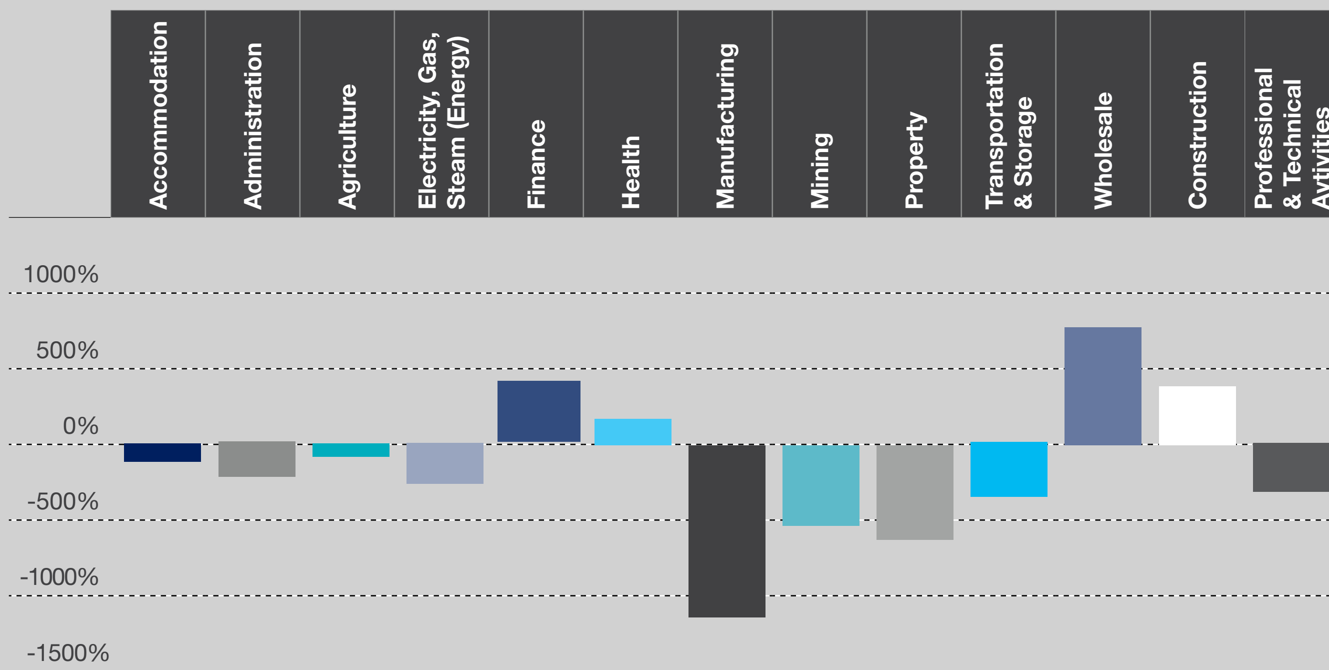
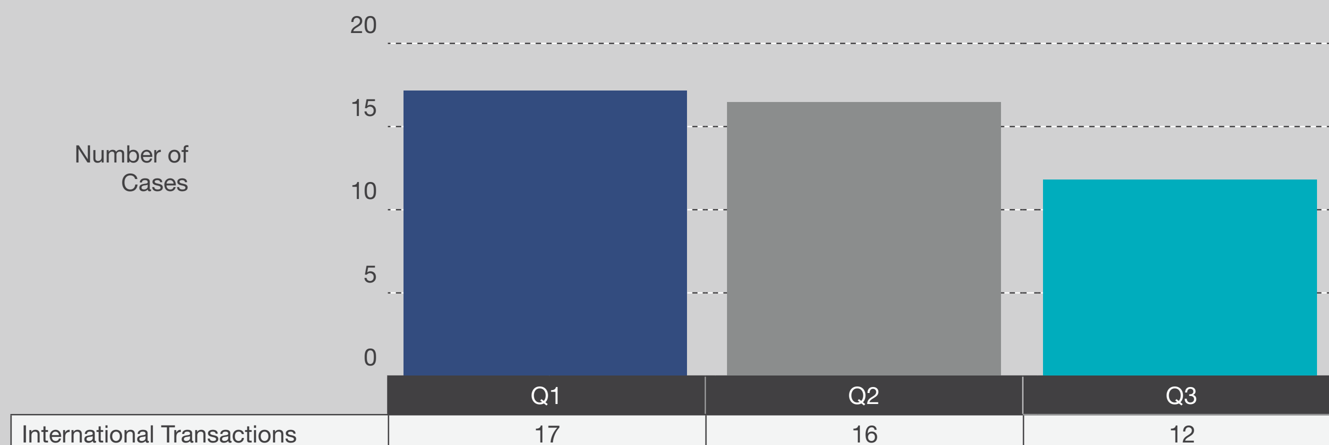


Figure 5: Figure 5: Quarter-on-quarter growth rate in finalised mergers (y/y)

Source: M&A's construction

13. From the data above and the trends observed on quarter-to-quarter changes, there is no consistent pattern on ultimate acquiring firms. The data indicates that acquisitions are being made by different ultimate acquiring firms across all sectors of the economy. The trend may be indicative of diversification strategies for most firms or expansion strategies.

14. Figure 6 below highlight the international transactions notified in the period. There is a considerable reduction in international transactions notified in the period from 16 in Q2 to 12 in this period.



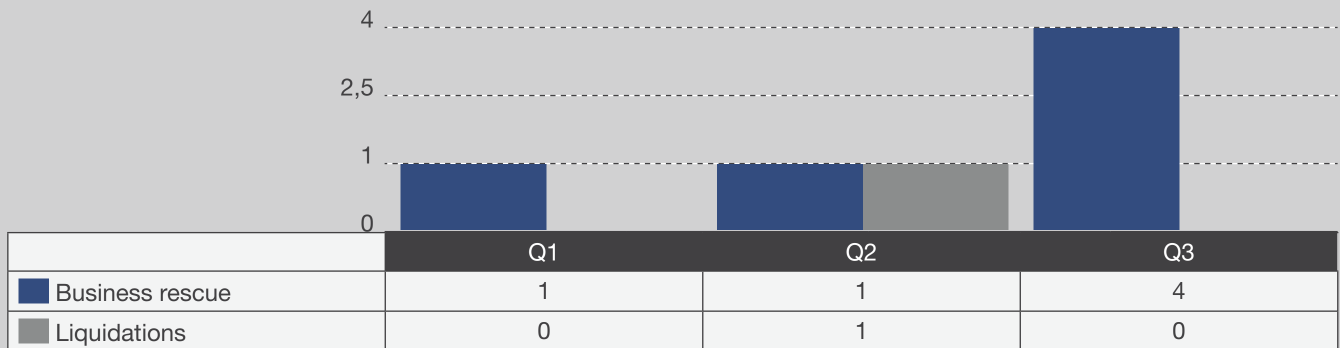
	Q1	Q2	Q3
International Transactions	17	16	12

Figure 6: International transactions

Source: M&A's construction

15. 15. Figure 7 below shows the number of Business rescue and Liquidation transactions for Q3.ions notified in the period from 16 in Q2 to 12 in this period. There were no transactions involving liquidations in this period and 4 (four) that involved Business rescue.

BUSINESS RESCUE AND LIQUIDATION TRANSACTIONS



	Q1	Q2	Q3
Business rescue	1	1	4
Liquidations	0	1	0

Figure 7: Business rescue and liquidation transactions

Source: M&A's construction

D. KEY CASES IN Q2

Styling Viva Milling (Pty) Ltd and AM Alberts (Pty) Ltd (case no.: 2016Dec0027)

16. The Competition Commission (Commission) recommended to the Competition Tribunal (Tribunal) that a large merger wherein Style Viva Milling (Pty) Ltd (Newco) intended to acquire AM Alberts (Pty) Ltd t/a Progress Milling be prohibited.

17. Newco is owned by a consortium comprising of Louis Dreyfus Company Africa (Pty) Ltd (LDCA) and DH Brothers Industries (Pty) Ltd t/a Willowton (Willowton) (Consortium).

18. The Commission assessed a vertical overlap between LDCA and Noordfed where LDCA is active in the upstream market for the trading in white maize and Noordfed is active in the downstream market for the milling of white maize. With regard to the upstream market for the trading in white maize, the Commission found that LDCA has a low market share (less than 10%) in the upstream market for the trading in white maize, therefore is unlikely to gain the requisite market power through this transaction to engage in an input foreclosure.

19. With regard to the downstream market for the milling of white maize, the Commission found that the transaction is unlikely to raise customer foreclosure concerns as other traders of white maize have alternative customers (millers) in the Limpopo area. However, there were coordinated effects concerns that arose from the transaction.

20. The Commission found that in addition to the pre-existing structural link between LDCA and Willowton (through Allsome Brands) in the market for the cleaning and packaging of rice, LDCA and Willowton (through Epko Oil) are also competitors in the market for the crushing of sunflower seeds pre-merger.

21. The Commission further found that the transaction introduces another link between LDCA and Willowton in the white maize market in that LDCA and Willowton will become co-shareholders in the white maize market, wherein Willowton is currently not active. This market is adjacent to other markets wherein the merging parties hold multiple shareholding interests and cross-directorships. The Commission further found that the transaction would create a structural link between two competitors in the white maize market in Limpopo, namely, Progress Milling and NTK.

22. The Commission was concerned that the transaction will enhance and facilitate coordination because both parties would have the ability to appoint directors to the board of Holdco post-merger. Holdco is the entity owned by a consortium comprising LDCA and Willowton and is the acquiring firm in the other 2 transactions related to the proposed transaction.

23. The Commission was concerned that LDCA and Willowton (through Epko Oil), being competitors in the market for sunflower seed crushing, will post-merger have board representation in Holdco thereby having an opportunity to interact in a manner which is likely to make the exchange of competitively sensitive information relating to the sunflower seed crushing market and other adjacent markets, such as white maize, more plausible.

24. The Commission was therefore concerned that the acquisition of Progress Milling would bring about a platform for information exchange to the detriment of competition in the sunflower seed crushing and white maize markets. The Commission noted that the structure of the white maize and sunflower seed crushing markets are conducive to collusive conduct because they are characterised by high levels of concentration with few key players, a high degree of product homogeneity, high barriers to entry and high transparency supported by extensive multi-market contact.

25. Further, the Commission is currently investigating a cartel in the market for refined, edible cooking oils, baking fats and margarine, which is in the same sunflower seed value chain. The Commission was of the view the new link between LDCA and Willowton presented by the proposed transaction is likely to facilitate and enhance collusion not only in the sunflower seed crushing market but also the white maize market, which in itself has a history of collusion.

26. The Commission could not rule out the ability of the proposed transaction to enhance and facilitate collusion in other

adjacent markets such as the white maize milling market, due to the high risk of information sharing presented by the merging parties' multiple cross directorships and shareholding across the grain milling markets.

27. In light of there being no remedies which could allay the Commission's concerns, the Commission prohibited this merger.

K2014202010 (Pty) Ltd and Noordfed (Pty) Ltd (case no: 2017Jun0001)

28. The Competition Commission (Commission) recommended to the Competition Tribunal (Tribunal) that a large merger wherein K2014202010 (Pty) Ltd (Holdco) intended to acquire Noordfed (Pty) Ltd (Noordfed) be prohibited.

29. Holdco is owned by a Consortium comprising of Louis Dreyfus Company Africa (Pty) Ltd (LDCA) and DH Brothers Industries (Pty) Ltd t/a Willowton (Willowton) (Consortium).

30. The Commission assessed a vertical overlap between LDCA and Noordfed where LDCA is active in the upstream market for the trading in white maize and Noordfed is active in the downstream market for the milling of white maize. With regard to the upstream market for the trading in white maize, the Commission found that it is unlikely that the merged entity will have the ability to engage in input foreclosure as it does not have market power in the upstream market and will continue to be constrained by other bigger players in the market post-merger. With regards to the downstream market for the milling of white maize, the Commission found that customer foreclosure is unlikely as Noordfed's market share in the relevant market is low (less than 10%). However, there were coordinated effects concerns that arose from the transaction.

31. The Commission found that in addition to the pre-existing structural link between LDCA and Willowton (through Allsome Brands) in the market for the cleaning and packaging of rice, LDCA and Willowton (through Epko Oil) are also competitors in the market for the crushing of sunflower seeds pre-merger. The Commission also found that the transaction introduces another link between LDCA and Willowton in the white maize market in that LDCA and Willowton will become co-shareholders in the wheat market, wherein Willowton is currently not active. This market is adjacent to other markets wherein the merging parties hold multiple shareholding interests and cross-directorships.

32. The Commission was concerned that the proposed transaction will enhance and facilitate coordination because both parties will have the ability to appoint directors to the board of Holdco post-merger. LDCA and Willowton (through Epko Oil), being competitors in the market for sunflower seed crushing, will post-merger have board representation in Holdco, thereby having an opportunity to interact in a manner which is likely to make the exchange of competitively sensitive information relating to the sunflower seed crushing market and other adjacent markets more plausible.

33. The Commission was therefore concerned that the acquisition of Noordfed would create a platform for information exchange to the detriment of competition in the sunflower seed crushing market and other adjacent markets, such as white maize. The Commission noted that the structure of the white maize and sunflower seed crushing markets are conducive to collusive conduct because they are characterised by high levels of concentration with few key players, a high degree of product homogeneity, high barriers to entry and high transparency supported by extensive multi-market contact.

34. Further, the Commission is currently investigating a cartel in the market for refined, edible cooking oils, baking fats and margarine, which is in the same sunflower seed value chain. The Commission was of the view the new link between LDCA and Willowton presented by the transaction is likely to facilitate and enhance collusion not only in the sunflower seed crushing market but also the white maize market, which in itself has a history of collusion.

35. The Commission could not rule out the ability of the proposed transaction to enhance and facilitate collusion in other adjacent markets such as the white maize milling market, due to the high risk of information sharing presented by the merging parties' multiple cross directorships and shareholding across the grain milling markets.

36. In light of there being no remedies which could allay the Commission's concerns, the Commission prohibited this merger.

K2014202010 (Pty) Ltd v African Star Grain and Milling (Pty) Ltd (2017Jul0011)

37. The Commission has prohibited an intermediate merger whereby K2014202010 (Pty) Ltd (Holdco) intends to acquire African Star and Milling (Pty) Ltd (African Star).

38. Holdco is owned by a consortium comprising Louis Dreyfus Company Africa (Pty) Ltd (LDCA) and DH Brothers Industries (Pty) Ltd t/a Willowton (Willowton).

39. The Commission assessed a vertical overlap between LDCA and African Star where LDCA is active in the upstream market for the trading in wheat and African Star is active in the downstream market for the milling of wheat. The Commission found that in the upstream market for the trading in wheat, the merged entity will have a low market share. Thus it is unlikely that the merged entity will have the ability to engage in input foreclosure as it does not have market power in the upstream market.

40. The investigation also showed that any incentive to foreclose will be constrained by other big traders. With regard to the downstream market for the milling of wheat, the Commission found that customer foreclosure is unlikely as Africa Star's market share is low in the relevant market and the merged entity will continue to be constrained by other bigger players in the market. However, there were coordinated effects concerns that arose from the transaction.

41. The Commission found that in addition to the pre-existing structural link between LDCA and Willowton (through Allsome Brands) in the market for the cleaning and packaging of rice, LDCA (through Epko Oil) and Willowton are also competitors in the market for the crushing of sunflower seeds pre-merger. The Commission further found that the transaction introduces another link between LDCA and Willowton in the wheat market in that LDCA and Willowton will become co-shareholders in the wheat market, wherein Willowton is currently not active. This market is adjacent to other markets wherein the merging parties hold multiple shareholding interests and cross-directorships.

42. The Commission was concerned that the transaction will enhance and facilitate coordination because both parties will have the ability to appoint directors to the board of African Star post-merger. LDCA (through Epko

Oil) and Willowton, being competitors in the market for sunflower seed crushing, will post-merger have board representation in African Star, thereby having an opportunity to interact in a manner which is likely to make the exchange of competitively sensitive information relating to the sunflower seed crushing market and other adjacent markets more plausible.

43. The Commission was therefore concerned that African Star is likely to be a platform for information exchange to the detriment of competition in the sunflower seed crushing market and other adjacent markets. The Commission noted that the structure of the sunflower seed crushing market is conducive to collusive conduct because it is characterised by high levels of concentration with few key players, a high degree of product homogeneity, high barriers to entry and high transparency supported by extensive multi-market contact.

44. Further, the Commission is currently investigating a cartel in the market for refined, edible cooking oils, baking fats and margarine, which is in the same sunflower seed value chain. The Commission was of the view the new link between LDCA and Willowton presented by the transaction was likely to facilitate and enhance collusion not only in the sunflower seed crushing market but also the wheat market, which in itself has a history of collusion.

45. The Commission could not rule out the ability of the transaction to enhance and facilitate collusion in other adjacent markets such as the maize milling market, due to the high risk of information sharing presented by the merging parties' multiple cross directorships and shareholding across the grain milling markets.

46. In light of there being no remedies which could allay the Commission's concerns, the Commission prohibited this merger.

Netcare Hospital Group (Pty) Ltd and The Akeso Group

47. The Commission has recommended to the Tribunal that the proposed merger be prohibited, whereby Netcare Hospital Group (Pty) Ltd and Netcare Property Holdings (Pty) Ltd, collectively referred to as Netcare, intends to acquire the Akeso Group and certain immovable properties, collectively referred to as Akeso.

48. The primary acquiring firm, Netcare, operates a private hospital network in South Africa and the United Kingdom. In South Africa, Netcare is active in operating a primary care network and medical emergency services.

49. Akeso is a group of in-patient clinics that provides individual, integrated and family orientated treatment for a range of mental health, psychological and addictive conditions. The Akeso Groups mental health hospitals are located throughout South Africa.

50. The Commission found that the proposed merger will result in significant combined market shares in the provision of mental healthcare services in a local market in Gauteng, with the merged entity likely to exercise market power. Netcare would have the highest number of mental healthcare beds post-merger and will likely be in a strong position to increase tariffs. Patients would have limited alternative mental health care hospitals The Commission took the view that other hospitals within the local market are small independent hospitals who are unlikely to place a competitive constrain on Netcare.

51. Moreso, given that Netcare does not currently operate an own standalone mental healthcare facility, it was likely to create its own new tariff file in respect of standalone mental health facilities and prices for mental healthcare services are likely to increase as a result because Netcare generally charges higher hospital tariffs when compared to other independent hospitals. Although Netcare and Akeso possess different practice codes and hence differences in their tariff structures, Netcare has the ability to increase Akeso's existing tariffs post-merger. Third parties engaged also suggested the same will likely happen as a result of the proposed merger.

52. In addition, because the proposed transaction would result in a significant change in market structure in a local market in Gauteng as Netcare would have footprint in areas that it currently does not operate before the merger, this would likely confer bargaining power to Netcare against medical aid schemes during tariff negotiations.

53. Furthermore, the Commission took the view that given the small number of independent hospitals in the local market and the fact that these hospitals possess relatively small number of mental hospital beds, it was likely that Netcare would acquire a competitive advantage in terms of obtaining Designated Service Provider (DSP) and other network arrangements to the detriment competition against these smaller rivals.

54. In light of there being no remedies which could allay the Commission's concerns, the Commission prohibited this merger.

E. COMPLIANCE AND IMPACT OF REMEDIES IMPOSED IN Q2

55. The Monitoring Unit (the 'Unit') is responsible for monitoring active conditions that are pending, closing lapsed conditions and commenting and reviewing new conditions to be imposed. In addition, the Unit also investigates allegations of apparent breach of conditions.

56. In this financial year, the Unit has identified 23 conditions that are due for closing. At the end of Q3, the Unit had closed 5 conditions. The Unit dealt with 1 investigation for an alleged breach in Q3, which is still pending. This report will highlight the number of conditions closed at the end of Q3 as well as the new conditional approvals in Q3.

(a) Monitoring Pending Conditions

57. At the commencement of Q3, the Unit was monitoring 153 cases where conditions have been imposed. At the end of Q3, 5 cases were closed and 21 new cases were added to the monitoring list. At the end of Q3, the Unit is therefore monitoring 169 cases. The number of conditional approvals in Q3 slightly increased when compared to the 18 conditional approvals in Q2. These statistics will be presented later below under the section dealing with conditions imposed in Q3.

(b) Closing of lapsed conditions

58. In the ***Mario II Corp and Sigma-Aldrich Corporation*** merger, the Conditions required the merged entity to renew the Distribution Agreements of two small distributors of Sigma-Aldrich, being Lehlabile Scientific CC and Capital Lab Supplies CC, for a period of 2 (two) years. In addition, the Conditions required the merged entity to not retrench more than 6 (six) employees as a result of the merger.

[1] *The Commission imposed conditions in 18 cases and the Tribunal imposed conditions on 3 cases, which the Commission had not imposed conditions on.*

The various compliance reports submitted by the merged entity confirmed that it has complied with the Conditions, as the merged entity renewed the Distribution Agreements of the small distributors and did not retrench any employees for a period of 2 (two) years.

59. In the ***Vukile Property Fund and Thavhani Property Investments in respect of a 1/3 interest in the Thavhani Mall Letting Enterprise*** merger, the Tribunal granted Vukile Property Fund approval for the acquisition of the remaining undivided share in Thavhani Mall (Step-in Rights), which would have triggered a separate merger notification, on condition that Vukile Property Fund exercises its Step-in Rights by 25 May 2017. Vukile Property Fund failed to exercise its Step-in Rights by 25 May 2017 as stipulated by the Conditions and therefore forfeited the Tribunal's approval for the acquisition of the remaining undivided share in the Thavhani Mall. The Conditions therefore lapsed and were closed by the Unit.

60. In the ***Foster Wheeler M&M and MDM Engineering Group*** merger, the Conditions required the merged entity not to retrench any employees as a result of the merger for a period of 3 (three) years. The various compliance reports submitted by the merged entity confirmed that they have complied with the Conditions, as they did not retrench any employees as a result of the merger during the moratorium period.

61. In the ***Dimension Data Middle East and Africa and Britehouse Holdings*** merger, the Conditions required the merged entity to not retrench any employees as a result of the merger for a period of 2 (two) years. The various compliance reports submitted by the merged entity confirmed that they have complied with the Conditions, as they did not retrench any employees as a result of the merger during the moratorium period.

62. In the ***Holcim and Lafarge S.A*** merger, the Conditions required Holcim to divest its 2.03% shareholding interest in AfriSam to a purchaser approved by the Commission within a period of 3 (three) years from approval date. Holcim has since divested the shareholding interest and it has provided the transactional documents in accordance with the Conditions. Holcim has therefore complied with the Conditions.

(c) Investigations on potential breach of conditions

ANHEUSER-BUSH INBEV SA/NV ("AB INBEV") AND SABMILLER PLC

63. The Commission received a complaint from Distell Limited ("Distell"), a competitor of the Merged Entity, alleging that the Merged Entity has breached and continues to breach clause 7.2 of the Conditions. The clause in question requires the Merged Entity not to induce Outlets[2] to refuse providing refrigeration space to the Merged Entity's competitors. The Unit, with the help of LSD and the merger investigation team, is investigating the alleged breach against the Merged Entity and this process is still ongoing.

(d) Conditions imposed on cases

64. During Q3, 18 (eighteen) cases were approved with conditions by the Commission and these are reflected in Table 1 below.

Table 1: List of cases approved with conditions by the Commission in Q2

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2017Aug0011	Firefly Investments 326 (Pty) Ltd	Bayport Financial Services 2010 (Pty) Ltd	Financial Services	Behavioural: Self-monitoring – cross shareholding/ information exchange: Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and to appoint common directors.
2017Aug0029	Deneb Investments Ltd	New Just Fun Group (Pty) Ltd	The Import and distribution of traditional toys and retail traditional toys	Public Interest – Employment: Acquiring firm and/or the acquiring firm's subcontractor to offer employment to employees employed by the current subcontractor for the acquiring firm.
2017Sep0003	Sylvania Metals (Pty) Ltd	Phoenix Platinum (Pty) Ltd	Production and Supply of PGMs	Public Interest – Employment: Moratorium on retrenchments for a period of 2 years from implementation date.
2017Jul0052	Libstar Operations (Pty) Ltd	Sonnendal Dairies (Pty) Ltd	Fast Movable consumer goods and the manufacture of dairy products	Behavioural – The merging parties were obligated to amend their restraint of trade clause in respect of geographic scope
2017Sep0007	Gutsche Family Investment Proprietary Ltd	Fairfield Dairy (Pty) Ltd	Movable consumer goods and the manufacture of dairy products	Behavioural: Self-monitoring – additional acquisitions: The acquiring firm is obligated to notify the Commission in respect of a further acquisition of shareholding interest in Fairfield Dairy (Pty) Ltd.

[2] The Conditions define Outlets as licensed on- and off- consumption outlets. The Outlets include retailers, taverns, over the counter retailers, events, stadiums and any other premise that is temporarily or permanently used for licensed sale of alcoholic beverages.

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2017Aug0073	Opel Automobile GmbH and the Opel Distribution Network	Chevrolet AfterSales Distribution Network of General Motors South Africa (Pty) Ltd	Wholesale of vehicles by commission agents	Public Interest – Employment: Opel Automobile GmbH shall transfer employees to Opel SA and or the general distributer being (Unitrans Automotive (Pty) Ltd.
2017Aug0052	Isuzu Motors South Africa Proprietary Limited	General Motors South Africa Proprietary Limited	Wholesale of vehicles by commission agents	Public Interest – Employment: GMSA shall transfer employees to Isuzu Motors Ltd
2017Sep0065	KAP Bedding (Pty) Ltd	Support a Paedic CC and RME Components CC	Manufacture of mattresses fitted with springs	Behavioural - The merging parties are obligated to reduce their restraint of trade period from 05 years to 3 years.
2017Sep0021	CTP Limited	Private Property South Africa Proprietary Limited	Online property portals	Behavioural – cross shareholding/information exchange: Obligation not to exchange competitively sensitive information and to appoint common directors.
2017Aug0062	Gallus Holdings td	Sovereign Foods Investment Ltd	Movable consumer goods	Public Interest – Employment: Moratorium on retrenchments for a period of 2 years from implementation date.
2017Apr0046	SOIHL Hong Kong Holding Limited	Chevron South Africa Proprietary Limited	Petrol, fuel oils, lubricating oils and greases	Public Interest: Employment – CSA obligated not to retrench any employees as a result of the merger. CSA is also obligated to maintain the headcount of employees for a period of no less than 5 years of implementation date. Public Interest: SME or BEE – Sinopec obligated to procure that CSA invests a total of 6 billion towards the modernisation and upgrade of the refinery owned and operated by CSA over and above the current investment plan by CSA. Sinopec to ensure that CSA maintains at least the baseline number of independently owned service stations. Sinopec is also obligated to give preference to small black owned business where new independently owned service stations are established. In addition, Sinopec is also obligated to ensure that CSA's service stations are fully branded in line with Sinopec's branding requirements by approximately 2024. Sinopec is obligated to: 1. increase its level of supplies of LPG to Black-owned Businesses 2. make available unused LPG storage capacity to third parties with a preference to black owned businesses 3. increase where feasible LPG supply into South Africa through purchases on international markets 4. make any available unused storage capacity available to third parties with a preference to black owned businesses. Public Interest: Procurement –Sinopec will procure that CSA shall maintain or increase the current level of local procurement of goods and services. Sinopec shall procure that CSA does not substitute current local owned suppliers with off-shore suppliers of goods and services.

				Public Interest: Development Fund for SMEs – Sinopec undertakes that it shall provide funding worth R215 million to a Development Fund over a period of 5 years from the implementation date. The development fund will be focused on the development of small businesses and black owned businesses. Public Interest: BEE – Sinopec undertakes to procure that CSA increases the BEE shareholding in CSA from 25% to 29%. In addition, Sinopec undertakes to procure that CSA: 1. uses its reasonable endeavours to increase its current B-BBEE score card rating by two levels (from level 4 to 2) within 2 years from the implementation date; 2. increases the number of service stations operated by black owned business in large metropolitan areas Export of south African Products: Sinopec to use its reasonable endeavours to promote the export and sale of manufactured products for sale in China.
2017Mar0146	Stefanutti Stock (Pty) Ltd (“Stefanutti”)	TN Molefe Construction proprietary Limited and Axsys Projects (Pty) Ltd	Construction	Behavioural – information exchange: Stefanutti to ensure that persons responsible for mentorship and development of emerging contractors are not the same persons appointed as trustees to represent Stefanutti’s interests in the fund established in terms of the settlement agreement reached between construction companies and the Government of the Republic of South Africa. Stefanutti Information exchange – Obligation not to exchange competitively sensitive information and to appoint common directors. Behavioural: Allocation of work/projects – Stefanutti shall ensure that it allocates work/projects to each emerging contractor in a fair and non-prejudicial manner. Development of a Competition Compliance Policy – Each of the Stefanutti alliance members shall develop and implement a Competition Compliance Policy within 6 months of the approval date.
2017Mar0147	WBHO Construction Proprietary	Fikile Construction Proprietary Limited	Construction	Behavioural – information exchange: WBHO to ensure that persons responsible for mentorship and development of emerging contractors are not the same persons appointed as trustees to represent WBHO’s interests in the fund established in terms of the settlement agreement reached between construction companies and the Government of the Republic of South Africa. WBHO Information exchange: Obligation not to exchange competitively sensitive information and to appoint common directors. Behavioural: Allocation of work/projects – WBHO shall ensure that it allocates work/projects to each emerging contractor in a fair and non-prejudicial manner. Development of a Competition Compliance Policy – Each of the WBHO Alliance Members shall develop and implement a Competition compliance policy within 6 months of the approval date.

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2017Mar0148	Raubex Proprietary Limited	Umso Construction Proprietry Limited	Construction	Behavioural – information exchange: Raubex to ensure that persons responsible for mentorship and development of emerging contractors are not the same persons appointed as trustees to represent Raubex's interests in the fund established in terms of the settlement agreement reached between construction companies and the Government of the Republic of South Africa. Raubex. Information exchange conditions: Obligation not to exchange competitively sensitive information and to appoint common directors. Behavioural: Allocation of work/projects – Raubex shall ensure that it allocates work/projects to each emerging contractor in a fair and non-prejudicial manner. Development of a Competition Compliance Policy: Each of the Raubex alliance members shall develop and implement a competition compliance policy within 6 months of the approval date.
2017Sep0008	Steinhoff Doors and Building Materials (Pty) Ltd	Building Supply Group (Pty) Ltd	Wholesale of building material	Public Interest – Employment: Moratorium on retrenchments for an indefinite period and an obligation to increase the number of full time employees to no less than 50 by implementation date. Black economic empowerment: Obligation on OML to increase its BEE shareholding to 25% within 3 years from the implementation date Enterprise development commitments: OML to procure that the Old Mutual Group shall allocate an incremental amount of R500 million to a perpetual ring-fenced enterprise development fund.
2017Oct0042	Lewis Stores Proprietary Limited	United Furniture Outlets Proprietary Limited	Wholesale of building material	Public Interest: Employment – Moratorium on retrenchment of employees for a period of 2 years from Approval Date.
2017Oct0027	Royal Bafokeng Platinum Limited	Maseve Investments 11 (Pty) Ltd	Mining of PGM's and PGM bi-products	Public Interest – Employment: Obligation on the acquiring firm to appoint 115 employees at the Concentrator plant by July-2018, with preference being given to 115 employees previously employed at the concentrator plant. The acquiring party shall take over 20 permanent employees currently employed by Maseve Investments (Pty) Ltd.
2017Oct0038	Colefax Trading (Pty) Ltd	KFC (Pty) Ltd	Fast Food chains	Public Interest – Employment: Moratorium on retrenchment of employees for a period of 2 years from Approval Date.

Source: Competition Commission

65. Table 1 indicates that of the 18 cases, 10 had public interest conditions and 8 had competition conditions. Of the 10 public interest conditions, 8 related to employment while the remaining 2 were a combination of employment, BEE or SMEs and an effect on a particular sector or region. The 8 competition conditions were all behavioural conditions and there were no structural competition conditions imposed in Q3. Of the 8 cases, 5 related to information exchange and cross-shareholding, 2 related to the amendment of restraint of trade clauses and the remaining 1 related to notifying the Commission on further acquisitions.

66. In addition to the above, the Tribunal also imposed conditions on 3 mergers that were unconditionally approved and/or prohibited by the Commission. These cases are reflected in the table below.

Table 2: List of cases approved with conditions by the Tribunal in Q3

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2017Jul0024	MIH eCommerce Holdings (Pty) Ltd	Car Trader (Pty) Ltd		Public Interest – Employment: Moratorium on retrenchments for a period of 2 years from Approval Date.
2017Jun0001	K2014202010 (Pty) Ltd	Noordfed (Pty) Ltd	Manufacture of grain mill products	Behavioural: Self-monitoring – cross shareholding/ information exchange: LDCA shall procure that each member of the LDCA Board as well as each of LDCA's nominees appointed to the Board of Epko and KBM, signs a confidentiality agreement in terms of which it agrees that it will maintain confidentiality over Competitively Sensitive Information Public Interest – Employment: Moratorium on retrenchments for a period of 15 months from Approval Date. The Consortium shall also establish skills development fund for purpose of upskilling affected employees retrenched from Noordfed.
2016Dec0027	Louis Dreyfus Company Africa (Pty) Ltd	AM Alberts (Pty) Ltd	Manufacture of grain mill products	Behavioural: Self-monitoring – cross shareholding/ information exchange: Behavioural – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and to appoint common directors. Behavioural: Self-monitoring: Obligation to develop a competition law awareness programme Public Interest – Employment: Moratorium on retrenchments for a period of 15 months from implementation date. Obligation to also contact employees who have been retrenched informing them of employment opportunities and also upskilling of the affected employees for an amount no less than R1.5 million.

Source: M&A's construct

67. Table 2 indicates that of the 3 conditions imposed by the Tribunal, 1 had public interest conditions, which related to employment and the remaining 2 had a combination of behavioural and public interest conditions, which related to cross shareholding/information exchange and employment.

F. JOBS REPORT FOR Q3

68. The table below provides an overview of the impact on jobs in Q3. Table 2 considers the number of jobs lost, the number of jobs saved and the number of jobs likely to be created through mergers and acquisitions that were finalised in Q3.

69. 69. In Q3, 8 cases had an impact on employment. These cases related to the mining, manufacturing, finance, health, wholesale and information & communication sectors. This is slightly lower than in Q2 where 12 cases had an impact on employment. Of these 8 cases, 4 were approved with employment conditions by the Commission as illustrated in Table 3 below. The figures in Table 2 above suggest that less jobs were lost while more jobs were saved in Q3. This suggests a positive net impact on jobs in Q3.

Table 2: List of cases approved with conditions by the Tribunal in Q3

Month	Jobs lost	Jobs saved	Intended job creation	No. of cases	Net effect
October	147	70 330	0	3	+70 183
November	35	955	41	4	+961
December	0	0	50	1	+50
Total	**182**	**71 285**[3]	**91**	**8**	**+71 194**[4]

Source: M&A's construct

70. The 8 cases that had an impact on employment as reflected in Table 2 above are provided below:

a. 2017Aug0075 – Dimension Data Holdings PLC and Hatch Investments (Mauritius) Limited
b. 2016Dec0027 – Louis Dreyfus Company Africa (Pty) Ltd and AM Alberts (Pty) Ltd
c. 2017Jun0001 – K2014202010 (Proprietary) Limited (Holdco) and Noordfed Proprietary Limited
d. 2017Sep0003 – Sylvania Metals Proprietary Limited and Phoenix Platinum Mining Proprietary Limited
e. 2017Sep0019 – Discovery Health Medical Scheme and University of Witwatersrand, Johannesburg Staff Medical Aid Fund
f. 2017Aug0052 – Isuzu Motors South Africa Proprietary Limited and General Motors south Africa Proprietary Limited in relation to its Isuzu Light Commercial Vehicle Business
g. 2017Au0029 – Deneb Investments Limited and New Just Fun Group Proprietary Limited
h. 2017Sep0008 – K2017235138 (South Africa) (Pty) Ltd and Old Mutual Plc

71. Table 3 below provides details on the cases approved with employment conditions in Quarter 3.

Table 3: List of cases approved with employment conditions by the Commission in Q3

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2017Aug0029	Deneb Investments Ltd	New Just Fun Group (Pty) Ltd	The Import and distribution of traditional toys and retail traditional toys	*Public Interest* – Employment: Acquiring firm and/or the acquiring firm's subcontractor to offer employment to employees employed by the current subcontractor for the acquiring firm.
2017 Sep0003	Sylvania Metals (Pty) Ltd	Phoenix Platinum (Pty) Ltd	Production and Supply of PGMs	*Public Interest* – Employment: Moratorium on retrenchments for a period of 2 years from implementation date.
2017Aug0073	Opel Automobile GmbH and the Opel Distribution Network	Chevrolet AfterSales Distribution Network of General Motors South Africa (Pty) Ltd	Wholesale of vehicles by commission agents	*Public Interest* – Employment: Opel Automobile GmbH shall transfer employees to Opel SA and or the general distributer being (Unitrans Automotive (Pty) Ltd.
2017Aug0052	Isuzu Motors South Africa Proprietary Limited	General Motors South Africa Proprietary Limited	Wholesale of vehicles by commission agents	*Public Interest* – Employment: GMSA shall transfer employees to Isuzu Motors Ltd

2017Aug0062	Gallus Holdings td	Sovereign Foods Investment Ltd	Movable consumer goods	*Public Interest* – Employment: Moratorium on retrenchments for a period of 2 years from implementation date.
2017APR0046	SOIHL Hong Kong Holding Limited	Chevron South Africa Proprietary Limited	Petrol, fuel oils, lubricating oils and greases	*Public Interest:* Employment – CSA obligated not to retrench any employees as a result of the merger. CSA is also obligated to maintain the headcount of employees for a period of no less than 5 years of implementation date. Sinopec obligated to procure that CSA invests a total of 6 billion towards the modernisation and upgrade of the refinery owned and operated by CSA over and above the current investment plan by CSA.
				Sinopec to ensure that CSA maintains at least the baseline number of independently owned service stations. Sinopec is also obligated to give preference to small black owned business where new independently owned service stations are established. In addition, Sinopec is also obligated to ensure that CSA's service stations are fully branded in line with Sinopec's branding requirements by approximately 2024. Sinopec is obligated to: 5. increase its level of supplies of LPG to Black-owned Businesses 6. make available unused LPG storage capacity to third parties with a preference to black owned businesses 7. increase where feasible LPG supply into South Africa through purchases on international markets 8. make any available unused storage capacity available to third parties with a preference to black owned businesses. Procurement commitments: Sinopec will procure that CSA shall maintain or increase the current level of local procurement of goods and services. Sinopec shall procure that CSA does not substitute current local owned suppliers with off-shore suppliers of goods and services. Commitments in respect of the development fund: Sinopec undertakes that it shall provide funding worth R215 million to a Development Fund over a period of 5 years from the implementation date. The development fund will be focused on the development of small businesses and black owned businesses.

[3] Case No. 2017Aug0075 Dimension Data Holdings PLC and Hatch Investments (Mauritius) Limited (Dimension Data/Hatch investments) saved a total of 70 000 jobs hence the figure for jobs saved in Q3 appear high.
[4] This figure indicates that more jobs were saved and likely to be created in Q3 when compared to the number of jobs that were lost in Q3.

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
				Sinopec undertakes to procure that CSA increases the BEE shareholding in CSA from 25% to 29%. In addition, Sinopec undertakes to procure that CSA: 3. uses its reasonable endeavours to increase its current B-BBEE score card rating by two levels (from level 4 to 2) within 2 years from the implementation date; 4. increases the number of service stations operated by black owned business in large metropolitan areas Export of south African Products: Sinopec to use its reasonable endeavours to promote the export and sale of manufactured products for sale in China.
2017Sep0008	K2017235138	Old Mutual plc	Insurance	*Public Interest* – Employment: Moratorium on retrenchments for an indefinite period and an obligation to increase the number of full time employees to no less than 50 by implementation date. Black Economic Empowerment: Obligation on OML to increase its BEE shareholding to 25% within 3 years from the implementation date Enterprise development commitments: OML to procure that the Old Mutual Group shall allocate an incremental amount of R500 million to a perpetual ring-fenced enterprise development fund
2017OCT0042	Lewis Stores Proprietary Limited	United Furniture Outlets Proprietary Limited	Wholesale of building material	Public Interest: Employment – Moratorium on retrenchment of employees for a period of 2 years from Approval Date.
2017Oct0027	Royal Bafokeng Platinum Limited	Maseve Investments 11 (Pty) Ltd	Mining of PGM's and PGM bi-products	*Public Interest* – Employment: Obligation on the acquiring firm to appoint 115 employees at the Concentrator plant by mid-2018, with preference being given to 115 employees previously employed at the concentrator plant
2017Oct0038	Colefax Trading (Pty) Ltd	KFC (Pty) Ltd	Fast Food chains	*Public Interest* – Employment: Moratorium on retrenchment of employees for a period of 2 years from Approval Date.

Source: Competition Commission

72. Table 3 above indicates that the Commission imposed employment conditions on 10 cases. These cases related to the mining, insurance, wholesale and manufacturing sectors. This is slightly higher than in Q2 where 6 cases were approved with employment conditions.

G. FUTURE OUTLOOK

73. In terms of future outlook, in spite of the economic downgrade, the number of merger notifications continue to gradually rise in line with trends experienced in prior years in which there was no economic downgrade. Regardless of the economic outlook, there has been a marked decline in the number of business rescue and liquidations transactions in Q2. The mooted merger between PPC and Afrisam that has continuously been publicised in the papers has not been filed yet and may be notified in Q4 if it is still proceeding.

[5] *Of these 10 cases, 8 were purely employment related conditions and the remaining 2 were a combination of employment and BEE or SMEs and an effect on a particular sector or region.*

HOW TO LODGE A COMPLAINT
WITH THE COMPETITION COMMISSION

1 COMPLAINING AGAINST ANOTHER PARTY

Any person may provide information relating to contraventions of the Competition Act to the Commission. To begin the procedure officially, a complainant will need to complete and send Form CC1 (available at http://www.compcom.co.za/wp-content/uploads/2014/09/CC1-Complaint-Form.pdf) and supporting documentation to the Commission. The form can be sent to the postal address and/or email address provided on the form.

When a complaint is received, it is referred to the Commission's Screening Unit by the Registry. The Screening Unit can make a recommendation to the Commissioners to:

- Non-refer complaints that clearly do not raise any competition concerns; or
- Further investigate complaints that clearly raise competition concerns.

2 JOINING IN A CASE STARTED BY SOMEONE ELSE WITH A SIMILAR COMPLAINT

After the Commission has received a complaint, it may publish a notice in the Government Gazette and/or other media, inviting any person (who believes that the alleged practice has affected, or is affecting, a material interest of that person) to file a complaint about the matter.

3 GIVING RELEVANT INFORMATION

Any complaint submitted to the Commission must contain the following information:

1. Name of the person lodging the complaint (the complainant);
2. Name of the person/company being complained about;
3. A brief description of the conduct giving rise to the complaint;
4. Whether or not the conduct is continuing. If not, the date on which the conduct ceased;
5. A detailed written submission setting out the reason for the complaint, how it arose, the parties involved, relevant dates and any other relevant information.
6. Complainant's contact details i.e. postal address, phone number and email address.

4 PROTECTING INFORMATION GIVEN TO THE COMMISSION

A person/company providing information to the Commission may ask to remain anonymous. In such cases, the person/company cannot be a complainant in the matter. However, the Commissioner can launch an investigation on the basis of the complaint and thus becomes the complainant.

In addition, if information sent to the Commission contains trade, business or industrial information, has a particular economic value and is not generally available to or known by others – and the person providing the information does not want it revealed to others – he/she may request that it should be kept confidential. This is done by means of filling in a specific form relating to confidential information. Should a dispute arise as to the status of such information, the Commission may refer the matter to the Tribunal for determination.

5 SEEKING INTERIM RELIEF

Any person who has lodged a complaint with the Commission concerning a restrictive practice may ask the Tribunal for an interim relief order, whether or not a hearing or investigation has started in respect of the alleged prohibited practice.

In order to succeed with the request for this relief, the person will need to provide proof that the prohibited practice being complained of did occur as alleged, that the relief sought is most likely to prevent serious damage to his/her interest and that the order would prevent the aims and objectives of this law being contravened.

6 WHERE THE COMMISSION DOES NOT REFER A MATTER TO THE TRIBUNAL

If the Commission declines to refer a complainant's case to the Tribunal for prosecution, the complainant may refer the matter to the Tribunal at his/her own cost within 10 days of receiving a "Notice of Non-Referral" from the Commission.

7 WITHDRAWING A COMPLAINT

In terms of Rule 16 of the Competition Act, a complainant may withdraw a complaint lodged at the Commission at any time during an investigation. In such circumstances, the Commission can accept the withdrawal. However, the Commission can still continue to investigate the complaint (as if the Commissioner had initiated it) or non-refer the matter.

14 FRESH PRODUCE MARKET AGENTS & INSTITUTE CHARGED FOR PRICE FIXING

The Commission's continued aggressive pursuit of cartels resulted in the referral of 14 fresh produce market agents and their association, the Institute for Market Agents of South Africa, to the Tribunal for prosecution on charges of price fixing and/or fixing trading conditions.

This referral in October last year follows search and seizure operations conducted by the Commission at the premises of the agents in Pretoria, Johannesburg, Cape Town and Durban in March 2017.

The Commission contends that the agents, which serve as fresh produce market intermediaries between farmers and buyers of freshly produced fruits and vegetables in South Africa, agreed and/or engaged in a concerted practice to charge farmers the same commission fee when selling their fresh produce to customers.

A Commission investigation found the fixed commission fee had been charged to farmers as follows:

- 5% to 6% for potatoes and onions;
- 7.5% for all other fruits and vegetables; and
- Up to 9.5% for all fruits and vegetables delivered to them by farmers without pallets.

HIGH COURT THROWS OUT FRESH PRODUCE MARKET AGENT BID TO STOP COMMISSION INVESTIGATION

The Gauteng North High Court dismissed an application by Farmers Trust CC (Farmers Trust) to set aside the Commission's search warrant in the Fresh Produce Market Agents matter, in May last year.

Farmers Trust argued, among others, that the warrant should not have been granted on an urgent basis and that statements contained in the Commission's affidavit (in its application for the warrant) constituted inadmissible hearsay evidence. Farmers Trust also maintained that it should have been informed about the Commission's application for the search warrant prior to issuing it.

The Court ruled in the Commission's favour, dismissing the application to set aside the search warrant with costs: The court said: "The Act aims to serve the greater good and it is self-evident that in order to be able to do so the Commission must be able to investigate a complaint properly. It will be counterproductive if the Commission is required to inform a party about the possibility of a search and seizure as it will defeat the purpose of an investigation. Under these circumstances it is justifiable that a suspected firm is not given notice of the application in terms of section".

The fresh produce market agents are all members of the Institute for Market Agents of South Africa and the practice of charging a fixed commission fee is enforced by the Institute. In addition, the practice has been in place for over 50 years and is ongoing. The conduct amounts to an agreement and/or concerted practice to fix prices and/or trading conditions and is in contravention of section 4(1)(b)(i) of the Competition Act.

The fresh produce market agents who are listed as Respondents in the referral are: Botha Roodt (Johannesburg); Botha Roodt (Pretoria); Suptropico (Pty) Ltd; Interaction Market Services; Holding (Pty) Ltd; Dapper Market Agents (Pty) Ltd; Dw Fresh Produce CC; Farmers Trust CC; Noordvaal Market Agents (Pty) Ltd; Marco Fresh Produce Agency; Wenpro Market Agents CC; Wenpro Market Agents (KZN); Prinsloo & Venter Market Agents; Fine Bros (Pty) Ltd; and Delta Market Agents (Pty) Ltd.

The matter emanates from a complaint lodged by the Department of Agriculture Forestry and Fisheries (DAFF) alleging, among others, that agents who act as intermediaries between farmers and buyers of fresh produce are involved in anti-competitive behaviour and that previously disadvantaged market agents are not able to compete effectively within the market.

FOOTBALL AGENTS
IN A FIX FOR CARTEL CONDUCT

In another cartel conduct matter that shook the sports community, the Commission referred the South African Football Intermediaries Association (SAFIA) and 35 of its members to the Competition Tribunal for prosecution in relation to fixing of prices and trading conditions in October 2017.

SAFIA is a body of sports agents who manage soccer players and coaches. They, by and large, negotiate transfer fees and contracts. A Commission investigation has revealed the following, among others:

- SAFIA and its members agreed to charge soccer players and coaches a standard 10% commission fee when negotiating transfer fees and contracts on their behalf;
- They charge football players a standard 20% commission fee when negotiating commercial contracts; and
- They use SAFIA as a platform for collusion.

In July 2015, the Commission received a complaint from SAFIA against SAFA. SAFIA alleged that the 3% cap introduced by SAFA constitutes fixing of an agent's fee in contravention of the Competition Act. Following an investigation, the Commission decided not to prosecute the matter.

However, during its investigation, the Commission obtained evidence that SAFIA and its members may have engaged in collusive conduct by fixing the commission they charge football players and coaches. In December 2015, the Commissioner launched an official investigation against SAFIA and its members.

On 1 May 2015, South African Football Association ("SAFA") introduced and implemented Regulations that were specifically designed to regulate the conduct of the intermediaries also known as football agents on carrying out their services in the football industry.

The Regulations introduced a 3% cap on remuneration earned by intermediaries that negotiate contracts with football clubs on behalf of football players and coaches and sometimes football clubs. Prior to this Regulations, football agents charged 10% commission when negotiating contracts with football clubs on behalf of football players and coaches.

On 25 June 2015, SAFIA was granted an interdict by the High Court of South Africa, South Gauteng Division, preventing SAFA from implementing the Regulations to the intermediaries. On 20 July 2015, the Commission received a complaint from SAFIA against SAFA. SAFIA alleged that the 3% cap introduced by SAFA constitutes a fixing of agents fee in contravention of section 4(1)(b)(i) of the Act. The Commission decided to non-refer the complaint.

However, during the investigation, the Commission obtained evidence detailing

that SAFIA and its members who are intermediaries might have engaged in a collusive conduct by fixing the commission they charge football players and coaches.

On 14 December 2015, the Commissioner initiated a complaint in terms of section 49(B)(1) of the Act against SAFIA and its members for allegedly fixing the commission they charge football players and coaches in possible contravention of section 4(1)(b)(i) of the Act.

The respondents are football agents. Football agents negotiates contracts with football clubs on behalf of football players and coaches. The agents also negotiates commercial contracts on behalf of football players and coaches. Commercial contracts are contracts concluded with football players and coaches for promoting, marketing and advertising products on behalf of brand owners.

They charge football players and coaches a fee for rendering these services. A football player or a coach who wishes to join, renew or change football clubs engages the services of agents to negotiate contracts on their behalf. The football agents have been charging 10% commission fee to football players and coaches for rendering this service.

SAFA acting on instructions of FIFA sought to regulate the affairs of the agents including to reduce the 10% commission to 3%. SAFIA blocked this attempt through a court interdict.

They have also been charging football players and coaches 20% commission for negotiating and concluding commercial contracts.

As things stand the agents continue to charge football players and coaches 10% commission of their guaranteed earnings and 20% of the value of the commercial contract. It is this practice of charging a standard 10% and 20% commission that is subject of this investigation.

The Alleged Conduct

- It is alleged that the respondents have entered into an agreement and/or engaged in a concerted practice to fix prices and/or trading condition.
- It is alleged that the respondents charged a fixed commission fee of 10% when negotiating new contracts, transfer contracts or renewing existing contracts on behalf of football players or coaches.
- It is further alleged that the respondents use SAFIA as a platform for collusion.

The above conduct amounts to price fixing and/or fixing of the trading conditions in contravention of section 4(1)(b)(i) of Act. The conduct is ongoing.

It is common cause that all the respondents are charging 10% commission of the transaction value when negotiating deals on behalf of football players and/or coaches and 20% for commercial contracts.

This is borne out of the standard contracts concluded by the respondents with football players and coaches as well as from the testimonies of the representatives of the respondents interrogated by the Commission.

There are however, some respondents that have indicated during interrogations that they deviate from the standard commission. But their contracts which they conclude with football players and coaches records that they charge the standard commission of 10% and 20% for commercial contracts.

In referring the matter to the Tribunal for prosecution, the Commission is seeking an order declaring that SAFIA and its members contravened the Competition Act. The Commission also wants to interdict the affected parties from contravening the Act in future.

Further, the Commission is seeking an order that each of the 36 parties be held liable for the payment of the maximum fine allowable in terms of the Competition Act.

The 36 parties in the matter:

1. South African Football Intermediaries Association
2. Pro Sport International (Pty) Ltd
3. Siyavuma Sports Group (Pty) Ltd
4. The Players Club CC
5. Bidvest Media (Pty) Ltd, trading as MSC Sports
6. Quality Talent Sports (Pty) Ltd
7. Prof' Sionalz Marketing and Management CC
8. JDR Consulting (Pty) Ltd
9. P Management (Pty) Ltd
10. Musawenkosi Arthur Dlamini
11. Tebogo Taunyane Hlapolosa
12. GS Sports Agency (Pty) Ltd
13. Erika Bester
14. Sierra Sports Agency CC
15. KN Sports CC
16. Bheki Khathide
17. Liberate Resources Sports Management CC
18. Eclectic Sports Management (Pty) Ltd
19. On the Ball Sports Management (Pty) Ltd
20. Touchline Sports Management (Pty) Ltd
21. True Ambition Sports Management (Pty) Ltd
22. Eliot Nzama
23. Ben Kokela
24. ETM Sports Management CC
25. Sports Midfield Agency (Pty) Ltd
26. Alex Bondarenko
27. Mede8 Sports (Pty) Ltd
28. New Generation Sports Management (Pty) Ltd
29. Abelsam Sports Management CC
30. Cape Colosseum Management CC
31. Sipho Shaven
32. MVP Sports Management International (Pty) Ltd
33. Modhouma Holding (Pty) Ltd
34. Gladwin Mpho Diokane
35. Vasili Barbis
36. Phelele Mkhize

STANDARD BANK
DEALT A BLOW IN THE FOREX MATTER

Standard Bank suffered a major setback in the forex matter when the Competition Tribunal ruled against the bank's application to compel the Commission to produce its investigation record before it could file its plea to the charge.

The order delivered on 06 November 2017, follows an application brought by Standard Bank to the Tribunal to force the Commission to release the record within five days of the anticipated order.

Standard Bank brought the application separately from the Forex case, relying on a rule in the Commission's rules of procedure that allows any person to have access to the Commission's record of investigation once the case has been referred.

This is after the Commission refused to provide the bank with the record of its investigation before discovery, that is before Standard Bank has filed its plea to the charge.

The Commission argued, in the alternative, that the reasonable time to give Standard Bank access to the record of investigation would be at the discovery stage.

The bank had to first file its answer to the charges against it. In turn, Standard Bank argued that the reasonable time was immediately, just five days after the Tribunal rules in its favour on its application.

The Tribunal agreed with the Commission, thus ruled in its favour that indeed the reasonable time to give Standard Bank access to the record of the investigation is at the discovery stage. The ruling meant that Standard Bank could not have access to the Commission's record of the investigation until it has filed its answer to the charges against it.

The Commission had also argued that the application be dismissed as it is procedurally flawed because the bank should have brought an application to review the Commission's decision to refuse it with access to the record. However, the Tribunal ruled in favour of Standard Bank asserting that the application to compel production of record was properly brought before it.

Standard Bank has appealed the decision and the matter will be heard in the Competition Appeal Court on 25 April 2018.

In February 2017, the Commission referred a collusion case to the Tribunal for prosecution against Bank of America Merrill Lynch International Limited, BNP Paribas, JP Morgan Chase & Co, JP Morgan Chase Bank N.A, Investec Ltd, Standard New York Securities Inc., HSBC Bank Plc, Standard Chartered Bank, Credit Suisse Group; Standard Bank of South Africa Ltd, Commerzbank AG; Australia and New Zealand Banking Group Limited, Nomura International Plc., Macquarie Bank Limited, ABSA Bank Limited (ABSA), Barclays Capital Inc, Barclays Bank plc.

THE HEARING PLAGUED BY BANK DELAYS

Although the Commission referred the matter to the Tribunal for prosecution setting out its case clearly against the banks in the referral papers, none of the banks have answered to the merits of the allegations. Instead, some have raised exceptions with regard to jurisdiction.

The Commission filed a reply to these exception laying out the legal basis for the referral stating crystal clear that the test was not whether or not a firm was based in South Africa, but whether or not the conduct of the enterprise had an effect on South Africa.

On 10 March 2017, there was a pre-hearing and a Commission proposed timetable was agreed upon by all parties for the further conduct of preliminary proceedings. The timetable was made an order of the Tribunal. It allowed the Commission up until 31 March 2017 to supplement its complaint referral and it also provided for the filing of exception applications on 3 May 2017 by any of the respondents.

The Commission had to file answering by 31 May 2017, Respondents had to file replying affidavits by 14 June 2017.

Given that the matter is of enormous public interest, the Commission approached the Tribunal and requested separate dates for hearings of each of the 14 exception applications.

An in-camera pre-hearing was scheduled on 23 June 2017 further management of the matter. The Tribunal would hear all the exception applications in a public hearing on 20 and 21 July 2017.

It was hoped that only after all such preliminary or interlocutory proceedings were finalised that the case will be ready for a hearing of the merits.

The in-camera pre-hearing was held in June 2017. Unfortunately, there was a request for documentation from the Commission and this led to the hearings scheduled for 20 -21 to be cancelled after the matter was taken off the roll.

On 24 July the Commission filed an application for separation of the exceptions, 12 of the 14 respondents which bought exceptions filed replies opposing the application on 07 August 2017. Two respondents filed notices of intention to abide by the Tribunal's ruling.

- The purpose of the 20/21 July hearings was to clear or settle these issues so that the matter can expeditiously move towards hearing the merits. So these dates were set aside to hear the exceptions as filed by the Respondents. We had, when the exceptions were raised, warned that it would be difficult to hear all the exceptions (14) at the same time given the fact that most parties raised different issues that were related to the rest of the parties. We proposed that they be heard separately.

On 28 August 2017, the matter was back at the Tribunal.

On 05 September the Tribunal ordered that all the exceptions by the banks be heard thematically over three days from 24 to 26 January 2018, rather than hearing exceptions separately by each bank.

The hearing were confined to "pure exceptions" i.e. those based on the referral

as supplemented. They could only deal with exceptions to the referral as it stood then. No new facts could be produced by the respondents.

The hearing would be divided according to:

1. Jurisdiction
2. The failure to plead material facts or which others have characterised as failure to sustain a cause of action.

On 18 September, the Tribunal heard Standard Bank's discovery application asking for an order:

- directing the Commission to provide Standard Bank with the Commission's record of investigation in respect of the complaint lodged with the Tribunal (the record), and
- that the Commission make the record available to Standard Bank within 5 days of the date of the order.

On 06 November the Tribunal released its verdict dismissing the Standard Bank application.

On 21 December 2017, the Commission submitted a supplementary affidavit which included the intention to join new applicants.
On 17 January the Tribunal issued new directives to all parties ordering that all exception applications in this matter, set down for hearing from 24-26 January 2018, are postponed sine die (indefinitely), pending new directions. The pre-hearing set down for 24 January 2018 would discuss a new way forward for the case. The pre-hearing will be closed.

- The Commission is ready to have the case heard by the Tribunal. The delay in hearing the complaint is occasioned by exception applications file by the 14 banks. These exception applications will have to be heard first before hearing of the complaint referral can take place. At the moment, the banks have not filed their answers to the complaint referral.

The Commission is also ready to have the exceptions heard. Given that the matter is of enormous public interest, the Commission approached the Tribunal and requested separate dates for hearings of each of the 14 exception applications.

When it became clear that this would indeed be the case as the 14 banks ganged up, hiding behind each other – then it was decided to roll or schedule the matter as we had suggest at the beginning.

On 30 July to 3 August 2018, the Tribunal will hear the revised exceptions and joinder applications. All exceptions will be heard at the same time and thematically.

CITIBANK PAYS MILLIONS FOR ITS ROLE IN THE FOREX CARTEL

Almost a month after the Commission decided to refer the banks to the Tribunal for prosecution, Citibank N.A agreed to pay R70m administrative penalty in a consent settlement agreement for its role in the forex cartel.

The fine did not exceed 10% of Citibank's annual turnover in South Africa. Citibank admitted that between September 2007 and October 2013, Citibank N.A. and its competitors manipulated the price of bids and offers through agreements to refrain from trading and creating fictitious bids and offers at particular times.

It went on to further admit that the members of the forex cartel assisted each other by allowing a trader with a large open risk position to complete his trades first before trading and through holding and/or pulling their trades to reserve liquidity for each other instead of trading normally in the market.

Citibank further conceded to fixing bids, offers and bid-offer spreads in relation to spot trades on ZAR currency pairs through co-ordination/alignment of the bids, offers, and bid-offer spreads quoted to customers.

Citibank N.A. will appear as a witness in the matter and has already begun supplying essential information. Citibank N.A, moreover, undertook to not engage in any future conduct in contravention of the Competition Act 89 of 1999 and continue its existent implementation programmes.

Citibank is the first of the banks reach a settlement agreement with the Commission in the complaint the Competition Commission v Bank of America Merrill Lynch and Seventeen Others lodged with the Tribunal.

A decision regarding the settlement agreement was postponed after a hearing on 22 March, 2017 as the Tribunal had asked for additional information from the Competition Commission regarding the percentage of Citibank's turnover on which the fine is based.

The allegations against the respondents are that they entered into an agreement and/or exchanged in concerted practice to directly or indirectly fix prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and futures trades though coordination/alignment of the bids, offers and bid-offers spreads that they quote to customers who buy and sell certain foreign currency pairs involving the Rand.

On 23 August, 2016 the Commissioner amended the complaint to include ABSA Bank Ltd; Barclays Capital Inc; Credit Suisse Group; Commerzbank AG; Bank of America Merrill Lynch International Ltd; HSBC Bank Plc, ANZ; Citibank N.A; JP Morgan; Nomura International Plc; Macquarie Group; and JP Morgan Chase Bank N.A as additional respondents and to include the conduct of dividing markets by allocating customers to the respondents.

competition commission
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