COMPETITION NEWS

EDITION 61 | JUNE 2018

MEDIA COMPANIES PROSECUTED FOR COLLUSION

At least six media companies out of 30 that were implicated in a media advertising cartel have agreed to pay penalties amounting to millions of Rands after they admitted to charges of collusion and cartel conduct.

In February this year, the Commission referred to the Competition Tribunal for prosecution twenty-eight (28) media companies on charges of price fixing and the fixing of trading conditions, in contravention of contravening section 4(1)(b)(i) of the Competition Act.

The Commission investigation found that 30 (thirty) media companies, through the Media Credit Co-Ordinators (MCC), had agreed to offer similar discounts and payment terms to advertising agencies that place advertisements with MCC members. The investigation also found that:

- MCC accredited agencies were offered a 16.5% discount for payments made within 45 days of the statement date, while non-members were offered 15%;

... Continued on page 4

IN THIS ISSUE

09 COFFEE SUPPLIER FINED FOR FIXING PRICE OF COFFEE CAPSULES

17 CCSA APPROVAL OF NYK, MOL AND KI SHIPPING JV MERGER

32 WE NEED TO EMBRACE AN EVER-EVOLVING DIGITAL ECONOMY

EDITORIAL NOTE

Welcome to another edition of *Competition News*, your favourite quarterly competition law, enforcement, and policy newsletter from the Competition Commission (SA). A lot has happened since we last touched base and anti-competitive busting continues to be the name of the game.

In this edition our remarkable team has put together this newsletter at a very interesting time when South African policy makers are looking at amending the Competition Act.

This edition's cover story features Media companies involved in cartel conduct that includes price fixing and the fixing of trading conditions in contravention of the Competition Act.

We also focus on international and local companies that have been referred to the Tribunal for prosecution relating to prohibited practice on rail track construction, coffee capsules and airlines.

There is also a special feature on mergers along with the regular mergers quarterly report. Our mergers quarterly report indicates that conditions in South Africa are predicted to improve and is dependent on the political and economic conditions in the country.

We are delighted to announce that the Commission has won two international awards from the 8th Annual Global Competition Review Awards. This includes agency of the year and matter of the year.

This edition also includes two opinion pieces which have been published in national newspapers. Deputy Commissioner, Hardin Ratshisusu, reflects on competition policy and the challenges that lie ahead while the Acting Chief of Staff, David Maimela, considers the need to embrace an ever evolving digital economy.

We trust you will spend many hours enjoying the rich content presented in this edition of *Competition News.* Lastly, we bid one of our team members, Gillian de Gouveia, who leaves the Commission at the end of June 2018. We thank her for her contribution and wish her well on her future endeavours. We extend our thanks and appreciation to everyone who has contributed through sharing their knowledge, opinions and expertise.

Happy reading!

EDITORIAL TEAM

Hardin Ratshisusu
Deputy Commissioner

Temosho Sekgobela
Case Advisor to the Deputy Commissioner

Sipho Ngwema
Head of Communication

Gillian De Gouveia
Media Relations Specialist

Lydia Molefe
Communications Coordinator

***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).*

RAIL MAINTENANCE COMPANY PAYS R8M FOR COLLUSION

Plasser South Africa (Pty) Ltd, a Gauteng company which provides rail track construction and maintenance services, recently admitted to participating in the division of markets and collusive tendering in relation to rail maintenance tenders issued by Transnet (SOE) Limited between 1997 and 2013.

> Between 1997 and 2013 Aveng, through its subsidiary Lennings, agreed with Plasser to divide markets and tender collusively

This follows a Commission investigation, launched in February 2014, against Aveng (Africa) Limited, Lennings DEC Rail Service (Pty) Ltd (Lennings) and Plasser.

As part of a settlement agreement finalised with the Commission in February, Plasser agreed to pay a penalty of R8 427 625.92 (eight million four hundred and twenty seven thousand six hundred and twenty five rand and ninety two cents).

The Commission's investigation found that between 1997 and 2013 Aveng, through its subsidiary Lennings, agreed with Plasser to divide markets and tender collusively in respect of rail track construction and maintenance tenders issued by Transnet (SOE) Limited. They agreed to allocate tenders by providing each other with cover prices when submitting their bids.

The investigation further found that Lennings and Plasser agreed to allocate and tender collusively for the Dynamic Stabilizer Continuous Action Tampers (Dynacat) tenders issued by Transnet in 2003 and 2004, which had been concluded in April 2013.

The companies agreed that the Dynacat tender would be divided into two phases. The first phase was to be awarded in 2004 and the second phase in 2006. In terms of the agreement, the first phase of the tender would be allocated to Plasser's subsidiary, Railway Mechanised Maintenance Company (Pty) Ltd (RAMCO) and the second phase would be allocated to Aveng's subsidiary, Lennings.

This conduct amounts to dividing markets and collusive tendering in contravention of the Competition Act. In terms of the settlement agreement, Plasser admitted to contravening the Act and agreed that it was liable to pay the administrative penalty.

In addition, Plasser undertook to refrain from contravening the Competition Act in future and to implement and monitor a competition law compliance programme. The programme would have to incorporate corporate governance designed to ensure that employees, management, directors and agents do not engage in future contraventions of the Act. In particular, the compliance programme would need to include mechanisms for the monitoring and detection of any contraventions of the Act.

RAMCO was a BEE subsidiary of Plasser, which was liquidated by Plasser in 2010. Lennings was earlier granted leniency in line with the Commission's Corporate Leniency Policy.

.... Continued from page 1

- The media companies agreed to charge a 50% cancellation fee for all advertisements that the advertising agencies withdraw 24 hours before publication; and
- The implicated companies, as MCC members, employed the services of a company called Corex which would be the sole company to perform risk assessments on advertising agencies for the purposes of imposing a settlement discount structure and terms on advertising agencies.

In referring the matter to the Tribunal for prosecution, the Commission sought an order declaring that the companies contravened the Competition Act and that the company is liable to pay the maximum penalty allowable in terms of the Act.

In terms of the settlement agreements so far, the companies have agreed to the following remedies:

1. They will contribute to the Economic Development Fund over a period of three years. The fund will assist with the development of black owned small media or advertising agencies requiring assistance with start-up capital and to assist black students requiring bursaries to study media or advertising
2. They will provide 25% in bonus advertising space for every Rand of airtime or advertising space bought by qualifying small agencies (which meet the criteria in the Broad Based Black Economic Empowerment Act) for three years.
3. Full cooperation with the Commission in the media collusion case until all litigation is finalised and
4. Development, implementation and monitoring of a competition law compliance programme as part of their respective corporate governance policies.
5. The companies also agreed to charge a 50% cancellation fee in respect of all adverts that advertising agencies withdrew 24 hours before publication.

To date, the Tribunal has confirmed settlement agreements between the Commission and the following media companies:

	MEDIA COMPANY	ADMINISTRATIVE PENALTY (FINE)
1	DStv Media Sales (Pty) Ltd	R22 262 599.00
2	Independent Media (Pty) Ltd	R2 220 603.00
3	Caxton & CTP Publishers and Printers Ltd	R5 806 890.14
4	Provantage Media	R1 094 222.00
5	Media24	R13 828 892.26
6	MTV Networks Africa (MTV)	R966 692.83
7	Mediamark	R1 013 803.94
8	United Stations	R423 920.73

Economic Development Fund contributions to date

	MEDIA COMPANY	FUND CONTRIBUTION (REMEDY)
1	DStv Media Sales (Pty) Ltd	R8 000 000.00
2	Independent Media (Pty) Ltd	R799 417.00
3	Caxton & CTP Publishers and Printers Ltd	R2 090 480.45
4	Provantage Media	R393 920.12
5	Media24	R4 978 401.21
6	MTV Networks Africa (MTV)	R348 009.42
7	Mediamark	R364 969.42
8	United Stations	R152 611.46

Media companies listed in the matter

- SABC (SOC) Limited;
- Media 24 Ltd; Media 24 Magazines; (settled)
- Independent Newspapers (Pty) Ltd; (settled)
- The Mail & Guardian (Pty) Ltd;
- DSTV Media Sales (Pty) Ltd; (settled)
- MTV Networks Africa (Pty) Ltd; (settled)
- Primedia (Pty) Ltd;
- Avusa Media Limited;
- Primedia Outdoor (Pty) Ltd;
- Cinemark (Pty) Ltd;
- Comutanet (Pty) Ltd;
- Conde Nast Independent Magazine;
- Caxton and CTP Publishers and Printers Ltd; (settled)
- The Citizen 1978 (Pty) Ltd;
- Spark Media (Pty) Ltd;
- Apurimac Media;
- Provantage Media (Pty) Ltd; (settled)
- Mediamark (Pty) Ltd; (settled)
- Carpe Diem Media;
- Rodale And Touchline;
- Mandla-Matla Publishing (Pty) Ltd;
- Ramsay Media;
- Lugan Investments (Pty) Ltd;
- Associated Media (Pty) Ltd;
- Associated Hearst (Pty) Ltd;
- Capro (Pty) Ltd;
- Trudon (Pty) Ltd;
- United Stations (Pty) Ltd;
- Continental Outdoor (Pty) Ltd;
- Apurimac Media CC; and
- Media Credit Co-Ordinators (MCC).

SETTLEMENT

MEDIA 24

Media 24 agreed to pay an administrative penalty of R13 828 892.26 (thirteen million eight hundred and twenty eight thousand, eight hundred and ninety two rand and twenty six cents) following its admission to participating in the media cartel.

These are the terms of the Media24 settlement agreement:

- It will contribute R4 978 401.21 (four million nine hundred and seventy eight thousand, four hundred and one rand and twenty one cents) to the Economic Development Fund over a three year period;
- The company will also provide 25% bonus advertising space for every rand of advertising space bought by qualifying small agencies, over three years and capped at R35 000 000 (thirty five million rand) annually;
- They also agreed to charge a 50% cancellation fee in respect of all adverts that advertising agencies withdrew 24 hours before publication.

SETTLEMENT

DSTV MEDIA SALES

DStv Media Sales (Pty) Ltd agreed to pay an administrative penalty amounting to R22 262 599 (twenty two million, two hundred and sixty two thousand, five hundred and ninety nine rand).

The company will also pay R8 000 000 (eight million rand) to the Economic Development Fund over three years. This will assist the development of black owned small media or advertising agencies requiring assistance with start-up capital and will assist black students requiring bursaries to study media or advertising, among others.

This fund will be managed by the Media Development and Diversity Agency (MDDA) and audited annually.

DStv Media Sales has further agreed to provide 25% in bonus airtime for every Rand of airtime bought by qualifying small agencies. This aims to help smaller agencies participate in the market. The bonus airtime will be provided for a period of three years and is subject to a total annual airtime cap of R50 000 000 (fifty million rand).

The settlement is worth R180m including the other remedies.

SETTLEMENT

MEDIAMARK

Mediamark agreed to pay an administrative penalty of R1 013 803.94 (one million and thirteen thousand, eight hundred and three rand and ninety-four cents).

REMEDIES

Economic Development Fund contributions.

Mediamark will contribute R364 969.42 (three hundred and sixty four thousand, nine hundred and sixty nine rand and forty-two cents)

Providing 25% in bonus advertising space for every Rand of airtime bought by qualifying small agencies (which meet the criteria in the Broad Based Black Economic Empowerment Act) for three years. Mediamark will provide space of R2 500 000.00 (two million five hundred thousand rand) annually.

Full cooperation with the Commission in the media collusion case until all litigation is finalised; and

Development, implementation and monitoring of a competition law compliance programme as part of their respective corporate governance policies.

SETTLEMENT

UNITED STATIONS

United Stations will pay R423 920.73 (four hundred and twenty-three thousand, nine hundred and twenty rand and seventy three cents).

REMEDIES

Economic Development Fund contributions.

United Stations R152 611.46 (one hundred and fifty two thousand, six hundred and eleven rand and forty-six cents);

Providing 25% in bonus advertising space for every Rand of airtime bought by qualifying small agencies (which meet the criteria in the Broad Based Black Economic Empowerment Act) for three years. United Stations will provide R1 500 000.00 (one million five hundred thousand rand) annually;

Full cooperation with the Commission in the media collusion case until all litigation is finalised; and

Development, implementation and monitoring of a competition law compliance programme as part of their respective corporate governance policies.

SETTLEMENT

CTP PUBLISHERS AND PRINTERS LIMITED (CAXTON)

Caxton agreed to a penalty of R5 806 890.14 (five million eight hundred and six thousand eight hundred and ninety rand and fourteen cents).

Caxton has also agreed to several remedies:

- The company will pay R2 090 480.45 (two million ninety thousand four hundred and eighty rand and forty five cents) to the Economic Development Fund over three years; and
- It will provide 25% in bonus advertising space for every rand of advertising space bought by qualifying small agencies. This will be for three years, capped at R15 000 000 (fifteen million rand) per annum.

SETTLEMENT

INDEPENDENT MEDIA (PTY) LTD (INDEPENDENT)

Independent agreed to pay an administrative penalty amounting to R2 220 603 (two million two hundred and twenty thousand six hundred and three rand).

Independent has also agreed to the following remedies:

- It will contribute R799 417 (seven hundred and ninety nine thousand four hundred and seventeen rand) to the Economic Development Fund over a three year period;
- The company will provide 25% bonus advertising space for every rand of advertising space bought by qualifying small agencies, over three years and capped at R50 000 000 (fifty million rand) per annum;
- Independent will also obtain its own credit insurance so that small agencies are not required to commit any securities or guarantees in order to book airtime and/or advertising space.

SETTLEMENT

PROVANTAGE

Provantage agreed to pay an administrative penalty of R1 094 222, as a percentage of its annual turnover for the year ending 2016.

Provantage undertook to provide either a 25% bonus in advertising space or a 25% discount for every Rand of advertising space bought by all qualifying small agencies. This bonus airtime shall be scheduled at the discretion of Provantage.

Provantage will offer these terms for a period of three years from the date of confirmation of this consent agreement, subject to a total annual cap of R 2 800 000.

Provantage will also contribute R393 920 to the Economic Development Fund over a period of three years from the date of confirmation of the consent agreement.

INDEPENDENT MEDIA RESPONDS
TO COMPETITION COMMISSION'S FINDING

Independent Media notes the findings of the Competition Commission relating to an investigation, which found that a number of media companies had colluded on offering discounts and payment terms to advertising agencies linked to Media Credit Co-ordinators (MCC).

This matter dates back to 2011 when Independent Media was under the ownership of the Irish-based Independent News and Media (INM).

With the acquisition of Independent Media by a Sekunjalo consortium in 2013, Independent Media became the largest black-owned South African media company.

Sekunjalo embarked on a clean-up of all its business practices when the company took ownership in 2013. This included co-operating fully with the Competition Commission's investigation.

In terms of the agreement reached with the commission, Independent Media has agreed to pay an administrative penalty. In addition, the company will make a contribution to the Economic Development Fund to be managed by the Media Development and Diversity Agency (MDDA), over three years. This fund provides assistance to small black-owned media and advertising agencies and bursaries to black students studying in media and advertising.

Independent Media will also provide 25% bonus advertising space for every rand of advertising space bought by qualifying small agencies which are majority owned by black people. The company will obtain its own credit insurance so that these small agencies will not be required to commit any guarantees when booking advertising space.

Independent Media is satisfied with the outcome and is committed to working with and supporting the development of small black-owned media and advertising agencies.

19 Feb 2018
Issued by: Independent Media

COFFEE SUPPLIER FINED FOR FIXING PRICE OF COFFEE CAPSULES

Secret River Trading CC (trading as Caffeluxe) admitted in March this year to fixing the prices of coffee capsules to retail customers and subsequently agreed to pay an administrative penalty of R750 000 (seven hundred and fifty thousand Rand).

This follows a Commission investigation, launched in 2015, which found that between 2013 and May 2014, Caffeluxe and Global Coffee Exports Ltd (Global Coffee) agreed not to undercut each other. In terms of the agreement, Global Coffee was precluded from undercutting Caffeluxe when selling coffee capsules to grocery retail outlets such as Checkers and Spar.

In a consent agreement with the Commission, Caffeluxe admitted to having contravened the Competition Act. The company undertook to refrain from engaging in any anti-competitive conduct in future and agreed to implement and monitor a competition law compliance programme.

The agreement was made an order of the Tribunal on 20 March 2018. Meanwhile, the Commission is not seeking any relief against Global Coffee, as it was the leniency applicant in the matter. The company was granted conditional leniency.

In a consent agreement with the Commission, Caffeluxe admitted to having contravened the Competition Act. The company undertook to refrain from engaging in any anti-competitive conduct in future and agreed to implement and monitor a competition law compliance programme.

SIPHO NGWEMA ON THE

ECONOMIC DEVELOPMENT FUND

WHAT IS THE OBJECTIVE OF THE FUND?

The Fund seeks to develop black owned small media or advertising agencies which require assistance with start-up capital and will assist black students with bursaries to study media or advertising, among others. The fund will be managed by the Media Development and Diversity Agency (MDDA) and audited annually.

The Economic Develop-ment Fund will assist with the development of black owned small media or advertising agencies requiring assistance with start-up capital and to assist black students requiring bursaries to study media or advertising.

WHY DID THE COMPETITION COMMISSION PARTNER WITH THE MDDA TO OVERSEE THE ECONOMIC DEVELOPMENT FUND/ EMPOWERMENT FUND?

Given the impact of the cartel conduct on small, particularly black-owned media and advertising agencies, we had to look for a vehicle that is entrusted with development and empowerment of small media enterprises. This falls squarely into the mandate of the MDDA.

WHAT CHECKS AND BALANCES HAVE BEEN PUT IN PLACE BY THE COMPETITION COMMISSION TO ENSURE THE MDDA MANAGES THE FUND PROPERLY?

The Commission has signed a Memorandum of Understanding with the MDDA in terms of how it shall manage the fund and account for it. We have an oversight responsibility in terms of this agreement which includes transparent accountability measures and processes.

> The media companies are to make 3 equal instalments each, the terms of which are that the first contribution will be made within 30 days from the date of confirmation by the tribunal and the other two instalments on the anniversary of the first.

WHAT IS THE MANDATE OF THE MDDA?

Their mandate is the following: Create an enabling environment for media development and diversity which reflects the needs and aspirations of all South Africans.

1. Redress exclusion and marginalisation of disadvantaged communities and persons from access to the media and the media industry.
2. Promote media development and diversity by providing support primarily to community and small commercial media projects.
3. Encourage ownership and control of, and access to, media by historically disadvantaged communities as well as by historically diminished indigenous language and cultural groups.
4. Encourage the development of human resources and training, and capacity building, within the media industry, especially amongst historically disadvantaged groups.
5. Encourage the channelling of resources to the community media and small commercial media sectors.
6. Raise public awareness with regard to media development and diversity issues.

Thus, they are the most suitable agency to oversee the fund.

HOW MUCH HAVE THE COMPANIES THAT HAVE SETTLED SO FAR UNDERTOOK TO CONTRIBUTE TO THE FUND?

The Tribunal has so far confirmed seven consent agreements. The media companies are to make 3 equal instalments each, the terms of which are that the first contribution will be made within 30 days from the date of confirmation by the tribunal and the other two instalments on the anniversary of the first.

The following are the first instalments that the media companies are to pay in terms of the agreement confirmed by the Tribunal:

1. Caxton's first instalment is – R 696 826.82
2. Independent Newspaper's first instalment - R 266 472.33
3. DSTV's first instalment is - R 2 666 666.67
4. Provantage's first instalment is - R 131 306.70
5. Media24's settlement agreement, its first instalment will be R 3 761 272.52.

mdda
MEDIA DEVELOPMENT & DIVERSITY AGENCY

COMMISSION PROSECUTES SA AIRLINK FOR ABUSE OF DOMINANCE

In February this year the Commission referred for prosecution SA Airlink (Pty) Ltd, a privately controlled regional feeder airline, to the Competition Tribunal on charges of excessive and predatory pricing.

This follows complaints laid by Mr Khwezi Tiya, Fly Blue Crane (Pty) Ltd and the OR Tambo District Chamber of Business between 2015 and 2017.

The complaints were about the Johannesburg-Mthatha route (the route). The complainants alleged that SA Airlink's prices were excessive before Fly Blue Crane entered the route. It was also alleged that SA Airlink then lowered its prices below its costs (predatory pricing) when Fly Blue Crane entered the route; and it was also alleged that SA Airlink went back to their exorbitant prices (excessive pricing) after Fly Blue Crane exited the route in January 2017.

The investigation subsequently found:

- SA Airlink contravened the Competition Act by abusing its dominance from September 2012 to August 2016 by charging excessive prices on the route to the detriment of consumers;
- Consumers would have saved between R89 million and R108 million had SA Airlink not priced excessively on this route;
- Lower prices would also have resulted in more passengers travelling by air on the route, possibly contributing to the local economy of Mthatha;
- The airline engaged in predatory pricing in that it priced below its average variable costs and average avoidable costs for some of its flights. (Variable costs are those costs which vary with the output. Avoidable costs are those costs that can be avoided if a decision is made to alter the course of a business/project);
- The predatory pricing conduct of SA Airlink contributed to the exit of Fly Blue Crane, their only competitor at the time on the Johannesburg-Mthatha route; and
- The effect of the predation is also likely to deter future competition on this route from other airlines.

The complainants alleged that SA Airlink's prices were excessive before Fly Blue Crane entered the Johannesburg-Mthatha route. It was also alleged that SA Airlink then lowered its prices below its costs (predatory pricing) when Fly Blue Crane entered the route; and it was also alleged that SA Airlink went back to their exorbitant prices (excessive pricing) after Fly Blue Crane exited the route in January 2017.

The Commission has sought an administrative penalty of up to 10% of SA Airlink's annual turnover for both the conduct of excessive pricing and predatory pricing. In addition, the Commission has asked the Tribunal to determine other appropriate remedies in order to correct the conduct.

The Commission believes that this conduct has had a negative effect on the route, even contributing to the exit of a new competitor that had entered the market in late 2016. Our estimates further show that air travellers in that area overpaid more than R100 million for the 5 years over which the conduct took place. The Commission is concerned about SA Airlink's conduct and will seek the maximum administrative penalty before the Tribunal.

SA AIRLINK AND SAFAIR MERGER PROHIBITED

The Commission has prohibited the proposed merger between SA Airlink (Pty) Ltd and Safair Operations (Pty) Ltd, as the transaction is likely to result in a substantial prevention of competition.

The Commission is of the view that the merger is likely to result in the removal of an effective competitor to SA Airlink on the routes it currently operates on. Safair offers competitive prices and has been growing in the market both in terms of its existing routes, as well as recently entering new routes.

Safair is also a potential competitor of SA Airlink in those routes which it has not yet entered and is likely to pose a competitive constraint on SA Airlink bearing in mind its currently competitive pricing on competing and non-competing routes. The Commission found that there are significant price differences between Safair and SA Airlink and that if the merger were to be approved, there is a likelihood of significant price increases.

The Commission further found that the merger is likely to result in coordinated effects through the exchange of competitively sensitive information between SAA and Safair (and SA Airlink) since SAA has a shareholding in SA Airlink. Further, SA Airlink currently operates under agreements with SAA. In the event that the merger were to be approved, SA Airlink would have the ability to adapt the business strategy of Safair such that Safair is incorporated into the agreements between SAA and SA Airlink. Further, the Commission also found that

The Commission is of the view that the merger is likely to result in the removal of an effective competitor to SA Airlink on the routes it currently operates on. Safair offers competitive prices and has been growing in the market both in terms of its existing routes, as well as recently entering new routes.

If the merger were to be approved, there is a likelihood of significant price increases.

Even if Safair were not to be incorporated into these agreements, since post-merger SAA would have an indirect economic interest in Safair, this would dampen competition between Safair and SAA, (and presumably by extension SA Express).

In this regard, the Commission found that the merger would likely result in the enhancement and facilitation of coordinated conduct. The Commission found that no remedies could sufficiently address the competition concerns identified.

In light of the above, the Commission finds that the merger is likely to result in a substantial prevention of competition. For this reason, the Commission prohibits the proposed transaction.

Background

Airlink provides scheduled passenger services on feeder routes to major hubs in South Africa and destinations across Southern Africa. Airlink also provides belly cargo services and maintenance services. The airline conducts some of its own ground handling activities.

Safair provides scheduled passenger services to and from major airport hubs in South Africa. Safair also provides non-scheduled or chartered humanitarian aid and relief services to and from African countries as well as outside of Africa with a principal focus on remote regions like Antarctica (South Pole).

FOUR COMPANIES IN HOT WATER FOR R4.5 BILLION ESKOM TENDER RIGGING

In February this year the Commission referred four scaffolding and labour broking companies to the Competition Tribunal for price fixing and tender collusion involving an Eskom tender worth R4.5 billion.

This follows a Commission investigation into collusive tendering for the supply, installation and dismantling of scaffolding and thermal insulation for all of the 15 Eskom coal-fired power stations subsequent to a complaint lodged by the power utility company.

The Commission discovered evidence of price fixing and collusive tendering on the part of Waco Africa (Pty) Ltd, acting through its division, SGB Cape, Tedoc Industries (Pty) Ltd, Mtsweni Corrosion Control (Pty) Ltd and Superfecta Trading 159 CC and three joint ventures which SGB Cape formed with each of the aforementioned companies through bilateral agreements.

The investigation found, among others, the following:

1. SGB Cape concluded bilateral agreements with each of Tedoc Industries, Mtsweni Corrosion Control and Superfecta Trading to form three separate joint ventures to be used to tender collusively;
2. SGB Cape submitted bids on its behalf and on behalf of the three joint ventures; and
3. SGB Cape priced the bids in such a way that it manipulated prices quoted by itself and the respective joint ventures.

> In March 2016, the Commission received Eskom's complaint in which it alleged that SGB Cape and the three joint ventures may have colluded when bidding for the tender.

Background

The invitation for the Eskom tender in question was issued in March 2015. Thirty-one suppliers responded to the tender when it closed at the end April 2015 and included SGB Cape, Tedoc SGB Cape Joint Venture, Superfecta SGB Cape Joint Venture and Mtsweni SGB Cape Joint Venture, the respondents in this case.

In March 2016, the Commission received Eskom's complaint in which it alleged that SGB Cape and the three joint ventures (Tedoc SGB Cape Joint Venture, Superfecta SGB Cape Joint Venture and Mtsweni SGB Cape Joint Venture) may have colluded when bidding for the tender.

The following led to Eskom suspecting collusion in relation to the bids:

A. SGB Cape submitted multiple tenders. One was its own and the other three were as a member of joint ventures;
B. The same person signed all four tender submissions; and
C. Safety, financial, technical and quality documents in all four bids were identical.

Curiously, on 13 March 2017, Eskom withdrew its complaint and on 16 March 2017, however, the Commissioner decided to continue with the investigation of the withdrawn complaint in terms of Rule 16(2) of the Commission Rules.

SGB Cape, as the incumbent interdicted Eskom from disqualifying it and awarding the tender to a new supplier. As a result, SGB Cape continued to render the services to Eskom.

SGB Cape is a marine and event scaffolding supplier and also specialises in maintenance works such as thermal insulation, corrosion protection, asbestos removal and industrial plastic encapsulation.

Tedoc, Mtsweni and Superfecta are all human resource companies and offer services which include recruitment, placement, payroll and all HR related administration and management. Based on the Commission's investigation, the three joint ventures were established for purposes of bidding for this tender.

ST GOBAIN AND ANOTHER CHARGED WITH CARTEL CONDUCT

Two companies that compete in the market for supplying glasswool insulation material were referred for prosecution to the Tribunal in February this year for price fixing and dividing markets.

A Commission investigation, launched in September 2016, uncovered that Saint Gobain Construction Products (Pty) Ltd (St Gobain) and D&D Roof Insulations CC (D&D Roof Insulations) had been involved in cartel conduct.

The investigation found that the companies had entered into an agreement April 2005 in terms of which:

- D&D Roof would stop importing base material and source finished glasswool products from St Gobain;
- The two companies would not do business with customers that belonged to each other;
- They would not provide competitive quotes in order to sustain the customer allocation agreement; and
- They agreed on the price they would charge when supplying their glasswool products to their respective customers.

This conduct amounts to price fixing and market division by allocating customers and contravenes Section 4(1)(b)(i) and (ii) of the Competition Act.

St Gobain manufactures and distributes, among other things, glasswool under its own brand called Factorylite. Prior to the agreement with St Gobain, D&D Roof used to import base material, which it laminated (using a thirty party contractor) to form finished glasswool. It distributed its glasswool under the Starlite brand in competition with St Gobain's Factorylite brand. They both supplied third party distributors.

Glasswool (see picture below) is a thermal insulating material made from fibres of glass arranged using a binder into a texture similar to wool. It is used to insulate flat surfaces such as cavity wall insulation, ceiling tiles, curtain walls as well as ducting. Among others, it insulates surfaces for thermal, acoustic as well as fire purposes and can be used for a variety of applications, including construction projects.

A Commission investigation, launched in September 2016, uncovered that Saint Gobain Construction Products (Pty) Ltd (St Gobain) and D&D Roof Insulations CC (D&D Roof Insulations) had been involved in cartel conduct.

MERGERS

BARNES SOUTHERN PALACE HOLDINGS / SCAW SOUTH AFRICA

In March 2018, the Competition Tribunal approved the large merger between Barnes and Scaw with conditions, following the recommendation of the Competition Commission to approve the large merger with conditions. In terms of the merger transaction Barnes Southern Palace sought to acquire the rolled products and wire rod divisions of Scaw.

Barnes Southern Palace is a combination of the Barnes Group which is owned by Messrs Doron and Rachamim Barnes and their Black Economic Empowerment partner, Southern Palace. The Barnes Group of firms are active in the manufacturing of wire, wire products and other related products. Southern Palace has diverse interests in real estate, industrial companies, information technology, metals, mining and construction. It is also active in the manufacture of steel products, recycling, automotive trading and manufacturing industry. Southern Palace also owns I&B Platform which operates in civil engineering, general building, opencast mining, road and earthwork, construction plant and equipment and property development.

Scaw is controlled by the Industrial Development Corporation (IDC). Scaw also has management control over the Consolidated Wire Industries (CWI) which is jointly owned by the IDC and ArcelorMittal. Scaw is a steel maker and operates through its casts division, grinding media division and wire rod and rolled products division. Scaw beneficiates iron ore and scrap to produce a wide range of steel products used in the mining, rail, power, offshore oil and gas, construction, commercial and other industrial sectors.

Following its investigation, the Commission found that there is a vertical relationship between the merging parties, as Scaw supplies steel products to the Barnes Group and other downstream competitors. The Commission also found a horizontal overlap between Scaw and the Barnes Group in the downstream market for wire and wire rod products. The Commission found that the horizontal overlap was unlikely to give rise to a significant lessening of competition as the business of Scaw downstream accounts for a small part of its overall business.

In its assessment of the vertical relationship the Commission assessed the national upstream market for the manufacturing and supply of long steel products and that national downstream market for the production and supply of wire and wire products. The Commission found that in the upstream market, there are other significant market players alongside Scaw including ArcelorMittal, Cape Gate, SA Metals and Fortune Steels. The Commission found that in the downstream market, there are also numerous players including Cape Gate, CWI, Hendok, Wireforce, Meshco group of companies, Wire Supplies, Steeledale and BRC. Therefore, neither Scaw nor Barnes would have the ability to exercise market power post-merger, given their relatively low market share as against their competitors in both the upstream and downstream markets.

Historically, the Commission has undertaken a number of investigations of cartel conduct into the steel industry and investigated firms such as Scaw, ArcerlorMittal, Cape Gate, CWI, Hendok and the Meshco group of companies. The Commission and the Tribunal have previously attributed the prevalence of collusion in this industry to information sharing in a highly concentrated market as well as vertical integration. Although the merger between Barnes Southern Palace and Scaw is likely to increase the level of symmetry in the market due to Barnes being vertically integrated post-merger, similar to Cape Gate and to some extent ArcerlorMittal, the sizes of both Barnes and Scaw in the relevant markets is unlikely to enable this symmetry to lead to a substantial lessening of competition. The merger did however create a structural link Barnes and CWI which did not exist pre-merger. Through this merger, the IDC which owns 50% of CWI, will post-merger, own 26% of the merged entity. The IDC will have the rights to appoint directors to both CWI and the merged entity. To this end, the Commission recommended that a condition be imposed limiting the ability of IDC appointing common directors to the boards of both CWI and the merged entity, thereby stemming the flow of confidential information that could dampen competition between Barnes and CWI.

From a public interest perspective, the merging parties agreed to not undertake retrenchments as a result of the merger. Moreover, the merging parties also agreed to give preference to the CastCo (a firm which will hold the casting division of Scaw) employees for new employment should positions become available. The merging parties also agreed to continue supplying direct reduction iron to mini-steel mills.

MERGERS

CCSA WELCOMES APPROVAL OF NYK, MOL AND KI SHIPPING JV MERGER BY THE TRIBUNAL

In June 2017, the Commission prohibited the container liner shipping joint venture transaction between Nippon Yusen Kabushiki Kaisha (NYK), Mitsui O.S.K. Lines Ltd (MOL) and Kawasaki Kisen Kaisha Ltd (KL).

In terms of the transaction, the joint venture would be jointly controlled by NYK, MOL and KL. Although NYK does not have a physical presence in South Africa, it operates its shipping business through an agent called Mitchell Cotts Maritime. Mitchell Cotts is part of the Sturrock Grindrod Maritime Group. In South Africa, MOL operates through its wholly owned subsidiaries called MOL South Africa (Pty) Ltd and MOL ACE South Africa (Pty) Ltd. In South Africa, KL operates through K Line Shipping South Africa (Pty).

In its investigation of the transaction the Commission found that there is a horizontal overlap between the activities of NYK, MOL and KL in respect of the container liner shipping market in South Africa. In assessing the impact of the transaction on the relevant market in relation to eight affected trade routes, the Commission found that the merger was likely to lead to coordinated effects in the container liner shipping market and the adjacent car carriers markets.

Given the history of collusion in the container liner shipping market the Commission also concluded that the merger will likely increase transparency and make it easier for interaction and multi-market contact in a market to occur. The Commission also considered the efficiencies claims by the merging parties and subsequently concluded that the claimed efficiencies were not merger specific and are unlikely to benefit consumers. The Commission also considered remedies proffered by the merging parties but again subsequently found the that proposed remedies are unlikely to address the coordinated effects concerns identified by the Commission. No public interest concerns were found.

Following a request for reconsideration by the merging parties, this merger was subsequently approved with conditions by the Tribunal in January 2018.

M&A QUARTERLY

PERFORMANCE REPORT: QUATER 4 (Q4)

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

A. OVERVIEW OF Q4

The Commission received 52 merger notifications during Q4 and finalized 76 mergers in the same period. There was a noticeable decline (47%) in number of cases notified between Q3 and Q4. Quarter on Quarter analysis also shows that there has been a decline of 37% in the number of cases notified between Q4 of 2016/2017 and Q4 of 2017/2018 financial year. However, generally the trend is the same as there is significantly lower number of transactions notified in Q4 of previous financial years. The Commission has observed a significant decline in the number of cases between 2016/2017 and 2017/2018. This could be alluded partly to the changes in the merger notification thresholds.

The number of mergers by decision shows that out of the finalised 76 merger in Q4, of these transactions 65 (86%) were approved without conditions, 9 were approved with conditions (12%), 2 were prohibited and 3 were abandoned. There has been a 50% decline in the number of cases approved with conditions between Q3 and Q4. However, quarter on quarter analysis shows that there has been approximately 13% increase in the number of cased approved with conditions between Q4 of 2016/2017 and 2017/2018 financial year. Year on Year analysis also shows that there has been a substantial increase in the number of cases approved with conditions in 2017/2018 financial year at 68%. This could symbolise the increase in complexity of cases that M&A has dealt with in the 2017/2018 financial year.

In Q4, mergers from sectors which grew (at quarter-on-quarter annualised rate) the most are Finance, Manufacturing, Mining and Professional services. The finalised mergers in Q4 were predominantly in Property (22%), Manufacturing (23%), wholesale (9%) and Finance (9%). 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.

For the Q4, the Division met targets for Phase 1, 2 and 3 intermediate mergers. The Division however did not meet the turnaround times for Phase 3 large mergers. The same trend can be observed on annual statistics where the Division has met the turnaround times for phase 1, 2

and 3 (intermediate mergers) cases as prescribed in the service standards.

On average for Q4, the turnaround times for the 2017/2018 financial years are as follows: Phase 1 intermediate mergers target met at 15 days, Phase 2 Intermediate mergers target met at 45 days, Phase 3 intermediate merges target met at 57 days and Phase 3 Large mergers, target not met at 131 days.

On average for the year, the turn-around times for the 2017/2018 financial years are as follows: Phase 1 intermediate mergers target met at 19 days, Phase 2 Intermediate mergers target met at 45 days, Phase 3 intermediate merges, target met at 58 days and Phase 3 Large mergers, target not met at 149 days.

There were 2 (two) merger prohibited in Q4 and these are discussed in more detail later on in this report under a section that deals with Key cases.

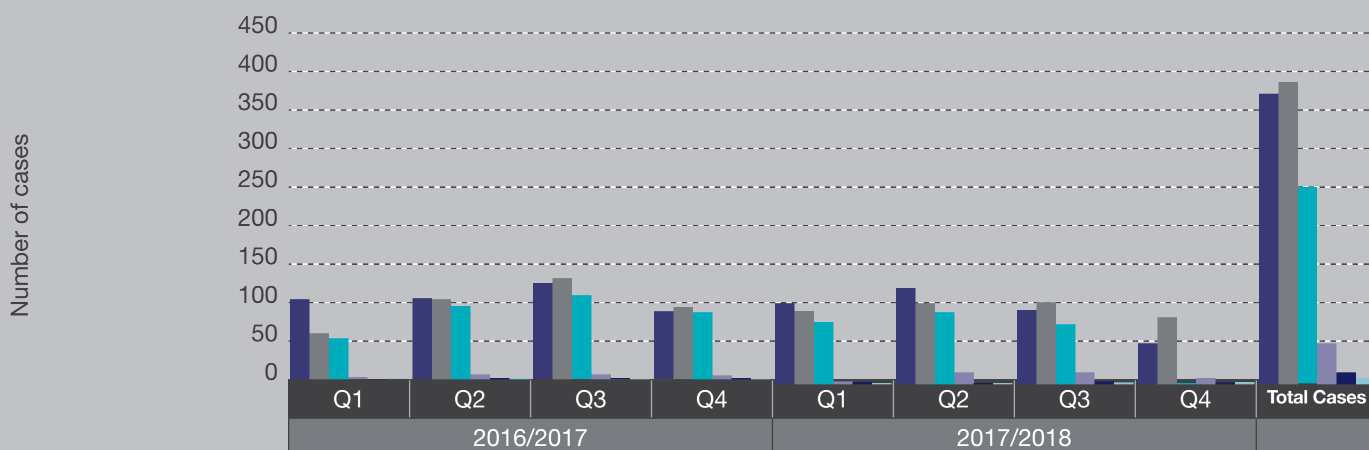
At the commencement of Q4, the Unit was monitoring 172 cases where conditions have been imposed. At the end of Q4, 7 cases were closed and 12 new cases were added to the monitoring list. At the end of Q4, the Unit is therefore monitoring 178 cases. The number of conditional approvals in Q3 slightly decreased when compared to the 18 conditional approvals in Q3. These statistics will be presented later below under the section dealing with conditions imposed in Q4.

In terms of future outlook, cconditions in South Africa are also predicted to improve, but this will depend on political and economic conditions in the country in the next two years. The sluggish economy and economic downturn of 2017 likely contributed to a halving in total M&A in 2017 versus 2016. However, the forecast predicts that economy should improve in 2018 due to the impact of monetary policy easing and stronger commodity prices. It is therefore expected number of notifications will likely increase in the coming year.

B. Q4 STATISTICS

The Commission received 52 merger notifications during Q4 and finalized 76 mergers in the same period. Quarter on Quarter analysis also shows that there has been a decline of 37% in the number of cases notified in Q4 of 2016/2017 and Q4 of 2017/2018 financial year. However, generally the trend is the same as there is a significantly lower number of transactions notified in Q4 of both financial years. In addition, the Commission has observed a significant decline in the number of cases between 2016/2017 and 2017/2018. This could be alluded partly to the changes in the merger notification thresholds and this is the trend that could be expected to manifest going into the new financial year.

2017/2018 YEARLY MERGER STATISTIC



	Q1 (2016/2017)	Q2 (2016/2017)	Q3 (2016/2017)	Q4 (2016/2017)	Q1 (2017/2018)	Q2 (2017/2018)	Q3 (2017/2018)	Q4 (2017/2018)	Total Cases
Notified	103	109	123	83	104	124	98	52	**378**
Finalised	63	102	130	90	91	113	110	76	**390**
Approved without conditions	58	91	119	81	77	94	85	1	**257**
Approved with conditions	4	9	10	8	7	18	18	9	**52**
Prohibited	0	2	1	2	5	1	4	2	**12**
Withdrawn/no jurisdiction	1	2	0	0	2	1	3	3	**9**

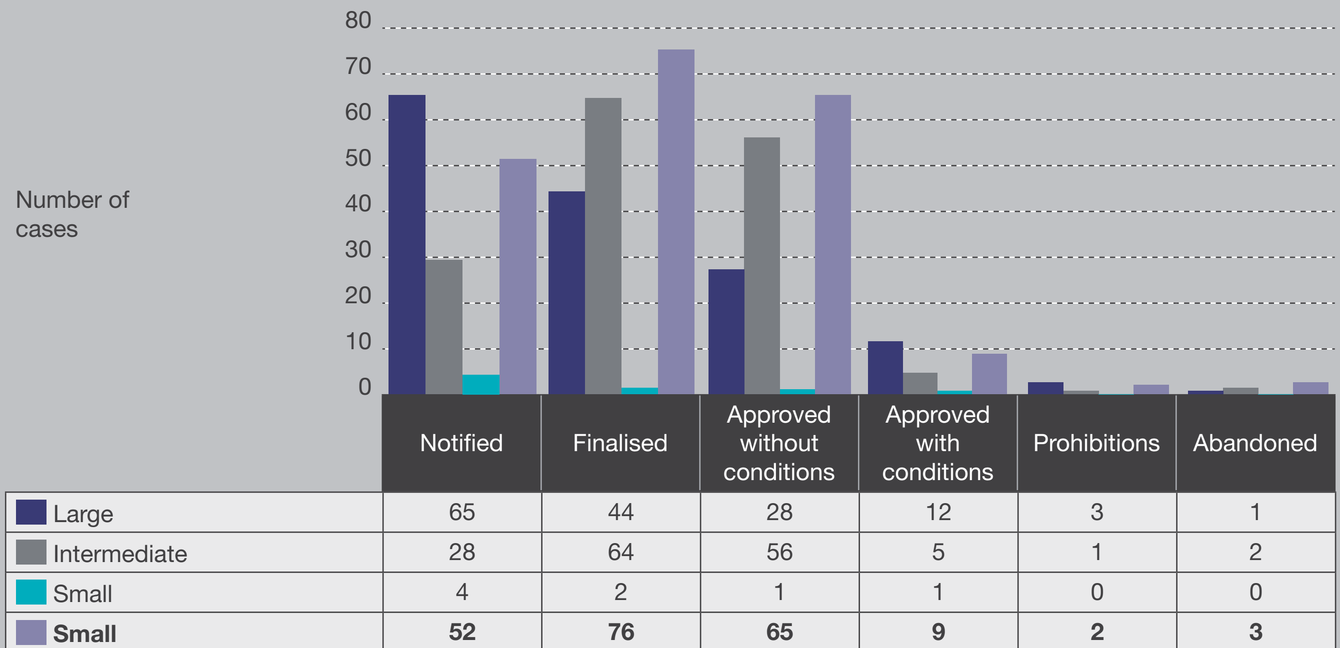
Figure 1: Quarterly summary of mergers notified and finalised in Q4

Source: M&A's data

Figure 1 above provides an overview of the cases notified and finalized by the Commission in Q4, whereas Figure 2 further breaks down the cases by merger category. In Figure 2 below, the number of mergers by decision shows that out of the finalised 76 mergers in Q4, of these transactions 65 (86%) were approved without conditions, 9 were approved with conditions (12%), 2 were prohibited and 3 were abandoned.

There has been a 50% decline in the number of cases approved with conditions between Q3 and Q4. However, quarter on quarter analysis shows that there has been approximately 13% increase in the number of cased approved with conditions in Q4 of 2016/2017 and 2017/2018 financial year. Year on Year analysis also shows that there has been a substantial increase in the number of cases approved with conditions in 2017/2018 financial year at 68%. This could symbolise the increase in complexity of cases that M&A has dealt with in the 2017/2018 financial year.

Q2 CASES BY MERGER CATEGORY



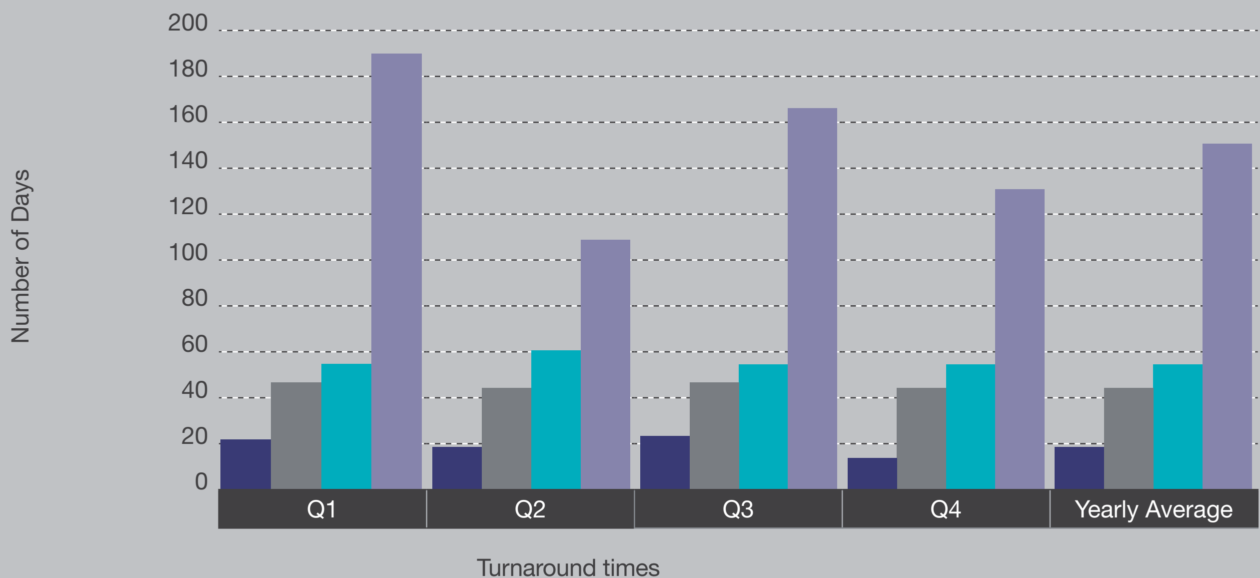
	Notified	Finalised	Approved without conditions	Approved with conditions	Prohibitions	Abandoned
Large	65	44	28	12	3	1
Intermediate	28	64	56	5	1	2
Small	4	2	1	1	0	0
Small	**52**	**76**	**65**	**9**	**2**	**3**

Figure 2: Q4 cases by merger category

Source: M&A's construction

Figure 3 highlights the turnaround times for the different cases finalised in Q4.

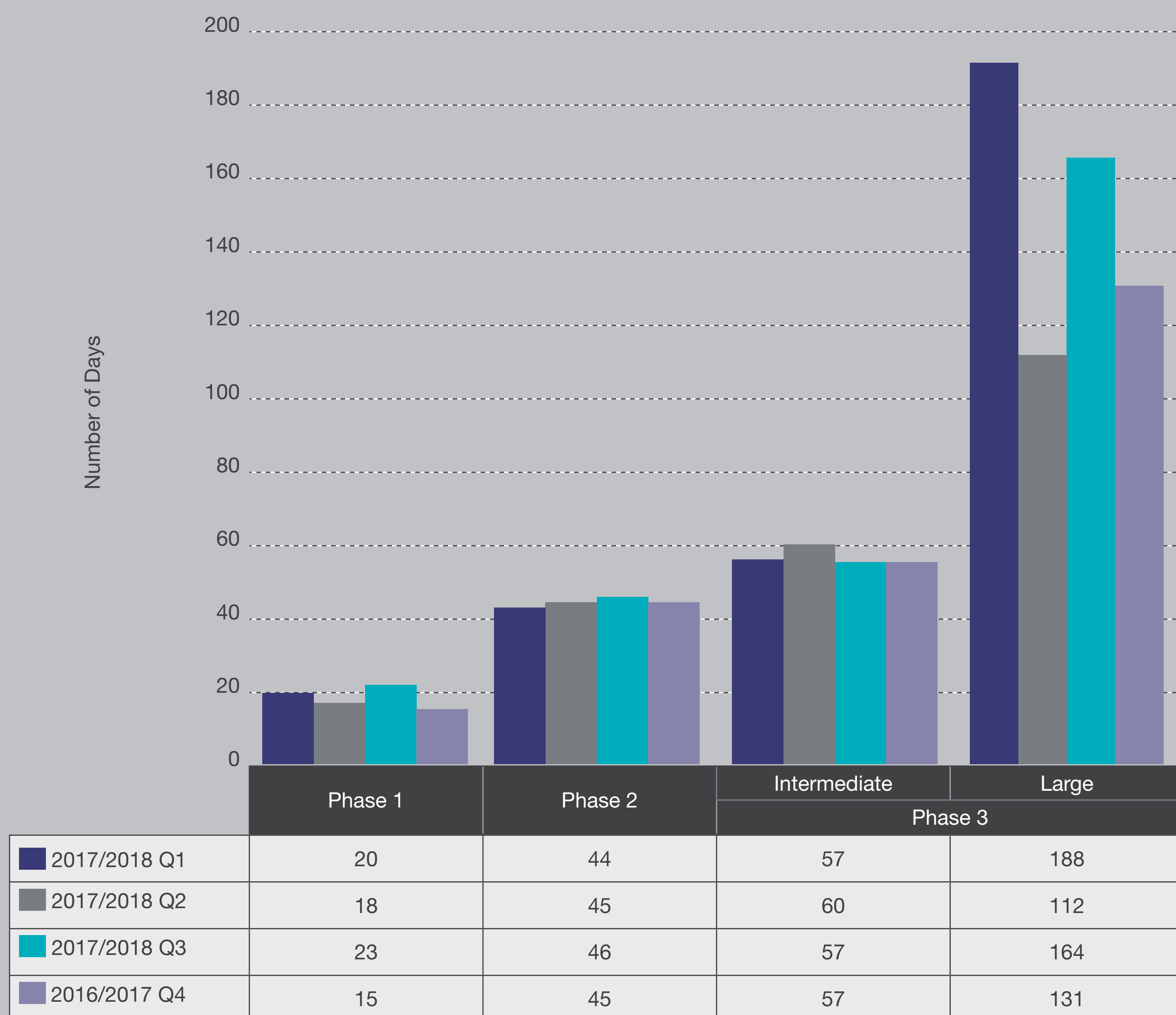
2017/2018 TURNAROUND TIMES



	Q1	Q2	Q3	Q4	Yearly Average
Phase 1	20	18	23	15	19
Phase 2	44	45	46	45	45
Phase 3 Intermediate	57	60	57	57	58
Phase 3 Large	188	112	164	131	149

Figure 3: Summary of average turnaround times

Source: M&A's construction



	Phase 1	Phase 2	Phase 3: Intermediate	Phase 3: Large
2017/2018 Q1	20	44	57	188
2017/2018 Q2	18	45	60	112
2017/2018 Q3	23	46	57	164
2016/2017 Q4	15	45	57	131

Figure 3: Summary of average turnaround times

Source: M&A's construction

The Division has met the turnaround times for phase 1, 2 and 3 (intermediate mergers) cases as prescribed in the service standards. However, the division did not meet the turnaround times for Phase 3 large mergers as prescribed in the services standards.

On average for Q4, the turn-around times for the 2017/2018 financial years are as follows: Phase 1 intermediate mergers target met at 15 days, Phase 2 Intermediate mergers target met at 45 days, Phase 3 intermediate merges target met at 57 days and Phase 3 Large mergers, target not met at 131 days.

On average, the turn-around times for the 2017/2018 financial years are as follows: Phase 1 intermediate mergers target met at 19 days, Phase 2 Intermediate mergers target met at 45 days, Phase 3 intermediate merges target met at 58 days and Phase 3 Large mergers, target not met at 149 days.

It should be noted that majority of large mergers notified and considered for the year were complex cases and in most instances this mergers involved convoluted investigation and they were either prohibited or approved with conditions. As such, although the turnaround times were not met in this respect, the division made significant impact through such cases. The cases that mostly affected the turn-around times were Barnes and Scaw metals in Q4 with 131 days and Netcare and Akeso in Q3 with 144 days. The Barnes case involved protracted negotiations on conditions as the EDD participated in the merger. The Netcare/Akeso was a complex case involving previously untested psychiatric healthcare markets. Conditions were explored at some point but ultimately the merger was prohibited.

C. M&A ACTIVITY AND SECTOR INSIGHTS IN Q4

Administration: 1%
Agriculture: 1%
Electricity, Gas, Steam: 4%
Finance: 12%
Health: 1%
Information Communication: 3%
Manufacturing: 30%
Mining: 5%
Other Activities: 4%
Property: 23%
Transportation & Storage: 2%
Wholesale: 12%
Professional & Technical Activities: 1%
Household Activities: 0%
Accommodation: 0%
Construction: 0%

In Q4, mergers from sectors which grew (at quarter-on-quarter annualised rate) the most are Finance, Manufacturing, Mining and Professional services. The finalised mergers in Q4 were predominantly in Property (22%), Manufacturing (23%), wholesale (9%) and Finance (9%). Property and Manufacturing are the sectors that routinely record the highest number of merger notifications, as was the case in Q3.

Figure 5 below shows that in Q3, the sectors which grew (at quarter-on-quarter annualised rate) the most are Finance, manufacturing and mining. The sectors which decelerated the most are Information Communication Technology and Agriculture.

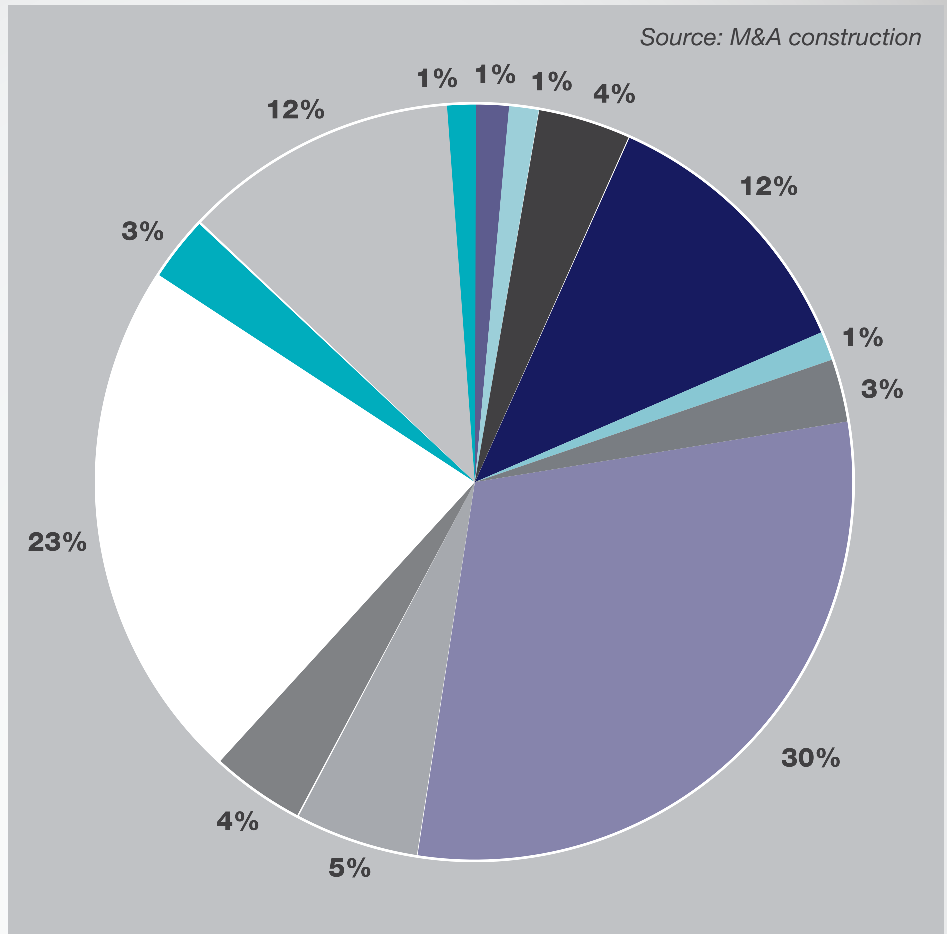


Figure 4: Mergers finalised by sector, Q4

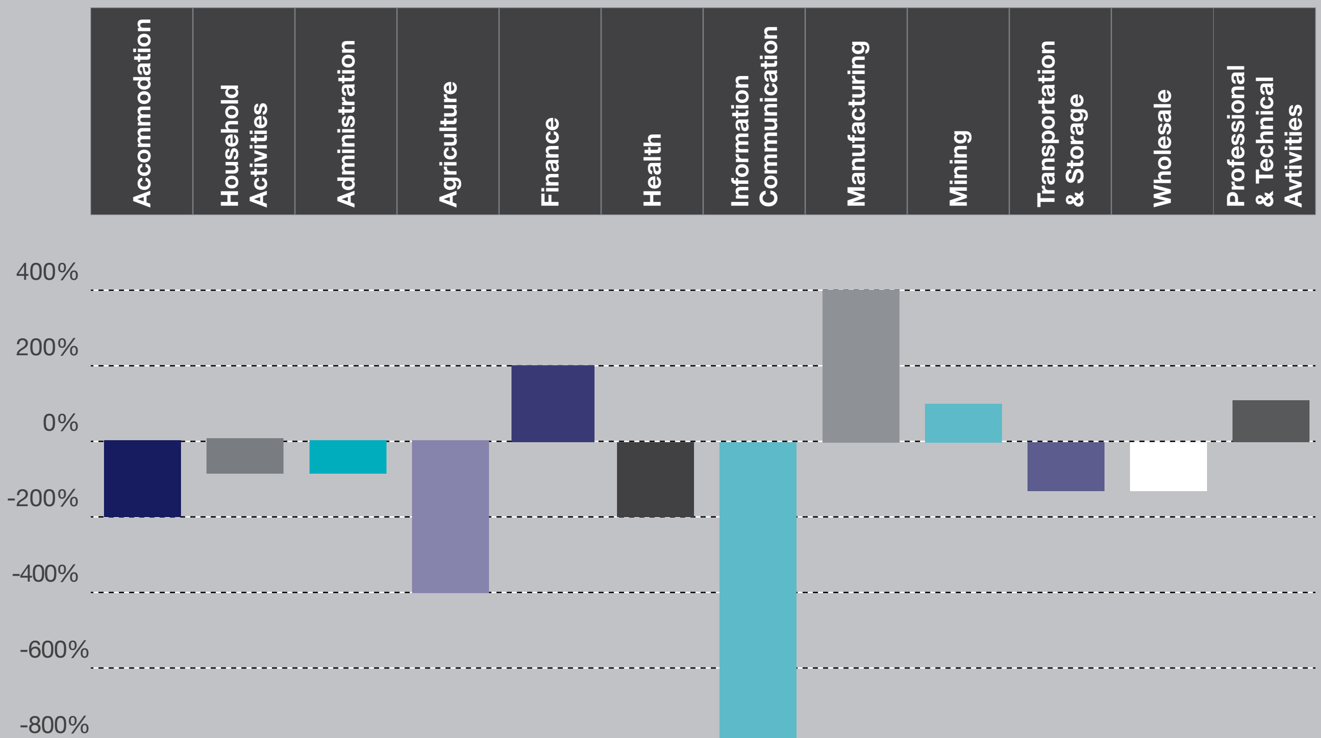


Figure 5: Quarter-on-quarter growth rate in finalised mergers (y/y)

Source: M&A's construction

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.

Table 1 below highlight the international transactions notified in the period. There has been a total of 11 transactions that involved international firms acquiring South African entities in Q4. There has not been any transaction notified in Q4 that involved either business rescue or liquidation proceedings.

Table 1: International transactions notified in Q4

International transaction	Merging parties
2017Dec0010	Robert Bosch GmbH and Hytec Holdings (Pty) Ltd
2017Dec0051	Fortum Deutschland and SE Uniper SE
2017Dec0030	Joyson KSS Holdings No.2 S.a.r.i and Joyson KSS Auto Safety S.A and Takata Corporation
2017Nov0003	**Sandvik Mining RSA Proprietary Limited and FLSmidth Proprietary Limited**
2018Mar0031	**Fpg Holdings Proprietary Limited And Brackenfell Property Trust In Respect Of Brackenfell Centre**
2017Dec0046	**Mitsui & Co., Ltd and ETC Group (Mauritius) Limited ("ETC Group')**

Source: M&A's data

D. KEY CASES IN Q4

Morecorp (Pty) Ltd and Purple Dot Investments (Pty) Ltd – 2017Dec0054

On 22 March 2018 the Competition Commission (Commission) prohibited an intermediate merger wherein Morecorp Proprietary Limited (Morecorp) intends to acquire Purple Dot Investments Proprietary Limited (Purple Dot Investments).

Morecorp is a holding company of MoreGolf. MoreGolf mainly conducts its golf operations through an entity called The Pro Shop Proprietary Limited (TPS). TPS supplies golfing products in the following categories: hardware (including irons, putters, drivers, woods and hybrids etc.), accessories, bags and luggage, apparel, footwear, club components such as grips, shafts and other consumables used for club repairs. In addition to selling these products, TPS also provides golf club fittings, repairs and club rentals.

The primary target firm is Purple Dot Investments. Purple Dot Investments is a holding company of The Golfers Club. The Golfers Club is active in the retail and supply of a range of golf products in the same categories as those supplied by TPS above. The Golfers Club conducts its activities through a number of brick and mortar stores, as well as its own website. The Golfers Club also provides golf club fittings, repairs and club rentals.

The Commission assessed the competition effects of the proposed transaction both in the cluster market for the retail of golf products as well as in the following narrow markets:

a. The national market for the retail of golf accessories and miscellaneous
b. The national market for the retail of golf apparel and footwear
c. The national market for the retail of golf balls
d. The national market for the retail of golf hardware and club components
e. The national market for the retail of golf bag/luggage.

The Commission found that the proposed merger is likely to result in unilateral effects post-merger in the cluster market for the retail of golf products because the merged entity would have high combined market shares of over 60% based on revenues in the last 2 years. Even when looked at in the individual narrow markets, the merging parties still have high combined market shares ranging from 50% - 81% in the 4 markets. The merging parties are effectively the largest and second largest players in the retailing of golf products in the country, whether looked at as a cluster market or in the individual relevant markets considered.

In addition to being the 2 largest golf products retailers, the merging parties are also close competitors and the proposed merger is likely to result in the removal of an effective competitor. This is due to the significant differences in the discounting patterns of the merging parties, with the target firm offering relatively higher discounts than the acquiring firm. There would therefore be loss of competitive rivalry especially on discounts post-merger.

The merger also presented a possibility of job losses for approximately 68 employees.

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

E. COMPLIANCE AND IMPACT OF REMEDIES IMPOSED IN Q4

In this financial year, the Unit had identified 23 conditions that were due for closing. At the end of Q4, the Unit had closed 25 conditions for the financial year. The Unit dealt with 6 investigations for an alleged breach in Q4, which 5 are still pending. The Unit finalised one investigation where it found that there was no breach of conditions. This report will highlight the number of conditions closed at the end of Q4 as well as the new conditional approvals in Q4.

(a) Monitoring Pending Conditions

At the commencement of Q4, the Unit was monitoring 172 cases where conditions have been imposed. At the end of Q4, 7 cases were closed and 12 new cases were added to the monitoring list. At the end of Q4, the Unit is therefore monitoring 178 cases. The number of conditional approvals in Q3 slightly decreased when compared to the 18 conditional approvals in Q3. These statistics will be presented later below under the section dealing with conditions imposed in Q4.

(b) Closing of lapsed conditions

In the **SMG Tygervalley and McCarthy Ltd ("McCarthy")** merger, the conditions required the merging parties to invite affected employees for any job opportunities that arose within McCarthy for a period of 12 months. The compliance report submitted by McCarthy indicates that it has complied with the conditions, as it communicated various vacancies that became available to the affected employees.

In the **Media24 (Pty) Ltd and Novus Holdings (Pty) Ltd** merger, the conditions required the merging parties, in particular Media 24 (Pty) Ltd to divest

its majority shareholding of 65% in Novus Holdings (Pty) Ltd ("Novus"). The purpose of the divestment was to ensure that the Naspers Limited and its subsidiaries would not have the ability to control Novus post-divestment. The documentary proof in the form of an updated share register and a SENS announcement.

In the **Comesa Financial Exchange Proprietary Limited ("Comesa") and Emid Holdings Proprietary Limited ("Emid") Case No: 2010jun5157 and between Lexshell 129 General Trading Proprietary Limited (Lexshell) and Nomad Information Systems Proprietary Limited ("Nomad") Case No.2010JUN5170** merger, the Conditions imposed by the Commission sought to address potential harm to competition arising from BankservAfrica's acquisition of control over Emid and Nomad; and these conditions related to information exchange, bundling and pricing. BanksevAfrica has subsequently disposed of its ownership of both Emid and Nomad businesses and therefore the concerns identified by the Tribunal of BankservAfrica's acquisition of these businesses are no longer applicable. As such, the Commission has terminated both conditions.

In the **DSV A/S ("DSV") and UTiW Worldwide Inc** merger, the conditions required the merging parties not to carry out merger-specific retrenchments of non-management employees for a period of 2 years from the implementation date. The compliance affidavits submitted by DSV indicate that it has complied with the conditions, as it did not retrench any non-management employees during the moratorium period.

In the **Enx Group ("ENX Group") and Extract Group Limited** merger, the conditions required unbundling of all the acquired shares by the ENX Group at the end of the 30 days from the date of approval of the merger. The transaction was a temporary acquisition of control and took place in the form of six cumulative steps over the course of 30 days. The various compliance documents submitted by the merging parties confirmed that they have complied with the conditions, as they ultimately unbundled the required shareholding within 30 days from the approval date.

In the **Diageo South Africa (Pty) Ltd and Brandhouse Beverages (Pty) Ltd** merger, the required the merging parties not to retrench more than 451 employees for a period of 18 (eighteen) months from the implementation date. In addition the merging parties were also required to create a minimum of 451 employment positions consisting of both skilled and semi-skilled employees. The various compliance reports submitted by the merging parties confirmed that they have complied with the conditions, on the basis that they have retrenched below the threshold of 451 employees and created 555 employment positions.

(c) Investigations on potential breach of conditions

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

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[1] to refuse providing refrigeration space to the Merged Entity's competitors. The Unit, with the help of LSD and the merger investigation team, concluded its investigation during Q4 and found that the conduct complained of does not amount to a breach of the conditions. The Unit, however, notes that Distell has also lodged a similar complaint with the Market Conduct Division which is investigating the complaint as it appears to be an abuse of dominance claim.

In addition to the above complaint, the Commission received a complaint from Grain SA that the merged entity has breached clause 9.2 of the Conditions. Grain SA submits that the merged entity has changed the terms and conditions of the supply agreements that the merged entity has with farmers for the procurement of barley. The terms and conditions that Grain SA complains of relate to the pricing for the procurement of barley from the farmers. The Unit met with Grain SA to further understand their complaint and is currently in the process of engaging with the merged entity. The investigation is therefore still pending.

MTN / SMART VILLAGE

The complainant alleges that MTN breached the conditions on the basis that they failed to grant wholesale access on an open access basis for as long as the merged entity exclusively owns infrastructure and controls fibre infrastructure. The Unit has engaged with the complaint and from its engagements with the complainant, the Unit found that the area complained of does not fall within the areas in which the merging parties have exclusive ownership of infrastructure and control of fibre. The area complained of therefore is not part of the areas covered in the Conditions. The Unit is therefore of the preliminary view that there has been no breach of the conditions and is currently in the process of writing a memorandum to the Commission Meeting.

COCA-COLA BEVERAGES AFRICA LIMITED AND VARIOUS COCA-COLA BOTTLING AND RELATED OPERATIONS

On 26 February 2018, the Commission received a complaint from certain employees alleging that they were unfairly dismissed by the merged entity. This matter was registered with the Screening Unit of the Commission. Subsequent to a Commission, the matter was transferred to M&A in March to investigate. By way of example, some of the employees allege that they were dismissed for being absent from work as per the merging parties' clocking system. Another complainant has also alleged that she was dismissed as a result of not following the leave policy when taking study leave to write her examination. The Unit is currently investigating the complaint.

REGENT / HOLLARD

The Commission received a complaint from certain employees alleging that they have been retrenched as a result of the merger and therefore in breach of the Conditions. The Unit engaged with both the complaint and the merging parties. The merging parties state that no retrenchments took place and that there was a Section 197 that was followed. The Unit has not finalised its investigation of the complaint and the complaint is therefore still pending.

CHUBB MERGER

The Commission received a complaint from a certain employees who alleges that he has been retrenched in breach of the Conditions. The Commission has engaged with both the complainant and the merged entity to establish whether the retrenchment was merger specific or not. Subsequent to the Commission's meeting with the merging parties, the merging parties have submitted further documentation to the Commission to support their assertion that the retrenchment was not merger specific. The investigation is therefore still pending.

(d) Conditions imposed on cases

During Q4, 9 (nine) cases were approved with conditions by the Commission. These cases are reflected in Table 1 below.

[1] *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.*

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

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2017Jul0043	Barnes Southern Palace Holdings Proprietary Limited	Scaw South Africa Proprietary Limited	Production of steel products	*Behavioural:* Self-monitoring – cross shareholding/ information exchange: Obligation not to exchange competitively sensitive information and to appoint common directors. Merged Entity to make available 20% of its Direct Reduction Iron to Mini Steel Mills *Public Interest* – Merged Entity obligated not to retrench for an indefinite period
2017Oct0045	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
2017Dec0012	DRDGOLD Limited	Sibanye Gold Limited, trading as Sibanye-Stillwater in respect of certain assets of the tailing retreatment business under the West Rand Tailing Retreatment Project (Selected Assets)	Mining of metal ores	*Behavioural* – additional acquisition: Sibanye-Stillwater shall inform the Commission of whether they exercised their call option, moving them from de facto to de jure control
2017Nov0062	Southern Palace Group of companies (Pty) Ltd	Murray & Roberts Limited	Movable consumer goods	*Public Interest* – Employment: Moratorium on retrenchments for a period of 2 years from implementation date.
2017Dec0030	Joy son KSS Holdings No.2 S.a.r.l and Joyson KSS Auto Safety S.A	Takata Corporation	Manufacture of parts and accessories for motor vehicles	*Behavioural* - The parties are obligated to set up an escrow fund in order to cover any potential administrative penalty which may be imposed by the Tribunal
2017Dec0036	SEMA Holdings Limited	CWT-Aquarius International Limited	Transportation services	*Behavioural* – cross shareholding/information exchange: Obligation to ensure that representatives appointed in the CWT board has no Operational Involvement in terms of certain services at the Acquiring Group Competition Law awareness programme: Acquiring Group shall procure that each of its representatives appointed to the CWT board undertake competition law awareness training
2017Jan0083	Amsted Rail Company Inc	The Cast Products Division of Scaw South Africa (Pty) Ltd	Manufacturing and supply of steel	*Public Interest* – Employment: Moratorium placing an obligation not to retrench for a period of 18 months from date of approval
2017Nov0003	FLSmidth Proprietary Limited	Sandvik Mining RSA Proprietary Limited in respect of certain	Supply of machinery	*Public Interest* – Employment: an obligation placed on the merged entity to exhaust all avenues to identify and offer available reasonable alternative employment for a period of 24 months after the implementation date.
2017OCT0043	Beljer Ref South Africa Proprietary Limited	The TecsaReco Business	Supply of refrigerators	*Behavioural* – Structural: The Conditions required that either Tecsa or Beijer divest of their wholesale distribution branches in both the Northwest and Limpopo Provinces, as going concerns

Source: Competition Commission

Table 1 indicates that of the 9 cases, 4 had public interest conditions, 5 had competition conditions and remaining 1 had a combination of public interest and competition conditions. Of the 4 public interest conditions, 3 related to employment while the remaining condition was a combination of employment, pricing conditions and the exchange of competitively sensitive information. Of the 5 competition conditions, 1 had structural conditions and 3 had behavioural conditions. While the remaining case had a combination of public interest and behavioural conditions.

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 Q4

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2017Mar0101	Netcare Hospital Group (Pty) Ltd and Netcare Property Holdings (Pty) Ltd and	The Akeso Group	Medical/Health care	*Behavioural* – Pricing: Netcare to ensure that the tariff used in relation to any Medical Scheme (or option) will not exceed the Akeso Base 55 Tariff (excluding VAT) In addition, the Medical Scheme (or option) shall only increase on annual basis (the first increase occurring with effect from 1 January 2019) by no more than the percentage increase agreed between Netcare and the relevant Medical Scheme. The Conditions shall be applicable for a period of seven years from implementation Date, respectively *Structural* - Divestment: Netcare obligated to divest the Rand Hospital and Bell Street Hospital within 18 and 12 months respectively
2017Oct0062	Unitrans Automotive (Pty) Ltd	Action Ford	Automotive Market	*Public Interest* – Employment: Moratorium placing an obligation not to retrench for a period of 2 years from implementation date
2017March0123	Timerite (Pty) Ltd	The Mining Division of Tufbag (Pty) Ltd	Mining	*Public Interest* – Employment: Moratorium placing an obligation not to retrench for a period of 24 months from date of approval Merged Parties also obligated to keep the manufacturing levels for a period of 24 months from date of approval

Source: M&A's construct

F. JOBS REPORT FOR Q4

The table below provides an overview of the impact on jobs in Q4. Table 3 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 Q4.

Month	Jobs lost	Jobs saved	Intended job creation	No. of cases	Net effect
January	74	2 783	0	2	+2 709
February	0	0	0	0	0
March	368	0	0	2	-368
Total	**442**	**2 783**[2]	**0**	**4**	**+2 341**[3]

Source: Commission's calculations

[2]*Case No.2017Nov0065 – K2017449111 (SA) (Pty) Ltd and The Kopanang Mine saved a total of 2 739 jobs in this quarter.*
[3]*This figure indicates that more jobs were saved in Q4 when compared to the number of jobs that were lost in Q4.*

In Q4, 4 cases had an impact on employment. These cases related to the mining and manufacturing sectors. This is lower than in Q3 where 8 cases had an impact on employment. Of these 4 cases, 2 were approved with employment conditions by the Commission[4] as illustrated in Table 4 below and 1 case was prohibited by the Commission. The figures in Table 2 above suggest that less jobs were lost while more jobs were saved in Q4. This suggests a positive net impact on jobs in Q4.

The 4 cases that had an impact on employment as reflected in Table 2 above are provided below:

a. 2017Nov0065 – K2017449111 (SA) (Pty) Ltd and The Kopanang Mine

b. 2017Dec0054 – Morecorp (Pty) Ltd and Purple Dot Investments

c. 2017Nov0003 – Sandvik Mining (Pty) Ltd and FLSmidth (Pty) Ltd

d. 2018Jan0038 – Amsted Rail Company Inc. and Cast Products South Africa (Pty) Ltd

Table 4 (see page 30) provides details on the cases approved with employment conditions in Quarter 4.

Table 4: List of cases approved with employment conditions by the Commission in Q4

Case Number	Primary Acquiring Firm	Primary Target Firm	Market	Condition
2017Jul0043	Barnes Southern Palace Holdings Proprietary Limited	Scaw South Africa Proprietary Limited	Manufacturing of steel 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. Merged Entity to make available 20% of its Direct Reduction Iron to Mini Steel Mills *Public Interest* – Merged Entity obligated not to retrench for an indefinite period
2017Oct0045	Sanlam Life Insurance (Pty) Ltd	Absa Consultants and Actuaries (Pty) Ltd	Financial Services: Insurance	*Public Interest* - Employment: Moratorium on retrenchments for a period of 2 years from implementation date
2017Jan0083	Amsted Rail Company Inc	The Cast Products Division of Scaw South Africa (Pty) Ltd	Manufacturing and supply of steel	*Public Interest* - Employment: Moratorium placing an obligation not to retrench for a period of 18 months from date of approval
2017Nov0003	FLSmidth Proprietary Limited	Sandvik Mining RSA Proprietary Limited in respect of certain assets of its mining systems business	Supply of machinery	*Public Interest* - Employment: an obligation placed on the merged entity to exhaust all avenues to identify and offer available reasonable alternative employment for a period of 24 months after the implementation date.

Source: Competition Commission

Table 4 above indicates that the Commission imposed employment conditions on 4[5] cases. These cases related to the mining, finance and manufacturing sectors. This is lower than in Q3 where 10 cases were approved with employment conditions.

G. FUTURE OUTLOOK

Conditions in South Africa are also predicted to improve, but this will depend on political and economic conditions in the country in the next two years. In South Africa, the forecast shows that growing political risk and a sluggish economy contributed to a halving in total M&A in 2017 versus 2016. However, the forecast predicts that economy should improve in 2018 due to the impact of monetary policy easing and stronger commodity prices.[6]

[4] The Commission prohibited the merger between Morecorp (Pty) Ltd and Purple Dot Investments in March 2018.
[5] Of these 4 cases, 3 were purely employment related conditions and the remaining 1 was a combination of employment and cross-shareholding / information exchange conditions.
[6] Global Transactions Forecast issued by Baker McKenzie accessed from https://businesstech.co.za/news/business/212149/south-african-mergers-and-acquisitions-deals-have-halved-in-2017/

12th annual competition law economics & policy conference 2018

CALL FOR PAPERS

NOW OPEN

Deadline for submission:
Friday, 14 September 2018

Call for Papers Enquiries: Yongaman@compcom.co.za
Conference Enquiries: annualconf@compcom.co.za

For more information, please visit the Competition Commission website:
www.compcom.co.za

Conference Dates: 5 & 6 November 2018

Venue: Gordon Institute of Business Sciences, 26 Melville Rd, Jhb

Theme: 20 Years of Competiton Law in South Africa

competition commission south africa

Gordon Institute of Business Science University of Pretoria

competition tribunal south africa

SUSPENDED ADVISORY OPINION SERVICE PENDING COURT DECISION

ADVISORY OPINION DEFINITION

A formal opinion that is given on a point of law by a court, judge, or judges on request from a legislature or government official, contrasted with an opinion in a case at law where the point is being adjudicated.

Advisory opinions form part of the Commission's advocacy functions to facilitate compliance with the Competition Act. They do not constitute Commission decisions and are not binding on the Commission and parties requesting such advice. These opinions cover various topics including whether or not a proposed transaction constitutes a merger and whether or not competition authorities must be notified of the proposed transaction.

The Commission and Tribunal previously unconditionally approved Hosken Consolidated Investments Limited (HCI) acquisition of a majority shareholding in Tsogo in 2014, HCI was unable to attain the majority interest in Tsogo and only became the largest minority shareholder. In the 2014 transaction HCI indicated that the two gaming businesses held under Tsogo and Niveus would not be integrated and as a result there would be no retrenchments. However, the proposed 2017 transaction envisaged a transfer of the gaming interests held under Niveus to Tsogo and this constitutes a form of integration. It was therefore necessary for the Commission to assess whether or not the proposed 2017 transaction should be approved subject to any employment conditions.
On 16 August 2017, at the request of HCI, the Commission issued an advisory opinion in which it advised the company to file a proposed transaction. The Commission suspended its advisory service pending the finalisation of the case against HCI.

This follows a Competition Appeal Court (CAC) judgment ruling against the regulator on the matter. In November last year, the CAC ruled against the Commission in the matter of HCI and Another v The Competition Commission, in a case centred-around an advisory opinion issued by the Commission to HCI.

In terms of the transaction, HCI intended to increase its shareholding in Tsogo Sun Holdings Limited (Tsogo) to more than 50% and consolidate all its gaming interests (other than its sports and betting interests) under Tsogo, by transferring such gaming interests owned indirectly by one of its subsidiary companies, Niveus Investments Limited (Niveus) to Tsogo (the proposed 2017 transaction).

The CAC decision creates a precedent which can be used by parties to challenge a non-binding advisory opinion issued by the Commission if they do not agree with it. A final decision on the advisory opinion service will be made after the outcome of the Commission's application for leave to appeal (and appeal if leave is granted) to the Constitutional Court.

HCI did not agree with the Commission's non-binding advisory opinion and approached the Tribunal for a declaratory order that it should not file its proposed transaction with the Commission. The Tribunal dismissed HCI and Tsogo's application and found, among others, that it did not have jurisdiction to hear the matter because there was no "live dispute" between the parties and that if HCI wished to challenge the Commission's views about whether or not the transaction must be filed with the Commission, HCI should have used the dispute resolution procedures set out in the Competition Act for resolving disputes relating to notifiability of mergers.

These procedures envisaged that if a party wishes to contest whether a transaction is a merger falling within the Competition Act, it must first file that transaction with the Commission, and if the Commission formally makes a decision that the transaction is a merger, that party has a right to appeal to the Tribunal against the Commission's decision. In this case there was no formal decision by the Commission whether the 2017 proposed transaction constituted a merger, the Commission merely provided HCI, at its request, with a non-binding advisory opinion.

HCI and Tsogo then filed an appeal with the CAC against the Tribunal's decision. The CAC set aside the Tribunal decision and found, among others, that the Tribunal had jurisdiction to hear the matter and that there was a "live dispute" between the parties. In addition, the CAC found that the proposed 2017 transaction did not require notification to the competition authorities as it did not change the quality of control that HCI enjoyed in Tsogo because HCI as the largest minority shareholder in Tsogo was able, at two annual shareholder meetings, which took place in 2015 and 2016 respectively, to secure a majority of votes cast in those meetings.

The Commission subsequently applied for leave to appeal to the Constitutional Court against the CAC's decision. At the heart of the Commission's application is that non-binding advisory opinions should not be the subject of litigation and cannot be used to side-step investigative processes set out in the Competition Act. The Commission's application for leave to appeal seeks to safeguard the interests of employees who may possibly be retrenched as a result of the integration of the businesses of Niveus and Tsogo. The Constitutional Court hearing is scheduled to be heard on Wednesday, 15 August 2018.

COMPETITION POLICY AND THE CHALLENGES THAT LIE AHEAD

By Deputy Commissioner, Hardin Ratshisusu

This year marks South Africa as chair of BRICS and for the past eight years BRICS competition authorities have taken active and practical steps to enhance cooperation in competition regulation.

The markets have increasingly become more complex and less constrained by borders. Thus, there's glaring recognition that the challenges that lie ahead require joint concerted effort. It is, therefore, imperative that these relationships are further cemented and continue in earnest.

The advent of democracy in 1994 ushered a new regulation era in South Africa and government gave high priority to redressing the economic imbalances which corresponded with the racial divisions in the country.

Strong competition policy became and still remains an important industrial policy tool in attaining this. We all know that prior to 1994, in the era of apartheid, the entire economy was designed to exclude black South Africans from meaningful economic participation.

During this time, government supressed market competition and promoted anticompetitive behaviour through state-sanctioned monopolies and cartels.

Notwithstanding these post 1994 changes, South Africa's market structures have remained largely unchanged with high levels of concentration and very little economic transformation.

Previously state-owned entities still remain dominant in markets with very little meaningful and pervasive market entry by small to medium-sized firms. For South Africa, this demands competition law and policy that is geared towards addressing these developmental concerns which challenge the orthodox approach to market regulation. This will require looking at competition regulation and market conduct in new ways.

In keeping with the maturation of South Africa as a new democracy, between the years of 1999 - 2004 the competition authorities spent these formative years building institutional capacity for enforcement.

Competition authorities have since 1999 levied administrative penalties of about R7 billion, with the greater part of the penalties levied in the period 2008 to 2017. Remedies, including divestitures, have also been imposed to address market concentration and public interest concerns.

The economic challenges that face South Africa today require a strong policy response to the issue of economic concentration and inequality. From a competition regulatory perspective, we are seeing a rise in cross-border cartels including those in automotive components and foreign currency trading.

Previously state-owned entities still remain dominant in markets with very little meaningful and pervasive market entry by small to medium-sized firms. For South Africa, this demands competition law and policy that is geared towards addressing these developmental concerns which challenge the orthodox approach to market regulation. This will require looking at competition regulation and market conduct in new ways.

We have also prioritised investigations relating to the high cost of pharmaceuticals, building on the collaborative work in the BRICS Working Group.

The Commission will continue its investigations in these markets and challenge the role of intellectual property rights to the extent that these rights lead to detriment in society.

The Commission has previously intervened in these types of markets in relation to antiretroviral drugs (ARVs) and achieved significant outcomes which led South Africa being the world leader in the ARV roll out programmes.

From a merger control perspective, we are also seeing a rise in cross-border merger transactions, recently in agricultural markets including Dow/Du Pont, Bayer/Monsanto, ChemChina/Syngenta as well as in beer with ABInBev acquiring SABMiller.

This will require that as a regulator, we actively apply our minds to new approaches to competition regulation and enforcement, recognising specific needs and demands of South Africa, the African region and its global position. This will require innovative competition regulation and enforcement which addresses developmental economic priorities.

South Africa recognises that innovation and the pursuit of a knowledge economy will allow us to better exploit our comparative and competitive advantages.

Technology and innovation also have important roles to play in the lives of ordinary South Africans and competition regulation must work towards ensuring that markets work for the betterment of society. The Commission is therefore cognisant of the role that tech giants such as Facebook, Apple, Amazon, Microsoft, Google and Netflix are playing on the global agenda.

South Africa is a country with a population of just under 57 million people with approximately 22 million people with access to the internet, a figure that is growing annually. Access to such technologies has meant that disruptors such as Uber, Taxify and Netflix have been able to make inroads within South Africa increasing consumer choice, somewhat lowering the cost of transportation and broadcasting.

On the other side of the coin, however, the role of technology and the use of big data has come under severe criticism especially in the wake of Facebook and data leaks and the growth of fake news.

From a competition perspective, the European Community has recently prosecuted and fined Google €2.4billion for manipulating search results in order to favour its own offerings over those of rivals and entrenching its dominance of the search engine and online shopping sectors.

This raises regulatory issues of how competition authorities deal with technology in their assessment of markets as well as considering issues of consumer protection in seeking to regulate such ubiquitous firms.

The policy thinking towards big tech giants and dominant firms generally, is changing. South Africa is also thinking about how to tackle market power and its abuse, this through the introduction of a Competition Amendment Bill which raises some solutions to dealing with market power and market concentration.

New thinking and new approaches towards competition regulation also requires that regulators share their experiences and continue deep and meaningful cooperation in seeking to regulate for effective competition.

There are five uppermost challenges that competition policy should seek to tackle and address at present:

1. **First** – the rise in the use of data and associated connectivity in markets which are at the heart of the fourth industrial revolution.

2. **Second** – the continued growth of multinationals through mega-mergers, creating even larger firms that are dominant across different markets, value-chains and countries

3. **Third** – trade agreements that include conditions which entrench the dominance of multinational firms rather than the promotion of competition and development in affected domestic markets.

4. **Fourth** – growing wealth inequality, primarily in developing countries. Competition policy should seriously confront questions of the distribution of wealth and resources in markets, access to markets by small and medium sized firms and dismantling barriers to entry, both regulatory and non-regulatory.

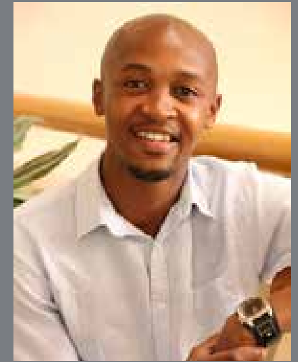
5. **Fifth** – the pervasive nature of cartels in local and global markets. Cartels are increasingly employing subtle techniques including algorithms and other market signalling techniques that require an urgent global response.

Competition authorities, globally, should therefore be at centre of tackling these new challenges to ensure competitive, growing and inclusive markets.

Published in the Business Day

WE NEED TO EMBRACE AN EVER-EVOLVING DIGITAL ECONOMY

By David Maimela



The Competition Commission has received numerous formal complaints relating to public transport since 2009.

Most of the complaints have related to excessive pricing on long distance bus services (especially during holiday peak periods) and restrictive practices such as certain taxi operators being denied entry to airports to compete with other taxi association members.

These complaints were lodged against the backdrop of a sector that is highly fragmented in nature and afflicted with a history of violence and conflict over routes within the taxi industry.

However, in the recent past, tensions have also been raised and lives have been lost and threatened with app-based or e-hailing taxi services such as Uber Technologies (Uber) and Taxify entering the market.

Public transport is an essential service for an estimated 80% of the South African population. It is dominated by the taxi industry which accounts for about 70% of total transport usage. Of this 70% total, minibus taxis account for around 63% while the metered taxi industry accounts for 7% of the total usage.

Uber and Taxify are currently the main app-based services in South Africa. It also appears as if there are local alternatives which include Scoop a Cab and Ryda.

The Commission received a complaint from the Metered Taxi Industry against Uber for alleged unfair business practice, charging below-cost rates and non-compliance with public transport rules and regulations. This is all in the public domain through media reports.

While the fare structure of traditional metered taxis must be published in the Provincial Gazette by the Minister of Transport or MEC in consultation with the relevant authority, prices charged by app-based services are not regulated.

App-based services use a dynamic pricing system in which fares are determined by demand and supply. Prices may increase significantly during periods of high demand, such as evenings and weekends, special events

or adverse weather conditions. If there is high demand for rides and fewer drivers on the roads, the price increases.

However, battles between app-based taxi services and metered taxis are not unique to South Africa. In fact, last week Monday the Organisation for Economic Co-operation and Development (OECD) held meetings in Paris, France, during which various countries discussed taxis and app-based taxi services.

The OECD is an inter-governmental organisation that provides a platform for governments to work together, to share experiences and to find solutions to common problems.

The Commission was invited to make a submission which focused on understanding traditional metered taxis' competitive response to the introduction of app-based taxi services.

The OECD sought a deeper understanding of the extent to which competition authorities around the world have analysed competition dynamics in their respective taxi industries and whether there have been specific interventions to deal with anti-competitive conduct within the metered taxi industry.

The removal of any regulatory burden, to level the playing field among taxi services, also formed part of the discussions.

In South Africa, there is currently no law governing app-based taxis and there has been uncertainty over how these services should be regulated.

As a remedy, the National Assembly passed the National Land Transport Amendment Bill two months ago to address regulatory gaps.

Public transport is an essential service for an estimated 80% of the South African population. It is dominated by the taxi industry which accounts for about 70% of total transport usage. Of this 70% total, minibus taxis account for around 63% while the metered taxi industry accounts for 7% of the total usage.

In relation to some of the complaints lodged with the Commission over recent years, a conclusion was reached that advocacy engagements with relevant role players in the transport industry might lead to better outcomes.

The Commission has been interacting with transport regulators, different spheres of government, taxi associations and app-based service providers as key stakeholders.

The Commission's submission to the OECD was based on qualitative research conducted in 2017 relating to public transport. The research revealed that competition between traditional metered taxis and app-based taxi services was intense and often characterised by resentment. As a result, violence between the traditional metered taxi industry and e-hailing services had been witnessed.

The research also revealed concerns by the traditional metered taxi industry that app-based services entered the metered taxi industry illegally and continued to operate illegally by not adhering to applicable laws that traditional metered taxis were subjected to. Traditional metered taxis complained about the lack of enforcement of regulations which led to app-based services entrenching their dominance in the market.

It appeared as if app-based services such as Uber and Taxify operated in two-sided markets for local transportation, in that it appeared as if they competed for both riders and drivers. On the rider side, app-based services seemed to compete with, and were constrained by, metered taxis.

On the drivers' side, these services competed with other transport services. The potential benefits of these services are convenience and certainty and, although this still has to be confirmed through a study, it also appeared that the pricing of trips seemed to be lower than that of traditional metered taxis.

Most metered taxi operators are organised under the SA Meter Taxi Association and, interestingly, the research indicated that they were starting to gravitate towards and respond to the app-based model, through an app-based service referred to as Yookoo Ride. There are also simpler mobile apps for booking cabs, such as the mobile platform of Rose Taxis based in Johannesburg.

While a reasonable number of traditional metered taxis introduced technology to be able to compete with Uber, the impact had not been very pronounced due to Uber brand loyalty.

The research also indicated that some traditional metered taxi drivers had opted to register with Uber or Taxify and, in some instances, they registered on both apps. Independent drivers were not tied to specific contracts by app-based service providers and they therefore had the liberty to use various app-based services simultaneously.

Due to the insistence that app-based taxis have better vehicles as part of their vetting process, some metered taxi drivers with older vehicles were not able to join these app-based taxi services. There were also indications that the City of Cape Town envisaged using e-hailing apps on minibuses, to transform the minibus taxi industry into a demand-responsive service.

The National Development Plan projected that by 2030, 7.8 million more people would be living in South African cities than in 2012. There have also been projections that at least 80% of South Africa's population would live in urban areas by 2050. Given the added pressure on infrastructure and an ongoing and growing demand for public transport, both government and industry need to understand and be ready for the opportunities and challenges that come with an ever-evolving digital economy.

-- *David Maimela is the Competition Commission's Acting Chief of Staff. He writes in his personal capacity.*

Published in the Business Day

COMPETITION COMMISSION COLLECTS AN INTERNATIONAL AWARD

The Competition Commission has been pronounced the "Agency of the Year in Asia- Pacific, Middle East & Africa" at the 8th Annual Global Competition Review Awards (GCR) held in Washington DC.

GCR is recognised as the world's leading competition law and policy journal and news service that monitors competition enforcement worldwide.

The winners chosen by the international competition community through a nomination and online voting process. The shortlisted nominees included institutions, people and matters considered to be the "best of the best" in 2017.

"Taiwan's Fair Trade Commission and Egypt's Competition Authority were also nominated, but South Africa's competition enforcer emerged as the clear winner. Top of the slate is its foreign exchange case. Barring settlements or dropping the case, the enforcer is set to become the first competition authority worldwide to have to prosecute its forex accusations in court, as other countries have reached a deal or issued administrative decisions.

"Beyond that, the commission is the best-established antitrust agency in Africa, with a track record of cracking down on cartels big and small, and of involvement in some of the world's biggest deals," said GCR on its website.

"We are honoured to receive this award and to be recognised by our global peers as a world-class organisation. We also thank GCR for their work on highlighting the importance of competition enforcement worldwide. We recently presented our Annual Performance Plan and Targets for 2018/2019 to Parliament's Portfolio Committee on Economic Development. We look forward to a very productive and fruitful year ahead, as we work hard to effectively contribute towards a growing and inclusive economy for all South Africans," said Competition Commissioner, Tembinkosi Bonakele.

CCSA WON TWO AWARDS FROM THE GLOBAL REVIEW

MATTER OF THE YEAR

Dow/DuPont
(The best in competition enforcement, merger and cartel defence)

AGENCY OF THE YEAR

Asia-Pacific,
Middle East
and Africa

UPCOMING EVENTS 2018

DATE	PLACE	EVENT
4 – 5 July 2018	Nairobi, Kenya	ACF Merger workshop
11 – 13 July 2018	Geneva, Switzerland	UNCTAD IGE
13 July 2018	Geneva, Switzerland	ACF Steering Committee Meeting [on side-lines of IGE]
16 – 20 July 2018	Johannesburg, South Africa	ACER week in partnership with UJ
25- 27 July 2018	Johannesburg, Sandton Convention Centre	BRICS Summit
5 September 2018	New York	Fordham Competition Law Institute: Head of Authorities Workshop
6 – 7 September 2018	New York	Fordham 45th Annual Conference on International Antitrust Law and Policy
5 – 6 September 2018	Wits, Johannesburg SA	Joint CCSA/CRESSE workshop
19 – 20 September 2018	Dar es Salaam, Tanzania	ACF Cartel Workshop
24 – 26 September 2018	Sochi, Russia	FAS Russian Competition Week Meeting of BRICS working groups on side-lines

CONSUMER INTEREST SEMINAR

THE IMPACT OF COMPETITION POLICY AND THE COMMISSIONS INTERVENTIONS ON CONSUMER WELFARE

The interplay between competition and consumer protection policies came under the spotlight at a Consumer Interest Seminar, hosted by the Commission's Stakeholder Relations Division on 15 March 2018, in Pretoria.

The seminar, on "the impact of competition policy and the competition authorities' interventions on consumer welfare", hosted delegates from the Consumer Commission, the Centre for Competition Regulation and Economic Development (CCRED), the South African National Consumer Union (SANCU) and the Black Sash, among others.

In his opening remarks, Deputy Commissioner Hardin Ratshisusu stressed the importance of such seminars, which provide a platform for regulators to actively and continuously understand each other's mandates.

"There is complementarity between competition policy and consumer protection policy in the everyday work of the Competition Commission and the Consumer Commission. The complaints that we receive from consumers in most cases give us an indication that certain markets may not be working due to weak competition and to a degree lax regulation. Some complaints are purely a frustration on the part of consumers from conduct of business or a regulatory authority," he said. The two regulators signed a memorandum of understanding in 2011 to, among others, promote cooperation, support each other's regulatory mandates and ensure benefits for consumers. Both also participate in SADC's standing committee on Competition and Consumer Policy and Law, which focuses on competition and consumer policies.

Competition mandate

Deputy Commissioner Ratshisusu explained that the Competition Commission's mandate involves promoting and maintaining competition for the benefit of all South Africans – ensuring a wider range of choices and lower prices.

"In any given year (we) receive multiple complaints. For example, from 1 April to the end of December 2017, we received approximately 160 complaints from the public. Of the 160 complaints, 14 raised consumer protection issues relating broadly to contractual disputes with mobile phone operators. These complaints touched on issues such as unfair billing and the charging of high prices for mobile phone contracts," he said.

"Other complaints were against automotive firms and related to concerns such as not allowing car owners to shop around for cheaper service providers due to warranty obligations… the nature and number of complaints we receive give us an indication of where competition concerns may exist," he added.

Competition interventions

The Competition Commission's interventions in various sectors over the years has resulted in tangible benefits for consumers and the country at large. This sentiment was echoed in a 2016 World Bank report, compiled in conjunction with the African Competition Forum, which concluded that competition regulation in Africa significantly benefited consumers. Deputy Commissioner Ratshisusu cited several examples of such work by the Commission:

- Following an investigation into allegations of excessive pricing of ARV medicines – and a subsequent settlement with two global pharmaceutical companies - the price of ARV medication dropped significantly, the roll out of ARVs increased and the government as the main buyer of ARVs has saved billions of Rand;
- Interventions into the bread, wheat and maize milling sector broke the back of a cartel involving Premier, Tiger Brands, Foodcorp, and Pioneer Foods. Penalties totalled just under R1 billion; and
- The cost of banking for consumers was impacted when the Commission launched a Banking Inquiry in 2006. Recommendations led to, among others, an industry Code of Banking Practice which has increased transparency in banking for consumers.

The Commission's work in the healthcare sector continues, with an investigation into the price of pharmaceuticals

(mainly relating to cancer drugs) and the Healthcare Market Inquiry. Other market inquiries undertaken by the Commission – and which are currently under way - relate to land based public transport, the grocery retail sector and the high cost of data services.

"The World Bank's Economic Outlook Report of 2017 noted that South African consumers are paying more for broadband services of lower speeds than many other emerging economies. These include economies on the continent as well as other BRICS countries. It is important that we all regulate effectively for consumers," Deputy Commissioner Ratshisusu told delegates. "The increase in trans-border trade as well as the complexity of business has meant that in today's fast-moving technological world, consumers are left vulnerable and in most instances without adequate recourse," he added.

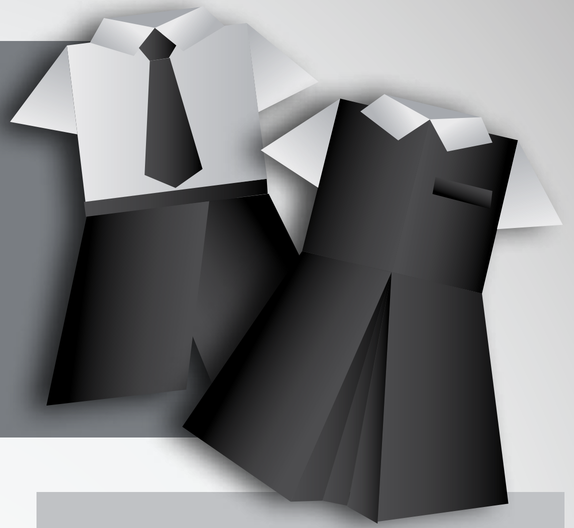
"I look forward to future collaborative work with the Consumer Commission as we tackle matters of mutual interest to enhance welfare of South Africans and make markets work for the wider public good, and not just narrow commercial interests," he concluded.

Meanwhile, Consumer Commissioner Ebrahim Mohamed acknowledged World Consumer Rights Day during the seminar: "It serves to recognise the impact made by consumer and civil rights organisations like us, mobilize citizen action in respect of consumer rights and to express solidarity within the consumer movement".

Noting the upcoming Human Rights Day celebrations and commemoration of the Sharpeville Massacre in March 1960, Mohamed commented on what had given rise to South Africa's rights-based laws and institutions: "I believe South Africa has done well by enacting progressive laws and establishing institutions that protect consumers from harmful consumer practices, unfair discrimination and inequality in the marketplace."

In acknowledging the role of enacted laws and various institutions in protecting consumers, Mohamed concluded that competition law must continue to play a role in protecting vulnerable and innocent consumers.

KEY ROLE PLAYERS HOLD DIALOGUE ON SCHOOL UNIFORM



The Commission, in partnership with the National Education Collaboration Trust, hosted a national dialogue which was attended by key stakeholders such Minister and Deputy Minister of Basic Education, Angie Motshekga and Enver Surty, trade unions, governing bodies, uniform manufactures and department of education officials.

At the event, which was held in February, the Commission presented results of a survey that was on school uniform following a circular was issued by the Department of Basic Education on uniform guidelines.

Early last year the Commission launched an investigation following complaints that it received and prompted its concerns about anticompetitive behaviour that seemed to lessen, prevent and distort competition.

The purpose of the investigation was to eradicate restrictive conduct and barriers to entry for small businesses.

A total of 1595 interviews were conducted with Deputy Principals, Governing bodies and Principals from different schools. The survey revealed that a large number of schools claimed to not be familiar with the circular issued by the Department of Basic Education.

The circular stated that

- School uniform should be as generic as possible;
- Be obtainable from as many suppliers as possible;
- Exclusivity should be limited;
- Schools should follow a competitive bidding process and select more than one supplier; and
- Agreements concluded with suppliers should be of a limited duration.

To ensure that schools adhere to the generic school items there needs to be a continuous engagement between the Commission and the Department of Basic Education. In February, the Commission and the Department of Basic Education held an event at Leriba Lodge. The theme of the event was "the role of school uniform and its impact on access to schooling".

In the dialogue discussion, Enoch Rabotapi, Acting Chief Director for Teaching Development, agreed with the Commission's recommendations to government in terms of monitoring the implementation of the circular. He added: "It is time for us as a department to reflect on existing policies…oversight needs to be taken seriously going forward".

Commissioner Tembinkosi Bonakele said: "Parents raised concerns regarding the price of school uniform and being restricted to only buying from specific suppliers. Various companies are unable to supply school uniform to certain schools, given the exclusive agreements that exist between various schools and school uniform suppliers. Schools should appoint more than one supplier in order to give parents more options".

competition commission
south africa

SCHOOL UNIFORM SURVEY SUMMARY:

1. The Commission, as part of the investigation, conducted a survey which was broadly aimed at understanding the compliance to the circular by various schools. The objectives of the survey were –

   a. To establish whether the schools have received the circular from the Department of Basic Education issued on the 15th of May 2015;
   b. To establish whether or not schools currently have reviewed their current school uniform contract since the receipt of the circular from the Department of Basic Education;
   c. To establish whether the schools have gone the competitive bidding route by advertising their tenders for the procurement of school uniforms;
   d. To establish the duration of contracts for the supply of school uniforms; and
   e. To establish whether schools intend to advertise their tenders at the end of the current contracts for the supply of school uniforms.

2. A sample of schools was drawn from the list provided by the Provincial Departments. A total of 1595 interviews with SGBs and principals or deputy principals were achieved, a relatively excellent response rate of 48% considering that the various types and levels of schools were adequately represented. Consequently, data weighting (total schools -1595 plus SGBs -287 and parents-414) was

applied to ensure that conclusions can accurately be projected to the population of schools particularly at provincial and type of school level, with a weighted sample size of 2296.

3. Below are some of the highlights of the results:

   a. With respect to the first objective relating to the receipt of the circular, the survey revealed that a very significant proportion of the schools in each province were not aware of the circular from the Department of Basic Education.
   b. The survey found that, around 70% of both private schools and former Model C schools did not have exclusive agreements.
   c. Only a third of private schools (32% or about 183 out of 573) and former model c schools (33% or about 567 out of 1723) had exclusive agreements.
   d. Of the above, 87% of the private schools and 53% of the FMC schools have just one exclusive agreement.
   e. Most of these agreements with exclusive suppliers started a number of years ago. The earliest year given being 1974. Most these schools had not done so through open tenders across all provinces.

COMPETITON COMMISSION
IN THE NEWS

Banks and insurers under fire

Competition Commission takes sideswipe by saying it does not want probe to get stuck on technicalities raised

Settled: The Competition Commission says it has settled a case over colluding only with Citibank. The bank paid the commission a R69.5m fine. /Supplied

Business Day
Friday, February 16, 2018
Page 11

BusinessDay

WINDSOR BROKERS
Learn How To TRADE Online
With Windsor Trading Courses

COMPANIES

The acquisition of 75% of Chevron SA by Sinopec's SOIHL Hong Kong is approved

03 JANUARY 2018 - 16:50 by LINDA ENSOR

Chevron. Picture: REUTERS/MIKE BLAKE

The Competition Commission has recommended to the Competition Tribunal that the proposed 75% acquisition of Chevron SA (CSA) by Chinese firm SOIHL Hong Kong Holding Limited (SOIHL HK) be approved, with conditions.

SOIHL is a subsidiary of the state-owned China Petroleum and Chemical Corporation (Sinopec), which is a significant Chinese manufacturer and supplier of petroleum and petrochemical products. It claims to be the largest oil and petrochemical products supplier, and the second major oil and gas producer, in China. Sinopec is also the largest oil refiner and the second largest chemical company in the world, and is second in respect of the total number of petrol stations in the world.

SOIHL will be a new entrant into the South African petroleum

Oil merger no ordinary case

Business Day
Tuesday, February 13, 2018
Page 10

Corporate arrogance in SA has become all too common

THE SHAKE-UP
Sechaba ka'Nkosi

Business Report
Wednesday, March 13, 2018
Page 16

'Break up the monopolies'

BARRIER: DOMINATION BY FEW BIG PLAYERS

» There should be deliberate govt policy to ring-fence small businesses in rural

remain highly restrictive. For example, why shouldn't artisans in rural areas produce some staple goods for their local markets? It should also be possible for a dressmaker to set up shop and produce school uniforms for local scholars.

This isn't happening because emerging entrepreneurs face high barriers to entry in the form of regulatory regimes, cost

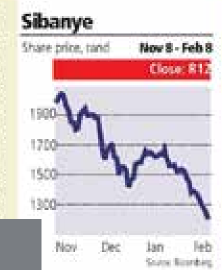
Citizen (KZN) Business
Wednesday, February 28, 2018
Page 24

Lifeline for DRDGold as Sibanye deal is approved

Dineo Faku

THE COMPETITION Commission has given the green light to a merger that could give DRDGold, the tailings retreatment company that has been around since 1895, a few more decades to its life.

This will see precious metals producer Sibanye-Stillwater selling selected gold surface-processing assets and



tions precedent, including the approval of DRDGold shareholders.

Sibanye has been under fire for its health and safety record. Two employees were killed at its Kloof mine on the West Rand on Wednesday, the mining company's second accident in a week.

Last Friday, 955 Sibanye-Stillwater workers were rescued from the Beatrix Mine in the Free State after being trapped underground for 30 hours after a storm cut the electricity supply, making it impossible for them to return

Business Report
Friday, February 9, 2018
Page 15

SA Airlink abused its dominance – complaint

Predatory pricing alleged

Siseko Njobeni

THE COMPETITION Commission wants the Competition Tribunal to penalise regional airline Airlink for abusing its dominance of the Johannesburg-Mthatha route and engaging in so-called predatory pricing.

According to the commission, Airlink's anti-competitive conduct saw passengers pay excessive prices and contributed to the demise of new entrant and Airlink's competitor in the route, Fly Blue Crane.

The commission said a member of the public, Khwezi Tiya, Fly Blue Crane and the OR Tambo District Chamber of Business had lodged complaints between 2015 and last year. "The complainants alleged that SA Airlink's prices were excessive before Fly Blue Crane entered the route. It was also alleged that SA Airlink then lowered its prices below its costs when Fly Blue Crane entered the route.

"It was also alleged that SA Airlink went back to their exorbitant prices after Fly Blue Crane exited the route in January 2017," the commission said.

Investigation

The commission said its investigation had uncovered that SA Airlink contravened the Competition Act by abusing its dominance from September 2012 to August 2016 by charging excessive prices on the route, to the detriment of consumers. Consumers would have saved between R39 million and R108m if SA Airlink had not priced excessively on this route, it said.

"Lower prices would also have resulted in more passengers travelling by air on the route, possibly contributing to ... engaged in predatory pricing by setting prices on its average variable costs and average avoidable costs for some of its flights.

The predatory pricing contributed to the exit of Fly Blue Crane, "their only competitor at the time on the Johannesburg-Mthatha route".

Business rescue

In late 2016, Fly Blue Crane, also a regional airline, entered into business rescue and in February last announced that it had to discontinue flights indefinitely.

'The complainants alleged that SA Airlink's prices were excessive before Fly Blue Crane entered the route.'

The commission said the tribunal should impose an administrative penalty of up to 10 percent of SA Airlink's annual turnover for both the conduct of excessive pricing and predatory pricing.

"This conduct has had a negative effect on the route, even contributing to the exit of a new competitor that had entered the market in late 2016.

"Our estimates further show that air travellers in that area overpaid more than R100m for the five years over which the conduct took place.

"The commission is concerned about SA Airlink's conduct and will seek the maximum administrative penalty before the tribunal," said deputy commissioner Hardin ...isusu.

... empts to obtain comment from SA Airlink yesterday were not successful.

Business Report (Pretoria News)
Thursday, February 15, 2018
Page 17

Alert over botching of hospital licences

● Healthcare market inquiry suggests new regulatory regime for facilities

THIS MAY IMPACT ON COMPETITION AND PRESENT A DISTORTED PICTURE OF THE MARKET

Business Day
Friday, February 16, 2018
Page 4

Exclusive

VRP deal deadline missed by three

Aveng, Group Five, Basil Read

Roy Cokayne

THREE of the seven listed construction companies who were signatories to the Voluntary Rebuilding Programme (VRP) agreement with the government have failed to meet the deadline for the finalisation of their transformation commitments in terms of this agreement. They are Aveng, Group Five and Basil Read.

The VRP agreement was negotiated with the government by the SA Forum of Civil Engineering Contractors on behalf of the seven companies and signed in February last year to address potential and ... reached with the Competition Commission in 2013 to engaging ...

Economic development Minister Ebrahim Patel.
PHOTO: SIMPHIWE MBOKAZI/ AFRICAN NEWS AGENCY (ANA)

R1.5bn
The commitment to a socio-economic ...

Business Report (Pretoria News)
Tuesday, February 14, 2018
Page 11

SA's data bundle war in full swing

By NICK HEDLEY

MOBILE operators told the Independent Communications Authority of SA (Icasa) last week that the regulator would be overstepping its bounds if it went ahead with a proposal that would force them to keep data bundles valid for three years.

Icasa and other regulators, including the Competition Commission, are to investigate issues involving the perceived high cost of communication services in SA.

This was partly in response to campaigns such as the #DataMustFall movement which intensified scrutiny of data costs and the expiry of data bundles.

But mobile operators said at public hearings on the second draft of the End-User and Subscriber Service Charter Regulations, held last week, that extending the validity of data bundles to three years could push up prices.

Longer-dated data bundles were inherently more expensive for operators and consumers than short-term bundles, while standardised expiry periods would rob service providers of a key differentiation tool, they argued.

Further, they claimed that they had already cut data costs materially in recent months.

Network operators said data bundles should not be subject to section 63 of the Consumer Protection Act, which prohibits the expiry of prepaid credit or vouchers before a consumer has redeemed it, or within three years. Section 63 has been a contentious issue for the industry since 2011, when the National Consumer Commission accused mobile operators of noncompliance.

Going by the public hearings on Thursday and Friday, little progress has been made to clarify the matter, even though Icasa councillor Botlenyana Mokhele said the regulator planned to publish final regulations by the end of April.

According to some network operators, section 63 should no longer apply when airtime is converted into a data bundle.

Meanwhile, Mokhele said Icasa aimed only to develop industry standards and the regulator had no intention of meddling with prices.

But Themba Phiri, executive head of regulatory affairs at Cell C, said Icasa was "treading into commercial price regulation, which your statute does not permit".

Mapula Bodibe, consumer business unit executive at MTN SA, said that since long-dated data bundles were more expensive, the rules would be akin to pricing regulations. — *BDLive*

... are not keen on customers being able to keep data bundles for up to three years
Picture: FILE

Daily Dispatch
Tuesday, March 6, 2018
Page 8

NEWS ANALYSIS

Construction merger raises questions

Business Day
Thursday, February 15, 2018
Page 10

School uniforms on topic

Hearing on extra burden of costs

By Yoliswa Sobuwa

For some parents in South Africa, a school uniform costs more than the fees they would be expected to pay.

Yesterday, Godwin Khosa, chief executive of the National Education Collaboration Trust, spoke of the role of uniform and its impact on schooling during a dialogue with the Competition Commission, Minister of Basic Education Angie Motshekga and other stakeholders.

The group said they could not pretend there was no ...

... uniforms and other items needed for school add to the burden of school fees. / ELIJAR MUSHIANA

Sowetan
Tuesday, February 6, 2018
Page 2

MARKET INQUIRY INTO THE

LAND BASED PUBLIC PASSENGER TRANSPORT SECTOR

PUBLIC HEARINGS ANNOUNCEMENTS

The Competition Commission ("the Commission") has, in terms of Chapter 4A of the Competition Act No. 89 of 1998 (as amended), initiated a market inquiry into land based public passenger transport (taxis, long distance and commuter buses and rail) in South Africa. The initiation was done because the Commission has reasons to believe that there are features in the public passenger transport industry that may prevent or restrict competition, to the detriment of the users of public passenger transport (PPT).

The broad issues identified in the Terms of Reference as the scope of the Inquiry are summarized as:

- Price setting mechanisms
- Price regulation
- Route allocation, licensing and entry regulations
- Allocation of operational subsidies
- Transport Planning
- Transformation in the land based public passenger transport industry

Who May Participate In The Inquiry?

Members of the public are invited to participate in the Inquiry during the public hearings. The participants in the market inquiry process may include: users of public passenger transport, business enterprises along the PPT sector value chain (including input/component manufacturers and wholesalers/distributers), other related business enterprises that provide services to the PPT sector, government departments, public entities, regulatory authorities, industry associations, and other stakeholders that may be able to provide information relevant to the market inquiry.

In particular, the following participants are encouraged to participate in the Inquiry process:

1. Members of the any public – any member of the public (individual or group) that has an interest in the Inquiry or is affected by the subject matter of the Inquiry;
2. Companies – any designated representative of a business that has an interest in or is affected by the subject matter of the Inquiry;
3. Organised groups – organised business fora, labour unions, civil society based organisations, industry bodies or any other bodies or institutions that have an interest in or are affected by the subject matter of the Inquiry;
4. Government – government departments, regulatory authorities, municipalities, public entities and any other organ of state or statutory body that has an interest in the Inquiry or is affected by the subject matter of the Inquiry.

Methods of Participation

Apart from attending any public consultation that may be organised by the Commission, anyone wishing to participate in the Inquiry must do so by making a submission in response to the Terms of Reference. Members of the public are encouraged to make their submissions to the Commission in groups – such as social groups, church groups, ward councils etc.

PROVISIONAL SCHEDULE FOR PUBLIC HEARINGS

PROVINCES	TOWN	CONFIRMED DATES
Mpumalanga	Nelspruit	10 July - 11 July
Northern Cape	Kimberley	19 July
North West	Mahikeng	24 July - 25 July
Eastern Cape	Port Elizabeth	13 August - 14 August
	East London	16 August - 17August
Limpopo	Polokwane	21 August - 22 August
Free State	Bloemfontein	30 August - 31 August

GAUTENG, WESTERN CAPE AND DURBAN
PUBLIC HEARINGS IN PICTURES

competition commission
south africa

THE COMPETITION COMMISSION CAN BE CONTACTED AT ANY OF THE FOLLOWING:

Telephone Number:
+27 (012) 394-3200
+27 (012) 394-3320

Fax Number :
+27 (012) 394 0166

Email Address:
ccsa@compcom.co.za

Physical address:
The DTI Campus, Mulayo (Block C),
77 Meintjies Street,
Sunnyside, Pretoria

Postal address:
Private Bag x23,
Lynwood Ridge,
0040