



competition commission
south africa

THE COMPETITION COMMISSION

2nd Quarter Report: 01 July 2021 – 30 September 2021

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TABLE OF CONTENTS

I. INTRODUCTION	5
1. PERFORMANCE SUMMARY	5
2. EXECUTIVE HIGHLIGHTS	7
2.1 JUDGMENTS IN THE TRIBUNAL AND THE COURTS	9
2.2 LITIGATION SUMMARY	12
2.3 SIGNIFICANT MERGERS.....	19
2.4 SIGNIFICANT COVID-19 INVESTIGATIONS.....	29
II. PERFORMANCE BY CORE PROGRAMMES	30
3. LEGAL SERVICES: PERFORMANCE OVERVIEW	30
3.1 KEY HEARINGS IN THE TRIBUNAL AND HIGHER COURTS.....	30
4. CARTELS: PERFORMANCE OVERVIEW.....	31
4.1 SUMMARY OF CARTELS DIVISION CASE LOAD.....	31
4.2 CORPORATE LENIENCY APPLICATIONS.....	32
4.3 DAWN RAIDS	32
5. MARKET CONDUCT: PERFORMANCE OVERVIEW	32
5.1 SUMMARY OF MARKET CONDUCT DIVISION CASE LOAD	33
5.2 FULL INVESTIGATIONS FINALIZED IN Q2.....	33
5.3 INVESTIGATIONS INITIATED IN PRIORITY SECTOR IN Q2	36
5.4 EXEMPTIONS	36
6. MERGERS & ACQUISITIONS: PERFORMANCE OVERVIEW	37
6.1 SUMMARY OF M&A CASE LOAD.....	37
6.2 MERGERS APPROVED WITH CONDITIONS	38

6.3	IMPACT OF MERGERS ON JOBS	45
6.4	MONITORING OF CONDITIONS.....	47
7.	ECONOMIC RESEARCH BUREAU: PERFORMANCE OVERVIEW	47
7.1	POSITION PAPER ON OPEN BANKING.....	48
7.2	ESSENTIAL FOOD PRICE MONITORING REPORT	49
7.3	DRAFT GUIDELINES ON COLLABORATION BETWEEN COMPETITORS ON LOCALISATION INITIATIVE	50
8.	MARKET INQUIRIES	51
8.1	MARKET INQUIRY INTO ONLINE INTERMEDIATION PLATFORMS SERVICES	51
8.2	PUBLIC PASSENGER TRANSPORT MARKET INQUIRY.....	51
8.3	GROCERY RETAIL MARKET INQUIRY	51
8.4	LIQUEFIED PETROLEUM GAS MARKET INQUIRY	51
8.5	DATA SERVICES MARKET INQUIRY	51
8.6	HEALTH MARKET INQUIRY.....	52
9.	ADVOCACY DIVISION: PERFORMANCE OVERVIEW	52
9.1	SCREENING	52
9.2	POLICY RESPONSES.....	53
9.3	WORKSHOPS ON COMPETITION POLICY.....	53
9.4	STAKEHOLDER ENGAGEMENTS	54
9.5	EDUCATION & TRAINING	54
10.	OFFICE OF THE COMMISSIONER: PERFORMANCE OVERVIEW.....	55
10.1	COMMISSION-INITIATED MEDIA ENGAGEMENTS	56
10.2	INTERNATIONAL RELATIONS	57
11.	ADMINISTRATION.....	58

11.1 HUMAN RESOURCES.....	58
11.2 INFORMATION AND COMMUNICATIONS TECHNOLOGY	58
11.3 GOVERNANCE AND RISKS	59
11.4 AUDITOR GENERAL REFERRED CASES	59
12. FINANCE.....	59
13. TABLE 24: PERFORMANCE AGAINST TARGETS: 2021/22	60

TABLES

Table 1: Total Quarter 2 Targets	5
Table 2: Targets Not Met in Q2.....	5
Table 3: Targets Exceeded in Q2	6
Table 4: Commission’s Litigation Load 2020/21	12
Table 5: Penalties imposed at the Tribunal and the courts	13
Table 6: Settlement Agreements Confirmed at Tribunal in Q2	13
Table 7: Covid-19 cases won/lost at the Tribunal and the courts	30
Table 8: Cartel decisions won/lost at the Tribunal and the courts.....	30
Table 9: Merger cases won at the Tribunal and the courts	30
Table 10: Cartels Case Load.....	32
Table 11: Applications for Leniency	32
Table 12: Exemption Applications in 2021/22.....	36
Table 13: Merger Activity in Q2	37
Table 14: Merger Activity by Quarters (2021/22)	37
Table 15: List of cases approved with conditions by the Commission in Q2	38
Table 16: Summary of the impact on jobs in Q2	45
Table 17: Mergers with Impact on Jobs in Q2	46
Table 18: List of cases approved with employment conditions by the Commission in Q2.....	46
Table 18: Complaints Statistics in 2020/21	53
Table 20: Commission-initiated Media Engagements	56
Table 21: Advertising Value Equivalency (AVE) by Coverage	56
Table 22: Commission mentions and impressions in online media for Q2.....	56
Table 23: Engagements with regional and international bodies in Q2	57
13. Table 24: PERFORMANCE AGAINST TARGETS: 2021/22	60

I. INTRODUCTION

This report constitutes the Competition Commission's ("Commission") performance results for the second quarter (Q2) of the 2021/22 financial year (01 July 2021 to 30 September 2021).

The Commission has a total of forty-four (44) performance targets in the 2021/22 Annual Performance Plan. Of these, twenty-three (23) targets were applicable in Q2 and twenty-one (21) targets not applicable. The Commission met fifteen (15) targets, exceeded three (03) targets, and did not meet five (05) targets. Therefore, the Commission obtains a performance score of 78% against its Q2 targets.

1. PERFORMANCE SUMMARY

Table 1: Total Quarter 2 Targets

Total APP Targets: 44	Q1	Q2
Applicable targets	24	23
Targets not applicable	20	21
Targets met	15	15
Targets exceeded	6	3
Targets not met	3	5
Total score %	88%	78%

1.1. Targets Not Met

The table below provide details of the targets the Commission did not meet.

Table 2: Targets Not Met in Q2

KPI No	KPI description	Q2 Target	Q2 Results	Reason for Variance
KPI 9	No. of abuse of dominance and restrictive cases initiated related to Covid-19.	5	0	The Commission was planning to initiate several SIU cases in Q2, however the Complainant filed the complaint. The Commission is also finalizing consultations for additional initiations.

KPI No	KPI description	Q2 Target	Q2 Results	Reason for Variance
KPI 12	No. of abuse of dominance and restrictive cases initiated in prioritized sectors.	2	0	The Commission initiated one complaint in Q1. The Commission is also finalizing consultations for additional initiations.
KPI 24	No. of Guidelines on the application of the Act issued to stakeholders.	1	0	Target was met in the previous quarter.
KPI 34	No. of submissions or responses to policy or regulation.	1	0	Target was met in the previous quarter.
KPI 38	Review of Organisational Structure.	Final Organisational Structure.	0	The Commission is finalizing internal consultations of the organizational structure.

1.2. Targets Exceeded

The table below provide details of the exceeded targets.

Table 3: Targets Exceeded in Q2

KPI No	KPI description	Q2 Target	Q2 Results	Reason for exceeding target
KPI 15	No. of cartel investigations completed.	3	9	There were no trials of cartel cases at the Tribunal due to Covid-19, therefore the Commission expedited completion of cartel investigations.
KPI 31	No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted.	1	2	The Commission conducted two workshops, an additional workshop was aimed at informing consumers and business of the Commission's response to Covid-19.

KPI No	KPI description	Q2 Target	Q2 Results	Reason for exceeding target
KPI 35	No. of research and thought leadership insights published.	1	2	Competition regulation under national disaster enabled opportunity to conduct more research.

1.3. Targets Not Applicable

A total of twenty-one (21) KPIs were not applicable in the quarter: twelve (12) KPIs did not have targets set for Q2 and eight (08) KPIs had set targets for Q2, but the targets were not triggered, hence reported as *not applicable*. Targets that were not triggered included average turnaround time for Phase 3 intermediate and small merger investigations (KPI 3), Covid-19 cases won at the courts (kpi 8), Covid-19 exemption completed within 3 months (KPI 10), exemption applications completed within 12 months, market conduct cases won at the Tribunal in relation to abuse of dominance, cartel cases won at the courts (KPI 17), restrictive practices and exemption litigation (KPI 18), % of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation (KPI 19), % of merger decisions upheld by the courts (KPI 21) and advisory opinions issued within 60 days (KPI 25).

2. EXECUTIVE HIGHLIGHTS

The Competition Commission (“Commission”) continued to maintain high levels of enforcement activity during the quarter under review. The Commission has a total of one hundred and nine (109) cases at various stages of litigation in the Competition Tribunal (“Tribunal”) and the courts, including eighty (80) cartels cases, six (6) abuse of dominant cases, three (3) contested mergers and seven (7) reconsiderations.

The Commission received seventy-seven (77) merger notifications during Q2 and finalised a total of seventy-seven (77) transactions, of which sixty-three (63) were approved without conditions and thirteen (13) were approved with conditions, whilst one (1) case was abandoned, and no case was prohibited.

With respect to complaints, the Commission received a total of one hundred and seventy (170) complaints from the public during Q2, ninety-two (92) complaints related to Covid-19 and seventy-eight (78) were non Covid-19 complaints. The Commission experienced an increase in the number of

Covid-19 cases received, ninety-two (92) complaints were received during Q2, compared to the previous quarter. However, majority (74) of those complaints related to the unrest and looting that occurred in certain parts of KwaZulu-Natal and Gauteng in July 2021. In total, the Commission received seventy-four (74) cases related to the riots at the end of the quarter.

The Commission finalised one hundred and thirty-one (131) Covid-19 related investigations. All Covid-19 investigations finalised were non-referred. The Commission finalised fifty-seven (57) non Covid-19 complaints in Q2, all the cases were non referred. The Commission completed nine (9) cartel investigations, and referred one (01) case to the Tribunal for prosecution.

The Commission welcomed the decision by the Tribunal in which Tourvest Holdings (Pty) Ltd and the Siyazisiza Trust were found guilty of collusive tendering or price fixing, in contravention of section 4(1)(b)(iii) of the Competition Act 89 of 1998 as amended. The judgment also provides guidance on characterization, where the colluding parties contested their horizontal relationship.

The Commission published its fifth food price monitoring report which covered the structural issues in South Africa's food market system and the initiative to develop small-scale, localized farming, the report also tracked essential food pricing during the third wave of the pandemic. The Commission also conducted research focused on open banking and the importance of consumer data in fostering innovation and competition. The research assists in highlighting key issues where regulatory supervision is required for open banking to be implemented successfully in South Africa. The research also explored whether a market-led, or regulatory-led approach may be adopted in South Africa.

The Commission issued draft guidelines on collaboration between competitors on localisation initiatives for public comment. In terms of the draft Guidelines, a "localisation initiative" is any project or effort to achieve greater levels of local procurement or production. Localisation initiatives may be initiated by Government or private players themselves. The Commission recognises that industry participants/market players may wish to engage in initiatives to increase localisation. Collaboration amongst competitors may be required to advance such localisation initiatives. The draft guidelines have been developed to guide the process by which such collaboration between competitors may occur and aim to provide guidance to industry and government as to how localisation initiatives may be appropriately identified and implemented, in a manner that does not raise competition concerns

The Commission also engaged with domestic and international stakeholders during the quarter, including hosting seminars and educational workshops to promote competition compliance.

2.1 Judgments in the Tribunal and the Courts

The following judgment was issued in the quarter under review.

2.1.1 The Competition Commission vs Tourvest and Siyazisiza Trust: CR022May15

The Competition Tribunal (“Tribunal”) delivered another significant judgement for the purposes of assessing allegations of collusive tendering, where characterization is disputed. The Tribunal’s finding in the Competition Commission (“Commission”) complaint referral against Tourvest Holdings (Pty) Ltd (“Tourvest”) and Siyazisiza Trust (“the Trust”), collectively the Respondents, for collusive tendering in respect of the provision of retailing of arts, curio and crafts to Airports Company South Africa (SOC) Ltd (“ACSA”), affirmed the Commission’s position that parties to a collusive tendering conduct cannot avail themselves a characterisation defense.

The complaint was filed by ACSA in 2013, where it was alleged that the Respondents entered into an agreement and / or a concerted practice to coordinate their respective bids submitted in response to a Request for Bids (“RFB”) issued by ACSA in February 2013, in relation to arts, crafts and curio retail leasing at OR Tambo International Airport (“OR Tambo”). The RFP was divided into three opportunities, namely, Shop DF02 (“Opportunity 1”), Shop DF20 (“Opportunity 2”) and Shops IPR04, DFE04 and BS02 (“Opportunity 3”). Tourvest was the incumbent service provider and submitted bids in respect of all three opportunities while the Trust only submitted a bid in relation to Opportunity 3.

In its complaint, ACSA asserted that its Bid Evaluation Committee suspected Tourvest of having colluded with the Trust, in respect of opportunity 3 as their bid documents were similar in respect of, inter alia, the projected rental revenue, the annual minimum rental, the marketing plans, the annual income, cash flow and business plan. ACSA then invited the Respondents to make representations explaining the alleged collusion. ACSA was not satisfied with the explanation. It then disqualified the Respondents in respect of all three opportunities and then filed a complaint with the Commission.

The Commission investigated the matter and found that the Respondents concluded a Memorandum of Understanding (“MOU”) wherein they agreed to assist each other in the preparations of their bids for Opportunity 3, which entailed the operation of 3 retail stores for arts, crafts and curio at the International Departures Terminal Airside of OR Tambo. Tourvest submitted its own independent bid, while at the same time it reached an agreement with the Trust about the Trust’s bid for the same opportunity. This conduct amounts to collusive tendering and/or price fixing in possible contravention of section 4(1)(b)(iii) and (i) of the Act.

In May 2015, the Commission referred the matter against the Respondents to the Tribunal for prosecution. Before the Tribunal, Tourvest and the Trust contended that they were not in a horizontal

relationship, since the Trust could not have fulfilled the requirements of the tender without Tourvest's assistance - both in the preparation of the bid documents and subsequently as a service provider, in the event of the Trust's bid being successful. The Respondents also argued that their conduct could not be characterised as falling within 4(1)(b) of the Act, as they did not intend to collude, but wanted to promote competition. According to the Respondents the agreement/MOU was entered into for non-commercial socio-economic upliftment purpose as Tourvest would have assisted the Trust to gain the requisite management skills and other expertise to manage the business on its own. In this regard, the Respondents also argued that the Commission failed to consider the socio-economic upliftment purposes of the impugned arrangement. In addition, the Respondents also argued that the Commission has failed to properly consider that the Trust lacked the requisite qualifications and experience in running a retail store as specifically stipulated in the tender documents issued by ACSA.

Therefore, the Tribunal had to determine (i) whether the Respondents are in a horizontal relationship and if so, (ii) whether impugned conduct contravenes section 4(1)(b)(iii) of the Act.

In dismissing Respondents' argument that they were not in a horizontal relationship, the Tribunal found that the Trust held itself out to be a competitor of Tourvest and other bidders at the point when it submitted its bid for Opportunity 3. According to the Tribunal, "the ability of a party to a collusive agreement to ultimately perform is not relevant when deciding whether or not there was an agreement to collude". In the language of the Tribunal, even if "we accept that the Trust did not have retail experience for Opportunity 3, the Trust did not rule out being able to run the opportunity and being able to compete with Tourvest and other retail outlets in the future". Therefore, Tourvest and the Trust at the very least became, as pleaded by the Commission, either actual or potential competitors during the time that they both submitted tenders for Opportunity 3. Accordingly, the Tribunal concluded that Tourvest and the Trust were in a horizontal relationship in relation to opportunity 3.

In rejecting the Respondents' argument that their conduct could not be characterised as falling within the scope of section 4(1)(b), the Tribunal found that both Respondents conceded that the Trust did not determine its prices for Opportunity 3 independently of Tourvest. Thus, the Tribunal found that the conduct of the Respondents involves collusive tendering in that the Trust prepared its bid documents in collusion with Tourvest in contravention of the Act.

Further, the Commission also contested that Tourvest entered into an arrangement with the Trust for non-commercial socio-economic upliftment purposes. The Commission presented evidence showing that Tourvest was concerned that it may lose the tender in respect of Opportunity 3 to an enterprise development, as it was aware that ACSA was looking to award the opportunity to some other empowered entities or a retailer with enterprise development credentials. It was clear from evidence

presented at the hearing that the loss of opportunities at OR Tambo would have significant impact on Tourvest's business operations if it did not enter into a business venture with an empowerment entity that might win the tender, in which case Tourvest will still benefit from being a service provider to the enterprise development entity. In this regard, the Tribunal reasoned that Tourvest did not enter into this arrangement with the Trust for non-commercial socio-economic upliftment purposes, as argued but instead entered into an arrangement with the Trust for commercial purpose to protect its own commercial interests.

The Tribunal concluded that Tourvest and the Trust had contravened the provisions section 4(1)(b)(iii) of the Act and ordered Tourvest - the instigator of the cartel conduct - to pay an administrative penalty of R9, 181073 (nine million, one hundred and eight one thousand and seventy-three rands). No administrative penalty was imposed on the Trust. the Tribunal found that they contravened the Act because the MOU concluded between Tourvest and the Trust was an agreement between parties in a horizontal relationship that was entered into with the intention to subvert competition. In exercising its discretion not to impose an administrative penalty on the Trust, the Tribunal reasoned that the Trust was too small, and that it did not benefit from the cartel conduct as well as that it played a minimal role in the design of the impugned conduct as Tourvest was found to be the mastermind and the leader of this collusive tendering.

2.1.2 Coca-Cola Beverages Africa (Pty) Ltd vs the Competition Commission and Food and Allied Workers Union Tribunal: RVW150May20

This case emanates from the merger conditions imposed by the Tribunal on 10 May 2016, which were extended on 27 September 2017. The main issue in this case relates to the retrenchment of 368 employees by CCBSA, and whether this was in breach of CCBA's merger conditions, particularly clause 9.2 which was meant to protect the affected employees from retrenchments because of the duplications that arose at the bottling operations as a result of the 2016 Merger.

The Commission's investigation found that there was a breach of clause 9.2 of the merger conditions and issued a Notice of Apparent Breach against CCBA. In March 2021 CCBA applied for a review of the Commission's decision, which review was opposed by the Commission and Food and Allied Workers Union ("FAWU").

In its decision, the Tribunal found that although CCBA readily admits that some of the employees retrenched were in duplicate positions, the Commission failed to put up any evidence as to whether all or, if not all, which or how many of those employees occupied duplicate positions.

The Tribunal noted that given no dispute in respect of the evidence provided by CCBA in respect of the macro-economic climate, the R2.1 billion sugar tax imposed in 2018 and the anticipated sharp increase in the costs of input raw materials, the probabilities strongly favour CCBSA's stated reasons for cutting costs generally and specifically in respect of the reduction of staff costs, which included the involuntary retrenchments. The cutting of costs in challenging economic circumstances is a requirement in response to an economic need of an employer and accordingly an operational requirement as it is contemplated in the definition of 'operational requirements' in the Labour Relations Act.

The Tribunal found that CCBA substantially complied with its obligations with respect to the merger conditions in clause 9.2 and set aside the Notice of Apparent Breach issued by the Commission.

The Commission has appealed the Tribunal's decision.

2.2 Litigation Summary

2.2.1 Litigation load

The Commission's litigation is undertaken by the Legal Services Division (LSD) as well as the Cartels Division. The Commission has observed that the cases are becoming more complex with respondents contesting proceedings more often, in addition to the high volume of cases. The table below shows a total of one hundred and nine (109) cases are in litigation at the end of Q2.

Table 4: Commission's Litigation Load 2020/21

Cases	Q1	Q2
Number of cartel cases in litigation at the Tribunal and the courts	82	80
Number of abuse of dominance cases in litigation at the Tribunal and the courts	8	6
Number of minimum resale price maintenance cases in litigation at the Tribunal	1	1
Number of contested large mergers in the Tribunal	2	3
Number of reconsiderations in litigation	6	7
Number of prior implementation cases in litigation	6	5

Number of appeals, review and variation application	9	7
TOTAL CASES	114	109

2.2.2 Penalties imposed by the Tribunal.

Penalties are imposed by the Tribunal after it has heard a case to its conclusion and thereafter makes a finding. Should the respondent/s be found guilty, the Tribunal has the option to impose a financial penalty. The Tribunal imposed one penalty in Q2.

Table 5: Penalties imposed at the Tribunal and the courts

Date of decision	Parties	Section Transgressed	Penalty levied
29/09/2021	Competition Commission vs Tourvest Holdings (Pty) Ltd	4(1)(b)(i) &(iii)	R9 181 073

2.2.3 Settlement Agreements

A settlement agreement is an agreement between the Commission and a respondent settling a complaint, which is confirmed by the Tribunal as an order of the Tribunal. The Commission negotiates terms of the settlement agreement, which are then confirmed by the Tribunal. During Q2, four (04) settlement agreements were confirmed by the Tribunal. The cases are listed in the table below, and some cases summarised thereafter.

Table 6: Settlement Agreements Confirmed at Tribunal in Q2

Decision Date	Case Name	Section Transgressed	Penalty levied	Donation value (Price-gouging cases only)
05/07/2021	Competition Commission vs ETG Agro Products (Pty) Ltd and Rand Agri (Pty) Ltd	13(A)	R1 000 000.00	R0
26/08/2021	Competition Commission vs Overlooked Colliery Alpha (Pty) Ltd and Sudor Coal (Pty) Ltd	13(A)	R577 500.00	R0
16/07/2021	Fruit Stop CC	8(1)(a)	R0	R23 100.00
16/09/2021	Competition Commission vs M Meyer Surgical Sales CC T/A Intermed	4(1) b (iii)	R50 000.00	R0

Decision Date	Case Name	Section Transgressed	Penalty levied	Donation value (Price-gouging cases only)
16/09/2021	Competition Commission vs Jasco Security and Fire Solutions (Pty) Ltd	4(1)(b)(ii)	R300 000.00	R0
			R 927 500	R23 100

2.2.3.1 The Competition Commission and M Meyer Surgical Sales CC T/A Intermed: 2019Sep0024

On 18 September 2019, the Commission received a complaint from the Department of Health Western Cape (“DOHWC”) in terms of section 49B(2)(b) of the Act. The DOHWC alleged that M Meyer Surgical Sales CC t/a Intermed (“Intermed”) and BMS Medical CC (“BMS Medical”), colluded when tendering for the DOHWC tender in contravention of section 4(1)(b)(iii) of the Act.

This complaint centred around tender number: WCGHCC007/2017 for the provision of diagnostic sets to all hospitals / institutions under the control of the DOHWC for a three-year period. The diagnostic sets are toolsets which assist clinicians to perform a comprehensive physical examination of patients’ eyes, ears, nose, and throats.

The Commission’s investigation found that on or about June 2018, Intermed and BMS Medical assisted each other when completing tender documents for the DOHWC Tender.

On 29 November 2020, Intermed made an offer to settle the matter by paying an administrative penalty of R50 000. On the 16 September 2021, the Tribunal confirmed the consent agreement between the Commission and Intermed.

2.2.3.2 The Competition Commission and Jasco Security and Fire Solutions (Pty) Ltd: 2017Jul0013 and 2018Feb0051

In July 2017 the Commission initiated the investigation against Automatic Sprinkler Inspection Bureau (Pty) Ltd (“ASIB”) as well as installers and suppliers of automatic fire sprinklers. A search and seizure operation was conducted in the premises of ASIB as well as 22 installers of automatic fire sprinklers. On 16 August 2019, the Commission referred this matter to the Tribunal for prosecution against ASIB and 18 installers of automatic fire sprinklers, including Jasco Security and Fire Solutions (Pty) Ltd (“Jasco”).

The Commission alleged that ASIB and its listed installers agreed to allocate specific services to each other in that ASIB would provide inspection services while the listed installers would provide automatic sprinkler installation services. Furthermore, that the listed installers agreed not to conduct business in areas where they are not listed by ASIB and that they should only conduct business in areas where they are listed. This conduct amounts to market division in contravention of section 4(1)(b)(i) & (ii) of the Act.

On 20 September 2021, the Tribunal has confirmed, as an order, a settlement agreement concluded between the Commission and Jasco in relation to an alleged collusion involving ASIB and various installers of automatic fire sprinklers. Jasco agreed to pay an administrative penalty of R300 000 (Three hundred thousand).

2.2.3.3 The Competition Commission, Overlooked Colliery Alpha (Pty) Ltd and Sudor Coal (Pty) Ltd: 2021Feb0030

On 19 February 2021, the Commission received a notice of an intermediate merger transaction, which was filed by Overlooked Colliery Alpha (Pty) Ltd (“Ova”) and Sudor Coal (Pty) (“Sudor Coal”), collectively the Respondents. In terms of the Transaction, OVA acquired the target firms owned by Sudor Coal comprising the Weltevreden, Kalbasfontein and Halfgewonen collieries (including property, plant, equipment, employees and mining rights) which comprised of an underground coal mine as well as a coal washing plant in Mpumalanga. The Weltevreden colliery is an underground coal mine. The coal produced at the Weltevreden colliery is processed at the Halfgewonen colliery which has a coal washing, crushing and screening plant. The mining rights related to the mining of coal at the aforementioned collieries.

The Commission’s investigation found that the Respondents concluded a Sale of Business Agreement on or about 30 October 2019 in terms of which Sudor Coal would sell its business and its mining rights to OVA. The Transaction was implemented in various stages in 2019 and 2020, and the Respondents concluded various agreements to implement the different aspects of the transaction.

The Respondents admit that they have contravened section 13A(3) of the Act by implementing a merger transaction prior to the approval by the Commission.

In terms of the settlement agreement, the Respondents have agreed and undertaken to: (i) not undertake in any contravention of the Act; (ii) develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act; and (iii) submit

a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the settlement agreement as an order by the Tribunal.

The parties have agreed that OVA will pay an administrative penalty in the amount of R577 500.00 (five hundred and seventy-seven thousand and five hundred rand) payable over a period of 6 months. This amount does not exceed 10% of OVA' total annual turnover in the Republic.

2.2.3.4 ETG Agro Products (Pty) Ltd and Rand Agri Growth (Pty) Ltd: 2018Dec0043

On December 2018, the Commission received notice of an intermediate “prior-implemented” merger between ETG Agro Products (Pty) Ltd (“ETG Agro”) and Rand Agri Growth (Pty) Ltd (“Rand Agri”). At the time of the merger Rand Agri was known as Maize and More (Pty) Ltd. This merger had been implemented in May 2013.

Prior to 2013 Rand Agri was controlled by the Christoph & Sanet Grey Trust (“CSG Trust”) and the Mettle Trust jointly, in equal proportions of 50% respectively.

In May 2013 ETG Agro acquired 50,1% of Rand Agri from the CSG Trust and the Mettle Trust. ETG Agro's 50,1% acquisition left the trusts with equal shareholding of 24.95% each. This acquisition was not notified with the Commission, despite meeting the merger thresholds in terms of section 11 of the Act. In November 2018, the ETG Group, through ETGI, acquired the 24,95% shareholding of Rand Agri held by the Mettle Trust, bringing the ETG Group's shareholding in Rand Agri to 75.05%.

The merging parties notified the Commission of the May 2013 acquisition after receiving legal advice regarding the November 2018 transaction which sought to increase ETG Group's shareholding in Rand Agri to 75.05%. In the merger filing papers, ETG Agro and Rand Agri admitted that they concluded a merger transaction in 2013 without notifying the Commission, and implemented the merger without approval of the competition authorities in contravention of section 13A(1) and (3) of the Act.

The parties entered into settlement negotiations with a view to settling the matter. In consideration of the settlement, the Commission took into account the following factors:

- a) The parties had sought legal advice on a subsequent 2018 transaction wherein ETG Agro intended to acquire a further stake in Rand Agri;
- b) The parties notified the prior-implemented merger when they realized that it had not been notified in 2013 as required by the Act;

- c) ETG Agro admitted to prior implementation of the May 2013 merger, and indicated a willingness to settle the matter with the Commission;
- d) ETG Agro was transparent with all information and documentation requested during the merger investigation and the subsequent prior implementation settlement engagements with them;
- e) The May 2013 transaction did not significantly alter the structure of the market since Rand Agri remained a small player in South Africa, and the merger itself did not result in a substantial lessening of competition; and
- f) The prior implemented transaction was subsequently approved by the Commission and confirmed by the Tribunal.

The Commission and ETG settled on a penalty of R 1 000 000 for the contravention. The consent agreement was confirmed by the Tribunal on 5 July 2021.

2.2.4 Referrals

2.2.4.1 The Competition Commission vs NGK Spark Plug Company Limited and Others:

On 10 October 2014, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against the NGK Spark Plug Company Ltd (“NGK Ltd”), together with its South African subsidiary, NGK Spark Plugs SA (Pty) Ltd (“NGK SA”), and DENSO Corporation (“DENSO”), collectively the Respondents, for alleged price fixing, market division and collusive tendering in the market for the manufacture, supply and/or sale of spark plugs to OEMs, in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act. The complaint was initiated as part of investigations into price fixing, market division and collusive tendering in the market for the manufacture and supply of automotive components supplied to OEMs.

NGK Ltd and DENSO are global players in the market for the manufacture, supply and/or sale of spark plugs and other automotive components to Original Equipment Manufacturers (“OEMs”).

The Commission’s investigation showed that the Respondents generally distribute or supply spark plugs in South Africa through one of the following ways:

- a) directly to an OEM located in South Africa for installation in vehicles which are manufactured and supplied in South Africa;
- b) to an OEM located outside of South Africa which then ships the automotive component to South Africa for assembly in vehicles manufactured and sold in South Africa; or

- c) to an OEM located outside of South Africa which assembles vehicles outside of South Africa and then ships the finished vehicles to South Africa for sale in South Africa.

On 21 July 2021, the Commission filed a complaint referral with the Respondents, for their involvement in price fixing, market division and collusive tendering in respect of spark plugs in contravention of section 4(1)(b)(i),(ii) and (iii) of the Act. According to its complaint referral, the Commission found that from at least 2008, NGK Ltd and DENSO colluded when responding to a Request for Quotation (“RFQ”) issued by Fuji Heavy Industries, for the supply of spark plugs for AR18 engine installed in its Subaru Impreza, Subaru Forrester and Subaru Legacy vehicles sold in South Africa. These vehicles, which contained the spark plugs that were subject to the collusive practices, were sold in South Africa. The Respondents’ representatives engaged with each other in meetings and telephone calls to agree on their responses to the RFQ.

The Commission seeks an order from the Tribunal imposing an administrative penalty equivalent to 10% of the annual turnover of either NGK Ltd or NGK SA, the one paying the other to be absolved.

On 15 September 2021, NGK Ltd and NGK SA filed an exception application to the Commission’s complaint referral. The exception application challenges, *inter alia*, the issue of jurisdiction of the Commission to prosecute the first and second respondents for the conduct described.

2.2.5 Settlements of Covid-19 cases

2.2.5.1 The Competition Commission and Fruit Stop CC: 2020Jul0074

The Commission received information in relation to the inflation of prices of raw ginger which were being charged by Fruit Stop CC (“Fruit Stop”) between April 2020 and June 2020. Fruit Stop is a family-owned grocery store which largely sells fruits and vegetables, as well as a broad range of groceries, meats, deli, cheese, milk, spices and pet foods. Fruit Stop has three branches, in Gezina, Silverton and Wonderboom. The store which was the subject of investigation was the Wonderboom store.

The Commission considered that the mere ability to raise prices by Fruit Stop was indicative of market power as it demonstrated a lack of constraints such that there was an ability to control prices and/or behave independently of competitors and customers. The Commission found that Fruit Stop’s average profit margins in respect of raw ginger since April 2020 to June 2020 have been consistently over 30%, averaging at 45%, which was a 23% increase from the average profit margins of 22% earned from December 2019 to February 2020.

Fruit Stop earned profit margins ranging from 18% to 28% from December 2019 to February 2020. Between April 2020 to June 2020 Fruit Stop earned profit margins ranging from 36% to 52%. The investigation revealed that Fruit Stop made excess profits of R23 110 during April 2020 and June 2020. The Commission found that Fruit Stop's conduct of overcharging for raw ginger may constitute a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the Consumer Protection Regulations.

Despite Fruit Stop disputing that it had charged excessive prices on raw ginger it was willing to resolve the matter by concluding a settlement agreement. The parties therefore entered into settlement negotiations with the intention of concluding a consent agreement. Fruit Stop undertook to make donations of essential goods e.g. fruits, vegetables and groceries to the value of R23 110 to Amadea Safe House, a community-based organization, located at 153 Daan De Wet Nel Dr, Hestia Park, Pretoria. It was agreed that the donation of essential goods will be made over a period of three months, being, July 2021, August 2021 and September 2021. The Donation of the essential goods would be valued at cost and that Fruit Stop would make the first donation within 7 calendar days from the date of confirmation of the consent agreement.

The Tribunal confirmed the consent agreement on 16 July 2021 and Fruit Stop proceeded to make the donations agreed to accordingly. Furthermore, Fruit Stop agreed to immediately desist from the pricing conduct found by the Commission and to reduce their gross profit margin charged in respect of raw ginger to 22% or less from the date of confirmation of the consent agreement.

2.3 Significant Mergers

Significant merger cases that were investigated in the quarter are discussed below.

2.3.1 The Competition Commission recommends conditional approval between Altron TMT SA Group (Pty) Ltd and Law Trusted Third Party Services (Pty) Ltd: 2021Apr0047

On 02 September 2021, the Commission recommended to the Tribunal that the proposed acquisition wherein Altron TMT SA Group (Pty) Ltd ("Altron TMT") intended to acquire 100% of the issued shares in Law Trusted Third Party Services (Pty) Ltd ("LawTrust"), be approved subject to conditions.

Altron TMT falls within the Allied Electronics Corporation Ltd ("Altron or Altron Group"). Altron Group is invested in telecommunications, multi-media, and information technology. Relevant for purposes of this transaction were the Altron Group's information technology ("IT") security services.

LawTrust is a specialist cyber security solutions provider that focuses on establishing positive identity, ensuring authenticity, and protecting privacy. LawTrust's solutions include SSL certificates and certificate management systems, FIDO certified strong authentication, digital signature, and approval solutions, managed Public Key Infrastructure ("PKI"), encryption solutions for database and cloud systems, biometric enrolment and matching systems and insider threat prevention with the electronic DNA platform.

The Commission considered the activities of the merging parties and found that there are horizontal overlaps in the supply of biometric solutions; in the supply of PKI and digital certificates; and in the supply of digital signature solutions. The Commission also found that the transaction resulted in a vertical overlap. Specifically, there was a vertical overlap in relation to PKI and digital certificates solutions (upstream markets) and digital signature solutions (downstream market). This is because both the target firm (LawTrust) and the Acquiring Group supply PKI and digital certificates in the upstream market whilst both firms also supply digital signature solutions at the downstream level of the value chain.

To transmit critical data safely over the internet during e-commerce and e-business transactions, robust and trustworthy security systems are required. PKI is such a security system that provides the necessary security services in enterprises. One of the main goals of PKI is the verification and authentication of each participant using digital certificates.

PKI refers to the underlying framework that enables entities (users and servers) to securely exchange information using digital certificates. PKI is a combination of technologies and processes that leverages cryptography for the protection of information in transit, in use and in storage. Certificate authorities operate accredited trust centres from which they use PKI to digitally authenticate that a particular key belongs to a specific user or device. This key allows the user or device to be identified in the digital space (such identification being the certificate). Digital certificates are the resulting output of PKI. Customers who require a digital certificate make a request to a certificate authority, who verifies the identity of such a customer directly (or through registration authorities). The certificate authority manages and maintains certificates and thereby promotes more secure transactions. LawTrust operates an accredited certificate authority, it operates PKI, and it issues digital certificates.

In South Africa, the Electronic Communications and Transactions Act No. 25 of 2002 (the "ECT Act") provides for the use of electronic signatures in the place of traditional wet ink signatures. The ECT Act recognises two types of signatures in the electronic format, namely Electronic Signatures and Advanced Electronic Signatures. There are several types of signatures in the electronic format that

fall under the Electronic Signatures segment. The signatures classified as Electronic Signatures range from a simple typed name at the end of an email, to using signing pads that are linked to documents, to the more secure digital signatures that are based on digital certificates. Digital signatures are Electronic Signature solutions based on/or originating from a digital certificate. A digital certificate is issued to a person, however that person must first be verified as the person who they are claiming to be.

In this transaction, the Commission considered both Electronic and Advanced Electronic digital signatures because in the upstream market, both LawTrust and Altron Group provide PKI and digital certificates that are used in downstream digital signature solutions. LawTrust also supplies its own digital signature solution, SigningHub, while Altron Group resells PBSA's (SigniFlow) digital signature solutions.

The Commission identified and assessed the proposed transaction in the following markets: Market for the provision of all IT security products and services; Narrow national upstream market for the provision of PKI and digital certificates; Narrow national downstream market for supply of digital signature solutions; and Narrow national market for the supply of biometric solutions.

Horizontal overlaps

In the markets for the provision of all IT security products and services and the supply of biometric solutions the Commission did not find any likely competition concerns arising as a result of the merger. The Commission estimated the merged entity would have market share of less than 20%% and less than 15% in the provision of all IT security products and services and the supply of biometric solutions respectively.

In the upstream market for the provision of PKI and digital certificates, the Commission estimated that the merged entity will have a post-merger market share of less than 30%. The Commission found that there are alternative suppliers including local South African based companies such as TrustFactory and Gijima as well as large global companies such as Entrust, Sectigo, Entersekt, Sectigo, Symantec, DigiCert, Global Sign, Verisign, and Thawte, among others.

In all, there were no market power concerns arising in both the upstream and downstream markets. The merging parties have low market shares, and/or there was low market accretion with the presence of several viable international firms. However, when it comes to a narrow segment of the upstream market comprising Advanced Electronic Signature certificates (which is a specific type of digital certificates) LawTrust has a pre-merger monopoly position because of South African Post Office ("SAPO") not being operational and South African Accreditation Authority ("SAAA") not having

accredited another player in the recent past. This monopoly was assessed in the context of the vertical foreclosure issues arising from the merger.

The Commission also found coordinated effects could arise from this proposed transaction. This is because LawTrust and DataCentrix (a competitor of Altron Group in the markets for ICT and IT solutions) jointly control the eDNA joint venture. As a result of this proposed transaction, the Altron Group and DataCentrix will now have direct links to each other via the eDNA joint venture. The structural link introduced by the merger may now make it easier for Altron Group and DataCentrix to coordinate on competitively sensitive information such as coordinating pricing and marketing policies, or to exchange sensitive information on these matters. The Acquiring Group's and DataCentrix's incentives to compete might also be reduced.

To address these concerns, the parties and Commission agreed to appoint directors to the joint venture who are not involved in the operations of Altron Group businesses; and provide non-disclosure undertakings preventing the sharing of competitively sensitive information between the joint venture and Altron Group. Additionally, all individuals appointed to the operations of eDNA joint venture from the Altron Group side (through LawTrust) cannot be the same individuals involved in the other Altron Group's ICT or related businesses.

Vertical overlap

In respect of Advanced Electronic Signature certificates, the merged entity does have the ability to foreclose its downstream rivals, given that LawTrust is a monopoly. The Commission found that the foreclosure period would depend on how soon the SAAA can provide accreditation to other firms who have applied for, but have not yet been granted accreditation.

The Commission found that the merged entity would have the incentives to foreclose its downstream rivals that supply digital signature solutions, including firms like PBSA (SigniFlow) and EOH (Impression) who require PKI and digital certificates to incorporate into their digital signature solutions, specifically where Advanced Electronic Signature certificates are concerned. By foreclosing these rivals, the merged entity will be able to expand its own downstream digital signature solutions, i.e., the SigningHub solution, post-merger. As a rationale of the merger, Altron Group intends to grow the LawTrust business by leveraging its product offering to its large existing customer base. Such a growth strategy might align with the foreclosure of other downstream rivals where the ability to do so exists.

Foreclosing downstream competitors from accessing Advanced Electronic Signature certificates will have a detrimental effect on the downstream market for supplying digital signature solutions, as

approximately 50% - 60% of the digital signature solutions markets are attributed to the competitors of LawTrust, such as PBSA and EOH. The size of the downstream market that may be foreclosed from accessing Advanced Electronic Signature certificates is therefore significant.

The merging parties and Commission agreed on a supply and pricing undertaking which limits the merged entity's ability to foreclose downstream competitors and raising prices into the future as a way of addressing the foreclosure concerns.

The Commission also assessed customer foreclosure issues. The target firm, LawTrust uses the technology of an international firm, Ascertia, and supplies the SigningHub digital signature solution (among others). On the other hand, the Acquiring Group resells PBSA's SigniFlow digital signature solutions. These digital signature solutions are downstream of the PKI and digital certificates market. The Commission however found that the transaction does not raise substantial customer foreclosure concerns because Altron Group does not appear to be significant supplier of digital signature solutions based on their market shares.

2.3.2 The Competition Commission recommends conditional approval of the Dis-chem Pharmacies Ltd and Pure Pharmacy Holdings (Pty) Ltd merger: 2020Dec0043

The Commission recommended that the Tribunal approve the proposed acquisition of Pure Pharmacy Holdings (Pty) Ltd ("PPH") by Dis-Chem Pharmacies Ltd ("Dis-Chem") subject to various competition and public interest conditions.

Dis-Chem is a publicly listed company incorporated in accordance with the laws of the Republic of South Africa. Dis-Chem is controlled by Ivlyn Local Investment Holdings (Pty) Ltd with a 52.7% shareholding interest.

Dis-Chem is active along the pharmaceutical supply chain ranging from wholesale distribution to the operation of retail pharmacies. Dis-Chem also provides primary healthcare services through its clinics, which are located within most of its pharmacy stores. Dis-Chem also wholly owns a subsidiary, The Local Choice (Pty) Ltd ("The Local Choice"), which is a franchisor of numerous independent franchisee pharmacies in the retail pharmaceutical market under the "The Local Choice" pharmacy brand. The Commission included the market share of The Local Choice franchisees in the computation of Dis-Chem's market share in line with previous approaches adopted by the Commission.

PPH is a company incorporated in accordance with the laws of the Republic of South Africa. PPH is controlled by SGP Investment Holdings (Pty) Ltd (“SGP”) with 72% shareholding interest. SGP directly controls Pie City Holdings (Pty) Ltd (“Pie City”, which in turn controls DevPet (Pty) Ltd, Smith Street (Pty) Ltd and Pie City Development (Pty) Ltd.

PPH is a healthcare and pharmacy group. PPH was, until recently, active in the wholesale distribution of pharmaceutical scheduled and unscheduled pharmaceutical products as well as front shop products. PPH holds the retail pharmacy licenses for its 50 pharmacy stores branded “Medicare” and is therefore active in the retail of scheduled and unscheduled pharmaceutical products as well as front shop products. PPH also owned Healthforce, which provides clinic practice management software with telemedicine functionality and a doctor network to serve nurses working in clinics. Healthforce is a technology company, providing services to pharmacies.

The Commission considered the activities of the merging parties and found that the proposed transaction results in both a horizontal and vertical overlap. The Commission assessed the competition effects of the proposed transaction on the following markets:

- a) The national upstream market for the wholesale distribution of pharmaceutical products.
- b) The national downstream market for the retail of scheduled pharmaceutical products in South Africa.
- c) The local downstream market for the retail of scheduled pharmaceutical products within a 5km radius of certain overlapping local markets.
- d) The national downstream market for the retail of unscheduled and front shop products in South Africa
- e) The local downstream market for the retail of unscheduled pharmaceutical products within a 5km radius of certain overlapping local markets.
- f) The national market for the provision of telemedicine services.

Unilateral Effects

In relation to the upstream market for the wholesale distribution of pharmaceutical products, the Commission found that Dis-Chem and PPH Pharmasave have market shares of less than 15% combined.

For the purposes of its market share analysis, the Commission considered Dis-Chem and The Local Choice to be part of the same pharmacy group. There are approximately 130 The Local Choice branded pharmacies in South Africa.

In relation to the national downstream market for the retail of scheduled pharmaceutical products, the Commission found that, pre-merger, the scheduled market is led by Dis-Chem (including The Local Choice) with a market share ranging between 25% to 30% based on revenue. Post-merger, Dis-Chem will increase its market share by less than 5% and the merged entity's market share will remain within the 25% to 30% range. The second largest player is Clicks.

In relation to the national downstream market for the retail of unscheduled pharmaceutical products, the Commission found that the merged entity will have a market share of less than 20%. The merger will result in a minimal accretion of less than 5%.

In relation to the national downstream market for the retail of front shop products, the Commission found that the merged entity will hold a market share of less than 10% with an accretion of less than 1%.

In relation to the local markets, the Commission found that the merged entity will have market shares in excess of 35% in certain local markets, primarily in the Gauteng province. The Commission noted that in most of these markets Dis-Chem already enjoyed a market share of over 35% and the accretion occasioned by the proposed transaction was minimal.

The Commission conducted an analysis to evaluate how the retail pharmacy market structure has changed over time and looked in particular at a five-year period between 2017 to 2021. The Commission found that corporate pharmacy groups such as Clicks and Dis-Chem have grown considerably in terms of the number of pharmacy outlets during this period. Dis-Chem (including The Local Choice) grew from approximately 159 pharmacies in 2017 to 320 pharmacies in 2021 (a growth rate of 101%). Clicks has also grown its pharmacy outlets since 2017 from approximately 473 pharmacies to approximately 585 pharmacies (a growth rate of 24%).

In contrast, the total number of independents has declined from 2 273 pharmacies in 2017 to 2 106 in 2021 (a growth rate of -7%). As such, the Commission notes that the structure of the market appears to be changing with notable growth of large corporate pharmacy groups and the decline of independent pharmacies and independent pharmacy groups.

The Commission's investigation showed that independent pharmacy groups (such as PPH) appear to pose a more effective constraint on corporate pharmacy chains than individual independently owned pharmacies. The instant transaction notably alters the structure of the national pharmaceutical retail market in that it reduces the number of significant independent pharmacy groups.

The Commission notes that aside from PPH with its 50 pharmacies nationwide, the other significant independent pharmacy groups are Arrie Nel with 86 pharmacies and Van Heerden with 18 pharmacies. There are also some commonly branded but independently owned pharmacies such as Alpha Pharm (415) and Link (170) pharmacies. With the takeover of the PPH pharmacies, the market will be left with smaller independent pharmacy groups which have a regional as opposed to a national presence, such as Van Heerden, Clinicare and Mopani. The Commission therefore notes that the merger reduces the number of independent pharmacy groups that play an important role for competition, innovation, and economic participation in the market.

The Commission notes that Dis-Chem has undertaken a series of mergers within the retail pharmaceutical market over the past 6 years with only a few of these being notifiable to the competition authorities. Specifically, Dis-Chem has engaged in about 35 mergers and acquisitions over a 6-year period and only five of these were notifiable transactions.

The Commission is concerned that Dis-Chem may be embarking on a creeping merger strategy to gain a higher share of the retail pharmacy market. Dis-Chem is already one of the leading market players especially for the retail sale of pharmaceutical and front shop products and in terms of number of retail stores. Given the forward-looking nature of merger assessments, the Commission notes that the proposed transaction likely moves the market closer to an oligopoly where the market will be dominated by Dis-Chem and Clicks.

The Commission has recommended a condition to assist the Commission in detecting small mergers by Dis-Chem that would otherwise not be notifiable to the Commission.

The Commission evaluated whether Dis-Chem and PPH are close competitors and whether the proposed transaction would result in the removal of an effective competitor in the retail pharmacy market in South Africa.

The market participants contacted by the Commission confirmed that the merging parties are competitors. The Commission's assessment found that PPH and Dis-Chem offer comparable services in their respective retail pharmacy stores in relation to the provision of front shop products, telemedicine/video-medicine offerings, and primary healthcare through in-store pharmacy clinics (although the Commission found that Dis-Chem has a much larger floor size for its retail stores when compared to Medicare pharmacies owned by PPH). In addition, the Commission found that other pharmacy groups also provide comparable services, and they will remain in the market to impose a competitive constraint on Dis-Chem post-merger.

The Commission notes that PPH had an intention to grow its business through acquiring more pharmacies and generating economies of scale to become an effective competitor in the broader retail pharmaceutical market. However, PPH was unable to raise the required capital to realize its growth strategy. As such, the Commission notes that PPH does not pose a credible, sustainable, and effective competitive constraint in the retail pharmacy market.

The Commission ultimately formed the view that PPH is unlikely to be an effective competitor to the corporate pharmacies without the much-needed capital injection that it has failed to secure, despite several attempts.

Failing firm assessment

The Commission assessed the financial position of PPH given the intimation by the merging parties that it is in a difficult financial position. The Commission's analysis found that the PPH Group (including its subsidiaries Medicare and Healthforce which are relevant to this transaction) is currently in a precarious financial position. This is shown by the financial losses incurred during 2019, 2020 and 2021.

PPH further attempted to re-organize its business in 2020 through closing the Pharmasave business and disposing of the Healthforce business to Dis-Chem. Both businesses contributed to the PPH group's losses, and these interventions sought to address the financial challenges PPH was experiencing at the time. PPH also engaged in a retrenchment process during May and June 2020, which resulted in the retrenchment of 27 employees in its Medicare stores. The merging parties submit that these retrenchments were required to return PPH to profitability.

However, despite these efforts undertaken by PPH, the Commission found that the group still recorded a total comprehensive loss in the 2021 financial year.

The Commission found evidence that PPH sought investment into the business from equity investors since 2019, to help improve its financial position. Despite receiving initial non-binding offers from these investors, PPH ultimately did not receive any funding from the investors as the respective due diligences conducted by the investors did not meet their requirements for funding.

The Commission also met virtually with the executives of the target firm to get a better understanding of the cost drivers that contributed to PPH's financial challenges. From this engagement, the Commission was able to ascertain that the main reasons that led to PPH experiencing financial

challenges largely relate to their operating costs, their dispensing fee and their revenue split between their dispensary and front shop business. According to PPH, its operating costs have been increasing over the years whereas its revenue has not increased sufficiently to cover operating costs. The CEO of PPH further indicated that although medical schemes give them a higher dispensing fee compared to the corporate pharmacies to help them compete, the effect of this is that independent pharmacies are considered more expensive by customers who must pay for pharmaceutical products out of their savings accounts which makes them less attractive.

The CEO of PPH also noted PPH's profit mix citing the fact that the dispensary business is a low gross margin business (due to price regulation on SEP, etc.) but with high labour costs because the pharmacy needs to hire pharmacists and assistant pharmacists who attract a high salary. On the other hand, the front shop business is a high gross margin business with low labour costs because the front shop staff are retail employees who do not command high salaries. In this regard, PPH indicates that the revenue mix of PPH is not desirable because 70% of its revenue comes from the dispensary business (low gross margin) and 30% comes from its front shops (high gross margin). PPH suggests that the right revenue mix should be the other way around with the front shop being 70% of the revenue to ensure profitability and sustainability which is closer to the balance achieved by Clicks and Dis-Chem.

The Commission formed the view that PPH is in a difficult financial position, appears to likely fail, and is unlikely to be an effective competitive constraint on Dis-Chem.

In order to remedy some of the concerns identified during its investigation, such as the rapid growth of corporate pharmacy groups through acquisitions and the potential foreclosure of Dis-Chem competitors from accessing Healthforce, the Commission proposes that the proposed transaction be approved subject to conditions which will ensure that Healthforce continues to be available to third parties post-merger.

Public Interest

The Commission notes that the proposed transaction is likely to result in duplications that may affect 54 employees as identified by the labour due diligence conducted by the merging parties. The Commission notes that in line with Tribunal precedent, the merging parties conducted a rational process in identifying the employees that are likely to be affected by potential retrenchments.

The Commission further notes that of the 54 identified potentially affected positions, the merging parties have undertaken that Dis-Chem will absorb 41 of the potentially affected employees and only 13 positions are likely to be redundant and retrenched.

In addition to the above, the Commission notes that the merging parties have indicated that there are currently 14 loss-making stores owned by PPH that are likely to be closed after the implementation of the proposed transaction to prevent the target firm from making further substantial losses. The merging parties, however, indicate that of the 14 loss-making stores, they will absorb the employees of 11 stores elsewhere in the Dis-Chem group and will limit retrenchments to three (3) affected stores. The 14 loss-making stores had a total of 110 employees prior to the merger. The merging parties indicate that the 3 affected stores have approximately 24 employees who will be retrenched. The remaining 86 employees from 11 of the loss-making stores will be absorbed into the Dis-Chem group.

To limit the negative impact on public interest, the Commission recommended a condition limiting the number of potential retrenchments to a maximum of 37 employees, being the 13 positions likely to be affected because of duplications and the 24 store employees that may be retrenched as a result of potential store closures of the 3 loss-making retail pharmacy stores. In addition, the merging parties have undertaken to offer these affected employees' future employment should there be any vacancies within the merged entity in the future.

In addition to the above, the merging parties and the Commission have also agreed to conditions which will ensure that, over the next 5 (five) years, Dis-Chem will increase its local procurement by a significant margin. This is to ensure that SMMEs and firms owned by historically disadvantaged individuals in the value chain are supported and remain competitive.

The Commission therefore recommended that the proposed transaction be approved subject to competition and public interest conditions.

2.4 Significant Covid-19 Investigations

The Commission did not have any Covid-19 referrals in Q2.

II. PERFORMANCE BY CORE PROGRAMMES

3. LEGAL SERVICES: PERFORMANCE OVERVIEW

The Legal Services Division (LSD) was accountable for five (5) applicable targets in Q2, with two (2) targets (KPI 16 & 17) jointly shared with Cartels, and one target (KPI 24) shared with ERB. LSD met all four (4) targets (KPI 7, 16, 17, 20) and did not meet one (1) target (KPI 24).

Table 7: Covid-19 cases won/lost at the Tribunal and the courts

Parties	Date of decision	Decision
Competition Commission vs Fruit Stop CC	16/07/2021	In favour

Table 8: Cartel decisions won/lost at the Tribunal and the courts

Parties	Date of decision	Decision
Competition Commission vs M Meyer Surgical Sales CC T/A Intermed	16/09/2021	In favour
Competition Commission vs Jasco Security and Fire Solutions (Pty) Ltd	16/09/2021	In favour
Competition Commission vs Tourvest Holdings (Pty) Ltd and Siyasizisa Trust	29/09/2021	In favour

Table 9: Merger cases won at the Tribunal and the courts

Parties	Date of decision	Decision
Competition Commission vs ETG Agro Products (Pty) Ltd and Rand Agri (Pty) Ltd	05/07/2021	In favour
Competition Commission vs Overlooked Colliery Alpha (Pty) Ltd and Sudor Coal (Pty) Ltd	26/8/2021	In favour

3.1 Key hearings in the Tribunal and Higher Courts

There following matter was heard in Q2, and is pending judgements.

3.1.1 KAP Diversified Industrial (Pty) Ltd & Steinhoff International Holdings Ltd and Sonae Arauco South Africa (Pty) Ltd vs the Competition Commission: 2016Mar0060

On 10 August 2021, the High Court of North Gauteng heard a review application filed by Steinhoff International Holdings Ltd (“Steinhoff”) that sought to review and set aside the Commission decision to refer a case of price fixing against it to the Tribunal for prosecution.

On 13 November 2019, the Commission referred a price fixing case against KAP Diversified Industrial (Pty) Ltd (“KAP”), Steinhoff and Sonae Arauco South Africa (“Sonae”) to the Tribunal for prosecution.

On 09 June 2020, Steinhoff served the Commission with a High Court Review Application requesting that the Commission’s decision to include Steinhoff in its complaint referral be set aside. Steinhoff stated that the Commission had no basis to include it in the referral. The Complaint Referral at the Tribunal was stayed pending a decision on the Review Application.

The Commission opposed the Review Application on the basis that Steinhoff did in fact exercise control over KAP through its shareholding. The Commission also opposed to the review being launched in the High Court and argued that the Tribunal has exclusive jurisdiction to hear Review Application and not the High Court. The judgment was reserved.

4. CARTELS: PERFORMANCE OVERVIEW

The Cartels Division was accountable for four (4) applicable targets in Q2, with KPI 6 shared with Advocacy and Market Conduct and KPI 16 and KPI 17 shared with LSD. Cartels met three (3) targets (KPI 6, 16 and 17), exceeded one (1) target (KPI 15). KPI 10 (% of Covid-19 exemption applications completed within 3 months) was not applicable in Q2.

4.1 Summary of Cartels Division Case Load

The Cartels division has a total of seventy-seven (77) cases under investigation in the current quarter and seventy-four (74) cases at various stages of litigation. During the quarter under review, the division completed nine (09) cases under investigations and three (03) on litigation. The division along with other divisions also focused on the investigation of price gouging on public procurement as well as price gouging by retailers.

Table 10: Cartels Case Load

Cases	Q1	Q2
Number of cartel cases under investigation	68	77
Number of cartel cases under investigation carried from previous quarter	61	72
Number of cartel cases in litigation	75	74
Number of cartel cases from third parties	7	5
Number of cartel cases initiated	0	0
Number of cartel cases completed	12	5
Number of cartel cases referred to the Tribunal	2	1
Number of cartel cases non-referred	10	4

4.2 Corporate Leniency Applications

Corporate Leniency applications are undertaken in terms of the Commission's Corporate Leniency Policy (CLP). The CLP is a policy in terms of which the Commission grants immunity from prosecution to a cartel member who is first to disclose or confess to their participation in a cartel. The evaluation of leniency applications is only done at the end of the investigation of each case.

Table 11: Applications for Leniency

Corporate leniency applications	Q1	Q2
CLP applications carried over from the previous quarter	20	20
CLP applications received during the quarter	0	1
Total CLP applications handled during the quarter	20	21
CLP applications granted	1	0
CLP applications rejected	3	2
CLP applications abandoned	0	0

4.3 Dawn Raids

There were no dawn raids conducted during Q2.

5. MARKET CONDUCT: PERFORMANCE OVERVIEW

The Market Conduct division had four (04) applicable targets for Q2, with KPI 6 shared with Advocacy and Cartels, and KPI 13 shared with Advocacy. The Market Conduct Division met two (2) targets (KPI

13, and KPI 6), and did not meet two (02) targets (KPI 9 and KPI 12). KPI 10 (% of Covid-19 exemption applications completed within 3 months) was not applicable in Q2.

5.1 Summary of Market Conduct Division Case Load

The Market Conduct Division had a total of forty-nine (49) complaints under investigation in Q2, with no exemption applications. The Division completed eleven (11) investigations in Q2, and carried over forty-four (44) cases from the previous quarter. No investigation was initiated in Q2.

5.2 Full Investigations finalized in Q2

A summary of the key investigations completed in the quarter is provided below:

5.2.1 Various Complainants vs the South African Council for the Architectural Profession and the Council for the Built Environment: 2019Feb0043, 2019Mar0009, 2019Mar0012, 2019Mar0014, 2019Apr0016, 2019Apr0022, 2020Mar0022, 2020Sep0044

The Commission received the various complaint against the South African Council for the Architectural Profession (“SACAP”) and the Council for the Built Environment companies (“CBE”) from 2019 to 2020. The Complainants alleged that the Scope of Work policy, in its current form, will restrict professional architectural draughtspersons and technologists from undertaking certain projects that will be reserved solely for professional architects.

The Complainants further alleged that the categorisation of work in terms of SACAP’s scope of work policy does not take into consideration the experience of professionals and excludes these professionals from doing certain work in the market solely based on qualifications. The alleged conduct relates to a contravention of sections 4(1) and 8(c) of the Act.

The Commission investigated the complaint and concluded that the matter should not be referred to the Tribunal for the following reasons:

- a) The Commission has concluded that SACAP’s submission and proposals address the concerns raised by the professionals. The Memorandum of Understanding between the Commission and SACAP will enable the Commission to keep track of the commitments by SACAP and to monitor the impact of the revised scope of work on competition in the market.
- b) The Commission and SACAP have also agreed to maintain an open line of communication where we will be able to express and change ideas with one another. There is also an

agreement to jointly run awareness campaigns targeted at all registered professionals with SACAP, residential estates, and customers on the workings of the scope of work policy guideline. In line with the MOU, the Commission and SACAP have agreed to meet quarterly to engage on developments in the industry and to ensure quick response and resolve to issues as they come up.

5.2.2 Coca-Cola Beverages South Africa (Pty) Ltd vs Illovo Sugar South Africa, Tongaat Hulett Sugar South Africa Ltd, and RCL Foods Ltd: 2018Nov0070

On 27 November 2018 Coca-Cola Beverages South Africa (Pty) Ltd (“CCBSA”) lodged a complaint with the Commission against Illovo Sugar South Africa (“ISSA”), Tongaat Hulett Sugar South Africa Ltd (“THS”), and RCL Foods Ltd. CCBSA is active in the market for the manufacturing, retailing and marketing of non-alcoholic beverages, beverage concentrates and syrups.

The other Respondents are various industry associations, namely the Sugar Association of South Africa (“SASA”), the South African Sugar Millers’ Association (“SASMA”), the South African Cane Growers’ Association (“SACGA”) and the South African Farmers Development Association (“SAFDA”).

In the complaint, CCBSA alleged that there is no price competition between the Respondents and that their pricing appears to be enabled by an abuse of dominance or horizontal collaboration. The complaint alleged that every time there is a rise in the sugar import tariff (called the Dollar-Based Reference Price), the Respondents increase their local prices according to the rise in the import price. The notional price for the sugar industry is determined by SASA, with input from industry players (processors, growers etc). The notional price for sugar, although not equivalent to the selling price, serves as a statutory-mandated reference price for the determination of various prices in the industry.

In respect of the abuse of dominance, CCBSA alleged that the Respondents are engaging in anti-competitive conduct by charging excessive prices for their sugar offerings to the detriment of consumers.

The team found that the relevant product market for this complaint consists of the (narrow) market for the production of refined white sugar used as an input in the production of carbonated soft drinks. The team found that the geographic market for the sale of refined sugar can be considered as national.

In assessing dominance, the team found that for a broad market none of the Respondents, individually, have a market share above the 45%, threshold for outright dominance between 2015 and

2020. However, the investigation team found that when the market is narrowed to only industrial customers, then ISSA is likely to be the only firm to meet the dominance threshold with an average market share of 45% between 2015 and 2020. However, based on the evidence gathered, it has also been found that ISSA's actual market power is likely limited.

In assessing the allegation of excessive pricing, the investigation team made use of various sources of evidence to assess whether the Respondents were earning excessively high margins and whether this resulted in the Respondent(s) earning supra-competitive profits, as would be expected if a dominant firm were pricing excessively. The team found that the Respondents have struggled to remain profitable, and their profit margins have not been excessive.

The investigation team performed a margin analysis (gross and net) on data submitted independently to ITAC as well as from the firms' own data. It was found that the margins that the Respondents generate are relatively low. Further, the investigation revealed loss-making periods and a general inability to consistently remain profitable. This is again inconsistent with a firm or firms that is exploiting dominance to extract supra-competitive profits.

Following a further provisional price-cost test regarding ISSA (the only firm which could be said to be dominant under certain conditions) confirmed the unlikelihood that ISSA was charging excessive prices during the investigation period.

Considering the above and the fact that the Sugar Master Plan is expected to address much of the concerns that downstream firms such as CCBSA have in the sugar sector, the matter was non-referred.

5.2.3 Health Justice Initiative and Ezintsha vs Aspen Pharmacare Holdings Ltd and others: 2020Jul0042

The Commission received the complaint by Health Justice Initiative ("HJI") and Ezintsha against various pharmaceutical companies on 21 July 2020. It is alleged that various pharmaceutical companies are engaging in excessive pricing with respect to the supply of Dexamethasone¹ and Remdesivir² in contravention of section 8(1)(a) of the Act.

The Commission investigated the complaint and concluded that the matter should not be referred to the Tribunal.

¹ Aspen Pharmacare Holdings Ltd, Zydus Healthcare South Africa (Pty), Fresenius Kabi South Africa (Pty) Ltd and Pharma-Q Holdings Ltd

² Cipla Medpro South Africa (Pty) Ltd and Gilead Sciences Inc.)

With respect to Dexamethasone, the Commission found that there are several substitutes, most of which are generic anti-inflammatory drugs. For the dominance assessment, the market shares were estimated using both the revenue earned and the volume sold for the identified anti-inflammatory drugs. Market share assessment based on revenue revealed that none of the Respondents are dominant. Market share assessment based on volume indicated that one of the Respondents is dominant, but the charges the lowest price in the market and therefore cannot be deemed to be abusing its dominance. Accordingly, the Commission was of the view that there is no merit in intervening as the lowest priced supplier is achieving high volume sales resulting in it gaining market share and dominance.

With respect to Remdesivir, the Commission considered that the drug may still be under clinical trial and prescribed by doctors under Section 21 authorisation. In addition, the Commission took note of the announcement by the World Health Organisation (WHO) expert panel that “*advised against the use of Remdesivir for hospitalised Covid-19 patients, regardless of how severely ill they are, as there was no evidence that it improves patient survival.*”³ Furthermore, the Complainants advised the Commission to cease the enquiry on Remdesivir given its poor clinical performance:

The Commission considered the current Covid-19 vaccination drive by South Africa which minimise the concern with respect to the specific drugs (Dexamethasone and Remdesivir) in the treatment of Covid-19.

5.3 Investigations initiated in priority sector in Q2

The Commission did not initiate any complaints in Q2.

5.4 Exemptions

The Market Conduct Division did not receive any new exemption application in Q2 and did not complete any exemption applications.

Table 12: Exemption Applications in 2021/22

Exemptions	Q1	Q2
Exemptions received	1	0
Exemptions granted	2	0
Exemptions refused	1	0

³News24 [WHO advises against remdesivir for Covid-19 treatment | Health24 \(news24.com\)](#) [accessed on 29 November 2020].

6. MERGERS & ACQUISITIONS: PERFORMANCE OVERVIEW

The Mergers & Acquisitions division (M&A) had four (4) applicable targets in Q2, four (4) targets were met in the quarter. The target for turnaround time for Phase 1 merger investigations (target: ≤ 20 days) was met, the division's average turnaround time was fourteen (14) days. For Phase 2 merger investigations (target ≤ 45 days) the target was met with average turnaround time of thirty-six (36) days. The Commission did not complete any Phase 3 intermediate and small merger investigation in Q2. The target for Phase 3 large merger investigations (target: ≤ 120 days) was met with an average of turnaround of one-hundred and eighteen (118) days. M&A continued to monitor 100% of imposed merger remedies and conditions, in terms of KPI 5.

6.1 Summary of M&A Case Load

The Commission received seventy-seven (77) merger notifications during Q2 and finalised a total of seventy-seven (77) transactions, of which sixty-three (63) were approved without conditions and thirteen (13) were approved with conditions, whilst one (1) case was abandoned, and no case was prohibited. The tables below provide information on the Q2 merger activity and the cumulative activity for the 2021/22 financial.

Table 13: Merger Activity in Q2

Merger Activity	July	August	September	Total
Notified	34	20	23	77
Finalised	20	32	25	77
Approved with conditions	3	4	6	13
Approved without conditions	17	27	19	63
Prohibited	0	0	0	0
Abandoned	0	1	0	1

Table 14: Merger Activity by Quarters (2021/22)

Merger Activity	Q1	Q2
Notified	69	77
Finalised	76	77
Approved with conditions	19	13
Approved without conditions	54	63
Prohibited	3	0
Abandoned	0	1
Carries from previous quarter		

6.2 Mergers Approved with Conditions

During Q2, the Commission approved six (06) cases with conditions and recommended to the Tribunal that seven (07) cases be approved with conditions. The Tribunal ultimately agreed with the Commission's recommendations on all seven (07) of these cases. These cases are depicted in the table below.

Table 15: List of cases approved with conditions by the Commission in Q2

Case Number	Primary Acquiring Firm	Primary Target Firm	Location	Sector	Condition
2021MAY0062	Ladismith Cheese Company (Pty) Ltd	Mooivallei Suiwel (Pty) Ltd	National	Dairy	<p>Employment</p> <ul style="list-style-type: none"> Moratorium on retrenchment for a period of 2 years from implementation date of the merger. This applied to employees classified under bands A to C of the Patterson grading structure.
2021MAY0027	DSV Panalpina A/S	Global Integrated Logistics business of Agility Public Warehousing Company K.S.C.P.	National	Freight	<p>Employment</p> <ul style="list-style-type: none"> The Merging parties shall not retrench any employees because of the Merger for a period of 2 years.
2021MAY0021	Bright Minerals (Pty) Ltd	Afarak Mogale (Pty) Ltd (In business rescue)	National	Chrome	<p>Management of database</p> <ul style="list-style-type: none"> For a period of 2 years, from the Implementation Date, if any employment opportunity arises within the Target Firm, the merged entity is required to notify all affected employees about the new positions.
2021JUL0045	AIH	Kwikspace Modular Buildings (Pty) Ltd	National	Private equity	<p>Transformation initiative</p> <ul style="list-style-type: none"> Within 15 months of Implementation Date, the acquiring group shall implement an HDP Transaction wherein no less than 20.63% of the issued share capital of the target firm will be transferred to one or more historically disadvantaged persons.
2021APR0047	Altron Group (Pty) Ltd	Law Trusted Third Party Services (Pty) Ltd	National	IT	<p>Cross directorships</p> <ul style="list-style-type: none"> For as long as merging parties can appoint or nominate directors to the board of eDNA Joint Venture, they shall ensure that their nominees: are not employed in an operational role by or serve on or are nominated and/or appointed on any board of the holding companies and/or affiliate companies of Altron Group that are active in ICT solutions markets with the exception of the Altron security business division.

					<p>Confidentiality of information</p> <ul style="list-style-type: none"> No competitively sensitive information in relation to the ICT solutions markets and related markets will be discussed, disclosed nor shared in any form or means by the merging parties' nominees on the board of eDNA Joint Venture. <p>Supply of Advanced Electronic Signature Certificates</p> <ul style="list-style-type: none"> From the Implementation Date, the merging parties shall supply advanced electronic signature certificates to all South African entities that require these products, including the Merging Parties' downstream rivals, on fair, reasonable and non-discriminatory commercial and pricing terms. This shall apply for a period of 3 (three) years. <p>Pricing condition</p> <ul style="list-style-type: none"> The merging parties shall limit the increase in prices of advanced electronic signature certificates to a yearly price increase linked to the consumer price index. The base price upon which the consumer price index increases are applied shall be a reference price linked to a more competitive period wherein the supply price was significantly lower than the prevailing price at the time of merger approval.
2021JUN0041	Saint Gobain	Chryso Group	National	Waterproofing	<p>Employment</p> <ul style="list-style-type: none"> Moratorium on retrenchment for a period of 2 years from implementation date of the merger.
2020DEC0043	Dis-Chem Pharmacies Limited	Pure Pharmacy Holdings (Pty) Ltd	National	Pharmaceuticals	<p>Competition Conditions</p> <p>Open access condition</p> <ul style="list-style-type: none"> For a period of 5 (five) years from the Implementation Date, the Merged Entity shall grant Third-Party Pharmacies Open Access to the Healthforce Video Telemedicine Platform on fair, reasonable and non-

					<p>discriminatory commercial and pricing terms.</p> <p><i>Inter-operability of Healthforce condition</i></p> <ul style="list-style-type: none"> • The Merged Entity shall ensure that the Healthforce Video Telemedicine Platform has the ability to be implemented in any Third-Party Retail Pharmacy (subject to the Third-Party Retail Pharmacy meeting the minimum system requirements in terms of physical infrastructure and connectivity) and that electronic patient health records and telemedicine functionality is readily available. • Further, the Merged Entity shall not preclude any patient, having consulted via the Healthforce Video Telemedicine Platform at any of the Merged Entity's pharmacy stores, from filling their prescription at any other pharmacy store unaffiliated to the Merged Entity. <p><i>Creeping mergers</i></p> <ul style="list-style-type: none"> • The acquiring firm undertakes to inform the Commission in writing for a 5 (five) year period from the Implementation Date, of any small merger in terms of which it may acquire control over another entity in the Pharmaceutical Market. <p><u>Public interest Conditions</u></p> <p><i>Employment</i></p> <ul style="list-style-type: none"> • Other than the affected employees and the loss-making store employees, the merging parties shall not retrench any employees as a result of the Merger for a period of 2 (two) years from the Implementation Date as well as the period between the Approval Date and the Implementation Date. <p><i>Potential store closure</i></p> <ul style="list-style-type: none"> • The acquiring firm shall use its reasonable endeavours to limit the closure of the target firm's stores. With the exception of the already identified 14 loss-making stores, the acquiring firm shall allow at least a 12-month period from Implementation Date to implement a turnaround plan before the closure of those target firm stores which may
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					<p>subsequently be identified as loss-making.</p> <p>Local Inputs</p> <ul style="list-style-type: none"> The acquiring firm shall use its reasonable endeavours to ensure that it maintains, and if possible, improves its current level of procurement of products made in south Africa, including from Small Medium and Micro Enterprises (SMME) and Historically Disadvantaged Persons (HDP), to develop its South African supplier base and promote local manufacturing. Further, The acquiring firm shall ensure that it increases this figure by a minimum of 50% over a cumulative period of 5 (five) years from the Implementation Date. <p>Supplier Development</p> <ul style="list-style-type: none"> The acquiring firm shall use its reasonable endeavours to procure locally manufactured products from its current and/or new SMME and HDP suppliers on reasonable commercial terms including credit terms, price, quality, provided that such products meet the requisite industry norms and standards and/or comply with any regulatory requirements imposed on the specific products by law. <p>Training</p> <ul style="list-style-type: none"> The acquiring firm shall for a five (5) year period from the Implementation Date commit to: (i) to provide up to 150 learnership opportunities to qualifying pharmacists' assistants; (ii) to provide 2 bursaries for every new Greenfield Pharmacy store (newly opened stores) opened by the Merged Entity after the Implementation Date; and (iii) to provide internship opportunities to graduating pharmacists and full-time employment as fully qualified pharmacists' post-community service. 	
2021JUL0023	South African Industrial Group (Pty) Ltd	Paul Eyethu (Pty) Ltd	Bayvel Sales	National	Copper	<p>Restraint of trade</p> <ul style="list-style-type: none"> The Restraint would be amended to limit its scope to SADC and that its duration would be for 5 years post the termination of the lock-in period The Restraint to be concluded by the Merging Parties shall be limited to the Restrained Shareholders.

2021JUL0007	Curro Holdings Limited	The Independent school business of Heronbridge College and Heronbridge Estate (Pty) Ltd	National	Education	<p>Employment</p> <ul style="list-style-type: none"> The merging parties shall not retrench any employees as a result of the merger for a period of 36 months.
2021JUL0046	Volaris Group Inc.	Adapt IT Holdings Limited	National	ICT	<p>Transformation initiative</p> <ul style="list-style-type: none"> Within 12 (twelve) months of the Implementation Date, the Merged Entity will establish a B-BBEE Education Trust. The B-BBEE Education Trust will own approximately 5% Black ownership of Adapt IT's issued ordinary shares. The funding provided by the B-BBEE Education Trust will be ring-fenced for education use, in the form of educational and skills development bursaries. Between 85% - 100% of funding provided by the B-BBEE Education Trust will be ring-fenced for only Adapt IT employees and their dependants or close family member, who will be the beneficiaries of the B-BBEE Education Trust. All Adapt IT employees will be able to apply for educational funding, in terms of transparent and fair criteria. <p>B-BBEE COMMITMENT</p> <ul style="list-style-type: none"> Within 12 (twelve) months of the Implementation Date, the merged entity shall ensure that the derived black shareholding in Adapt IT (calculated in terms of the current B-BBEE ICT Sector Code and by excluding shareholding attributable to foreign operations), in terms of economic interest, will be at least 17% (seventeen percent). Within a period of 2 (two) years, the merged entity shall ensure that the derived Black shareholding in Adapt IT will be at least 20%. This B-BBEE Commitment is subject, at all times, to Volaris maintaining control over Adapt IT, as contemplated by the Competition Act and a shareholding in Adapt IT of at least 50.1%. <p>B-BBEE RATING COMMITMENT</p>

					<ul style="list-style-type: none"> The merged entity shall use all reasonable endeavours to ensure that Adapt IT and its main operating subsidiary will maintain their 2021 B-BBEE ratings or only one level lower for a period of 5 (five) years after the Implementation Date, as measured in terms of the current B-BBEE Act and B-BBEE ICT Sector Code. To the extent that the B-BBEE rating of Adapt IT or its main operating subsidiary falls by one level vis-à-vis the level immediately prior to the receipt of 2021 Certificate, the Merged Entity commits to rectify same within a 12 (twelve) month period, until expiry of this B-BBEE Rating Commitment. This B-BBEE Rating Commitment is subject, at all times, to Volaris maintaining control over Adapt IT as contemplated by the Competition Act and a shareholding in Adapt IT of at least 50.1%, and is subject to the B-BBEE rating being measured in terms of the current B-BBEE Act read with the B-BBEE ICT Sector Code.
2021JUL0009	Rhodes Food Group	The frozen food business of Pioneer Foods Wellingtons	National	Food	<p>Employment</p> <ul style="list-style-type: none"> The merging parties shall not retrench any employees as a result of the merger, save for the Affected Employees who (i) cannot be redeployed by the Acquiring Firm or the Pioneer Food Group or (ii) do not wish to take up the redeployment opportunities offered as or (iii) do not accept voluntary severance packages. Further, the acquiring firm undertakes the following: (i) 50 new positions will be created within the acquiring firm's bakery business in Gauteng to accommodate the affected employees who opt to be redeployed. Affected Employees who opt to be redeployed to Gauteng will qualify to receive benefits in accordance with the acquiring firm's relocation policy. For the avoidance of doubt, the acquiring firm will seek to fill such positions within 2 years from the Implementation Date irrespective of whether any of the Affected Employees opt to be redeployed to Gauteng; and (ii) the acquiring firm will accommodate another 50 Affected Employees who opt to be redeployed at its Groot Drakenstein site in the

					<p>Western Cape in its various production facilities. affected employees who opt to be redeployed to the acquiring firm's Groot Drakenstein site will qualify to be paid a traveling allowance in the amount of R1,200 (one thousand two hundred rand) per month for a period of two years.</p> <ul style="list-style-type: none"> • Pioneer Food Group undertakes to accommodate 80 Affected Employees who opt to be redeployed at various sites within the greater Atlantis, Malmesbury and Cape Town region where the Pioneer Food Group operates. <p>Training and skills development</p> <ul style="list-style-type: none"> • The acquiring firm will source a reputable third-party reskilling service provider and is willing to fund the reskilling of Affected Employees, who cannot or elect not to be redeployed, up to a maximum amount equal to R15,000 (fifteen thousand rand) per employee. <p>Favourable packages</p> <ul style="list-style-type: none"> • Where any affected employees choose to enter into VSPs, the acquiring firm will pay favourable severance packages of 3 months' severance pay over and above the statutory severance of one week for every year of service and the standard one month's notice pay. <p>Preferential employment</p> <ul style="list-style-type: none"> • The acquiring firm will assist any Affected Employees who may be retrenched with offers of preferential employment, for a period of two years from the Implementation Date to the extent that job opportunities become available and provided that the applicants are suitably qualified and experienced for such roles. • The Pioneer Food Group will assist any Affected Employees who may be retrenched with offers of preferential employment, for a period of two years from the Implementation Date to the extent that job opportunities become available and provided that the applicants are suitably qualified and experienced for such roles.
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					<p>Counselling and Wellness</p> <ul style="list-style-type: none"> The Affected Employees will be provided with group as well as individual counselling sessions through the acquiring firm's employee wellness program. <p>Distribution of CVs</p> <ul style="list-style-type: none"> The acquiring firm will distribute the CVs of retrenched Affected Employees to appropriate customers, suppliers, third parties and facilitate assistance for such employees through recruitment agencies.
2021JUL0054	K2021544474 (South Africa) (Pty) Ltd	Kwatani Global (Pty) Ltd	National	Mining	<p>Ownership and transformation</p> <ul style="list-style-type: none"> The acquiring firm shall ensure that within 12 (twelve) months from the Implementation Date, a shareholding of at least 25% plus one share in Sandvik SRP will be transferred, on mutually acceptable commercial terms, to one or more B-BEEE shareholder/s.
2021MAY0040	Dis-Chem Pharmacies Limited	Kaelo Holdings Proprietary Limited	National	Healthcare services	<p>Ownership</p> <ul style="list-style-type: none"> Should the acquiring firm acquire a 50% plus 1 share interest or sole unfettered control in the target firm after the Approval Date, the acquiring firm shall notify the acquisition of the 50% plus 1 share interest or sole unfettered control in the target firm as a merger in terms of section 13A of the Act.

Source: M&A Database

6.3 Impact of mergers on jobs

The table below depicts the impact of merger transactions on jobs during Q2 in terms of 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 by Q2.

Table 16: Summary of the impact on jobs in Q2

Month	Jobs lost	Jobs saved	Intended job creation	No. of cases	Net effect
April	211	336	0	1	125
May	0	0	0	0	0
June	110	310	0	2	200
July	1	78	0	1	77
August	0	0	0	0	0

Month	Jobs lost	Jobs saved	Intended job creation	No. of cases	Net effect
September	37	257	50	2	270
Total	359	981	50	6	672

Source: Commission's calculations

In Q2, there was a positive net effect of 347 jobs resulting from 3 cases that were finalised between July and September 2021. As a result of the Commission's intervention, 335 jobs were saved while 38 jobs were lost, and 50 jobs were created in Q2. Furthermore, as a result of various moratoriums imposed, there was further job preservation that could not be quantified owing to the nature of the conditions. In total, for Q1 and Q2 of 2021/22, there has been a positive net effect on employment of 672 jobs between April and September 2021. The table below reflects the merger which had an effect on jobs in Q2.

Table 17: Mergers with Impact on Jobs in Q2

Case Number	Primary Firm	Acquiring Firm	Primary Target Firm	Jobs lost	Jobs created	Jobs saved
2021MAY0062	Ladismith Cheese Company (Pty) Ltd		Mooivallei Suiwel (Pty) Ltd	1	0	78
2021JUL0009	Rhodes Food Group		The frozen food business of Pioneer Foods Wellingtons	0	50	130
2020DEC0043	Dis-Chem Limited	Pharmacies	Pure Pharmacy Holdings (Pty) Ltd	37	0	127

Table below indicates that the Commission imposed employment conditions on 6 cases. These cases were mainly in the manufacturing, transport, ICT, Mining, short term accommodation (Hotels) and refinery, amongst others.

Table 18: List of cases approved with employment conditions by the Commission in Q2

Case Number	Primary Acquiring Firm	Primary Target Firm	Location	Sector	Condition
2021MAY0062	Ladismith Cheese Company (Pty) Ltd	Mooivallei Suiwel (Pty) Ltd	National	Dairy	Employment <ul style="list-style-type: none"> Moratorium on retrenchment for a period of 2 years from implementation date of the merger. This applied to employees classified under bands A to C of the Patterson grading structure.
2021MAY0027	DSV Panalpina A/S	Global Integrated Logistics business of Agility Public Warehousing Company K.S.C.P.	National	Freight	Employment <ul style="list-style-type: none"> The Merging parties shall not retrench any employees because of the Merger for a period of 2 years.

2021JUN0041	Saint Gobain	Chryso Group	National	Waterproofing	Employment <ul style="list-style-type: none"> • Moratorium on retrenchment for a period of 2 years from implementation date of the merger.
2020DEC0043	Dis-Chem Pharmacies Limited	Pure Pharmacy Holdings (Pty) Ltd	National	Pharmaceuticals	Employment <ul style="list-style-type: none"> • Other than the affected employees and the loss-making store employees, the merging parties shall not retrench any employees as a result of the Merger for a period of 2 (two) years from the Implementation Date as well as the period between the Approval Date and the Implementation Date. •
2021JUL0007	Curro Holdings Limited	The Independent school business of Heronbridge College and Heronbridge Estate (Pty) Ltd	National	Education	Employment <ul style="list-style-type: none"> • The merging parties shall not retrench any employees as a result of the merger for a period of 36 months.
2021JUL0009	Rhodes Food Group	The frozen food business of Pioneer Foods Wellingtons	National	Food	Employment <ul style="list-style-type: none"> • The merging parties shall not retrench any employees as a result of the merger, save for the Affected Employees who (i) cannot be redeployed by the Acquiring Firm or the Pioneer Food Group or (ii) do not wish to take up the redeployment opportunities offered as or (iii) do not accept voluntary severance packages.

Source: M&A database

6.4 Monitoring of Conditions

At the end of Q2, the Commission approved six (6) cases with conditions and recommended to the Tribunal that seven (7) cases be approved with conditions. The Tribunal ultimately agreed with the Commission's recommendations on all seven (7) of these cases. Therefore, thirteen (13) conditions were imposed in Q2. The Commission is currently monitoring two hundred and fifty-two (252) conditions.

7. ECONOMIC RESEARCH BUREAU: PERFORMANCE OVERVIEW

The Economic Research Bureau (ERB) is composed of economists and is involved with the day-to-day work of cases, providing economic guidance and methodological assistance in complex cases and competition policy issues. The ERB also provides economic expert testimony at the Tribunal on

behalf of the Commission on a case-by-case basis. The ERB had three (3) applicable targets in Q2, one (1) target was met, one (1) exceeded, and one (1) was not met.

Key output from ERB is highlighted below:

7.1 Position Paper on Open Banking

The Commission conducted research focused on open banking and the importance of consumer data in fostering innovation and competition. Drawing from international experiences, the research assists in highlighting key issues where regulatory supervision is required for open banking to be implemented successfully in South Africa. The focus on open banking is aligned to the Commission's contribution to the Intergovernmental Fintech Working Group ("IFWG"). The IFWG is a platform for engagement with relevant industry market players and regulators on selected subjects including open banking.

The research examined the approaches to open banking adopted globally. Considering experiences in other jurisdictions, the research further explored whether a market-led, or regulatory-led approach may be adopted in South Africa. The research found that the key pillars that have a bearing on open banking implementation include: the type of data involved, data ownership, payment for data, opening of APIs and data privacy and security. As such, for open banking implementation to be a success in South Africa regulatory guidance is needed on these aspects. Furthermore, international experiences also show that whichever approach is pursued in South Africa, i.e., whether a market-led, or regulatory-led approach, relevant regulators including the Information Regulator must provide direction on the main pillars of open banking identified. This is where multi-stakeholder forums such as the IFWG which includes the Commission can serve a useful purpose of advancing discourse in this field.

Another key feature of open banking explored in this research pertains to data privacy and security. Notwithstanding the regulatory framework which empowers consumers to give consent for their personal data to be shared, data privacy and security considerations may pose difficulties to compel dominant players such as the larger banks to provide data access to SMEs (i.e. Fintechs). In the context of open banking, targeted legislation on data privacy and security may be necessary to establish acceptable data privacy and security standards. Therefore, supervision is required on how data can be shared without compromising data privacy and security.

This research has also observed that while not yet an imminent threat, the open banking initiative does invite the entry of BigTech firms and not just Fintech start-ups into the financial system, which, while increasing competition and the penetration of financial services in the short run, may create a

long-term risk of monopolisation or gatekeeping by BigTech firms. Furthermore, as BigTech firms become more pervasive in the financial system without regulatory oversight, systemic risk in the system will likely escalate. A pre-emptive decision must be made regarding their involvement in the South African financial market if registration will be compulsory. For example, it may be necessary that bespoke regulation be developed for BigTech firms with limitations on the allowable penetration by these firms into the financial system before systemic risk exposure requires regulatory oversight.

7.2 Essential Food Price Monitoring Report

This served as the fifth Essential Food Price Monitoring report and covered two broad areas, namely the broader structural issues in South Africa's food market system and the initiative to develop small-scale, localized farming, and secondly the report tracks essential food pricing through the third wave of the pandemic to monitor price movements and inflation for essential food products.

- a) In terms of the two broad areas covered in this report, the following aspects were covered as part of the broader structural issues:
 - i. The structure of agriculture in South Africa is considered by highlighting that the agricultural value chain is highly industrialised and characterized by super commercialization of production via large-scale farming as well as concentrated upstream inputs and processing.
 - ii. The trends and benefits of local, small-scale farming which centre around socio-economic benefits such as improving small farmer participation in the food value chain, especially for historically disadvantaged farmers, and also address rural poverty and the lack of access to affordable and healthy food.
 - iii. The decline of small-scale farming in South Africa as well as its challenges and what initiatives there have been to try to address these challenges.

- b) In terms of the second broad area covered in this report, it looked at the tracked pricing of essential food products through the different waves of the pandemic (especially the third wave) to see what is happening with these prices and whether events such as panic buying or other global events are impacting negatively on food prices, security and nutrition.
 - i. The updated food price data covering the third wave does not show any panic buying behaviour that has driven price changes.
 - ii. We are seeing some general seasonality shifts in pricing and global or weather-related changes, but no obvious effect of the third wave per se on the tracked essential foods, and not even a strong price effect on ginger and garlic (as seen before in the second wave).

- iii. There has been price inflation for certain commodities over the last while, such as cooking oil, and meat markets are also showing steady increases in retail prices since the first wave of the pandemic.
- iv. Consumers remain under enormous financial pressure due to impact on livelihoods, third wave closures and riots, which highlights the importance of ongoing tracking of essential food products.

7.3 Draft Guidelines on collaboration between competitors on localisation initiative

The Commission issued draft guidelines on collaboration between competitors on localisation initiatives for public comment in terms of section 79(3) of the Act in Government Gazette number 44981.

In response to the economic consequences of the Covid-19 pandemic, government developed the Economic Reconstruction and Recovery Plan (“ERRP”) which maps out interventions aimed at promoting inclusive growth and employment in the domestic economy. One of the key objectives of the ERRP is increased localisation – increasing the share of total procurement of an identified input from local suppliers and decreasing the share of procurement of imports of the same input.

In terms of the Draft Guidelines, a “localisation initiative” is any project or effort to achieve greater levels of local procurement or production. Localisation initiatives may be initiated by Government or private players themselves. Government-initiated localisation initiatives may include initiatives such as the DTIC’s CEO Localisation Initiative or localisation initiatives that arise of the DTIC’s Master Plan processes. In addition, localisation initiatives may be initiated by any government entity. Outside of government, the Commission recognises that industry participants/market players may also wish to engage in initiatives to increase localisation in terms of the ERRP, and in line with government policy.

Collaboration amongst competitors may be required to advance such localisation initiatives - whether led by Government or industry. The Draft Guidelines have been developed to guide the process by which such collaboration between competitors may occur and aim to provide guidance to industry and government as to how localisation initiatives may be appropriately identified and implemented, in a manner that does not raise competition concerns. The Draft Guidelines are in respect of localisation processes and relate to collaboration amongst purchasers and/or suppliers of products earmarked for greater localisation.

Submissions were due to the Commission by 27 September 2021.

8. MARKET INQUIRIES

There is currently one market inquiry underway at the Commission. The Commission initiates market inquiries under powers granted to it in the Competition Amendment Act 2009 (1 of 2009), which provides for the Commission to undertake a “formal Inquiry in respect of the general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm”. The Commission is also undertaking the implementation of the four (4) completed market inquiries. The market inquiries are reported briefly below:

8.1 Market Inquiry into Online Intermediation Platforms Services

After the analysis of the first round of Information received from +/- 82 Platforms. The Commission sent out further follow-up requests and conducted follow-up meetings based on information received from the first round of information gathering. The Commission held internal workshops to dissect the issues found in the first submissions as well as assessing the direction of the inquiry. The Commission continues to engage with stakeholders, including major platforms, users of platforms and government.

The Commission released its Further Statement of Issues on 17 August 2021 for public comments. In the same month the Commission also published its second business user survey, followed invitation for “call for participation” in preparation for the upcoming Public Hearings to be set in November 2021.

8.2 Public Passenger Transport Market Inquiry

The Commission has finalised the Public Passenger Transport Market Inquiry in the last quarter of previous financial year,

8.3 Grocery Retail Market Inquiry

The Commission continues with the implementation of the recommendations from the Grocery Market Inquiry.

8.4 Liquefied Petroleum Gas Market Inquiry

The Commission continues to follow up on the implementation of the findings from the Liquefied Petroleum Gas Market Inquiry by stakeholders.

8.5 Data Services Market Inquiry

The Commission continues with implementation of the recommendations from the Data Services Market Inquiry.

8.6 Health Market Inquiry

The Commission continues with implementation of the recommendations from the Health Market Inquiry.

9. ADVOCACY DIVISION: PERFORMANCE OVERVIEW

The Advocacy division comprises of the following departments: Screening, Strategy & Planning, Policy & Research and Stakeholder Relations. The division had seven (07) applicable targets the quarter, with three targets shared with Cartels, MCD and OTC. The division met six (06) targets (KPIs 6, 13, 23, 22, 31 and 34 and did not meet one (01) target (KPI 38).

9.1 Screening

The Screening Unit is responsible for undertaking preliminary investigations of complaints received. Based on these preliminary investigations, the Commission can investigate the case further or decide not to investigate further (non-referral). The Commission non-refers matters during the screening period if i) the complaint does not raise competition concerns, ii) if the allegation does not amount to a contravention of the Act and iii) if the parties resolve the complaint during the preliminary investigation phase. Where there are no competition concerns arising and complaints are non-referred, parties are advised of alternative routes to resolve the matters.

The Commission received a total of one hundred and seventy (170) complaints from the public during Q2, ninety-two (92) complaints related to Covid-19 and seventy-eight (78) were non Covid-19 complaints.

Covid-19/ Price-gouging Complaints

The Commission experienced an increase in the number of Covid-19 cases received, ninety-two (92) complaints were received during Q2. Majority of the price gouging complaints received in this quarter related to the unrest and looting that occurred in certain parts KwaZulu-Natal and Gauteng in July 2021. In total, the Commission received seventy-four (74) cases related to the riots at the end of the quarter.

The Commission finalised one hundred and thirty-one (131) Covid-19 related investigations. All Covid-19 investigations finalised were non-referred. The Commission however referred 69 of 131 finalised cases to the KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs (KZNDEDTEA), for further investigation and resolution. These are cases related to the riots in KwaZulu-Natal.

Non-price gouging complaints

The Commission had a total of seventy-eight (78) complaints not related to price gouging under investigation at the end of the reporting period. The Commission finalised sixty-seven (67) non Covid-19 complaints in Q2. Of the sixty-seven (67) complaints screened, forty-six (46) complaints were non-referred, four (4) withdrawn. The Commission's divisions will undertake full investigations of seventeen (17) complaints which were screened during the quarter. Five (05) complaints were transferred to Market Conduct, nine (09) transferred to Cartels and three (03) transferred to M&A for further investigation.

Table 19: Complaints Statistics in 2020/21

Screening Activity	Q1	Q2
Total complaints received	90	78
Total Covid-19 complaints received	14	92
Total complaints finalised	127	67
Total Covid-19 complaints finalised	63	131
Complaints withdrawn	3	4
Active non Covid-19 cases	78	81
Active Covid-19 Cases	102	55
Complaints referred to other entities/regulators	0	69

9.2 Policy Responses

The Commission did not submit any policy responses in Q2.

9.3 Workshops on Competition Policy

The Commission had two workshops on competition policy in the quarter under review – workshop with Information Regulator of South Africa and a webinar on price gauging during the pandemic.

The Commission held a workshop with the Information Regulator of South Africa (“IRSA”) on 19 August 2021. The purpose of the engagement was to discuss issues related to data regulation in the country and in particular the concurrent jurisdiction shared by the two regulators on these issues. The two regulators engaged extensively on the Commission's investigation into the complaint by GovChat against WhatsApp/Facebook as well as the IRSA's investigation of WhatsApp sharing of data with

Facebook. The Commission and IRSA also intend to enter into a Memorandum of Understanding (“MoU”) that will govern the manner in which the two regulators will work together in future.

The Commission also hosted a Webinar titled “Price Gouging During the Covid-19 Pandemic”. The webinar was held on 10 September 2021 via Microsoft Teams and was streamed over the Commission’s social media platforms (YouTube and Facebook). The Teams platform hosted over eighty (80) attendees while the social media platforms hosted over one hundred (100) attendees representing various stakeholders. The purpose of the webinar was to inform stakeholders of the Commission’s role/mandate in response to the Covid-19 induced price gouging as well as share information on interventions the Commission has undertaken to curb the anti-competitive conduct.

9.4 Stakeholder Engagements

The Commission signed an MoU with the National Agricultural Marketing Council (“NAMC”) to strengthen their cooperation and the sharing of information particularly on competition and marketing of agricultural products. The MoU was published in the Government Gazette on 13 August 2021. The purpose of the MoU is to establish the manner in which the two agencies will interact and cooperate with each other to enable them to (a) conduct research on areas of mutual interest, including joint research studies, sharing of data and market information that will inform their policy work; (b) consult and coordinate their activities on policy and regulation in the agriculture, food, and agro-processing sectors, applying a consistent interpretation and application of competition and agricultural marketing policy principles in the exercise of their respective powers and functions; (c) partner on non-enforcement activities such as advocacy projects; and (d) provide each other with the necessary information, advice and inputs during case investigations, review of merger transactions and exemption applications.

In August 2021, the Commission was invited to participate as a speaker at the South African Council for the Architectural Profession (“SACAP”) Stakeholder Convention. The event was attended by various stakeholders within the architectural sector including voluntary associations, architectural professionals, government, academia and suppliers of products and services in the sector. The Commission engaged the stakeholders on the competition issues in the sector related to the Identification of Work (“IDOW”) and the Professional Guideline Fees, its partnership with SACAP that aims to promote competition within the architectural sector and the ongoing work with the other Councils of the Council for the Built Environment.

9.5 Education & Training

On July 2021, the Commission provided training to the Standards Division of the South African Bureau of Standards (“SABS”). The training focussed on the competition concerns related to standard setting and in particular the harmful effect of having industry players serving on the Working Groups and Technical Committees of the SABS that are tasked with developing standards.

On September 2021, the Commission provided training to the Auditors of the Auditor General of South Africa (“AGSA”). The training was provided to over 180 participants in the Free State and Gauteng offices. The training focused on the competition issues that are detectable in public procurement and the types of competition concerns that are likely to arise in the procurement process. The training also focused on the warning signs” that Auditors must be aware of when conducting their audits as well as the process of reporting material irregularities in line with the Memorandum of Agreement (“MoA”) concluded between the Commission and the AGSA.

The DTIC in collaboration with the University of Mpumalanga hosted a Student Exposure workshop on 15 September 2021. The workshop aimed to encourage the youth to make use of different products and services available from government; highlight opportunities available in the Agro-processing sector; promote opportunities for self-employment and innovation; and facilitate business contacts between the youth and international counterparts. The Commission’s presentation focused on the scope of its work in the agro-processing and agricultural sectors, including research into the barriers to entry facing black emerging farmers in agriculture (access to finance, inputs and infrastructure and routes to market), development funds established through merger conditions, and examples of cartel conduct and abuse of dominance investigated by the Commission. The DTIC has invited the Commission to present in three upcoming workshops as part of its student exposure campaign.

10. OFFICE OF THE COMMISSIONER: PERFORMANCE OVERVIEW

The Office of the Commissioner (OTC) comprises of the Company Secretary, International Relations, Communication and the Spokesperson. The Spokesperson is responsible for the media functions of the Commission.

The OTC was responsible for two (2) performance targets in Q2, with KPI 23 shared with Advocacy. One (1) target was met, and the other exceeded.

10.1 Commission-Initiated Media Engagements

Below we discuss some of the key highlights from Q2:

Table 20: Commission-initiated Media Engagements

	Q1		Q2
April	3	July	5
May	4	August	3
June	3	September	4
Total	10	Total	12

The Advertising Value Equivalent (AVE) of the Commission's media coverage is reflected below. The figures reflect the monetary value of the space and airtime enjoyed in the media.

Table 21: Advertising Value Equivalency (AVE) by Coverage

Coverage	Q1	Q2
Print	R26 991 290	R 28 030 27
Broadcasting	R23 358 211	R16 213 011
Online	R56 407 460	R 53 455 305
Total	R106 756 962	R97 698 588

The Commission is active in social media platforms such as Twitter, Facebook, LinkedIn and Instagram. The table below summarises the Commission's social media footprint:

Table 22: Commission mentions and impressions in online media for Q2

Type of media	July	August	September	Number of mentions
Twitter	553	160	370	1083
Type of media	July	August	September	Number of Impressions/Reach
Twitter	177k	108k	84.7k	369.7K
Facebook	14 502	32 909	22 628	70 039
LinkedIn	72 788	54 162	56 057	183 007
Instagram	3452	2526	3986	9964

10.2 International Relations

The main highlights from Q2 are the events attended and hosted relating to engagements with other African countries under the African Competition Forum (“ACF”), Brazil, Russia, India, China and South Africa (“BRICS”), the Organisation for Economic Co-operation and Development (“OECD”), UNCTAD and International Competition Network (“ICN”), with a high rate of engagements and collaboration being in UNCTAD, ICN and the ACF. The aim of these engagements is to influence international discourse in collaborative research and/or projects on competition policy and draw learnings from other authorities. The engagements are outlined in detail below.

Table 23: Engagements with regional and international bodies in Q2

Competition body	Nature of engagement
African Competition Forum (ACF)	ACF/SADC Training- 29 July 2021.
OECD	<ol style="list-style-type: none"> 1. 2nd OECD-CRESSE Competition Agency Leaders – 03-07 July 2021. 2. Preparations for upcoming OECD (Nov/Dec 2021) – 12 July 2021.
BRICS	No Activity
SADC	<ol style="list-style-type: none"> 1. SADC Cartel Working Group, 10 September 2021.
ICN	<p>Nine ICN activities including teleseminars, meetings, teleconference calls and webinars took place under period of review:</p> <ol style="list-style-type: none"> 1. ICN Steering Group conference call- 07 July 2021. 2. ICN Virtual P&I Workshop (9, 16, 23 and 30 September 2021.) 3. ICN CWG = Big Data and Cartels Project 4. ICN UCWG inputs on IGE 07 July 2021 5. ICN Operational Framework input on 05 July 2021 6. ICN Annual conference planning committee on 28 July 2021 7. ICN Co-chairs meeting on 25 August 2021 8. ICN Sustainability preparatory call on 06 September 2021 9. ICN MWG merger notification and procedure submission on August 2021
UNCTAD	UNCTAD 19TH IGE schedules 05 – 09 July 2021
Other	<p>Sixteen activities took place under period of review.</p> <ol style="list-style-type: none"> 1. CCSA & Nigeria Bilateral Meeting, 27 July 2021. 2. Information Exchange: Structural Mission South Africa OECD Economic Survey - Requested Documents. 3. CADE Digital markets questionnaire 4. Advocacy benchmarking exercise with Australis, CMA and Mexico 5. Nersa international relations strategy meeting

	<ol style="list-style-type: none"> 6. Case exchange US – CCSA on the new US Foreign corrupt practices 7. Asia eCommerce Week - Get involved! 17- 21 Oct 2021. 8. Privacy International survey on data privacy and competition. 9. 9th Bill Kovacic Antitrust Salon [3-Webinar Series, 27-29 September 2021] 10. CMA Training 21 July 2021. 11. CompetitionOnlineForum Deadline Extended till 31st July - Call for Papers: CUTS & CIRC 7th Biennial Conference. 12. AfCFTA 1st Meeting on Competition Policy- 11 to 13 August 2021. 13. Meeting between CCSA and NCC- 18 August 2021. 14. CCSA ECA Workshop- 20 August 2021. 15. Information Exchange: CCSA/Embassy of Spain- localization initiatives. 16. Information Exchange: CCSA/ Mauritius- Human Resource Enquiry.
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11. ADMINISTRATION

11.1 Human Resources

The Commission had 215 employees in Q2, and only one (0,47%) termination of employment during the quarter. The equity ratio for female and male representation in Q2 was 58% females and 42% males. People with disabilities represented 2% of Commission staff, achieving the legislated target of 2%, however, the Commission will continue to increase efforts in the recruitment of disabled employees by giving priority to qualifying disabled applicants for vacant positions, as well as for development opportunities.

11.2 Information and Communications Technology

As the world reacts to the Covid-19 pandemic, the Commission is becoming increasingly reliant on technology to support staff and stakeholders to mitigate the spread of the virus and for business continuity. Remote working and collaboration tools (project management tools, video conferencing, real time document revision and cloud storage and sharing tools) have become essential systems, with new demands placed on networks and datacentre infrastructure.

The Commission continues to explore other ICT systems and services to ensure business continuity. We are in the process of developing a revised IT Governance & Strategy Framework in line with DPSA standards. Other projects which IT is currently busy with are upgrade and migration of Intranet & KMS, Cyber Security system, Data Leak Prevention system, Implementation of online backup system and ERP implementation.

11.3 Governance and Risks

The Commission finalised its Occupational Health and Safety (OHS) policy in July 2021, linked with Covid-19 Protocols. The Commission has also finalised the Covid-19 Return to Office Plan for implementation. The above measures are meant to make sure that the workplace is kept safe and healthy for staff members and those who return to office can work without any exposure to occupational hazards. Given the risk adjusted level 2 that has been declared by the president, the Commission will retain its hybrid model of remote working whilst certain divisions will return to the office for operational reasons. Services of a Space Planner have been sourced to help the Commission to optimise its available office space whilst at the same time creating the right social distancing arrangements and compliance with all Covid-19 protocols.

11.4 Auditor General Referred Cases

In terms of 5(1A) of the Public Audit Act (“PAA”), the Auditor General must refer any findings of material irregularities to public entities for investigation. There have been no Competition matters referred by AG in Q2.

12. FINANCE

See attached Q2 Finance report.

13. Table 24: PERFORMANCE AGAINST TARGETS: 2021/22

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
1. Efficient and effective merger regulation & enforcement	a) Mergers and Acquisitions decisions	M&A	1.	Average turnaround time for Phase 1 merger investigations.	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days	19 days	14 days	Target Met.
		M&A	2.	Average turnaround time for Phase 2 merger investigations.	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days	38 days	36 days	Target Met.
		M&A	3.	Average turnaround time for Phase 3 intermediate and small merger investigations.	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days	59 days	N/A	Target Not Applicable. The Commission did not complete Phase 3 intermediate mergers in Q2.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
		M&A	4.	Average turnaround time for 90% of Phase 3 large merger investigations.	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days	168 days	118 days	Target Met.
		M&A	5.	% of imposed merger remedies and conditions monitored.	100%	100%	100%	100%	100%	100%	100%	Target Met.
	b) Covid-19 investigations	Advocacy, Cartels & MCD	6.	% of Covid-19 investigations completed within 12 months.	100%	100%	100%	100%	100%	63%	100%	Target Met.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
		LSD	7.	% of Covid-19 cases won at the Tribunal.	90%	90%	90%	90%	90%	100%	100%	Target Met.
		LSD	8.	% of Covid-19 cases won at the courts.	90%	90%	90%	90%	90%	100%	N/A	Target Not Applicable. No decision granted in the quarter under review.
		MCD	9.	No. of abuse of dominance and restrictive cases initiated related to Covid-19.	10	5	5	0	0	0	0	Target Not Met. The Commission was planning to initiate several SIU cases in Q2, however the Complainant filed the complaint. The Commission is also finalizing consultations for additional initiations
		MCD & Cartels	10.	% of Covid-19	100%	100%	100%	100%	100%	N/A	N/A	Target Not Applicable. The Commission did not

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
				exemption applications completed within 3 months.								receive any Covid-19 exemption applications in Q2.
		ERB	11.	No. of Reports on Food Prices.	2	0	1	0	1	N/A	1	Target Met.
2. Competitive, Contestable and Decentralized Markets + 3. Impr	a) Investigation of Abuse of dominance and restrictive practices	MCD	12.	No. of abuse of dominance and restrictive cases initiated in prioritized sectors.	5	0	2	2	1	1	0	Target Not Met. The Commission initiated one complaint in Q1. The Commission is also finalizing consultations for additional initiations.
		MCD & Advocacy	13.	% of market conduct investigations completed within 18	≥75%	≥75%	≥75%	≥75%	≥75%	96%	98.75%	Target Met.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
Overlooked public interest outcomes				months.								
	b) Exemption application decisions	MCD	14.	% of exemption applications completed within 12 months.	≥100%	≥100%	≥100%	≥100%	≥100%	100%	N/A	Target Not Applicable. The Commission did not complete any exemption applications in Q2.
	c) Cartel investigations	Cartels	15.	No. of cartel investigations completed.	10	2	3	2	3	12	9	Target Exceeded. There were no trials of cartel cases at the Tribunal due to Covid-19, therefore the Commission expedited completion of cartel investigations.
	d) Cartel prosecutions	Cartels & LSD	16.	% of cartel cases won at the Tribunal.	≥75%	≥75%	≥75%	≥75%	≥75%	100%	100%	Target Met.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
		Cartels & LSD	17.	% of cartel cases won at the courts.	≥75%	≥75%	≥75%	≥75%	≥75%	100%	N/A	Target Not Applicable. No decision granted in the quarter under review.
	e) Prosecution of Abuse of dominance and restrictive practices	LSD	18.	% of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation.	≥70%	≥70%	≥70%	≥70%	≥70%	N/A	N/A	Target Not Applicable. No decision granted in the quarter under review.
		LSD	19.	% of market conduct cases won at the courts in relation to abuse of	≥70%	≥70%	≥70%	≥70%	≥70%	N/A	N/A	Target Not Applicable. No decision granted in the quarter under review.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
				dominance, restrictive practices and exemption litigation.								
	f) Merger litigation	LSD	20.	% of merger decisions upheld by the Tribunal.	≥75%	≥75%	≥75%	≥75%	≥75%	100%	100%	Target Met.
		LSD	21.	% of merger decisions upheld by the courts.	≥75%	≥75%	≥75%	≥75%	≥75%	N/A	N/A	Target Not Applicable. No decision granted in the quarter under review.
4. Improved compliance & awareness	a) Domestic outreach initiatives	Advocacy	22.	No. of education, training and outreach initiatives conducted	2	0	1	1	0	5	1	Target Met.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
s				dition on Competition Act.								
		Advocacy & OTC	23.	Number of awareness publications on the Competition Act.	6	1	2	2	1	2	2	Target Met.
	b) External Guidelines on the application of the Act	LSD & ERB	24.	No. of Guidelines on the application of the Act issued to stakeholders.	2	0	1	0	1	1	0	Target Not Met. Target was met in the previous quarter.
c) Advisory Opinion	LSD	25.	% of advisory opinions	90%	90%	90%	90%	90%	90%	N/A		Target Not Applicable. The Commission is awaiting publication of

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
	ns			issued within 60 days.								final regulations on advisory opinions.
5. Improved understanding of market dynamics in priority sectors	a) Market inquiries	MCD	26.	No. of market inquiries initiated.	1	0	0	0	1	N/A	N/A	Target Not Applicable.
		MCD	27.	No. of market inquiries completed.	0	0	0	0	0	N/A	N/A	Target Not Applicable.
	b) Industry Scoping Studies	ERB	28.	No. of industry scoping studies conducted in prioritized sectors.	1	0	0	1	0	N/A	N/A	Target Not Applicable.
		ERB	29.	No. of impact assessment studies completed.	1	0	0	0	1	N/A	N/A	Target Not Applicable.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
	ns or competition policy											
	d) Advocacy in priority sectors	Advocacy	30.	No. of advocacy cases completed in priority sectors.	2	0	0	1	1	N/A	N/A	Target Not Applicable.
6. Improved coordination on the application of economic polic	a) Strategic Partnerships with relevant stakeholders	Advocacy	31.	No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted.	2	0	1	1	0	N/A	2	Target Exceeded. The Commission conducted two workshops, an additional workshop was aimed at informing consumers and business of the Commission's response to Covid-19.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
y and competition policy		Advocacy	32.	No. of outreach activities undertaken in collaboration with Black Business & Women Associations.	1	0	0	1	0	N/A	N/A	Target Not Applicable.
		OTC & ERB	33.	No. of Annual Conferences hosted.	1	0	0	1	0	N/A	N/A	Target Not Applicable.
	b) Policy Responses	Advocacy	34.	No. of submissions or responses to policy or regulation.	4	1	1	1	1	2	0	Target Not Met. Target was met in the previous quarter.



PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
	c) Research & Thought Leadership	ERB	35.	No. of research and thought leadership insights published	4	1	1	1	1	1	2	Target Exceeded. Competition regulation under national disaster enabled opportunity to conduct more research.
7. Increased importance of developmental perspectives in domestic and international	d) Collaboration with Regional & International partners	OTC	36.	No. of research projects and/or publications undertaken with African, BRICS and international partners.	8	2	2	2	2	2	2	Target Met.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
competition law discourse												
8. Sound Corporate Governance	a) Audit Outcome	Finance	37.	Audit Opinion.	Clean Audit	N/A	N/A	Clean Audit	N/A	N/A	N/A	Target Not Applicable.
9. Secure, harmonious and conducive working environment	a) Organizational Structure Review	Advocacy, CSD & Finance	38.	Review of Organizational Structure.	Report on Organizational Structure	N/A	Final Report	N/A	N/A	N/A	0	Target Not Met. The Commission is finalizing internal consultations of the organizational structure.
	b) Conducive Facilities & Efficient	CSD & Finance	39.	Implementation of Phase 1 of integrated business system.	Report on completed implementation.	N/A	N/A	N/A	Report on completed implementation.	N/A	N/A	Target Not Applicable.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
nt	Security	CSD & Finance	40.	Relocate staff to appropriate office space.	Report on completed implementation.	0	0	0	Report on completed implementation.	N/A	N/A	Target Not Applicable.
		CSD	41	Reports on implementation of the OHS compliance plan.	4	1	1	1	1	1		Target Met.
10. Highly engaged, motivated and productive workforce	a) Talent Management	CSD & OTC	42	% of HR spend in learning and development.	1%	N/A	N/A	N/A	1%	N/A	N/A	Target Not Applicable.
		CSD	43.	% retention rate of staff complement.	≥90%	≥90%	≥90%	≥90%	≥90%	98.5%	98.5%	Target Met.



PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Q2	Reason for variance
		OTC	44.	% of staff reached through training academy initiatives.	≥60%	0	0	0	≥60%	N/A	N/A	Target Not Applicable.