



**competition commission**  
*south africa*

**THE COMPETITION COMMISSION**

1<sup>st</sup> Quarter Report: 01 April 2021 – 30 June 2021

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## I. INTRODUCTION

This report constitutes the Competition Commission's ("Commission") performance results for the first quarter (Q1) of the 2021/22 financial year (01 April 2021 to 30 June 2021).

The Commission has a total of forty-four (44) performance targets in the 2021/22 Annual Performance Plan. Of these, twenty-four (24) targets were applicable in Q1 and twenty (20) targets not applicable. The Commission met fifteen (15) targets, exceeded six (6) targets, and did not meet three (3) targets. Therefore, the Commission obtains a performance score of 88% against its Q1 targets.

### 1. PERFORMANCE SUMMARY

**Table 1: Total Quarter 1 Targets**

Total APP Targets: 41	Q1
Applicable targets	24
Targets not applicable	20
Targets met	15
Targets exceeded	6
Targets not met	3
<b>Total score %</b>	<b>88%</b>

#### 1.1. Targets Not Met

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

**Table 2: Targets Not Met in Q1**

KPI No	KPI description	Q1 Target	Q1 Results	Reason for Variance
KPI 4	Average turnaround time for 90% of Phase 3 large merger investigations.	≤ 120 days	168 days	The Commission investigated several complex and contested Phase 3 (L) Mergers in this quarter. These included ALLISA/Sasol, RusselStone Protein, Cashbuild/TBC

KPI No	KPI description	Q1 Target	Q1 Results	Reason for Variance
KPI 6	% of Covid-19 investigations completed within 12 months.	100%	63%	The Commission took a strategic decision to refer two SAPS matters to the Tribunal and to obtain guidance on how to deal with the remaining SAPS matters.
KPI 9	No. of abuse of dominance and restrictive cases initiated related to Covid-19.	5	0	Division prioritized the completion of the balance of covid-19 complaints from the public and the SIU.

## 1.2. Targets Exceeded

The table below provides details of the exceeded targets.

**Table 3: Targets Exceeded in Q1**

KPI No	KPI description	Q1 Target	Q1 Results	Reason for exceeding target
KPI 12	No. of abuse of dominance and restrictive cases initiated in prioritized sectors.	0	1	The Commission came across flu vaccine information which required that we initiate a complaint urgently.
KPI 15	No. of cartel investigations completed.	2	12	There were no trials of cartel cases at the Tribunal due to Covid-19, therefore the Commission expedited completion of cartel investigations.
KPI 22	No. of education, training and outreach initiatives conducted on Competition Act.	0	5	The Commission had to conduct workshops on Automotive Guidelines to promote awareness and provide public education on the Guidelines ahead of July effective date.
KPI 23	Number of awareness publications on the Competition Act.	1	2	The Commission had to publish a Frequently Asked Question pamphlet to guide stakeholders on implementation of

KPI No	KPI description	Q1 Target	Q1 Results	Reason for exceeding target
				the Automotive Guidelines, in addition to the newsletter.
KPI 24	No. of Guidelines on the application of the Act issued to stakeholders.	0	1	The Commission had to expedite publication of the guidelines following the designation of the sugar industry by the Minister of the DTIC.
KPI 32	No. of submissions or responses to policy or regulation.	1	2	There were more policy/regulatory developments in priority sectors arising in the quarter than anticipated.

### 1.3. Targets Not Applicable

A total of twenty (20) KPIs were not applicable in the quarter: Fifteen (15) KPIs did not have targets set for Q1 and five (5) KPIs had set targets for Q1, but the targets were not triggered, hence reported as *not applicable*. Targets that were not triggered related to % of applications Covid-19 exemption completed within 3 months, (KPI 10), % of market conduct cases won at the Tribunal in relation to abuse of dominance, 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 % of advisory opinions issued within 60 days (KPI 25).

## 2. EXECUTIVE HIGHLIGHTS

The Commission received a total of ninety (90) complaints from the public during Q1, fourteen (14) complaints related to Covid-19 and seventy-six (76) were non Covid-19 complaints. The number of Covid-19 complaints continue to drop each quarter and is significantly lower than same period last year where we had over a thousand cases. The Commission finalised sixty-three (63) Covid-19 investigations: sixty-two (62) complaints were non-referred, as the conduct complained of did not amount to a contravention of the Act. Only 1 complaint was referred to the Tribunal as the conduct possibly contravened the Act.

The Commission finalised the screening sixty-four (64) non Covid-19 complaints in Q1. Of the sixty-four (64) complaints screened, forty-seven (48) complaints were non-referred, three (3) withdrawn.



The Commission's divisions will undertake full investigations of thirteen (13) complaints which were screened during the quarter.

At the end of the quarter, the Commission had hundred and fourteen (114) cases in litigation at the Tribunal and the courts, of which eighty-two (82) are cartel cases, fourteen (14) are mergers and eight (8) abuse of dominance cases, one (1) minimum resale price maintenance and nine (9) matters for appeal/review.

The Commission issued draft guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030, for public comment. The purpose of the draft Guidelines is to provide guidance to the sugar industry on collaboration in the implementation of industry commitments to increasing sourcing of local sugar as contemplated in the South African Sugarcane Value Chain Master Plan to 2030 ("the Sugar Master Plan"). The draft guidelines were issued in terms of section 79(3) of the Act.

The Commission conducted a study in levels and trends of concentration and participation in the South Africa. The study includes a detailed assessment of both the levels and trends in concentration and participation over 178 the past 5-10 years across industries. The study will first serve before Cabinet and thereafter be made available to the public.

The Commission also made major progress with the implementation of the Grocery Retail Market Inquiry recommendations, by concluding settlement agreements with Pick 'n Pay. Pick 'n Pay agreed eliminate exclusivity against small and independent grocery retailers and supermarkets owned and controlled by historically disadvantaged persons, and to not sign any new lease agreements that contain exclusivity clauses, in compliance with the recommendations of the Grocery Retail Market Inquiry. The agreement was confirmed by the Tribunal decision.

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**

No judgements issued in the Quarter under review.

## 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 fourteen (114) cases are in litigation at the end of Q1.

**Table 4: Commission's Litigation Load 2020/21**

Cases	Q1
Number of cartel cases in litigation at the Tribunal and the courts	82
Number of abuse of dominance cases in litigation at the Tribunal and the courts	8
Number of minimum resale price maintenance cases in litigation at the Tribunal	1
Number of contested large mergers in the Tribunal	2
Number of reconsiderations <sup>1</sup> in litigation	6
Number of prior implementation cases in litigation	6
Number of appeals, review and variation application	9
<b>TOTAL CASES</b>	<b>114</b>

### 2.3 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 be found guilty, the Tribunal has the option to impose a financial penalty. The Tribunal did not impose any penalty in Q1.

### 2.4 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 Q1, three (3) settlement agreements were confirmed by the Tribunal. The cases are listed in the table below, and some cases summarised thereafter.

<sup>1</sup> The reconsideration application is an application brought by the merging parties to the Tribunal to reconsider a decision of the Commission, either prohibiting a small or intermediate merger or approving such a merger with conditions.

**Table 5: Settlement Agreements Confirmed at Tribunal in Q1**

Decision Date	Case Name	Section Transgressed	Penalty levied	Donation value (Price-gouging cases only)
14/4/2021	CC vs Mine Africa Safety Solutions	8(1)(a)	R0	R116 672.02
03/06/2021	CC and Shashe Trading (Pty) Ltd and Devenco 44 (Pty) Ltd	13A(3)	R350 000	R0
05/05/2021	CC vs Kagiso Media Investments	13A(3)	R1 699 500	
12/05/2021	CC vs Premier Foods (Pty) Ltd	4(1)(a)	R0	R0
22/05/2021	Media Credit Coordinators NPC	4(1)(b)(i)	R0	R0
			<b>R 2 049 500</b>	<b>R116 672.02</b>

#### 2.4.1 Competition Commission vs Shashe Trading (Pty) Ltd and Devenco 44 (Pty) Ltd: 2019Dec0001

On 29 November 2019, the Commission received a notice of an merger between Shashe Trading (Pty) Ltd (“Shashe”) and Devenco 44 (Pty) Ltd (“Devenco”) in respect of Mopani SuperSpar supermarket business. In the merger notification documents, Shashe indicated that the merger had already been implemented, i.e., Shashe already took control of Devenco's Mopani SuperSpar.

Shashe is active in the retail market, where it sells general household merchandise such as fruit and vegetables, household cleaning, frozen foods and pet care under Spar branded franchise supermarkets. Prior to the merger, Devenco was also involved in the retail market where it carried on a supermarket business under the name and style of Mopani SuperSpar. Mopani SuperSpar sells a wide variety of fresh and processed foodstuff and other household products to the general public.

The Commission found that Shashe purchased Devenco's Mopani SuperSpar from the Spar Group and started operating the business on 6 June 2019. This purchase by Shashe constituted an intermediate merger in terms of section 12(1)(a), read with section 12(2) of the Act. Shashe, however, only notified the Commission of the acquisition on 29 November 2019, namely 5 months after Shashe took control of Mopani SuperSpar. The Commission therefore found that Shashe and Devenco failed to notify the transaction at the time when Shashe acquired Mopani SuperSpar business, in contravention of section 13A(1) of the Act. They also implemented the merger transaction without the approval of the Commission in contravention of section 13A(3) of the Act.

In its assessment of the transaction, the Commission found that the merger was unlikely to substantially prevent or lessen competition in the market for the retail of grocery and general merchandise in Giyani, Limpopo province. The transaction also did not raise any public interest

concerns. The transaction was accordingly approved by the Commission without conditions on 26 February 2020.

The Commission and Shashe entered into settlement discussions and were ultimately able to reach a settlement and agreed on a penalty amount of R 350 000. The Commission was of the view that the R 350 000 penalty amount is reasonable especially when one takes into account the mitigating factors in Shashe's favour. These included inter alia (i) the fact that the sections 13A(1) and 13A(3) contraventions were only for 5 months and (ii) Shashe admitted to the contravention and indicated that the failure to notify the merger was a bona fide mistake and indicated a willingness to settle the matter.

Shashe and Devenco have admitted that they entered into a merger transaction without notifying the Commission and implemented the merger without the approval of the Commission in terms of section 14(1)(b), or the Tribunal in terms of section 16(2) or the Competition Appeal Court ("CAC") in terms of section 17, as required by section 13A of the Act, and as such were in contravention of the Act.

In terms of the settlement agreement, Shashe and Devenco 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 Shashe will pay an administrative penalty in the amount of R 350 000 (three hundred and fifty thousand rands). This amount does not exceed 10% of Shashe's total annual turnover in the Republic and its exports from the Republic for its 2019/2020 financial year.

#### **2.4.2 Competition Commission vs Kagiso Media Investments (Pty) Ltd: 2019Aug0028**

The matter related to the implementation of a 2011 Transaction whereby Kagiso Media Investments (Pty) Ltd ("Kagiso") purchased 2 725 ordinary shares in Mediamark (Pty) Ltd ("Mediamark") from Lagardere Active Radio International ("LARI"). The Commission became aware of the 2011 Transaction in 2019 after Kagiso Media and Mediamark filed a notification of a large merger whereby Kagiso intended to acquire the remaining 49% plus 1 share from LARI ("2019 Transaction"), which would result in Kagiso Media holding 100% in Mediamark ("the 2019 Transaction"). The Commission

approved both the 2011 Transaction and the 2019 Transactions without conditions but referred the prior implementation case relating to the 2011 Transaction to LSD.

The evidence indicated that the 2011 Transaction was a result of a Call Option Agreement concluded in December 2006 whereby which LARI granted Kagiso Media the right and option to purchase 2 725 ordinary shares held by LARI in Mediamark. Kagiso Media exercised the call option in January 2011, which resulted in Kagiso Media increasing its shareholding from 49.97% to 50.01% (50% plus 1 share) and LARI's shareholding decreased from 50.03% to 49.99%.

Kagiso Media and Mediamark admitted that they did not notify or obtain the approval of the Commission before implementing the 2011 Transaction, and that the 2011 Transaction would have met the thresholds to trigger an intermediate merger notification in 2011, had same been notified. However, they disputed that the 2011 Transaction required notification and argued, inter alia, that the 2011 Transaction did not occasion a change in qualitative control exercised by Kagiso Media in Mediamark because Kagiso Media was already an existing shareholder and attenuated joint control of Mediamark since August 1997 with LARI. They, however, did not have any documentary evidence to prove that Kagiso Media established control over Mediamark. As such, the Commission took the position that the 2011 Transaction resulted in Kagiso Media establishing control over Mediamark, which it did not exercise before January 2011, and therefore required notification.

The parties subsequently admitted that the 2011 Transaction constituted prior implementation in contravention of section 13A(3) of the Act, and concluded a Consent Agreement with the Commission, which was confirmed as an order of the Tribunal on 5 May 2021. The Commission imposed an administrative penalty of R1 699 500 (one million, six hundred and ninety-nine thousand and five hundred Rand) on Mediamark, which was payable within 30 (thirty) Days of confirmation of the Consent Agreement by the Tribunal.

#### **2.4.3 Competition Commission vs Pioneer Foods (Pty) Ltd and 17 Others: 2007Mar2844**

The matter relates to the legacy maize milling cartel case, Competition Commission v Pioneer Foods and 17 Others. The proceedings against the other 15 respondents have been concluded - The Commission concluded consent agreements with 14 (fourteen) respondents and filed a notice of withdrawal against one respondent, Isiswe Mills (Pty) Ltd, on 9 September 2020. The two remaining respondents were Premier Foods (Pty) Ltd ("Premier Foods") and Tiger Brands Limited ("Tiger Brands") who had been granted Conditional immunity in terms of the Commission's Corporate Leniency Policy ("CLP") on 16 March 2007 and 9 November 2007, respectively.

Each of the remaining respondents raised objections to the Commission's position that final immunity would be granted subject to a Consent Agreement:

- i) Premier Foods argued that the CLP did not require it to conclude a consent agreement to be granted Final Immunity and that the Commission's position was contrary to the CLP. The Commission concluded that there was no basis to Premier Foods' objection and insisted that Final Immunity would be granted subject to a Settlement Agreement without the imposition of an administrative penalty.
- ii) Tiger Brands argued that it had already entered into a settlement agreement with the Commission (on a full and final basis), which was confirmed as an order of the Tribunal in November 2007. The Commission concluded that the Consent Order concluded with Tiger Brands in November 2008 incorporated the current proceedings (under case number: 2019Aug0028). Premier Foods subsequently agreed to conclude a Settlement Agreement.

The Commission granted final immunity to Premier Foods through a Settlement Agreement, which was filed with the Tribunal on 28 April 2021 and was confirmed as a Consent Order on 12 May 2021.

The Commission granted final immunity to Tiger Brands in a letter dated 13 May 2021.

## **2.5 Settlements of Covid-19 cases**

### **2.5.1 Competition Commission vs Mine Africa Safety Solutions: 2020Mar0136**

On 14 April 2021, the Tribunal confirmed as an order the settlement agreement between the Competition Commission and Mine Africa Safety Solutions ("Mine Africa").

This settlement agreement follows a third-party complaint received in March 2020 indicating Mine Africa inflated prices it was charging its customers for the FFP1 and FFP2 face masks for the period March and April 2020.

In terms of the order Mine Africa undertook to reduce its gross profit margin on face masks to a maximum of 30% with immediate effect and for the duration of the state of the national disaster; donate essential goods to Empilweni - New Life Community Project (013-499 NPO) situated at 152 Nkanyamba Street, Mqantsa Section, Tembisa, 1632 totalling a cost price value of R116 672.02 (One hundred and sixteen thousand, six hundred and seventy-two Rand and two cents) within 7 (seven) calendar days of signature by both Parties; and pay a cash contribution in the amount of R116 672.02

to the Solidarity Fund within Seven calendar days from the date of confirmation of this Consent Agreement as an order by the Tribunal.

The Commission's investigation established that since the outbreak of Covid-19, Mine Africa significantly increased prices of FFP1 and FFP2 face masks in respect of sales to end users and retailers. During February and March 2020, Mine Africa Safety Solutions applied the following gross profit margins on the sales of FFP1 and FFP2 face masks to retailers and end-users:

For FFP1 masks, a gross profit margin of 52.57% on sales to retailers in March, and a gross profit margin of 82.70% in February, and 64.98% in March on sales to end-users; and

For FFP2 masks, a gross profit margin of 53.42% in March on sales to retailers, and a gross profit margin of 69.45% in February and 61.38% in March to end-users.

Thus, given the high gross profit margins realized by Mine Africa, the Commission was of the view that the conduct accordingly constitutes a contravention of section 8(1)(a) of the Act read together with Regulation 4 of the Consumer Protection Regulations.

## 2.6 Significant Mergers

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

### 2.6.1 Competition Commission prohibits the merger between ECP Africa Fund, Burger King South Africa and Grand Foods: 2021Mar0009

On 1 June 2021, the Commission prohibited the proposed merger wherein whereby ECP Africa Fund IV LLC and ECP Africa Fund IV A LLC ECP Africa Fund IV LLC and ECP Africa Fund IV A LLC (ECP Funds IV) intends to acquire Burger King (South Africa) RF (Pty) Ltd (Burger Kings South Africa) and Grand Foods Meat Plant (Pty) Ltd (Grand Foods) from Grand Parade Investments (GPI).

ECP Funds IV and all the firms it controls in South Africa are collectively referred to as the Acquiring Group. In South Africa, the Acquiring Group through its subsidiaries, operates a transport forex business which is a technology platform that enables payments for fuel-related products and services, border crossings, tolls, and cash disbursement services for cross-border road transportation customers. The Acquiring Group also operates a remittance technology platform that allows users to send or receive money across various countries in Sub-Saharan Africa and provides secondary financial services (namely funeral insurance policies and prepaid (debit) card services).

Burger King is an American multinational chain of fast-food restaurants. At the time of the transaction, Burger King South Africa had more than 90 stores in operation throughout South Afrika. Grand Foods is a meat manufacturing and processing plant in Cape Town. Grand Foods supplies, among others,

Burger King South Africa with burger patties. Burger King and Grand Foods are collectively referred to as the Target Firms.

The Target Firms are majority owned and controlled by GPI; an empowerment entity listed on the Johannesburg Stock Exchange.

The Commission found that there is no horizontal overlap between the activities of the merging parties as the Acquiring Group is not involved in activities that can be deemed interchangeable or substitutable with those of the Target Firms. In addition, the Commission found that there is no vertical overlap between the merging parties' activities as they do not participate at different levels of the same supply chain. Accordingly, the Commission concluded that the transaction was unlikely to substantially prevent or lessen competition in any market.

With respect to employment, the Commission found that the merger will have no negative effect on employment.

The Commission also considered the effect of the merger on the promotion of a greater spread of ownership, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market as contemplated in section 12A(3)(e) of the Act. In this regard, the Commission found that the Target Firms are ultimately controlled by GPI, an empowerment entity with 68.56% of its shareholding held by historically disadvantaged persons (HDPs), 22.87% of which is held by black women. The Acquiring Firms have no ownership by HDPs. Thus, as a direct result of the proposed merger, the merged entity will not have any ownership by HDPs and workers.

Section 12A(3)(e) of the Act imposes an obligation on the competition authorities to consider the effect of a merger transaction on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market. Section 12A(3)(e) of Act falls under legislative measures contemplated in section 9(2) of the Constitution, which states that to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

The proposed transaction does not promote the greater spread of ownership in that it does not increase the levels of ownership by HDPs and workers in firms in the market as required by section 12A(3)(e) of the Act. The Commission is therefore of the view that the proposed merger cannot be justified on substantial public interest grounds.



The Commission invited the Merging Parties to consider various commitments ranging from an ownership stake by (other) HDPs, an ESOP for workers, the incorporation of black-owned firms into their supply chain or setting aside - through sub-franchise licences - a number of stores (per year on its growth) for HDPs. These suggestions were proposed as a way of getting the Merging Parties to address the public interest concern raised by the Commission.

The Merging Parties did not propose any remedies that address the Commission's concerns regarding the effect of the merger on Section 12A(3)(e) of the Act. Considering the above, the Commission is of the view that the proposed transaction cannot be justified on substantial public interest grounds because it does not promote the greater spread of ownership, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market. This is contrary to the mandatory provisions of section 12A(3)(e) of the Act.

Considering the above, the Commission decided to prohibit the merger.

#### **2.6.2 Competition Commission recommends the prohibition of the Cashbuild and The Building Company merger: 2020Oct0033**

The Commission has recommended to the Tribunal that the merger between Cashbuild Management Services (Pty) Ltd (Cashbuild Management) and The Building Company (Pty) Ltd (The Building Company) be prohibited.

Cashbuild Management controls several firms in the building materials industry including Cashbuild (South Africa) (Pty) Ltd and P&L Hardware (Pty) Ltd. The Cashbuild Group is a Southern African-based retailer of building materials and products.

The Building Company is wholly owned and controlled by Pepkor Holdings Ltd. The Building Company owns several firms in South Africa and operates 160 stores in Africa. The Building Company's business comprises of three divisions, namely retail, wholesale and specialised divisions.

The proposed transaction raised a horizontal as well as a vertical overlap. The horizontal overlap arises because the parties are both active in the retail supply of building materials, hardware, and related products. The vertical overlap arises in that the Building Company Group, through MacNeil and Cachet, is active in the wholesale supply of building material and hardware products to retailers including Cashbuild.

The Commission found that the proposed merger will result in the creation of the single largest retailer of building material and hardware and related products in South Africa. This market is highly concentrated with only four retailers that have a national footprint. Of the four national retailers, three are corporate retailers while the fourth is a buying group comprised of independent franchisees. Cashbuild, the Acquiring Firm, is the largest corporate retailer based on number of stores at the national level. The Building Company is the second largest corporate retailer at the national level (including BUCO stores and other specialist/single specialty stores).

At a local level, the Commission found that the merging parties' stores overlap in over 80 townships. In some of the affected townships, the merging parties compete mainly with independent retailers who do not have the ability to exert a significant competitive constraint on the merging parties. The Commission also received concerns from several competitors about the effect of the merger in certain local areas wherein the merging parties compete with independent retailers. These include areas such as: Alice, Sterkspruit, Acornhoek, Giyani, Letlhabile and Thabazimbi.

In this regard, the Commission was concerned that:

- i) The proposed merger will result in the removal of BUCO as an effective competitor in the national market with the potential to expand and compete effectively in the market. This will also result in a creation of a single largest retailer of building material and related hardware products.
- ii) With respect to the local markets (overlap in certain townships or local areas), the proposed merger will result in the merging parties being the dominant retailer of building material and related hardware products. This is because in these areas, independent retailers do not exert a significant competitive constraint to the merging parties. Thus, the proposed merger will give the merging parties the ability to unilaterally increase prices or change trading terms in the identified local market.
- iii) The proposed merger is likely to strengthen the buyer/bargaining power of the merged entity. This is also because the proposed merger will result in a creation of the single largest retailer of building material and related hardware products. Several competitors and suppliers contacted by the Commission also raised concerns about the buyer power that the merged entity will achieve as a direct result of the proposed merger. The enhanced buyer power of the merging parties will affect the market in the following ways:

- a) Firstly, the merging parties can use their buyer power to squeeze the margins of their suppliers, particularly smaller suppliers who will now have to negotiate with the single largest retailer and may be forced to accept unfavourable trading terms dictated by the merged entity. This is in line with the concerns received from the market participants.
- b) Secondly, the merging parties can use their buyer power to exclude their rivals from competing effectively or growing and expanding in their respective geographic market (townships or rural areas). In this regard, the merging parties need only pass on a small portion of the lower purchase price to consumers on a limited number of key value items such as cement, which the Commission understands to be a footfall driver in this market. Unlike independents, large retailers have the ability to recoup these margins on other products and across a range of stores. This is in line with the concerns received from independent retailers.
- iv) With respect to the vertical overlap, the Commission did not find any evidence suggesting that the proposed merger will result in significant input or customer foreclosure concerns.

The Commission also received concerns from the Department of Trade Industry and Competition (“DTIC”). The DTIC submitted that the proposed merger will result in the largest single retailer of building hardware in the country. The DTIC is of the view that any approval to the merger should be accompanied with substantial public interest commitments from the merged entity, which may help to allay the concern with increasing market concentration in the hardware retail market. Areas to be covered by public interest commitments should include: (i) Localisation and supplier development; (ii) Employment; (iii) Transformation; and (iv) Franchisee opportunities.

The merging parties provided public interest commitments addressing the DTIC concerns. The Commission reviewed the commitments made by the merging parties and found that they do not outweigh the competition concerns resulting from the proposed merger.

The Commission therefore recommended that the merger be prohibited. The matter is currently being considered by the Tribunal for final determination.

### **2.6.3 The Competition Commission recommends prohibition of the RussellStone Protein transaction: 2020Jun0061**

The Commission recommended that the Tribunal prohibit the proposed acquisition of RussellStone Protein (Pty) Ltd (RussellStone Protein) by DH Brothers (Pty) Ltd (DH Brothers) and Seaboard Corporation (Seaboard).

DH Brothers is wholly owned and controlled by Willowton Group (Pty) Ltd (Willowton Group), a company incorporated in accordance with the laws of the Republic of South Africa. The Willowton Group is in turn controlled by various family trusts.

The Willowton Group is active in sunflower seed and soybean crushing and oil refinery operations, with interests in the manufacture and sale of edible oils, cleaning and packaging of rice, maize milling and in the fast-moving consumer goods market. Willowton sells its products under *inter alia* the following brands: Sunfoil, Sunshine D, D'Lite, Crown, Nuvolite and Allsome Rice. Willowton operates across South Africa with manufacturing facilities in Pietermaritzburg, Kempton Park and Cape Town.

Seaboard is part of a global agribusiness and logistics company which is, *inter alia*, active in South Africa in the trading of agricultural commodities such as soybeans, soybean meal, soybean hulls, crude soybean oil, sunflower seeds, sunflower meal, sorghum, wheat and maize.

RussellStone Protein has a soybean crushing plant situated in Bronkhorstspruit in the Gauteng Province which is active only in soybean crushing. RussellStone Protein's main product offering is soybean meal. The soybean meal is used in the animal feed industry, mainly for poultry and also in piggeries. RussellStone Protein is currently toll crushing for Seaboard. In terms of its toll crushing agreement, the soybean meal, soybean hulls and crude soybean oil belong to Seaboard.

Following an extensive investigation of the impact of the proposed merger, the Commission concluded that the proposed merger is likely to result in a substantial lessening of competition through coordinated effects in the soybean meal market in South Africa.

The Commission found that the characterisation of the proposed merger is curious as the proposed post-merger arrangement will supposedly leave the Willowton Group and Seaboard competing independently of each other in the products that are the subject of the RussellStone Protein joint venture. The Commission noted that the parties to the joint venture will continue to operate their respective businesses in the soybean markets separately while playing an active role in the management and operation of the joint venture.

The Commission formed the view that the proposed merger creates a structural link between Seaboard and the Willowton Group and creates a platform for constant commercial interaction between the two firms as joint shareholders and joint directors of RussellStone Protein, a situation that did not exist pre-merger. As a result of this structural link and the interaction between the firms, the merger is likely to raise significant anti-competitive effects through coordinated effects in the soybean meal market.

The Commission's investigation found the proposed merger is likely to result in the substantial lessening of competition through coordinated effects because, firstly, it involves a maverick, Seaboard being a substantial deep-sea importer of soybean meal with the price of soybean meal being based on import parity. Secondly, the proposed merger will align the commercial incentives of Seaboard with the incentives of the Willowton Group through the RussellStone Protein joint venture. Thirdly, the proposed merger will align the incentives of Seaboard with the incentives of other local crushers who are likely to follow any price increases by Seaboard to improve their margins, given the low margins in the soybean meal market in South Africa.

The Commission further found that any coordinated conduct from the Willowton Group and Seaboard is likely to be particularly harmful to competition considering the significant collective market shares attributable to the parties to the joint venture in the soybean meal market in South Africa. This suggests that coordination by the parties to the joint venture is unlikely to be sufficiently constrained by competitors. The Commission further found that the barriers to entry are high in the soybean meal market and thus it was unlikely that any threat of entry would disrupt coordination in the market.

In addition to coordination concerns, the Commission further assessed whether the proposed merger is likely to have anti-competitive vertical effects and found that the proposed merger is likely to raise foreclosure concerns in the imported soybean meal market as Seaboard will have the ability and incentive to foreclose the downstream rivals of RussellStone Protein and the Willowton Group from accessing imported soybean meal post-merger.

Considering the above, the Commission formed the view that the proposed merger is likely to substantially lessen or prevent competition in the soybean meal market in South Africa.

The Commission also found that the proposed merger will have a negative impact on the public interest. In particular, the Commission notes that poultry is the primary source of protein for the majority of South Africans and that soybean meal is a significant input into the cost of chicken feed. The Commission therefore noted that any increase in the price of soybean would likely lead to an increase in the price of chicken feed, which would be passed through to South African consumers

through higher chicken prices. This is particularly concerning because poultry meat is the most common source of animal protein in South Africa by a multiple of more than two.

Given the findings that the proposed merger is likely to result in a substantial lessening of competition through coordinated effects and negatively affect the public interest, the Commission considered whether the concerns could be alleviated through merger remedies. The Commission found that there are challenges to crafting remedies which would address these concerns. The Commission notes that the concerns identified above are structural in nature, i.e., these concerns arise from the formation of a structural link between Seaboard, Willowton and RussellStone Protein. Any merger remedies that do not address this structural link would, therefore, be ineffective. The merging parties proposed behavioral remedies, but the Commission ultimately found them to be unsuitable.

The Commission's investigation ultimately found that the proposed merger would likely result in coordinated effects in the soybean meal market and potential input foreclosure of imported soybean meal. The Commission found that this conduct would also have a negative effect on public interest as soybean meal is an essential input in chicken feed.

The Commission, therefore, recommended that the Tribunal prohibits the proposed merger. The matter is currently being considered by the Tribunal for final determination.

## **2.7 Significant Covid-19 Investigations**

### **2.7.1 Mr Velenkosini Fiki Hlabisa vs Logan Medical & Surgical Pty Ltd: 2020Sep0043**

On 28 September 2020 Mr Velenkosini Fiki Hlabisa, leader of the Inkata Freedom Party and member of Parliament, lodged a complaint against Logan Medical & Surgical Pty Ltd ("Logan Medical"). Mr. Hlabisa alleged that Logan Medical charged excessive prices in respect of sanitisers, disinfectants and thermometer scanners to the Kwa-Zulu Natal Department of Education ("KZN DoE"), Kwa-Zulu Natal Department of Transport ("KZN DoT"), Kwa-Zulu Natal Office of the Premier ("KZN Office of the Premier"). The matter was investigated as potential price gouging in contravention of the Price Gouging Regulations and section 8(1)(a) of the Act.

The investigation identified three products where the mark-ups and margins were excessive, namely 5-litre sanitisers supplied to the KZN DoE; 25-litre sanitiser supplied to the KZN DoT; and thermometer scanners supplied to the KZN Office of the Premier. The investigation found that the extent of the excessive profits exceeds R30 million.

The Commission consequently decided to refer the matter to the Tribunal for prosecution.

## II. PERFORMANCE BY CORE PROGRAMMES

### 3. LEGAL SERVICES: PERFORMANCE OVERVIEW

The Legal Services Division (LSD) was accountable for five (5) applicable targets in Q1, with two (2) targets (KPI 16 & 17) jointly shared with Cartels, and one target (KPI 24) shared with ERB. LSD met all five (5) targets.

**Table 6: Covid-19 cases won/lost at the Tribunal and the courts**

Parties	Date of decision	Decision
Competition Commission vs Mine Africa Safety Solutions	14/04/2021	In favour

**Table 7: Cartel decisions won/lost at the Tribunal and the courts**

Parties	Date of order	Decision
Competition Commission vs Media Credit Coordinators NPC	22/04/2021	In favour

#### 3.1 Key hearings in the Tribunal and Higher Courts

There were key hearings pending judgements in Q1.

##### 3.1.1 Competition Commission v Beefcor (Pty) Ltd and Cape Fruit Processors (Pty) Ltd: 2017Sep0027

Beefcor (Pty) Ltd and Cape Fruit Processors (Pty) Ltd (“Respondents”) are processors of wet peels and citrus peel pulp. These are by-products of fruit juice production and are also used as inputs in the production of livestock feed. The Commission’s case is that the Respondents entered into an agreement, to not compete in the market for the processing of wet peels and citrus peel pulp. This conduct is in contravention of section 4(1)(b)(ii) of the Competition Act, No.89 of 1998, as amended (“the Act”).

The matter was referred to the Competition Tribunal (“Tribunal”) and it was later withdrawn in terms of Tribunal Rule 50(1) by the Commission, to allow parties an opportunity to enter into settlement discussions. The settlement discussions fell through, and the matter was referred back to the Tribunal. The Tribunal requested the Commission to make an application to have the matter enrolled back, an application which was opposed by the Respondents. The Tribunal dismissed the application citing that the Commission had to postpone the matter instead of unilaterally deciding to withdraw. The legal effect being that once you withdraw, the matter is withdrawn in its entirety and can no longer be brought back unless new evidence exists.

The Commission appealed this decision at the Competition Appeal Court (CAC) and the Commission lost the appeal. CAC concurred with the Tribunal's decision but further held that a withdrawn matter can never be enrolled back under any circumstances because it amounts to completed proceedings i.e res judicata in terms of section 67(2) of the Act.

The Commission appealed the Competition Tribunal and Competition Appeal Court's decision at the Constitutional Court. The Constitutional Court decided against CAC'S decision that a withdrawal does not amount to completed proceedings and agreed with the Competition Tribunal that a withdrawn matter can be re-enrolled only if new facts or evidence exists.

### **3.1.2 Competition Commission vs Esor Ltd and Others: 2009May4445/2010Feb4925**

On 27 May 2021, the Tribunal heard the closing arguments in a matter referred by the Competition Commission on 2 March 2011 against Esor Ltd (formerly Esorfranki Ltd), Esor Africa (Pty) Ltd, Esor Construction (Pty) Ltd (formerly Franki Africa (Pty) Ltd) (collectively "**Esorfranki**") and Diabor (Pty) Ltd ("**Diabor**") (Esorfranki and Diabor being the remaining respondents before the Tribunal), Rodio Geotechnics (Pty) Ltd ("**Rodio**"), Dura Soltanche Bachy (Pty) Ltd ("**Dura**"), Geomechanics CC ("**Geomech**") and Grinaker LTA ("**Grinaker**") (collectively the "respondents"), in respect of various construction projects from the 1970s to at least 2015, for contravening section 4(1)(b)(i); (ii) and (iii) of the Competition Act 89 of 1998, amended. No relief was sought against Grinaker as it had applied for and was granted conditional immunity by the Commission.

The Commission's case before the Tribunal was that Esorfranki, Diabor and their competitors, namely, Rodio, Dura, Geomech and Grinaker concluded collusive agreements in terms of which they divided tenders amongst themselves, fixed tender prices and allocated tenders/customers/projects between themselves, in the market for geotechnical services, including piling, lateral support, grouting and geotechnical drilling investigation services.

The Commission argued that the respondents were involved in an overarching cartel that took the form of formal and *ad hoc* arrangements. The formal arrangement involved a 'scorecard' or 'book' that was used to record tenders allocated to each participant and also reflected tenders received by each participant in accordance with the agreed proportion of market share. The *ad hoc* arrangements continued after the formal arrangement and also involved the allocation of projects, the taking and giving of cover prices and payment of compensation fees for staying out of projects. The formal and *ad hoc* arrangements form part of the overarching collusive conduct.



The collusive conduct started as far back as the 1970s, but subsided and resumed in the early 1990s. The Commission submitted that the collusive conduct lasted until at least 2009 or 2015, and did not stop on 24 September 2005, as contended by Esorfranki. In the early 1990s the collusive conduct was mainly in the form of formal or regularised arrangements through the scorecards as well as *ad hoc* arrangements that occurred from time to time. After 2006, the collusive conduct continued mainly on an *ad hoc* basis. Some of the projects that were the subject of the overarching collusive agreement that were allocated towards the end of the formal arrangements and those that were allocated under *ad hoc* arrangements included Inner Circle; Mercure Hotel; Centurion Gate 1(c); Centurion Gate 1(d); and Lusip Dam. The *ad hoc* arrangements included Sappi/Saiccor piling project, Moses Mabhida stadium piling project, Braamhoek Dam Grouting project, Coega Harbour diaphragm wall project, Gautrain Rapid Rail Link project, Olifantsfontein Treatment plant; and Lesotho Highlands Water project.

The questions before the Tribunal are whether the collusive conduct ceased in 2005, in particular whether Esorfranki's participation in the collusive conduct stopped in 2005, and whether Diabor participated in the alleged cartel conduct; and the appropriate administrative penalty to be imposed.

The Tribunal has reserved its decision in this matter.

### **3.1.2 Competition Commission vs DH Brothers Industries (Pty) Ltd, Seaboard Corporation and RussellStone Protein (Pty) Ltd in re DH Brothers Industries (Pty) Ltd, Seaboard Corporation and RussellStone Protein (Pty) Ltd: 2020Jun0061.**

The case concerned two opposing interlocutory applications to compel further and better discovery, in relation to an intermediate merger filed between Dh Brothers Industries Proprietary Limited, Seaboard Corporation and Russelstone Proteins Proprietary Limited under case number LM061Jul20.

The merging parties sought discovery of the Commission's draft recommendations, minutes of its meetings and documents reflecting its internal deliberations prior to its decision in terms of section 14A(1) of the Act to recommend to the Tribunal that the proposed transaction between the merging parties be prohibited. The merging parties averred that the documentation sought was relevant to the merging parties litigation before the Tribunal, in that it showed inter alia, bias on the part of the Commission.

Conversely, the Commission argued that the documentation sought:

- i) are not relevant, in that they merely reflect the opinion of the Commission's staff;

- ii) constitutes legal advice given by the Commission's Chief Legal Counsel, Mr Bukhosibakhe Majenge, and therefore subject to, and protected from disclosure by the doctrine of legal privilege; and
- iii) are protected under rule 14 Competition Commission Rules.

In the reciprocal interlocutory application, the Commission's request for further and better discovery entailed a request for the discovery of certain documents from the merging parties underlying the merging parties' own competitive report filed as part of the merger transaction, as well as other documents relevant to the Commission's competitive assessment. The Commission sought such information on grounds that they are relevant, and that it is improbable that the merging parties simply rely on an excuse that they do not exist. The Commission accordingly requested that the Tribunal exercise its inquisitorial powers in directing the provision of such documents. The merging parties argued that the documents are not relevant, nor are they in their possession, or under their control and therefore not discoverable.

The matter was heard and argued before a full tribunal panel on 23 June 2021. Having heard arguments from both sides, the Tribunal handed down its order in respect of the merging parties application to compel the disclosure of Commission internal documents on the 2 July 2021. The Tribunal dismissed the merging parties application.

The merging parties provided further documents responsive to the Commission's request, the Commission team is in the process of assessing same. The upshot is that the Tribunal has not provided an order in the Commission's application for further and better discovery.

### **3.1.3 Competition Commission vs B BlueCollar Occupational Health (Pty)Ltd and Ateltico Investments (Pty) Ltd: COVCR114Sep20**

On 1-3 and 25 March 2021, (with closing arguments on 29 April 2021), the Tribunal heard evidence regarding a complaint referral concerns an abuse of market power by the respondents, BlueCollar Occupational Health (Pty)Ltd ("BlueCollar") and Ateltico Investments (Pty) Ltd ("Ateltico") within the context of the outbreak of the novel coronavirus worldwide. At the time of the contravention BlueCollar and Ateltico were parties to a profit-sharing partnership. The Commission alleged that the respondents charged excessive prices in contravention of section 8(1)(a) of the Competition Act, No.89 of 1998 ("the Act") to the South African Police Services ("the SAPS") in respect of hand sanitiser purchased in terms of its emergency procurement processes.

The complaint period begins on 21 March 2020 and continued until at least 15 April 2020, but the Commission argued that the detrimental effect of the conduct would have continued for a substantially longer period.

The Commission argued that based on the evidence presented, the respondents charged an excessive price to the SAPS in respect of the procurement and supply of hand sanitiser to the detriment of the SAPS. The respondents added a mark-up of 120% and a gross profit margin of 54% in respect of sanitiser containers bought from suppliers. The mark-up and gross profit margin are excessive when compared to the competitive gross profit margin of 10-15%. Even based on the respondents' own calculations of a 73% mark-up and a 42% gross profit margin, the price remains excessive.

The Commission alleged that BlueCollar was in a profit-sharing partnership with Ateltico for the purposes of the procurement and supply of the hand sanitizer. As a result, the Commission submitted that the partnership has contravened section 8(1)(a) of the Act.

At the time that the alleged contravention occurred, the SAPS was desperate to secure hand sanitiser stock. There was a shortage of hand sanitiser in the market. The SAPS had never before procured hand sanitiser and had no stock in store. It needed hand sanitiser urgently to enable its members to continue with policing activities while protecting its staff and the public from the further spread of Covid 19. The procurement of hand sanitiser was done over a very short time, using emergency procurement procedures and the SAPS had to take supply from whoever was able to supply them with hand sanitiser.

The Commission argued that a firm can be a lucky monopolist regardless of whether it supplies PPE to members of the public or to the State. BlueCollar was the only supplier who responded to the SAPS request for quotations sent out on 21 March 2020. The respondents exploited the dire need of the SAPS and the market shortages to charge excessive prices. They were in the position of a lucky monopolist benefiting from the exogenous factors brought about by the pandemic.

The Commission currently awaits the Tribunal decision.

#### 4. CARTELS: PERFORMANCE OVERVIEW

The Cartels Division was accountable for four (4) applicable targets in Q1, with KPI 6 jointly shared with Advocacy and KPI 16 and KPI 17 jointly shared with LSD. Cartels met two (2) targets (KPI 16 and KPI 17), exceeded one (1) target (KPI 15), and did not meet one (1) target (KPI 6).

##### 4.1 Summary of Cartels Division Case Load

The Cartels division has a total of sixty-eight (68) cases under investigation in the current quarter and seventy-five (75) cases at various stages of litigation. During the quarter under review, the division completed twelve (12) investigations, the division also focused on the investigation of public procurement and of price gouging cases, along with other divisions.

**Table 8: Cartels Case Load**

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

##### 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 9: Applications for Leniency**

Corporate leniency applications	Q1
CLP applications carried over from the previous quarter	20
CLP applications received during the quarter	0

Corporate leniency applications	Q1
Total CLP applications handled during the quarter	20
CLP applications granted	1
CLP applications rejected	3
CLP applications abandoned	0

### 4.3 Dawn Raids

There were no dawn raids conducted during Q1.

## 5. MARKET CONDUCT: PERFORMANCE OVERVIEW

The Market Conduct division had five (5) applicable targets for Q1, with KPI 6 jointly shared with Advocacy and Cartels, and KPI 13 shared with Advocacy. The Market Conduct Division met two (2) targets (KPI 13 and KPI 14), exceeded one (1) target (KPI 12) and did not meet two (2) targets (KPI 6 and KPI 9).

### 5.1 Summary of Market Conduct Division Case Load

The Market Conduct had a total of fifty-five (55) complaints under investigation in Q1. The division completed one (1) investigation in Q1 and three (3) exemption applications. One (1) investigation was initiated Q1.

### 5.2 Investigations initiated in priority sector in Q1

#### 5.2.1 Competition Commission vs Sanofi Industries South Africa and/or Sanofi – Aventis South Africa and Abbott Laboratories SA (Pty) Ltd: 2021Apr0001

This is an initiation of a complaint by the Competition Commissioner of the Competition Commission (“the Commissioner”) in terms of section 49B (1) of the Act. The Commission is in possession of information that gives rise to a reasonable suspicion that Sanofi Industries South Africa (Pty) Ltd and/or Sanofi-Aventis South Africa (Pty) Ltd and Abbott Laboratories SA (Pty) Ltd have and continue to engage in anti-competitive in the provision of quadrivalent flu vaccine in contravention of sections 8(1)(a) and 4(1)(b)(i) of the Act.

A quadrivalent flu vaccine includes two subtypes of influenza A viruses (an A(H1N1) pdm09 and an A(H3N2) virus) and two lineages of influenza B viruses (a B/Victoria lineage virus and a B/Yamagata

lineage virus).<sup>2</sup> A quadrivalent flu vaccine differs from a trivalent flu vaccination, which includes two subtypes of influenza A viruses (an A(H1N1) pdm09 and an A(H3N2) virus and one type B virus.<sup>3</sup>

The First Respondent is Sanofi Industries South Africa (Pty) Ltd (“Sanofi Industries”), a private company involved in the manufacturing of pharmaceuticals duly registered in accordance with the laws of the Republic of South Africa with its principal place of business at Sanofi House, 44 On Central Office Park, 2 Bond Street Grand Central Ext 1, Midrand, Johannesburg Gauteng.

The Second Respondent is Sanofi-Aventis South Africa (Pty) Ltd (“Sanofi-Aventis”) private company involved in the importation, packaging, and distribution of a wide range of pharmaceutical products duly registered in accordance with the laws of the Republic of South Africa with its principal place of business at Sanofi House, 44 On Central Office Park, 2 Bond Street Grand Central Ext 1, Midrand, Johannesburg Gauteng.

The Third Respondent is Abbott Laboratories SA (Pty) Ltd (“Abbott Laboratories”), a private company involved in the wholesale and importation of pharmaceutical and hospital products duly registered in accordance with the laws of the Republic of South Africa with its principal place of business at Abbott Place 219 Golf Club Terrace, Constantia Kloof.

The Commission is in possession of information which suggests that for the upcoming flu season, the World Health Organisation (WHO) does not provide a preferential recommendation between the trivalent and quadrivalent flu vaccines and notes that a country may review the respective costs, benefits and context-specific evidence to inform their decisions on which type of vaccine to choose.<sup>4</sup> In so far as the section 8(1)(a) allegations are concerned the information in the Commission’s possession suggests that despite the WHO’s advice, the Respondents are only making their quadrivalent flu vaccine available to the South African market for the upcoming flu season, effectively withdrawing their trivalent flu vaccine.

The First and Second Respondents current pricing for the trivalent flu vaccine, Vaxigrip 0.5ml Single<sup>5</sup>, is at a standard exit price (SEP) of R57.18 exclusive of VAT. Information in the Commission’s possession suggest that the First and Second Respondents registered a quadrivalent flu vaccine, Vaxigrip Tetra 0.5ml<sup>6</sup>, with South African Health Products Regulatory

<sup>2</sup>[https://www.who.int/influenza/vaccines/virus/recommendations/202009\\_qanda\\_recommendation.pdf?ua=1](https://www.who.int/influenza/vaccines/virus/recommendations/202009_qanda_recommendation.pdf?ua=1)

<sup>3</sup> Ibid.

<sup>4</sup> World Health Organization. (2020). Seasonal influenza vaccines: an overview for decision-makers. <https://apps.who.int/iris/bitstream/handle/10665/336951/9789240010154-eng.pdf>

<sup>5</sup> NAPPI code 813338

<sup>6</sup> NAPPI code 3000826

Authority (“SAHPRA”) and this quadrivalent flu vaccine is currently priced at R87.00 exclusive of VAT.

### 5.3 Full Investigations finalized in Q1

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

#### 5.3.1 Barnabas Xulu and partners Inc obo CODETA and Lisekhonikamva Rapid Transport Operators (Pty) Ltd v N2 Express JV, GABS and City of Cape Town: 2019Dec0018

Barnabas Xulu and Partners Inc. filed a complaint on behalf of Congress for Democratic Taxi Associations (“CODETA”) and Lisekhonikamva Rapid Transport Operators (Pty) Ltd (“LRTO”) (“the Complainants”). CODETA is the largest voluntary association of minibus taxi operators in Cape Town and the Western Cape. LRTO is a private company, which was created as a special purpose vehicle to represent the interests of CODETA. LRTO is a 33.3% shareholder in the N2 Express JV.

The Complainants alleged the following:

- i) Some of the provisions in the agreement with COCT and GABS (as part of the N2 Express JV agreement), were not adhered to, more specifically the undertaking capacity building by GABS to equip the Complainants with managerial and operational skills;
- ii) The N2 Express service was designed to provide participants with benefits such as shareholding and capacity building, however, it turned out that the “biggest BEE transport deal was a front for the COCT to grant GABS a contract indirectly”; and
- iii) Due to the lack of capacitation, the minibus operators are rendered useless and were unable to compete in existing and future MyCiti Operations.

The allegations were considered as part of Land-Based Passenger Public Transport Market Inquiry (“PPTMI”). Considering the final recommendations of the PPTMI, the Commission decided to non-refer the matter based on the following findings of the Inquiry:

- i) The introduction of N2 Express service was linked to the need of transport integration which necessitated the COCT to identify players in the route that would be affected by the introduction of the N2 Express service and seek ways to ensure that those firms remain competitive in the long run.
- ii) The Inquiry established that the IRPTN has not resulted in the empowerment and transformation of the minibus taxi industry – this is consistent with the allegations.

- iii) In addition, the requirement that taxi owners forfeit their taxi operating licences when opting to be part of the BOCs/VOCs, without a guarantee in the continuation of their contracts, creates an uncertainty that impedes the empowerment of these former minibus taxi owners.

In relation to these findings, the Inquiry recommended the following:

- i) National Department of Transport (DOT) and National Treasury should undertake a complete review of the BRT/IRPTN model considering measures for effective participation of the minibus taxi industry.
- ii) DOT should consider reviewing the 12-year BOC/VOC model, or undertake a study to evaluate if this model promotes transformation and empowerment.

## 5.4 Exemptions

The Market Conduct Division received one (1) new exemption application in Q1 and completed three (3) exemption applications, as narrated below. The South Africa Sugar Association (“SASA”) exemption was received in Q1 and completed in Q1 as narrated below.

A summary of this exemption is provided below:

**Table 10: Exemption Applications in 2021/22**

Exemptions	Q1
Exemptions received	1
Exemptions granted	2
Exemptions refused	1

### 5.4.1 Independent Chrome Ore Producers Exemption: 2020Sep0032

On 21 September 2020, various Independent Chrome Ore Producers (“ICOP”) hereinafter referred to as (“Applicants”) filed an exemption application (the “Application”) in terms of section 10(1)(b) of the Act. The Applicants sought an exemption for a period of two (2) years. The Applicants to the exemption are not members of any association.<sup>7</sup>

<sup>7</sup> The Applicants included Rustenburg Platinum Mines Limited and Atomic Trading Proprietary Limited (both entities being subsidiaries, alternatively, affiliates of Anglo-American Platinum Limited); Assore Limited and its subsidiaries, including but not limited to: Dwarsrivier Chrome Mine Proprietary Limited and Ore & Metal Company (collectively, “Assore”); Bauba Resources Limited and the firms controlled thereby whether directly or indirectly; Chrometco Limited and the firms controlled thereby whether directly or indirectly; Chrometco Limited and the firms controlled thereby whether directly or indirectly; Impala Platinum Holdings Limited and the firms controlled thereby whether directly or indirectly (Impala was initially part of the Application when it was filed but pulled out in March 2021); Northam Platinum Limited and



The Applicants are non-integrated firms involved in the mining and production of chrome ore for both local and international market. The exemption application was filed against the background of government's intention to impose an export tax (in the form of a levy or duty) on the outbound chrome ore to be exported from South Africa. The proposed export tax is meant to stabilise and support the declining ferrochrome market in South Africa by ensuring that adequate chrome ore is utilised by local downstream ferrochrome producers.

The Applicants submitted that the proposed export tax on chrome ore producers might have dire consequences on the chrome ore industry and sought to find alternative mechanisms to support the ferrochrome industry. In this regard, the Applicants sought an exemption to ensure that the chrome ore producers can coordinate and engage with each other and consolidate their responses and make proposals to the government on mechanisms to assist the ferrochrome industry.

The Applicants requested to undertake engagements with government and industry participants to facilitate research on viable interventions to support the deteriorating ferrochrome industry in South Africa. For this purpose, the Applicants identified the following potential broad areas of coordination in a bid to find alternative interventions to the proposed export tax:

- i) Palatable and non-destructive form of chrome ore export tax;
- ii) Appropriate off-take arrangements in terms of which the chrome ore sector obtains assurance that it will not be left with unsold volumes of, or reduced prices for chrome ore, as a result of any export tax; and
- iii) Appropriate energy production or purchasing arrangements to improve the cost-effectiveness for the production of both chrome ore and ferrochrome.

The Commission considered the exemption request and concluded that the broad areas envisaged for coordination may still be achieved without an exemption. As a result, on 25 May 2021, the Commission decided to refuse granting the exemption. During its investigation, the Commission became aware that there are on-going and parallel processes led by government to find viable

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the firms controlled thereby whether directly or indirectly; Sibanye-Stillwater Limited and the firms controlled thereby whether directly or indirectly; Siyanda Resources Proprietary Limited and the firms controlled thereby whether directly or indirectly; and Tharisa plc, including its subsidiaries: Tharisa Minerals Proprietary Limited, Arxo Resources Limited and Arxo Metals Proprietary Limited.

interventions and/or mechanism in support of the declining ferrochrome industry. For instance, the Commission understood that the Cabinet and Trade and Industry Portfolio Committee took a decision on some viable mechanisms to be considered to support the ferrochrome industry.<sup>8</sup>

The DTIC also indicated during engagements with the Commission that there are on-going engagements with the industry across the value chain to discuss the proposed support measures that can balance the interest of chrome miners and ferrochrome.<sup>9</sup> The Applicants further indicated that they have ongoing engagements with government (Department of Mineral Resources and Energy and Department of Trade Industry and Competition) regarding the proposed export tax. In this regard, the Commission believed that this is an appropriate forum to facilitate discussions to explore other possible interventions that government can take to support both the chrome ore and ferrochrome sectors. In addition, the Commission believed that the exploration process can be achieved utilising this forum without the need for an exemption.

However, when an agreement or arrangement is reached, the Applicants can then file an exemption with the Commission for consideration. On 18 June 2021, a Gazette Notice for decision to refuse granting the exemption was published in the national government gazette.

#### **5.4.2 Marang Africa Healthcare Exemption: 2020Oct0008**

On 5 October 2020, Marang Africa Healthcare Pty Ltd (“Marang Health”) filed an exemption application (“the application”) in terms of section 10(1) of the Act to be exempted from certain provisions (section 4(1)(b)(i)) of the Act for a period of ten (10) years.

Marang Health is a wholly owned subsidiary of Marang Global Capital (Pty) Ltd (“Marang Global”). Marang Global was established in 2015 as a financial advisory firm focusing on health care investments, healthcare infrastructure, finance, and healthcare asset finance. Founders of Marang Health are established management consultants, finance, and investment banking professionals. Marang Health’s objective is to build a world class African owned healthcare organisation positioned to offer quality care with global standard clinical outcomes, comprehensive care, and a sustainable and scalable business model with competitive financial returns.

In 2015, Marang Health was granted four licenses to build hospitals in KwaMashu (Bridge Hospital), Kagiso, Johannesburg (Marang Kagiso Hospital), Nelson Mandela Bay (Motherwell Private Hospital) and Khayelitsha (Khaya Private Hospital). Marang Health made several attempts for over 5 years to raise capital with no success. This led Marang Health to broaden their approach by tapping into the

<sup>8</sup> Portfolio Committee meeting dated 28 October 2020.

<sup>9</sup> Submission by the DTIC dated 14 January 2021.

international capital markets. After numerous unsuccessful applications, Marang Health approached CDC UK about 2 years ago and were in discussions to obtain the funding for the OpCo for the sum of R550 million. CDC UK issued a non-binding letter of interest to providing funding on the condition that a) Marang Health secures a strategic hospital operations and management partnership with an established hospital operator group and b) the same hospital group invests in the OpCo and hold equity.

It is under such circumstances that Marang Health wished to establish an Operating Company (“OpCo”) and enter into two agreements with Mediclinic Southern Africa Pty Ltd (“Mediclinic”). The first, involves Mediclinic acquiring 25% into the OpCo. The second, a management and operations agreement where Mediclinic is responsible for the management, operation, determination, and negotiation of tariffs on behalf of Marang Health for 10 years.

Marang Health submits that the envisaged arrangement with Mediclinic is required to promote the ability of effective entry into, participation in or expansion within a market of small business or medium businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive as per section 10(3)(b)(ii) of the Act.

The Commission found that the conduct, outlined by Marang Health in the application, to be a plausible mechanism to achieve the objectives relied upon. However, the proposed period of 10 (ten) years problematic because a) there is no firm agreement between Marang Health and Mediclinic b) there is no clear plan that will facilitate Mediclinic’s exit after the exemption period at its disposal and, c) a skills transfer strategy was still to be developed to facilitate Marang Health in taking over the hospital operations when the exemption expires.

On 25 May 2021 the decision to conditionally grant the exemption for 18 months to facilitate the finalization of all the agreements between Marang Health and Mediclinic and Marang Health would then be required to file these agreements with the Commission, through an exemption, for further evaluation. On 18 June 2021, a Gazette notice for the decision to conditionally grant the exemption was published in the National Government Gazette.

#### **5.4.3 South Africa Sugar Association: 2020Aug0064**

On 17 August 2020, the South African Sugar Association (“SASA”) and its members, hereinafter jointly referred to as (“the Applicants”) filed an application for an exemption in terms of section 10 of the Act. The exemption was requested for a period of one (1) year, from the date of the application up to and including 30 June 2021.

SASA is a statutory body established in terms of section 2(1) of the Sugar Act No. 9 of 1978 (“the Sugar Act”). SASA provides a variety of services to its members to support the functioning of the regulatory framework within which the industry operates, and acts as a presentative of the industry in relation to engagements with external stakeholders. SASA’s members comprise of two levels of the value chain, namely Growers and Millers and are made up of the associations which represent the interests of those levels. These are (1) the South African Sugar Miller’s Association (“SASMA”); (2) the South African Cane Growers Association (“SACGA”); and (3) the South African Farmer’s Development Association (“SAFDA”).

The exemption application was brought in terms of section 10(1) of the Act which allows a firm to apply to the Commission to exempt an agreement, a practice and/or a category of agreements from the provisions of Chapter 2 of the the Act. SASA relied on the objective set out in section 10(3)(b)(iv) of the Act, which allows an exemption of agreements and/or practices that contribute to the economic stability of any industry designated by the Minister of the DTIC. The exemption application covered the following practices by SASA and its members:

- i) restrain producer price increases of sugar in terms of timing, notice and manner of implementing such price increases;
- ii) share competitively sensitive information and in light of that information, engage regarding various options for interventions that could be implemented to support small-scale growers and ensure that they become a sustainable part of the sugar supply chain, in line with the objectives of the Sugar Master Plan;
- iii) share competitively sensitive information of the various sugar industry participants, including growers, millers and refiners and in light of that information engage on the various means by which the industry could implement a restructuring of the nature contemplated in the Sugar Master Plan; and
- iv) share competitively sensitive information with the Eswatini Sugar Association (including in relation to production volumes, local and export sales volumes, notional pricing, and identification of diversification opportunities) and considering this information engage with the Eswatini Sugar Association to achieve policy harmonisation to the mutual benefit of each country's sugar producers.

The Commission’s investigation resulted in the following findings:

- i) the conduct of SASA’s members would result in a contravention of section 4 of the Act as the application relates to coordination and information exchange between parties in a horizontal relationship;
- ii) the exemption may contribute to the economic stability of the sugar industry; and

- iii) the exemption can be used as an instrument for transformation and the opening up of the sugar industry to previously disadvantaged individuals, particularly small-scale sugarcane growers, in line with the objectives of the Act.

Based on these findings, the Commission granted the Applicants a conditional exemption up to and including 30 June 2021. The exemption was subject to monitoring mechanisms which the Commission put in place to ensure that the objectives set out in the application are met within the scope of the exemption. The decision of the Commission was published in Government Gazette No. 43872 on 06 November 2020.

Subsequently, on 07 June 2021, the Applicants submitted an application requesting the Commission to extend their conditional exemption by 24 months (i.e. up to 30 June 2023) in light of the Minister's extension of the designation of the sugar industry to 30 June 2023 as published in Government Gazette No. 44653 on 3 June 2021. The scope of the application remains unchanged as set out above and the basis for the request is to accommodate additional time required to achieve the economic stability of the sugar industry.

After due consideration of the above, the Commission has decided to grant SASA and its' members an extension of the conditional exemption, up to and including 30 June 2023. The conditions and monitoring mechanisms will remain the same as those gazetted on 06 November 2020.

## **6. MERGERS & ACQUISITIONS: PERFORMANCE OVERVIEW**

The Mergers & Acquisitions division (M&A) had five (5) applicable targets in Q1, 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 nineteen (19) days. For Phase 2 merger investigations (target ≤ 45 days) the target was met with average turnaround time of thirty-eight (38) days. Phase 3 intermediate and small merger investigations (target: ≤ 60 days) the target was met with average turnaround time of fifty-nine (59) days. The target for Phase 3 large merger investigations (target: ≤ 120 days) was not met with an average of turnaround of one-hundred and sixty-eight (168) 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 sixty-nine (69) merger notifications during Q1 and finalised a total of seventy-six (76) transactions, of which fifty-four (54) were approved without conditions and nineteen (19) were approved with conditions, whilst three (3) cases were prohibited, and no case was

abandoned. The tables below provide information on the Q1 merger activity and the cumulative activity for the 2021/22 financial.

**Table 11: Merger Activity in Q1**

Merger Activity	April	May	June	Total
Notified	21	27	21	69
Finalised	16	32	28	76
Approved with conditions	6	6	7	19
Approved without conditions	9	25	20	54
Prohibited	1	1	1	3
Abandoned	0	0	0	0

**Table 12: Merger Activity by Quarters (2021/22)**

Merger Activity	Q1
Notified	69
Finalised	76
Approved with conditions	19
Approved without conditions	54
Prohibited	3
Abandoned	0

## 6.2 Mergers Approved with Conditions

During Q1, the Commission approved eight (8) cases with conditions and recommended to the Tribunal that eleven (11) cases be approved with conditions. The Tribunal ultimately agreed with the Commission's recommendations on all eleven (11) of these cases. These cases are depicted in the table below.

**Table 13: List of cases approved with conditions by the Commission in Q1**

Case Number	Primary Acquiring Firm	Primary Target Firm	Location	Sector	Condition
2021Mar0001	JAS Worldwide Omni-Channel LLC	Tigers Limited	National	Transport	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchment for a period of 2 years from implementation date of the merger.</li> </ul>

2021Feb0014	CMH Holdings (Pty) Ltd	Ballito Motor Holdings (Pty) Ltd	KZN	Motor vehicle Dealership	<p><b>Termination of an agreement before implementation</b></p> <ul style="list-style-type: none"> <li>The Target Firm shall terminate the JLR Dealership<sup>10</sup> before the Implementation Date of the merger.</li> </ul>
2020Dec0040	Alviva Holdings Limited	Tarsus Technology Group (Pty) Ltd	National	ICT	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The merging parties shall not retrench any employees as a result of the merger for a period of 2 years from Implementation Date.</li> </ul>
2020Dec0013	DSV SA (Pty) Ltd	Globeflight Worldwide Express SA (Pty) Lt	National	Courier	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>For a period of 3 years from Implementation, the Merged Entity will – (i) not retrench any Semi-skilled Employees, (ii) limit the number of retrenchments of Skilled Employees to no more than 140, (iii) Limit the number of retrenchments of Professionally Qualified Employees to no more than 59.</li> <li>DSV will establish a Fund to reskill or retrain the Eligible Employees which Fund shall be governed by agreed principles.<sup>11</sup></li> </ul>
2021Feb0012	Epiroc Canada MineRP Holding Inc or its nominee	MineRP Holdings Inc	National	Mining	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The merging parties shall not retrench any employees as a result of the merger for a period of 2 years.</li> </ul>
2020Oct0003	Trade Retail HoldCo and Agrifin	Trade Retail fuel and financial services business of BKB and VKB	National	Agriculture	<p><b>Cross directorships</b></p> <ul style="list-style-type: none"> <li>For as long as BKB and VKB can appoint or nominate individuals to the board of directors of the Acquiring Firm, they shall ensure that their nominees are not directly involved in the day-to-day activities in the BKB and VKB Grain and Oilseed Storage and Trading activities.</li> </ul> <p><b>Confidentiality of information</b></p> <ul style="list-style-type: none"> <li>The merged entity shall ensure, through various interventions, that there shall be no exchange of competitively sensitive information between the Acquiring Firm and the Grain and</li> </ul>

<sup>10</sup> This the Jaguar Land Rover motor vehicle Dealership.

<sup>11</sup> The total number of jobs lost was 205 while 317 jobs were saved.

					<p>Oilseed Storage and Trading Activities of VKB and BKB.</p> <p><b>Transformation initiative</b></p> <ul style="list-style-type: none"> <li>• Within 2 years of Implementation Date, BKB will implement the Transformation Initiative.<sup>12</sup></li> </ul>
2021Feb0024	NMI Durban South Motors (Pty) Ltd	The Barloworld Motor Retail business	KZN	Motor vehicle dealership	<p><b>Supplier Development</b></p> <ul style="list-style-type: none"> <li>• The Merged Entity shall ensure that it continues to participate in the Barloworld Supplier Development Programme for a period of 2 years after Implementation date in accordance with the agreed targets.</li> </ul>
2021Feb0016	Seche Holdings SA (Pty) Ltd	Spill Tech Holdings (Pty) Ltd	National	Waste management	<p><b>Ownership and transformation</b></p> <ul style="list-style-type: none"> <li>• Acquiring Firm will, within 18 months of the Implementation Date, execute a BEE transaction in relation to the Target business which shall culminate in HDPs owning majority shares in the Target Business.</li> </ul>
2021Mar0057	Sandvik Aktiebolag Plc	DSI Underground Holdings S.a.r.l.	National	Mining	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>• Moratorium on retrenchments for a period of 24 months.</li> </ul>
2021Mar0021	NCR Corporation	Cardtronics Plc	National	ICT	<p><b>Supply conditions (for a period of 2 years following Implementation Date)</b></p> <ul style="list-style-type: none"> <li>• NCR shall continue to supply ATM products and solutions to the Traditional Participants<sup>13</sup> on commercially reasonable and non-discriminatory terms.</li> <li>• NCR shall not disadvantage a Traditional Participant as compared to other Traditional Participants in a manner that means that the Traditional Participants are unable to remain competitive.</li> <li>• NCR will continue to honour the existing Traditional Participants' contracts, on terms and conditions as they exist upon Implementation Date of the Merger.</li> </ul>

<sup>12</sup> This Transformation Initiative will lead to the participation by the Historically Disadvantaged Person in the BKB Fuel Retail SubCo.

<sup>13</sup> Means a service provider in the Traditional ATM market.



					<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The Merged Entity shall not retrench any employee for a period of 2 years following Implementation Date.</li> </ul>
2020Sep0020	Airliquide Large Industries SA (Pty) Ltd	16 Air Separation units of Sasol SA Limited	National	Manufacturing	<p><b>Carbon emission reductions</b></p> <ul style="list-style-type: none"> <li>ALLISA<sup>14</sup> commit to a reduction of carbon emissions by an agreed target over a period of time.</li> </ul> <p><b>Employment and skills development</b></p> <ul style="list-style-type: none"> <li>Should there be future retrenchments unrelated to the merger, ALLISA and Sasol shall cooperate in order to identify employment opportunities for the affected employees.</li> <li>ALLISA commits to training and upskilling employees transferred from SASOL within 2 years from the Implementation Date.</li> </ul> <p><b>Supply of spare liquid oxygen produced by the Assets<sup>15</sup></b></p> <ul style="list-style-type: none"> <li>In the event that surplus liquid oxygen produced by the Assets becomes available in future and is required in an emergency for supply to the healthcare sector, then ALLISA undertakes to make that excess liquid oxygen available to customers in the public healthcare sector subject to agreed principles.</li> </ul> <p><b>Ownership and transformation</b></p> <ul style="list-style-type: none"> <li>ALLISA commits to achieving B-BBEE rating of level 4 within 3 years in accordance with the agreed principles.</li> </ul> <p><b>Enterprise Supplier Development</b></p> <ul style="list-style-type: none"> <li>ALLISA commits to establish a programme or programmes aimed at supporting and developing SMMEs and firms owned and controlled by the HDPs in Secunda in accordance with the agreed mechanisms.</li> </ul>

<sup>14</sup> Air Liquide Large Industries South Africa (Pty) Ltd

<sup>15</sup> Means the 16 Air separation Units of SASOL that will be acquired by ALLISA.

2021May0007	K2021511200 (SA)(Pty) Ltd	Consolidated Steel Industries (Pty) Ltd	National	Wholesale Trade	<p><b>Employment<sup>16</sup></b></p> <ul style="list-style-type: none"> <li>For the duration of the Moratorium Period, the Merged Entity shall give first preference to the Affected Employees over other potential employees for any vacancies at the Merged Entity, provided the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.</li> </ul>
2021Apr0037	The Capital Apartments and Hotel Groups (Pty) Ltd	IFA Fair – Zim Hotel and Resort (Pty) Ltd	KZN	Accommodation	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Other than the Affected Employees<sup>17</sup>, the Merging Parties shall not retrench any employee as a result of the Merger for a period of 2 years from the Implementation Date as well as the period between Approval Date and Implementation Date.</li> </ul>
2021Apr0022	Herens Holdco AG	Lonzaz Speciality Ingredients Business	KZN	Manufacturing	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The Merging Parties shall not retrench any employees in South Africa as a result of the merger for a period of 2 years following Implementation Date.</li> </ul> <p><b>Local manufacturing</b></p> <ul style="list-style-type: none"> <li>The merging parties shall not relocate the Target Firm's factory in KZN or relocate it outside of the KZN as a result of the merger during the 2-year period.</li> </ul>

<sup>16</sup> A total number of 310 jobs were saved while 80 jobs were lost.

<sup>17</sup> Affected Employees are 30 in total.

2021Apr0019	Texmex 57 (Pty) Ltd	Bidvest Car Rental (Pty) Ltd	National	Transport	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The Target firm shall establish a database of affected employees and if any employment opportunities arise in future, the Target Firm shall notify such employees about the opportunities.</li> </ul>
2021Apr0010	One and Only Cape Town FZE	One and Only Cape Town Holdings (RF) (Pty) Ltd	Western Cape	Accommodation	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>For a period of 2 years following Implementation Date, the Merging Parties shall give first preference to the Affected Employees for any vacancies at OOCT,<sup>18</sup> provided the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.</li> </ul>
2021Apr0004	FFS Refiners (Pty) Ltd	OTGC Terminals (Pty) Ltd	Western Cape	Refinery	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The Merging parties shall not retrench any Employees because of the Merger for a period of 2 years.</li> </ul>
2020Oc0011	AON PLC	Willis Towers Watson Public Limited	National	Insurance	<p><b>Divestiture</b></p> <ul style="list-style-type: none"> <li>The Merged Entity shall dispose of the Divestiture Business<sup>19</sup> to the Purchaser within a Divestiture Period.</li> </ul> <p><b>Employee Non-solicitation clause</b></p> <ul style="list-style-type: none"> <li>The Merging Parties undertake not to solicit, hire, employ or engage and procure that their Affiliated Undertakings do not solicit, hire, employ from the Purchaser, the Key Employees transferred with the Divested Business for a period of 30 months.</li> </ul> <p><b>Customer non-compete and non-solicitation clause.</b></p> <ul style="list-style-type: none"> <li>The merging parties commit and will procure that their affiliated undertakings undertake to comply with the non-compete and non-solicitation clauses in accordance with the agreed principles.</li> </ul>

<sup>18</sup> One and Only Cape Town.

<sup>19</sup> This includes the Reinsurance Divestiture Business and South African CRB Divestiture Business.

2021Jan0027	Premier FMCG (Pty) Ltd	Lodestone Brands (Pty) Ltd	National	Manufacturing	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>• Retrenchment cap of 6 employees for Affected Employees in executive or senior positions.</li> <li>• Moratorium on retrenchment for 19 Potentially Affected Employees for a period of 2 years.</li> </ul>
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Source: M&A Database

### 6.3 Impact of mergers on jobs

The table below depicts the impact of merger transactions on jobs during Q1 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 Q1.

**Table 14: Summary of the impact on jobs in Q1**

Month	Jobs lost	Jobs saved	Intended job creation	No. of cases	Net effect
April	216	336	0	3	120
May	0	363	0	1	363
June	30	310	0	2	280
<b>Total</b>	<b>246</b>	<b>1009</b>	<b>0</b>	<b>6</b>	<b>+763</b>

Source: Commission's calculations

In Q1, there was a positive net effect of 763 jobs from the cases that were finalised between April and June 2021. Through the Commission's intervention, 1009 jobs were saved while 246 jobs were also lost. Furthermore, because of various moratoriums imposed, there were further job preservations that could not be quantified owing to the nature of the conditions. In total, for the quarter, there has been a positive net effect on employment of 763 jobs between April and June 2021.

**Table 15: Mergers with Impact on Jobs in Q1**

Case Number	Primary Firm	Acquiring Firm	Primary Target Firm	Jobs lost	Jobs created	Jobs saved
2020Dec0013	DSV SA (Pty) Ltd		Globeflight Worldwide Express SA (Pty) Ltd	205	0	317
2020Oct0033	Cashbuild Management Services (Pty) Ltd		The Building Company (Pty) Ltd	0	0	363 <sup>20</sup>

<sup>20</sup> The Commission notes that in the proposed merger, the Acquiring Firm indicated that it would retrench up to 363 employees from underperforming stores at the Target Firm, should the merger be approved. The Commission did not find

2021Feb0012	Epiroc Holding Inc.	Canada	MineRP Holdings Inc.	5	0	0
2017May0007	K2021511200 (SA)(Pty) Ltd		Consolidated Steel Industries (Pty) Ltd <sup>21</sup>	0	0	310
2021Apr0037	The Capital Apartments and Hotel Groups (Pty) Ltd		IFA Fair – Zim Hotel and Resort (Pty) Ltd	30	0	0

**Table 16: Mergers with Impact on Jobs in Q1.**

Case Number	Primary Acquiring Firm	Primary Target Firm	Location	Sector	Condition
2020Dec0013	DSV SA (Pty) Ltd	Globeflight Worldwide Express SA (Pty) Lt	National	Courier	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>For a period of 3 years from Implementation, the Merged Entity will – (i) not retrench any Semi-skilled Employees, (ii) limit the number of retrenchments of Skilled Employees to no more than 140, (iii) Limit the number of retrenchments of Professionally Qualified Employees to no more than 59.</li> <li>DSV will establish a Fund to reskill or retrain the Eligible Employees which Fund shall be governed by agreed principles.<sup>22</sup></li> </ul>
2021May0007	K2021511200 (SA)(Pty) Ltd	Consolidated Steel Industries (Pty) Ltd	National	Wholesale Trade	<p><b>Employment<sup>23</sup></b></p> <ul style="list-style-type: none"> <li>For the duration of the Moratorium Period, the Merged Entity shall give first preference to the Affected Employees over other potential employees for any vacancies at the Merged Entity, provided the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.</li> </ul>
2021Apr0037	The Capital Apartments and Hotel Groups (Pty) Ltd	IFA Fair – Zim Hotel and Resort (Pty) Ltd	KZN	Accommodation	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Other than the Affected Employees<sup>24</sup>, the Merging Parties shall not retrench any employee as a result of the Merger for a period of 2 years from the</li> </ul>

any evidence that the retrenchments would occur absent the merger and, given that it recommended a prohibition, considers that 363 jobs would be saved.

<sup>21</sup> The Commission notes that 80 employees were retrenched at the target firm prior to the merger (i.e., as part of the business rescue process). These employees were offered, and accepted, VSPs and are not counted here as the retrenchments occurred prior to and in spite of the merger.

<sup>22</sup> A total number of 205 jobs were lost while 317 jobs were saved.

<sup>23</sup> A total number of 310 jobs were saved while and 80 jobs were lost.

<sup>24</sup> Affected Employees are 30 in total.

					Implementation Date as well as the period between Approval Date and Implementation Date.
2020Oct0033	Cashbuild Management Services (Pty) Ltd	The Building Company (Pty) Ltd	National	Building Retail	<b><i>This merger was prohibited.</i></b>  The Acquiring Firm indicated that it would retrench up to 363 employees from underperforming stores at the Target Firm, should the merger be approved. The Commission did not find any evidence that the retrenchments would occur absent the merger and, given that it recommended a prohibition, considers that 363 jobs would be saved as a result of the prohibition.
2021Feb0012	Epiroc Canada MineRP Holding Inc or its nominee	MineRP Holdings Inc	National	Mining	<b><i>Employment</i></b>  The merging parties shall not retrench any employees as a result of the merger for a period of 2 years.
2021Jan0027	Premier FMCG (Pty) Ltd	Lodestone Brands (Pty) Ltd	National	Manufacturing	<b><i>Employment</i></b> <ul style="list-style-type: none"> <li>• Retrenchment cap of 6 employees for Affected Employees in executive or senior positions.</li> <li>• Moratorium on retrenchment for 19 Potentially Affected Employees for a period of 2 years.</li> </ul>

Source: M&A database

Table below indicates that the Commission imposed employment conditions on 14 cases. These cases were mainly in the manufacturing, transport, ICT, Mining, short term accommodation (Hotels) and refinery, amongst others.

**Table 17: List of cases approved with employment conditions by the Commission in Q1.**

Case Number	Primary Acquiring Firm	Primary Target Firm	Location	Sector	Condition
2021Mar0001	JAS Worldwide Omni-Channel LLC	Tigers Limited	National	Transport	<b><i>Employment</i></b> <ul style="list-style-type: none"> <li>• Moratorium on retrenchment for a period of 2 years from implementation date of the merger.</li> </ul>

2020Dec0040	Alviva Holdings Limited	Tarsus Technology Group (Pty) Ltd	National	ICT	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The merging parties shall not retrench any employees as a result of the merger for a period of 2 years from Implementation Date.</li> </ul>
2020Dec0013	DSV SA (Pty) Ltd	Globeflight Worldwide Express SA (Pty) Lt	National	Courier	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>For a period of 3 years from Implementation, the Merged Entity will – (i) not retrench any Semi-skilled Employees, (ii) limit the number of retrenchments of Skilled Employees to no more than 140, (iii) Limit the number of retrenchments of Professionally Qualified Employees to no more than 59.</li> <li>DSV will establish a Fund to reskill or retrain the Eligible Employees which Fund shall be governed by agreed principles.<sup>25</sup></li> </ul>
2021Feb0012	Epiroc Canada MineRP Holding Inc or its nominee	MineRP Holdings Inc	National	Mining	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The merging parties shall not retrench any employees as a result of the merger for a period of 2 years.</li> </ul>
2021Mar0057	Sandvik Aktiebolag Plc	DSI Underground Holdings S.a.r.l.	National	Mining	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchments for a period of 24 months.</li> </ul>
2021Mar0021	NCR Corporation	Cardtronics Plc	National	ICT	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The Merged Entity shall not retrench any employee for a period of 2 years following Implementation Date.</li> </ul>
2020Sep0020	Airliquide Large Industries SA (Pty) Ltd	16 Air Separation units of Sasol SA Limited	National	Manufacturing	<p><b>Employment and skills development</b></p> <ul style="list-style-type: none"> <li>Should there be future retrenchments unrelated to the merger, ALLISA and Sasol shall cooperate in order to identify employment opportunities for the affected employees.</li> <li>ALLISA commit to training and upskilling employees transferred from SASOL within 2 years from the Implementation Date.</li> </ul>

<sup>25</sup> The total number of jobs lost was 205 while 317 jobs were saved.

2021May0007	K2021511200 (SA)(Pty) Ltd	Consolidated Steel Industries (Pty) Ltd	National	Wholesale Trade	<p><b>Employment<sup>26</sup></b></p> <ul style="list-style-type: none"> <li>For the duration of the Moratorium Period, the Merged Entity shall give first preference to the Affected Employees over other potential employees for any vacancies at the Merged Entity, provided the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.</li> </ul>
2021Apr0037	The Capital Apartments and Hotel Groups (Pty) Ltd	IFA Fair – Zim Hotel and Resort (Pty) Ltd	KZN	Accommodation	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Other than the Affected Employees<sup>27</sup>, the Merging Parties shall not retrench any employee as a result of the Merger for a period of 2 years from the Implementation Date as well as the period between Approval Date and Implementation Date.</li> </ul>
2021Apr0022	Herens Holdco AG	Lonzaz Speciality Ingredients Business	KZN	Manufacturing	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The Merging Parties shall not retrench any employees in South Africa as a result of the merger for a period of 2 years following Implementation Date.</li> </ul>
2021Apr0019	Texmex 57 (Pty) Ltd	Bidvest Car Rental (Pty) Ltd	National	Transport	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The Target firm shall establish a database of affected employees and if any employment opportunities arise in future, the Target Firm shall notify such employees about the opportunities.</li> </ul>
2021Apr0010	One and Only Cape Town FZE	One and Only Cape Town Holdings (RF) (Pty) Ltd	Western Cape	Accommodation	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>For a period of 2 years following Implementation Date, the Merging Parties shall give first preference to the Affected Employees for any vacancies at OOCT,<sup>28</sup> provided the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.</li> </ul>

<sup>26</sup> A total number of 310 jobs were saved while 80 jobs were lost.

<sup>27</sup> Affected Employees are 30 in total.

<sup>28</sup> One and Only Cape Town Hotel.



2021Apr0004	FFS Refiners (Pty) Ltd	OTGC Terminals (Pty) Ltd	Western Cape	Refinery	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The Merging parties shall not retrench any Employees because of the Merger for a period of 2 years.</li> </ul>
2021Jan0027	Premier FMCG (Pty) Ltd	Lodestone Brands (Pty) Ltd	National	Manufacturing	<p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Retrenchment cap of 6 employees for Affected Employees in executive or senior positions.</li> <li>Moratorium on retrenchment for 19 Potentially Affected Employees for a period of 2 years.</li> </ul>

Source: M&A database

#### 6.4 Monitoring of Conditions

At the end of Q1, the Merger Notification Unit (MNU) was monitoring two hundred and forty-five (245) conditions. During Q1, twelve (12) conditions were closed, and nineteen (19) new conditions were added to the conditions monitoring list.

### 7. ECONOMIC RESEARCH BUREAU: PERFORMANCE OVERVIEW

The Economic Research Bureau (ERB) is composed of economists and is closely involved with the day-to-day work of case teams, providing economic guidance and methodological assistance in complex cases and competition policy issues. The ERB also provides economic expert testimony to the Tribunal on behalf of the Commission on a case-by-case basis. The ERB had one (1) applicable target in Q1, one (1) target was met, and one (1) exceeded.

Key output from ERB is highlighted below:

#### 7.1 Measurement Of Concentration and Participation in South Africa Study

The Commission conducted a study in levels and trends of concentration and participation in the South Africa which seeks to deepen the understanding of the patterns of concentration and participation in the South African economy. The study includes a detailed assessment of both the levels and trends in concentration and participation over the past 5-10 years across 178 industries. The methodology used in the study provides the basis for future updates using the same consistent measures, enabling the Commission to continue to track changes to concentration and participation going forward. This study should be considered as complementary to concentration studies based on

merger filings, which usually have the added benefit of access to source data that is from the market participants themselves but also consider defined competition markets.

The study has sought to measure levels and trends in concentration and participation through collating sectoral data that is itself consistently collected over time by an organisation, be it a government department, regulator, statistical agency or industry association. These data sources are complemented by annual reports which are also consistently produced and merger investigations where gaps exist. The Commission has contacted more than 80 industry bodies, regulatory bodies, and government departments belonging to various sectors and subsectors. The success of this initiative is based on their generosity and support in supplying data.

The study has sought to provide measures at a detailed sub-sector level and across the various layers of the value chain for all major sectors of the economy. The sub-sectoral analysis will in most instances reflect the competition markets that are the subject of merger control or conduct investigations, but this is not so in every case. Investigations may examine narrower product or geographic markets or broader sources of competition, such as imports, depending on the context. This reflects the fact that concentration does not necessarily equate to a lack of competition in every case, as was also identified in the Commission's earlier analysis of merger investigations. Concentration may also occur for sound reasons, such as the growth of innovative firms or the exploitation of scale economies to drive efficiencies.

The study's detailed sectoral analysis is complemented by national datasets to provide broader insights around the level of concentration at a broader sectoral level, the distribution of firm income across firm sizes, the level and trend in the participation of SMEs, the evolving entry/exit of firms across firm size categories and the transitioning between firm size categories. Specifically, the study has made use of the Administrative Tax Data based on the South African Revenue Services ("SARS") database which provides turnover by broad sector for tax-paying registered firms. This dataset has also enabled the Commission to develop a measure of the inequity in firm wealth distribution by applying the Gini coefficient to firm income within broad sectors.

The study will first serve before Cabinet and thereafter be made available to the public.

## **7.2 Draft Guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030**

In April 2021, the Commission, in terms of section 79(3) of the Act, issued draft guidelines on local procurement in the implementation of the South African Value Chain Sugarcane Master Plan to 2030, for public comment.

The purpose of the draft Guidelines is to provide guidance to the sugar industry on collaboration in the implementation of industry commitments to increasing sourcing of local sugar as contemplated in the South African Sugarcane Value Chain Master Plan to 2030 (“the Sugar Master Plan”). On 23 June 2020, the Minister of the DTIC, after consultation with the Minister of Agriculture, Land Reform and Rural Development, granted a designation to the sugar industry in terms of section 10(3)(b)(iv) of the Act for a period of 12 months, commencing on 1 July 2020. The designation is aimed at providing support to the economic development, growth, transformation, and stability of the sugar industry in line with the objectives of Sugar Master Plan.

Subsequently, on 16 October 2020, the Commission granted an exemption to the South African Sugar Association (“SASA”), a statutory body established in terms of section 2(1) of the Sugar Act No.9 of 1978, as amended, to enable its members to collaborate in the implementation of the Sugar Master Plan, subject to certain conditions. SASA’s members comprise of the South African Sugar Millers’ Association, the South African Cane Growers Association and the South African Farmers Development Association. As a result, the exemption granted by the Commission only covers the production and milling value chains of the sugar industry.

A key element of the social compact in respect of the commitment to restore the local market and off-take commitments in the Sugar Master Plan is that retail, wholesale and industrial sugar customers, in support of the goals of stabilising and restructuring the sugar industry, will commit to increased sourcing of locally produced sugar for a period of three years.

However, collaboration by retail, wholesale and industrial sugar customers in the implementation of the Sugar Master Plan did not form part of SASA’s exemption application to the Commission. Consequently, these draft Guidelines seek to provide guidance to the sugar industry on collaboration in delivering on industry commitments to increasing sourcing of locally produced sugar in the implementation of the Sugar Master Plan.

The draft Guidelines are aimed at providing guidance to the sugar industry and government on how the industry can collaborate in implementing the local procurement commitments contained in the Sugar Master Plan in a manner that does not raise competition concerns.

The draft Guidelines set out a framework for collaboration on local sugar procurement. This framework includes guidance on the process of setting industry local procurement targets; the process of setting individual firm local procurement targets; and demand forecasting.

## 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

On 09 April 2021, the Commission gazetted the final Terms of Reference (ToRs) regarding a market inquiry into Online Platforms in South Africa focusing on online intermediation services (OIPMI). Online intermediation platforms are defined as platforms that facilitate transactions between business users and consumers (or so-called “B2C” platforms) for the sale of goods, services and software, regardless of whether the transactions are concluded on the platform itself, on the online site of the business user or offline. Online intermediation platforms include eCommerce marketplaces, online classified marketplaces, software application stores and intermediated services such as accommodation, travel, transport and food delivery. On the same day (09 April 2021) the Commission also published its Guidelines for Participation on how the general public could participate in the inquiry.

The Inquiry is Chaired by the Chief Economist and Acting Deputy Commissioner James Hodge and Ms Doris Tshepe is the other panel member for the Inquiry. The technical team is led by Itumeleng Lesofe and Dr Hariprasad Govinda.

On 19 May 2021, the Commission officially launched the OIPMI and its statement of issues, inviting comments and submissions from platforms and the public. The statement of issues is published on the webpage of the inquiry which provides some more context to the online platforms and the types of issues arising in respect of these three themes. The statement of issues has a set of specific questions for stakeholders to respond to which is designed to improve our understanding of how these markets work and the experience of platforms users.

To supplement the statement of issues, the OIPMI has also put up an online questionnaire for businesses that make use of online platforms in South Africa. This is a short 30-minutes questionnaire to understand how they use platforms, their sales through those channels, their views on the terms, conditions and fees charged, the degree of transparency, and their ability to use opportunities to improve their presence.

In addition, online platforms operating in South Africa received a short request for information (RFI) to gather key evidence and insights as to the operation of these markets in South Africa. This gathers essential evidence such as their size, profitability and business model of the platforms, an understanding of consumer and business behaviour from market research, terms and conditions and fees/commissions, ranking algorithms and support for onboarding SMEs and businesses owned by historically disadvantaged persons.

The Inquiry team is currently reviewing the submissions in preparation for a second round of requests for information and further statement of issues.

### **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 and is developing the plan to implement recommendations from the inquiry.

### **8.3 Grocery Retail Market Inquiry**

The Commission made progress on the conclusion of agreements relating to the cessation of long-term exclusive leases. The Tribunal approved the Consent Agreement entered with Pick n Pay Stores Limited occurred in June 2021. As such, Consent Agreements with the two largest national supermarket chains have been approved by the Tribunal. Engagements with the SPAR Group Limited (“SPAR”) ceased following failure to reach agreement on the terms of a Consent Agreement. A mediation process by an independent third party is currently being set up with a view to reaching agreement between the Commission and SPAR.

In respect of the revisions of regulations and enforcement against counterfeit goods, a proposed implementation plan has been developed for the consideration of the GRMI Working Group. This plan sets out detailed actions that must be taken by the various members of GRMI Working Group to ensure a successful implementation of the GRMI’s recommendations. The implementation plan is still pending approval.

In respect of the development of small business competitiveness support package, the Commission participated at a peer review session organised by the Department of Small Business Development. This session sought to develop a high-level overview on the state of township economies in South Africa and identify research gaps that may exist from the GRMI report.

In respect of the recommendations relating to the code of conduct for property developers, the suppliers’ code of conduct and supplier development programmes, the team will be tabling a proposal for consideration by the Commission Meeting with a view to changing the strategy followed to date.

This proposal is based on the team's view that the prospects of success for reaching agreement with the various stakeholders are low.

In conclusion, positive progress has been made in respect of the GRMI's recommendations. However, it appears that the implementation of some of the recommendations such as the FMCG suppliers' and property developers' codes may need to be adjusted in order to ensure that they are appropriately and optimally applied. Further, limited progress has been made in respect of the recommendations relating to the modernisation of the regulatory environment. This has implications for the timely finalisation of the implementation of the GRMI's recommendation, particularly in light of the economic challenges facing small businesses as a result of the covid-19 pandemic.

#### **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**

During the first quarter, work continued the implementation of the recommendations of the Data Services Market Inquiry (DSMI). As per the agreement with Vodacom, Vodacom effected further reductions in prices for its prepaid data bundles on 1 April 2021. This included, for instance, the reduction in price of the 1GB bundle from R100 to R85.

For the most part, operators have complied with the substantive requirements of the agreements reached with the Commission. The Commission is conducting an impact assessment in order to understand the true impact of the DSMI's recommendations. Meetings with each of the four operators were held in the quarter to understand the question of impact and any challenges faced by the operators, and to discuss aspects where the impact has not met expectations or the dynamics underpinning certain observations are not clear. The Commission is directing further requests for information to the operators to understand the full impact over a 14-month period and the extent to which the "spirit" of the agreements has been upheld. This will be used in finalising an impact study.

With respect to the recommendations requiring legislative changes, important progress has been by the ECA Task Team. A draft amendment Bill has been produced which has been circulated for internal consultation across the departments and regulators represented on the ECA Task Team. The final draft version of the Bill has now been provided to the State Law Advisor, after which it will be submitted to cabinet.

Furthermore, during the quarter, we took a lead in a substantial reworking and finalising of a new draft of the Socio-Economic Impact Assessment System (SEIAS) report. This report has now been submitted to Presidency for approval.

### **8.6 Health Market Inquiry**

The Commission continues with the 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 four (4) applicable targets the quarter, with three targets shared with Cartels, MCD and OTC. The division met two (2) targets (KPI 13 and KPI 34, exceeded two (2) targets (KPI 22 and KPI 23) and did not meet one (1) target (KPI 6).

### **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 ninety (90) complaints from the public during Q1, fourteen (14) complaints related to Covid-19 and seventy-six (76) were non Covid-19 complaints.

#### ***Covid-19/ Price-gouging Complaints***

The Commission experienced a decline in the number of Covid-19 cases received, fourteen (14) complaints during April, May and June 2021 as compared to the previous quarter. The Commission had a total of one hundred and two (102) Covid-19 complaints at the end of the quarter.

Of these, the Commission finalised sixty-three (63) investigations: sixty-two (62) complaints were non-referred, as the conduct complained of did not amount to a contravention of the Act. Only 1 complaint was referred to the Tribunal as the conduct possibly contravened the Act.

#### ***Non-price gouging complaints***

The Commission had a total of seventy-nine (79) complaints not related to price gouging under investigation at the end of the reporting period. The Commission finalised the screening sixty-four (64) non Covid-19 complaints in Q1. Of the sixty-four (64) complaints screened, forty-seven (48) complaints were non-referred, three (3) withdrawn. The Commission's divisions will undertake full investigations of thirteen (13) complaints which were screened during the quarter. Six (6) complaints were transferred to Market Conduct, six (6) transferred to Cartels and one (1) transferred to M&A for further investigation.

**Table 18: Complaints Statistics in 2020/21**

Screening Activity	Q1
Total complaints received	90
Total Covid-19 complaints received	14
Total complaints finalised	127
Total Covid-19 complaints finalised	63
Complaints withdrawn	3
Active non Covid cases	79
Active Covid-19 Cases	102
Complaints referred to other entities/regulators	0

## 9.2 Policy Responses

The Commission submitted two (2) policy responses in Q1. The policy responses were submitted to the Department of Communications and Digital Communications ("DCDT") and the National Energy Regulator of South Africa ("NERSA").

The first policy response related to the Draft National Policy on Data and Cloud ("the Policy"), more specifically to the chapter titled 'Policy Issues in Competition. The Policy seeks to establish a High-Performance Computing and Data Processing Centre (HPCDPC) for public data processing and storage and provide cloud services to State entities.<sup>29</sup> The objective is to create a single integrated data processing centre to store data, that State entities can tap into for their use. This would include but is not limited to individual data, data in respect of public resources (such as education, disease

<sup>29</sup> Stats SA would oversee the central collection, storage, digitisation, and analytics of all government data in South Africa. The Draft National Policy on Data and Cloud at Page 30.



management, healthcare, crime prevention) and data that would come into the hands of government entities through its interactions with citizens and the private sector.<sup>30</sup> This data can be used to ensure an equitable allocation of available public resources, informed decision making and planning, and create value for consumers in the form of innovative digital products and improved service delivery.<sup>31</sup> This requires collaboration with public and private players in cloud computing in the long term.<sup>32</sup>

The Chapter on 'Policy Issues in Competition' as was provided to the Commission highlighted theories of harm as they refer to privately-owned data centres and cloud computing centres, controlled by large digital firms such as Google, Apple, Amazon, Microsoft and others. It explained that the concentration or consolidation of big data could give them market power and the tendency towards concentration in markets arising from first-mover advantages, data accumulation and network effects. However, on the understanding that the rationale for the Policy is to establish a State-owned integrated data processing centre, therefore the Policy issues related to the development of the HPCDPC would be slightly different than when considering these privately-owned data centres.

The Commission, therefore, recommended that the Chapter should focus less on the theories of harm arising out of the private use of data, but focus on the potential competition policy aspects that arise from introducing state-owned capacity. There are some benefits within this context: firstly, it secures data sovereignty which has benefits for the South African economy and secondly can be used to introduce open data access principles for Government to extract data in the hands of state entities, research institutions, and private companies that have socio-economic value. These are in line with the very objectives of the Competition Act including promoting efficiency of the economy, promoting consumer choice, advancing the socio-economic welfare of South African and ensuring that small and medium enterprises have an equitable opportunity to participate in the economy.

The Commission also sought to expand on the competition principles for the DCDT to consider for its Chapter on 'Policy Issues in Competition,' drawing from its recent paper entitled 'Competition in the Digital Economy.'<sup>33</sup> The submission focused on the following themes: data sovereignty, digitising government services, an open data strategy, and policy interventions.

The second policy response was submitted to the National Energy Regulator of South Africa ("NERSA") in the form of a non-binding advisory opinion. NERSA had sought an advisory from the Commission regarding the challenges it was facing in obtaining information from its Joint Venture

<sup>30</sup> Meeting with the DCDT on 21 May 2021.

<sup>31</sup> Meeting with the DCDT on 21 May 2021. The Draft National Policy on Data and Cloud at Page 23.

<sup>32</sup> Ibid.

<sup>33</sup> The Commission's paper on 'Competition in the Digital Economy' (Version 2, February 2021) is accessible at [www.compcom.co.za/wp-content/uploads/2021/03/Digital-Markets-Paper-2021-002-1.pdf](http://www.compcom.co.za/wp-content/uploads/2021/03/Digital-Markets-Paper-2021-002-1.pdf) last accessed on 1 June 2021.

("JV") Licensees. In order to fulfil its mandate in terms of the Petroleum Pipelines Act (60 of 2003) and the Petroleum Products Amendment Act (58 of 2005), NERSA is required to gather information from its licensees including: audited financials for the JV and clarity on Weighted Average Cost of Capital (WACC); asset registers and book value of assets pertaining to the JV; consolidated volume information of the JV; title deeds; JV agreements; tariff application information; as well as BBBEE details.

NERSA indicated that it was facing challenges in gathering this information due to the lack of cooperation by the JVs. The JVs were refusing to provide the information requested by NERSA citing the Commission's findings in the Sasol Oil / BP South Africa merger ("Merger") which they state, prevents direct communication on financial and operational matters between JV partners.

In its advice, the Commission indicated that JVs may be a platform for anti-competitive behaviour particularly where they are made up of firms that compete at any level. The petroleum companies that make up the JVs compete in the same market, therefore there would be certain information, particularly confidential and competitively sensitive information that the JVs cannot share directly among each other as this may potentially lead to collusive conduct or other anti-competitive conduct.

The Commission indicated that in collating the information from the JVs, NERSA should consider how information such as financial information, asset registers, book value of assets and tariff information which is critical for competitive rivalry of firms, ought to be dealt with in a way that is unlikely to lead to a contravention of the Competition Act.

The Commission referred to the Sasol/BP merger as a relevant case for the JVs in terms of what information may or may not be shared directly among themselves. In this matter the Commission found that any exchange of information must be within the ambit specified in the Exemption. Information only relating to the co-ownership is allowed to be shared between the JVs. It was specified that the following information may not be shared among the JVs:

- i) customer information;
- ii) pricing information;
- iii) volumes; and
- iv) other competitively sensitive information.

The Commission however emphasised that the Sasol/BP Merger decision does not amount to a blanket prohibition of information sharing between the JVs and therefore, the decision cannot be used as a blanket excuse for the JVs' lack of co-operation to NERSA's information request.

The Commission considered the following:

- i) NERSA requires this information in order to fulfil its mandate;
- ii) Information that does not constitute competitively sensitive information as well as historic information should be obtained from the JVs without any issues;
- iii) Information that is competitively sensitive should be limited to information relating to co-ownership of the JV, and not outside of that. Any information that is shared which is deemed to be beyond the scope of the operations of the JV, would be permissible to share with NERSA through an independent third-party service provider; and
- iv) Information that is competitively sensitive should be in a format readily available in relation to the JV or consolidated or collated via an independent third party.

The Commission recommended that the format that should be followed by NERSA in collecting information from the JVs should comply with the following minimum requirements:

- i) the JV itself as an entity has to submit its own information to NERSA separately from its members. In turn, its members will also submit their own information separately from the JV to NERSA.
- ii) NERSA should put measures in place to ensure that individual company confidential and competitively sensitive data or information is not disseminated to industry participants;
- iii) the information is collected solely for NERSA to fulfil its mandate in terms of its empowering legislation; and
- iv) there should be no exchange of disaggregated information among JV entities or industry participants.

### **9.3 Workshops on Competition Policy**

The Commission did not host any workshop on competition policy.

### **9.4 Stakeholder Engagements**

The Commission had an engagement with the National Empowerment Fund (“NEF”). The engagement related to the conclusion of a memorandum of understanding (MOU) between the parties. The Commission and the NEF intend to enter into specific co-operation for scoping and creating development funds for increased market competitiveness of historically disadvantaged persons and enterprise development.

The Commission had an engagement with the Gauteng Department of Economic Development. The Department hosted an awareness session for the SMEs in the province. The Commission provided a presentation to the Department and the SMEs on 29 June 2021.

In June 2021 the Commission signed a Memorandum of Understanding (MOU) with the South African Council for the Architectural Profession (“SACAP”) to strengthen competition law enforcement within South Africa.

The MOU comes at the back of the growing number of competition issues arising in the architectural sector, most of which are related to the Identification of Work Policy (“IDOW”) and the publication of Professional Guideline Fees. The purpose of the IDOW is to set out the qualifications and skills requirements for the performance of architectural work and to detail the kind of architectural work that can be undertaken under each of its registration categories whereas the purpose of the Professional Guideline Fee is to provide clients, in particular Government entities, with guidance on the fees relating to the various types of projects.

This MOU provides a mechanism to ensure that the Commission and SACAP work together to promote competition within the architectural profession. In particular, the MOU enables the Commission and SACAP to consult with each other annually on any proposed changes to the IDOW to ensure that its provisions are pro-competitive and that nothing in the policy contravenes any section or objectives of the Competition Act. The MOU establishes cooperation between the parties that seeks to ensure that the design and application of the IDOW:

- i ) Does not exclude unregistered persons or non-members of SACAP from participating in the market;
- ii ) Facilitates access to architectural work to all registered and unregistered persons; and
- iii) Promotes transformation of the architectural profession.

In the same period, the Commission signed a Memorandum of Understanding (MOU) with the National Energy Regulator of South Africa (“NERSA”) to strengthen competition law enforcement within South Africa.

The Commission initially entered into an MOU with the Regulator’s predecessor, the National Electricity Regulator in 2002. The MOU was entered into to establish the manner in which the parties will interact with each other in respect of the investigation, evaluation and analysis of mergers and acquisition transactions and complaints involving electricity licensees, other licensees, consumers and persons which are subject to the regulation and control of the National Electricity Regulator.

The current MOU acts as a strengthening mechanism to ensure that there is continued cooperation and collaboration between the Commission and NERSA in respect of the regulation of electricity, piped-gas, and petroleum pipeline industries.

The MOU will, amongst other things, help effectively coordinate the exercise of the Commission's jurisdiction and powers when taking decisions on competition matters within the energy sector; ensure the application of a consistent interpretation and treatment of the principles of competition in the exercise of powers of the Commission and NERSA and their respective functions in terms of their enabling legislation. The MOU will also enable the two institutions to consult each other regarding the definition of markets for electricity, piped-gas and petroleum pipelines and determining whether there is effective competition in these markets. The MOU will facilitate engagements in respect of the undertaking of enquiries regarding dominance or significant market power in such markets; and enable the Commission and NERSA to provide each other with necessary information in respect of the investigation of anti-competitive practices, regulation of mergers and acquisitions, as well as research developments or studies within the energy market.

### **9.5 Education & Training**

On the 29th of January 2021, the Commission published in the Government Gazette the Guidelines for Competition in the South African Automotive Aftermarket. The Commission hosted a series of five (5) online Workshops in its effort to promote awareness and provide public education on what the Guidelines mean for stakeholders and to answer their questions. Four (4) workshops were held with independent service providers (ISPs) and independent repairer associations from regions across the country on 5, 7, 12 and 14 May 2021. Over one hundred (100) ISPs participated in these workshops representing associations including the Automotive Industry Development Centre (Eastern Cape and Gauteng), African Panelbeaters Motor Mechanics Association (APMMA) and Right to Repair SA, among others.

The Commission also hosted an online workshop for consumers and consumer interest groups on 18 June 2021. Over one hundred (100) participants joined the workshop on the day. The Commission took the stakeholders through the process for developing the Guidelines, what the Guidelines mean various stakeholders, what is required for the implementation of the guidelines. The Commission also engaged directly with the National Consumer Commission, the Motor Industry Ombuds of South Africa, the South African Insurers Association and the Automotive Business Council on the Guidelines.

## 10. OFFICE OF THE COMMISSIONER: PERFORMANCE OVERVIEW

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

The Office of the Commissioner (OTC) was responsible for two (2) performance targets in Q1, 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 Q1:

**Table 19: Commission-initiated Media Engagements**

	Q1
April	3
May	4
June	3
<b>Total</b>	<b>10</b>

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 20: Advertising Value Equivalency (AVE) by Coverage**

Coverage	Q1
Print	R26 991 290
Broadcasting	R23 358 211
Online	R56 407 460
<b>Total</b>	<b>R106 756 962</b>

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 21: Commission mentions and impressions in online media for Q1.**

Type of media	April	May	June	Number of mentions
Twitter	230	289	477	<b>996</b>
Type of media	April	May	June	Number of Impressions/Reach
Twitter	138K	78.3K	322K	<b>538.3K</b>
Facebook	12556	16382	27326	<b>56264</b>
LinkedIn	19955	37585	56067	<b>113607</b>
Instagram	999	2726	4021	<b>7746</b>

## 10.2 International Relations

The main highlights from Quarter 1 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 22: Engagements with regional and international bodies in Q1:**

Competition body	Nature of engagement
African Competition Forum (ACF)	Two ACF activity took place under period of review: <ol style="list-style-type: none"> <li>1. ACF Steering Committee meeting was held on 12 April 2021.</li> <li>2. ACF Mergers training on Assessing Digital Markets took place on 29 June 2021.</li> </ol>
OECD	Two activities took place under period of review: <ol style="list-style-type: none"> <li>1. OECD – Virtual Briefing Meeting with the Permanent Delegations.</li> <li>2. OECD – Competition Committee meetings took place on 07 – 11 June 2021. CCSA has contributed to two written contributions on Competition Enforcement and Regulatory Alternatives and The Concept of Potential Competition.</li> </ol>
BRICS	Three activities took place under period of review: <ol style="list-style-type: none"> <li>1. BRICS Automotive technical working meeting was held on 12 May 2021.</li> <li>2. Meeting of the Heads of BRICS Competition Authorities was held on 27 May 2021.</li> <li>3. BRICS Research centre alignment meeting was held on 24 June 2021.</li> </ol>

ICN	<p>Eleven ICN activities including teleseminars, meetings, teleconference calls and webinars took place under period of review:</p> <ol style="list-style-type: none"> <li>1. ICN Training on Demand held on 8 April 2021.</li> <li>2. ICN Steering Group Meeting held on 5 May 2021.</li> <li>3. ICN Training on Demand held on 6 May 2021.</li> <li>4. Assessing Crisis Cartels at Times of Covid-19: Lessons learnt from Past Crises (ICN) held on 12 May 2021.</li> <li>5. ICN Special Project Group on international enforcement cooperation - call with UCWG co-chairs held on 18 May 2021.</li> <li>6. ICN Working Group Co-Chair / ACPC Call held on 26 May 2021.</li> <li>7. Operational Framework Working Group conference call held on 31 May 2021.</li> <li>8. ICN Steering Group conference call held on June 2021.</li> <li>9. ICN Training on Demand Coordination Group Meeting held on 3 June 2021.</li> <li>10. ICN TOWN HALL: Younger Agencies in the Third Decade held on 22 June 2021.</li> <li>11. UCWG suggestions from CCSA, contribution towards ICN UCWG workplan in June 2021.</li> </ol>
UNCTAD	<p>Five activities took place under period of review.</p> <ol style="list-style-type: none"> <li>1. CCSA participated in the Second Cross Border Cartel Working Group and was represented by Cartels Divisional Manager, Mr Makgale Mohlala. The session held on 13 April 2021.</li> <li>2. UNCTAD – regional dialogue: the role of competition policy in facilitating market access for MSMES was held on 8 April 2021.</li> <li>3. UNCTAD 3rd Cross Border Cartel Working Group meeting was held on 01 June 2021.</li> <li>4. UN Trade Forum -UNCTAD was held on 14-15 June 2021.</li> <li>5. UNCTAD CCPB Global Event was held on 18 June 2021.</li> </ol>
Other	<p>Twelve activities took place under period of review.</p> <ol style="list-style-type: none"> <li>1. Book Launch, Competition Law, Climate Change &amp; Environmental Sustainability held on 19 April 2021.</li> <li>2. Request from COMESA to CCSA for 2014 Poultry study on 19 April 2021.</li> <li>3. UK's G7 Presidency: strengthening cooperation and coherence in digital competition work held on 27 April 2021.</li> <li>4. Case Exchange- CCSA/European Commission- Herens HoldCo AG/ Lonza Specialty Ingredients Business.</li> <li>5. Case Exchange: CCSA/ London- Request for Contact details from the Competition Commission of South Africa.</li> <li>6. Case Exchange: CCSA/London Competition Authority- GovChat vs WhatsApp/Facebook.</li> <li>7. Discussion on further cooperation with the Competition Commission of South Africa held on 7 May 2021.</li> </ol>



	<p>8. Training: Lessons from buyer power cases in Kenya and South Africa on 27 May 2021.</p> <p>9. International Bar Association: Antitrust Committee liaison with SACC held on 7 June 2021.</p> <p>10. CCSA - Egypt Bilateral meeting was held on 15 June 2021.</p> <p>11. JFTC's online webinar "Competition law enforcement and competition regulation: the digital challenge", 18 June.</p> <p>12. Launch of the OECD publication "Fighting Bid Rigging in the Energy Sector in Ukraine: A Review of Ukrenergo"   15 June 2021.</p>
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## 11. ADMINISTRATION

### 11.1 Human Resources

The Commission had 202 employees in Q1. There were 1,43% (3) terminations of employment during Q1. In Q1, the equity ratio for female and male representation was 59% females and 41% males, respectively. People with disabilities represented 1,57 % of Commission staff. To achieve the legislated target of 2%, the Commission will 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.

### 11.3 Governance: Risks

With the emergence of Covid-19 pandemic, the Commission introduced measures to mitigate against health risks on its employees and external stakeholders. The Commission employees continue to work from home to protect as a way of protection from the risk of Covid-19 infections in the office. Measures were put in place to ensure there is no disruption in operations. The Commission ensured that external stakeholders continued to receive the service to which they are entitled, while actively monitoring developments on Covid-19 pandemic and being responsive to the needs of its employees, those who do business with the Commission and those affected by its activities. Deep cleaning was

conducted in the quarter as a result of an increase in reported Covid 19 infections amongst employees who accessed the premises. Stricter protocols have been implemented around meeting rooms, access to the building and overall usage.

#### **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 Q1.

## **12. FINANCE**

See attached Q1 Finance report.

**Table 23: 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	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	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	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	Target Met.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS	
Outcome	Outputs	Accountable Program	KPI No	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	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	Target Not Met. The Commission investigated several complex and contested Phase 3 (L) Mergers in this quarter. These included ALLISA/Sasol, RusselStone Protein, Cashbuild/TBC
		M&A	5.	% of imposed merger remedies and conditions monitored	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%	Target Not Met. The Commission took a strategic decision to refer two SAPS matters to the Tribunal and to obtain guidance on how to deal with the remaining SAPS matters.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS	
Outcome	Outputs	Accountable Program	KPI No	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Reason for variance
		LSD	7.	% of Covid-19 cases won at the Tribunal.	90%	90%	90%	90%	90%	100%	Target Met.
		LSD	8.	% of Covid-19 cases won at the courts.	90%	90%	90%	90%	90%	100%	Target Met.
		MCD	9.	No. of abuse of dominance and restrictive cases initiated related to Covid-19.	10	5	5	0	0	0	Target Not Met. Division prioritized the completion of the balance of covid-19 complaints from the public and the SIU.
		MCD & Cartels	10.	% of Covid-19	100%	100%	100%	100%	100%	N/A	Target Not Applicable. The Commission did not receive any

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS	
Outcome	Outputs	Accountable Program	KPI No	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Reason for variance
				exemption applications completed within 3 months.							Covid-19 exemption applications in Q1.
		ERB	11.	No. of Reports on Food Prices.	2	0	1	0	1	N/A	Target Not Applicable.
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	Target Exceeded. The Commission came across flu vaccine information which required that we initiate a complaint urgently.
		MCD & Advocacy	13.	% of market conduct investigations completed within 18	≥75%	≥75%	≥75%	≥75%	≥75%	96%	Target Met.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS		
Outcome	Outputs	Accountable Program	KPI No	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Reason for variance	
oved public interest outcomes				months.								
	b) Exemption application decisions	MCD	14.	% of exemption applications completed within 12 months.	≥100%	≥100%	≥100%	≥100%	≥100%	100%	Target Met.	
	c) Cartel investigations	Cartels	15.	No. of cartel investigations completed.	10	2	3	2	3	12	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%	≥75%	100%	Target Met.
		Cartels & LSD	17.	% of cartel cases won at the courts.	≥75%	≥75%	≥75%	≥75%	≥75%	≥75%	≥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	Reason for variance
	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	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 dominance, restrictive practices and exemptio	≥70%	≥70%	≥70%	≥70%	≥70%	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	Reason for variance
				n litigation.							
	f) Merger litigation	LSD	20.	% of merger decisions upheld by the Tribunal.	≥75%	≥75%	≥75%	≥75%	≥75%	100%	Target Met.
		LSD	21.	% of merger decisions upheld by the courts.	≥75%	≥75%	≥75%	≥75%	≥75%	N/A	Target Not Applicable. No decision granted in the quarter under review.
<b>4. Improved compliance &amp; awareness</b>	a) Domestic outreach initiatives	Advocacy	22.	No. of education, training and outreach initiatives conducted on Competition Act.	2	0	1	1	0	5	Target Exceeded. The Commission had to conduct workshops on Automotive Guidelines to promote awareness and provide public education on the Guidelines ahead of July effective date.

PERFORMANCE MEASURE						QUARTERLY TARGETS				ACHIEVEMENT AGAINST TARGETS	
Outcome	Outputs	Accountable Program	KPI No	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4	Q1	Reason for variance
		Advocacy & OTC	23.	Number of awareness publications on the Competition Act.	6	1	2	2	1	2	Target Exceeded. The Commission had to publish a Frequently Asked Question pamphlet to guide stakeholders on implementation of the Automotive Guidelines, in addition to the newsletter.
	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	Target Exceeded. The Commission had to expedite publication of the guidelines following the designation of the sugar industry by the Minister of the DTIC.
	c) Advisory Opinions	LSD	25.	% of advisory opinions issued within 60 days.	90%	90%	90%	90%	90%	N/A	Target Not Applicable. The Commission is awaiting publication of final regulations on advisory opinions.
<b>5. Improved understanding</b>	a) Market inquiries	MCD	26.	No. of market inquiries initiated.	1	0	0	0	1	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	Reason for variance
Monitoring of market dynamics in priority sectors		MCD	27.	No. of market inquiries completed.	0	0	0	0	0	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	Target Not Applicable.
	c) Impact assessments on Commission decisions or competition policy	ERB	29.	No. of impact assessment studies completed.	1	0	0	0	1	N/A	Target Not Applicable.
	d) Advocacy in priority sectors	Advocacy	30.	No. of advocacy cases	2	0	0	1	1	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	Reason for variance
				completed in priority sectors.							
6. Improved coordination on the application of economic policy and competition policy	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	Target Not Applicable
		Advocacy	32.	No. of outreach activities undertaken in collaboration with Black Business	1	0	0	1	0	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	Reason for variance
				& Women Associations.							
		OTC & ERB	33.	No. of Annual Conferences hosted.	1	0	0	1	0	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	Target Exceeded. There were more policy/regulatory developments in priority sectors arising in the quarter than anticipated.
	c) Research & Thought Leadership	ERB	35.	No. of research and thought leadership insights published.	4	1	1	1	1	1	Target Met.
<b>7. Increased</b>	d) Collaboration	OTC	36.	No. of research	8	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	Reason for variance
importance of developmental perspectives in domestic and international competition law discourse	with Regional & International partners			projects and/or publications undertaken with African, BRICS and international partners.							
8. Sound Corporate Governance	a) Audit Outcome	Finance	37.	Audit Opinion.	Clean Audit	N/A	N/A	Clean Audit	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	Reason for variance
e											
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	Target Not Applicable.
	b) Conducive Facilities & Efficient Security	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	Target Not Applicable.
		CSD & Finance	40.	Relocate staff to appropriate office space.	Report on completed implementation.	0	0	0	Report on completed implementation.	N/A	Target Not Applicable.
		CSD	41	Reports on implementation of the OHS compliance plan.	4	1	1	1	1	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	Reason for variance
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	Target Not Applicable.
		CSD	43.	% retention rate of staff complement.	≥90%	≥90%	≥90%	≥90%	≥90%	98.5%	Target Met.
		OTC	44.	% of staff reached through training academy initiatives.	≥60%	0	0	0	≥60%	N/A	Target Not Applicable.