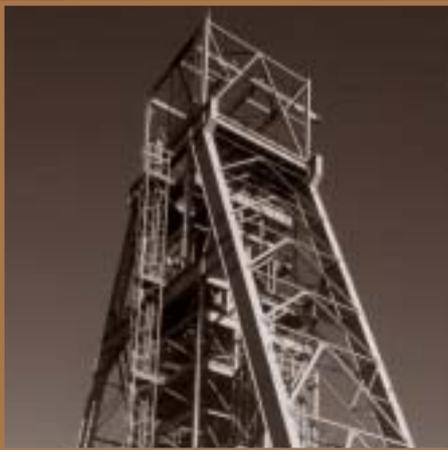




**competitiontribunal**  
*south africa*



*Competition Tribunal  
Annual Report  
2002/2003*



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## *What we have achieved*

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- 62 large merger transactions decided
- In 61 of 62 cases the order was released within ten days. In 49 of 62 cases the order was released on the same day
- The Tribunal rated as “impressive” and “sophisticated” by OECD peer review report
- The Tribunal actively contributed and provided leadership to the International Competition Network, a body established to address practical competition enforcement and policy issues

## *What we do*

---

### **We are an independent, impartial institution**

The Competition Tribunal regulates mergers and adjudicates on anti-competitive business practices

### **In respect of mergers, the Tribunal**

- authorises or prohibits large mergers
- adjudicates appeals from the Competition Commission’s decisions on intermediate mergers

### **In respect of anti-competitive practices, the Tribunal**

- adjudicates complaint referrals
- adjudicates interim relief applications
- hears appeals on exemptions



# REPORT OF THE AUDITOR-GENERAL

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE COMPETITION TRIBUNAL FOR THE YEAR ENDED 31 MARCH 2003

## 1. Audit assignment

The financial statements as set out on pages 4 and 5 and pages 35 to 43 for the year ended 31 March 2003, have been audited in terms of section 188 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), read with sections 3 and 5 of the Auditor-General Act, 1995 (Act No 12 of 1995) and section 40(10) of the Competition Act, 1998 (Act No 89 of 1998), as amended. These financial statements, the maintenance of effective control measures and compliance with the relevant laws and regulations are the responsibility of the Chairperson of the Competition Tribunal. My responsibility is to express an opinion on these financial statements, based on the audit.

## 2. Nature and scope

### 2.1 Audit of financial statements

The audit was conducted in accordance with Statements of South African Auditing Standards. Those standards require that I plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement.

An audit includes:

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

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

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

## 3. Audit opinion

In my opinion, the financial statements fairly present, in all material respects the financial position of the Competition Tribunal at 31 March 2003 and the results of its operations and cash flows for the year then ended in accordance with generally accepted accounting practice and in the manner required by the Public Finance Management Act, 1999 (Act No 1 of 1999).

## 4. Appreciation

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

**LA van Vuuren**  
*for Auditor-General*  
Pretoria  
4 July 2003

# STATEMENT OF RESPONSIBILITY



## STATEMENT OF RESPONSIBILITY BY THE ACCOUNTING AUTHORITY OF THE COMPETITION TRIBUNAL

The accounting authority is responsible for the preparation, integrity and fair presentation of the financial statements of the Competition Tribunal of South Africa for the year ended 31 March 2003. The financial statements presented on pages 4 and 5 and on pages 35 to 43 have been prepared in accordance with generally accepted accounting principles and include amounts based on judgements and estimates made by management. The accounting authority, in consultation with the executive committee, prepared the other information included in the annual report and is responsible for both its accuracy and its consistency with the financial statements.

The accounting authority is of the opinion that the Tribunal will continue as a going concern in the foreseeable future.

The Office of the Auditor-General has audited the financial statements as set out on pages 4 and 5 and pages 35 to 43. The auditors were given unrestricted access to all financial records and related data, including minutes of all meetings of the executive committee, staff and the case management committee. The accounting authority believes that all representations made to the auditors during their audit are valid and appropriate.

The audit report of the Office of the Auditor-General is presented on page 2.

The financial statements were approved and signed by the accounting authority on 18 June 2003.

**David Lewis**  
*Accounting Authority*  
18 June 2003

# CHAIRPERSON'S REPORT

For the year ended 31 March 2003



**David Lewis**  
Chairperson

It gives me pleasure to present the fourth annual report, which forms part of the audited financial statements of the Tribunal for the period ended 31 March 2003.

The Tribunal has had a busy and successful year. Large mergers have continued to constitute the major caseload of the Tribunal. The number of larger merger cases heard by the Tribunal in the period under review increased by 47,6%. In addition the complexity of restrictive practices cases brought before the Tribunal has increased requiring Tribunal members to spend more time reviewing documentation and more days at hearings.

Analysis and debate over competition issues have deepened in the media and other fora. It is our distinct impression that the business community now recognises the need to consider the competition law implications of its decisions.

During the year under review we have continued to remain involved in initiatives, which are aimed at strengthening regional and international cooperation in competition law, and have actively participated in international fora like the International Competition Network

(ICN), UNCTAD, the OECD and WTO. In the ICN we have been responsible for coordinating the Network's initiatives on competition policy in developing countries and in identifying technical assistance programmes designed to support its successful implementation. We have also participated actively in the Southern and Eastern African Competition Network and have been involved in initiatives to strengthen competition regulation in Zimbabwe and Algeria.

In March 2003 we co-hosted the South African Competition Authorities Annual Conference with the Competition Commission. 195 people representing NGOs, the Competition Commission, the Competition Tribunal, trade unions, the legal fraternity and the media attended the conference. The conference titled "Promoting Competition in a Protected Economy" was addressed by a number of local and international speakers all providing different perspectives on competition issues, public enterprises and the interaction between the two.

During the year, we, together with the Competition Commission, became the first developing country to voluntarily submit itself to a peer review conducted under the auspices of the OECD's Global Competition

Forum. I am pleased to report that we were found to be "impressive and sophisticated" and "recognised in South Africa as notably competent and serious".

## 1. Nature of business

The Competition Tribunal adjudicates competition matters in accordance with the Competition Act (Act No 89 of 1998). It has jurisdiction throughout South Africa. The Tribunal is independent and subject to the Constitution and the law. When a matter is referred to it the Tribunal may:

- grant an exemption from a relevant provision of the Act
- authorise a merger, with or without conditions, or prohibit a merger
- adjudicate in relation to any conduct prohibited in terms of the Act by determining whether prohibited conduct has occurred, and if so, impose a remedy provided for in the Act
- grant an order for costs

The Competition Tribunal was listed in terms of the Public Finance Management Act, 1999 as a National Public Entity effective from 1 April 2001.

## 2. Objectives and targets

The role and core activities of the Competition Tribunal are defined by the Competition Act (1998) and its procedures are outlined in the Rules of the Competition Tribunal. The Tribunal is limited in its ability to proactively set objectives and targets as it is a court of first instance and its workload is driven by the cases brought to it in terms of the Act. This limits the ability of the institution to proactively set objectives and targets; and to accurately predict the number and types of anticipated cases.

### 2.2 Financial performance

Revenue for the year ended 31 March 2003 increased by 16,2%. This increase is primarily explained by an increase in the filing fees received from the Competition Commission (17,3% increase). Filing fees constitute 84,2% of the Tribunal's revenue.

In the year under review the Tribunal's income was received from the Competition Commission in the following manner: 30% of the filing fees received for large mergers and 5% of the filing fee received for intermediate mergers.



<b>2.1 Financial results</b>		
	2003 R	2002 R
Total revenue	6 577 733	5 662 061
Total expenditure	(7 326 131)	(6 329 343)
Operating (loss)/profit for the year	(748 398)	(667 282)
	2003 R	2002 R
Total assets	10 225 837	10 985 291
Total liabilities	412 663	423 719

Total expenditure for the period under review increased by 15,7%. This increase in expenditure cannot be attributed to one single line item but is explained by increases in many line items.

### 3. Events subsequent to balance sheet date

No events took place between the balance sheet date and the date the financial statements were signed that were material enough to disclose it to the interested parties in the chairperson's report.

### 4. Remuneration

The table below shows total remuneration received by the chairperson and the CEO for the period ended 31 March 2003.

	2003	2002
<i>Chairperson</i>		
D Lewis	615 661	591 636
<i>CEO</i>		
S Ramburuth	440 146	410 071

The Tribunal is responsible for the employees' contribution to group life cover as well as the administration costs associated with the pension fund. These figures are not included in the total remuneration given above but performance bonuses paid to the CEO and any back pay received by the chairperson and the CEO are included.

### 5. Property, plant and equipment

There has been no change in the policy relating to the use of property, plant and equipment.

### 6. Executive committee

The executive committee has continued to meet regularly throughout the year and has continued to provide direction on decision-making and

expenditure in the Tribunal. The composition of the executive committee has remained unchanged over the period under review.

#### Members

- David Lewis, chairperson
- Marumo Moerane, deputy chairperson
- Shan Ramburuth, CEO
- Janeen de Klerk, head of finance
- Norman Manoim, full-time Tribunal member

### 7. Fruitless and wasteful expenditure

An amount of R52 219,68 is due to the South African Revenue Service as penalties and interest in respect of the late submission of VAT returns. This amount has been provided for in the financial statements but we have requested the Receiver to waive the penalties. No written response has been received from the Receiver to date.

### 8. Irregular expenditure

In the last annual report I reported on the irregular expenditure that had arisen as a result of confusion around the daily rate payable to part-time Tribunal members. I am pleased to report that as at 31 March 2003 there has been no unauthorised or irregular expenditure in the Tribunal. In addition we together with the dti and the Minister of Finance have resolved the confusion with regard to Tribunal members' daily rate. As at 1 January 2003 we are able to pay them a rate of R4 000,00 per day as opposed to last year's rate of R1 754,00 per day. I am confident that paying this altered rate will assist the Tribunal in its ability to attract and maintain high calibre professionals as well as not compromise its effectiveness and integrity.

### 9. Management fee paid to the Competition Commission

The Competition Commission and the Competition Tribunal share premises in Glenfield Office Park. In addition some

services are shared, eg cleaning and security. The Commission is the signatory to contracts with service providers and to the lease agreement for the building. In terms of a memorandum of agreement signed between the two institutions the Tribunal makes use of some services contracted by the Commission and the Commission invoices the Tribunal for these particular services.

A change occurred in the nature of billing from the Commission for the financial year under review. In prior years the Tribunal was billed for each and every service individually. From April 2002 it was agreed that the Tribunal would pay the Commission a monthly management fee (based on the cost of the previous year's shared services).

The management fee paid for the period under review was R80 000 per month. This management fee will be reviewed by the institutions on an annual basis.

This change in billing explains why no expenses are reflected against operating leases for premises and hearing rooms in note 6 of the financial statements and why no figures are reflected in terms of land and building lease commitments in note 7 of the financial statements for the period under review.

### 10. Office address

The Competition Tribunal's registered offices are situated at:

Building C  
Glenfield Office Park  
Cnr Glenwood Road and Oberon Street  
Faerie Glen  
Pretoria

with the postal address being:

Private Bag X28  
Lynwood Ridge  
0040  
Pretoria

**David Lewis**  
Chairperson  
18 June 2003

# MEMBERS OF THE TRIBUNAL

## The Competition Tribunal's members

At the end of the current financial year, the Tribunal consisted of the chairperson, one full-time member and five part-time members. Two members resigned in August 2002. The Minister of Trade and Industry made nominations for replacement of these two members and a member (who had previously resigned in December 2001) to the President. No confirmation of these appointments has been received before year-end. No new appointments were made during the current financial year.

The chairperson appoints adjudicative panels comprising three Tribunal members for each hearing before the Competition Tribunal.

The Act specifies that each member is a citizen of South Africa and that members should have suitable qualifications and experience in economics, law, commerce, industry or public affairs. Four of the current Tribunal members have a legal background and three are economists.



### Chairperson

**David Lewis**  
(BCom, MA)

### Deputy chairperson

**Advocate Marumo Moerane**  
(BSc, BCom, LLB)

### Full-time member

**Norman Manoim**  
(BA, LLB)

### Part-time members

**Urmila Bhoola**  
(BA Hons, LLB, LLM)  
**Professor Frederick Fourie**  
(BA Hons, MA, PhD)  
**Professor Merle Holden**  
(BCom Hons, MA, PhD)  
**Phatudi Maponya**  
(BProc, LLB, H Dip Company Law, LLM)

### Resignations

**Christine Qunta** (BA, LLB)  
**Sindi Zilwa** (BCompt Hons)

## The Tribunal secretariat

The staff of the Competition Tribunal provides administrative, research and organisational support to the chairperson and Tribunal members.

Two staff members resigned in June 2002 and November 2002 respectively. One appointment was made during the period under review and the second appointment will take place in April 2003.

**Chief executive officer/registrar**  
**Shan Ramburuth**

### Case managers

**Kim Kampel**  
**Rietsie Badenhorst**  
**Thulani Kunene**  
(resigned in June 2002)  
**Shaazia Bhaktawer**  
(appointed in September 2002)

### Registry

**Eugene Tsitsi**,  
head of registry (resigned in November 2002)  
**David Tefu**, registry clerk  
**Jerry Ramatlo**, court orderly/driver

### Finance

**Janeen de Klerk**, head of finance  
**Donald Phiri**, accounts assistant

### Executive secretaries

**Lerato Motaung**,  
executive secretary to the chairperson  
**Tebogo Mputle**,  
executive secretary to the CEO



**Chairperson**  
**David Lewis**  
(BCom, MA)



**Deputy Chairperson**  
**Advocate Marumo Moerane**  
(BSc, BCom, LLB)



**Full-time member**  
**Norman Manoim**  
(BA, LLB)



**Part-time members**  
**Urmila Bhoola**  
(BCom Hons, MA, PhD)



**Part-time members**  
**Professor Frederick Fourie**  
(BA Hons, MA, PhD)



**Part-time members**  
**Professor Merle Holden**  
(BCom Hons, MA, PhD)



**Part-time members**  
**Phutudi Maponya**  
(BProc, LLB, H Dip Company Law, LLM)



**Part-time members**  
**Advocate Mbuyiseli Madlanga**  
Appointed 4 April 2003



**Part-time members**  
**Thandi Orleyn**  
Appointed 4 April 2003



**Part-time members**  
**Lawrence Reyburn**  
Appointed 4 April 2003



**The Tribunal Staff**

# THE MANDATE OF THE COMPETITION TRIBUNAL

## THE ROLE OF THE COMPETITION TRIBUNAL

The Competition Tribunal was created by the Competition Act 89 of 1998 and has jurisdiction over the behaviour of firms, which have an effect in the Republic South Africa.

### The Competition Tribunal:

- *Authorises or prohibits large mergers, with or without conditions*

A merger is defined as the direct or indirect acquisition or direct or indirect establishment of control, by one or more persons over all significant interests in the whole or part of the business of a competitor, supplier, customer or other person.

Mergers are defined as “large” when they exceed a threshold of annual turnover and asset value set by the Minister of Trade and Industry.

- *Adjudicates appeals from the Competition Commission's decisions*

The Competition Commission may approve or prohibit intermediate mergers and grant or deny exemptions from anti-competitive practices prohibited in Chapter 2 of the Competition Act. Parties may appeal adverse decisions of the Commission on intermediate mergers and exemptions to the Competition Tribunal.

- *Adjudicates complaints of prohibited conduct*

Procedures and remedies provided for in the legislation will be triggered by a combination of structural and behavioural factors. A case alleging prohibited practices may be brought to the Tribunal by the Commission or directly by an aggrieved party. The Tribunal is required to determine whether a prohibited conduct has occurred, and if so, impose a remedy provided for in the Act.

- *Grants or denies an order for interim relief*

The Tribunal may grant an order for interim relief if:

- (i) There is evidence that a prohibited practice has occurred;
- (ii) It is reasonably necessary to prevent serious, irreparable damage to that person or prevent the purposes of the Act being frustrated;
- (iii) The respondent has been given a reasonable opportunity to be heard, with regard to the urgency of the proceedings;
- (iv) The balance of convenience favours the granting of the order.

- *Imposes a remedy (which includes granting or denying an order for costs and imposing an administrative fine)*

The Competition Tribunal has the authority to issue compliance orders and interdicts, levy fines and to impose structural remedies.

## PARTICIPATION IN REGIONAL AND INTERNATIONAL INITIATIVES

The Tribunal has actively participated in international forums, including the International Competition Network (ICN), a body established to provide developed and developing countries with a platform for addressing practical competition enforcement and policy issues. The chairperson of the Tribunal, David Lewis, is a member of the steering committee of the ICN and Tribunal member and Norman Manoim participates in the ICN subcommittee dealing with merger regulation. Representatives from the Tribunal attended World Trade Organisation (WTO) meetings on competition policy and participated in an UNCTAD training seminar for the Zimbabwean Competition Authority. The Tribunal has also participated actively in the Southern and Eastern African



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Competition Network and has been involved in initiatives to strengthen competition regulation in Zimbabwe and Algeria.

Two Tribunal members and three Competition Appeal Court judges attended the Fordham Anti Trust Conference held in New York in November 2002. Following this conference, the Competition Appeal Court judges visited officials at the Federal Trade Commission (FTC) and the United States Department of Justice (DOJ) in Washington.

A "Workshop for Adjudicators in Competition Cases", co-hosted with the OECD, was held in June 2002. Tribunal members, Competition Appeal Court judges as well as competition officials from Kenya, Zambia and Zimbabwe attended this workshop. Topics covered included a judicial review of competition cases, recent developments in competition law, the accommodation of multiple criteria in competition cases, standards of proof and remedies.

The chairperson, deputy chairperson and CEO represented the Tribunal at the OECD Global Peer Review held in Paris in February 2003.

### **Subjecting the Competition Tribunal to the rigour of peer review**

The Tribunal is striving to follow best practices from the experience of other enforcement agencies around the world. In line with this, it voluntarily submitted itself to international scrutiny in the form of an OECD global peer review of competition policy and law in South Africa.

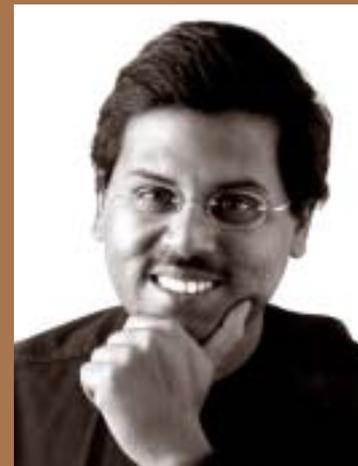
The OECD peer review report was compiled by a OECD researcher who interviewed stakeholders in South Africa. This report was presented at the OECD meeting and feedback was elicited from OECD competition officials. The report found

the South African competition authorities "impressive and sophisticated" and said that "decisions to date show that, in terms of substantive economic analysis and sensitivity to policy context, merger review in South Africa is done at a high level of sophistication".

The report said that the competition authorities are recognised in South Africa as notably competent and serious and that the decision-making independence of the Commission and the Tribunal is well established.

In summary the OECD review said: "South Africa aspires to a modern competition policy regime, to deal with the well-resourced sophistication

*of much of the South African economy. Its new institutions, whose novelty responds in large part to the post-1994 imperative for fundamental restructuring of government institutions, have shown a confident capacity to deal with complex structural issues in deciding dozens of merger cases. A legalistic business and government culture have challenged these new bodies to prove their competence and tested their jurisdiction. Now that the merger review process has been established, more attention should be paid to non-merger matters and probably to advocacy as well. Resources are stretched, and there is a critical need to improve the depth and strengthen the capacity of the professional staff."*



**Shan Ramburuth**  
CEO/Registrar

# CASES BEFORE THE COMPETITION TRIBUNAL

1 APRIL 2002 – 31 MARCH 2003

## 1. MERGERS

### 1.1 Large mergers

In the period under review the Tribunal received 66 large merger notifications. In addition four mergers received in the previous financial year were decided in the period under review. The Tribunal decided 62 large mergers, three banking mergers were withdrawn at the behest of the Minister of Finance and five were pending at year-end. Of the large mergers decided:

- **57 were approved without conditions**
- **4 were approved with conditions**
- **1 was prohibited**

Merging parties	Date received	Date of hearing	Date of decision/order	Date of reasons	Decision
Clidet No 366 (Pty) Limited and Dorbyl Metals Trading, a division of Dorbyl Limited	22 Mar 02	10 Apr 02	10 Apr 02	15 Apr 02	Approved without conditions
Siemens Business Services (Pty) Limited and Medscheme Holdings (Pty) Limited	19 Mar 02	03 Apr 02	03 Apr 02	12 Apr 02	Approved without conditions
Imperial Holdings and Murnau Holdings (Pty) Limited	06 Mar 02	03 Apr 02	03 Apr 02	11 Apr 02	Approved without conditions
Mondi Limited and Kohler Cores & Cubes, a division of Kohler Packaging Limited	13 Mar 02	9 and 10 May 02	23 May 02	20 June 02	Prohibited
Islandsite Investments One Hundred and Forty Nine (Pty) Limited and Chlorchem, a division of Sentrachem Limited	08 Apr 02	17 Apr 02	17 Apr 02	23 Apr 02	Approved without conditions
Imperial Holdings Limited and Imperilog Limited	16 Apr 02	24 Apr 02	24 Apr 02	03 May 02	Approved without conditions
Cape of Good Hope Bank and a division of Nedcor Investment Bank	22 Apr 02	24 Apr 02	24 Apr 02	26 Apr 02	Approved without conditions
Sociedad Investments (Pty) Limited and Furnex Stores (Pty) Limited	15 Apr 02	08 May 02	08 May 02	15 May 02	Approved without conditions
V & A Waterfront Holdings (Pty) Limited and V & A Waterfront Properties (Pty) Limited	30 Apr 02	15 May 02	15 May 02	24 May 02	Approved without conditions
Sasol Holding GMBH and Schumann Sasol International AG	20 May 02	29 May 02	29 May 02	24 June 02	Approved without conditions
Clidet No 390 (Pty) Limited and Unihold Limited	21 May 02	29 May 02	29 May 02	03 June 02	Approved without conditions
Santam Limited and Allianz Risk Transfer Limited	21 May 02	29 May 02	29 May 02	06 June 02	Approved without conditions
Khumo Bathong Holdings (Pty) Limited and Crown Gold Recoveries (Pty) Limited	22 May 02	29 May 02	29 May 02	04 June 02	Approved without conditions
FirstRand Bank Limited and Profurn Limited	24 May 02	29 May 02	29 May 02	04 June 02	Approved without conditions
HFSA Investment BV and Hercul Ferrochrome (Pty) Limited	21 Jun 02	02 Jul 02	02 Jul 02	05 Jul 02	Approved without conditions
Nampak Limited and Malbak Limited	16 May 02	13 and 14 Jun 02	18 Jun 02	15 Jul 02	Approved with conditions

Merging parties	Date received	Date of hearing	Date of decision/order	Date of reasons	Decision
Anglo South Africa Capital (Pty) Limited and Anglovaal Mining Limited	09 Sep 02				Pending
Anglo American Holdings Limited and Kumba Resources Limited	09 Sep 02				Pending
Pioneer Foods (Pty) Limited and SAD Holdings Limited	06 Jun 02	02 Jul 02	02 Jul 02	17 Jul 02	Approved without conditions
Clidet No 403 (Pty) Limited and Midas Limited	15 Jul 02	23 Jul 02	23 Jul 02	24 Jul 02	Approved without conditions
Genbel Securities Limited and Genbel South Africa Limited	05 Jul 02	23 Jul 02	23 Jul 02	29 Jul 02	Approved without conditions
Namitech Holdings Limited and Integrated Card Technology (Pty) Limited	24 Jul 02	07 Aug 02	07 Aug 02	23 Aug 02	Approved without conditions
Pick 'n Pay Retailers (Pty) Limited and Boxer Holdings (Pty) Limited	31 Jul 02	07 Aug 02	07 Aug 02	26 Aug 02	Approved without conditions
Foodcorp (Pty) Limited and Boksburg Oil Milling, an asset of Unilever South Africa	07 Aug 02	28 Aug 02	28 Aug 02	05 Sep 02	Approved without conditions
FirstRand Bank Limited and Saambou Bank Limited	12 Aug 02				Jurisdiction withdrawn by Minister of Finance
Safmarine Container Lines NV and The Unicorn Lines	14 Aug 02	04 Sep 02	04 Sep 02	20 Sep 02	Approved without conditions
Armgold/Harmony Freegold Joint Venture Company (Pty) Limited and St Helena Gold Mines Limited	17 Sep 02	23 Sep 02	23 Sep 02	10 Oct 02	Approved without conditions
Edgars Consolidated Stores Limited and Retail Apparel Group (Pty) Limited	23 Sep 02	23 Sep 02	23 Sep 02	10 Oct 02	Approved without conditions
Toyota Motor Corporation (Japan) and Toyota South Africa (Pty) Limited	17 Sep 02	23 Sep 02	23 Sep 02	10 Oct 02	Approved without conditions
Standard Bank of South Africa Limited and Stellenbosch Vineyards Limited	14 Aug 02	28 Aug 02	28 Aug 02	23 Oct 02	Approved without conditions
Capital Alliance Life Limited and Saambou Life Assurers Limited	01 Oct 02	09 Oct 02	09 Oct 02	29 Oct 02	Approved without conditions
Corvest (Pty) Limited and Merchant Commercial Finance (Pty) Limited	10 Oct 02	16 Oct 02	16 Oct 02	7 Nov 02	Approved without conditions
Edgars Consolidated Stores Limited and Elixir Marketing (Pty) Limited	04 Oct 02	16 Oct 02	16 Oct 02	08 Nov 02	Approved without conditions
South African Airways (Pty) Limited and Air Chefs (Pty) Limited	11 Oct 02	25 Oct 02	25 Oct 02	12 Nov 02	Approved without conditions
Clidet No 408 (Pty) Limited and MB Technologies Limited	26 Sep 02	09 Oct 02	09 Oct 02	12 Nov 02	Approved without conditions
Edgars Consolidated Stores Limited and Central News Agency (Pty) Limited and Consolidated News Agency (Pty) Limited	01 Nov 02	6 Nov 02	6 Nov 02	18 Nov 02	Approved without conditions
Adcock Ingram Holdings (Pty) Limited and Adcock Ingram Intellectual Property (Pty) Limited and Robertsons (Pty) Limited and Robertsons Homecare (Pty) Limited	31 Oct 02	6 Nov 02	6 Nov 02	18 Nov 02	Approved without conditions

# CASES BEFORE THE COMPETITION TRIBUNAL

1 APRIL 2002 – 31 MARCH 2003 (continued)

Merging parties	Date received	Date of hearing	Date of decision/order	Date of reasons	Decision
Prochem (Pty) Limited and Duravin Chemicals (Pty) Limited	21 Oct 02	6 Nov 02	6 Nov 02	19 Nov 02	Approved without conditions
Sandown Motors Holdings (Pty) Limited and McCarthy Limited	01 Aug 02	11 Sep 02	12 Sep 02	19 Nov 02	Approved without conditions
Sandown Motors Holdings (Pty) Limited and Barloworld Motor (Pty) Limited	01 Aug 02	11 Sep 02	12 Sep 02	19 Nov 02	Approved without conditions
Barloworld Motor (Pty) Limited and Durban South Motors (Pty) Limited	01 Aug 02	11 Sep 02	12 Sep 02	19 Nov 02	Approved without conditions
Newco (being a joint venture company between Barloworld Motor (Pty) Limited and Durban South Motors (Pty) Limited) and McCarthy Limited	01 Aug 02	11 Sep 02	12 Sep 02	19 Nov 02	Approved without conditions
Sandown Motors Holdings (Pty) Limited and Imperial Holdings (Pty) Limited	01 Aug 02	11 Sep 02	12 Sep 02	19 Nov 02	Approved without conditions
Imperial Holdings (Pty) Limited and Sirius Motor Corporation (Pty) Limited	01 Aug 02	11 Sep 02	12 Sep 02	19 Nov 02	Approved without conditions
Rustenburg Platinum Mines and Eastern Platinum Mines Limited "Pandora Joint Venture" and Rustenburg Platinum Mines Limited	27 Sep 02	16 Oct 02	16 Oct 02	06 Dec 02	Approved without conditions
Datatec Limited and Affinity Logic Holdings (Pty) Limited	12 Nov 02	04 Dec 02	04 Dec 02	09 Dec 02	Approved without conditions
Medi-Clinic Corporation Limited and Curamed Holdings Limited	12 Nov 02	04 Dec 02	04 Dec 02	04 Mar 03	Approved without conditions
Clicks Pharmaceutical Wholesale (Pty) Limited and New United Pharmaceutical Distributors (Pty) Limited	12 Nov 02	04 Dec 02	05 Dec 02	13 Dec 02	Approved without conditions
Old Mutual (South Africa) Limited ("Old Mutual") and Franklin Templeton NIB Asset Management (Proprietary) Limited ("Franklin Templeton NIB")	13 Dec 02	19 Dec 02	19 Dec 02	28 Jan 03	Approved without conditions
Nedcor Investment Bank Holdings Limited ("Nedcor") and ("Franklin Templeton NIB")	17 Dec 02	19 Dec 02	19 Dec 02	28 Jan 03	Approved without conditions
BoE Bank Limited and Fasic Africa (Pty) Limited	13 Dec 02	15 Jan 03			Pending
Reutech Engineering Services (Pty) Limited and ATC (Pty) Limited	04 Dec 02	19 Dec 02	19 Dec 02	20 Dec 02	Approved without conditions
ABSA Group Limited and PSG Investment Bank Holdings Limited	10 Dec 02	19 Dec 02	19 Dec 02	20 Dec 02	Approved without conditions
Afgri Operations Limited and Laeveld Korporatiewe Beleggings Beperk	01 Nov 02	04 Dec 02	04 Dec 02	13 Jan 03	Approved without conditions
Rustenburg Platinum Mines Limited and The Royal Bafokeng Nation in their capacity as the participants in the "Bafokeng Rasimone Joint Venture" and Rustenburg Platinum Mines Limited and the Royal Bafokeng Nation	12 Nov 02	11 Dec 02	11 Dec 02	14 Jan 03	Approved without conditions
Silicon Technology (Pty) Limited and Calcium Carbide Division of Sentrachem Limited	21 Oct 02	06 Nov 02	06 Nov 02	15 Jan 03	Approved without conditions

Merging parties	Date received	Date of hearing	Date of decision/order	Date of reasons	Decision
Old Mutual SA Limited and BoE Life Assurance Company Limited	13 Dec 02	19 Dec 02	19 Dec 02	04 Feb 03	Approved without conditions
Distell Group Limited and Stellenbosch Farmers Winery Group Limited	20 Jun 02	15 Aug 02 22 Aug 02 22 Nov 02		06 Feb 03 19 Mar 03	Approved with conditions
JD Group Limited and Profurn Limited	08 Oct 02	25 and 29 Nov 02 03 Dec 02	12 Dec 02	29 Apr 03	Approved with conditions
Coleus Packaging (Pty) Limited and Rheem Crown Plant, a division of Highveld Steel and Vanadium Corporation Limited	31 Oct 02	21 and 22 Jan 03	27 Jan 03	11 Feb 03	Approved with conditions
WesBank, a division of FirstRand Bank Limited and Barloworld Leasing, a division of Barloworld (Pty) Limited	27 Jan 03	06 Feb 03	11 Feb 03	09 Apr 03	Approved without conditions
Clidet No 409 (Pty) Limited and Dorbyl Engineering – a division of Dorbyl	04 Dec 02	11 Dec 02	13 Dec 02	26 Feb 03	Approved without conditions
Friedshelf (Pty) Limited and Gillettee South Africa (Pty) Limited	10 Feb 03	20 Feb 03	20 Feb 03	27 Feb 03	Approved without conditions
New Tsogo Sun Holdings and Tsogo Sun Holdings (Pty) Limited/Southern Sun Holdings (Pty) Limited	13 Feb 03	24 Feb 03	24 Feb 03	14 Mar 03	Approved without conditions
Masstores (Pty) Limited and Masana Limited and MGS Handy House (Pty) Limited	18 Feb 03	03 Mar 03	03 Mar 03	31 Mar 03	Approved without conditions
Compagnie Gervais Danone and Clover Beverages Limited and Clover SA (Pty) Limited and Danone Clover (Pty) Limited	19 Feb 03	03 Mar 03	03 Mar 03	14 Mar 03	Approved without conditions
FirstRand Bank Limited and Saambou Bank Limited	21 Jan 03				Jurisdiction withdrawn by Minister of Finance
Saambou Bank Limited and FirstRand Bank Limited	21 Jan 03				Jurisdiction withdrawn by Minister of Finance
Pepkor Limited and Fashaf (Pty) Limited	04 Mar 03	02 Apr 03	02 Apr 03		Pending
ABSA Bank Limited and MEEG Bank Limited	31 Mar 03	09 Apr 03	09 Apr 03	17 Apr 03	Approved without conditions

### Turnaround times for large mergers

72,6% of the large merger notifications (ie 45 out of 62) were heard within the ten-day period prescribed in the Tribunal rules. Hearings may be heard beyond the prescribed period when

- (i) further information is requested from the merging parties;
- (ii) a prehearing conference is required to clarify contentious issues and plan the logistics of the proceedings;
- (iii) parties request more time to prepare their case.

In terms of its rules, the Tribunal is required to issue an order within ten days of the hearing. In 61 of the 62 decided cases, the order was released within the ten-day prescribed period. In 49 of these 62 cases the order was released on the same day as the hearing.

The Tribunal issued written reasons for its decision within the prescribed 20-day period in 44 of the decided cases.

# COMPETITION ISSUES RAISED IN LARGE MERGERS

## Pre-empting anti-competitive behaviour



The Competition Tribunal prohibited the vertical merger between Mondi Limited (Mondi) and Kohler Tubes (KC&T), a division of Kohler Packaging Limited.

Mondi, a supplier of paper products (including those used in the manufacture of cores and tubes in the upstream market) was to acquire the cores and tubes division of Kohler Limited, one of Mondi's downstream customers.

Mondi is also a customer of cores and tubes from Kohler as certain of Mondi's other paper products, for example newsprint, are wound on to cores and tubes.

The Tribunal found that the proposed merger was likely to substantially prevent or lessen competition in both the upstream and downstream markets for the following reasons:

- The transaction would raise the cost of conducting business by

rivals of Mondi and Sappi (the other South African producer of paper products) in the upstream market.

- The transaction would raise the cost of conducting business by rivals of KC&T in the downstream market.
- The transaction would cement the domestic duopoly between Sappi and Mondi. In addition, it would enhance the possibilities for tacit or direct collusion between Sappi and Mondi by facilitating the exchange of pricing and other sensitive information in the upstream market and in a number of other markets in which both are engaged.

The Tribunal noted in its decision that *"its responsibilities under the Act do not permit it to simply shrug off an anti-competitive structure with the observation that a member of the oligopolistic market would be able to pursue a collusive strategy . . . should it wish"*. The Act requires that, under these structural conditions, the Tribunal exercises particular vigilance and, in the present instance, a vigilant examination revealed that the merger did indeed 'enhance the possibilities for collusion between Sappi and Mondi'.

Counsel for the merging parties had cautioned the Tribunal against being *" . . . seduced by speculative arguments, which are easy to conjure up but altogether more difficult to prove . . ."*.

In response to this argument, the Tribunal said: *"As a statement of general principle this caution is, of course, unimpeachable, even trite. But in the context of merger adjudication it invites comment . . . a prediction must be supported by evidence, but no amount of reliable evidence will remove the predictive or 'probabilistic' element in merger adjudication. This is explicitly recognised in the Act, which enjoins us to determine the 'likely' consequences of a transaction before us. The Act provides explicitly for a regime where the effect of a merger is assessed prior to its implementation. The necessary implication of this regime is that adjudication is a priori, not post hoc. Since the merger has not taken place at the time of adjudication and indeed may not take place at all, an element of prediction regarding what may happen after implementation is inherent in the statutory design. Fortunately significant advances in economic theory, particularly in game theory, have eased the task of prediction – based on observations of past behaviour and on the rational responses of profit maximising firms to a given set of incentives we are able to make predictions from a strong scientific basis."*

In February 2003 the Competition Appeal Court dismissed an application brought by Mondi Limited to set aside the decision of the Competition Tribunal to prohibit the merger.



## Notifiable merger raises competition concerns



On 19 April 2001 the Competition Tribunal found that the transaction between Distillers Corporation and Stellenbosch Farmer's Winery Group (SFW), which resulted in the formation of Distell, qualified as a notifiable merger in terms of section 12 of the Competition Act.

Distillers and SFW had not notified their merger on the grounds that it had not resulted in a change in ownership. Proceedings were instituted before the Tribunal by Distell's competitor, Bulmers, to declare the transaction notifiable. Subsequent to the Tribunal's finding, the parties notified the merger to the Competition Commission and the transaction was investigated and evaluated by the Commission.

The Competition Commission recommended that the merger be approved subject to conditions relating to the divestiture of brandy, gin and sparkling wine products.

The Tribunal however identified three relevant markets, namely the value spirits market, proprietary spirits market and the premium spirits market, and subsequently found on 6 February 2003 that the merger was likely to cause a substantial lessening of competition in only one market, ie the market for proprietary spirits which includes medium-priced brandy, whisky, gin, vodka and cane brands.

The Tribunal found that the merger would not result in a substantial lessening of competition in the other two segments of the spirits market – the value spirits market and premium spirits market. This was due to low entry barriers in the value spirits market segment and penetration of the value market not entailing the considerable expense and lead times required in brand building. In addition, said the Tribunal, *"We are persuaded that the unusually significant production of low value wine in South Africa, will nevertheless constrain pricing practices in the value segment, a segment where price, above all, determines consumer behaviour"*.

The Tribunal noted that the *"existence of effective local distribution channels coupled with the importance of well-established brands means that entry into the premium market is relatively easy"*.

The Tribunal said it was *"less sanguine regarding the outlook for competition in*

*the proprietary segment. Distell's post-merger market share in this sector is considerable. We accept that Distillers enjoyed a considerable pre-merger market share of this segment. However, the merger with SFW has added important brands to the Distillers' armoury, notably the brandy brands, Martell 5 Star and Mellow Wood 5, and Mainstay cane and vodka"*. Also, *"barriers to entry in the proprietary spirits market are significant. In particular, successful penetration of this sector clearly requires considerable investment in brand building. In addition for successful penetration of the proprietary segment not only is investment in branding important but high volumes are crucial as well. It appears that a premium brand earns such high margins that it is wholly possible to sustain market entry on the basis of very low sales volumes. Where the proprietary brands are concerned it appears that not only must the brands be solid, but they must also achieve considerable sales volumes. This twin requirement makes for very high barriers to entry indeed"*.

After a hearing on appropriate remedies to be imposed, the Tribunal ordered Distell to relinquish control of two key brands in the South African proprietary spirits market, namely the Martell and KWV brands and, in addition, said that a director or nominee of KWV (or any company in the group) could not be appointed as a director of Distell.

# COMPETITION ISSUES RAISED IN LARGE MERGERS

(continued)

## Taking into account local and global concerns



On 18 June 2002 the Competition Tribunal approved the merger between packaging companies, Nampak Limited and Malbak Limited, subject to the condition that the merged firm sell its Bubblepak insulation machine to a third party approved by the Competition Commission. Prior to the merger, Nampak and Malbak were the 41st and 77th largest packaging companies respectively in the world.

The divestiture was ordered by the Tribunal to maintain competition in the market for thermal insulation and was based on an agreement between the merging firms and the Commission prior to the hearing.

The Tribunal's decision to conditionally approve the merger between Nampak

Limited and Malbak was "rooted in evidence, which strongly indicates significant developments in the manner in which multinational corporations organise their global production". The Tribunal stated that: "these are manifest in an increasing centralisation at selected locations of production units capable of serving a regional, continental or, even, global customer base. In a parallel development, multinational companies producing consumer non-durables, even those multinationals unable to centralise their production, are moving rapidly toward single-source purchasing of major inputs, including packaging."

The Tribunal said: "these developments underpin a significant bifurcation in the relevant markets that we have identified. Indeed, it is our view that we are in the midst of a development in the direction of separate relevant markets for, on the one hand, the sale of packaging services to multinational customers and, on the other hand, their sale to customers who produce predominantly for their domestic markets. The former will be served uniquely by global packaging giants, firms with production facilities whose scale and global spread enables them to meet the requirements of their

multinational customers. The latter will be served by these multinational producers in the national markets in which they are located but they will also be served by local packaging firms whose scale does not allow them to compete for the work of the multinationals but who are perfectly capable of competing for the custom of the national producers.

"While we cannot yet confidently find that these developments have already given rise to separate relevant markets, we are certain that they impact significantly on the competitive structure of the packaging industry. The merging parties are, it appears, positioning themselves for competing for the custom of the multinationals. In so doing, they will compete with other global packaging giants in a competitive international market. The merged entity will also compete in the national packaging market, the market in which South African non-durable good producers procure packaging services. Although the merged entity will occupy a powerful position in this latter market, here they face robust competition from local producers and the prospect of relatively low entry barriers."



## Different decision in furniture sector rooted in changing market conditions



The Competition Tribunal conditionally approved the merger between furniture retailers JD Group and Profurn Limited. The conditions addressed concerns that the deep-seated relationship between the JD Group and Steinhoff, the country's largest furniture manufacturer and JD's largest supplier, would, in the post-merger scenario, result in the independent manufacturers losing custom to Steinhoff. In turn this customer foreclosure would see the demise of the independent manufacturers.

The Tribunal said in its decision: . . .  
*"we have imposed conditions on the JD Group in relation to its purchase*

*of supplies from independent furniture manufacturers. The various chains that make up the newly merged firm will be obliged to purchase from independents, at least in the same proportion as they do presently. The conditions will be in force for the next three years, after which they fall away. During the period in which the conditions are in force, independents will have an opportunity to compete for the JD Group's custom whilst adjusting to the changes in the retail sector. The order of the Tribunal obliges the JD Group to submit an annual report from its auditors confirming that the retail chain is abiding by this condition. The conditions do not oblige the JD Group to use any particular independents, even those who have traditionally supplied the Profurn group. This means that the JD Group will not be forced to support inefficient suppliers and thus raise its costs in relation to those of its rivals".*

The Tribunal did not impose conditions in relation to horizontal aspects of the merger. Although it said that the elimination of Profurn as a competitor would diminish competition, the Tribunal was not persuaded that this

would be as a result of the merger. The Tribunal also referred to the JD/Ellerine merger, which they prohibited two years ago.

*"Profurn has ceased to be the competitive force it was when the Tribunal considered the JD/Ellerine merger two years ago. Unlike Ellerines, and to a lesser extent the JD Group, the Profurn management misread the lower end of the market, and, aided and abetted by its major bankers expanded too rapidly without establishing a solid base. Even if the transaction with the JD Group did not take place, Profurn was a spent force in the lower end of the retail market and there were no other takers for its chains that operated at this end of the market. Profurn's customer base was thus bound to migrate to its rivals, in particular the JD, Ellerines and Relyant Groups, even absent the merger.*

*"The Ellerines group remains the JD Group's most effective rival. Had the Tribunal permitted its merger with the JD Group two years ago, the demise of Profurn would still have taken place and consumers at the low end of the market would be left with even less choice than they have today."*

# CASES BEFORE THE COMPETITION TRIBUNAL

(continued)

## 1.2 Intermediate

The Competition Commission is responsible for approving intermediate mergers. Parties may however appeal an adverse decision of the Commission to the Tribunal.

In the period under review the Tribunal received three applications to reconsider the decision of the Commission. One was received in the previous financial year but was decided in the period under review. Two of these cases were heard and approved with conditions, one was withdrawn and one was pending at year-end.

Merging parties	Date received	Date of hearing	Date of decision/order	Date of reasons	Decision
Astral Foods Limited and National Chick Limited	18 Dec 01	19 Feb 02 20 Mar 02	02 Apr 02	16 Apr 02	Approved with conditions
Bayer (Pty) Limited and Aventis CropScience (Pty) Limited	25 Jun 02	18 Sep 02	11 Oct 02	11 Oct 02	Approved with conditions
Digital Healthcare Solution (Pty) Limited vs The Competition Commission	12 Jun 02	28 Mar 03			Pending
Liberty Healthcare (Pty) Limited vs Competition Commission	05 Jul 02				Withdrawn

## 1.3 Small mergers

It is not mandatory to notify a small merger unless this is required by the Competition Commission if, in its opinion, the transaction may result in substantially preventing or lessening competition or it cannot be justified on public interest grounds. The Commission decides on the approval of small mergers and its decision may be appealed to the Tribunal.

One small merger notification was received by the Tribunal in the period under review. This case was still pending at year-end.

Merging parties	Date received	Date of hearing	Date of decision/order	Date of reasons	Decision
South African Airways (Pty) Limited and Air Tanzania Corporation	05 Mar 03				Pending

## 1.4 Failure to notify a merger

The Competition Act stipulates that an intermediate or large merger may not be implemented until it is approved by the competition authorities. The Act further provides for the Competition Tribunal to impose an administrative penalty on parties for failing to notify a merger or proceeding to implement a merger contrary to the decision of the authorities.

The Tribunal decided two cases relating to a failure to notify.

Merging parties	Date received	Date of hearing	Date of decision/order	Date of reasons	Decision
Structa Technology (Pty) Limited and Dorbyl Engineering Management Company and Fastpulse Trading 26 (Pty) Limited	11 Nov 02	28 Feb 03	24 Mar 03	24 Mar 03	Fined R1,00
Edgars Consolidated Stores Limited and Retail Apparel (Pty) Limited	20 Dec 02	03 Mar 03	24 Mar 03	24 Mar 03	Fined R250 000,00

## Sending the right message



The Tribunal released two separate decisions on 24 March 2003, relating to the implementation of a merger by merging parties without the prior approval of the Competition Commission. The first decision relates to the matter between The Competition Commission and Structa Technology (Pty) Limited and Others and the second between the Competition Commission and Edgars Consolidated Stores Limited and Retail Apparel (Pty) Limited.

In *Structa/Dorbyl*, the merging parties had not notified the Commission of the merger because they considered it to be below the notification threshold. The merger comprised a joint venture agreement between Dorbyl Engineering Management Company (Pty) Limited and Fastpulse Trading 26 (Pty) Limited in terms of which each held a 50% share in Structa Technology (Pty) Limited. On the advice of their attorney the merging parties requested an advisory opinion from the Commission who informed them that the merger was notifiable. The merger was subsequently notified, albeit after the merger was implemented.

The Tribunal imposed a symbolic fine of R1,00 on Structa Technology (Pty)

Limited, Dorbyl Engineering Management Company (Pty) Limited and Fastpulse Trading 26 (Pty) Limited.

The Commission had requested the imposition of a penalty of R250 000,00 for implementing the merger prior to approval by the Commission. The Commission contended that its task was to ensure compliance with the Act, and in so doing stop unlawful conduct, punish wrongdoers and deter or prevent unlawful conduct occurring or being repeated. However, in the Tribunal's view the imposition of a R250 000 fine, as recommended by the Competition Commission, would send decidedly mixed signals:

*"... the message that the Commission needs to send to the market is, that when in doubt, consult with the compliance division of the Commission, that the Act has wide jurisdiction and that it is better to err in notifying a non-notifiable merger than err in not notifying at all. One of the main objectives of compliance is to convince people that it is in their best interest to comply with the law, and not to force them to hide their transgressions once they realise that they have made a bona fide mistake. However, this is not the message that would be conveyed if a fine were imposed in this case. Indeed, precisely the converse is conveyed. Attorneys would advise their clients to rather keep quiet when a bona fide mistake is made because cooperation with the authorities will provide the authorities with the material necessary to mount a prosecution. In doing so law abiding citizens are forced to become fugitives. These are surely not the targets that the legislature had in mind when it drafted section 59(1)(d)(iv) of the Act".*

The Tribunal pointed out that when the parties realised they had made a mistake they immediately sought legal opinion and when they were told by their attorney to request the Commission compliance division to provide an advisory opinion they did so. The Tribunal found that although the Act had been contravened, it was *"... based on a bona fide error that embodie[d] no negative consequences"*.

In the second related case the Tribunal found that Edgars Consolidated Stores Limited (Edcon) and Retail Apparel Limited (RAG) had contravened the Competition Act in that they had implemented a merger prior to approval in terms of the Act. The transaction was implemented in two stages. The first leg involved Edcon purchasing RAG's book debt and certain ancillary rights, while in the second, Edcon purchased further assets of RAG and its subsidiaries. The parties were of the view that the second leg constituted a notifiable merger, but that the first did not as it did not amount to the acquisition of a business or part of the business.

The Tribunal held that the first leg constituted the acquisition of part of a business of the selling firm and hence constituted a merger in terms of the Act. Although the Tribunal found that the separation of the first and second transactions was designed to create a mechanism for Edcon to secure the book debt of RAG on an urgent basis to prevent the migration of customers to RAG's competition, it noted the danger in allowing parties to structure transactions in a way that could obviate their obligations to notify: *"If parties to asset transactions could purchase one standalone asset by*

# CASES BEFORE THE COMPETITION TRIBUNAL

(continued)

## Sending the right message

*agreement to form part of a severable agreement it is easy to see that this could be used to reduce the threshold for the merger notification either to make an otherwise large merger an intermediate one or to render it not notifiable at all."*

The Tribunal found however that the parties had only contravened the Act in one respect, namely implementing the merger prior to it being approved. In terms of the Act, when determining an appropriate penalty, the Tribunal must consider a range of other factors. The Commission had asked the Tribunal to impose a fine of R85 552 610,00 (later changed to half that amount) on the grounds that the Edcon's purchase of RAG's book

debts constituted a merger and that Edcon had contravened the Act by implementing the merger prior to approval.

The Tribunal found that the Commission's proposed fine was inappropriate:

*"In essence, the violation is one of a procedural rather than substantive provision of the Act; this coupled with the fact the respondents had never intended to evade substantive scrutiny of the merger suggests that a fine far lower than proposed by the Commission is appropriate. On the other hand it cannot be so low a firm would regard it as worth evading the procedural prerequisites of the Act to secure a quick deal."*

The Tribunal further stated that at worse the parties wanted to evade the delay associated with obtaining regulatory approval, but warned that although a lesser form of evasion, it cannot be treated with impunity as all mergers cause parties delay ". . . and that is a reality which firms must accept and factor into their activity".



## 2. RESTRICTIVE PRACTICES

A single firm or a combination of firms, regardless of size or structure, may transgress the Competition Act by engaging in prohibited horizontal (relationships between competitors) and vertical (relationships between suppliers, producers and distributors) restrictive practices.

Prohibited practices are set out in Chapter 2 of the Competition Act. In terms of the Act, certain restrictive practices, as well as the abuse of a dominant position, is prohibited. Restrictive practices include the following:

- Horizontal or vertical relationships between parties which prevent or lessen competition;
- Restrictive horizontal practices, include price fixing, market division between firms and collusive tendering;
- Minimum resale price maintenance.

A firm that is dominant may not pursue the following practices:

- Charge excessive prices;
- Refuse access to an essential facility;
- Engage in exclusionary acts, such as requiring or inducing a supplier or customer not to deal with a competitor; refusing to supply scarce goods to a competitor; tying sales or purchases or making them conditional; or buying up scarce resources required by a competitor;
- Engage in price discrimination if it prevents or lessens competition; involves the equivalent sale of goods and services of like grade and quality to different customers; or involves discrimination between customers in terms of price, discounts, allowances, rebates, credit, the payment for and the provision of goods and services.

### 2.1 Interim relief brought by complainant

The Competition Act allows for a complainant, in certain circumstance, to seek interim relief when it has lodged a complaint with the Commission. Of the five interim relief applications heard during the period under review two were dismissed, two are pending and one was withdrawn.

Three applications were received in the period under review. Of the three, one was dismissed, one was withdrawn, and one is pending. Two were received in the previous financial year but heard in the current period. Of these two, one was dismissed and one is pending.

Applicant	Respondent	Summary	Basis of complaint			Date received	Date of hearing	Date of order/ reasons	Outcome
			HRP	VRP	AOD				
Pharmaceutical Wholesalers	Glaxo Wellcome (Discovery Application) The Competition Commission	The Tribunal granted interim relief to nine pharmaceutical wholesalers against five multi-national pharmaceutical manufacturers and an exclusive distribution agency formed by them to distribute their products. The Tribunal ordered the pharmaceutical manufacturers to resume supply to the wholesalers on terms and conditions which were applied prior to the formation of the joint exclusive distribution agency. This was successfully appealed by the manufacturers and the Competition Appeal Court ordered that the matter be referred back to the Tribunal for a further hearing.	4(1), (a)			08 Jun 00	18 – 20 Mar 03		Pending
Southern African Fruit Terminals (Pty) Limited	Portnet, Transnet, Capespan (Pty) Limited, International Harbour Services (Pty) Limited	The applicants sought the use of Portnet's Quayside Cold Storage facilities which they claimed were being used exclusively by a competitor, Capespan. The applicants wanted use of these cold storage facilities on competitive terms and wanted the Tribunal to vary or expunge all provisions in the lease agreements between Portnet and Capespan which expressly or tacitly reserved or provided for exclusive use of such facilities.		5(1) 5(2)	8(b), 8(c) 8(d) (ii)(iv) and 9	19 Sep 01	04 and 05 Mar 02	29 Apr 02	Dismissed
Nkosinathi Ronald Msomi and 10 others	British American Tobacco South Africa (Pty) Limited	An urgent application for interim relief brought by 11 cigarette wholesalers and distributors trading in KwaZulu-Natal against British American Tobacco South Africa (Pty) Limited ("BAT") was dismissed by the Competition Tribunal. The wholesalers alleged that a new agreement, which BAT sought to implement, contained clauses which would substantially prevent or lessen competition between wholesalers/distributors in the cigarette market. The Tribunal was asked to prohibit BAT from cancelling its previous agreement with the wholesalers and distributors and to order it to continue trading on the same basis.		5(1) 5(2)	8(c)	17 Jul 02	31 Jul 02	31 Jul 02 30 Aug 02	Dismissed
Stemcor (Pty) Limited	Saldanha Steel (Pty) Limited, Iscor Limited and Others	An urgent application for interim relief brought by Stemcor, an agent for the distribution of steel products, against Iscor. Stemcor asked for an order to prevent Saldanha Steel from cancelling its contract with Stemcor. At the time Stemcor was Saldanha's major export agent. Stemcor's contract with Saldanha Steel was not renewed when Iscor took over Saldanha Steel, on the basis that Iscor had an exclusive distribution contract with MacSteel.	4(1)(a) and 4(1)(b)	5	8(c) and 8(d)	30 May 02	31 May 02	31 May 02	Withdrawn

# CASES BEFORE THE COMPETITION TRIBUNAL

(continued)

Complainant	Respondent	Summary	Basis of complaint			Date received	Date of hearing	Date of order/ reasons	Outcome
			HRP	VRP	AOD				
Magazine Street Sales	Caxton Magazines (Pty) Limited and Republican News Agency	Magazine Street Sales (MSS) brought an application to the Competition Tribunal against Caxton Magazines (Pty) Limited and Republican News Agency alleging that they had contravened section 8(c) alternatively 8(d)(i) in that Caxton as a dominant firm had engaged in an exclusionary act in that it had prevented Republic News Agency from supplying Magazine Street Sales with copies of Marie Claire and Rooi Rose magazines. MSS sought an order for the re-instatement of supplies of those magazines to MSS by Caxton. MSS subsequently withdrew their application.			8(c) and 8(d)(i)	10 Oct 02			Pending

## 2.2 Complaint referral from the Competition Commission

Complaints of prohibited restrictive practices are investigated by the Competition Commission and, if the Commission finds that there is a basis for the complaint, referred to the Competition Tribunal for adjudication.

In the year under review the Tribunal received five referrals from the Commission and six referrals were pending from the previous year. The Tribunal agreed to two consent orders and decided a further two cases. Seven cases were pending at year-end.

Complainant	Respondent	Summary	Basis of complaint			Date received	Date of hearing	Date of order/ reasons	Outcome
			HRP	VRP	AOD				
Jakobus Johannes Petrus Bezuidenhout and Jan Daniel du Preez	Patensie Sitrus Beherend Beperk	The Commission submitted that the respondent is a dominant firm in the relevant market and by requiring its shareholders to deliver their produce to it, it is fixing a trading condition. In addition, by preventing the complainants from selling their produce to its competitors, it is engaging in prohibited practices in contravention of the Competition Act.			8(d)(i)	22 Jun 01	27 and 28 Feb 02	08 Apr 02	Granted
Mainstreet 2 (Pty) Limited t/a New United Pharmaceutical Distributors and Others	Novartis SA (Pty) Limited and Others	Nine pharmaceutical wholesalers complained that an exclusive distribution agency formed by a group of pharmaceutical manufacturers was in contravention of the Competition Act. The pharmaceutical manufacturers have taken the Commission decision to refer the case to the Tribunal on review to the High Court. The manufacturers have also asked the Tribunal to dismiss the case.	4(1)(a) and 4(1)(b)(i)	5(1)	8(c) and 9(1)(c)(ii)	02 May 01	Pending		Pending
South African Forestry Company Limited	York Timbers Limited and CJ Rance (Pty) Limited	The Commission submitted that provisions in the contracts SAFCOL had with York Timbers Limited and CJ Rance (Pty) Limited constituted price discrimination by a dominant firm. As part of its relief the Commission sought to void certain provisions of these agreements. In November 2001 the Commission and SAFCOL entered into a consent order in which SAFCOL agreed to nullify certain clauses in its contract. The consent order was subsequently filed with the Tribunal for approval. York Timbers (Pty) Limited and CJ Rance (Pty) Limited opposed the granting of the consent order. At a hearing held on 19 June 2002 the Tribunal decided that it was not		5(1)		22 Jun 01	Withdrawn	26 Jun 02	Consent order not granted



Complainant	Respondent	Summary	Basis of complaint			Date received	Date of hearing	Date of order/ reasons	Outcome
			HRP	VRP	AOD				
		competent to grant the consent order without the consent of Rance and York. This matter has therefore come before the Tribunal again as a re-filing of the complaint referral by the Commission.							
South African Airlink (Pty) Limited	Hibiscus Coast Municipality	The Tribunal granted a consent order to Intensive Air, which confirmed an agreement between the Commission and the parties to remove a clause in the loan agreement between SA Airlink and Hibiscus Coast Municipality, which prevented Intensive Air from competing on the Johannesburg International Airport/Margate Airport route. The Commission found that this clause substantially lessened competition in the relevant market.		5(1)		17 Sep 02	15 Jan 03		Consent order
The Competition Commission	Uitenhage & Dispatch Independent Practitioners Association and Members	The Commission submits that UDIPA and its members engaged in price fixing in that the doctors charged a fixed fee to all patients belonging to a medical scheme, which UDIPA was contracted to. UDIPA has admitted that its constitution contains numerous clauses that contravene the Competition Act and has agreed to remove the offending clauses. In addition, the Commission has recommended that the Tribunal impose an administrative fine on UDIPA of R266 600. The Tribunal will decide whether to grant these agreements as consent orders.	4(1) (b)(i) and (ii)			08 Aug 02	11 Dec 02		Pending
Anglo American Corporation Medical Scheme and Engen Medical Fund	United South African Pharmacies	The Commission submits that by influencing its members or by reaching an understanding with its members to boycott servicing members of the complainant, the respondent's conduct amounts to an agreement between, or a concerted practice by firms in a horizontal relationship and it involves directly or indirectly fixing a purchase price or any trading conditions in contravention of section 4(1)(b)(i) of the Act.	4(1)(b)			17 Jan 02	Pending		Pending
The Competition Commission	Federal Mogul Aftermarket Southern Africa (Pty) Limited	The Tribunal found, on 29 January 2003, that Federal Mogul Aftermarket (Pty) Limited, a local subsidiary of US based Federal Mogul group had acted in contravention of section 5(2) of the Competition Act which prohibits the practice of minimum resale price maintenance (in other words, requiring retailers to sell to their customers at a minimum resale price). The Tribunal will hear submissions from the Commission and Federal Mogul regarding remedies. The Commission has asked that a fine be imposed on Federal Mogul.		5(2)		07 Feb 01	15, 26, 27, 28 Aug 02 19 Nov 02	08 Jan 03	Granted
The Competition Commission	Professional Basketball League Management and Others	The complaint, lodged by Basketball South Africa (BSA), relates to an agreement entered into between BSA and the Professional Basketball League Management (PBL), which contains a		5(1)		07 Aug 01	Pending		Pending

# CASES BEFORE THE COMPETITION TRIBUNAL

(continued)

Applicant	Respondent	Summary	Basis of complaint			Date received	Date of hearing	Date of order/ reasons	Outcome
			HRP	VRP	AOD				
		non-compete clause. The Commission argues that this constitutes a restrictive vertical practice and thus contravenes the Competition Act. The Commission has asked the Tribunal to delete the offending clause.							
The Competition Commission	Iscor Limited, Saldanha Steel (Pty) Limited	The Commission submitted that Iscor Limited and Saldanha Steel (Pty) Limited had contravened section 4(1)(b)(ii) and that certain clauses in the shareholder's agreement between Saldanha Steel and Industrial Development Corporation (IDC) and Iscor as well as in the supply agreement between Saldanha Steel and Duferco be declared void. The Commission filed an application to join the IDC and Duferco Steel Processing (Pty) Limited. The respondents excepted to the Commission's complaint referral. Filing is continuing.	4(1) (b)(ii)			05 Feb 03			Pending
The Competition Commission	SAFCOL, York Timbers Limited, CJ Rance (Pty) Limited	Following the Tribunal order denying the consent order between the Commission and SAFCOL, the Commission re-filed the complaint referral citing CJ Rance and York Timbers as respondents in the matter which relates to price discrimination.			9	05 Feb 03			Pending
North West Ceramics and Fazel Rhemtula	Italtile Franchising, Italtile Ceramics, Italtile Limited	On 3 September 2001 a complaint was lodged with the Competition Commission against Italtile Franchising. The complainants, franchisees of Italtile, alleged that Italtile engages in horizontal and vertical restrictive practices and that it abuses its dominance in the ceramic tiles and related markets. The Commission found that the respondents contravened section 5(2) of the Act by engaging in minimum resale price maintenance. The matter was referred to the Tribunal in December 2002. It is envisaged that the matter will be heard later this year.		5(2)		13 Dec 02			Pending

## 2.3 Brought by a complainant following a non-referral by the Commission

If the Competition Commission decides not to refer a complaint to the Tribunal for adjudication, the complainant may of its own accord bring an application directly to the Tribunal.

In the period under review, the Tribunal received six cases directly from a complainant and had four such cases pending from the previous year. One of these cases was withdrawn and the remaining nine were pending at year-end.

Applicant	Respondent	Summary	Basis of complaint			Date received	Date of hearing	Date of order/ reasons	Outcome
			HRP	VRP	AOD				
Avalon Group (Pty) Limited	Old Mutual Life Assurance Company of South Africa	The complainants allege that certain conduct by the respondent in relation to the allocation of cinemas at the Gateway development at Umhlanga constitutes a restrictive vertical practice and an abuse of dominance in contravention of sections 5(1), 8(b) and 8(c) of the Act.		5(1)	8(b) and (c)	14 May 01	Pending		Pending
National Association of Pharmaceutical Wholesalers and Others	Glaxo Wellcome (Pty) Limited and Others	The complainants allege that the respondents by establishing an exclusive distribution agency for their products and refusal to deal directly with the complainants is in contravention of sections 4 and/or 5 and/or 8 and/or 9 of the Act.	4	5	8 and 9	20 Jul 01	Pending		Pending



Applicant	Respondent	Summary	Basis of complaint			Date received	Date of hearing	Date of order/ reasons	Outcome
			HRP	VRP	AOD				
Justice for Foodies Committee and Others	Metcash Trading Limited	The complainants allege that the respondent in enforcing restrictive practices which include price fixing, forced purchases, prohibition against dealing with respondent's competitors and designated suppliers, is in contravention of sections 5 and 8 of the Act.		5(1)	8(a)	08 Aug 01	Pending		Pending
Videovision Entertainment (Pty) Limited	Old Mutual Properties and Others	The complainants allege that the lease agreement concluded between the respondent and Ster Kinekor Films (Pty) Limited constitutes a prohibited restrictive vertical practice under section 5(1) of the Act. Further that as the respondent is dominant in the market of renting premises for exhibition of films to the public, its decision not to grant the complainant a lease for the operation of cinemas at the Gateway shopping centre is an unlawful prohibited practice as contemplated in section 8(c) of the Act.		5(1)	8(c)	14 Sep 01	Withdrawn 05 Mar 03		Withdrawn
Pharmed Pharmaceuticals (Pty) Limited	Astrazeneca Pharmaceuticals (Pty) Limited and Others	Following a non-referral by the Commission, the complainant referred the complaint to the Tribunal in June 2002 alleging that the respondent had abused its dominance in the market by contravening sections 4(1)(a) and (b), s5, s8 (b), (c), (d)(i) and/or (ii) as well as s9 of the Act, in that it had inter alia charged excessive prices for their products and engaged in exclusionary acts. To date no further filings have been made.		5	8(b), 8(c), 8(d)(i), (ii) and 9	14 Jun 02	Pending		Pending
FFS Refiners (Pty) Limited	Eskom	Following a non-referral by the Commission, the complainant, FFS, referred a complaint to the Tribunal against Eskom, alleging that Eskom is abusing its dominance by selling electricity at below marginal or average variable cost, engaging in general exclusionary conduct and price discrimination, and has entered into a vertical agreement with EB Steam, which is substantially preventing or lessening competition in the market. Eskom excepted to the complaint referral, which was upheld by the Tribunal with FFS being given 20 days to cure the defects in the complaint referral.		5(1)	8(c) 8(d)(i), (iv) and 9(1)	11 Sep 02			Pending
Independent Estate Agents Action Committee	KwaZulu-Natal Property Services Limited and Others	The parties are in the real estate business. The complainants allege that the respondent and its members are engaged in a collusive arrangement which inter alia, divides markets, fix sales commission payable by sellers to members, fix the division of sales commission between members and between each member and its sales personnel. They further allege that the respondent whose shareholders are estate agencies which account for over 80% of business in the greater Durban area, have abused their dominance by refusing to permit non-member real estate agents access to an essential facility viz the Network Listings System.	4(1)(a) and 4(1)(b)(i)		8(b), (c) 8(d)(i), (iii)	25 Apr 02			Pending

# CASES BEFORE THE COMPETITION TRIBUNAL

(continued)

Applicant	Respondent	Summary	Basis of complaint			Date received	Date of hearing	Date of order/ reasons	Outcome
			HRP	VRP	AOD				
Sadick Mukaddam	Ster Kinekor, Nu Metro and United International Pictures	Following a non-referral by the Commission, the complainant, an owner of a cinema in Paarl, alleged that the respondents, who are suppliers to the complainant, contravened the Act by inter alia, supplying him with movies which have been shown for a considerable period in other cinemas and by requiring him to pay a guarantee which other cinemas are not subjected to.	4(1) (a), 4(1) (b)(i) and (ii)		8 and 9	16 Sep 02	Pending		Pending
BLSA Industries (Pty) Limited	Aquachlor (Pty) Limited, Arch Chemicals (Pty) Limited, Board on Tariffs and Trade	The Commission submitted that Arch Chemicals, in applying to the Board on Tariffs and Trade (BTT) for an increase of 10% ad valorem in the customs duty on active ingredients which comprise the complainant's product, is committing an exclusionary act in terms of section 8(c), by impeding or preventing BLSA Industries from expanding the sales of its product within the SA market. They sought an order directing the BTT to refuse the application. Arch Chemicals, in answer, contended inter alia, that the Tribunal does not have jurisdiction over the BTT and government ministers insofar as a declarator by the Tribunal would circumvent their ministerial power. The complaint referral was subsequently withdrawn.			8(c)	20 Dec 02			Pending
Shield Stain (Pty) Limited	Afrox Limited	The complainant Shield Stain alleges that African Oxygen (Afrox) is engaged in anti-competitive behaviour by abusing its dominance in the relevant market. Afrox supplies gases used in the welding industry and it is alleged that Afrox enters into supply agreements which are essentially exclusive and anti-competitive.			8(a), 8(c), 8(d) and 9(1)	13 Dec 02			Pending

## 3. DECISIONS ON PROCEDURE AND POINTS OF LAW

The new competition legislation and lack of jurisprudence has resulted in a number of cases which have required clarification. These cases have contributed towards building up a body of jurisprudence.

Nine cases on procedure and points of law were received in the period under review, eight were decided and one is pending. One case was received in the previous financial year and decided in the current period.

Applicant	Respondent	Point of law	Date received	Date of hearing	Date of order/ reasons	Decision
Independent Estate Agents Action Committee	Kwazulu-Natal Property Services Limited and Others	Whether the second interim relief application by the wholesalers is dismissible as an abuse of process.	25 Apr 02	18 Nov 02	22 Nov 2002	The application to dismiss the second interim relief was dismissed
Pharmaceutical Wholesalers	Glaxo Wellcome (Discovery Application), The Competition Commission	Whether the Commission has jurisdiction to refer the complaint to the Tribunal after the requisite one-year period has lapsed.	13 Aug 01	08 May 02	23 May 02	The Commission was not precluded by operation of law from continuing its investigation. It therefore has no jurisdiction to refer the complaint to the Tribunal and is deemed to have issued a notice of non-referral to the complainants
IDC	Anglo American (Intervention)	Intervention application	26 Jun 02	19 Sep 02	26 Sep 02	Intervention granted

Applicant	Respondent	Point of law	Date received	Date of hearing	Date of order/ reasons	Decision
IDC	Anglo American (Scope)		26 Jun 02	15 Oct 02	23 Oct 02	Scope determined
IDC	Anglo American (Intervention)	Intervention application	26 Jun 02	11 Dec 02	24 Dec 02	Intervention granted
Anglo American Corporation Medical Scheme and Competition Commission	United South African Pharmacies and Others	Intervention application	17 Jan 02	28 May 02	04 Jun 02	Intervention granted
The Competition Commission of South Africa and Anglo American Medical Scheme and Engen Medical Fund	United South African Pharmacies and Members of United South African Pharmacies and further Respondents	Exception application	17 Jan 02	11 Dec 02	22 Jan 03	Some exceptions were upheld and some were dismissed
Astral Foods Limited	National Chick Limited	Application for intervention	27 Nov 02	06 Feb 03	20 Feb 03	Intervention granted
Astral Foods Limited	National Chick Limited	Application to vary the Tribunal's order	27 Nov 02			Pending
FFS Refiners (Pty) Limited	Eskom	Exception application	11 Sep 02	10 Feb 03	21 Feb 03	Exception upheld

## Broadening rules of intervention



On 19 September 2002 the Competition Tribunal heard an application by the Industrial Development Corporation of South Africa (IDC) to intervene in the large merger between Anglo American Holdings and Kumba Resources. The merging parties opposed this application because they claimed, primarily, that the IDC did not have a "material interest" in the proceedings given that they were merely a minority shareholder in the target firm.

On 20 September 2002 a single member of the Tribunal heard this application and allowed the IDC to intervene on the grounds of its holdings in Kumba and Iscor and its statutory role in the economy.

Anglo American successfully appealed this decision on the basis that the Tribunal rule that allowed a single member to hear the application was not consistent with the Act, which required the matter be heard by a panel of three members.

On 24 December 2002 a three-member panel of the Competition Tribunal was persuaded that the IDC demonstrated good cause in its application to participate in the merger proceedings. The panel members found that the IDC satisfied the criteria of having a "material interest" in the mergers, that its interests were within the scope of the Act and that its interest were not represented by any other participant. In addition, the panel

said that the IDC had a significant and relevant contribution to make in the adjudication of the large mergers and that its participation would facilitate the Tribunal's truth seeking objective.

Anglo American once again appealed this decision to the Competition Appeal Court challenging the Tribunal's finding that the IDC had shown "good cause" to participate in the merger proceedings.

The Competition Appeal Court (CAC) dismissed this appeal. The CAC said, *"In short, the Tribunal has acted judicially when it exercised its discretion in favour of allowing a party who is in a position to show that the party's participation would assist the Tribunal in fulfilling its mandate in accordance with the provisions of the Act". "The Tribunal is not confined to submissions or evidence placed before it by the parties to the merger or people who have 'an interest' in the merger.*

# CASES BEFORE THE COMPETITION TRIBUNAL

(continued)

## 4. EXCEPTION APPLICATIONS

The Tribunal expanded on its approach to exception proceedings in two cases heard in the current period.

In *The Competition Commission and Anglo American Medical Scheme (“AACMED”) and Another/United South African Pharmacies (“USAP”) and Others*, the Tribunal reiterated that its approach to exception applications, is “less strict than would be a High Court’s”. This approach is based on two observations. Firstly, the principles of exception applications derive from adversarial proceedings, which seek the vindication of private rights, while the Tribunal’s proceedings provide a forum for the vindication of the public interests. Secondly, the Act allows the Tribunal to “step into the ring” in exercising its inquisitorial powers, thus pleadings play a less central role in its proceedings. Where appropriate the basis for exceptions can be cured by parties being given the opportunity to rectify their papers in further affidavits.

However, the Tribunal also noted that: “. . . *this does not mean that a respondent is required to answer to any type of pleading proffered, regardless of its impoverishment of fact or legal averment. Fairness is also a standard that our procedures must meet. Respondents are entitled to understand the case being made out against them. The standard set out in Rule 15 of the Tribunal Rules must be adhered to.*”<sup>1</sup>

Accordingly, in *FFS Refiners (Pty) Limited/Eskom and Others*<sup>2</sup> the Tribunal found that this standard had not been met by FFS Refiners, thus the exceptions raised by Eskom were upheld. FFS Refiners were given twenty days from the date of the decision to cure the defects in the complaint referral.

<sup>1</sup> See page 2 of the above decision.

<sup>2</sup> Case No 64/CR/Sep 02. See decision on exception application.

## THE COMPETITION APPEAL COURT

The Competition Appeal Court is a specialised division of the High Court of South Africa. It hears appeals and reviews of Tribunal decisions. It is the court of final instance in respect of competition issues.

The members of the court are:

Judge Dennis Davis (Judge President)

Judge Thabani Jali

Judge Selwyn Selikowitz

Judge Ismail Hussain

Judge Lucy Mailula

Judge Francois Malan

The Competition Appeal Court Judges have participated in the workshops and conferences outlined on page 8.

In addition three judges attended the Fordham AntiTrust Conference and following this visited the AntiTrust Division of the US Department of Justice and Federal Trade Commission.

### Cases brought before the Competition Appeal Court

Ten applications were made to the Competition Appeal Court in the period under review. Nine of these cases were heard and one was withdrawn. Of the nine heard, six decisions were handed down and three decision were pending at year-end.

Appellant	Respondent	Date of appeal	Bench	Date of decision	Decision
Schumann-Sasol and Prices Daelite	Competition Tribunal	27 Mar 02	Davis, JP Selikowitz, JA Hussain, JA	27 Jun 02	The decision of the Competition Tribunal was set aside and the merger approved
Southern African Fruit Terminals (Pty) Ltd	Portnet; Capespan; International Harbor Services; Fresh Produce Terminal	21 May 02			Withdrawn
Glaxo Wellcome (Pty) Limited, and 6 others	National Association of Pharmaceutical Wholesalers and 8 others	18 Jun 02	Selikowitz, JA Malan, AJA Hussain, JA	21 Oct 02	The appeal was upheld and the decision of the Tribunal amended The cross-appeal was dismissed with costs of two counsel



Appellant	Respondent	Date of appeal	Bench	Date of decision	Decision
American Soda Ash Corporation and CHC Global (Pty) Limited	Competition Commission of South Africa, Botswana Ash (Pty) Limited and Chemsolve Technical Products (Pty) Limited	21 Jun 02	Davis, JP Jali, JA Mailula, AJA	24 Oct 02	The appeal was dismissed with costs including the costs of two counsels
Mondi Limited and Kohler Cores and Tubes, a division of Kohler Packaging Limited	Lewis, Manoim, Zilwa, Competition Tribunal and Competition Commission	25 Sep 02	Davis, JP Hussain, JA Mailula, AJA	14 Feb 03	The appeal was dismissed
Anglo SA Capital and Anglovaal Mining Limited	Competition Tribunal	15 Nov 02	Davis, JP Jali, JA Selikowitz, JA	26 Nov 02	Tribunal decision on intervention and scope set aside and matter referred back to three member panel of Competition Tribunal for determination
Patensie Sitrus Beherend Beperk	The Competition Commission, Jakobus Johannes Petrus Bezuidenhout and Jan Daniël du Preez	09 Dec 02	Selikowitz, JA Hussain, JA Malan, AJA		Pending
Anglo South Africa Capital (Pty) Limited, Anglovaal Mining Limited, Anglo American Holdings Limited, Kumba Resources Limited	The Industrial Development Corporation of South Africa Limited and The Competition Commission of South Africa	14 Feb 03	Davis, JP Jali, JA Selikowitz, JA	28 Mar 03	Appeal dismissed with costs
Old Mutual Properties (Pty) Limited, Old Mutual Life	Competition Tribunal, N Manoim NO, Avalon Group, Primedia Limited Assurance Company (SA) Limited, Ster Kinekor	28 Mar 03	Jali, JA Hussain, JA Malan, AJA		Pending
Sappi Fine Paper (Proprietary) Limited	Competition Commission, Papercor cc	28 Mar 03	Davis, JP Mailula, AJA Patel, AJA		Pending

## CORPORATE GOVERNANCE

### 1. Performance indicators

In January 2003 the Tribunal contracted with KPMG Services to complete a review of the Tribunal's key performance indicators.

The Tribunal had previously reported their performance against predetermined targets but these targets related to operational day-to-day activities and are not easily linked to strategic objectives set. The challenge facing the Tribunal is to adopt a set of indicators that provide a holistic overview of the Tribunal's core activities and are aligned to strategic objectives set. A limiting factor is the Tribunal's inability to proactively set objectives and targets and to accurately predict anticipated cases. This arises as the Tribunal's workload is driven by cases brought to it in terms of the Act and the caseload is entirely determined by referrals from external parties while operating costs, notably salaries and assets, remain largely fixed.

KPMG made numerous recommendations, which the Tribunal will consider, and which we hope will serve as a basis for the establishment, future functioning and improvement of the Tribunal's performance management.

KPMG also recommended an alignment of the objectives set by the Tribunal and those set by the Consumer and Corporate Regulation programme – this will ensure striving towards a common goal and will enable the dti to measure the impact of the Tribunal on the economy of South Africa.

### 2. Compliance with legislation

#### 2.1 The Competition Act, 1998

The functions, activities and procedures of the Competition Tribunal are prescribed by the Competition Act, 1998 and the rules of the Competition Tribunal.

#### 2.2 The Public Finance Management Act, 1999

The Tribunal has been listed as a national public entity in schedule 3 A of the Public Finance Management Act 1999 (PFMA) since 1 April 2001. The PFMA prescribes requirements for accountable and transparent financial management in the institution. The Tribunal submitted a PFMA compliance schedule to the dti in July 2002.

# CORPORATE GOVERNANCE

(continued)

Treasury regulations require that institutions draft an *investment policy* for approval by the accounting authority. The Tribunal submitted its investment policy to the dti in February 2002. A response was received in October 2002, which the Tribunal queried, and as at March 2003, no approval of this policy had been received.

In accordance with the PFMA and treasury regulations the Tribunal has submitted its *business plan* and *budget* to the dti. In addition, quarterly reports on the Tribunal's expenditure, budget variance and activities have been submitted.

## 2.3 Audit committee

The audit committee, which was established in March 2000, has met three times in the year under review. An audit committee charter adopted in December 2000 outlines the audit committee functions.

The audit committee reviewed quarterly internal audit reports; internal and external audit plans, the annual report and financial statements for the period ending 31 March 2002 during these meetings.

The audit committee has continued to assist the executive committee in fulfilling its oversight responsibilities as they relate to internal controls, risk management, compliance with laws, regulations and ethics and financial management.

The membership of the audit committee has remained unchanged this year.

### Executive members

- David Lewis
- Shan Ramburuth
- Janeen de Klerk

### Non-executive members

- Sakhile Masuku – chairperson
- Thabo Mosololi
- Nonku Tshombe
- Tobie Verwey

## 2.4 Internal audits

The internal auditing function for the Tribunal has been performed by KPMG. KPMG was awarded a three-year contract beginning 1 April 2002. In the current financial year, KPMG performed a strategic risk assessment, one internal audit and an IT risk management review. A second internal audit for the period under review will be conducted in early April 2003.

The audit committee approved an internal audit charter in June 2002.

The first internal audit focused on the registry, research and case management sections of the Tribunal and the effectiveness of controls for strategic risks. Process level risks with high residual risk were evaluated.

The objective of the IT risk management review was to assess the level of risk within the IT environment.

## 2.5 External audit

The office of the Auditor-General has completed an external audit for the period ending 31 March 2003.

## 2.6 Statutory requirements

The Tribunal has registered and met its obligations on the following levies and taxes:

- Skills Development levy
- Workmen's Compensation
- Regional Services Council (RSC) levy
- Unemployment Insurance Fund (UIF)
- Value added tax (VAT)
- Pay as you earn (PAYE)

The Receiver of Revenue exempted the Tribunal as tax liable in terms of section 10(1)(a) of the Income Tax Act (1962) in November 2000.

### 3. EXECUTIVE COMMITTEE

The executive committee, which provides direction, makes expenditure decisions and receives reports from the chief executive officer and the head of finance has had 13 meetings in the period under review. The composition of the executive committee has remained unchanged and is as follows:

#### Members

- David Lewis, chairperson
- Marumo Moerane, deputy chairperson
- Shan Ramburuth, CEO
- Janeen de Klerk, head of finance
- Norman Manoim, full-time Tribunal member

### 4. CASE MANAGEMENT MEETINGS

The Tribunal has a case management committee which meets weekly to assist the chairperson in setting down matters on the Tribunal roll, convening panels and overseeing the administration and logistics for hearings. These meetings track progress in cases and ensures adherence to time frames and procedures stipulated in the Act. The committee comprises the chairperson of the Tribunal, CEO, the full-time member, the case managers, the executive secretary to the chairperson and the head of registry.

### 5. TRAINING AND HUMAN RESOURCE DEVELOPMENT

#### 5.1 Staff composition

At the beginning of the period under review the Tribunal secretariat consisted of 11 staff. During the course of the year we had two resignations.

Shaazia Bhaktawer replaced Thulani Kunene when she was appointed as a case manager in September 2002.

Eugene Tsitsi resigned as head of registry in November 2002 and had not been replaced as at 31 March 2003

The head of registry position was set at a much higher level than was necessary, and indeed was being fulfilled in practice. This position did not necessarily require a qualified lawyer or extensive management experience as was initially conceived and it was felt that a competent administrator could adequately fulfil the tasks and responsibilities associated with this post. This position was converted to span a wider range of grades. At the lower level, it will be filled by a "registry administrator", This is a non-management developmental post with the incumbent receiving extensive guidance from the CEO. The post of registry administrator was filled in April 2003.

Six of the staff members are female, five are black, two are Asian and three are white. 50% have a bachelor's degree or higher.

#### 5.2 Training

Employees have been provided with opportunities for development and further education.

Some 70,6 working days have been spent in training during the current financial year. In terms of salary cost, this amounts to R113 389,77 (ie an average of 7,06 training days per person at an average cost of R1 606,09 per day). Training and development comprises both in-house training and external courses, workshops and conferences locally and internationally.

Two case managers attended the two-day ICN International Merger Workshop in Washington in November 2002. The workshop was designed to provide a venue for lawyers and economists to meet and learn from one another's practical experiences in conducting merger reviews.

Nine of the staff members have participated in extensive computer courses during the period under review.

The Tribunal has since its inception operated a bursary scheme. The aim of the scheme is to assist employees in obtaining further tertiary qualifications. The loans cover tuition and examination fees up to R4 000 per annum per employee and are converted to bursaries on the employee successfully completing a course. Loans in excess of R4 000 may be granted by a special decision of the executive committee.

During the current financial year, three staff members received study loans totalling R14 755,00. 47% of these loans were transferred to the Commission on an employee's transfer. None of the loans awarded in the previous year were converted to bursaries in the year under review.

# CORPORATE GOVERNANCE

(continued)

## 5.3 Performance management system

Performance appraisal meetings with the chairperson and the CEO were held with each member of staff during May and June 2002. During each appraisal process individual performance action plans are discussed and completed.

The performance management system facilitates the alignment of individual performance with the institution's objectives and in addition provides a forum that ensures adequate levels of support and feedback for employees in fulfilling their work responsibilities.

These annual performance appraisal meetings evaluate overall performance, identify areas for improvement and determine training needs. Performance bonuses and salary adjustments are also determined on the basis of the performance appraisal.

## 5.4 Human resource consultancies

During the period under the review the Tribunal undertook two major consultancy projects namely:

### 5.4.1 Remuneration of part-time members

In June 2002, after a tender process, the Tribunal awarded a contract to Deloitte and Touché Human Capital Corporation to comment on and recommend an appropriate level of remuneration for part-time members of the Tribunal. This was initiated by the confusion that had arisen regarding the fees payable to part-time members and the subsequent reduction in the allowable daily rate for part-time members from R4 000 per day to R1 750 per day. It was felt that the lower rate devalued the importance of the Tribunal and could in fact provide a disincentive to maintaining and attracting high calibre professionals to serve as Tribunal members.

The report concluded that the current level of remuneration was inadequate and placed the Tribunal at risk of losing these individuals, which would have a material impact on the effectiveness and integrity of the Tribunal. The report recommended that these members not be remunerated as part-time employees but rather as professional advisors and consultants and recommended a daily rate of R6 000. This report was circulated to the dti, which subsequently motivated a rate of R4 000 per day to the Minister of Finance. The Minister of Finance approved a daily rate of R4 000 payable as at 1 January 2003.

### 5.4.2 Job grading consultancy

In October 2002, the Tribunal appointed Deloitte and Touché Human Capital Corporation (HCC) to undertake a job evaluation and job grading exercise, which included updating job descriptions, and the development of a pay model for the organisation. No tenders were advertised as HCC had undertaken a similar exercise for the Competition Commission.

The purpose of this exercise was to enable the Tribunal to attract and maintain suitable staff in a context where it competes with the private sector for scarce skills; and to ensure that employees are remunerated in line with their worth to the organisation.

The exercise undertaken by HCC involved extensive consultations with staff that included a workshop on objectives and methodology; and consultations with individual staff members with respect to their job descriptions.

The outcome of the HCC consultancy was:

- a report proposing a pay model and job evaluation policy – the pay model still needs to be submitted to the dti for final approval
- revised job descriptions for all categories of staff in the Tribunal
- graded positions within the Tribunal
- Revised salary bands

In short, the proposals comprise of a pay model benchmarked against organisations doing similar work to that of the Tribunal and a job evaluations system based on the Peromnes System. It is proposed that the Tribunal position itself relative to the 50th percentile (median) of the target market and that the Tribunal will apply a lead/lag strategy in tracking the market.

In implementing these proposals, the Tribunal's pay model and job evaluation policy will provide an objective basis for job grading and remuneration.

## COMMUNICATING THE WORK OF THE TRIBUNAL

Communication with the media is, to a certain extent, limited by the adjudicative role of the Tribunal but within these parameters the media are kept informed of all Tribunal hearings and decisions.

Tribunal cases and activities have received fair coverage in the financial press: From April 2002 to March 2003, 354 reports appeared in the financial print media monitored by the Tribunal. A weekly diary of cases and decisions appeared in the Sunday Times, Business Times from 19 January 2003.

Tribunal decisions are also posted onto the Tribunal website and Tribunal members are kept informed of cases through the Tribunal Tribune, a quarterly newsletter carrying articles on Tribunal cases and topical issues in competition regulation.

The Competition Tribunal co-hosted a conference with the Competition Commission on "Promoting Competition in a Protected Economy" which was well attended by the media

## STRATEGIC OBJECTIVES

Strategic objective	Performance indicator	2003	2002
To ensure timeous judgments of a high calibre	Number of cases finalised	62 cases	42 cases
	Heard within 10 days	72,6%	69%
	Order released same day as hearing	79%	54,6%
	Order released within 10 days	19,4%	28,6%
	Order released after 10 days	1,6%	2,4%
To comply with various legislation	Number of lawsuits settled with reference to non-compliance	0	0
	Fine related expenses/costs/irregular expenditure associated with non compliance	R52 219	R46 043
To encourage effective communication externally and internally	Number of Tribunal Tribunes produced	3 Tribunes	4 Tribunes
	Total work days spent in training by secretariat	70,6 days	70,6 days
	Total salary cost of training	R113 390	R105 940
	Total work days spent in training by Tribunal members	28 days	27 days
	Total salary cost of training	R126 607	R107 100
	Media reports in financial press	354 reports	238 reports
	Public addresses made	9	
	Executive meetings held	13 meetings	12 meetings
	Meetings held for Tribunal panel	2 meetings	2 meetings
	Website maintained and updated	Yes	Yes
To maintain a good corporate image and reputation	Annual report produced	Yes	Yes
	Peer review conducted	OECD	None
	Joint conference held	Yes	No
	Reports in financial press	354 reports	238 reports
	Determine appropriate level of remuneration for Tribunal panel members	Resolved and daily rate set at R4 000/dy	Unresolved
	Submit business plan and budget to dti	Submitted and approved	Submitted and approved
	Timeous financial reporting to dti	Quarterly reporting	Quarterly reporting
To provide an efficient competent and speedy service	Cases completed within legislatively prescribed days	44/62	39/42
To inculcate a proper value system	Number of sick days as a % of total sick leave days due	11,15%	16,18%
	Disciplinary hearings	0 hearings	0 hearings
To be fair, objective and independent	Assessments by other international legislative bodies	OECD	None

# FINANCIAL MANAGEMENT

## FINANCIAL MANAGEMENT

The budget for the 12-month period ending 31 March 2003 reflected expenditure (inclusive of capital expenditure) of R9,03 million and estimated income (generated from fees and interest) of R4,23 million.

Income for the year amounted to R6,58 million and was distributed as follows:

Category	Amount (Rm)	Percentage (2003)	Percentage (2002)
Government grants	0	0	0
Donor funds	0	0	0
Filing fees	5,53	84,16	83,62
Other income	1,04	15,84	16,38
<b>Total income</b>	<b>6,58</b>	<b>100</b>	<b>100</b>

Minor changes in the composition of income have occurred over the last three years with filing fees remaining the significant income generator. Since 1 April 2001 the Tribunal has not needed to approach the dti for funds. The reason for this has been that the Tribunal was given treasury approval to accumulate any surpluses generated and to use these surpluses to cover expenditure for the next financial year.

Total expenditure (including capital expenditure) for the period was R7,36 million.

Expenditure category	Percentage (2003)	Percentage (2002)
Capital	0,45	0,59
Personnel and admin	66,83	68,74
Recruitment and training	8,79	7,13
Professional services	23,93	23,54
<b>Total expenditure</b>	<b>100</b>	<b>100</b>

Professional service expenditure includes payments to the Commission (in terms of the MOU), hearing transcription services, legal fees and media and finance-related consulting services.

Expenditure on professional services increased by 17%. This increase is explained by:

- (1) 64,8% increase in transcription services
- (2) 216,9% increase in legal fees
- (3) 473,2 % increase in other professional services. This was due to three special projects, which were contracted out to external consultants. These consultancies have been reported on earlier in the report

A breakdown of expenditure on professional services over the last two years follows:

Category	2003	2002
Competition Commission	960 000	985 630
Transcription services	161 444	97 991
Public relations	195 504	184 440
Legal fees	107 281	33 857
Media expenses	9 498	2 371
Audit fees (Internal and External)	117 316	158 053
Other	209 712	36 589
<b>Total</b>	<b>1 760 755</b>	<b>1 498 931</b>

# ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 2003

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The annual financial statements were approved by the Accounting Authority on 18 June 2003 and are signed below by him.



**D Lewis**  
 Accounting Authority  
 Pretoria  
 18 June 2003

## BALANCE SHEET

AT 31 MARCH 2003

	Notes	2003 R	2002 R
<b>ASSETS</b>			
<b>Non-current assets</b>			
Property, plant and equipment	2	389 399	603 738
<b>Current assets</b>			
Inventory	3	13 926	25 590
Trade and other receivables		456 825	766 679
Cash and cash equivalent		9 365 687	9 589 284
<b>Total assets</b>		<b>10 225 837</b>	<b>10 985 291</b>
<b>FUNDS AND LIABILITIES</b>			
<b>Capital and reserves</b>			
Accumulated funds		9 813 174	10 561 572
<b>Current liabilities</b>			
Trade and other payables		330 078	359 942
Provisions	4	82 585	63 777
<b>Total funds and liabilities</b>		<b>10 225 837</b>	<b>10 985 291</b>

## INCOME STATEMENT

FOR THE YEAR ENDED 31 MARCH 2003

	Notes	2003 R	2002 R
Revenue		5 535 890	4 721 059
Other income	5	1 041 843	941 002
<b>Operating costs</b>	6	<b>6 577 733</b> <b>(7 326 131)</b>	<b>5 662 061</b> <b>(6 329 343)</b>
<i>Operating loss for the year</i>		<b>(748 398)</b>	<b>(667 282)</b>

## STATEMENT OF CHANGES IN FUNDS

FOR THE YEAR ENDED 31 MARCH 2003

Accumulated funds	2003 R
Balance as at 1 April 2001	11 228 854
Loss for the 2002 year	(667 282)
Balance as at 31 March 2002	10 561 572
Loss for the 2003 year	(748 398)
Balance at 31 March 2003	9 813 174

## CASH FLOW STATEMENT

FOR THE YEAR ENDED 31 MARCH 2003

	Notes	2003 R	2002 R
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		(190 289)	(1 482 919)
Cash receipts from customers		5 845 744	4 197 119
Cash paid to suppliers and employees		(7 074 266)	(6 620 604)
Cash (utilised)/generated by operations	9	(1 228 522)	(2 423 485)
Interest paid		(3 610)	(154)
Interest received		1 041 843	940 720
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		(33 308)	(40 860)
Investment to expand operations Property, plant and equipment – acquired		(33 308)	(40 860)
<i>Decrease in cash and cash equivalents</i>		(223 597)	(1 523 779)
<i>Cash and cash equivalents at beginning of year</i>		9 589 284	11 113 063
<i>Cash and cash equivalents at end of year</i>	10	9 365 687	9 589 284

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 2003

## 1. ACCOUNTING POLICIES

The financial statements are prepared on a historical cost basis and incorporate the following principal accounting policies, which are consistent with those of the previous year.

These financial statements comply with generally accepted accounting practice.

### 1.1 Property, plant and equipment

Assets costing less than R2 000 are written off in the year of acquisition.

Property, plant and equipment are stated at historical cost less depreciation. Depreciation is calculated on a straight-line basis at rates considered appropriate to reduce the cost of the assets over their estimated useful lives.

The depreciation rates are as follows:

Computer equipment	33,33%
Furniture and fittings	20%
Leasehold improvements	18,18%
Motor vehicles	20%
Office equipment	20%

### 1.2 Pension and other post-retirement benefits

Contributions to the defined contribution plan are charged to the income statement in the year in which they relate.

### 1.3 Inventory

Inventory is stated at the lower of cost and net realisable value and cost is determined on a first-in-first-out basis.

### 1.4 Leased assets

Leases under which the lessor effectively retains the risks and benefits of ownership are classified as operating leases. Obligations incurred under operating leases are charged to the income statement in equal instalments over the period of the lease, except when an alternative method is more representative of the time pattern from which benefits are derived.

### 1.5 Provisions

Provisions are recognised when the institution has a present legal or obstructive obligation as a result of past events, for which it is probable that an outflow of economic benefits will occur, and where a reliable estimate can be made of the amount of the obligation.

### 1.6 Revenue

Revenue comprises fees receivable for the year excluding value added tax.

### 1.7 Financial instruments

#### *Measurement*

Financial instruments are initially measured at cost, which includes transaction costs. Subsequent to initial recognition these instruments are set out below:

#### *Trade and other receivables*

Trade and other receivables consist of money owed to the Tribunal and the carrying amount reported on the balance sheet represents the fair value of this instrument.

#### *Trade and other payables*

Trade and other payables consist of money owed to suppliers and the carrying amount reported on the balance sheet represents the fair value of this instrument.

#### *Cash and cash equivalents*

Cash and cash equivalents include monies held in call accounts with Absa Bank Limited and the Corporation for Public Deposits as well as cash in the bank and cash on hand. Cash and cash equivalents are measured at fair value.

	2003 R	2002 R
<b>2. PROPERTY, PLANT AND EQUIPMENT</b>		
<b>Computer equipment</b>	26 121	69 844
Carrying amount at beginning of year	69 844	121 216
Cost	273 311	238 876
Accumulated depreciation	(203 467)	(117 660)
Additions	11 610	34 435
Depreciation	(55 333)	(85 807)
Carrying amount at end of year	26 121	69 844
Cost	284 921	273 311
Accumulated depreciation	(258 800)	(203 467)
<b>Furniture and fittings</b>	116 850	158 581
Carrying amount at beginning of year	158 581	214 465
Cost	304 368	301 245
Accumulated depreciation	(145 787)	(86 780)
Additions	21 698	6 425
Depreciation	(63 429)	(60 548)
Disposal	(0)	(1 761)
Cost	(0)	(3 302)
Accumulated depreciation	0	1 541
Carrying amount at end of year	116 850	158 581
Cost	326 066	304 368
Accumulated depreciation	(209 216)	(145 787)
<b>Leasehold improvements</b>	210 443	315 664
Carrying amount at beginning of year	315 664	420 806
Cost	482 638	482 638
Accumulated depreciation	(166 974)	(61 832)
Additions	-	-
Depreciation	(105 221)	(105 142)
Carrying amount at end of year	210 443	315 664
Cost	482 638	482 638
Accumulated depreciation	(272 195)	(166 974)
Carried forward	353 414	544 089

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 2003 *(continued)*

	2003 R	2002 R
<b>2. PROPERTY, PLANT AND EQUIPMENT</b> <i>(continued)</i>		
Brought forward	353 414	544 089
<b>Motor vehicles</b>	31 991	53 318
Carrying amount at beginning of year	53 318	74 645
Cost	106 635	106 635
Accumulated depreciation	(53 317)	(31 990)
Depreciation	(21 327)	(21 327)
Carrying amount at end of year	31 991	53 318
Cost	106 635	106 635
Accumulated depreciation	(74 644)	(53 317)
<b>Office equipment</b>	3 994	6 331
Carrying amount at beginning of year	6 331	8 668
Cost	11 686	11 686
Accumulated depreciation	(5 355)	(3 018)
Depreciation	(2 337)	(2 337)
Carrying amount at end of year	3 994	6 331
Cost	11 686	11 686
Accumulated depreciation	(7 692)	(5 355)
	389 399	603 738
<b>3. INVENTORY</b>		
Inventory comprises:		
Consumables	13 926	25 590
<b>4. PROVISION FOR LEAVE</b>		
Opening carrying amount	63 777	60 689
Additional provisions	18 808	3 088
Closing carrying amount	82 585	63 777
<b>5. OTHER INCOME</b>		
Interest received	1 041 843	940 720
Other	0	282
	1 041 843	941 002

	2003 R	2002 R
<b>6. OPERATING LOSS FOR THE YEAR</b>		
Operating loss is stated after taking into account the following:		
<b>Expenditure</b>		
Auditor's remuneration	27 872	96 509
– Fees for audit	28 997	87 353
– Under/(over) provision previous year	(1 125)	9 156
Depreciation of property, plant and equipment	247 647	275 161
– computer equipment	55 333	85 807
– furniture and fittings	63 429	60 548
– leasehold improvements	105 221	105 142
– motor vehicles	21 327	21 327
– office equipment	2 337	2 337
Operating leases	60 299	545 150
Premises	0	460 429
Hearing rooms	0	33 150
Equipment	60 299	51 571
Retirement benefit costs		
– defined contribution plan	212 764	143 116
Administration fees	20 460	19 686
Contributions	170 256	117 129
Board of Trustees expenses	22 048	6 301
Employee costs	3 700 974	3 459 214
Chairperson	615 661	591 636
CEO	440 146	410 071
Other personnel	2 645 167	2 457 507
Professional services	673 941	352 877
Interest paid	3 610	154
Disclosable item		
Irregular expenditure – allowances to Tribunal members	0	46 043
Fruitless expenditure	52 220	0

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 2003 (continued)

	2003 R	2002 R
<b>7. OPERATING LEASE COMMITMENTS</b>		
The Competition Tribunal is leasing a photocopier for a period of five years from 2002. The lease agreement is renewable at the end of the lease term and the Tribunal does not have an option to acquire the equipment		
Commitments for the next 12 months:	83 740	513 488
– Land and building	–	462 392
– Property, plant and equipment	83 740	51 096
Commitments for one to five years:	427 395	3 205 655
– Land and building	–	3 196 450
– Property, plant and equipment	427 395	9 205
Commitments for more than five years		
– Land and buildings	–	3 353 587
	<b>511 135</b>	<b>7 072 730</b>
<b>8. EMPLOYEE BENEFITS</b>		
<b>Pension fund</b>		
The Competition Commission Pension Fund, which is governed by the Pension Funds Act of 1956, is a defined contribution plan for all employees. All employees of the Tribunal are members of this fund which is administered by Sanlam Limited. The scheme is currently invested in investment policies with Metropolitan Life. As an insured fund, the Competition Commission Pension Fund complies with regulation 28 of the Pensions Fund Act of 1956 and is exempted from statutory actuarial valuation.		
<b>9. RECONCILIATION OF LOSS TO CASH UTILISED FROM OPERATIONS</b>		
Operating loss	(748 398)	(667 282)
Adjustments for:		
Change in provisions	18 808	(21 060)
Scrapping of asset	0	1 761
Interest paid	3 610	154
Depreciation	247 647	275 161
Investment income	(1 041 843)	(940 720)
Operating loss before working capital changes	(1 520 176)	(1 351 986)
Working capital changes	291 654	(1 071 499)
(Increase)/decrease in inventory	11 664	(12 904)
Decrease in trade and other receivables	309 854	(524 222)
(Decrease)/increase in trade and other payables	(29 864)	(534 373)
Cash utilised by operations	<b>(1 228 522)</b>	<b>(2 423 485)</b>

	2003 R	2002 R
<b>10. CASH AND CASH EQUIVALENTS</b>		
Cash and cash equivalents consist of cash on hand and balance with banks, and investments in call accounts		
Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:		
Bank	41 972	428 142
Cash on hand	178	657
Investments	9 323 537	9 160 485
	<b>9 365 687</b>	<b>9 589 284</b>
<b>11. NET FINANCE COSTS</b>		
Interest – bank overdraft and late payment of VAT	(3 610)	(154)
Interest received	1 041 843	940 720
Net finance costs	<b>1 038 233</b>	<b>940 566</b>
<b>12. INCOME TAX EXEMPTION</b>		
The Competition Tribunal is exempt from Income Tax in terms of section 10(1)(a) of the Income Tax Act,1962.		
<b>13. IRREGULAR EXPENDITURE</b>		
Irregular expenditure of R46 043 was reported on in the financial statements for the previous year. This irregular expenditure was the result of confusion with regard to the fee payable to part-time Tribunal members. This confusion has been resolved and a daily rate has been agreed to.		
<b>14. FRUITLESS EXPENDITURE</b>		
An amount of R52 219,68 is due to the South African Revenue Service as penalties and interest in respect of late submission of VAT returns. These amounts have been provided for in the financial statements and the Tribunal has requested the Receiver to waive the penalties.		

## SCHEDULE TO THE ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 2003

	2003 R	2002 R
<b>OPERATING COSTS</b>		
Audit fees – external	27 872	96 509
Audit fees – internal	79 846	59 523
Audit – sundry expenses	9 598	2 021
Bank charges	7 772	6 408
Competition Commission – shared services	960 000	985 630
Computer, software licences	15 358	4 227
Conferences and seminars	242 635	155 729
Courier and delivery costs	42 345	22 809
Depreciation	247 647	275 161
Equipment hire	60 299	51 571
Gifts	7 624	7 738
Insurance	66 755	20 801
Interest paid	3 610	154
Loss on furniture disposal	0	1 761
Media expenses	9 498	2 371
Minor office equipment	8 517	4 387
Motor vehicle expenses	14 751	12 014
Motor, travelling and entertainment	207 117	162 205
Printing, stationery and postage	173 769	117 421
Professional services	673 941	352 877
Publications, books and subscriptions	22 894	18 805
Recruitment and training costs	404 403	298 369
Repairs, maintenance and cleaning	1 404	5 753
Salaries	3 913 739	3 610 464
Telephone and telex	75 968	54 635
VAT penalties	48 769	0
	<b>7 326 131</b>	<b>6 329 343</b>

## REPORT OF THE AUDIT COMMITTEE

This report was prepared according to the Treasury Regulations for Public Entities issued in terms of the Public Finance Management Act, 1999 (Act No 1 of 1999), and promulgated in Government Gazette No 23463 on 25 May 2002. The Competition Tribunal is listed as a national public entity in Schedule 3A of the Act. The audit committee has adopted formal terms of reference.

The internal controls of the Tribunal were effective during the year under review. No material internal control weaknesses were reported on by neither the internal auditors nor external auditors. The internal audit function was performed in a satisfactory manner for the period under review.

The audit committee was satisfied with the quality of monthly and quarterly reports submitted in terms of the PFM Act.

The audit committee performed an evaluation of the 2003 annual financial statements prior to publication of these. Based on its evaluation the audit committee recommended that the annual financial statements be accepted and read together with the report of the Auditor-General.

A handwritten signature in black ink, appearing to be 'S.M.', written in a cursive style.

**Sakhile Masuku**  
Chairperson: Tribunal Audit Committee  
22 July 2003



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