

Competition Tribunal

Annual Report

1999/2000



competitiontribunal
south africa

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The chairperson's report and financial statements as set out on pages 4 – 24 were approved by the accounting officer on 27 September 2000 and is signed below by him



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The functions of the Competition Tribunal

An independent, impartial institution

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

In respect of the mergers, the Tribunal

- *authorises or prohibits a large merger*
- *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*

Highlights of the period

- *fourteen merger transactions decided in the period, ten subsequent to year end*
- *infrastructure established, systems and procedures finalised*
- *all substantive aspects of corporate governance established*
- *three interim relief orders granted*

The Competition Tribunal is independent, subject only to the Constitution and the law. It must be impartial and perform its functions without fear, favour and prejudice.

Report of the auditor-general on the financial statements of the Competition Tribunal

for the period ended 31 March 2000

1. Audit assignment

The financial statements as set out on pages 4 to 24 for the period ended 31 March 2000 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 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 and compliance with relevant laws and regulations, applicable to financial matters, based on the audit.

2. Regularity audit

2.1 Nature and scope

2.1.1 Financial audit

The audit was conducted in accordance with generally accepted government auditing standards which incorporate generally accepted auditing standards. These standards require the audit to be planned and performed to obtain reasonable assurance that the financial statements are free of material misstatement. The audit was also planned and performed to obtain reasonable assurance that in all material respects, the relevant requirements of the Reporting by Public Entities Act, 1992 (Act No 93 of 1992), as amended, have been complied with. 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.

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

2.1.2 Compliance audit

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.

2.2 Audit opinion

2.2.1 Financial audit

In my opinion:

- The financial statements fairly present, in all material respects, the financial position of the Competition Tribunal at 31 March 2000 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 Schedule 4 of the Companies Act, 1973 (Act No 61 of 1973), and other reporting requirements as set out in the Reporting by Public Entities Act, 1992, and the regulations thereto.
- The information furnished in terms of sections 6 and 7 of the Reporting by Public Entities Act, 1992, is fair in all material respects, taking into account the circumstances mentioned in paragraph 3; and
- The transactions that came to my attention during the audit were in all material respects made in accordance with the mandatory functions of the Tribunal as determined by law or otherwise.

2.2.2 Compliance audit

Based on the audit work performed, nothing has come to my attention that causes me to believe that material non-compliance with laws and regulations, applicable to financial matters, has occurred.

3. Emphasis of matter

Without qualifying the audit opinion expressed above, attention is drawn to the following matter that was revealed during the audit:

3.1 Reporting in terms of section 7 of the Reporting by Public Entities Act, 1992

In terms of section 40(8) (c) read with section 42 of the Competition Act, the Tribunal is subject to the Reporting by Public Entities Act. The Tribunal did not fully comply with sections 7(3) (b) and (c) of the Reporting by Public Entities Act which require the Tribunal to report on the extent to which it has met its goals for the period and to report the relevant performance information with regard to economy, efficiency and effectiveness. The Competition Tribunal was established in terms of the Competition Act, 1998 (Act No 89 of 1998), by proclamation by the President on 19 August 1999 with effect from 1 September 1999. It was therefore difficult for the Tribunal to fully comply with all the requirements of sections 7(3) (b) and (c) of the Reporting by Public Entities Act, 1992, within such a short period of time.

4. Appreciation

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



L A van Vuuren
For auditor-general

Pretoria
29 September 2000

Weaknesses in previous competition legislation were, in part, responsible for the high levels of concentration that characterised a large array of important product markets and for the widespread anti-competitive abuses perpetrated by those who enjoyed market power.

The chairperson's report

for the seven months ended 31 March 2000



David Lewis
Chairperson of the Competition Tribunal

The need for **clear rules in a fair economy**

South Africa has had competition legislation on the statute books since 1980. However, it was generally accepted that both legislation and the resources devoted to its enforcement were simply not up to the task of promoting and maintaining competition. These weaknesses were, in part, responsible for the high levels of concentration that characterised a large array of important product markets and for the widespread anti-competitive abuses perpetrated by those who enjoyed market power.

The first democratic government came into power committed to reviewing competition policy. This coincided with a resurgence of interest in competition policy in advanced industrial countries and the widespread introduction of competition enforcement in developing countries. This global resurgence was partly inspired by the experience of international trade liberalisation and the recognition that barriers in domestic markets constituted a potent deterrent to international trade and investment. It was also underpinned by the gradual reduction of state involvement in many economies and the recognition that, to function effectively, market economies required clear rules governing the behaviour of their participants.

This review took several years and involved extensive consultation with stakeholders in South Africa, and with competition policy practitioners in other countries. It culminated in the enactment of new legislation, the Competition Act No 89 of 1998, and the establishment of three institutions, the Competition Commission, the Competition Tribunal and the Competition Appeal Court. The legislation has been in force since 1 September 1999. This report provides a comprehensive survey of the activities of the Tribunal in its first seven months.

Discernible shift in business behaviour

The work of the Tribunal has proceeded smoothly. Our caseload largely depends on the case flow emanating from the commission, either in the form of merger recommendations or complaint referrals. We have adjudicated a steady stream of large mergers. The investigation of complaints, on the other hand, has taken longer than originally anticipated and we are yet to hear our first referral from the commission. However, several complainants have used the provisions of the act that permit a direct approach to the Tribunal to seek interim relief.

The temptation to pass judgement, positive or negative, on the legislation and the institutions should be tempered at this early stage. However, in the few months the Tribunal has been in operation, it is already possible to identify a discernible shift in business behaviour. Certainly, in the area of merger regulation, there is growing acceptance of the presence of the competition authorities and of the essential legitimacy of their concerns. It would not be appropriate to identify patterns from the few interim relief applications we have heard, although the issues raised – for example, questions related to franchising and the transition from regulation to competition in agriculture – are clearly of great significance.

Constant testing and clarifying of the law

Competition law is a particularly complex branch of the legal system, involving, as it does, a powerful interface with the discipline of economics. The stakes are high and many of the parties that engage with this area of the law are extremely well resourced. This inevitably involves considerable litigation and constant testing of the law. In common with experiences of competition regulators elsewhere, there have been a number of challenges to the jurisdiction of the Competition Act, particularly in relation to other regulated industries. These challenges are inevitable and are welcomed as part of the process of producing a better law and an improved understanding of the issues involved in its application.

We have set out to establish a Tribunal that is relatively informal in its approach, performs to high professional standards and, of major importance in this area, acts expeditiously. I believe we have attained these objectives, thanks largely to the commitment and performance of the staff and members of the Tribunal.

Maintaining accounting and other records and an effective system of internal control is my responsibility as chairperson. I believe this requirement has been fulfilled and that the financial statements prepared fairly present the results of the Tribunal for the seven months to 31 March 2000.

The Tribunal's annual financial statements are prepared on the historical cost basis and relevant accounting policies. These policies have continually been complied with. I approved the annual financial statements set out on pages 19 to 24.

No material facts or circumstances have arisen between the date of the balance sheet and the date of approval, which affect the financial position of the Competition Tribunal as reflected in these financial statements. I believe the Competition Tribunal is financially sound and operates as a going concern.



Shan Ramburuth
Chief executive officer and registrar

1. Operational review

This report reflects the Competition Tribunal's activities and achievements between 1 September 1999 and 31 March 2000. In just seven months, we believe the necessity of a powerful competition authority has been proven. As corporate South Africa proceeds through an intense phase of transformation, consolidation and globalisation, an effective competition authority ensures that the interests of all stakeholders are always considered.

2. The Competition Act

Section 2 of the Competition Act specifies that its purpose is to promote and maintain competition in the Republic of South Africa to:

- Promote the efficiency, adaptability and development of the economy;
- Provide consumers with competitive prices and product choices;
- Promote employment and advance the social and economic welfare of all South Africans;
- Expand opportunities for South Africa to participate in world markets and to recognise the role of foreign competition in the Republic;
- Ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
- Promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged people.

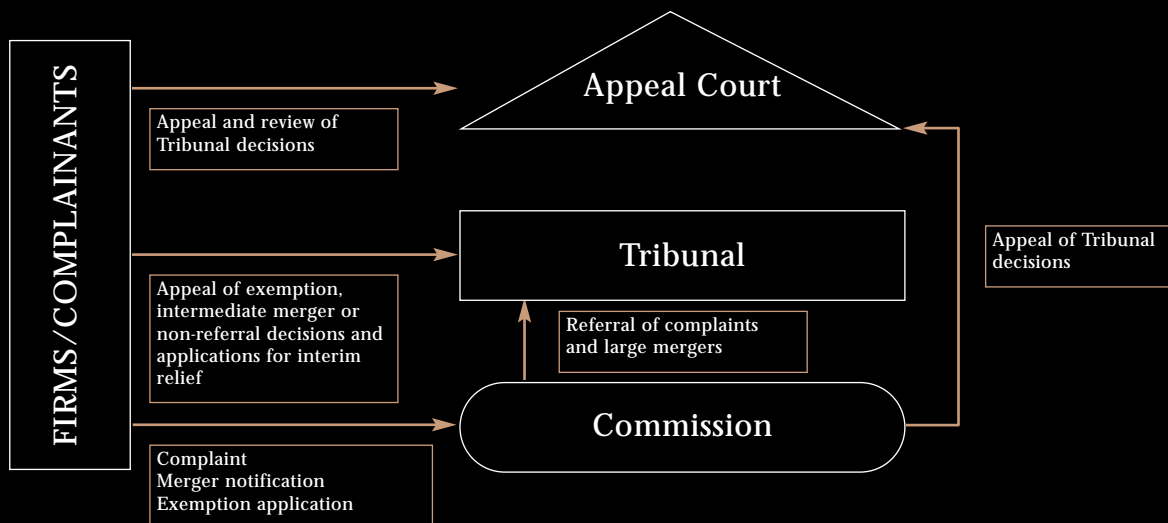
The Competition Act:

- Prohibits anti-competitive practices between firms in vertical and horizontal relationships;
- Prohibits abuse of a dominant position;
- Provides for restrictive practices to be exempted on specified grounds; and
- Requires notification of merger transactions above a specified threshold and provides for their regulation.

3. The competition authorities

The act provides for the establishment of three institutions:

- The Competition Commission, which investigates mergers and complaints of anti-competitive practices and grants exemptions;
- The Competition Tribunal which adjudicates; and
- The Competition Appeal Court, which has the status of the High Court, hears appeals and reviews decisions of the Competition Tribunal.



Members of the Tribunal represent a broad cross-section of the population of South Africa and have suitable qualifications and experience in economics, law, commerce, industry or public affairs.

4. The Competition Tribunal's members

The President, on recommendation from the Minister of Trade and Industry, appointed the chairperson and nine other members of the Tribunal with effect from 1 August 1999. Terms of appointment are five years. Two members (including the chairperson) are full-time executive members and eight (including the deputy chairperson) are part-time non-executive members. These members constitute the pool from which the chairperson appoints adjudicative panels comprising three members.

The act specifies that, viewed collectively, membership of the Tribunal should represent a broad cross-section of the population of South Africa and that each member should be a citizen of the Republic and should have suitable qualifications and experience in economics, law, commerce, industry or public affairs. Six of the current Tribunal members have a legal background, three are economists and one is a chartered accountant.

Members of the Competition Tribunal

Chairperson

David Lewis (BCom, MA)

Deputy chairperson

Marumo Moerane (BSc, BCom, LLB)

Full-time member

Norman Manoim (BA, LLB)

Part-time members

Urmila Bhoola (BA Hons, LLB, LLM)

Frederick Fourie (BA Hons, MA, PhD)

Merle Holden (BCom Hons, MA, PhD)

Phatudi Maponya (BProc, LLB, HDip Company Law, LLM)

Christine Qunta (BA, LLB)

Diane Terblanche (BA, LLB, LLM)

Sindi Zilwa (CA(SA), Adv Tax Cert (SA), CFP)

The first democratic government came into power committed to reviewing competition policy. This coincided with a resurgence of interest in competition policy in the advanced industrial countries.

5. Setting up the institution

Fulfilling objectives from the start

The seven-month period covered in this report primarily constitutes the set-up phase of the institution. Both the Tribunal and the Commission became operational on 1 September 1999. Many aspects of setting up the institutions were done collaboratively under the guidance of the Department of Trade and Industry (DTI). The relationships between the Tribunal, the Commission and the DTI during the set-up phase were governed by memorandums of understanding (MOU) to facilitate collaboration while ensuring that the ongoing relationship between the institutions does not compromise operational independence. For the Commission, the MOU outlined how we would manage shared resources.

Our objectives for the seven months to the end of the first financial year were focused on setting up the institution. These objectives reflect our aims:

- to deal effectively and efficiently with the caseload from the outset;
- to make transparent, expeditious, high-quality decisions that give the public certainty and confidence;
- to manage processes in a way that ensures accessibility and includes all interested parties;
- to communicate decision in a way that ensures accessibility and understanding to all stakeholders.

6. The functions of the Competition Tribunal

An independent, impartial institution

The Competition Tribunal adjudicates competition matters, in accordance with the act and has jurisdiction throughout South Africa. It is independent and subject to the constitution and the law. It must be impartial and perform its functions without fear, favour, or prejudice. When a matter is referred to it in terms of the act, the tribunal must:

- authorise or prohibit a large merger, with or without conditions;
- adjudicate appeals from the Competition Commission's decisions on intermediate mergers and exemptions;
- adjudicate complaints of prohibited conduct in terms of the act by determining whether prohibited conduct has occurred, and if so, impose a remedy provided for in the act;
- grant or deny an order for interim relief; and
- grant or deny an order for costs.

Summary of objectives, activities and outputs
for the financial year from 1 September 1999 to 31 March 2000

OBJECTIVES	ACTIVITIES	OUTCOMES
<p>Establish credible professional and efficient Competition Tribunal secretariat</p>	<ul style="list-style-type: none"> • Finalise premises, furniture and equipment 	<ul style="list-style-type: none"> • Premises occupied • Asset register compiled
	<ul style="list-style-type: none"> • Recruit and train staff • Establish HR policies 	<ul style="list-style-type: none"> • Full staff complement employed • Staff training undertaken in priority areas • Draft staff manual completed
	<ul style="list-style-type: none"> • Establish financial management system and admin procedures to facilitate accountability and transparency 	<ul style="list-style-type: none"> • Financial code completed • Budgeting and financial reporting system established • Internal auditors appointed • Audit committee established • Admin manual completed
	<ul style="list-style-type: none"> • Establish case management system to facilitate procedural transparency 	<ul style="list-style-type: none"> • Case management committee meets weekly • Workflow designed • Procedures manual for registry completed
	<ul style="list-style-type: none"> • Adjudicate matters in an expeditious and transparent manner 	<ul style="list-style-type: none"> • Procedures established and implemented • See cases section for numbers
	<ul style="list-style-type: none"> • Establish document management system 	<ul style="list-style-type: none"> • Filing system established • Procedures manual for registry completed
	<ul style="list-style-type: none"> • Establish IT systems 	<ul style="list-style-type: none"> • Equipment and software procured • Staff trained in use of software • User-friendly, reliable, secure internal IT network in place
	<ul style="list-style-type: none"> • Develop and implement strategy for research 	<ul style="list-style-type: none"> • Systems for collaboration on case management and case research in place • Four briefing papers • Two issues of <i>Tribunal Tribune</i> published
<p>Develop the Tribunal's corporate image and manage public perceptions</p>	<ul style="list-style-type: none"> • Design corporate image • Appoint media consultant • Establish relationships with, and inform journalists • Establish the Tribunal's website 	<ul style="list-style-type: none"> • Corporate image designed • Communications manual completed • Press coverage on Tribunal procedures and cases • Website operational

7. Competition Tribunal cases

between 1 September 1999 and 31 March 2000

7.1 Large mergers

Assessing the effect of mergers on competition

All large mergers which have an effect in the Republic of South Africa have to be approved by the Competition Tribunal. Large mergers are defined as transactions exceeding a threshold, calculated on the annual turnover and asset value of the merging firms, determined by the Minister of Trade and Industry. Parties to a large merger are required to notify the Competition Commission of their transaction. The Commission assesses the effect of the merger on competition according to criteria specified in the act, and makes a recommendation to the Tribunal on whether it should approve the merger. In making its decision, the Tribunal will take into account the recommendation from the Commission, submissions from the merging parties and submissions from any other party which has followed the required procedures to declare a material interest in the case. The Tribunal can issue an order which:

- approves the transaction without conditions;
- approves the transaction with conditions; or
- prohibits the transaction.

The Tribunal was notified of 28 merger transactions between 1 September 1999 and 31 March 2000. Fourteen were decided in the period under review and ten were decided in the following financial year. Four merger notifications were withdrawn.

In all but one of the cases heard during the review period, the Tribunal issued an order and informed the parties of its decision on the day of the hearing. Reasons for the decision have always been released within a month of the hearing.

Transactions notified and decided between 1 September 1999 and 31 March 2000

Transactions	Date notified	Date of order	Decision
Engen Limited and Afric Energy Resources (Pty) Ltd	14 Dec 1999	26 Jan 2000	Approved without conditions
Van Leer (Pty) Ltd and Steelbank Merchant (Pty) Ltd	10 Jan 2000	9 Feb 2000	Approved without conditions
Vodacom Group (Pty) Ltd and GSM Cellular (Pty) Ltd	14 Jan 2000	26 Jan 2000	Approved without conditions
Tiger Food Industries Ltd and Quadrant Container Line	21 Dec 1999	14 Jan 2000	Approved without conditions
Vodacom Group (Pty) Ltd and Teljoy Holdings Ltd	18 Jan 2000	26 Jan 2000	Approved without conditions
Bidvest Group Ltd and Island View Storage Ltd	8 Dec 2000	15 Dec 1999	Approved without conditions
Ensemble Trading 184 (Pty) Ltd and Murray & Roberts	28 Jan 2000	2 Feb 2000	Approved without conditions
Lexshell 296 Investment Holding (Pty) Ltd	11 Feb 2000	23 Feb 2000	Approved without conditions
Imperial Holdings Ltd and SAFAIR (Pty) Ltd	27 Feb 2000	2 Feb 2000	Approved without conditions
Vitro Pipes and Fraser Fyfe (Pty) Ltd	1 Feb 2000	23 Feb 2000	Approved without conditions
Ford Motor Company USA and Volvo Cars Corporation	7 Feb 2000	23 Feb 2000	Approved without conditions
Harmony Gold Mining Co and Randfontein Estates Ltd	9 March 2000	15 March 2000	Approved without conditions
Imperial Holdings Ltd and National Airways & Finance Corp Ltd	29 Feb 2000	15 March 2000	Approved without conditions
Distillers Corporation SA Ltd and Hygrace Holdings (Pty) Ltd	13 March 2000	29 March 2000	Approved without conditions

Transactions notified between 1 September 1999 and 31 March 2000, but decided in the following financial year

Transactions	Date notified	Date of order	Decision
Pioneer Foods (Pty) Ltd and National Brands Ltd	7 Feb 2000	19 April 2000	Approved without conditions
Santam Ltd and Guardian National Insurance Company	9 Feb 2000	4 April 2000	Approved without conditions
Samancor and Unisil	18 Feb 2000	5 April 2000	Approved without conditions
AECI Ltd and PPG Industries Securities Incorporated	16 Feb 2000	1 March 2000	Approved without conditions
Ceramic Industries Ltd and the Vitro Punched Tile	17 Feb 2000	3 May 2000	Approved without conditions
Bromor Foods Ltd and the “Game” Sports Drink	17 Feb 2000	14 April 2000	Approved with conditions
Ford Motor Company and Samancor	29 Feb 2000	5 April 2000	Approved without conditions
Anglovaal Mining Ltd and De Beer Consolidated Mines Ltd	1 March 2000	19 April 2000	Approved without conditions
PQ Data Trading (Pty) Ltd and Alexander Forbes Group (Pty) Ltd	17 March 2000	5 April 2000	Approved without conditions
Imperial Holdings Ltd and The Cold Chain (Pty) Ltd	31 March 2000	24 May 2000	Approved with conditions

Appeals on decisions by the Competition Commission on intermediate mergers

Intermediate mergers are defined as transactions falling between two thresholds, calculated on asset value and annual turnover, determined by the Minister of Trade and Industry. The Commission may approve (with or without conditions) or prohibit an intermediate merger. If the Commission prohibits or conditionally approves an intermediate merger, that decision may be appealed to the Tribunal. The Tribunal did not consider any appeals on Commission decisions on intermediate mergers in the review period – seven appeals were made during the period and three were withdrawn in the same period.

Appeals on decisions of the Competition Commission on exemption applications

The Competition Commission may grant a conditional or unconditional exemption for a specified time for agreements or practices prohibited by the act. The act specifies the criteria on which exemptions are granted. A party may appeal the Commission’s decision to grant or refuse an exemption to the Competition Tribunal. No appeals on exemption decisions were made to the Tribunal between 1 September 1999 and 31 March 2000.

Complaint referrals

Anyone can complain to the Competition Commission about anti-competitive practices which are prohibited by the Competition Act. The Commission will accept the complaint if it has jurisdiction over the matter and if it is made in accordance with the proper procedures. The Commission will proceed to investigate whether a prohibited practice has occurred and must complete its investigation within one year. After completing its investigation, the Commission will refer the matter to the Competition Tribunal if it has established that a prohibited practice has occurred, or issue a notice of non-referral to the complainant if the investigation showed otherwise.

While the Competition Commission received a number of complaints in the period between 1 September 1999 and 31 March 2000, there was only one complaint referral to the Competition Tribunal, in a matter between Botswana Ash and Ansac. A hearing on this matter was, however, not conducted in the period under review.

We have set out to establish a Tribunal that is relatively informal in its approach, performs to high professional standards and acts expeditiously.

Interim relief

Since complaint referrals take some time to investigate, a person is entitled to apply to the Competition Tribunal for interim relief. The Tribunal will only grant interim relief if it is satisfied that the complainant will suffer irreparable harm during the period in which the investigation is taking place, or if the purposes of the act are being frustrated. An interim relief order by the Tribunal is valid for six months or until such time that the referral from the Commission has been heard, whichever is earlier.

There were 14 applications for interim relief in the period under review. Some have since been withdrawn. Five cases were heard. In three, interim relief was granted; in one, relief was not granted; and in one case the parties reached a settlement and the Tribunal issued a consent order.

Interim relief cases in which an order was made

Case	Date of application	Date of order	Decision
DJ Mine Services vs Chemserve	28 Sept 1999	4 Nov 2000	Consent order
South African Raisins (Pty) Ltd vs SAD Holdings Ltd	13 Oct 1999	24 Nov 2000	Interim relief granted
South African Raisins (Pty) Ltd vs SAD Holdings Ltd	8 Dec 1999	20 Jan 2000	Interim relief granted
DW Integrators cc vs SAS Institute (Pty) Ltd	25 Nov 1999	10 March 2000	Interim relief not granted
Cancun Trading No 24 and others vs Seven Eleven Corp (Pty) Ltd	14 Dec 1999	31 March 2000	Interim relief partly granted and partly refused

7.2 Case management

Where necessary, to expedite its hearings, the Competition Tribunal has adopted the practice of conducting pre-hearing conferences in more complex cases. The purpose of these conferences is to reach agreement with the parties on procedural issues.

8. The staff of the Tribunal secretariat

The act provides for the chairperson to appoint staff or contract with other persons to assist the Tribunal in carrying out its functions. The staff of the Tribunal provides administrative, research and organisational support to the chairperson and Tribunal members.

At year end, the team comprised:

Chief executive officer/registrar

Shan Ramburuth

Research

Desmond Rudman, head of research
Rietsie Badenhorst, researcher/case manager
Thulani Kunene, researcher/case manager

Registry

Eugene Tsitsi, head of registry
Jerry Ramatlo, court orderly/driver
David Tefu, registry clerk
Tebogo Mputle, receptionist

Finance

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

Executive secretaries

Lerato Motaung, executive secretary to the chairperson
Ntombi Mothei, executive secretary to the CEO



The staff of the Tribunal secretariat

The Tribunal has set up corporate governance structures and internal organisation systems, to ensure accountability and maximise efficiency.

9. Corporate governance

Controls and procedures in place

The activities and expenditure of the Tribunal secretariat is largely prescribed by the Competition Act (1998) and the rules of the Competition Tribunal. The Tribunal reports monthly to DTI (to the chief directorate: business regulation and consumer affairs) on expenditure and activity.

Audit committee

As a public entity, the Tribunal is listed as a schedule 3 institution under the Public Finance Management Act (1999). In accordance with this act, an audit committee was established and mandated to oversee responsibilities in financial, management and other reporting practices, internal control structures and management of risks and to ensure compliance with laws, regulations and ethics.

Executive members

David Lewis, MA
Shan Ramburuth, MM
Janeen de Klerk, MA

Non-executive members

Thabo Mosololi, CA(SA) – chairperson
Sakile Masuku, CA(SA)
Peter Modiselle, CA(SA)
Tobie Verwey, BCom (FIAC) (FICA) (AIMTA)

Executive committee

The executive committee oversees the operational activities of the Tribunal. It receives reports from the chief executive and the head of finance and provides policy direction on operational decision-making and expenditure. The executive committee meets bi-monthly and comprises:

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

Case management committee

The substantive aspects of the Tribunal's work on cases are managed by this committee which meets weekly. The committee comprises:

David Lewis – chairperson of the Competition Tribunal
Norman Manoim – full-time member
Shan Ramburuth – CEO
Desmond Rudman – head of research
Eugene Tsitsi – head of registry
Rietsie Badenhorst – case manager in the research department
Thulani Kunene – case manager in the research department

10. Registry

The Tribunal's registry is responsible for document management and the logistics of Tribunal hearings. A manual for our case management system (*How to handle cases in the registry*) details the workflow in the registry to ensure compliance with the Tribunal's obligations and time frames as set out in the Competition Act (1998) and the rules of the Competition Tribunal.

The registry:

- has developed a case numbering and filing system;
- receives and distributes case documents;
- manages a roster system for Tribunal panels;
- manages the court roll; and
- manages the logistics for court proceedings, including a hired transcription service.

11. Research division

Case management

Researchers act as case managers in providing wide-ranging support to Tribunal panels and in liaising with legal representatives of parties over procedural matters. Researchers are responsible for the following aspects of case management:

- Tracking and perusing all documents submitted to the Tribunal in a matter, and briefing appointed panel members
- In consultation with the chairperson of the panel, conducting background research to facilitate the conduct of hearings and writing of decisions
- Attending pre-hearing conferences and hearings relating to the matter, preparing minutes of the proceedings
- Liaising with the legal representatives of the parties, expert witnesses and the Commission
- Assisting the registry in general procedural administration of the matter
- Liaising with panel members.

Research

Topical papers prepared

The research department also produces papers on topical subjects relating to competition law and economics for distribution to Tribunal members. During the period under review, the department produced four briefing papers:

The Tribunal contributes towards the purchase of material for the Competition Commission's resource centre and participates in a policy and research seminar series organised by the Commission.

Employing staff in the set-up phase necessitated thorough induction and considerable on-the-job training in developing workflow systems.

12. Training and human resource development

For personal and organisational enhancement

The Competition Tribunal is committed to developing the skills of staff to improve both individual and organisational performance. Employing staff in the set-up phase necessitated thorough induction and considerable on-the-job training in developing workflow systems. In addition, staff have attended a number of courses conducted by external institutions.

13. Tribunal member meetings and training

Continually updating aspects of best practice in competition policy

Tribunal members have held several meetings during the set-up of the institution to familiarise themselves with the systems being developed and to discuss aspects of their work.

In addition, a three-day workshop was held for members on 22 to 24 October 1999. This workshop was facilitated by international experts on competition law – from the USA, UK and Canada. The Tribunal will hold regular meetings and workshops to keep members informed and updated on legal and economic aspects of competition policy.

14. Communicating the work of the Tribunal

Multiple communication channels

At its inception, the Competition Tribunal set out to be an accessible institution, which informed the media of its mandate, its procedures and the cases it was hearing. The Tribunal's role in providing such information was particularly important because the new legislation, and the institutions it set up, was not widely understood.

The CEO is the spokesperson for the Tribunal. A communications consultant has developed a public relations manual, which sets out policies, objectives and procedures for dealing with the media. There has been extensive coverage in the media of the Tribunal's decisions, which has helped educate the public about the Tribunal's functions and the Competition Act.

The Tribunal's website (www.comtrib.co.za) enables public access to information about its activities and outputs. Its decisions are published on the site immediately after their release. The site also contains the Competition Act, the Tribunal rules, Tribunal forms and links to other competition-related sites.

Full-time members have lectured university students and addressed a number of conferences, meetings and seminars on competition policy, the act and the Tribunal's procedures.

Part-time members receive an e-mail of press clippings on the competition matters daily and are informed of the status of cases through a newsletter produced by the research department. The newsletter includes updates on developments in the field of competition, both in SA and internationally. Three copies have been produced to date.

15. Financial management

Internal audit

The Competition Tribunal's internal auditors, ABD&T, were appointed for a two-year period beginning 1 January 2000. Two internal audits, as at 28 February 2000 and 31 March 2000, were conducted.

External audit

The independent external auditor is responsible for reporting on the financial statements. In terms of the act, this function is performed by the auditor-general's office. This audit has been completed.

Comments on financial statements

The budget for the seven-month period ending 31 March 2000 reflected expenditure (inclusive of capital expenditure) of approximately R10 million.

Income generated for the year amounted to R10,4 million and was distributed as follows:

Category	Amount (Rm)	Percentage
Government grants	5,0	47,88
Filing fees	5,2	49,79
Other income	0,2	2,33
Total income	10,4	100,00

Total **expenditure** (including capital expenditure) for the period under review amounted to R4,3 million.

Expenditure was allocated as follows:

Category	Percentage
Capital	25,83
Personnel and admin	59,39
Recruitment and training	6,26
Professional services	8,52
Total expenditure	100,00

Professional service expenditure includes payments to the Commission (in terms of the MOU), hearing transcription services and consulting services for system installations.

The major components of capital expenditure are tabulated below:

Category	Amount (Rm)	Percentage
Computer equipment	0,24	21,55
Furniture	0,29	26,03
Motor vehicles	0,10	9,62
Leasehold costs	0,46	41,74
Office equipment	0,01	1,06
Total capital expenditure	1,10	100,00

The variance in expenditure may, in the main, be attributed to the following factors:

- The volume of cases (and therefore associated costs) processed was lower than we had predicted
- The budget was drawn on the basis of the Tribunal having to pay 25% of set-up costs and shared services. A subsequent analysis of space occupied later showed that the Tribunal in fact only occupied 15% of the building space. This figure was used to structure payments to the Commission for shared services (in terms of the MOU).
- The budget provided for performance bonuses which were not paid because it was too early to assess employee performance and an appraisal system had not been developed. Salary increases, which are based on public sector increases, were also lower than the budgeted allocation.

Balance sheet

at 31 March 2000

	Notes	2000 R
Assets		
<i>Non-current assets</i>		1 009 107
Property, plant and equipment	2	1 009 107
<i>Current assets</i>		9 775 521
Inventory	3	11 032
Trade and other debtors		6 163 764
Cash and cash equivalents		3 600 725
<i>Total assets</i>		10 784 628
Equity and liabilities		
<i>Capital and reserves</i>		
Accumulated funds		7 260 057
<i>Current liabilities</i>		
Trade and other creditors		3 524 571
<i>Total equity and liabilities</i>		10 784 628

Income statement

for the seven months ended 31 March 2000

	Notes	2000 R
Fees received		5 199 818
<i>Other income</i>	4	5 243 369
<i>Operating costs</i>		10 443 187 (3 183 130)
Surplus income/accumulated funds for the period		7 260 057

Statement of changes in equity

for the seven months ended 31 March 2000

	2000 R
Balance as at 31 March 1999	–
Surplus for the period	7 260 057
Balance as at 31 March 2000	7 260 057

Cash flow statement

for the seven months ended 31 March 2000

	Notes	2000 R
<i>Cash flows from operating activities</i>		4 709 050
Cash receipts from customers		4 264 686
Cash paid to suppliers and employees		203 627
Cash generated by operations	7	4 468 313
Interest received		240 737
<i>Cash flows from investing activities</i>		(1 108 325)
Investment to expand operations: Property, plant and equipment – acquired		(1 108 325)
Cash and cash equivalents at end of the period	8	3 600 725

Notes to the financial statements

for the seven months ended 31 March 2000

1. Accounting policies

The financial statements are prepared on the historical cost basis and incorporate the following principal accounting policies.

These policies 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 the straight-line method at rates considered appropriate to reduce the cost of the assets over their estimated useful lives.

The depreciation rates are as follows:

Computer equipment	- 3 years
Furniture and equipment	- 5 years
Leasehold improvements	- 12 years
Motor vehicles	- 5 years
Office equipment	- 5 years

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.

No shortfalls have been charged against income for the period under review.

1.3 Inventory

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

1.4 Revenue

1.4.1 Government grants

Grants received from the government are recognised in the year to which they relate, once reasonable assurance has been obtained that all conditions of the grants have been complied with and the grant has been received.

1.4.2 Fees received

Fees received consist of fees receivable for the period excluding value-added tax.

1.5 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.

Notes to the financial statements

for the seven months ended 31 March 2000

	2000 R
2. Property, plant and equipment	
<i>Computer equipment</i>	200 833
Additions	238 876
Depreciation	(38 043)
Carrying amount at end of period	200 833
Cost	238 876
Accumulated depreciation	(38 043)
<i>Furniture and equipment</i>	260 583
Additions	288 525
Depreciation	(27 942)
Carrying amount at end of period	260 583
Cost	288 525
Accumulated depreciation	(27 942)
<i>Leasehold improvements</i>	440 713
Additions	462 603
Depreciation	(21 890)
Carrying amount at end of period	440 713
Cost	462 603
Accumulated depreciation	(21 890)
<i>Motor vehicles</i>	95 972
Additions	106 635
Depreciation	(10 663)
Carrying amount at end of period	95 972
Cost	106 635
Accumulated depreciation	(10 663)
<i>Office equipment</i>	11 006
Additions	11 686
Depreciation	(680)
Carrying amount at end of period	11 006
Cost	11 686
Accumulated depreciation	(680)
	1 009 107

Notes to the financial statements

for the seven months ended 31 March 2000

	2000 R
3. Inventory	
Inventory comprises:	
Consumables	11 032
4. Other income	
Government grants received	5 000 000
Interest received	240 737
Other	2 632
	5 243 369
Government grants relate to monetary assistance received from the Department of Trade and Industry.	
5. Surplus income	
Surplus income is stated after taking into account the following:	
<i>Expenditure</i>	
Auditors' remuneration	
– Audit fees	44 440
Depreciation of fixed assets	99 218
– computer equipment	38 043
– furniture and equipment	27 942
– leasehold improvements	21 890
– motor vehicles	10 663
– office equipment	680
Operating leases	291 550
Premises	277 624
Hearing rooms	6 630
Equipment	7 296
Retirement benefit costs	
– defined contribution plan	83 009
Administration fees	10 651
Contributions	72 358

Notes to the financial statements

for the seven months ended 31 March 2000

2000
R

6. Pension fund

The Competition Tribunal Pension Fund, which is governed by the Pension Funds Act of 1956, is a defined contribution plan for all employees.

The first statutory actuarial valuation report is only on 1 June 2002, due to the fact that the fund was established on 1 June 1999.

7. Reconciliation of surplus for the period to cash generated from operations

Surplus for the period	7 260 057
Adjustments for:	
Depreciation	99 218
Investment income	(240 737)
Operating profit before working capital changes	7 118 538
Working capital changes	(2 650 225)
Increase in inventory	(11 032)
Increase in trade and other debtors	(6 163 764)
Increase in trade and other creditors	3 524 571
Cash generated from operations	4 468 313

8. Cash and cash equivalents

Cash and cash equivalents consist of cash on hand and balances with banks, and investments in call accounts.

Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

Bank	115 407
Cash on hand	114
Investments	3 485 204
	3 600 725

9. Comparative figures

No comparative figures are disclosed due to the fact that it was the first year of operations.

Schedule to the financial statements

for the seven months ended 31 March 2000

	2000 R
Operating costs	
Audit fees – external	44 440
Bank charges	3 468
Catering management fee	14 238
Competition Commission – shared services	113 802
Computer, software licences	82 582
Conferences and seminars	105 112
Courier and delivery costs	16 254
Depreciation	99 218
Equipment hire	7 296
Gifts	1 431
Insurance	8 869
Media expenses	27 589
Minor office equipment	6 151
Motor vehicle expenses	3 776
Motor, travelling and entertainment	143 976
Printing, stationery and postage	37 965
Professional services	180 014
Publications, books and subscriptions	3 960
Recruitment and training costs	163 485
Rent paid	284 254
Repairs, maintenance and cleaning	24 093
Salaries	1 745 054
Security	13 845
Signage	14 362
Telephone and fax	37 896
	3 183 130

tribunal that is relatively
superior in its approach, to
that prepared to high profession
l standards and, of major impor
tance in this area, that acts exp
editiously. I believe that
we attained these objectives
thanks largely to the committ
ed performance of the staff a
nd members of the tribunal.



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