



# 2017 | 2018

A N N U A L

## INTERGRATED REPORT



**competitiontribunal**  
*south africa*

## VISION

To be seen as an exemplary administrative tribunal by being independent, impartial, ethical and professional.

## MISSION

To develop credible competition law and to be an effective structure for administering the law.

## VALUES

In pursuing its legislated mandate the Competition Tribunal (Tribunal) strives to deliver:

- fairness, objectivity and independence;
- timeous decisions of high calibre;
- effective communication of our work with the public; and
- courteous, efficient, informed interaction with our stakeholders.

## CONSTITUTIONAL MANDATE

The mandate of the Tribunal is contained in section 34 of The Constitution of the Republic of South Africa, 1996, which states *“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum”*.

## LEGISLATIVE MANDATE

The Tribunal derives its legislative mandate from the Competition Act of 1998 (Act 89 of 1998) (“the Act” or “the Competition Act”) and its purpose is to promote and maintain competition in the republic in order to:

(a) promote efficiency, adaptability and development of the economy;



(b) provide consumers with competitive prices and product choices;



(c) promote employment and advance the social and economic welfare of all South Africans;



(d) expand opportunities for South African participation in world markets;



(e) recognise the role of foreign competition;



(f) ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and



(g) promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged people.



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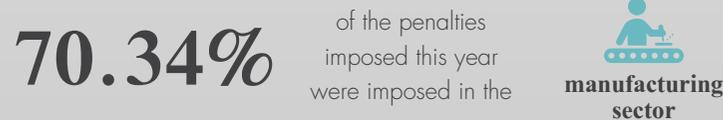
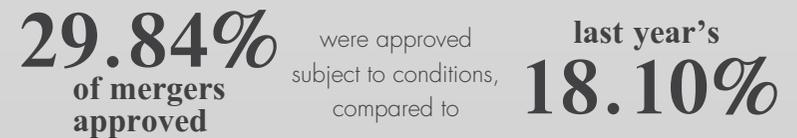
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# HIGHLIGHTS FOR 2017/2018

## Adjudicative Excellence -

To ensure effective and efficient adjudication on matters brought before the Tribunal



Of these, 67.57% were approved with public interest conditions.

Highest administrative penalty imposed this year was on Autoliv, for collusive conduct, and amounted to

**R149.96 million**

## Stakeholder Relationships - to build and develop effective stakeholder relationships

 **121** merger decisions and **50** complaint referral notifications were placed in the Government Gazette

**3 854** subscribers to our press releases 

Number of visitor sessions on the Tribunal's website increased from  **91 400** to **93 888**

**4 314** stories were carried in the media 

 **128** press releases issued for the **130** final decisions released this year

This comprised online **(43.07%)** | Print coverage **(43.16%)**   
Broadcast making up **13.77%** of the remainder of the coverage

## Accountable, Transparent And Sustainable Entity - to ensure effective leadership, transparency and accountability in the Tribunal through capacity building, effective reporting, policy management and financial compliance

**117.95** days  
Tribunal members and staff spent in workshops or conferences

 **45.26%** increase in the volume of materials recycled, excluding paper

**R11 100** raised by staff to build a home for a family and to buy a  laptop for University student, as part of our social responsibility programme

# PART 1

At A Glance



## MINISTER'S FOREWORD



“*Twenty years ago, President Nelson Mandela signed the Competition Act into law.*”

Twenty years ago, President Nelson Mandela signed the Competition Act into law. The Act was part of a series of legal reforms which sought to address the issues of inequality, exclusion, ownership and concentration in our economy. It also provided for the establishment of a set of independent regulatory bodies to implement its purposes: The Competition Commission, and the Competition Tribunal. Since the Act came into operation, the Commission and the Tribunal have investigated many mergers, and exposed and ended several cartels and other anti-competitive prohibited practices. It is against this backdrop that I table the Tribunal's 19th annual report in Parliament.

In the last year, the Tribunal was involved in a number of mergers in which conditions were imposed to protect

employment, small and medium businesses and encourage investment in a range of sectors. Three significant mergers in which the Tribunal were involved include Coca-Cola's buyback of its shares from ABInBev (a new transaction); Chevron's sale of its South African assets (involving Sinopec), and Old Mutual's corporate restructuring, which saw the company returning home to South Africa and making the JSE its primary stock exchange listing.

In each of these large transactions, the competition authorities placed significant public interest conditions on the transactions which builds on a trend over the past few years. These are ground-breaking developments in competition policy, not only in SA but internationally too. Taken as a whole, the conditions address one key concern



*Ebrahim Patel,  
Minister: Economic Development Department*

that citizens raise in many countries: how to balance corporate and public interests fairly and effectively. The conditions were agreed between the merger parties and Government, showing the value of social dialogue in shaping that balance, and ensuring acceptable outcomes to large merger processes.

In the Old Mutual transaction, the conditions included that the company's global headquarters be moved to Johannesburg; that high-level finance jobs previously performed in London be returned to South Africa; that a new R500m fund for developing small business be launched, that no jobs be lost as a result of the merger and that its BEE share-holding levels be increased to 25% of total equity, and thereafter to best-in-class in the industry.

Chevron, a large US oil-company with a refinery in Cape Town, and Caltex service stations across South Africa, decided to sell its local assets, initially to Sinopec, a Chinese oil-company. A range of public interest conditions were agreed on during merger negotiations. These included a commitment by the purchaser to invest an additional R6bn in the refinery, a R215m development fund to support small and black-owned businesses, maintaining or increasing the level of local procurement and increasing BEE levels from 25% to 29%. One unusual condition was that Sinopec should provide access for SA manufactured goods to the Chinese market, through the retail shops in their service-station network in China. Subsequently, a new merger filing was made by Off The Shelf investments, which exercised a right-of-first-refusal by bidding to match the Sinopec merger price. Government had, by date of finalisation of this report (August 2018), concluded an agreement substantially the same as that agreed by Sinopec, save where the context is materially different. This transaction will be referred to the Tribunal in due course.

Following the decision by Coca-Cola to buy back the equity in its bottling operations held by ABInBev, in a new transaction following the merger transaction reported last year, Government and the company agreed on extending the previously-agreed public interest conditions to the new transaction, with three significant additions. The company will maintain its aggregate levels of employment for roughly five years, it will increase BEE shareholding from 11% to 30%, and it will provide South African companies a fair opportunity to bid for controlling shares in the company's Africa bottling operations.

The Tribunal approved each of these transactions with the agreed conditions, following an opportunity for public scrutiny of the settlement agreements.

The Tribunal also concluded work on mergers involving three large construction companies, and seven smaller black-owned construction companies, imposing public interest conditions which will support transformation in the construction industry in South Africa. This will complement the other measures in the settlement agreement signed in October 2016 between government and the seven construction companies that were fined for collusion relating to the 2010 Soccer World Cup stadia and other related infrastructure projects.

In addition to evaluating mergers, the Tribunal has considered the outcome of Commission investigations into cartels and other abuses by dominant firms. This has resulted in penalties imposed of more than R350m in 2017/18 – totalling more than R7bn since 2010.

These successes notwithstanding, it is clear that the objective of a more inclusive society has not yet been fully achieved. This year we tabled a draft Competition

Amendment Bill, which will bring significant amendments to the Act to further empower the Commission and the Tribunal to deal, specifically, with structures of markets which lead to high levels of economic concentration, higher consumer prices, and that impede the ability for small and medium businesses, and black-owned businesses to participate in the economy.

The Bill also addresses a number of institutional enhancements which will bring the capacity and flexibility which the Tribunal needs to carry on its work. With the Bill, the process of economic transformation, towards greater inclusivity and competition in South Africa's economy has entered a new phase.

I wish to thank the chairperson, Norman Manoim, for his capable leadership of the Tribunal, and the dedicated Tribunal team who remind us that organisations do not need large scale operations or numbers to be effective. We look forward to continuing the partnership with and support for the Tribunal.



**Ebrahim Patel**

Minister of Economic Development

31 July 2018

## CHAIRPERSON'S REPORT



“ *This year has had an international flavour to it, both in terms of some of the mergers that have come before us and in one cartel case.* ”

It is with pleasure that I present my report as part of the 19th annual report for the period ended 31 March 2018.

This year has had an international flavour to it, both in terms of some of the mergers that have come before us and in one cartel case.

The cartel case has been brought by the Commission against 21 banks, only two of which are domestically based. The case involves alleged rigging of the rand-dollar exchange rate.

The case has yet to be heard on its merits, but despite that it has kept us fully engaged in managing the process which has been complex, given the number of participants and various changes that have taken place during the course of

the litigation. One dispute we had to decide in the course of this litigation was whether one of the respondent banks could rely on the public access rights, afforded to third parties in the Commission's rules, to gain access to the Commission's record prior to the time it gets discovered in the normal course of the litigation. Although we decided the bank's request was premature it has taken our decision on appeal. The matter has been heard by the Competition Appeal Court (CAC) and a decision is awaited at the time of writing.

On the merger front we were one of many jurisdictions that had to consider the merger between international chemical giants Dow Chemical and DuPont to form DowDuPont. Various jurisdictions had imposed conditions on the merger so by the time it had to be considered by us, many of the competition concerns had been remedied. Nevertheless,



**Norman Manoim,**  
*Tribunal Chairperson*

a specific local concern remained and the Tribunal imposed an additional licencing condition on the merging parties which they have not contested.

Two other mergers involved international buyers seeking to merge with South African firms.

Sinopec, which is China's largest petroleum refinery owner, is one of two rival bidders for CSA, which owns the Caltex business in South Africa. The merger attracted much attention because of the large investment undertaking made by Sinopec to the minister of economic development. In the Tribunal hearing the focus was the effect of the merger on certain intermediary companies which deliver the petroleum to retail outlets and who were concerned that a change of ownership might, in the long term, affect their viability. The Tribunal imposed certain conditions on the merger to offer some protection to these firms.

A similar investment condition was given to Old Mutual (Pty) Ltd which notified the final stages of a complex process of corporate restructuring which sees the firm re-domesticate itself.

The large merger we considered two years ago involving Anheuser-Busch InBev SA/NV (AB InBev) acquiring control of SABMiller Plc (SABMiller) has had several recent consequential mergers for the Tribunal to consider. One involved the sale of SABMiller's stake in Distell to the Government Employees Pension Fund (GEPPF). The other involved a restructuring of the Coca-Cola Group in which SABMiller had once held a substantial interest and which it sold to the US parent company.

Public interest conditions continue to be imposed in a number of cases, particularly with regard to employment.

This year saw the Commission taking enforcement action against firms that had failed to notify mergers. Pharmaceutical company Adcock Ingram Holdings was the subject of a hotly contested rival bid to acquire it. The successful bidder BB Investment Company, a company controlled by the Bidvest Group, had initially disputed that it had only notified the merger after having acquired control and thus defeating the rival bid. In the end it settled with the Commission and paid a penalty of R2m.

In another case the Natal Witness, now a subsidiary of the Naspers Group, conceded that it had merged with a small newspaper in KwaZulu-Natal (KZN) in November 2000 known as Mandla-Matla, without notifying the transaction. It agreed to settle the case with the Commission by paying a penalty of R1m. This settlement was challenged by the Naspers Group, Caxton and CTP Publishers and Printers Limited and Capital Newspapers, which requested the Tribunal impose a higher administrative penalty than the one provided for in the settlement. The Tribunal refused and confirmed the agreement with the Commission, finding that there was insufficient evidence to support the imposition of a higher administrative penalty.

More large mergers were cleared this year than in the previous year, but not as many compared to the 2015/2016 financial year; but that year registered the highest number of large merger clearances in the Tribunal's history.

Cartel cases continue to come before the Tribunal frequently, either in the form of settlements with the Commission or contested cases we are required to hear as trials. The variety of industries implicated continues to astound; ranging from rigged bids in the construction industry (a legacy from previous years of enforcement action) to a curious case

where two firms were accused of rigging a tender valued at R2000 to clear a Magistrates Court in a small Free State town of bees.

In some cases most of the firms charged with participating in a cartel agree to settle. Such is the case in a cartel involving a number of media companies accused of colluding over the rate of payment of discounts to advertisers. These settlements now numbering eight firms, with more still expected in the forthcoming year, have involved an innovative remedy. The firms have agreed to pay a contribution to an economic development fund designed to bring about new entry of small advertising agencies and to provide them with discount rates on advertising they introduce up to a certain level. The remedy is thus designed to ameliorate competition harm where some firms benefitted from the discounts at the expense of others.

Where firms accused of participation in a cartel refuse to settle the case must be heard by the Tribunal on an opposed basis. Whilst this imposes challenges to the resources of the Tribunal it serves an important purpose in not merely resolving a dispute in the particular case but also developing the jurisprudence in this area.

In most of these cases the documentary evidence proves decisive in determining the outcome of the case. However, in one, the proof of an agreement depended entirely on one phone call between the executives of two construction companies which the Tribunal found had colluded to provide with the one agreeing to provide the other with a cover price in response to a tender.

There have been far fewer abuse of dominance cases. The two abuse of dominance cases currently before us both

involve allegedly exclusionary contract clauses imposed by a dominant firm on customers, allegedly to prevent the entry of rival firms. As these case haven't been concluded, we will report on them next year.

Cases of restrictive vertical agreements are even more rare, as in most such cases the allegation is made against a dominant firm and reliance is made on the provisions of section 8 of the Act, the abuse of dominance provision, and not section 5(1), which deals with restrictive vertical agreements.

However one case we heard this year was brought by a private complainant relying on section 5(1). Massmart alleged that its Game division was being prevented from selling fresh groceries in shopping malls where it was located due to restrictions in leases between its rivals (Pick n Pay, Shoprite Checkers and Spar) and the owners of various shopping malls. We found at the exception stage that a case for competitive harm had not been sufficiently established under section 5(1).

We continue to improve on our efficiency in processing cases. In prohibited practice cases we agree to time frames that all parties must adhere to in order to ensure that they are completed in the period set down. Whilst this does not work out in all cases, our intention is to gradually gain acceptance for this approach from the legal profession.

Another innovation has been to curtail the time spent on expert evidence. We have recently introduced, in some cases, the so called 'hot tub'. This involves experts giving evidence simultaneously, instead of sequentially, and also allows the experts to question one another. Not only has hearing time devoted to experts reduced by at least 50%, but the Tribunal benefits from a debate on the issues between the experts on the same topic at the same time.

Due to its quasi-judicial nature the Tribunal is precluded from setting pro-active objectives or embarking on any focused interventions which target a particular sector or emphasise any specific sector. The Tribunal has no control over the number and type of cases brought before it and the only determinants of case load are complaint referrals and notified mergers. Each case brought before the Tribunal is adjudicated on its merits.

An evaluation of performance against 25 identified targets, explained in greater detail later in the report, showed 16 of our 25 targets were met or exceeded.

Two of the targets could not be measured as they pertained to the issuing of reasons and no reasons were issued. Reasons for partial achievement of the remaining targets are given later in this report, however further explanation is required to put the partial achievement into context as it would be wrong to assume that all targets are of equal significance.

12 of our targets relate to our core function, namely adjudicative excellence. Four targets were met or exceeded as indicated earlier, six were partially achieved and two could not be measured.

The reasons for us failing to meet our targets in respect of writing reasons is due to the fact that we have a limited number of members whilst the workload of the Tribunal continues to increase. Decision writing is time consuming as records are lengthy and frequently in our young system cases raise new questions of law which have to be carefully decided and well-reasoned.

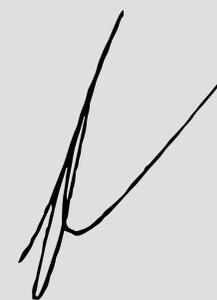
I am confident that the Tribunal staff are continuously striving to meet and improve on the above targets.

Part 5 of the annual report provides both a graphic and narrative explanation of the Tribunal's finances. I am of the view that the Tribunal continues to manage its finances both effectively and efficiently.

I am pleased to report that for the second year in a row and through the concerted efforts of the chief operating officer ("COO"), the corporate services, finance and procurement divisions the Tribunal has received a clean audit report.

In addition the Tribunal's annual report continues to receive various accolades – we received a merit award from the SA Publication Forum for the 2015/2016 annual report and a merit award for the 2016/2017 annual report at the Integrated Report Awards 2017 hosted by the Chartered Secretaries Southern Africa (CSSA) and the JSE. This is the second year running that the Tribunal's annual report has been recognised in these forums.

In conclusion I take this opportunity to thank both the staff and the Tribunal members for striving to ensure that we remain a credible, transparent and accountable entity.



**Norman Manóim**  
Chairperson

31 July 2018



Janeen de Klerk,  
Chief Operating Officer

## CHIEF OPERATING OFFICER'S REPORT



“

*While the impact we can have with regard to social and environmental sustainability is limited we provide the reader with a brief description as to how we as an organisation and as individuals in the organisation continue to address these areas in our work environment.*

”

The Tribunal, in preparing its 19th annual report, has continued to engage with the manner in which we can improve on the process of producing an integrated report. As indicated earlier in the chairperson's report we were pleased to, once again, receive recognition for our efforts in this process at the CSSA/JSE integrated report award where we once again received a merit award for the 2016/2017 annual report.

In preparing an integrated report we are striving towards giving the reader a holistic view of the Tribunal's operations over the reporting period showing the links between strategy, governance and performance (financial and non-financial). We focus on our achievements and our shortcomings and where it is within our control highlight plans to address these shortcomings going forward. We also provide a comparison between current and prior period results and explain reasons for the different results.

We have continued to use infographics to support the narrative as they make for easier reading. We have included our vision, mission and values and legislative mandate on the inside cover of the report thus placing our existence and role in context for the reader.

We have kept the basic structure of the report the same as the prior year. The report consists of six main parts. Part 1, as its title indicates, provides a glance into the Tribunal's operations from the perspective of the Economic Development Department, the chairperson of the Tribunal and the operational head and in essence is a "teaser" for the content to follow.

Part 2 focuses on our role and who comprises the Tribunal and is of particular benefit to the new reader who is not as familiar with the Tribunal as the seasoned reader of our report.

We have had a busy year this year with an increased volume in most aspects of our core function – adjudication and Part 3 addresses our performance against our stated objectives in the three strategic focus areas – adjudication, stakeholder relationships and governance. For each objective we consider whether we met the targets we set, to what degree we met them and, if we failed to meet them, what the reasons for non-achievement were and whether these are in our control or not.

We provide a narrative description on interesting aspects of the adjudication process – highlighting particularly notable cases, examining the reasons behind conditional approvals and providing some insight into noteworthy cases where employment conditions were imposed. We consider the volume and value of penalties imposed for prohibited conduct brought to the Tribunal's attention as well as the nature of the prohibited conduct. Over R354m in penalties was levied in 26 matters brought before the Tribunal.

Our continued enhancement of our electronic case management system (CMS) and the reporting tool Qlikview used to extract data relating to the adjudicative process has allowed us to provide interesting statistics relating to the classification of mergers. Of the mergers, 40% decided this year were classified as horizontal. Data from the CMS and Qlikview also revealed that 63 extensions were awarded this year, the value of the mergers decided by the Tribunal was R4.9 trillion and the average combined turnover per merger was just over R41m.

We look at the impact our increased use of social media and the electronic press release subscription and distribution process has had on our media coverage and address new strategies (implemented and planned) with regard to reaching new audiences and the youth in particular.

The effectiveness of any organisation and its ability to sustain itself is determined by its use of financial and intellectual resources so we explain in some detail the training interventions we have applied within the Tribunal (both national and international) and describe the various programmes we have for interns – both for those entering the workplace with no skills as well as the programmes we have for students studying economics or competition law at a tertiary level.

During the period under review the Tribunal had 13 interns over a total period of just under 1245 days and at a cost to the organisation of R0.92m. Through these programmes we achieve two objectives – providing work experience to those who normally may find it difficult to get such experience and therefore have limited future possibilities and build potential capacity and skill for the Tribunal and the field of competition work in general. We also provide detail on the interesting journey we have had with Harambee – an employment accelerator.

While the impact we can have with regard to social and environmental sustainability is limited we provide the reader with a brief description as to how we as an organisation and as individuals in the organisation continue to address these areas in our work environment

The environment we operate in – the public sector – has over the years increased the level of compliance required by entities receiving public funds. This has therefore place an increased responsibility on the Tribunal and other entities to be accountable and transparent in all aspects of our work.

While Part 3 partly addresses this Part 4 provides more detail on our compliance framework and the role the oversight structures and internal and external audit have with regard to providing guidance and holding us

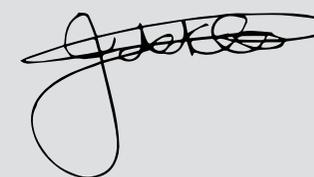
accountable to ensure we operate within an effective control environment in terms of all aspects of our operations.

These oversight structures keep us on our toes and their contribution towards the clean audit we have once again received should not be underestimated. In addition the willingness of the various divisions to address and clear findings raised in the external and internal audits has also contributed significantly towards the clean audit finding. I thank the various divisional managers and heads for their positive response with regard to addressing these issues.

The final section of this report (Part 5), in a simple and user friendly way highlights how we have spent our financial resources as, compared to prior years and against our approved budget. We look at the cost of each strategic objective we have set and unpack some of the costs and the factors driving these costs in the adjudicative process.

The remainder of the report includes the full annual financial statements prepared in compliance with GRAP requirements and the detailed full performance information as submitted to our line department and National Treasury.

We are of the view that we have produced an annual report that will be both user friendly, interesting and a few steps higher on the integrated reporting ladder.



**Janeen de Klerk**  
Chief Operating Officer

31 July 2018

“ *The exceptional knowledge these members have of competition law is evident when we note that together they have just over eight decades of working experience in the Tribunal. The average experience being seven years and nine months, with the longest serving 18 years and eight months while the shortest period served is one year and three months.* ”

# PART 2

Who We Are



## OUR ROLE



The Tribunal's mandate, role and goals are described in the Competition Act.

The Act provided for the establishment of two other institutions, the Commission and the Competition Appeal Court (CAC) to promote and maintain competition in the economy and protect consumer welfare.

Mergers and prohibited practices constitute the two types of cases mainly heard by the Tribunal.

In large mergers the Commission, following extensive investigations, makes a recommendation to the Tribunal to decide upon whereas in small and intermediate mergers the Commission makes a decision but parties can appeal this decision to the Tribunal.

The Tribunal is required to allow merging parties, unions or employee representatives and intervening parties to put their case forward directly to the Tribunal and is not bound by the Commission's recommendation.

Mergers are judged by their effects on competition and public interest and can be approved, prohibited or conditionally approved.

The Tribunal issues reasons for its decisions which are in the public domain and are published on our website. In the event that reasons contain confidential information, a non-confidential version is issued.

Prohibited practices are contraventions of the Act and can be:

- horizontal practices (agreements between competitors) with collusion being the most common type;
- vertical practices (agreements between suppliers and customers). These are described in the Act as 'minimum resale price maintenance' and agreements that have the effect of reducing inter- or intra-brand competition; and
- abuse of dominance – conduct by a dominant single firm that is exploitative, exclusionary or that discriminates in terms of price.

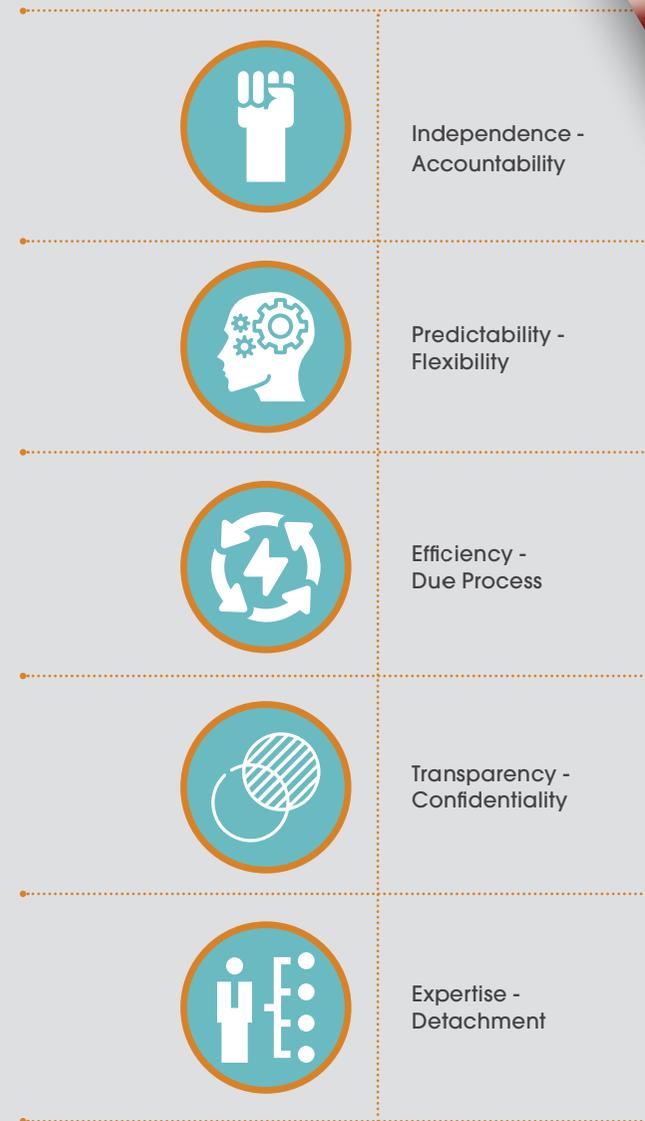
All hearings are conducted like a court hearing with pleadings, discovery, witness statements and a trial that includes examination, cross examination and legal argument.

These cases can be brief, if settled by a consent agreement, or long if they are contested. Outcomes of cases can include a remedy for a contravention. A remedy may be in the form of an imposition of a fine, divestiture order, or cease and desist orders.

Firms may apply to the Commission to be exempted from the application of the Act but the Tribunal will only become involved in this process when the exemption is refused or another party believes the exemption should not be granted.

In hearing cases brought before it the Tribunal must constantly perform a balancing act between the values depicted in the diagram to the right.

Diagram 1: Balancing our values



## HOW DOES THE TRIBUNAL ADD VALUE?



### Levelling The Playing Field –

the Tribunal facilitates entry by ensuring that markets remain open for business and that consumer welfare is protected.



**Innovation** – the Tribunal is mindful of the importance of innovation and one of the considerations when reviewing a merger is whether it is likely to inhibit or encourage innovation. In hearing a prohibited practice complaint, the Tribunal would consider, amongst other things, if the practice discouraged innovation.



**Creating Judicial Certainty** – the Tribunal adjudicates on matters where there are disputes, contraventions or mergers, creating surety for firms and encouraging investment both local and international through legislative fairness and consistency. This creates a well-regulated regime, which includes appeal processes and guides companies on how to interpret jurisprudence as it refers to competition law.



### Protects The Public Interest –

competition authorities are obliged to consider public interest grounds in merger analysis in terms of: its effect on small businesses (SMEs) or firms controlled or owned by historically disadvantaged individuals (HDIs) to become competitive; the impact of the merger on industry or on employment; and the ability of national industries to compete internationally.

**Reparation** – with regard to some prohibited practices where the conduct is considered to have a serious impact on the economy the Tribunal may approve a remedy requiring firms to contribute to a development fund, over and above the penalty imposed.



## TRIBUNAL IN OPERATION



The nature of competition law, with its legal and economic considerations, requires that matters brought before the Tribunal must be heard by a panel with the requisite skills. The Tribunal panel is made up of three members selected from the current pool of eight lawyers and three economists. These members, with the exception of the chairperson, are appointed for five years and can be reappointed. The chairperson may not be appointed for more than two consecutive terms. The Act requires that these members are South African and represent a cross section of our population. Currently 54.55% of the members are black.

The exceptional knowledge these members have of competition law is evident when we note that together they have just over eight decades of working experience in the Tribunal. The average experience being make seven years and nine months, with the longest serving 18 years and eight months while the shortest period served is one year and three months.

The secretariat consists of full-time employees who have no decision making powers with regard to the cases. They provide logistic and operational support to the panel.

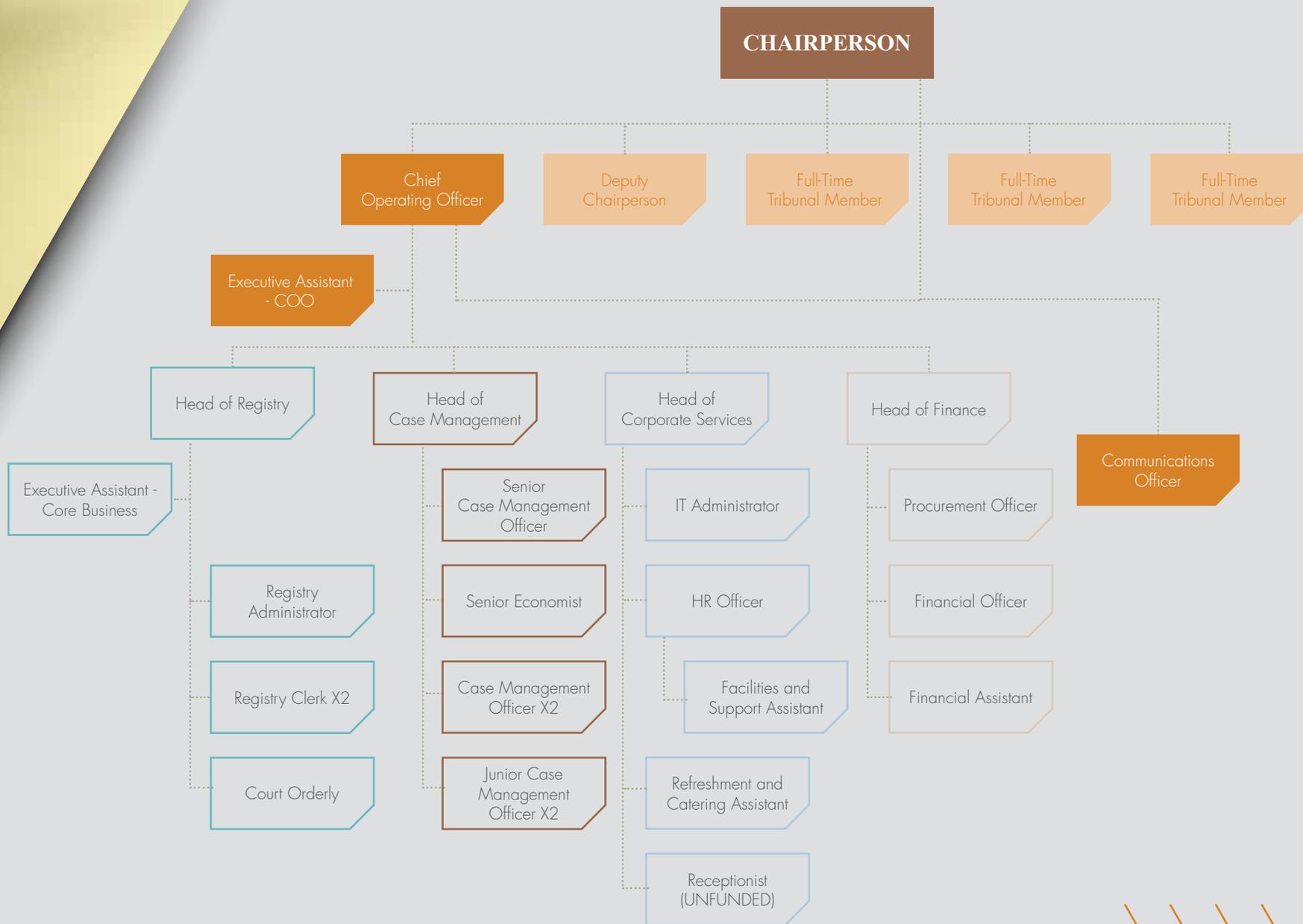
The secretariat is headed by the COO who is supported in her role by four divisional heads of case management, finance, registry and corporate services. These five positions constitute the Operations Committee (OPCOM) which provides assistance to the chairperson in his role as accounting authority. The OPCOM's mandate is detailed in its terms of reference and it has oversight responsibilities for all operational functions. It is required to ensure that good governance is established and maintained.

The Tribunal's current structure, illustrated hereafter, allows for a staff complement of 26, excluding full-time members.

As at end of March 2018 one position was unfunded.



Diagram 2: Organisational structure of the Tribunal



# TRIBUNAL FULL-TIME MEMBERS



**Norman Manoim**  
Chairperson  
Years in Service  
**18 years 8 months**



**Enver Daniels**  
Deputy Chairperson  
Years in Service  
**1 year 3 months**



**Yasmin Carrim**  
Years in Service  
**13 years 8 months**



**Andreas Wessels**  
Years in Service  
**8 years 8 months**



**Mondo Mazwai**  
Years in Service  
**5 years 3 months**

# TRIBUNAL PART-TIME MEMBERS



**Medi Mokuena**

Years in Service  
**13 years 8 months**



**Imraan Valodia**

Years in Service  
**5 years 3 months**



**Halton Cheadle**

Years in Service  
**1 year 3 months**



**Anton Roskam**

Years in Service  
**5 years 3 months**



**Fiona Tregenna**

Years in Service  
**4 years**



**Andiswa Ndoni**

Years in Service  
**8 years and 8 months**

“

*It is evident from this comparative that 2017/2018 was a “busier” year than the prior year. The number of matters heard increased by 11.52%. The number of orders issued increased by 15.08%. The number of reasons the Tribunal issued increased by 2.61%.*

”

# PART 3

## How Did We Perform?

## SETTING STRATEGIC GOALS AND OBJECTIVES



The Tribunal has identified three broad strategic goals. Each goal includes strategic objectives which have key performance indicators (KPI's) and targets assigned to it. Our performance is measured against these targets.

The nature of our function is such that KPI's relating to the adjudicative process and stakeholder relationships generally remain constant over the five year strategic period and in many instances are actually stated in the Tribunal rules. Despite this we reassess targets annually and, where relevant, adjust them based on a three year average baseline performance.

Targets are not set at 100% as we cannot always attribute non-performance to the Tribunal. Non-performance may be the result of the complexity of the matter or delays requested by parties.

The Tribunal budget is allocated according to each strategic goal and we are therefore able to report expenditure against each goal and determine the direct cost of our core business: adjudication.

We provide a detailed narrative of performance against the 25 targets set for the period under review in the section below and have summarised financial and non-financial performance in Diagram 3.

14 targets relate to our core business and businesses processes, four to stakeholder awareness and seven to operational effectiveness.

Diagram 3: Strategic focus areas and performance this financial year

Strategic Orientated Outcome Goal	Goal Statement	Budget Allocated	Budget Spent	No. Of Indicators	No. Achieved/ Exceeded	No. Partially Achieved	No. That Could Not Be Measured
Adjudicative excellence	To ensure effective and efficient adjudication on matters brought before the Tribunal.	R27 853 139.00	R26 360 938.19	14	6	6	2
Stakeholder relationships	To build and develop effective stakeholder relationships.	R1 124 930.90	R1 115 608.46	4	3	1	0
Accountable, transparent and sustainable entity	To ensure effective leadership, transparency and accountability in the Tribunal through capacity building, effective reporting, policy management and financial compliance.	R9 335 486.10	R7 878 485.38	7	7	0	0
Other expenses		R13 910 911.00	R12 937 335.63				
<b>TOTAL</b>		<b>R52 224 467.00</b>	<b>R48 292 367.66</b>	<b>25</b>	<b>16</b>	<b>7</b>	<b>2</b>

## MEASURING THE ADJUDICATIVE PROCESS



We continue to use the CMS to monitor the progress of the adjudicative process and to provide updated and accurate information on performance.

The system and reporting tools are designed to enable us to extract data relating to our work and provide a picture of our performance as well as statistics pertaining to the entire adjudicative process. The CMS makes it possible for the Tribunal to determine the effectiveness and efficiency

of the adjudicative process because we can accurately assess and measure whether we have set down matters and issued judgments in the required timeframe. We are also able to make a comparative analysis of performance over a number of financial years.

The volume of matters heard and decided and the number of reasons issued over the last two financial years is illustrated in the diagram on the next page.

Diagram 4: Volume of matters over two years



It is evident from this comparative that 2017/2018 was a “busier” year than the prior year. The number of matters heard increased by 11.52%. The number of orders issued increased by 15.08%. The number of reasons the Tribunal issued increased by 2.61%.

The increase in matters heard is the result of an 18.63% increase in the number of mergers heard and a 40% increase in number of complaints from the Commission heard. The increase in orders issued can be attributed to the

larger volume of mergers heard and the 19.05% increase in the issue of orders for procedural matters.

It is difficult to identify a particular reason for the increased volume. The inability to predict volumes and to explain fluctuations in volumes makes planning and budgeting in the Tribunal difficult as we cannot rely on historic records. We can only use them as a guide and to evaluate performance.

The Tribunal sets its targets annually based on a three year

average baseline. Factors that affect our ability to meet these targets include Tribunal member capacity, complexity of the matter, new procedural ground to consider and the availability of the parties in a matter.

During the current year we failed to meet six of the 12 core adjudicative targets (50%). When compared to prior years this could be deemed “poor” as last year we met or exceeded 57.14% of these targets. We address reasons for non-achievement later in this annual report.

Analysing the “merger clearance period” allows the Commission and the Tribunal to establish how effective they have been in assessing and deciding large mergers. The “merger clearance period” is determined by the Act which stipulates that the merger clearance period for a large merger should be 60 business days: 40 days for the Commission to investigate, ten days for the Tribunal to hear the matter and a further ten days for the Tribunal to issue an order.

61.98% of the 121 large mergers decided this year were cleared in 60 days or less as opposed to 73.53% in the prior year.

The diagram on the right provides a graphic illustration of the merger clearance period over the current and prior financial year.

At face value this would seem to indicate a decrease in efficiency and one must therefore ask what the cause of this is.

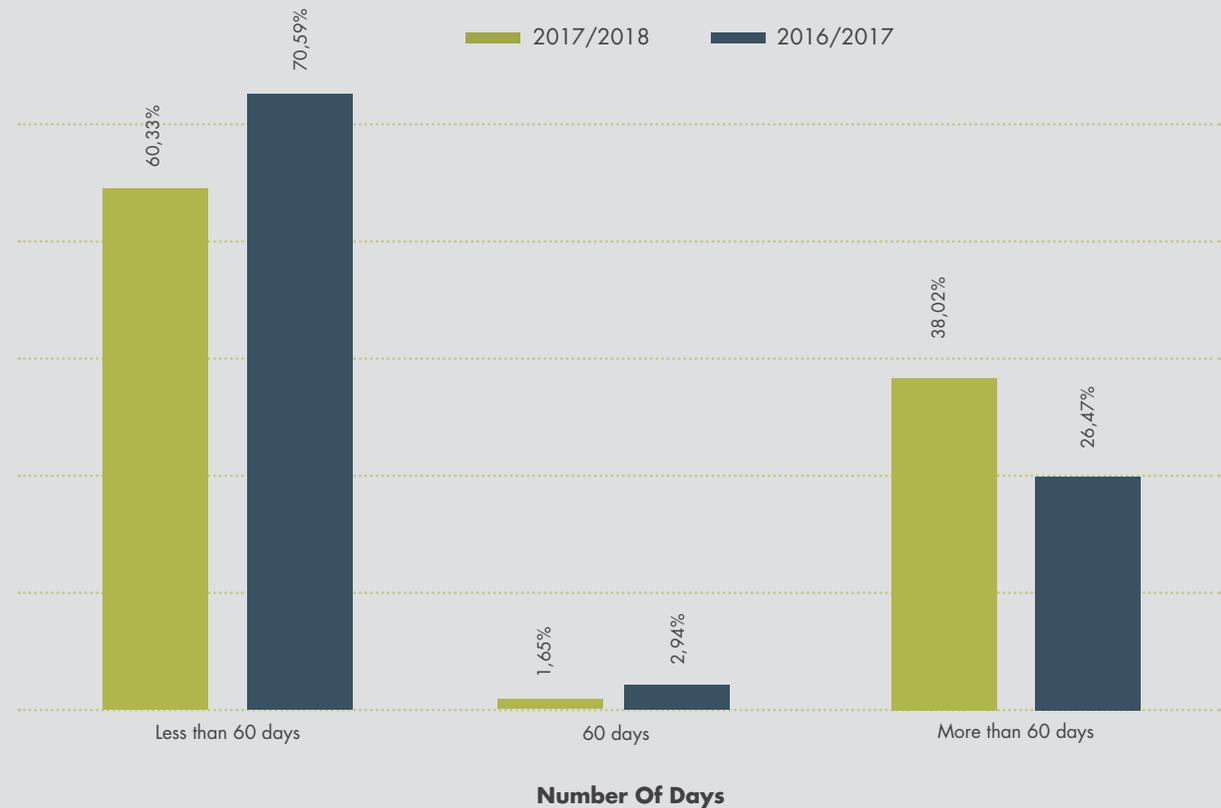
While we are unable to identify delays or reasons for delays on the Commission’s part we are able to provide some explanations for the Tribunal’s delays.

28.10%, as opposed to last year’s 12.75%, of large mergers were not set down within the required ten days.

During the adjudicative process extensions may be requested by the Commission for various reasons which include but are not limited to:

- outstanding documents from parties;
- responses have been requested from competitors or customers; and
- more time is required to investigate the merger.

Diagram 5: Merger clearance period



The approval of extensions requested also leads to delays in the adjudicative process. In the current financial year extensions were granted for 63 large mergers as opposed to 50 in the prior year. In addition longer extensions were granted in the current year as compared to the prior year with the median extension being 25 and the maximum days being 247 as opposed to 15 and 148 in the prior year.

Diagram 6: Period and number of extensions granted for mergers



From our CMS we are able to extract information relating to the combined turnover of mergers in which orders were issued during the current period and the prior period.

The table below provides the reader with an overview of the value of the transactions being decided by the Tribunal. The average combined turnover per merger is higher in the current year – R41.32m as compared to R37.46m in the prior year.

Table 1: Value of transactions decided by the Tribunal

	2017/2018	2016/2017
<b>Total Combined Turnover</b>	R4 886 307 336 295	R3 821 395 046 552
<b>Minimum Combined Turnover</b>	R59 691 000	R 0
<b>Maximum Combined Turnover</b>	R1 666 123 080 000	R355 057 277 000
<b>Average Combined Turnover</b>	R41 322 504 810	R37 464 657 319
<b>Number Of Mergers Decided</b>	121	102
<b>Total Transaction Value</b>	R1 869 600 000	R2 077 470 000

In addition we are able to extract data pertaining to the type of merger.

Mergers are defined as:

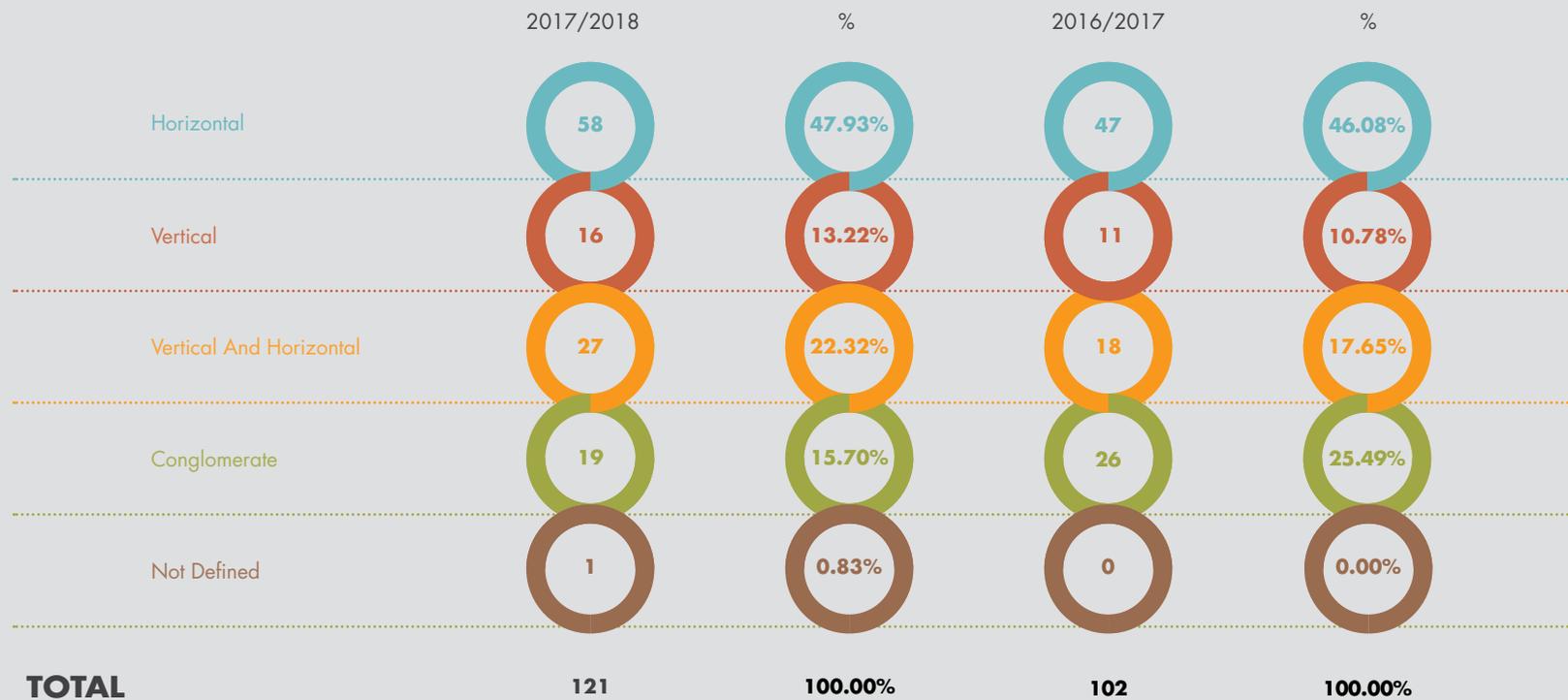
- **Horizontal merger** - mergers between competitors

- **Vertical merger** - a merger between companies in the same industry, but at different stages of the production process particularly firms in a customer/supplier relationship.
- **Conglomerate merger** - merger between firms that are involved in totally unrelated business activities. Pure conglomerate mergers involve firms with nothing in common,

while mixed conglomerate mergers involve firms that are looking for product extensions or market extensions.

There are instances where the merger relates to a vertical and horizontal product overlap for example a motor manufacturer buying a car dealer.

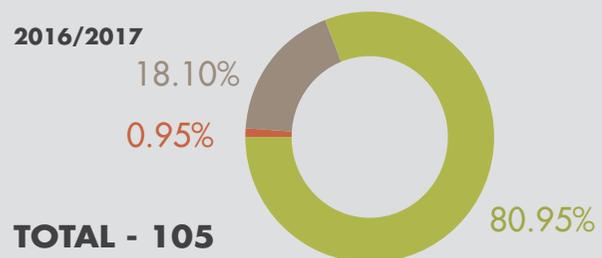
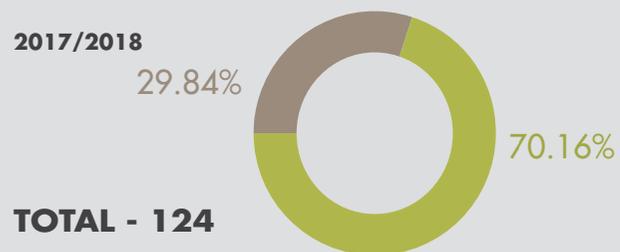
Diagram 7: Types of large mergers decided by the Tribunal



In both periods more than 40% of the large mergers decided were classified as horizontal mergers.

The diagram on the following page provides merger statistics for the two most recent financial periods. 37 (29.84%) of the mergers approved were approved subject to conditions. This is higher than the prior year figure of 18.10%.

Diagram 8: Comparative figures for mergers decided over two years



- Approved
- Approved With Conditions
- Prohibited

Approving a merger with conditions means that the Tribunal approves a merger subject to imposing a “remedy” on the parties. The remedies take the form of conditions that address a defined set of public interest grounds, company behaviour or market circumstances.

In the sections that follow we highlight some notable cases and then provide further detail with regard to public interest conditions applied in 67.57% (25) of the 37 mergers approved conditionally.



## Notable cases



### Global Merger Challenge Gets Home Grown Solutions

On 17 August 2017 the Tribunal approved, with conditions, the large merger between DowDuPont and Dow Chemical and DuPont. DowDuPont was a new company incorporated for the purpose of the transaction and was controlled by both Dow and DuPont.

#### Background

At the time of the transaction, both Dow Chemical and DuPont were involved in the distribution of seeds, agro-chemicals and material science products in South Africa. DowDuPont, Dow Chemical and DuPont notified the merger in other jurisdictions and had already agreed to certain conditions raised in those jurisdictions. While those remedies also resolved some competition concerns that arose in the South African market the Tribunal was concerned that they were insufficient to address the South African issues, in particular the possible exit of a potential significant competitor in the maize market.

#### Remedy

In response to this concern the merging parties tendered a detailed set of licensing remedies aimed at ensuring access to specified plant materials after the merger. The licensing remedies included granting the right to third parties to conduct breeding and testing on each and any products on the Dow Genetics Materials List, at no charge, and removing restrictions on using the licensed materials for commercialisation. After a hearing in which the Tribunal interrogated the adequacy of the licensing remedy, the Tribunal approved the merger with conditions.



### Petroleum Deal Empowers Wholesalers And Distributors

On 9 March 2018 the Tribunal approved a merger between Sinopec and CSA subject to a wide range of employment, investment and other public interest conditions. Sinopec was China's largest petroleum refinery owner. CSA was owned by Chevron Global Energy Inc. In terms of the merger agreement SOIHL HK (owned by Sinopec), acquired a 75% interest in CSA.

#### Background

By the time the merger was referred to the Tribunal for a decision, the merging parties had negotiated a wide range of employment, investment and other public interest conditions with the minister of economic development. However at the Tribunal hearing ten independent wholesalers and distributors, to whom CSA had previously sold its wholesale/distribution business, raised concerns about the potential effects of the merger on them and on their long term relationship with CSA. The wholesalers and distributors were also dissatisfied with the lack of engagement between them and the merging parties about the transaction.

#### Remedy

To address these concerns the merging parties tendered further conditions undertaking to engage with the independent wholesalers and distributors, to maintain their existing contracts and to bear the costs of rebranding certain service stations to the Sinopec brand. As part of the conditions agreed with the minister of economic development the merged parties also agreed to keep CSA's head office in South Africa and agreed that there would not be any merger related retrenchments.



### Consumer Welfare At The Heart Of Hospital Merger Finding

On 19 March 2018 the Tribunal approved, with conditions, a large merger between the Netcare Hospital Group (Netcare) and mental health care provider Akeso Group (Akeso) going against an earlier recommendation by the Commission that the merger be prohibited.

#### Background

Both Netcare and Akeso were active in the provision of private healthcare in South Africa. The Commission initially recommended a prohibition because it was concerned that Netcare would increase Akeso's existing lower tariffs for mental healthcare to Netcare's higher general healthcare tariffs. It was concerned the merged entity would acquire market power in a local market in Gauteng, giving it the unfettered ability to control market conditions. However, on receiving further conditions tendered by the merging parties the Commission reversed its recommendation to an approval subject to conditions.

#### Remedy

To resolve the concerns raised by the Commission, the merging parties, during the hearing, tendered conditions addressing its 2018 prices for Akeso and future price increases at Akeso's current facilities. It also undertook to divest its Rand and Bell Street Hospitals. The merger was accordingly approved by the Tribunal subject to these pricing and divestiture conditions.

## Adjudicating in the public interest

When deciding a merger, the Competition Act requires the Tribunal to consider both the impact that the merger will have on competition and whether the merger can or cannot be justified on public interest grounds. What this means is that a pro-competitive merger can be prohibited by the Tribunal solely on the basis of its negative effect on the public interest. Similarly, an anti-competitive merger can be approved if it is in the public interest to do so.

As such, the public interest provisions in the Act have far reaching implications. However, the concept is limited to the four public interest grounds set out in the Act, namely employment; impact on a particular sector or region; the ability of small businesses, or firms controlled by historically disadvantaged persons (HDPs) to become competitive; and the ability of national industries to compete in international markets.

Although no mergers were approved or prohibited solely on the basis of public interest during the reporting period, as illustrated earlier public interest concerns were added as conditions in 25 of the 37 mergers approved conditionally. This represents 67.57% as opposed to the 42.10% in the prior year. 22 of these related to employment conditions.

The most noteworthy of these are set out briefly below.

- Enterprise development and black economic empowerment were some of the conditions in a transaction in which a newly incorporated Old Mutual Pty Ltd acquired Old Mutual Plc's as part of an internal

reorganisation and separation of the Old Mutual Group part of the company. The merged party would use South Africa as its primary base for its activities into emerging markets.

- In the large merger between Steinhoff Doors and Building Materials (Pty) Ltd and Building Supply Group (Pty) Ltd the merging parties could not confirm the number of employees that would potentially be retrenched as a due diligence exercise had not been performed prior to filing the transaction. The Tribunal imposed a moratorium on merger related retrenchments of 21 semi-skilled and unskilled employees for a period of three years while limiting retrenchments of skilled employees to nine employees.
- In the large merger between South African Distillers & Wine (SA) Ltd and Lusan Holdings (Pty) Ltd, which gave Distell control over wine farms owned by Lusan, namely Alto wine farm and Uitkyk wine farm, the fate of one unskilled employee remained in the balance. After discussions the merging parties agreed that the employee remain in Distell's employment for a period of two years to give Distell the opportunity to find a permanent place to accommodate the employee should the opportunity arise. As part of the conditions the unskilled employee would also be given the chance to undergo further training.
- In a private security sector merger involving Fidelity Services and Analytical Risk Management, trading as 2RM Security, the Tribunal imposed a condition that there would not be any merger specific retrenchments of 2RM employees for a period of two years.
- Public interest issues were also the focus in the merger between Dimension Data Protocol BV and Hatch Investments (Mauritius) Ltd. This merger concerned the

possible retrenchment and the transfer of skills in the IT sector via an internship program. Both these concerns related to Nihilent Technologies, a subsidiary of the target firm. In order to protect at least 69 employees of Nihilent Technologies, whose jobs would be duplicated after the proposed transaction, the Tribunal imposed a condition which prohibited Dimension Data from retrenching any employees as a result of the merger for a period of two years. A condition was also imposed to ensure that Nihilent continued with its internship programme in IT and software testing to ensure skills transfer.

- Timrite (Pty) Ltd and Tufbag (Pty) Ltd applied to the Tribunal to reconsider the decision of the Commission to prohibit the acquisition of the Mining Bag Division owned by Tufbag. The Commission had prohibited the merger on fears that it would facilitate market allocation between competitors and lessen competition by eliminating a potential competitor in that market. The Tribunal approved the transaction but imposed employment conditions prohibiting merger specific retrenchments for two years and preventing agreements that contained exclusivity supply provisions, other than that aimed at the protection of Timrite's intellectual property and know-how.
- In three separate construction mergers involving Raubex, Stefanutti Stocks and WBHO Construction with various small and medium sized black owned companies, the Tribunal attached conditions aimed at preventing the exchange of competitively sensitive information through a trust fund established by the government pursuant to the settlement in the construction cartel. In all three of these transactions the Tribunal also imposed public interest conditions which addressed empowering and supplying emerging black businesses and contractors.

The diagram below highlights the remainder of the cases where employment conditions were applied but have not been discussed in more detail earlier in the report.

Diagram 9: Employment conditions imposed in large mergers decided

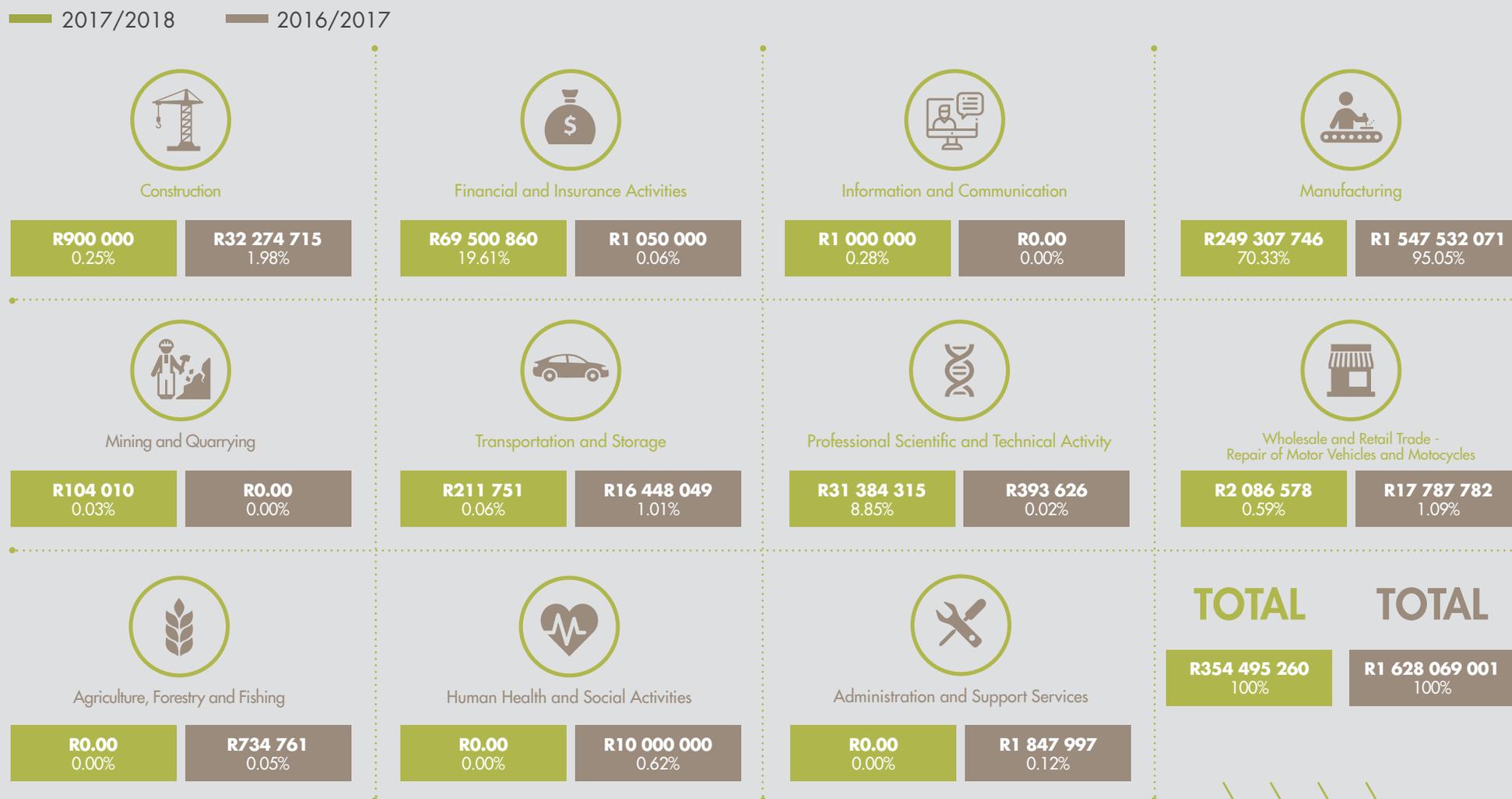


## Prohibited conduct matters before the Tribunal



The diagram below reflects the penalties imposed per sector during the period under review. 70.33% of the penalties imposed this year were imposed in the manufacturing sector. In the prior period this sector accounted for 95.05% of penalties imposed however this high percentage was mainly attributable to one firm: the ArcelorMittal settlement of R1.5bn.

Diagram 10: Fines issued per sector over two years

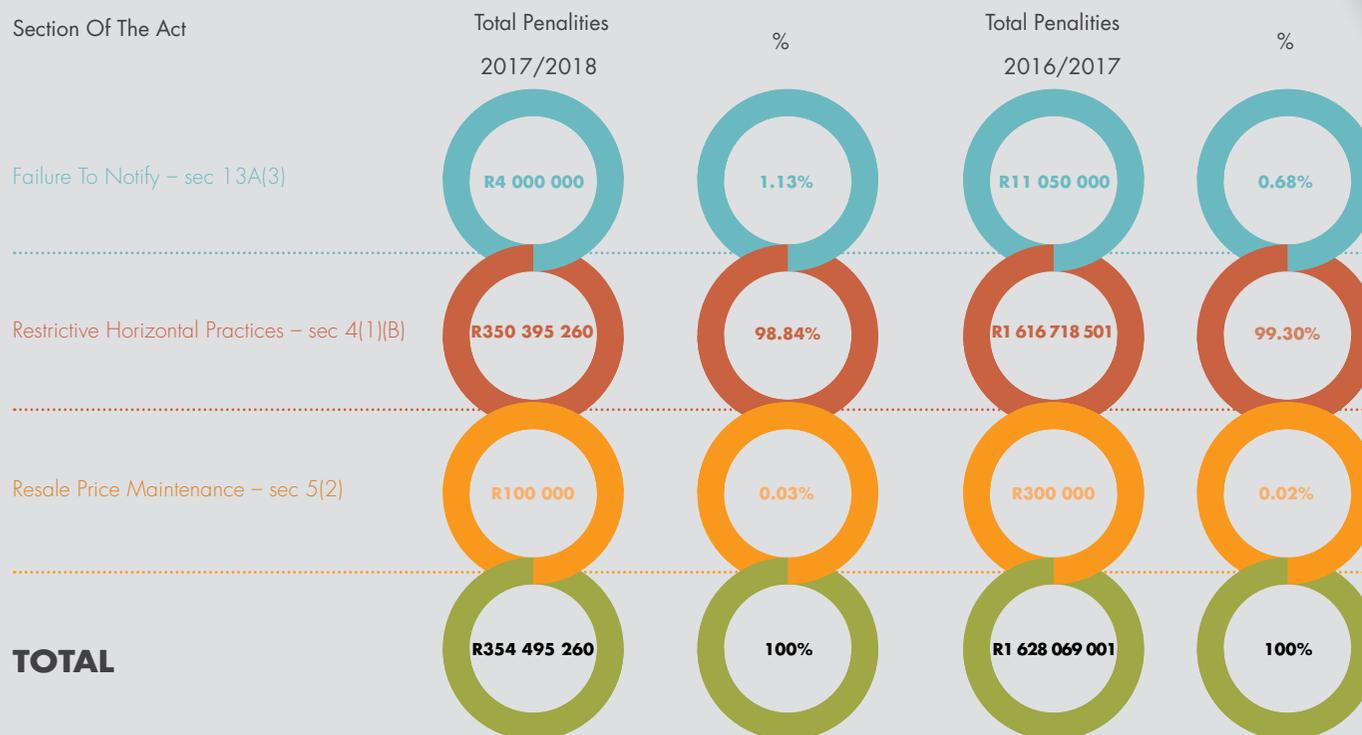


Cartel conduct or collusion refers to agreements or arrangements between competitors which unfairly restrict competition. They are prohibited in section 4 of the Competition Act and have often been described as the most egregious violation of South Africa's competition law. In technical terms these contraventions are called "restrictive horizontal practices". In the reporting period the Tribunal continued to adjudicate high numbers of cartel cases brought by the Commission.

Most frequently cartel cases are referred to the Tribunal as settlement agreements in which the Commission and the respondents have agreed to the terms of a settlement, a remedy and an administrative penalty. Less frequently, cartel cases are referred to the Tribunal as contested matters that require a full hearing to determine the outcome of the matter.

The diagram below indicates that in both the current and the prior year more than 95% of the penalties imposed were imposed for restrictive horizontal practices.

Diagram 11: Penalties imposed per section of the Act over two years





The significant cartel matters heard in the reporting period are discussed below.

- The largest fine confirmed by the Tribunal on a single firm was a penalty of R149 960 450.00 for Autoliv, the world's largest automotive safety supplier, for cartel conduct. In a settlement agreement Autoliv admitted to dividing the market and bid rigging in relation to occupational safety systems for BMW and VW vehicles.
- Four large media companies, out of 33 respondents allegedly taking part in price fixing in the outdoor advertising market, have paid R31 383 314.70 in penalties. Remedies also include a requirement that the firms involved provide 25% bonus airtime for every rand bought by all small qualifying agencies for three years up to a specified cap; and includes a requirement that the respondents contribute to an economic development fund. DSTV is to contribute R8 000 000 to the fund, Provantage R393 930.12, Caxton & CTP Publishers and Printers Ltd R2 090 480.45 and Independent R799 417.

- This year saw collusion around a government tender for supply of fabric used to manufacture uniforms for the Department of Correctional Services, the South African Air Force and the South African Military Health Services. Berg River Textiles and Eye Way Trading were found to have colluded in respect of two tenders issued by National Treasury. Berg River argued initially that the conduct fell outside of the scope of section 4(1)(b) of the Act because Eye Way did not have the capacity to manufacture the required fabrics. The Tribunal found that once both firms had entered bids they became competitors and therefore had a duty to bid independently. The Tribunal's decision has since been appealed and is set down to be heard by the CAC in 2018.
- A penalty of R69 500 860 was imposed on Citibank for entering into horizontal agreements and/or engaging in concerted practices to directly or indirectly fix prices in relation to bids, offers and bid-offer spreads in respect of spot trades, forward trades and futures trades.
- Pride Milling, Brenner Mills, Godrich Flour Mills and Bothaville Milling were fined R10 624 959.60, R12 000 872, R4 354 467 and R4 211 385.90 respectively for fixing the price of white milled maize.

Diagram 12 lists the remaining settlement agreements or consent orders considered by the Tribunal but also includes penalties for the failure to notify a merger.

Diagram 12: Consent orders and settlement agreements

<p><b>Party</b> ..... Alvern Cables (Pty) Ltd</p> <p><b>Conduct</b> ..... Alvern, SEW, Tulisa and Aberdare allocated customers and fixed the selling price of power cables to wholesalers, distributors and original equipment manufacturers (OEM's).</p> <p><b>Penalty</b> ..... R4 736 375.61</p>	<p><b>Party</b> ..... South Ocean Electric Wire Company (Pty) Ltd</p> <p><b>Conduct</b> ..... For directly or indirectly fixing the selling price of power cables.</p> <p><b>Penalty</b> ..... R13 362 855.00</p>	<p><b>Party</b> ..... Blurock Quarries (Pty) Ltd; Procon Precast CC</p> <p><b>Conduct</b> ..... Blurock Quarries (Pty) Ltd and Procon Precast CC admitted that Blurock supplied crusher dust to Procon and other firms outside of Estcourt at lower prices and supplied firms within Estcourt who compete with Procon at higher prices.</p> <p><b>Penalty</b> ..... The parties did not admit that this is a contravention of section 8(c) and 9(1) of the Act, but did agree to implement a pricing remedy to address the competition concerns arising from their conduct.</p>	<p><b>Party</b> ..... Secret River Trading CC t/a Caffelux</p> <p><b>Conduct</b> ..... Secret River Trading CC t/a Caffelux entered into an agreement with other competitors to not undercut one another when selling coffee capsules to retail customers.</p> <p><b>Penalty</b> ..... R750 000.00</p>	<p><b>Party</b> ..... Plasser South Africa (Pty) Ltd</p> <p><b>Conduct</b> ..... Plasser South Africa together with Aveng and Lennings agreed to engage in bid rigging and market division for railway maintenance and services in South Africa.</p> <p><b>Penalty</b> ..... R8 427 625.92</p>
<p><b>Party</b> ..... Afrion Property Service CC</p> <p><b>Conduct</b> ..... Afrion Property Services CC fixed prices, divided markets, and tendered collusively in the market for the supply, installation and maintenance of fire control and protection systems.</p> <p><b>Penalty</b> ..... R327 201.85</p>	<p><b>Party</b> ..... Fireco (Pty) Ltd</p> <p><b>Conduct</b> ..... Fireco Gauteng fixed prices, divided markets, and tendered collusively in the market for the supply, installation and maintenance of fire control and protection systems.</p> <p><b>Penalty</b> ..... R909 376.29</p>	<p><b>Party</b> ..... Fermel (Pty) Ltd</p> <p><b>Conduct</b> ..... Agreed to divide markets by allocating customers in the post warranty repair and maintenance market of Cassapa branded gear pumps.</p> <p><b>Penalty</b> ..... R104 010.00</p>	<p><b>Party</b> ..... Cape Brick (Pty) Ltd</p> <p><b>Conduct</b> ..... For price-fixing and market division in the masonry brick market in the Western Cape.</p> <p><b>Penalty</b> ..... R300 000.00</p>	<p><b>Party</b> ..... Core Relocations (Pty) Ltd</p> <p><b>Conduct</b> ..... For collusion with other respondents on tenders issued by the South African National Defence Force in the market for the provision of furniture removal services.</p> <p><b>Penalty</b> ..... R211 750.76</p>
<p><b>Party</b> ..... Macsteel Services Centre SA (Pty) Ltd; Unique Ventilation and Support Systems (Pty) Ltd</p> <p><b>Conduct</b> ..... Macs Services Centre had failed to notify the Commission of its merger with Unique Ventilation and Support Systems.</p> <p><b>Penalty</b> ..... R1 000 000.00</p>	<p><b>Party</b> ..... The Natal Witness Printing and Publishing Company (Pty) Ltd</p> <p><b>Conduct</b> ..... Failure to notify a merger.</p> <p><b>Penalty</b> ..... R800 000.00</p>	<p><b>Party</b> ..... Mandla-Matla Publishing (Pty) Ltd</p> <p><b>Conduct</b> ..... Failure to notify a merger.</p> <p><b>Penalty</b> ..... R200 000.00</p>	<p><b>Party</b> ..... BB Investment Company (Pty) Ltd ; Bidvest Group Ltd; Adcock Ingram Holdings (Ltd)</p> <p><b>Conduct</b> ..... Prior implementation of a merger.</p> <p><b>Penalty</b> ..... R2 000 000.00</p>	<p><b>Party</b> ..... Evraz Highveld Steel and Vanadium Ltd</p> <p><b>Conduct</b> ..... Evraz Highveld Steel and Vanadium Ltd fixed prices and divided markets. Highveld Steel and Acerlor/Mittal South Africa shared monthly sales volumes of flat steel products through an association.</p> <p><b>Penalty</b> ..... R1 000 000.00</p>
<p><b>Party</b> ..... Investchem (Pty) Ltd</p> <p><b>Conduct</b> ..... Investchem and Akulu Marchon fixed prices and divided the market by allocating customers in the market for the manufacture and supply of surfactants.</p> <p><b>Penalty</b> ..... R23 423 155.00</p>	<p><b>Party</b> ..... Akulu-Marchon (Pty) Ltd</p> <p><b>Conduct</b> ..... Akulu-Marchon (Pty) Ltd and Investchem fixed prices and divided the market by allocating customers, in the market for the manufacture and supply of surfactants</p> <p><b>Penalty</b> ..... R13 905 600.40</p>	<p><b>Party</b> ..... SBS Household Appliances t/a SMEG (Pty) Ltd</p> <p><b>Conduct</b> ..... Engaging in minimum resale price maintenance in contravention of section 5(2) of the Act.</p> <p><b>Penalty</b> ..... R100 000.00</p>		

## Novel issues raised in Tribunal cases

Some cases before the Tribunal dealt with novel matters of substance and procedure leading to new jurisprudence in the development of competition law.

- Rival building companies had allegedly tendered for the Mondi Reel Handling Project (the Mondi Project) in Durban. The content of a telephone conversation between the two executives of the rival companies formed the subject of dispute and there were no other witnesses to offer a version. The Tribunal was tasked with deciding which version of the alleged telephone conversation was more probable. However, one piece of evidence caught the eye of the Tribunal: a spreadsheet submitted by Mondi which had surprisingly contained a tender price from Giuricich. Giuricich, in its defence, could not convince the Tribunal how this price came to be contained in the spreadsheet. The Tribunal was not satisfied with the version put up by Giuricich, finding that Giuricich had contravened the Act by engaging in collusive tendering and imposing an administrative penalty of R900 000.
- Hosken Consolidated Investment Ltd (HCI) and Tsogo Sun Holdings Ltd (Tsogo) filed an application for an urgent declaratory order stating that a proposed transaction with Niveus did not need to be notified as a merger. The application followed an earlier advisory opinion issued by the Commission in which the Commission advised that the Niveus transaction be

notified. The Tribunal dismissed the application and held that the Commission’s advisory opinion was not binding on HCI and that notification of a transaction to the Commission was a jurisdictional requirement for the Tribunal to exercise its functions. As HCI had not yet notified their transaction with the Commission, the Tribunal concluded that it lacked jurisdiction to consider the matter. HCI has since taken this decision on appeal to the CAC and its judgment is awaited.

- In two applications brought by Goodyear South Africa (Pty) Ltd and Continental Tyres South Africa (Pty) Ltd the applicants sought to nullify the Commission’s agreement with the complainant to extend the Commission’s investigation. The Tribunal held that the Act does not stipulate that an agreement to extend should be reduced to writing. It found that it has become a practice by the Commission that it requests extensions from complainants by first obtaining these verbally and then submitting them in writing. Moreover, a reading of the Tribunal rules shows that, amongst other things, the registrar can accept documents within or outside office hours of the Tribunal, at his or her discretion as well as at the direction of the Tribunal or member of the Tribunal assigned by its chairperson. The registrar in this case accepted the Commission’s referral at 16h50 on 31 August 2010 and was therefore empowered in terms of the Act to do so. The Commission’s referral was thus considered to be filed in accordance with the rules of the Tribunal. The Tribunal dismissed Goodyear and Continental’s applications.

## HOW DID WE PERFORM AGAINST OUR PREDETERMINED ADJUDICATION OBJECTIVES?



These targets are revised annually based on a three year baseline average and are set to ensure that the Tribunal adjudicates matters brought before it and issues orders or decisions within time frames stipulated in the Act or determined internally.

### To what degree did we not comply and why?

- 34 out of 121 large mergers were set down late. In 52.94% (18 matters) delays were the result of parties’ unavailability to attend hearings on earlier dates given by the Tribunal. Delays arose in 23.53% (eight matters) as referrals were received prior to office closure over the festive season and the date available in January was outside the required turnaround time. In the remaining

23.53% (eight matters) an already full Tribunal calendar meant matters could not be set down for a hearing within the required timeframe.

- The target set for setting down small and intermediate mergers for a pre-hearing/hearing within 10 days of the filing of the request for consideration is 75%. We received ten requests to consider small or intermediate mergers and we set seven down within the required timeframe. The underachievement of 5% was due to parties not being available on the earlier dates offered by the Tribunal.
- Of the small or intermediate mergers that we decided in the reporting period, four orders were issued. In one matter the order and reasons were combined and issued at the same time thus resulting in non-achievement of this target.
- Reasons issued for prohibited practices that are deemed to be “simple matters” are required to be issued within 100 business days. Reasons were issued in two such matters with one exceeding the required time by 75 days. In this instance the member writing the reasons was also sitting on other matters which made it difficult to meet the target.
- Procedural matters by their very nature are often highly complex, traverse new procedural ground and involve difficult issues of law and fact. This means that drafting of reasons in these matters is not straight forward and it becomes difficult to meet the target of 20 business days after the last hearing date. The orders in 22 out of 50 procedural matters were issued late which meant that we under performed in this area by 29%.

- With regard to the issuing of consent orders and settlement agreements – we under achieved by 5%, with four out of 26 consent orders or settlement agreements being issued late. Two of the four matters were quite complex and had their order and reasons issued simultaneously. In the other two matters the orders went out late due to an administrative error.

While we have a full complement of Tribunal members we continue to experience difficulty in finding sufficient members to fill the panels required. This occurs particularly with regard to part-time members, whose availability depends on their other work commitments and who may be able to sit on one day hearings but are not always able to assist with longer hearings or with the writing of reasons. To this end the Tribunal is engaging the EDD with regard to either increasing the numbers of part-time members or allowing for acting Tribunal members.

In addition, we continue to monitor delays and reasons for delays and in the next strategic planning process we will consider adjustments that may need to be made to turnaround times.

With regard to our CMS we have continued to ensure the sustainability of the system and recent updates implemented have meant it will remain supported until 2022. In addition, our regular “health checks” indicate that it is a very stable system and it currently has very few vulnerabilities that impact on its performance.

We have made enhancements to both CMS and Qlikview, the reporting tool aligned to the CMS, that have enabled us to extract more data from the system. Two of the developments this year include a report that details the turnover and the transaction value of large mergers decided

and a specific tab in CMS where case managers input all data pertaining to the matter on the roll thus ensuring data relevant to the case is captured here and then auto populates to other fields within the CMS.

## OUR RELATIONSHIP WITH STAKEHOLDERS



The Tribunal has continued to focus on its relationship with its internal and external stakeholders with three of the annual targets addressing the promotion and increase of stakeholder awareness. In this way we are ensuring that communication is relevant and timeous.

### Reaching our stakeholders

Cases before the Tribunal continue to become more complex and the communication officer receives many requests on background information pertaining to cases before the Tribunal and the status of cases. While our counterpart, the Commission, can play a very active role in the media the Tribunal’s role is restricted given its judicial function.

Platforms used by the Tribunal to communicate and create awareness are varied. They include regular press releases, media interviews on matters not related to a specific case, talks given by Tribunal members at different forums, the hosting of other competition authorities, education programmes aimed at school children, social media (Twitter and Instagram), the website, e-newsletter, brochure, internal publications, the annual report and the Government Gazette. In addition the communication officer monitors the media on a regular basis in order to track public perception and address the accuracy of information reported on.

All orders released by the Tribunal must be published in the Government Gazette within 20 working days of the order being released. 83.47% of the 121 merger decisions placed in the gazette were placed within the required 20 working days while 66% of the 50 complaint referral notifications were placed in the gazette within the required 20 working days.

We have increased our reach through social media platforms Twitter and Instagram. Twitter has proved to be a popular medium for stakeholders wanting information in real time, in other words as soon as a decision is released.

Twitter is one of the top three social sites in South Africa with demographics that reflect the South African population. Monitoring Twitter followers allows the Tribunal to assess the general attitude to cases lodged and decisions given by the Tribunal, flag public misconceptions where they exist and understand their specific interests. One of the Twitter analytics indicate that the Tribunal's audience is most interested in business news, followed by decisions dealing with the technology sector and decisions loosely relating to government.

The e-newsletter produced by the Tribunal highlights cases seen to be significant to stakeholders as well as providing interesting statistics pertaining to the adjudicative process. Its distribution list includes, but is not limited to, various government departments, media and global competition publications. In the year under review the Tribunal produced two newsletters.

We produced three issues of the Tribunal's internal newsletter, Tsele le Tsele, which is used to communicate information about Tribunal staff, welcome new recruits, say goodbye to those leaving the Tribunal and recognise achievement. It provides an update on progress with regard to our social responsibility and recycling projects. It helps create unity amongst staff members and is a fun, light hearted read in an environment that is normally dominated by more serious reading material.

While no education programme for learners was held this year we have spent some time refining the programme and planning for a visit of 53 pupils from a local school in April 2018. This will be reported on in next year's annual report.

As part of the communication strategy to reach new audiences and the youth, we facilitated an intern's interview with a popular website The Daily Vox. The intern's brief foray as an unsuccessful entrepreneur and the influence it had on his decision to study competition law has also been placed on the website in English and Zulu.

### Deepening our knowledge of stakeholders

A major project undertaken within the Tribunal during the period under review was the substantial revision of the stakeholder database and the introduction of an automated system for distributing the press releases. Stakeholders were issued a single invitation to subscribe or unsubscribe to all or any number of the four types of press releases (upcoming one day hearings; one day hearing outcomes; hearing

alerts and outcome of a specific matter) issued and the Tribunal's e-newsletter.

This invitation was sent to 1 024 stakeholders and the list consisted of existing stakeholders as well as to stakeholders not previously on the contact list - with a particular focus on small local or community media organisations.

As at 31 March 2018 we have a total of 3 854 subscribers for the four types of press releases (an average of just under 964 subscribers per type of press release). The list varies on a daily basis as stakeholders subscribe or unsubscribe. Automating this process has made the dissemination of information, particularly decisions, more efficient and we hope it is gradually extending the Tribunal's reach.

As the system is new, we are still trying to understand how to interpret the data we receive. While it appears as if the percentage of stakeholders who "open" the mail is low (currently less than 30% on average per "campaign" distributed) the bounce back is minimal and very few subscribers are unsubscribing.

In August 2013 the Tribunal undertook and completed a stakeholder survey that focussed primarily on the adjudicative process and hearing logistics. The Tribunal plans to undertake a stakeholder survey in the 2018/2019 financial year in order to review stakeholder needs and perceptions. The specific areas of focus for the survey are still to be determined.

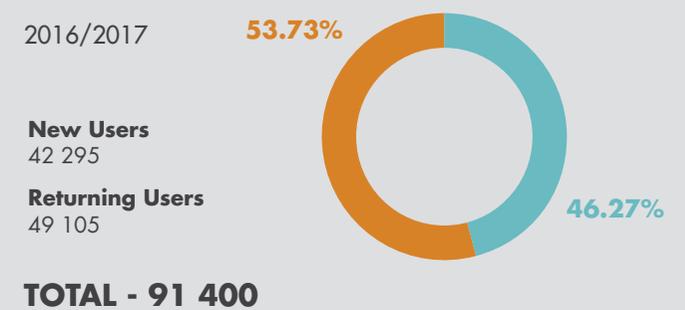
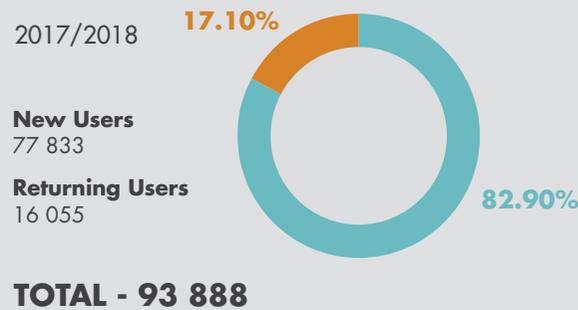
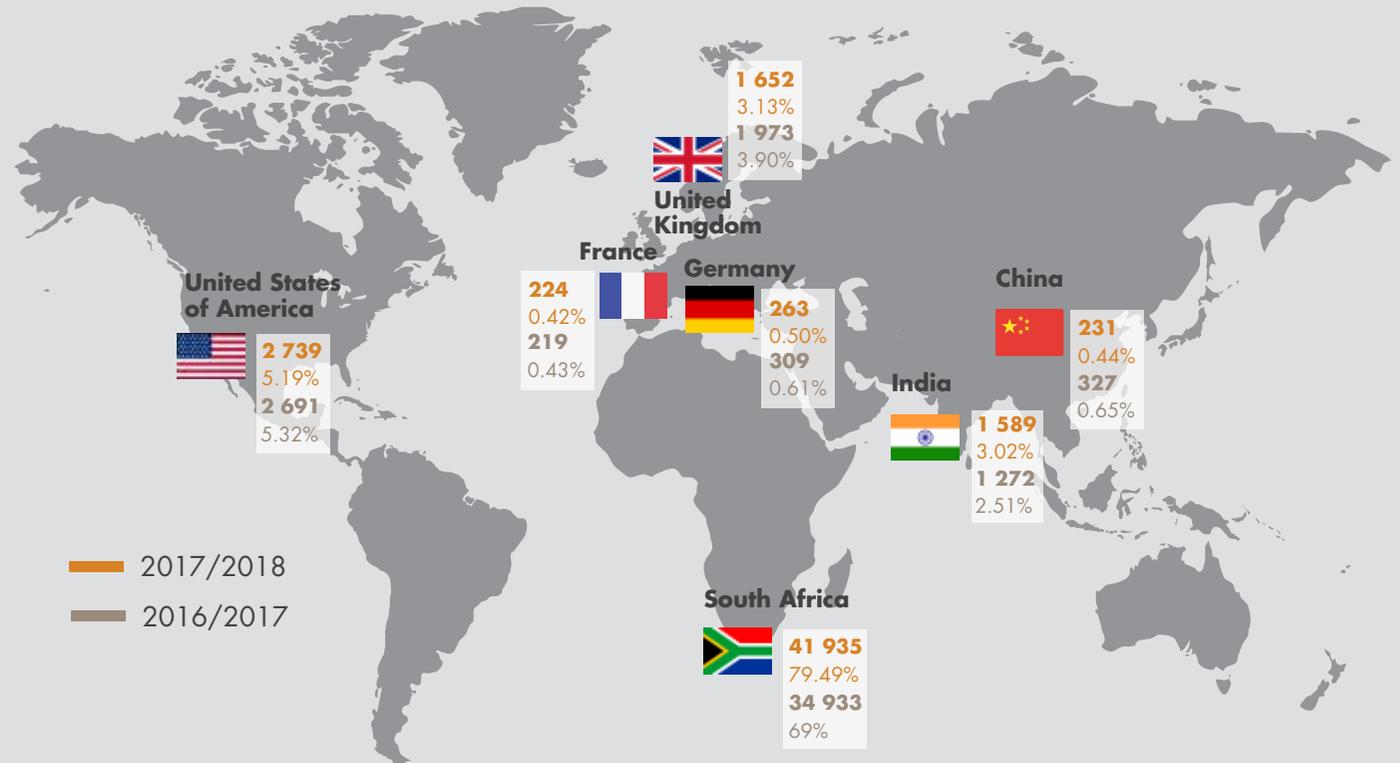
## Enhancing our reports and messages



The website remains the primary method for communicating with the general public. Using Google Analytics we are able to measure traffic to our website.

A website session is defined as a group of interactions one user takes within a given time frame on the website. In the period under review each user viewed an average of 3.76 pages for 3.45 minutes. This is marginally less than 2016/2017 when users viewed 4.57 pages for 4.27 minutes. Despite this the number of sessions has increased by 2.72% from 91 400 to 93 888.

Diagram 13: Users of our website



New users

Returning users

128 press releases published for 130 final decisions issued by the Tribunal were posted on the website. Access to these and other historical press releases was improved this year with a redesign on the website that meant all press releases are organised into financial years thus facilitating easier search.

We are currently in the process of finalising a bid process to enter into a contract with a service provider to revamp our website which includes translating certain information into four languages. Our ability to translate information into official languages is limited by the fact that competition and legal terminology is difficult to translate directly.

We look forward to a website that is interactive, modern, accessible and intuitive for users.

## Using data to analyse our media coverage



The Tribunal undertakes a detailed analysis of its media coverage, on a quarterly basis. – with the main source of this information being the news monitoring service Newsclip.

This analysis includes the number of stories published in the media; the cases that received the highest coverage; the target market of the audiences carrying the stories; which of the three categories of media carried the most stories and

whether stories carried were negative or positive.

This in depth analysis began towards the end of the last financial year and continued into 2017/2018 but was extended to include determining whether the media coverage was a direct response to an order being issued by the Tribunal.

As indicated, monitoring media and social media helps to highlight negative perceptions or incorrect information. It also assists in identifying public interest and the effectiveness of the Tribunal's media campaign.

We have seen a steady increase in the number of mergers approved subject to public interest conditions (from nine in the prior period to 24 in the current period). Our strategy to extend our reach to media organisations that target particular language groups, community or regional audiences will provide us with an opportunity to ensure that those affected by these conditions are made aware of them.

Some cases that dominated the media are:

- an application by Standard Bank in the complaint against 21 banks for rigging the rand dollar exchange rate;
- settlements by media companies for fixing outdoor advertising prices;
- international mergers such as agro-chemical company DowDuPont; Barnes and Scaw; Old Mutual (Pty) Ltd

and Old Mutual Plc and that of Sinopec and Chevron;

- a settlement for prior implementation of the Bidvest and Adcock merger;
- mergers involving struggling firms, Daybreak, Progress Milling and Noordfed;
- a merger involving Italtile; and
- the price fixing settlement for coffee capsule supplier Secret River Trading t/a Caffelux.

Our analysis indicates that 4 314 stories were carried in the media in the year under review. The Tribunal received equal online (43.07%) and print coverage (43.16%) with broadcast making up 13.77% of the remainder of the coverage.

Total Advertising Value Equivalent (AVE) is a common measure used by publicity and marketing companies to assess their performance. AVE takes column size in inches covered and then calculates the cost of the same amount of space in advertising value.

It therefore provides an indication to how much it would have cost the Tribunal should it have paid for the advertising in print, broadcast or online media. This means the advertising would have to have the same placement (in terms of when or where it was run) and a similar length or column space.

The AVE for the 2017/2018 is R221m. The AVE for the last quarter of 2017/2018 year was R79m up on the AVE of R65m for the 2016/2017 financial year.

## HOW DID WE PERFORM AGAINST OUR PREDETERMINED STAKEHOLDER RELATIONSHIP OBJECTIVES?



A well-integrated communication plan enables the Tribunal to have a structured and focussed process to create and enhance awareness of its work. One target set for the year included a review of the plan implemented last year while the other was a requirement to include progress against strategy and an analysis of media coverage in the quarterly report presented to the EXCO. These targets have been fully met in the period under review.

The Tribunal issued 128 press releases for 130 final decisions in mergers and prohibited practice cases. These press releases are required to be issued within two business days of the order being issued. While we exceeded the target for the press releases for final merger decisions by 25% we failed to meet the target for press releases for final prohibited practice decisions. In this regard five press releases were issued but two were not issued within

the required two business days of the order issued due to housekeeping issues. The target for prohibited practice cases is set at 100% and that for mergers is set at 75% because not all merger decisions are considered of such interest that a press release is required.

## HOW DO WE REMAIN ACCOUNTABLE TRANSPARENT AND SUSTAINABLE?

The third strategic goal allows us to measure our ability to sustain the required capacity and govern the entity so as to achieve effective financial management and reporting.

Producing an integrated approach to annual reporting has meant that year on year we strive to make the report relevant and engaging and that we ensure that our focus is on financial and non-financial activities.

Transparency and accountability is achieved through our focus on successes and failures. We also address possible remedies for failure or non-performance. We address capacity building in this section and later in the report look at issues of governance and ethics.

Through our internship programme we are able to simultaneously benefit the organisation while providing youth with very valuable and practical work experience.

The Tribunal internships prioritise mentoring and the transfer of skills and is a key part of the fabric of the organisation. Over the years and across the divisions in the Tribunal we have seen a significant number of these internships translated into full-time employment or long term contracts. We currently have seven staff members who began their work experience in the Tribunal. Three of these interns were recruited through a youth employment accelerator, Harambee, while the remaining four participated in the case management vacation or long term internship programme.

Through this programme final year LLB, B Comm (Law) or B Comm (Economics) degree students are offered work experience during the vacation period and two to three graduates are annually offered a long term internship, as junior case managers, from January to December.

Long term interns are mentored and assigned merger cases that they are required to oversee for the duration of their term. They attend hearings related to the cases assigned to them and draft case summaries with the guidance of more senior case managers. They also shadow case managers on prohibited practice cases.

Final year students on vacation internships shadow case managers assisting with many aspects of the adjudicative process and gain working experience of competition law.

In the period under review four university students benefitted from vacation internships, spending a total of 60 days in the Tribunal, and three students were appointed as long term interns.

In other divisions the internship programmes is aimed primarily at providing short term entry level job experience to unemployed youth. We generally focus on offering these internships prior to year-end when the interns can assist with various administrative and support functions. As indicated earlier we have maintained a relationship with Harambee for this purpose.

Two Harambee interns employed in the Tribunal in the prior and current period applied for vacant positions in the Tribunal and, as they proved to be the most suitable candidates, were offered permanent positions. Ongezwa Dzulane, an intern in the finance division, was appointed as the financial assistant with effect from 1 December 2017 and Sabinah Monareng, an intern in the corporate services function, was appointed as the facilities and support services assistant, with effect from 1 October 2017.

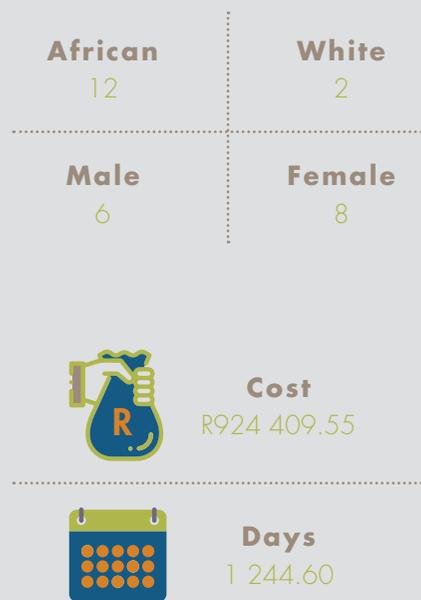
Marie-Louis Funston of Harambee says of the ongoing relationship: *“The journey with the Competition Tribunal has been a great one. The Tribunal has been fantastic; the organisation goes the extra mile in giving them (the Harambee work seekers) support, a bigger scope of duties and a great salary for an entry level job. This means that the intern will continue coming to work as their remuneration is sufficient to cover their needs and transport costs. Transport costs have an impact on candidates who are highly impoverished and therefore adequate remuneration and/or placement close to their place of residence is of importance.”*

Marie-Louis indicated that Harambee assists candidates with drawing up a curriculum vitae, opening a bank account and managing expectations about employment opportunities.

Harambee focuses on finding organisations that are willing to give candidates with no work experience an opportunity. Giving a candidate one year’s work experience increases their chances of finding other employment. Marie-Louis explained that Harambee tries to match the candidate with the specific requirements of the organisation and to place them within a specific catchment area.



### INTERNSHIPS



Building sustainable capacity also means that Tribunal members, case managers and other employees receive the requisite training to expand their skills and increase their level of competency in their specific field.

Provision is made in the annual budget for this purpose and we spent R0.79m for full-time Tribunal members and employees to spend 1 17.95 days in various skill enhancing workshops or conferences.

We continued to ensure that the Tribunal is represented on an international level with eight delegates attending six conferences or workshops. The Tribunal was represented at two International Competition Network (ICN) annual conferences and the competition committee of the Organisation for Economic Co-operation and Development (OECD) thus ensuring that employees remain current with regard to international best practice in competition law and policy.

The Tribunal’s deputy chairperson attended the Competition and Regulatory European Summer School (CRESSE) lawyers’ course while a part-time Tribunal member and the Tribunal’s economist attended the CRESSE advanced economics course. The former covers key concepts that enable lawyers, judges and enforcers to review and apply economic principles and methods in their work while the latter is geared specifically at economists and focuses on advanced economic principles.

Two full-time members respectively attended the annual conference for competition economists (ACE) held in Madrid, Spain in November 2017 and the 7th Lear Conference held in Rome, Italy in July 2017. Lear is a specialised economic consultancy in Italy and has the distinction of being the first Italian competition economics

consultancy. The conference focussed on exchanging ideas and experiences on issues of public procurement and competition policy. ACE, on the other hand, brings together competition economists working in the academic, public and private sector annually to discuss and debate policy and specific cases.

In June 2017 the nine case managers, including interns, and ten Tribunal members attended the annual Tribunal workshop facilitated by Prof. Richard Whish, who is emeritus professor at London's Kings College. Prof. Whish provided updates on the most recent developments and latest decisions on competition law in the European Union and the United States with a specific focus on mergers and restrictive practice cases.

The 11th Annual Conference on Competition Law and Economics Policy, co-hosted by the Tribunal and the Commission, was held in Sandton, Johannesburg from 30 August to 1 September 2017. It was attended by 13 case managers and Tribunal members. The conference titled "The Future of Competition Policy" included papers that addressed how best competition enforcement can be optimised and be aligned with globalisation and rapid technological developments that have had an effect on the way in which business is conducted as well as changes in competition policy that could be effected.

In September Prof Massimo Motta from ICREA Universitat Pompeu Fabra Barcelona Graduate School of Economics gave a seminar on recent abuse of dominance cases in the EU and the different approaches to abuse of dominance in the EU and US, with a focus on economics.

Prof Eleanor Fox of New York University School of Law presented a seminar in September on new developments and trends in US antitrust law and EU competition law and the expected changes in the antitrust policy after the appointment of the Trump administration.

These two workshops were attended by case managers and Tribunal members.

An introductory course in economics was again presented in the Tribunal by Reena Das Nair from CCRED which was attended by one newly appointed part-time member, three junior case managers and two interns.

Employees also attended various courses, whether held internally or presented by external service providers that were identified as part of their personal development plan (PDP) during the performance assessment process. This included specific computer courses, website maintenance, payroll related courses, OHS training and personal financial management. In addition, divisional heads also facilitated workshops pertaining to internal Tribunal policies.

Employees attending training at the Tribunal's expense are required to submit a report that provides a brief overview of the content covered, the relevance of the content and indicate whether they feel others in the Tribunal would benefit by attending.

Study assistance was provided to two employees who had requested financial assistance for courses external to the Tribunal. These were for an Association of Certified Chartered Accounts (ACCA) qualification and a Bachelor of Law qualification.

## DID WE ACHIEVE OUR OBJECTIVES OF ACCOUNTABILITY, TRANSPARENCY AND SUSTAINABILITY?



The outcome of the annual audit and the extent of our compliance with regard to the submission of the annual financial statements are addressed by six of these seven targets. The annual audit is finalised in July annually and the achievement or non-achievement relates to the prior year audit.

The implementation of the long term graduate internship programme is reflected in the seventh target. As indicated earlier in this section this programme is well embedded in the Tribunal and has benefitted many young students.

We are pleased to report that we achieved a clean audit for the year ending March 2017 and we were awarded a trophy by the Auditor-General for this achievement. This also meant that we fully achieved all six of the targets that relate to the finalisation of the audit and submission of the annual financial statements.

Meeting these targets is the result of the concerted effort of staff in the corporate service, finance and procurement divisions to address prior year findings and employ processes and controls that ensure effective financial management and utilisation of resources.

## ADDRESSING SUSTAINABILITY



**S**ustainability by definition encompasses financial, social and environmental sustainability.

While our ability to ensure and contribute to sustainability is limited we can gain an understanding of how our operations affect the community and environment we operate in and vice versa.

Financial stability can, in part, be determined by assessing the Tribunal's ability to continue as a going

concern. The going concern assumption presumes that funds are available to finance future operations and that during the ordinary course of business the realisation of assets, settlements of liabilities, contingent liabilities and commitments will occur.

The Tribunal's financial statements are prepared on the basis of accounting policies applicable to a going concern. We are dependent on National Treasury and on the EDD for our continued function and, given that our functions and mandate are stipulated in the Act, we have no reason to believe that these two bodies have the need or the intention to materially curtail the scale of the Tribunal.

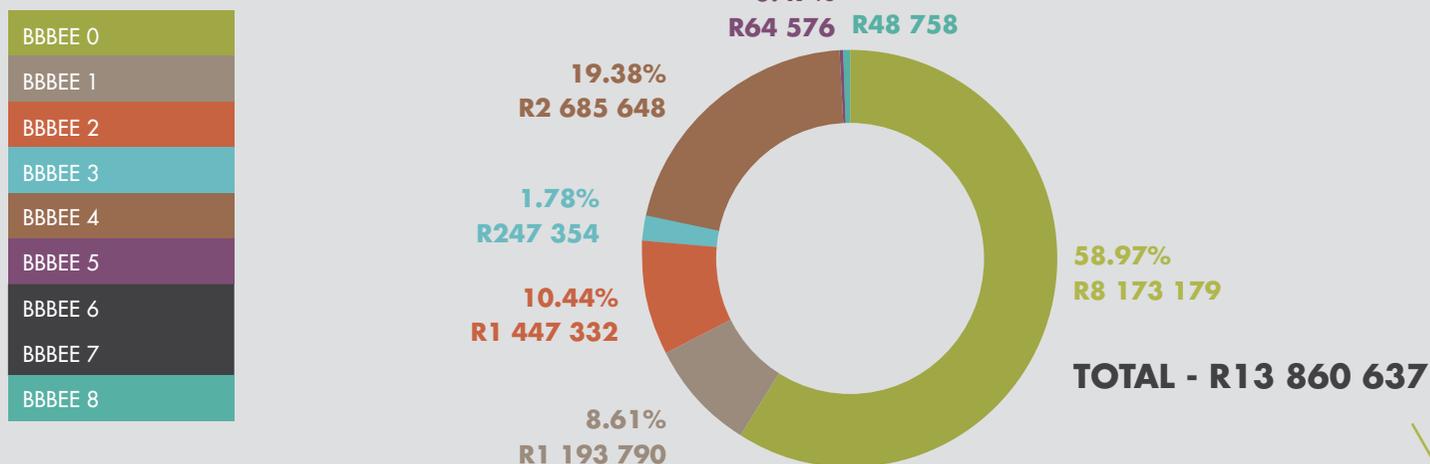
In terms of section 13 G (1) of the Broad Based Black Economic Empowerment (B-BBEE) Act the Tribunal was required, with effect from 1st April 2016, to report on the Tribunal's compliance with regard to B-BBEE. The Tribunal has not met this compliance requirement. We will be contracting with a service provider in the 2018/2019 financial year to assist us with assessing our current B-BBEE

status and to put a process in place to ensure that we meet these compliance requirements annually. In addition we will identify areas that we can focus on in order to improve our level of compliance and also increase our B-BBEE level.

Within the Tribunal we are in the processing of implementing a system that will allow us to collect data on the suppliers we procure goods and services from and determine our spend both in terms of B-BBEE level and in enterprise size and thereby measure our contribution to the government's objective of addressing historical imbalances and to advance small and medium sized enterprises (SMME). This is objective is consistent with the Tribunal's legislative mandate to ensure that SMME's have an equitable opportunity to participate in the economy, and to promote a greater spread of ownership.

While our data with regard to spend by enterprise requires more work we have been able to determine our spend by B-BBEE for the year under review as reflected in the diagram below.

Diagram 14: Tribunal spend, arranged by B-BBEE classification



Throughout the year we have continued to motivate and monitor adherence to the Tribunal's recycling project started in 2010. As illustrated in the table below the figures for the

year (apart from paper) indicate that our recycling efforts have improved and this success is due to the combined efforts of staff at the Tribunal. The fact that less recyclable

material is found in the dustbins and more in is placed in the relevant bins is another indication of our success.

Table 2: Materials recycled over two years

	 Plastic	 Tin	 Glass	 Tetrapack	 Computer Equipment	 Paper
2016/2017 (Kg's)	18.00	19.20	35.00	20.90	24.90	2 645.40
2017/2018 (Kg's)	32.60	23.30	39.40	30.90	45.80	1 913.60
Difference	14.60	4.10	4.40	10.00	20.90	-731.80
<b>PERCENTAGE CHANGE</b>	<b>81.11</b>	<b>21.35</b>	<b>12.57</b>	<b>47.85</b>	<b>83.94</b>	<b>-27.66</b>

The nature of the Tribunal's work is such that one would expect paper to be the largest volume recycled. In 2016/2017 the Tribunal prepared for a move to the first floor and the large quantity of paper recycled (2 645.40 kgs) arose primarily because staff were discarding unwanted paper. During the current period paper recycled reduced by 27.66%, while we saw a 45.76% increase in the volume of all other materials recycled.

**THE  
1913.60 KG'S  
OF PAPER  
WE RECYCLED  
SAVED:**



35.7 **Trees**



8 400 **Kilowatts**



3 024.42 litres **Oil**



55 713 litres **Water**



5.29sq **Metres**

The importance of recycling is evident when we consider the following:

- aluminium cans we recycle are ready for reuse in six weeks;
- recycling one aluminium can could save enough energy to run a TV for three hours;
- a recycled glass bottle can save enough energy to run a computer for 25 minutes; and
- recycling plastic takes 88% less energy than making plastic from raw materials.

As part of our efforts to reduce the negative impact we may have on the environment we continue to purchase “environmentally friendly paper”. That is paper that comes from well managed forests, is chlorine free and/or is 100% recycled.

The Tribunal is funded by government resources and therefore there is no budget set aside for social responsibility spending but as an organisation we make a social contribution to the wider community.

We have undertaken the following initiatives this year:

- donated 110 plastic files (estimated value R5 500), numerous pieces of furniture (estimated value R20 000) and printer cartridges (estimated value R35 000) which were no longer needed to Atteridgeville Holy Trinity Secondary School;

- employees made personal contributions totalling approximately R2 500 towards materials for a two bedroomed home for a woman living in Soweto who had lost her house and son in a fire. She had continued to live in the dilapidated structure with her two grandchildren after the fire. A group from the office transported the materials and assisted with erecting the new home. Food donated by employees was also presented to the family;
- presented a laptop to a student studying IT at the Pretoria Technicon. The student is the son of a cleaner who was unable to purchase his own laptop and required one for his studies. Staff personally contributed R8 600 to purchase the laptop; and
- donated about 90 tins of pilchards and jars of peanut butter for children in the Steve Biko Oncology Unit at Tshwane Hospital. The tins provide a much needed and accessible form of protein for the children to take home when they are discharged.

We have enabled unemployed youth to gain experience in the working world through our internship programme described earlier in this document.

Adhering to ethical business practices can also be regarded as being socially responsible and we address this in more detail in Part 4 of the report.



“

*I am pleased to report that for the second year in a row and through the concerted efforts of the COO, the corporate services, finance and procurement divisions, the Tribunal has received a clean audit report.*

”

# PART 4

Governance  
In The Tribunal

## OUR COMPLIANCE FRAMEWORK



There is an increasing emphasis, in both the corporate and public sector, on operating and conducting business in a responsible, transparent, accountable and fair manner. In the Tribunal this would be applicable to our core work (the adjudicative process) and our day-to-day operational functions.

The need to operate in this manner is compounded by the fact that we receive funding from the state and face a unique set of risks that include procurement fraud and irregular expenditure.

The Tribunal's approach with regard to ensuring best practice and legislative compliance is set out in a corporate governance framework.

The framework has recently been revised to be aligned to the King IV report on corporate governance. King IV, while supporting the view that all principles should be applied as they stand, indicates that implementation should be scaled in accordance with the size of the workforce, resources and the extent, complexity and impact of the entities activities. This view is applied within the Tribunal.

The diagram below lists the primary legislation and areas of compliance that guide our operations.

Diagram 15: Legislation and areas of compliance that guide our operations



The following section includes a discussion of our approach to some of the main components of the governance framework such as ethical leadership, risk management and the governance of information technology.

## MANAGING AND MONITORING ETHICAL BEHAVIOUR



The Tribunal chairperson as the accounting authority is responsible for leading ethically and effectively and for establishing an ethical culture within the Tribunal. To this end the Tribunal has various practices and policies that promote standards of transparency and ensure accountability for the purpose of maintaining our integrity and reputation.

The biggest risk to our integrity and reputation is that the decision-making process could be compromised. For this reason we have a code of conduct in place that is applicable to all employees (part or full-time) and requires them to disclose financial interests and declare any conflict of interest where it may exist.

Other practices and policies in place include but are not limited those listed on the right.

Panels always comprise three members thus ensuring fairness with regard to decision making.

Gifts received in excess of R300 must be declared and recorded in the gift register (no gifts were returned this year).

Full-time Tribunal members are not subject to a performance review thus ensuring their independence when deliberating on a case.

However, the Tribunal is accountable to the public through Parliament and reports at least annually to the parliamentary portfolio committee on plans and outcomes.

Reasons for decisions are not posted on the website until parties confirm that they do not contain confidential information.

In cases of dissent a majority and minority decision is possible.

Part-time members forming part of a hearing panel must declare on the court record that they have no conflict of interest in the case.

The Act allows for parties to declare information confidential and will honour these requests even clearing a hearing room if confidential information is received.

No party to a case may address any single panel member at any time outside of the hearing and related processes.

Parties may, in terms of the Act, object to the composition of a panel (no objections to panels were made this year or in the prior year).

Tribunal members, managers and case managers annually disclose financial interests.

Written reasons are issued for all Tribunal decisions.

Case related side discussions are always held in chambers in the presence of all panel members and parties to the case.

Tribunal members are precluded from speaking to the media on cases.

To a lesser or greater extent various governance structures have an oversight function where adherence to ethical behaviour and the management of risks associated with unethical behaviour are concerned.

Managers and the COO review adherence to disclosure. Moreover the declaration requirements and risk management structures in place ensure that effective processes are in place and that these risks are effectively controlled and mitigated.

A risk-based approach is applied in determining the internal audit plan. Key controls and the Tribunal's compliance to ethical practices and processes are audited.

## IDENTIFYING AND MANAGING RISKS



The Tribunal believes that effective risk management ensures a safer, healthier work environment for employees, the preservation of assets and the effective and efficient management of resources.

Risk for the Tribunal is defined as any uncertain event that may affect our ability to achieve our strategic objective and mandate. The challenge is to determine how much uncertainty we can accept. To this end we have implemented and adopted an enterprise approach to risk

management that enables us to effectively and proactively identify, assess, quantify, and mitigate risks.

Risk management is the responsibility of every employee and risk management processes in the Tribunal are overseen by the risk committee (RC) while overall responsibility for this function rests with the accounting authority.

It is the responsibility of the COO, as chief risk officer, to execute these processes and ensure that quarterly risk reports are presented to the RC for review and approval.

In reviewing these reports the RC also reviews the extent to which the Tribunal has implemented and embedded risk management practices. The RC plays an advisory role providing assurance that the risks are managed and that the internal audit plan is risk based. The report of the RC is included in this annual report.

In April 2017 we developed and implemented a combined assurance plan that optimises the assurance coverage obtained from management as well as the internal and external assurance provider on the Tribunal's risk profile.

The Tribunal's risk register contains 17 risks which all have a category (e.g. reputation, human resources, etc.), origin (strategic/fraud or IT), exposure (inherent and residual), effectiveness of controls and risk owner assigned to them. Mitigating controls, based on the root cause and consequence, are identified and their effectiveness is

monitored on a quarterly basis by assurance providers who provide documentary evidence to support their conclusion.

Key risk indicators (KRI's) assigned to each risk provide early signals of increasing or decreasing risk exposure. Each KRI has a specific tolerance limit or acceptable level of exposure. The actual exposure of the KRI is measured against this limit and where it exceeds the acceptable level of exposure, management determines an appropriate risk response and corrective action to be implemented. An action log is maintained and enables the RC to track the progress of the action against set target dates.

Table 3: Risk dashboard, sorted by residual risk exposure

Risk Name	Category	Origin	Inherent Risk Exposure	Control Effectiveness	Residual Risk Exposure	Risk Management
Shortage of Tribunal members to effectively oversee cases	Human resources	Strategic	●	■	●	Tolerate
Inadequate operational facilities on DTI campus	Multiple categories	Strategic	●	■	●	Tolerate
Ineffective management of OHS within the Tribunal	Safety, security, health and environmental	Strategic	●	■	●	Treat
Long term funding sustainability	Financial stability	Strategic	●	●	●	Treat
Inadequate Information Security	Information integrity and reliability	IT	●	●	●	Treat
Business interruption	Business continuity planning	Strategic	●	●	▲	Treat
Inadequate financial management	Fraud and theft	Fraud	●	●	▲	Treat
Inadequate record keeping of case documents	Operational	Strategic	●	●	▲	Treat
Poor case management	Reputation	Strategic	●	■	▲	Treat
Inaccurate or inadequate performance reporting	Regulatory / Statutory / Legal	Strategic	●	■	■	Treat
Inadequate physical and financial control over Tribunal assets	Fraud and theft	Strategic	●	■	■	Treat
Financial non-disclosure and inadequate financial reporting to relevant stakeholders	Regulatory / Statutory / Legal	Strategic	●	■	■	Treat
Inadequate procurement management	Fraud and theft	Fraud	●	■	■	Treat
Poor corporate governance / business ethics and regulatory compliance	Regulatory / Statutory / Legal	Strategic	●	■	■	Treat
Poor management of hearing logistics	Operational	Strategic	●	■	■	Treat
Inability to attract and retain key critical positions within the organisation	Human resources	Strategic	●	■	■	Tolerate
Inadequate Payroll management	Human resources	Fraud	●	■	■	Treat

● Extreme   ■ Unsatisfactory   ● High   ● Satisfactory   ■ Good   ■ Within risk tolerance   ▲ Moderate

## PREVENTING FRAUD



Fraud prevention is a component of risk management and a zero tolerance to fraud is adopted by the Tribunal.

A fraud prevention committee (FPC) has been established and its role includes ensuring management has a process for relevant officials to sign an anti-fraud charter and that an approved fraud prevention plan (FPP) is developed, implemented and reviewed.

The FPP is communicated to all employees and details processes for fraud reporting and the responsibilities of the FPC with regard to investigating these reports.

The committee meets at least twice annually to focus and monitor the fraud risks included in the risk register.

A FPC charter provides terms of reference for the committee and addresses issues of membership, authority and responsibilities. It is adopted and reviewed annually by the committee.

Any member of the FPC reported for or suspected of fraud may not form part of the committee until the matter is resolved.

The FPC presents its report to the Tribunal's audit and risk committee meetings.

The Tribunal is confident that the language and culture of zero fraud tolerance prevails in the Tribunal. No incidents of fraud have been reported or investigated in the year under review.



# REPORT OF THE RISK COMMITTEE



The risk committee has adopted the appropriate formal terms of reference, as per its charter, and has regulated its affairs and discharged its responsibilities as contained in the charter.

The risk committee charter includes the committee's responsibilities to:

- Assist the accounting authority to review the risk management policy and recommend same to the accounting authority for approval;
- Monitor the implementation of the risk management framework, and through structured systems and processes designed for that purpose, ensuring that:
  - o management disseminates the risk management policy and plan throughout the entity; and
  - o management ensures that the risk management plan is integrated into the daily activities of the business.
- Based upon the reports of management, and any reviews by internal and external audits, express formally to the accounting authority their opinion on the effectiveness of risk management systems and processes;

- Review the risk management report at each meeting and shall have particular regard to:
  - o ensuring that a process exists where risk management frameworks and methodologies are implemented to increase the possibility of anticipating unpredictable risk;
  - o ensuring that a process exists where risk management assessments are performed on a continuous basis;
  - o ensuring that management considers and implements appropriate risk responses; and
  - o ensuring that continuous risk monitoring by management takes place.

In supporting these objectives, the committee conducted the following activities:

- oversaw the review of the entity's risk management policy;
- reviewed procedures to ensure that the entity risk management framework was properly implemented throughout the operations and that the requisite training was undertaken;
- reviewed the implementation of the Risk Management Plan and assessing whether the implementation efforts were successful and consistent with desired outcomes; and
- assisted the accounting authority in determining the material strategic and operational risks, and the concomitant opportunities that could potentially impact/benefit the entity.

During the year under review, the committee is satisfied that it has complied with its charter, which has been formalised to include principles contained in King IV and guides the committee in performing its duties during the year. The committee further confirms that in the current period the Tribunal has continued to rigorously manage its strategic and operational risks in order to achieve its mandate.

The membership of the committee is made up of five independent non-executive members, as well as A. Wessels and J. de Klerk from the Tribunal. The external auditors as well as internal auditors have a standing invitation to the meetings and have attended all the scheduled meetings during the year.

The committee met four times during the year under review.

**Akhter Moosa**  
Risk Committee Chairperson

31 July 2018

# INFORMATION TECHNOLOGY AND GOVERNANCE



In terms of principle 12 of King IV the purpose of IT governance is to support an organisation to set and achieve objectives. Policies pertaining to technology and information management should be implemented and embedded in the day-to-day (medium and long-term) decision making and culture of the organisation.

## Maintaining effective IT governance in the Tribunal

The Tribunal has developed and is currently revising an IT governance framework. The framework defines the ways and methods through which IT governance can be implemented, managed and monitored in the Tribunal and provides guidelines for the effective use of IT resources and processes.

Being a public entity the framework must comply with the corporate governance of information and communications technology framework (CGICT) prescribed by the Department of Public Service and Administration (DPSA).

To give effect to the CGICT the Tribunal has developed and implemented nine IT policies that address email and internet usage, information security, domain access, governance as well as access to hardware or software applications.

Employees are required to sign a formal acknowledgement

of policies and indicate their commitment to adhere to these policies.

We are in the process of creating a website policy that will mainly focus on uploading and managing content on our website. The aim of the policy is to put in place procedures to ensure that website is secure and content uploaded has been authorised, is current, accurate and valid.

During April 2017 we tested our IT Disaster Recovery Policy and Procedure (DRP) by simulating an IT disaster in the Tribunal. The test was undertaken in order to ascertain whether there were any gaps in our policy and procedure that needed to be addressed and whether we were able to have business critical IT systems online within the timeframes set out in the DRP.

This was the first disaster recovery test we performed and it was for the most part successful however a few gaps and issues were encountered and have been addressed in a revised version of the DRP.

Ensuring effective IT governance in the Tribunal requires that consideration is given to aligning IT strategy with the Tribunal's strategic objectives. This is given effect to in our IT strategic plan which reflects IT objectives over a three year period. Justification is provided for each objective which, in turn, is linked to one or more of the Tribunal's strategic objectives. IT projects and the budget required to achieve stated IT objectives are detailed in the plan.

In addition it is imperative that IT related risks are identified and managed effectively. In the Tribunal IT risks are included in the risk register and monitored as part of the risk management process.

## Building IT capacity

The growth in the Tribunal's IT environment has meant that consideration needs to be given to building additional capacity and a more focussed approach to succession planning within the IT division.

In prior years the Tribunal made use of short term IT interns who assisted the IT administrator with numerous day-to-day IT issues.

Given the success with the part-time internship the EXCO agreed to implement a full-time internship in the IT division. A robust task list was put in place thus allowing the intern to gain as much value from his/her employment while simultaneously allowing the IT administrator to focus on strategy, ensure good IT governance and maintain the technical IT environment.

## IT in operation in the Tribunal

The primary focus of the IT division has been to enhance internet connectivity and network independence throughout our offices and server environment. The latter was achieved by migrating from the shared network space provided by the DTI onto a dedicated network space that could be managed by the Tribunal's IT division.

In order to enhance internet connection speeds we implemented a dedicated high speed fixed fibre internet line as well as advanced wireless connectivity throughout our offices and court room. The first benefit of this is that stakeholders and Tribunal employees are now connected to high speed wireless internet in the office and the court room.

The second is that access speeds to all online services and applications has improved significantly.

We have installed a robust firewall system that is managed by the IT division to ensure that all online traffic flow is secure and free of malicious threats.

We implemented a new backup solution that provides server imaging for our business critical servers, data backups for all other Tribunal information thereby ensuring that our data is protected and secure as well as reducing the risk of information loss.

Our electronic CMS has been customised using Case 360, an open text product, and in the prior period - through rigorous testing - we established that upgrades could be implemented without affecting current functionality. Furthermore we established that CMS support is extended by an additional year for every upgrade applied. Currently CMS is supported until 2022.

These upgrades have been implemented in the production environment and we have seen an immediate improvement in performance and are currently developing further enhancements to the system that increase its functionality

and allow us to capture more data on the adjudicative process.

We have also focussed on using the reporting tool, Qlikview, built on top of CMS to develop models that allow us to extract more data from CMS and make a comparative analysis of performance against predetermined targets and other statistics pertaining to the adjudicative process.

The IT budget for the period under review was set at R3.47m. The table below highlights the major line items in the IT budget and reflects expenditure against budget in the current financial year.

Table 4: Allocation of the IT budget

	Category	Budget 2017/2018	Total Spent	Total Spent %	Variance
	<b>IT Hardware</b>	<b>R523 779.00</b>	<b>R299 659.18</b>	<b>57.21%</b>	<b>R224 119.82</b>
	<b>Software, Services and Renewals</b>	<b>R561 174.00</b>	<b>R582 709.90</b>	<b>103.84%</b>	<b>R-21 535.90</b>
	<b>Intangible Assets</b>	<b>R783 461.00</b>	<b>R198 325.14</b>	<b>25.31%</b>	<b>R585 135.86</b>
	<b>Leases</b>	<b>R186 743.52</b>	<b>R22 202.44</b>	<b>11.89%</b>	<b>R164 541.08</b>
	<b>Internet</b>	<b>R220 019.19</b>	<b>R122 103.84</b>	<b>55.50%</b>	<b>R97 915.35</b>
	<b>E-Mail Services</b>	<b>R71 548.20</b>	<b>R71 548.20</b>	<b>100.00%</b>	<b>R0.00</b>
	<b>Website Support</b>	<b>R176 522.50</b>	<b>R177 120.42</b>	<b>100.34%</b>	<b>R-597.92</b>
	<b>Website Consulting</b>	<b>R100 000.00</b>	<b>R63 710.00</b>	<b>63.71%</b>	<b>R36 290.00</b>
	<b>Repairs and Maintenance</b>	<b>R845 406.00</b>	<b>R777 225.59</b>	<b>91.94%</b>	<b>R68 180.41</b>
	<b>TOTALS</b>	<b>R3 468 653.41</b>	<b>R2 314 604.71</b>	<b>66.73%</b>	<b>R1 154 048.70</b>

The major underspend is attributed to an underspend on IT capital expenditure – revisions to the IT budget were proposed in June 2017 but were not approved by our reporting department until February 2018 making it difficult to implement before year end. In addition enhancements to the Tribunal’s CMS were implemented at a lower cost than expected.

## Looking forward

The IT administrator attended the Microsoft Ignite conference in the USA in September 2017 where Microsoft was showcasing cloud solutions and various new technologies.

With the knowledge gained at the conference the Tribunal will be migrating its e-mail infrastructure to the cloud environment in the 2018/2019 financial year.

In his own words the IT administrator recalls that the most valuable piece of knowledge he gained was to understand that if you do not move forward and keep up with technology and new ways of processing information you will get left behind and your old solutions will become redundant and “you will get left in the dark”.

## HOW DO WE MANAGE OUR HUMAN RESOURCES?



Human resource management is a term used to describe systems devised within organisations for the management of people.

Within the Tribunal human resources management focuses on remuneration and benefits, training and development, performance management, employee wellness and occupational health and safety.

The Tribunal is a small entity and employees often perform cross functional duties. Therefore there is an increased risk of non-delivery if there is ineffective human resource management.

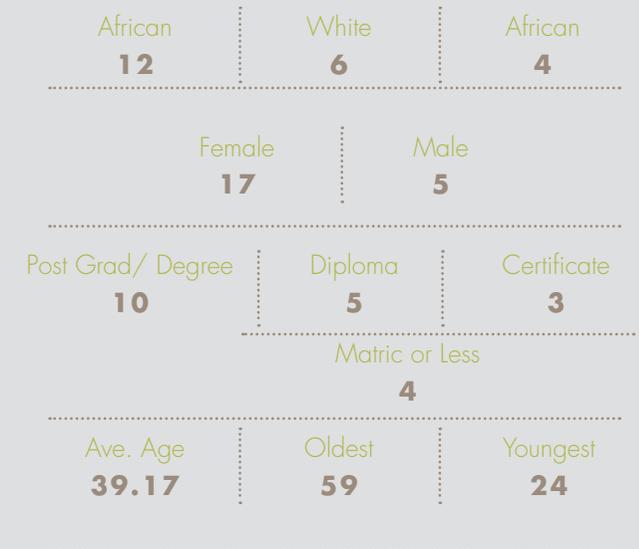
### How do we remunerate our human capital?

Effective human resource management becomes more important when one considers that personnel costs account for 58.18% of the Tribunal’s budget.

In this section of the report we highlight statistics profiling the demographics and qualifications of the 22 full-time employees, excluding interns and Tribunal members, employed in the Tribunal as at 31 March 2018.



### FULL-TIME STAFF



### YEARS OF SERVICE



Earlier in the report we provided details on the various training interventions applied in the Tribunal to ensure that employees are given the opportunity to improve their qualifications and skills thus contributing to sustainable capacity. We also addressed the benefits derived from the internship programmes in place in the Tribunal.

The performance management system is used by divisional heads to assess their employee's performance and to identify training and development needs. Where there is poor performance, measures will be discussed that can lead to improvement. Employees achieving scores that reflect above average performance may be rewarded by means of a promotional adjustment or a performance bonus.

In the year under review all 23 of the staff eligible for performance bonuses received a performance bonus. Bonuses to the value of R1.19m ranging between 7% of basic salary to 10% were awarded with the average being 9.07%.

The remuneration structure applied in the Tribunal is a total cost to company (TCC) structure that includes retirement and medical aid contributions. Additional benefits include risk

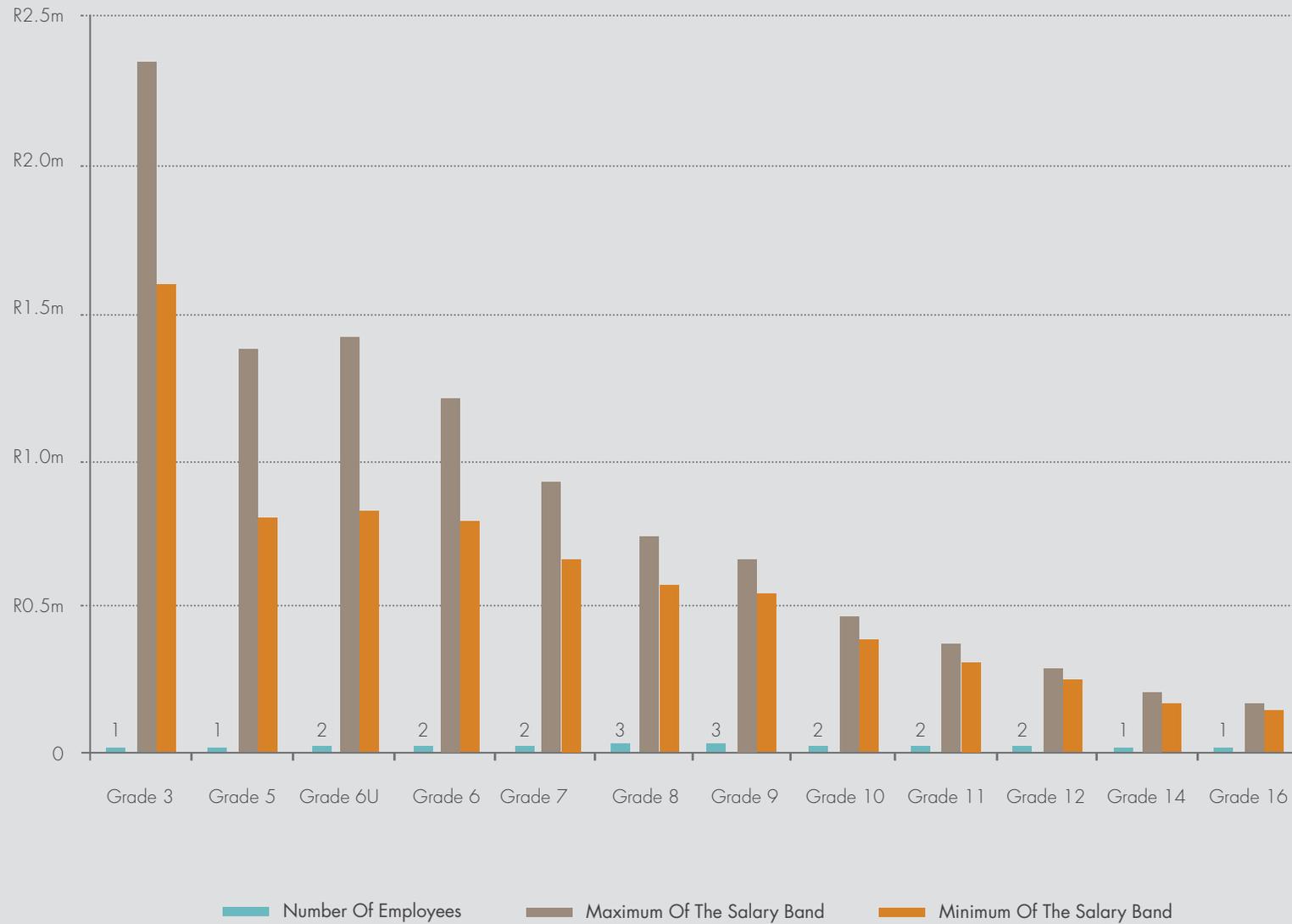
cover benefits, parking and contributions to an employee assistance programme (EAP). These benefits are all subject to perks tax.

Annual cost of living adjustments are applied subject to budget availability and are guided by adjustments made in the public sector. Employees falling within the senior management service salary range were awarded a 5.5% increase while other employees were awarded 7.3%. Tribunal member's salaries are deemed to be equivalent to those of high court judges and they received a 4% adjustment.

The Tribunal's salary scale, based on the Peromnes grading system, is structured to include a range of job grades ranging from junior positions (Grade 18) to senior positions (Grade 3). As per the diagram that follows, each job grade represents a salary band of pay ranges that are structured to reflect a minimum, midpoint and maximum payment level for each grade.

As at end March the Tribunal had five full-time members, 22 full-time employees, and two employees on two-year contracts, one on a one-year contract and five interns.

Diagram 16: Distribution of full-time employees by grade



## Making changes to our staffing

The separation of the finance and procurement functions from corporate services into a new finance division has enabled us to increase the capacity of our financial skills. These changes have also resulted in greater efficiencies in the COO's office thus enabling the COO to focus on strategic as opposed to operational management. Separating the finance functions from the COO's functions is also in line with best practice.

## Meeting health and wellbeing needs

The Tribunal has a responsibility to ensure that employees are provided with a working environment that is safe and without risk to their health. An OHS committee established in the Tribunal continues to perform its duties as required by legislation. Representatives on these committees continue to attend the training required for their respective roles thus ensuring their readiness for an emergency situation. The representatives further perform monthly and quarterly checklists and report to the risk committee.

The Tribunal has contracted a wellness company to provide support and guidance to employees and their family members dealing with personal and work related challenges. Current engagement with this service by employees is low at 16.10% and it lies just below the sector average of 16.70%. The Tribunal will in the following year focus on creating awareness amongst employees of the services offered by the wellness programme and thereby increase its impact on the wellbeing of Tribunal employees.

In April 2017 the Tribunal relocated from the third floor to the first floor of Block C on the DTI campus. This move resulted in an increase in office space by just under 41%. The relocation has meant that employees and Tribunal members are no longer required to share offices and we have more storage facilities for documents, thus reducing the risk of non-compliance with occupational health and safety requirements and the risk of loss of information.

## OVERSEEING OUR WORK, PROCESSES AND PROCEDURES



There are certain statutory requirements, such as section 188 of the Constitution, sections 4(3)(a), 15 and 20 of the Public Audit Act of 2004, section 5(1)(a)(ii) of the PFMA, Treasury Regulation 27.22.2 and section 40(10) of our enabling Act that require the Tribunal to have an external and an internal audit function in place.

Internal audit's role is to provide independent assurance to the Tribunal that there is effective risk management, governance and internal control processes in the organisation.

Internal audit reports administratively to the accounting authority and functionally to the audit committee and management. It performs financial and non-financial audits as agreed in the annual plan and is risk based.

Being a Schedule 3A entity we are required to have our external audit function performed by the office of the

Auditor-General. This audit focuses on the financial accounts and financial management within the Tribunal. However its scope has been expanded to include regulatory compliance and the audit of predetermined objectives. At year end, following the audit, the Auditor-General provides an opinion as to whether the financial statements present a true reflection of the Tribunal's financial position and financial performance.

Internal auditors are hired by the Tribunal through a procurement process for a three year contractual period at minimum. External auditors on the other hand are appointed by the Auditor-General. Internal audits are conducted throughout the year and their audit reports are used by management whereas the external audit takes place annually and its report is generated for the benefit of external stakeholders, particularly the EDD and the parliamentary portfolio committee.

In the Tribunal the functions of internal audit, where possible, are coordinated with those of other internal and external assurance providers so as to minimise duplication and ensure proper coverage.

An internal audit charter defines the purpose, authority, terms of reference, objectives, powers, duties and responsibilities of the internal audit function and the audit is conducted in accordance with standards of conduct and codes of ethics prescribed by the Institute of Internal Auditors.

The three year strategic internal audit plan represents a balance between risk and compliance and is approved following discussions with management and the audit committee.

In the period under review four audits were completed. They are described briefly below and the diagram following the description provides the reader with a graphic illustration of the significance of these findings.

- Follow up review** – this review assessed the progress made with regard to 27 action plans identified in previous internal audit reports. The report concluded that 30% (eight) of these plans had been fully implemented, 59% (16) had been partially addressed while 11% (three) had not been addressed at all. The unresolved issues related primarily to the finalisation of a corporate governance framework aligned to King IV and improvement in an internal process to determine the tax status of service providers. Subsequent to this audit all these findings have been resolved.

- Case management review** – during this review various processes pertaining to case management were audited to ensure compliance with documented policy and procedure. The review also addressed co-ordination between registry and case management with regard to the adjudicative process and the completeness and accuracy of information in the CMS. Ten findings were noted and control areas needing improvement were identified by internal audit. Action plans were determined and many have been implemented. They will be followed up in the next review.

- Performance information review** – results of the second quarterly performance report were compared to targets set and documentation was reviewed to assess the accuracy and validity of the reported results.

In addition, the consistency of agreed objectives, output, performance indicators and targets as per the approved annual performance plan was considered. Two findings relating to alignment between the APP and the performance report were identified. These have subsequently been addressed by management.

- Internal financial control review** – reviewed the adequacy and operating effectiveness of controls in place in order to ensure compliance with procurement policies and procedures and considered the completeness, accuracy and validity of certain aspects of financial reporting. Seven findings were identified, (none of which were major) and management has given an undertaking to resolve these by the end of June 2018.

Diagram 17: Progress on prior year audit findings



The diagram below indicates the number of findings raised by the internal auditors during the current financial year and the significance of the findings raised.

Diagram 18: The significance of audit findings raised in 2017/2018



**Notes**

- PIO - Performance Improved Observation
- Not Rated - Findings were originally not rated by the previous internal auditors

Page 69 - 71 contains the audit opinion of the Auditor-General on the external audit. The audited financial statements as presented to the accounting authority and audit committee are presented on pages 78 to 110. An engagement letter contains the terms of engagement, respective responsibilities of the auditor and the Tribunal as well as the nature and limitations of the audit while the scope, timing and cost is contained in the audit strategy.

The COO is responsible for coordinating responses to audit findings that are reported in a management letter and does this in consultation with an audit steering committee which includes divisional heads, representatives of the Auditor-General and the outsourced firm, and with the approval of

the Tribunal chairperson.

In the 2016/2017 audit report no deficiencies were identified as the Tribunal received a clean report for that period.

### Who are the members of our oversight structures?

The Tribunal has three oversight structures in place. The section on governance above made reference to the RC and the FPC and their respective functioning.

The report of the third oversight structure, the audit committee (AC), follows on page 66.

Their main role is to assist the accounting authority to fulfil his obligations to demonstrate accountability, transparency and good governance but still remain independent.

Both the AC and RC consist of a maximum of five independent non-executive members who collectively must have sufficient qualifications, skills and experience to fulfil their duties. The term of members is limited to three years and a maximum of six if consecutive. A member of the AC may also be a member of the RC and the chairperson of the FPC is a member of the AC.

		Non-Executive Members					Executive Members		
		M. Moodley	M. Mofokeng	O. Josie	A. Moosa	K. Soni	N. Manoim	J. De Klerk	A. Wessels
Audit Committee Meetings	Regd. To Attend	4	4	4	4	4	4	4	-
	Attended	4	4	3	3	4	4	4	-
	Fees (1)	R61 154.01	R53 720.04	R46 700.00	R53 238.00	R46 700.00	-	-	-
Risk Committee Meetings	Regd. To Attend	3	3	3	3	3	-	3	3
	Attended	3	3	3	3	3	-	3	-
	Fees (2)	R28 020.00	R34 508.00	R28 020.00	R31 942.00	R28 020.00	-	-	-

**Notes**

[1] Fees refer only on remuneration for committee and exclude reimbursement for other meetings and travel [2] See 2 above

## Evaluating our oversight structures



An annual assessment of the performance of the AC and internal audit allows the Tribunal to determine whether they are performing as required and whether there are any gaps that require corrective action.

The assessment forms were completed by the AC members, COO and internal audit. External audit was requested to participate in the process but declined. The assessment included member self-evaluation, an evaluation of the AC chairperson and an evaluation of internal audit of the AC committee.

The overall conclusion reached was that:

- the AC as a whole is performing its required role and meeting its responsibilities – evidenced in an overall score of 95.29% (prior year 95.48%);
- the AC is more than satisfied 90.30% (prior year 89.30%) with the outsourced internal audit function and is of the view that internal audit is meeting its responsibilities and requirements (average score of 3.61 out of 5 (prior year 3.57));
- AC members as individuals perceive their overall performance as meeting and partially exceeding defined requirements (average score of 4.25 out of 5) (prior year 4.27); and

- the chairperson's performance is seen as meeting and exceeding defined requirements (average score of 4.25 out of 5) (prior year 4.26).

The member's self-evaluation indicated there may be a need to determine whether members feel the need for additional knowledge and to look at their role to see if and where they can add more value.

The evaluation of the chairperson indicated that there was a need for the chairperson to look at ways to enhance committee development. These areas were raised as a concern in the prior period assessment.

No real concerns were evident in the evaluation of internal audit but there were areas identified that could be discussed with the new internal audit IA team – particularly with regard to the charter and the audit plan.

With regard to the evaluation of the AC as a whole it appears necessary to consider why the areas dealing with conflict of interest and additional skills received low scores.

In the prior year we indicated that we were developing a similar assessment process that could be applied to the internal risk management committee and the external risk committee and while we have made some progress in this area we have not yet implemented the assessment.

# REPORT OF THE AUDIT COMMITTEE



We are pleased to present our report for the financial year ended 31 March 2018.

The audit committee (the committee) is required, as per its approved terms of reference, to meet at least four times per annum. During the period under review the committee held four meetings.

## Audit committee responsibility

The committee reports that it has complied with its responsibilities arising from section 55 (1) of the PFMA and Treasury regulations 27.1.7 and 27.1.10 (b) and (c).

The committee also reports that it has adopted appropriate formal terms of reference as approved by the accounting authority. The committee has regulated its affairs in compliance with its charter and has discharged all its responsibilities as contained therein.

## The effectiveness of internal control

The system of controls is designed to provide cost effective assurance that assets are safeguarded and that liabilities and working capital are efficiently managed.

In line with PFMA and the King IV report on corporate governance requirements, internal audit provides the committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes.

From the various reports of the internal auditors, the audit report on the annual financial statements, any qualification and/or emphasis of matter, and the management letter of the Auditor-General, it was noted that no significant or material noncompliance with prescribed policies and procedures has been reported.

Accordingly, we can report that the system of internal control for the period under review was efficient and effective.

## The quality of in year management and monthly/quarterly reports submitted in terms of the PFMA

Monthly and quarterly reports on performance information and the Tribunal's finances were presented and reported on at committee meetings and were monitored throughout the year. The committee is satisfied with the content and quality of the monthly and quarterly reports prepared and issued by the accounting authority of the Tribunal in the year under review.

## Evaluation of annual financial statements

The committee has:

- reviewed and discussed the draft annual financial statements to be included in the annual report, with the Auditor-General and the accounting authority;
- reviewed and discussed the performance information with management;
- reviewed changes in accounting policies and practices; and
- reviewed the entities compliance with legal and regulatory provisions.

The committee would like to highlight that the Tribunal is highly dependent on the approval of the retention of accumulated surplus from National Treasury, as well as

the approval of the annual grants from the Economic Development Department in order to maintain its going concern status.

## Internal audit

We are satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the Tribunal and its audits.

## Auditor-General of South Africa

We have met with the Auditor-General to ensure that there were no unresolved issues.

## Combined Assurance

The Tribunal has implemented a formalised combined assurance plan that is being refined further and encompasses four lines of defence. The committee has received assurance from management as well as internal and external assurance providers that risks are being appropriately managed.

The committee notes that two major risks (Tribunal member vacancies and lack of space) have been partially or fully resolved during the 2017/2018 financial year.

**Maggie Mofokeng**

Chairperson of the Audit Committee

31 July 2018



“

*In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2018.*

”

# PART 5

How We Used Our  
Financial Resources

# REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE COMPETITION TRIBUNAL

## Report on the audit of the financial statements

### Opinion

1. I have audited the financial statements of the Competition Tribunal set out on pages 78 to 110, which comprise the statement of financial position as at 31 March 2018, the statement of financial performance, statement of changes in net assets, cash flow statement and the statement of comparison of budget and actual amounts for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Tribunal as at 31 March 2018, and its financial performance and cash flows for the year then ended in accordance with the Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA).

### Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
4. I am independent of the public entity in accordance with the International Ethics Standards Board for Accountants' *Code of ethics for professional accountants* (IESBA code) and the ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Responsibilities of the accounting authority for the financial statements

6. The accounting authority is responsible for the preparation and fair presentation of the financial statements in accordance with the Standards of GRAP and the requirements of the PFMA, and for such internal control as the accounting authority determines is necessary to enable the preparation of financial

statements that are free from material misstatement, whether due to fraud or error.

7. In preparing the financial statements, the accounting authority is responsible for assessing the Competition Tribunal's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the accounting authority either intends to liquidate the public entity or to cease operations, or has no realistic alternative but to do so.

### Auditor-general's responsibilities for the audit of the financial statements

8. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.
9. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

## Report on the audit of the annual performance report

### Introduction and scope

10. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report material findings on the reported performance information against predetermined objectives for the selected focus area presented in the annual performance report. I performed procedures to identify findings but not to gather evidence to express assurance.
11. My procedures address the reported performance information, which must be based on the approved performance planning documents of the public entity. I have not evaluated the completeness and appropriateness of the performance indicators/ measures included in the planning documents. My procedures also did not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
12. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected focus area presented in the annual performance report of the public entity for the year ended 31 March 2018:

Strategic focus area	Pages in the annual performance report
Strategic focus area 1 – Adjudicative Excellence	113 - 115

13. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
14. I did not raise any material findings on the usefulness and reliability of the reported performance information for the selected focus area.

### Other matter

15. I draw attention to the matter below.

### Achievement of planned targets

16. Refer to the annual performance report on pages 111 to 113 for information on the achievement of planned targets for the year and explanations provided for the under/ over achievement of a number of targets.

### Report on the audit of compliance with legislation

#### Introduction and scope

17. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the compliance of the public entity with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.
18. I did not raise material findings on compliance with the specific matters in key legislation set out in the general notice issued in terms of the PAA.

### Other information

19. The accounting authority is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements,

the auditor's report and the selected focus area presented in the annual performance report that have been specifically reported in this auditor's report.

20. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
21. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected focus area presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
22. If, based on the work I have performed, I conclude that there is a material misstatement in this other information, I am required to report that fact. I have nothing to report in this regard.

### Internal control deficiencies

23. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. I did not identify any significant deficiencies in internal control.

## Auditor General

Pretoria  
31 July 2018



AUDITOR-GENERAL  
SOUTH AFRICA

Auditing to build public confidence

## Annexure – Auditor-General’s responsibility for the audit

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements, and the procedures performed on reported performance information for the selected focus area and on the public entity’s compliance with respect to the selected subject matters.

### Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor’s report, I also:
  - identify and assess the risks of material misstatement of the financial statements whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control
  - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the public entity’s internal control

- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority
- conclude on the appropriateness of the accounting authority’s use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Competition Tribunal’s ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor’s report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify the opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor’s report. However, future events or conditions may cause an entity to cease continuing as a going concern
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

## Communication with those charged with governance

3. I communicate with the accounting authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also confirm to the accounting authority that I have complied with relevant ethical requirements regarding independence, and communicate all relationships and other matters that may reasonably be thought to have a bearing on my independence and, where applicable, related safeguards.

## HOW DO WE BUDGET?



For the year under review the Tribunal's approved budget, exclusive of capital expenditure was estimated to reflect R50.55m in expenditure and revenue R44.40m. The shortfall of R7.83m was to be funded by the use of accumulated surpluses (R17.47m) generated as at end March 2017.

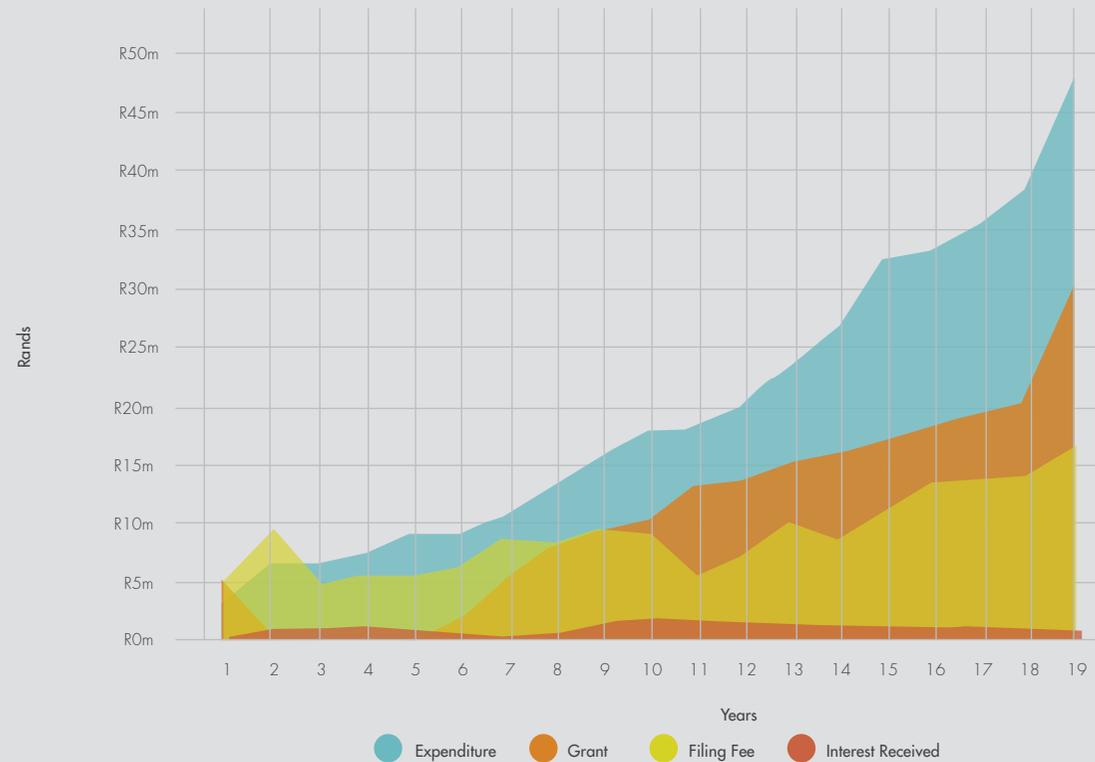
The Tribunal's budget includes an administrative budget of the CAC. Budgeting accurately is difficult as we are unable to predict the number or the length of the cases that will be brought before us or the CAC in any given year.

Since inception expenditure has increased at a fairly constant rate while the grant allocated to the Tribunal reflects slower and fairly constant growth but at a rate based on inflation as opposed to a rate related to changes in the Tribunal's requirement.

In terms of a memorandum of agreement between the Tribunal and the Commission the Tribunal receives 30% of large merger filing fees and 5% of intermediate merger filing fees received by the Commission. Understandably these fluctuate significantly with merger activity and add to our budgeting difficulties as there is no certainty with regard to this revenue source.

The diagram on the right demonstrates these fluctuations and gaps over the last 19 years.

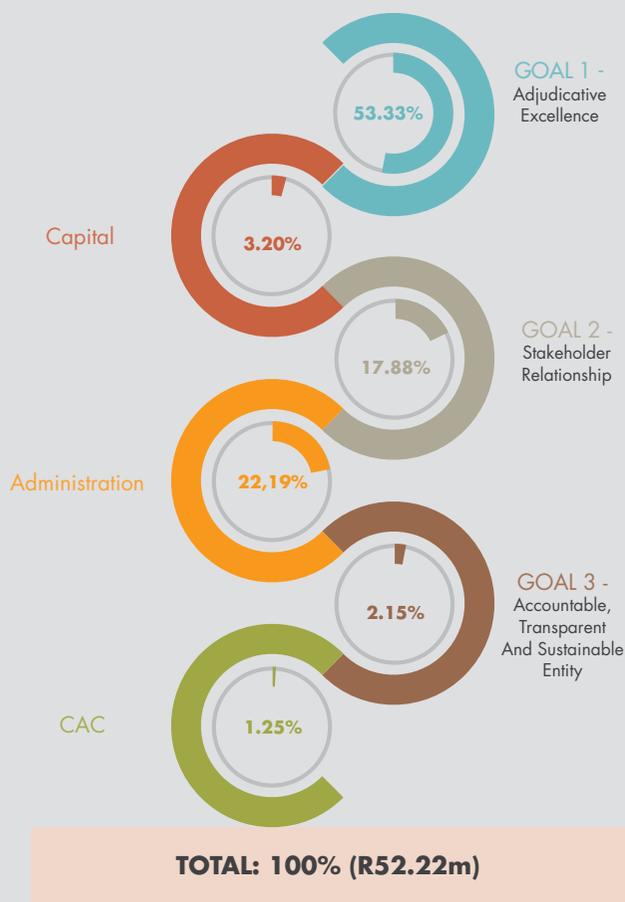
Diagram 19: Funding analysis 1999 - 2018



We have been able to rely on the use of current accumulated funds to cover these shortfalls in the past but these surpluses are being drawn down and we expect them to be depleted by the end of the 2020/2021 financial year. It is therefore necessary to look to the EDD and the Treasury for larger grant allocations going forward.

We allocate our budget by strategic objective across our three strategic goals. In the current year 73.36% of the budget was allocated to these goals with our first goal, adjudication, accounting for 53.33%.

Diagram 20: Budget allocation across strategic objectives



## HOW DID WE SPEND THE BUDGET?



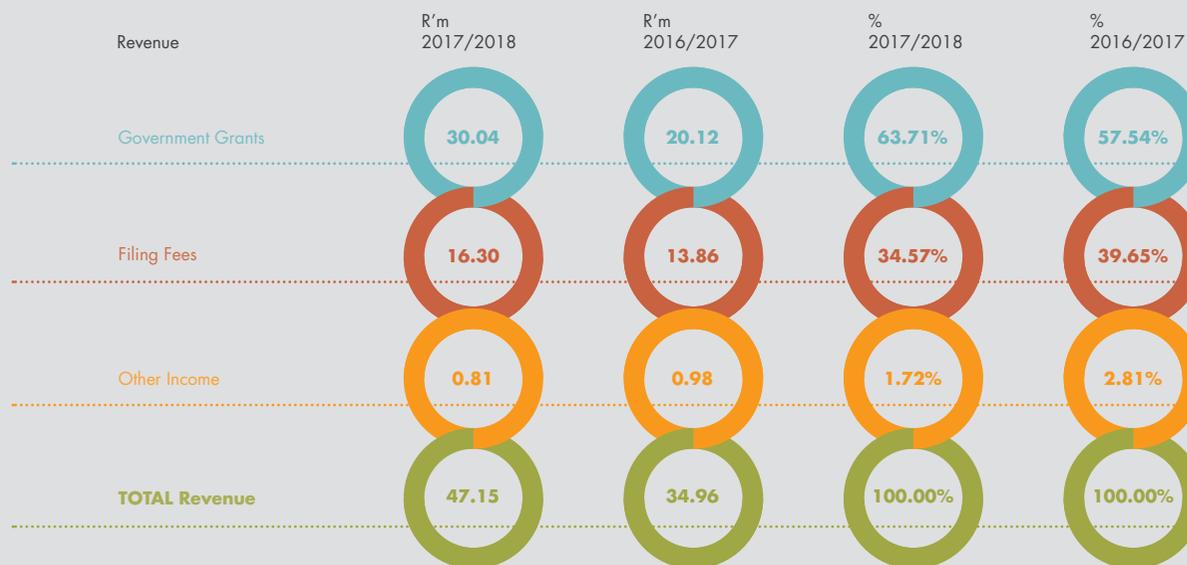
A comparative picture of income received over the last two years is reflected in the diagram below.

In the period under review the grant allocation accounts for 63.71% of revenue received while filing fees account for 34.57%.

Other income pertains mainly to interest received on deposits (accumulated funds) held with the corporation of public deposits (CPD). As accumulated funds are being depleted over time we expect to see a decrease in interest going forward.

Total revenue received this year is 34.88% higher than the prior year. The main reason for this increase is that the approved grant from EDD increased by 49.34% and filing fees increased by 17.60%. The EDD grant was increased for a number of reasons which included increased costs associated with the relocation to larger space on the campus and the appointment of an additional full-time member in January 2017. There are two main factors which have led to the increase in filing fees – increased merger activity and a change in filing fees payable as well as a change in threshold’s determining fees payable.

Diagram 21: Income by category over the last two years



A comparative picture of expenditure (exclusive of capital expenditure) incurred over the last two years is reflected in the diagram below.

Diagram 22: Expenditure analysis over two years



Administrative expenses include the cost of the travel, the cost of occupation on the DTI campus and the running cost of various governance and oversight structures.

Other operating expenses include payments to the Commission in terms of the MOA in place, legal fees, training, IT expenses and consulting services.

## ARE WE OVER OR UNDER SPENDING AND WHY?



In general, expenditure trends reflect consistency between the two years regarding the percentage spend by category as illustrated in the diagram below.

Diagram 23: Percentage spend by expenditure category over the last two years



Excluding capital expenditure from the analysis total expenditure (R47.47m) for the year was underspent by 6.09%.

During the period under review we have continued to implement measures to contain costs (as per National Treasury guidelines). For this reason we see an underspend of 6.85% on other operating expenses and a substantial higher

underspend on training of 45.46%. We effected these reductions by reducing the number of representatives sent to international conferences or workshops and toned down the nature of internal workshops and conferences held.

Despite keeping expenditure on this line item constant with that of last year we have still been able to ensure that the required training and representation at international meetings is achieved as indicated in the section on building sustainable capacity.

We have seen some unexpected overspend on budget with regard to administrative expenses (1.40% overspent) and professional services (8.02% overspent).

In the former the overspend is related to a perceived overspend of 10.20% on the costs of occupying space on the DTI campus but this line item includes a book entry of R1.12m related to the smoothing of the operating lease over a five year period. If this figure is removed we have underspent on budget by 11.92% and administrative expenses would reflect underspending of 10.10%.

With regard to professional services the overspend is primarily related to a 73.79% overspend on transcription and recording services. As a court the Tribunal is required to keep an record of all matters heard by the Tribunal – as indicated earlier the volume of matters heard increased by just under 9% and the Tribunal also made a decision to record pre-hearings (27 out of 121 pre-hearings held were recorded).

Panels adjudicating matters brought before the Tribunal consist of three members (fulltime and parttime). In the case of pre-hearings the panel may only consist of one member and in certain instances two but very seldom three.

The example across provides an explanation of how we measure hearing and panel days.

If two panels sit on one day we count that as two hearing

days and assuming three panel members per panel the panel days would be six (2 days x 3 members per panel).

A daily fee of R9 000.00 is paid to part-time members sitting on panels for each day a hearing is held and for each preparation day allocated to a matter.

The same daily fee is payable if a part-time member is requested to write decisions. In some instances a hearing may be cancelled shortly before it begins or while a case is part-heard. Part-time members receive a daily fee if the notice of cancellation given was insufficient for them to take up non-Tribunal work.

Diagram 24: Allocation of days for adjudicative processes

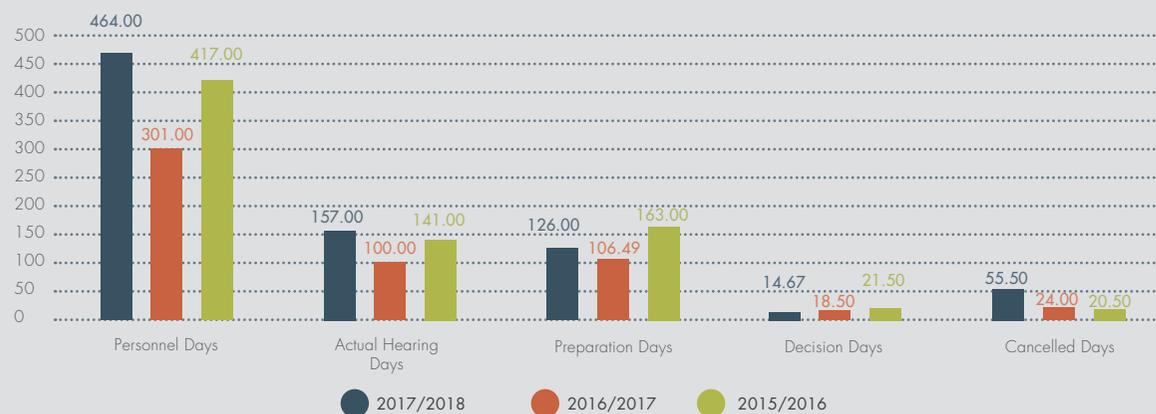


Diagram 25: Allocation of panel days between full and part-time members



While it is difficult to depict a clear trend in the above graph it is one that is worth watching as it indicates an increasingly smaller distribution of panel days to part-time members over a four year period. We expect this is related both to the vacancies only recently filled and a decreasing availability of part-time members to sit on panels.

Our CMS and the reporting tool (Qlikview) developed on top of it enable us to get current and accurate data relating to the days referred to above, and because we input costs into the system we are able to generate reports that reflect the variable cost of the adjudicative process as illustrated on the right.

Diagram 26: Variable cost of the adjudicative process



# WHAT DOES IT COST US TO MEET OUR STRATEGIC GOALS?



Table 5: Expenditure and budget by strategic objective

Goal	Budget (R'000)	% Budget By Objective	Expenditure (R'000)	% Spent By Objective	% Of Budget Spent
<b>Objectives - Goal 1 - Adjudicative Excellence</b>					
Timeous Hearing And Issuing Of Judgments	25 107 958	48.08%	23 941 859	49.58%	95.36%
Effective Business Processes	2 745 181	5.26%	2 419 080	5.01%	88.12%
<b>Objectives - Goal 2 - Stakeholder Relationships</b>					
Stakeholder Awareness	1 124 931	2.15%	1 115 608	2.31%	99.17%
<b>Objectives - Goal 3 - Accountable, Transparent And Sustainable Entity</b>					
Effective Oversight	3 737 594	7.16%	3 776 604	7.82%	101.04%
Effective Financial Management	2 711 068	5.19%	2 007 658	4.16%	74.05%
Sustainable Capacity	2 886 824	5.53%	2 094 223	4.34%	72.54%
<b>Other Expenses</b>					
Administration	10 456 162	20.02%	10 800 111	22.36%	103.29%
Depreciation	1 131 404	2.17%	1 029 442	2.13%	90.99%
Capital	1 670 847	3.20%	827 906	1.71%	49.55%
Appeal Court	652 498	1.25%	279 877	0.58%	42.89%
<b>TOTAL</b>	<b>52 224 467</b>	<b>100.00%</b>	<b>49 292 368</b>	<b>100.00%</b>	<b>92.47%</b>



## STATEMENT OF RESPONSIBILITY

The accounting authority is responsible for the preparation, integrity and fair presentation of the annual financial statements of the Competition Tribunal of South Africa for the year ended 31 March 2018.

The annual financial statements presented on pages 79 to 110 have been prepared in accordance with the South African Statements of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting

Standards Board in accordance with Section 55 of the Public Finance Management Act to the extent as indicated in the accounting policies, 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 annual financial statements.

The going concern basis has been adopted in preparing the annual financial statements. The accounting authority has no reason to believe that sufficient funding will not be obtained to continue with the official functions of the Tribunal. These annual financial statements support the viability of the Tribunal.

The accounting authority initially approved and submitted the annual financial statements to the Auditor General South Africa on 31 May 2018.



# ANNUAL FINANCIAL STATEMENTS

for the year ended 31 March 2018

## 79 Annual Financial Statements

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## STATEMENT OF FINANCIAL POSITION

	Note(s)	2018 R '000	2017 Restated* R '000
<b>ASSETS</b>			
<b>Current Assets</b>			
Cash and cash equivalents	2	14,509	13,203
Receivables from exchange transactions	3	2,681	2,414
Prepayments		149	211
Inventory		18	59
		<b>17,357</b>	<b>15,887</b>
<b>Non-Current Assets</b>			
Property, plant and equipment	4	1,487	1,440
Intangible assets	5	2,961	3,103
		<b>4,448</b>	<b>4,543</b>
<b>TOTAL ASSETS</b>		<b>21,805</b>	<b>20,430</b>
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Finance lease obligation	6	120	195
Payables from exchange transactions	7	2,483	1,955
Provisions	8	909	669
		<b>3,512</b>	<b>2,819</b>
<b>Non-Current Liabilities</b>			
Finance lease obligation	6	24	144
Operating lease liability	9	1,122	-
		<b>1,146</b>	<b>144</b>
<b>TOTAL LIABILITIES</b>		<b>4,658</b>	<b>2,963</b>
<b>NET ASSETS</b>		<b>17,147</b>	<b>17,467</b>
Accumulated surplus		17,147	17,467

## STATEMENT OF FINANCIAL PERFORMANCE

### REVENUE

#### Revenue from exchange transactions

Fees earned  
Other income  
Interest income  
Gain on disposal of assets

#### Total revenue from exchange transactions

#### Revenue from non-exchange transactions

#### Transfer revenue

Government grants & subsidies

### TOTAL REVENUE

### EXPENDITURE

Personnel costs  
Depreciation and amortisation  
Finance costs  
Administrative expenses  
Loss on disposal of assets  
Other operating expenses

### TOTAL EXPENDITURE

### Deficit for the year

Note(s)	2018 R '000	2017 Restated* R '000
10	16,295	13,860
	2	30
11	787	935
12	20	17
	<b>17,104</b>	<b>14,842</b>
13	30,041	20,115
	<b>47,145</b>	<b>34,957</b>
14	(27,617)	(23,814)
15	(1,029)	(899)
16	(10)	(38)
17	(9,889)	(6,389)
12	(16)	(15)
18	(8,904)	(7,100)
	<b>(47,465)</b>	<b>(38,255)</b>
	<b>(320)</b>	<b>(3,298)</b>

## STATEMENT OF CHANGES IN NET ASSETS

	<b>Accumulated surplus R '000</b>	<b>Total net assets R '000</b>
Opening balance as previously reported	20,715	20,715
Adjustments		
Prior period error	50	50
<b>Restated*Balance at 01 April 2016</b>	<b>20,765</b>	<b>20,765</b>
Changes in net assets		
Deficit for the year	(3,298)	(3,298)
Total changes	(3,298)	(3,298)
<b>Restated* Balance at 01 April 2017</b>	<b>17,467</b>	<b>17,467</b>
Changes in net assets		
Deficit for the year	(320)	(320)
Total changes	(320)	(320)
<b>Balance at 31 March 2018</b>	<b>17,147</b>	<b>17,147</b>

## CASH FLOW STATEMENT

### CASH FLOWS FROM OPERATING ACTIVITIES

#### Receipts

Grants	
Interest income	
Other receipts	
Fees received	

#### Payments

Employee costs	
Suppliers	
Finance costs	

#### Net cash flows from operating activities

### CASH FLOWS FROM INVESTING ACTIVITIES

Purchase of property, plant and equipment	
Proceeds from sale of property, plant and equipment	
Purchase of intangible assets	

#### Net cash flows from investing activities

### CASH FLOWS FROM FINANCING ACTIVITIES

Repayment of finance leases	
-----------------------------	--

#### Net cash flows from financing activities

#### Net increase/(decrease) in cash and cash equivalents

Cash and cash equivalents at the beginning of the year

#### Cash and cash equivalents at the end of the year

Note(s)	2018 R '000	2017 Restated* R '000
	30,041	20,115
	787	935
	2	30
	16,027	13,688
	46,857	34,768
	(27,377)	(23,682)
	(17,038)	(14,635)
	(10)	(38)
	(44,425)	(38,355)
19	<b>2,432</b>	<b>(3,587)</b>
	(753)	(382)
4	20	17
4	(198)	(68)
5	<b>(931)</b>	<b>(433)</b>
	(195)	(191)
	<b>(195)</b>	<b>(191)</b>
	<b>1,306</b>	<b>(4,211)</b>
	13,203	17,414
2	<b>14,509</b>	<b>13,203</b>

## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

	Approved budget	Actual amounts on comparable basis	Difference between approved budget and actual	Reference
	R '000	R '000	R '000	
<b>STATEMENT OF FINANCIAL PERFORMANCE</b>				
<b>REVENUE</b>				
<b>REVENUE FROM EXCHANGE TRANSACTIONS</b>				
Fees earned	13,441	16,295	<b>2,854</b>	Note a
Other income	-	2	<b>2</b>	
Interest income	916	787	<b>(129)</b>	Note b
<b>TOTAL REVENUE FROM EXCHANGE TRANSACTIONS</b>	<b>14,357</b>	<b>17,084</b>	<b>2,727</b>	
<b>REVENUE FROM NON-EXCHANGE TRANSACTIONS</b>				
Government grants & subsidies	30,041	30,041	-	
<b>TOTAL REVENUE</b>	<b>44,398</b>	<b>47,125</b>	<b>2,727</b>	
<b>EXPENDITURE</b>				
Personnel	(29,712)	(27,617)	<b>2,095</b>	Note c
Depreciation and amortisation	(1,131)	(1,029)	<b>102</b>	Note d
Finance costs	-	(10)	<b>(10)</b>	
Administrative expenses	(9,750)	(9,889)	<b>(139)</b>	Note e
Other operating expenses	(9,961)	(8,904)	<b>1,057</b>	Note e
<b>TOTAL EXPENDITURE</b>	<b>(50,554)</b>	<b>(47,449)</b>	<b>3,105</b>	
<b>Operating deficit</b>	<b>(6,156)</b>	<b>(324)</b>	<b>5,832</b>	
Gain on disposal of assets	-	20	<b>20</b>	
Loss on disposal of assets	-	(16)	<b>(16)</b>	
	<b>-</b>	<b>4</b>	<b>4</b>	
<b>Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement</b>	<b>(6,156)</b>	<b>(320)</b>	<b>5,836</b>	Note f

<b>Note a:</b>	Our budget estimate for filing fees from the Commission is based on their expected merger activity and filing fee budget. Activity was higher this year and therefore the large variance.
<b>Note b:</b>	The Tribunal held a smaller deposit with the Corporation for Public Deposit than expected and therefore interest earned was lower than budgeted.
<b>Note c:</b>	The variance on personnel costs occurred as performance bonuses paid was less than budgeted and there was marginal underspending on staff costs when staff resign and the position is vacant for a short period.
<b>Note d:</b>	The depreciation budget is an estimate based on current and expected asset purchases and cannot be predicted accurately hence the small variance.
<b>Note e:</b>	The relevant notes provide a breakdown of the line items. The Tribunal made a conscious effort to reduce spending this year in accordance with cost containment measures imposed and hence the variance in administrative and other operating expenses.
<b>Note f:</b>	The Tribunal's MTEF submission reflects a roll forward of retained income to cover the budget shortfall and as these accumulated funds are not reflected as revenue it appears as if we budget for a deficit. In addition the budget does not include budgeted capital expenditure.



## ACCOUNTING POLICIES

### 1. BASIS OF PREPARATION

The annual financial statements have been prepared in accordance with the Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with Section 91(1) of the Public Finance Management Act.

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention.

All figures have been rounded to the nearest thousand rand.

These accounting policies are consistent with the previous period.

#### 1.1 Significant judgements and sources of estimation uncertainty

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Significant judgement include:

##### Provision for accumulated leave

Management took the number of annual leave days due per employee as at year end and estimated a value for this provision by multiplying the number of days due per employee by the daily wage per employee as reflected in payroll.

##### Amortisation of internally generated software

The Tribunal developed an electronic document management software system that was officially signed off in February 2013 and became fully operative from this date. All development costs associated with this

development (development costs, legal fees, technical support, project management, etc.) were capitalised and the entire cost is amortised over 15 years from this "go live date".

##### Useful lives of property, plant and equipment and other assets

The Tribunal's management determines the estimated useful lives and related depreciation charges for property, plant and equipment and other assets. This estimate is based on the pattern in which the assets future economic benefits or service potential is expected to be consumed by the Tribunal.

#### 1.2 Going concern assumption

These annual financial statements have been prepared based on the expectation that the Tribunal will continue to operate as a going concern for at least the next 12 months.

#### 1.3 Presentation currency

These financial statements are presented in South African Rands, which is the functional currency of the Tribunal.

#### 1.4 Financial instruments

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or a residual interest of another entity.

A financial asset is:

- cash;
- a contractual right to:
  - receive cash or another financial asset from another entity; or
  - exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity.

A financial liability is any liability that is a contractual obligation to:

- deliver cash or another financial asset to another entity; or
- exchange financial assets or financial liabilities under conditions that are potentially unfavourable to the entity.

#### Classification

The Tribunal has the following types of financial assets (class and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Cash and cash equivalents	Financial asset measured at fair value
Trade receivables	Financial asset measured at fair value

The Tribunal has the following types of financial liabilities (classes and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Trade payables	Financial liability measured at fair value

#### Initial recognition

The Tribunal recognises a financial asset or a financial liability in its statement of financial position when the Tribunal becomes a party to the contractual provisions of the instrument.

The entity recognises financial assets using trade date accounting.

#### Initial measurement of financial assets and financial liabilities

The Tribunal measures a financial asset and financial liability, other than those subsequently measured at fair value, initially at its fair value plus transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability.

## 1.4 Financial instruments (continued)

### Subsequent measurement of financial assets and financial liabilities

The entity measures all financial assets and financial liabilities after initial recognition using the following categories:

- Financial instruments at fair value;
- Financial instruments at amortised cost; and
- Financial instruments at cost.

### Fair value measurement considerations

Short-term receivables and payables are not discounted where the initial credit period granted or received is consistent with terms used in the public sector, either through established practices or legislation.

### Gains and losses

A gain or loss arising from a change in the fair value of a financial asset or financial liability measured at fair value is recognised in surplus or deficit.

### Derecognition

#### Financial assets

The entity derecognises a financial asset only when:

- the contractual rights to the cash flows from the financial asset expire, are settled or waived.

On derecognition of a financial asset in its entirety, the difference between the carrying amount and the sum of the consideration received is recognised in surplus or deficit.

#### Financial liabilities

The Tribunal removes a financial liability (or a part of a financial liability) from its statement of financial position when it is extinguished – i.e. when the obligation

specified in the contract is discharged, cancelled, expires or is waived.

## 1.5 Inventory

Inventories are initially measured at cost except where inventories are acquired through a non-exchange transaction, then their costs are their fair value as at the date of acquisition.

Subsequently inventories are measured at the lower of cost and net realisable value.

The Tribunal measures its inventories at the lower of cost and current replacement cost as they are held for:

- distribution at no charge or for a nominal charge; or
- consumption in the production process of goods to be distributed at no charge or for a nominal charge.

The costs of purchase of inventories comprise the purchase price, import duties and other taxes (other than those subsequently recoverable by the Tribunal from the taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and supplies. Trade discounts, rebates and other similar items are deducted in determining the costs of purchase.

Current replacement cost is the cost the entity incurs to acquire the inventory on the reporting date.

The cost of inventory is assigned using the weighted average cost formula. The same cost formula is used for all inventory having a similar nature and use to the entity. Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average is calculated as each delivery is received.

The cost of inventory comprises of all costs of purchase, costs of conversion and other costs incurred in bringing the

inventory to their present location and condition.

When inventories are donated or issued to other entities for no cost/nominal values, inventories shall be measured at the lower of cost and net realisable value.

## 1.6 Property, plant and equipment

Property, plant and equipment are tangible non current assets that are held for use in the production or supply of goods or services, rental to others, or for administrative purposes, and are expected to be used during more than one period.

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits or service potential associated with the item will flow to the entity; and
- the cost or fair value can be measured reliably.

Property, plant and equipment is initially measured at cost.

The cost of an item of property, plant and equipment is the purchase price and other costs attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Trade discounts and rebates are deducted in arriving at the cost.

Where an asset is acquired through a non exchange transaction, its cost is its fair value as at the date of acquisition.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses.

Property, plant and equipment are depreciated on the straight line basis over their expected useful lives to their estimated residual value.

The useful lives of items of property, plant and equipment have been assessed as indicated in the table below.

## ACCOUNTING POLICIES (continued)

### 1.6 Property, plant and equipment (continued)

Item	Depreciation method	Average useful life
Furniture and fixtures	Straight line	Between 5 and 18 years
Motor vehicles	Straight line	Between 5 and 9 years
Office equipment	Straight line	Between 5 and 18 years
IT equipment	Straight line	Between 3 and 10 years
Other leased assets	Straight line	Period of lease

The depreciable amount of an asset is allocated on a systematic basis over its useful life.

The depreciation method used reflects the pattern in which the asset's future economic benefits or service potential are expected to be consumed by the entity. The depreciation method applied to an asset is reviewed at least at each reporting date and, if there has been a significant change in the expected pattern of consumption of the future economic benefits or service potential embodied in the asset, the method is changed to reflect the changed pattern. Such a change is accounted for as a change in an accounting estimate.

The entity assesses at each reporting date whether there is any indication that the entity expectations about the residual value and the useful life of an asset have changed since the preceding reporting date. If any such indication exists, the entity revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

Items of property, plant and equipment are derecognised when the asset is disposed of or when there are no further

economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is included in surplus or deficit when the item is derecognised. The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

The entity separately discloses expenditure to repair and maintain property, plant and equipment in the notes to the financial statements.

### 1.7 Intangible assets

An intangible asset is an identifiable non monetary asset without physical substance.

An asset is identifiable if it is either:

- separable, i.e. is capable of being separated or divided from an entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, identifiable assets or liability, regardless of whether the entity intends to do so; or
- arises from binding arrangements (including rights from contracts), regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.

A binding arrangement describes an arrangement that confers similar rights and obligations on the parties to it as if it were in the form of a contract.

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and

- the cost or fair value of the asset can be measured reliably.

Where an intangible asset is acquired through a non-exchange transaction, its initial cost at the date of acquisition is measured at its fair value as at that date.

Expenditure on research (or on the research phase of an internal project) is recognised as an expense when it is incurred.

An intangible asset arising from development (or from the development phase of an internal project) is recognised when:

- it is technically feasible to complete the asset so that it will be available for use or sale;
- there is an intention to complete and use or sell it;
- there is an ability to use or sell it;
- it will generate probable future economic benefits or service potential;
- there are available technical, financial and other resources to complete the development and to use or sell the asset; and
- the expenditure attributable to the asset during its development can be measured reliably.

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date. Internally generated software refers to our electronic case management system and a customised reporting tool. It has been estimated to have a useful life of 15 years as the system is very sustainable and does not need to be replaced before this time.

Any enhancements to the system are reflected as additions to the value of the asset in the period they occur and are amortised over the remaining useful life of the asset.

### 1.7 Intangible assets (continued)

Amortisation is provided to write down the intangible assets, on a straight line basis, to their residual values as follows:

Item	Useful life
Computer software, internally generated	Between 5 and 15 years
Computer software, other	Between 5 and 15 years line

The entity discloses relevant information relating to assets under construction or development, in the notes to the financial statements (see note 5).

Intangible assets are derecognised:

- on disposal; or
- when no future economic benefits or service potential are expected from its use or disposal.

The gain or loss arising from the derecognition of intangible assets is included in surplus or deficit when the asset is derecognised (unless the Standard of GRAP on leases requires otherwise on a sale and leaseback).

### 1.8 Impairment of non-cash generating assets

Non-cash generating assets are assets other than those that are primarily held for service delivery purposes i.e. assets not generating a commercial return.

Impairment is a loss in the future economic benefits or service potential of an asset, over and above the systematic recognition of the loss of the asset's future economic benefits or service potential through depreciation (amortisation).

Fair value less costs to sell is the amount obtainable from the sale of an asset in an arm's length transaction between knowledgeable, willing parties, less the costs of disposal.

Recoverable service amount is the higher of a non-cash generating asset's fair value less costs to sell and its value in use.

#### Identification

When the carrying amount of a non-cash generating asset exceeds its recoverable service amount, it is impaired.

The Tribunal assesses at each reporting date whether there is any indication that a non-cash generating asset may be impaired. If any such indication exists, the Tribunal estimates the recoverable service amount of the asset. Irrespective of whether there is any indication of impairment, the Tribunal also tests a non-cash generating intangible asset with an indefinite useful life or a non-cash generating intangible asset not yet available for use for impairment annually by comparing its carrying amount with its recoverable service amount. This impairment test is performed at the same time every year. If an intangible asset was initially recognised during the current reporting period, that intangible asset was tested for impairment before the end of the current reporting period.

#### Value in use

Value in use of non-cash generating assets is the present value of the non-cash generating assets remaining service potential.

The present value of the remaining service potential of non-cash generating assets is determined using the following approach:

#### Depreciated replacement cost approach

The present value of the remaining service potential of a non-cash generating asset is determined as the depreciated replacement cost of the asset. The replacement cost of an asset is the cost to replace the asset's gross service potential. This cost is depreciated to reflect the asset in its used condition. An asset may be replaced either through reproduction (replication) of the existing asset or through replacement of its gross service potential. The depreciated replacement cost is measured as the reproduction or replacement cost of the asset, whichever is lower, less accumulated depreciation calculated on the basis of such cost, to reflect the already consumed or expired service potential of the asset.

#### Recognition and measurement

If the recoverable service amount of a non-cash generating asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable service amount. This reduction is an impairment loss.

An impairment loss is recognised immediately in surplus or deficit.

After the recognition of an impairment loss, the depreciation (amortisation) charge for the non-cash generating asset is adjusted in future periods to allocate the non-cash generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

## ACCOUNTING POLICIES (continued)

### 1.8 Impairment of non-cash generating assets (continued)

#### Reversal of an impairment loss

The Tribunal assess at each reporting date whether there is any indication that an impairment loss recognised in prior periods for a non-cash generating asset may no longer exist or may have decreased. If any such indication exists, the Tribunal estimates the recoverable service amount of that asset.

A reversal of an impairment loss for a non-cash generating asset is recognised immediately in surplus or deficit.

After a reversal of an impairment loss is recognised, the depreciation (amortisation) charge for the non-cash generating asset is adjusted in future periods to allocate the non-cash generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

### 1.9 Accumulated surplus

The Tribunal's surplus or deficit for the year is accounted for in the accumulated surplus in the statement of changes in net assets.

The accumulated surplus/deficit represents the net difference between total assets and total liabilities of the entity. Any surpluses and deficits realised during a specific financial year are credited/debited against accumulated surplus/deficit. Prior year adjustments relating to income and expenditure are debited/credited against accumulated surplus when retrospective adjustments are made.

### 1.10 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership.

A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

#### Leased assets

The Tribunal recognises assets acquired under finance leases as assets and the associated lease obligations as liabilities in the statement of financial position. The assets and liabilities shall be recognised at amounts equal to the fair value of the leased asset, or if lower, the present value of the minimum lease payments, each determined at the inception of the lease.

The discount rate to be used in calculating the present value of minimum lease payments is the interest rate implicit in the lease.

Minimum lease payments are apportioned between finance charges and reduction of the outstanding liability. The finance charge shall be allocated to each period so as to achieve a constant periodic rate of interest on the remaining balance of the liability.

Finance charges are charged to surplus or deficit in the statement of financial performance.

A finance lease gives rise to a depreciation expense for depreciable assets as well as finance expense for each accounting period. The depreciation policy for depreciable leased assets must be consistent with that for depreciable assets that are owned, and the depreciation recognised shall be calculated in accordance with the Standard of GRAP on Property, Plant and Equipment. Refer to note 6 for detail on finance leases.

#### Operating leases – lessee

Operating lease payments are recognised as an expense on a straight line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease liability. This liability is not discounted.

### 1.11 Provisions and contingencies

Provisions are recognised when:

- the Tribunal has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the obligation at the reporting date.

Where the effect of time value of money is material, the amount of the provision is the present value of the expenditures expected to be required to settle the obligation. The discount rate is a pre tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits will be required to settle the obligation.

A provision is used only for expenditures for which the provision was originally recognised.

Provisions are not recognised for future operating expenditure.

### 1.11 Provisions and contingencies (continued)

A contingent liability is:

- a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or
- non-occurrence of one or more uncertain future events not wholly within the control of the entity; or
- a present obligation that arises from past events but is not recognised because:
  - *it is not probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and*
  - *the amount of the obligation cannot be measured with sufficient reliability.*

### 1.12 Employee benefits

Employee benefits are all forms of consideration given by the Tribunal in exchange for services rendered by employees.

#### Short-term employee benefits

Short-term employee benefits are employee benefits (other than termination benefits) that are due to be settled within twelve months after the end of the period in which the employees render the related service.

Short-term employee benefits include items such as:

- salaries and social security contributions;
- short-term compensated absences (such as paid annual leave and paid sick leave) where the compensation for the absences is due to be settled within twelve months after the end of the reporting period in which the employees render the related employee service; and
- 13th cheque and performance related payments payable within twelve months after the end of the reporting period

in which the employees render the related service.

When an employee has rendered service to the Tribunal during a reporting period, the Tribunal recognises the undiscounted amount of short term employee benefits expected to be paid in exchange for that service:

- as a liability (accrued expense), after deducting any amount already paid. If the amount already paid exceeds the undiscounted amount of the benefits, the Tribunal recognises that excess as an asset (prepaid expense) to the extent that the prepayment will lead to, for example, a reduction in future payments or a cash refund; and
- as an expense, unless another Standard requires or permits the inclusion of the benefits in the cost of an asset.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs.

The Tribunal measures the expected cost of accumulating compensated absences as the additional amount that the entity expects to pay as a result of the unused entitlement that has accumulated at the reporting date.

The entity recognises the expected cost of bonus, incentive and performance related payments when the Tribunal has a present legal or constructive obligation to make such payments as a result of past events and a reliable estimate of the obligation can be made. A present obligation exists when the entity has no realistic alternative but to make the payments.

### 1.13 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners.

An exchange transaction is one in which the Tribunal receives assets or services, or has liabilities extinguished, and directly give approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

When the outcome of a transaction involving the rendering of services can be estimated reliably, revenue associated with the transaction is recognised by reference to the stage of completion of the transaction at the reporting date. The outcome of a transaction can be estimated reliably when all the following conditions are satisfied:

- the amount of revenue can be measured reliably;
- it is probable that the economic benefits associated with the transaction will flow to the entity;
- the performance obligations are met and at reporting date can be measured reliably; and
- the costs incurred for the transaction and the costs to complete the transaction can be measured reliably.

When the outcome of the transaction involving the rendering of services cannot be estimated reliably, revenue shall be recognised only to the extent of the expenses recognised that are recoverable.

Service revenue is recognised by reference to the stage of completion of the transaction at reporting date. Stage of completion is determined by surveys of work performed.

Revenue is measured at the fair value of the consideration received or receivable and represents the amounts receivable for goods and services provided in the normal course of business.

## ACCOUNTING POLICIES (continued)

### 1.13 Revenue from exchange transactions (continued)

#### Filing fees

In terms of a memorandum of agreement between the Commission and the Tribunal, the Tribunal receives a portion of the filing fees paid to the Commission on notification of mergers. Filing fees due to the Tribunal are recognised as receivables by the Tribunal when the papers have been filed with the Commission and the filing fees have been paid to the Commission. Any filing fees paid to the Commission for cases but not filed or those that lapse for the periods stipulated in the Competition Act are refunded by the Commission to the parties. In the event that the Tribunal had received a portion of these fees they would be reflected as payables or netted off against receivables due from the Commission.

#### Interest income

Revenue is recognised as interest accrues using the effective interest rate.

#### Other income

Other income is recognised on an accrual basis. Other income received by the Tribunal may include monies due/paid for photocopying of documents or insurance refunds.

### 1.14 Revenue from non-exchange transactions

Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, an entity either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

#### Recognition

An inflow of resources from a non-exchange transaction recognised as an asset is recognised as revenue, except to the extent that a liability is also recognised in respect of the same inflow.

As the Tribunal satisfies a present obligation recognised as a liability in respect of an inflow of resources from a non-exchange transaction recognised as an asset, it reduces the carrying amount of the liability recognised and recognises an amount of revenue equal to that reduction.

#### Government grants

Government grants 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 ie. the submission of required reports to the parent department, the grant has been received and there is no liability to repay the amount in the event of non-performance.

#### Measurement

Revenue from a non-exchange transaction is measured at the amount of the increase in net assets recognised by the entity.

### 1.15 Comparative figures

Where necessary, comparative figures have been reclassified to conform to changes in presentation in the current year.

### 1.16 Fruitless and wasteful expenditure

Fruitless and wasteful expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

### 1.17 Irregular expenditure

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including:

- (a) this Act; or
- (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- (c) any provincial legislation providing for procurement procedures in that provincial government.

National Treasury practice note no. 4 of 2008/2009 which was issued in terms of sections 76(1) to 76(4) of the PFMA requires the following (effective from 1 April 2008).

Irregular expenditure that was incurred and identified during the current financial year and which was condoned before year end and/or before finalisation of the financial statements is recorded appropriately in the irregular expenditure register. In such an instance, no further action is required with the exception of updating the note to the financial statements.

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end is recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements.

### 1.17 Irregular expenditure (continued)

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements is updated with the amount condoned.

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority is recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps are thereafter taken to recover the amount from the person concerned. If recovery is not possible, the Accounting Officer or Accounting Authority may write off the amount as debt impairment and disclose such in the relevant note to the financial statements. The irregular expenditure register is updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto remains against the relevant programme/expenditure item, is disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

### 1.18 Budget information

The Tribunal is typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or something similar.

The approved budget is prepared on the accrual basis and presented by functional classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 1 April 2017 to 31 March 2018.

The annual financial statements and the budget are on the same basis of accounting therefore a comparison with the budgeted amounts for the reporting period have been included in the statement of comparison of budget and actual amounts.

### 1.19 Commitments

Items are classified as commitments when the Tribunal has committed itself to future transactions that will normally result in the outflow of cash.

### 1.20 Related parties

The entity operates in an economic sector currently dominated by entities directly or indirectly owned by the South African government. As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

Management are those persons responsible for planning, directing and controlling the activities of the entity, including those charged with the governance of the entity in accordance with legislation, in instances where they are required to perform such functions.

Close members of the family of a person are considered to be those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity.

Only transactions with related parties not at arm's length or not in the ordinary course of business are disclosed.

### 1.21 Events after reporting date

Events after reporting date are those events, both favourable and unfavourable, that occur between the reporting date and the date when the financial statements are authorised for issue. Two types of events can be identified:

- those that provide evidence of conditions that existed at the reporting date (adjusting events after the reporting date); and
- those that are indicative of conditions that arose after the reporting date (non-adjusting events after the reporting date).

The entity will adjust the amount recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred.

The entity will disclose the nature of the event and an estimate of its financial effect or a statement that such estimate cannot be made in respect of all material non-adjusting events, where non disclosure could influence the economic decisions of users taken on the basis of the financial statements.

### 1.22 Standard in issue not yet effective

Standards in issue but not yet effective, are disclosed in the financial statements as well as the impact on the financial statements in future periods. Refer to note 28.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS

### 2. CASH AND CASH EQUIVALENTS

Cash and cash equivalents comprise cash that is held with registered banking institutions. As the interest rate risk at these institutions is deemed to be insignificant, the carrying amount of these assets approximates their fair value.

There are no restrictions on the use of cash.

Cash on hand

Cash at bank

**Total**

### 3. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Receivables

Other debtors

**Total**

	<b>2018 R '000</b>	<b>2017 R '000</b>
	4	3
	14,505	13,200
	<b>14,509</b>	<b>13,203</b>
	2,551	2,295
	130	119
	<b>2,681</b>	<b>2,414</b>

Trade receivables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice. The effect of discounting was considered and found to be immaterial since the carrying value of receivables approximates its fair value.

#### 4. PROPERTY, PLANT AND EQUIPMENT

	2018			2017		
	Cost	Accumulated depreciation and accumulated impairment	Carrying value	Cost	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	1,068	(559)	509	665	(441)	224
Motor vehicles	210	(101)	109	210	(97)	113
Office equipment	46	(17)	29	46	(18)	28
IT equipment	1,390	(687)	703	1,394	(647)	747
Photocopiers and 3G contracts (Leased)	480	(343)	137	604	(276)	328
<b>Total</b>	<b>3,194</b>	<b>(1,707)</b>	<b>1,487</b>	<b>2,919</b>	<b>(1,479)</b>	<b>1,440</b>

#### Reconciliation of property, plant and equipment – 2018

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	224	444	(1)	(157)	510
Motor vehicles	113	-	-	(4)	109
Office equipment	28	9	(4)	(5)	28
IT equipment	747	300	(3)	(341)	703
Photocopiers and 3G contracts (Leased)	328	-	-	(191)	137
	<b>1,440</b>	<b>753</b>	<b>(8)</b>	<b>(698)</b>	<b>1,487</b>

#### Reconciliation of property, plant and equipment – 2017

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	314	6	-	(96)	224
Motor vehicles	118	-	-	(5)	113
Office equipment	35	-	(1)	(6)	28
IT equipment	675	376	(14)	(290)	747
Photocopiers and 3G contracts (Leased)	308	220	-	(200)	328
	<b>1,450</b>	<b>602</b>	<b>(15)</b>	<b>(597)</b>	<b>1,440</b>

#### Pledged as security and contractual commitments

During the financial year, there was no property, plant or equipment pledged as security. The Tribunal has not entered into any contractual commitments to acquire assets.

#### Assets subject to finance lease (Net carrying amount)

Leased assets		137	328
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## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 5. INTANGIBLE ASSETS

	2018			2017		
	Cost	Accumulated amortisation and accumulated impairment	Carrying value	Cost	Accumulated amortisation and accumulated impairment	Carrying value
Computer software, internally generated	4,136	(1,601)	2,535	4,127	(1,323)	2,804
Computer software, acquired	621	(195)	426	481	(182)	299
<b>Total</b>	<b>4,757</b>	<b>(1,796)</b>	<b>2,961</b>	<b>4,608</b>	<b>(1,505)</b>	<b>3,103</b>

#### Reconciliation of intangible assets – 2018

	Opening balance	Additions	Disposals	Amortisation	Total
Computer software, internally generated	2,804	9	-	(278)	2,535
Computer software, acquired	299	189	(9)	(53)	426
	<b>3,103</b>	<b>198</b>	<b>(9)</b>	<b>(331)</b>	<b>2,961</b>

#### Reconciliation of intangible assets – 2017

	Opening balance	Additions	Amortisation	Total
Computer software, internally generated	2,993	68	(257)	2,804
Computer software, acquired	344	-	(45)	299
	<b>3,337</b>	<b>68</b>	<b>(302)</b>	<b>3,103</b>

#### Pledged as security and contractual commitments

During the financial year there were no intangible assets pledged as security. The Tribunal has not entered into any contractual commitments to acquire any intangible assets.

## 6. FINANCE LEASE OBLIGATION

### Minimum lease payments due

- within one year
- in second to fifth year inclusive

less: future finance charges

### Present value of minimum lease payments

### Present value of minimum lease payments due

- within one year
- in second to fifth year inclusive

Non current liabilities

Current liabilities

	<b>2018</b> R '000	<b>2017</b> R '000
	128	221
	24	152
	152	373
	(8)	(34)
	<b>144</b>	<b>339</b>
	120	195
	24	144
	<b>144</b>	<b>339</b>
	24	144
	120	195
	<b>144</b>	<b>339</b>

The Tribunal is leasing photocopiers under two finance leases and there are no restrictions imposed on the Tribunal in terms of the leases. There are no escalation clauses reflected in the lease agreements. The obligation under the finance leases are secured by the lessor's title to the leased assets. The leases can be extended for a further period after the initial period has expired. The average lease period is 3 years and the average effective borrowing rate is 10.5% per annum.

## 7. PAYABLES FROM EXCHANGE TRANSACTIONS

Creditors

Accrued performance bonus

Other accruals

	195	180
	1,186	1,112
	1,102	663
	<b>2,483</b>	<b>1,955</b>

Trade payables are unsecured, bear no interest and are expected to be settled within 30 days of date of invoice. The effect of discounting was considered and found to be immaterial since the carrying value of trade and other creditors approximates its fair value. During the period under review there were no breaches of contracts or agreements held with the Tribunal and it was not necessary to negotiate any new terms with suppliers.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 8. PROVISIONS

#### Reconciliation of provisions - 2018

	Opening balance	Additions	Reversed during the year	Total
Leave provision	669	909	(669)	909

#### Reconciliation of provisions - 2017

	Opening balance	Additions	Utilised during the year	Reversed during the year	Total
Leave provision	537	669	(44)	(493)	669

The leave provision is calculated based on the leave due and daily salary paid to an employee as at the end of the financial year. This leave is paid out if and when an employee leaves the entity. The uncertainty with regard to the provision is that we have no indication as to whether an employee will or when they will leave the entity. In addition this leave may be used or may continue to accumulate during the next financial year.

### 9. OPERATING LEASE LIABILITY

Non-current liabilities

The Tribunal entered into a 5 year lease agreement for building occupation on the DTI Campus which commenced on 1 April 2017 and terminates on 31 March 2022. The monthly payment escalates by 10% annually.

#### Minimum Lease payments due

- within one year

- in second to fifth year inclusive

	2018 R '000	2017 R '000
Non-current liabilities	(1,122)	-
Minimum Lease payments due		
- within one year	5,132	-
- in second to fifth year inclusive	18,685	-
	<b>23,817</b>	<b>-</b>
Fees earned	16,295	13,860

### 10. FEES EARNED

Fees earned

These fees relate to filing fees in respect of merger cases received from the Competition Commission.

## 11. INTEREST INCOME

### Interest received

- Bank deposits

## 12. NET GAIN/(LOSS) ON DISPOSAL OF ASSETS

Gain on disposal of property, plant and equipment

Loss on disposal of property, plant and equipment

## 13. GOVERNMENT GRANT AND SUBSIDIES

Economic Development Department

## 14. PERSONNEL

Basic salaries

Performance awards

Medical-aid company contributions

Statutory contributions

Insurance

Other salary related costs

Defined contribution pension plan expense (see Note 20)

Executive committee members emoluments

	<b>2018 R '000</b>	<b>2017 R '000</b>
	787	935
	20	17
	(16)	(15)
	<b>4</b>	<b>2</b>
	30,041	20,115
	15,085	13,896
	1,050	983
	853	740
	227	209
	239	216
	240	176
	1,087	986
	8,836	6,608
	<b>27,617</b>	<b>23,814</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 15. DEPRECIATION AND AMORTISATION

#### Depreciation

Furniture and fixtures
Motor vehicles
Office equipment
IT equipment
Leased assets

#### Amortisation

Computer software
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### 16. FINANCE COSTS

Finance cost on leases
Fair value adjustments on payables/receivables

### 17. ADMINISTRATIVE EXPENSES

Audit committee members' fees
Risk committee members' fees
Audit committee meeting expenses
General expenses
External audit fees
Internal audit fees
Travel and subsistence
Building Occupation
Fraud prevention committee
IT Expenses

2018 R '000	2017 R '000
157	95
4	5
5	6
341	290
191	201
<b>698</b>	<b>597</b>
331	302
25	40
(15)	(2)
<b>10</b>	<b>38</b>
276	288
151	147
10	15
1,108	920
1,062	561
491	551
318	321
5,674	3,009
23	5
776	572
<b>9,889</b>	<b>6,389</b>

## 18. OTHER OPERATING EXPENSES

Consultants, contractors and special services
Staff training and development
Fees paid to part-time Tribunal members
Software under development
Maintenance, repairs and running costs

## 19. CASH GENERATED FROM OPERATIONS

Deficit for the year

### Adjustments for:

Depreciation and amortisation
Gain on disposal of assets
Loss on disposal of assets
Movements in operating lease liability
Movements in provisions

### Changes in working capital:

Inventory
Receivables from exchange transactions
Prepayments
Payables from exchange transactions

## 20. EMPLOYEE BENEFIT OBLIGATIONS

### Defined contribution plan

The Competition Tribunal Pension Fund, which is governed by the Pensions Fund Act of 1956 as amended, is a compulsory defined contribution plan for all employees in the Tribunal. The fund is administered by Sanlam Retirement Fund Administrators. The Competition Tribunal is a participating employer on the Sanlam Umbrella Fund. The scheme offers the members various investment options for their pension fund contributions. As an insured fund, the Sanlam Umbrella Fund and thus the Competition Tribunal as participating employer, complies with regulation 28 of the Pension Fund Act of 1956. (see Note 14).

2018 R '000	2017 R '000
2,936	2,164
1,304	1,083
3,869	3,118
-	50
795	685
<b>8,904</b>	<b>7,100</b>
(320)	(3,298)
1,029	899
(20)	(17)
16	15
1,122	-
240	132
41	2
(267)	(172)
62	(1)
529	(1,147)
<b>2,432</b>	<b>(3,587)</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 21. INCOME TAX EXEMPTION

The Tribunal is currently exempt from Income Tax in terms of section 10 (1) (a) of the Income Tax Act, 1962.

### 22. FINANCIAL RISK MANAGEMENT

The main risks arising from the Tribunal's financial instruments are market risk, liquidity risk and credit risk.

#### Credit risk

The Tribunal trades only with recognised, creditworthy third parties. It is the Tribunal's policy that all customers who wish to trade on credit terms are subject to credit verification procedures. In addition, receivables balances are monitored on an ongoing basis with the result that the Tribunal's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed in Note 3. There is no significant concentration of credit risk within the Tribunal.

With respect to credit risk arising from the other financial assets of the Tribunal, which comprise cash equivalents, the Tribunal's exposure to credit risk arises from default of the counter party, with a maximum exposure equal to the carrying amount of these instruments. The Tribunal's cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is limited.

#### Exposure to credit risk

The maximum exposure to credit risk at the reporting date from financial assets was:

Cash equivalents

Receivables

#### Total

	2018 R '000	2017 R '000
Cash equivalents	14,505	13,200
Receivables	2,551	2,295
<b>Total</b>	<b>17,056</b>	<b>15,495</b>

#### Concentration of credit risk

The maximum exposure to credit risk for financial assets at the reporting date by credit rating category was as follows:  
The Tribunal's cash is either held in an ABSA current account or invested with the Corporation for Public Deposits.

#### 2018

Cash equivalents

#### 2017

Cash equivalents

	Rated and government R '000	Unrated R '000
Cash equivalents	14,505	-
Cash equivalents	13,200	-

## 22. FINANCIAL RISK MANAGEMENT (continued)

The following table provides information regarding the credit quality of assets which may expose the Tribunal to credit risk:

	<b>Neither past due nor impaired R '000</b>	<b>Past due but not impaired less than 2 months R '000</b>	<b>Carrying value R '000</b>
<b>2018</b>			
Cash equivalents	14,505	-	14,505
Receivables	2,551	-	2,551
<b>2017</b>			
Cash equivalents	13,200	-	13,200
Receivables	1,620	675	2,295

### Market risk

Market risk is the risk that changes in market prices, such as the interest rate will affect the value of the financial assets of the Tribunal.

### Interest rate risk

The Tribunal is exposed to interest rate changes in respect of returns on its investments with financial institutions and interest payable on finance leases contracted with outside parties.

The Tribunal's exposure to interest risk is managed by investing surplus funds in the Corporation for Public Deposits as the interest rate is favourable and still allows easy access to funds both in terms of movement from and movement to.

The change in net surplus of a 1% change in interest is based on year end exposure.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 22. FINANCIAL RISK MANAGEMENT (continued)

#### Sensitivity Analysis

##### 2018

Cash equivalents

Increase/(decrease) in net surplus for the year		
Change in Investments	Upward change	Downward change
1.00%	145	(145)

##### 2017

Cash equivalents

Change in Investments	Upward change	Downward change
1.00%	132	(132)

#### Liquidity risk

Liquidity risk is the risk that the Tribunal would not have sufficient funds available to cover future commitments. The Tribunal regards this risk to be low; taking into consideration the Tribunal's current funding structures and availability of cash resources.

The following table reflects the Tribunal's exposure to liquidity risk from financial liabilities:

##### 2018

Finance lease obligation

Payable from exchange transactions

Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
R '000	R '000	R '000	R '000
144	144	120	24
2,483	2,483	2,483	-

##### 2017

Finance lease obligation

Payable from exchange transactions

Carrying amount	Total cash flow	Contractual cash flow within 1 year	Contractual cash flow between 1 and 5 years
R '000	R '000	R '000	R '000
339	339	195	144
1,955	1,955	1,955	-

## 22. FINANCIAL RISK MANAGEMENT (continued)

### Financial instruments

The following table shows the classification of the Tribunal's principal instruments together with their carrying value:

Financial Instrument		2018 R '000	2017 R '000
Cash equivalents	Financial asset measured at fair value	14,505	13,200
Trade debtors	Financial asset measured at fair value	2,551	2,295
Payables from exchange transactions	Financial liabilities measured at fair value	2,483	1,955

The accounting policies for financial instruments have been applied to the items above.

## 23. COMPARATIVE FIGURES

Comparative figures have been reclassified in the Statement of Financial Performance to conform to changes in presentation in the current year. The reclassification relates to workmen's compensation and joint management forum expenses previously included in Personnel costs, reclassified to Administrative expenses.

The reason for the reclassification is to more accurately reflect the personnel costs in the annual financial statements.

The effects of the reclassification are as follows:

Statement of Financial Performance	Comparative figures previously reported R '000	Reclassification R '000	After reclassification R '000
Personnel costs	(23,895)	81	(23,814)
Administrative costs	(6,308)	(81)	(6,389)
<b>Total</b>	<b>(30,203)</b>	<b>-</b>	<b>(30,203)</b>

## 24. FRUITLESS AND WASTEFUL EXPENDITURE

The Tribunal has not incurred fruitless and wasteful expenditure in the current and prior year.

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 25. IRREGULAR EXPENDITURE

Opening balance

Add: Irregular expenditure – current year

Less: Amounts recoverable (not condoned)

Less: Amounts not recoverable (condoned)

#### Amounts awaiting condonation

#### Analysis of expenditure awaiting condonation per age classification

Irregular expenditure awaiting condonation

<b>2018</b> <b>R '000</b>	<b>2017</b> <b>R '000</b>
976	976
85	-
-	-
-	-
<b>1,061</b>	<b>976</b>
1,061	976

During the current financial year, the irregular expenditure incurred relates to the amount exceeding 15% of the original contract value for back up services. The contract was extended as the procurement process was not finalised in time and the Tribunal did not obtain prior approval from National Treasury. The Tribunal is currently engaging with National Treasury with regard to condonation of irregular expenditure.

## 26. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE

Reconciliation of budget (deficit)/surplus with the (deficit)/surplus in the statement of financial performance:

Deficit per the statement of financial performance

### Adjusted for:

Fair value adjustments

Gain on the disposal of assets

Printing recoupment and insurance refund

Transfer from retained income

### Adjustments for items reflected as capital expenditure on budget:

Leased equipment

Capital expenditure

### Income under/(in excess of) budget:

Filing fees from the Commission

Interest received

EDD grant

### Over/(under) expenditure on budget:

Personnel

Part-time Tribunal member fees

Local training

Overseas training

Professional fees

Recording and transcription services

Recruitment costs

Administrative expenses

Facilities and capital

Competition Appeal Court

### Net deficit per approved budget

	2018 R '000	2017 R '000
Deficit per the statement of financial performance	(320)	(3,298)
Fair value adjustments	(15)	(2)
Gain on the disposal of assets	(20)	(17)
Printing recoupment and insurance refund	(2)	(30)
Transfer from retained income	7,826	9,271
Leased equipment	(165)	(194)
Capital expenditure	(1,671)	(1,327)
Filing fees from the Commission	(2,855)	(2,337)
Interest received	130	(155)
EDD grant	-	1,080
Personnel	(2,095)	152
Part-time Tribunal member fees	(126)	(1,246)
Local training	(227)	(157)
Overseas training	(584)	(587)
Professional fees	601	(192)
Recording and transcription services	569	187
Recruitment costs	(55)	67
Administrative expenses	(329)	(213)
Facilities and capital	(289)	(491)
Competition Appeal Court	(373)	(511)
<b>Net deficit per approved budget</b>	<b>-</b>	<b>-</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 27. RELATED PARTIES

Related party	Relationship
The Competition Commission	Public entity in the National Sphere
Industrial Development Corporation	Public entity in the National Sphere
International Trade Administration Commission	Public entity in the National Sphere
The Department of Trade and Industry	National Department in the National Sphere
Economic Development Department	National Department in the National Sphere
Members of key management	Executive committee members

#### Related party balances

##### Amounts included in trade payables regarding related parties

The Department of Trade and Industry

4 5

##### Amounts included in trade receivables regarding related parties

Refund on administrative expenses due from the Commission

70 97

Filing fees due from the Competition Commission

2,700 2,320

Facility fee refund due from the Competition Commission

(305) (150)

#### Related party transactions

##### The Competition Commission

Filing fees

16,295 13,860

Facility fees

(827) (697)

Administrative costs

30 29

##### The Department of Trade and Industry

Unitary payments

(4,552) (3,008)

Administrative costs

(50) (58)

##### Economic Development Department

Government grant

30,041 20,115

##### Full time member/Chairperson: N Manoim

Package

2,379 2,271

Statutory contributions

23 23

Other salary related contributions

58 58

**2,460 2,352**

**27. RELATED PARTIES (continued)**

**Full time member/Deputy Chairperson: E Daniels**

Package  
Statutory contributions  
Other salary related contributions

**Full time member: Y Carrim**

Package  
Statutory contributions  
Other salary related contributions

**Chief Operating Officer: J de Klerk**

Package  
Performance bonus  
Statutory contributions  
Other salary related contributions

	<b>2018 R '000</b>	<b>2017 R '000</b>
	2,204	529
	21	5
	55	14
	<b>2,280</b>	<b>548</b>
	2,255	1,928
	22	19
	55	53
	<b>2,332</b>	<b>2,000</b>
	1,564	1,516
	140	140
	17	16
	43	36
	<b>1,764</b>	<b>1,708</b>

## NOTES TO THE ANNUAL FINANCIAL STATEMENTS (continued)

### 28. NEW STANDARDS AND INTERPRETATIONS

#### 28.1 STANDARDS AND INTERPRETATIONS ISSUED, BUT NOT YET EFFECTIVE

The entity has not applied the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after 01 April 2018 or later periods:

##### Standard/ Interpretation:

- GRAP 109: Accounting by Principals and Agents
- GRAP 108: Statutory Receivables
- GRAP 32: Service Concession Arrangements: Grantor
- GRAP 20: Related parties

##### Effective date: Years beginning on or after

No effective date as yet  
No effective date as yet  
No effective date as yet  
No effective date as yet

##### Expected impact:

Unlikely to be a material impact  
Unlikely to be a material impact  
Unlikely to be a material impact  
Not expected to impact results but may result in additional disclosure

### 29. PRIOR PERIOD ERRORS AND ADJUSTMENTS

There are 2 areas of prior year adjustments that impact both the receivables from exchange transactions and the accumulated surplus account in the statement of financial position by a total amount of R49 716.74:

1. SARS owes the Tribunal R46 716.74 more than the amount recognised in the prior years. The correcting adjustment has been processed as at 31 March 2016.
2. As a result of a rounding difference from prior years, receivable and accumulated surpluses have been understated by R3 000. The correcting adjustment has been processed as at 31 March

The correction of the error(s) results in adjustments as follows:

Statement of Financial Position	Balance as previously reported R '000	Prior period adjustment R '000	Restated balance R '000
Receivables from exchange transactions	2,364	50	2,414
Accumulated Surplus	(17,417)	(50)	(17,467)
	<b>(15,053)</b>	<b>-</b>	<b>(15,053)</b>

### 30. CONTINGENT LIABILITY

In terms of Section 53(3) of the PFMA, a public entity may not accumulate surplus funds without approval from the National Treasury. Approval will be requested from the National Treasury to retain estimated cash surpluses amounting to R14.59 million. As permission has not yet been granted as yet, this is reflected as a contingent liability.





# PART 6

Appendix

# APPENDIX A: ANNUAL PERFORMANCE REPORT

## STRATEGIC FOCUS AREA 1



STRATEGIC FOCUS AREA 1:		ADJUDICATIVE EXCELLENCE			YEAR TO DATE	REASON FOR DEVIATIONS	
		BUDGET			R27 853 139,00		
		ACTUAL EXPENDITURE			R26 360 938,19	The budget is based on an estimate of the volume of cases and variances will occur as we cannot predict volume	
GOAL STATEMENT		TO ENSURE EFFECTIVE AND EFFICIENT ADJUDICATION ON MATTERS BROUGHT BEFORE THE TRIBUNAL					
STRATEGIC OUTCOME							
STRATEGIC OBJECTIVE	STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS
						YEAR TO DATE	
CASE MANAGEMENT EFFICIENCY	Matters brought before the Tribunal are heard within the adopted delivery time frames.	Hearings are set down within required time frames.	% of large mergers to be set down for the beginning of a hearing or a pre-hearing within 10 business days of the filing of the merger referral.	75%	87.25%	71.90%	Target not met for year to date. 34 out of 121 matters were set down late. In 18 matters delays were due to parties availability on earlier dates offered by the Tribunal. In 8 matters delays were due to the referrals received late in December and the earliest hearing date in January was already outside the required turnaround time. In another 8 matters delays were due to the Tribunal's calendar being full.
			% of intermediate and small merger considerations to be set down for the beginning of a hearing or a pre-hearing within 10 business days of the filing of the request for consideration.	75%	80%	70%	Target not met for year. 3 out of 10 matters were set down late as parties were not available on the earlier dates offered by the Tribunal.
TIMEOUS ISSUING OF JUDGMENTS	Improvement in the issuing of judgments/decisions in line with adopted time frames.	Expeditious conclusion of matters.	% of large merger orders issued to parties within 10 business days of last hearing date (Business rule "hearing day" can refer actual hearing, telephonic hearing, paper hearing ("last submission date").	95%	99.02%	100%	Target exceeded by 5% for the year. The target is not set at 100% as we have to allow some leeway for delays in issuing of orders in complex matters that require more time for consideration.
			% of large merger reasons issued to parties within 20 business days of order being issued.	70%	78.70%	90.91%	Target for the year exceeded by 21%. The target is not set at 100% as we have to allow some leeway for delays in issuing of reasons in complex matters that require more time for consideration. During the period under review we have exceeded our target as we had more non complex mergers to deliberate on.
			% of intermediate and small merger consideration orders issued to parties within 10 business days of last hearing date (Business rule - "hearing day" can refer to actual hearing, telephonic hearing, paper hearing ("last submission date").	95%	66.67%	75%	Target not met for the year. 1 out 4 orders were issued late. The delay was due to the fact that the order and reasons were combined and issued at the same time.
			% of intermediate and small merger consideration reasons issued to parties within 20 business days of order being issued.	60%	0%	100%	Target exceeded by 30% for the year. Reasons were issued in one matter only and these were issued within time.

STRATEGIC FOCUS AREA 1 (continued)

STRATEGIC FOCUS AREA 1:		ADJUDICATIVE EXCELLENCE				YEAR TO DATE	REASON FOR DEVIATIONS	
		BUDGET				R27 853 139,00		
		ACTUAL EXPENDITURE				R26 360 938,19	The budget is based on an estimate of the volume of cases and variances will occur as we cannot predict volume	
GOAL STATEMENT		TO ENSURE EFFECTIVE AND EFFICIENT ADJUDICATION ON MATTERS BROUGHT BEFORE THE TRIBUNAL						
STRATEGIC OUTCOME								
STRATEGIC OBJECTIVE	STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS	
						YEAR TO DATE		
TIMEOUS ISSUING OF JUDGMENTS	Improvement in the issuing of judgments/decisions in line with adopted time frames.	Expeditious conclusion of matters.	Reasons for prohibited practice cases issued to parties in accordance with the delivery timeframes per category: A,B or C. (Prohibited practice cases refer to all complaints from the Commission, the complainant and the High Court - A refers to a simple matter, B to a complex matter and C to a very complex matter).	A - 100 business days	No reasons issued	50%	Target not met for the year as members were sitting on other matters as well as trying to write decisions 1 out 2 simple matters was late by 75 business days.	
				B - 125 business days	66.67%	100%	Target met for the year 3 out of 3 complex matters were issued within the required timeframe.	
				C - 150 business days	50%	No reasons issued	No reasons issued therefore target cannot be measured.	
				% of procedural matter orders issued to parties within 20 business days of last hearing date. (Procedural matters include interlocutory applications).	85%	26.19%	56%	Target not met for year to date. 22 out of 50 orders were issued late due to the following reasons - some matters were highly complex and traversed new procedural ground, thus requiring a large amount of time to write. Other cases involved difficult issues of law and fact and the drafting of reasons was therefore not straightforward.
				% of orders for consent orders and settlement agreements issued to parties within 10 business days of last hearing date.	90%	100%	84.62%	Target not met for the year to date. 4 out of 26 orders were issued late. 2 of the 4 matters were quite complex and had their order and reasons issued simultaneously. In the other 2 matters the orders went out late due to an administrative error.
				% of interim relief reasons issued to parties within 20 business days of last hearing date.	100%	0%	No reasons issued	No reasons issued therefore target cannot be measured.

STRATEGIC FOCUS AREA 1 (continued)

STRATEGIC FOCUS AREA 1:		ADJUDICATIVE EXCELLENCE				YEAR TO DATE	REASON FOR DEVIATIONS
		BUDGET				R27 853 139,00	
		ACTUAL EXPENDITURE				R26 360 938,19	The budget is based on an estimate of the volume of cases and variances will occur as we cannot predict volume
GOAL STATEMENT		TO ENSURE EFFECTIVE AND EFFICIENT ADJUDICATION ON MATTERS BROUGHT BEFORE THE TRIBUNAL					
STRATEGIC OUTCOME							
STRATEGIC OBJECTIVE	STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS
						YEAR TO DATE	
EFFECTIVE BUSINESS APPLICATIONS	Enhancing record keeping, performance and caseload management by harnessing facility and functionality of business applications.	Improved management information to inform strategic decision making and access to historical data.	CMS deemed to be sustainable.	Sustainability of CMS confirmed.	It was established that updates were possible and as a result no feasibility study was undertaken. We are currently testing the final update and will then be in a position to determine what enhancement is required and can be implemented. This target will therefore be removed or revised in 2017/2018.	CMS deemed to be sustainable as per report presented by IT Administrator.	Target met for year to date (annual target).
			Models developed and implemented that generate statistics pertaining to the adjudicative process.	Develop and implement a model that generates reports based on statistics relating to adjudicative process.	An informal as opposed to formal agreed plan for electronic reporting was agreed and we have been working on these so as to reduce the reliance on manual systems. Enhancements are implemented as we progress and new reports are being tested. This target will be removed or revised in 2017/2018.	New models developed (useful statistics) and models developed further to include statistics relating to turnover of merging parties, and number of extensions.	Target met for year to date (annual target).

6 met/exceeded  
2 could not be measured as no activity  
6 partially achieved

## STRATEGIC FOCUS AREA 2

STRATEGIC FOCUS AREA 2:		STAKEHOLDER RELATIONSHIPS				YEAR TO DATE	REASON FOR DEVIATIONS
		BUDGET				R1 124 930,90	
		ACTUAL EXPENDITURE				R1 115 608,46	Little variance in this objective. Costing based on estimates and therefore some variance is expected.
GOAL STATEMENT		TO BUILD AND DEVELOP EFFECTIVE STAKEHOLDER RELATIONSHIPS					
STRATEGIC OUTCOME							
STRATEGIC OBJECTIVE	STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS
						YEAR TO DATE	
ENSURE RELEVANT COMMUNICATION TO STAKEHOLDERS	Ensure that an integrated communication plan is developed and implemented.	A structured and focussed process to create and enhance awareness of the work of the Tribunal.	Communication framework reviewed annually.	Implement recommended changes to framework.	New target in 2017/2018.	The framework has been reviewed and changes have been made but still need to be implemented and the revised framework approved.	Target met for year to date (annual target).
			Communication strategy and media coverage reported on quarterly.	Communication strategy and media coverage reported quarterly	New target in 2017/2018.	All quarterly reports have included data on media coverage and strategy.	Target met for year to date.
MAINTAIN AND ENHANCE THE PRESENCE AND PROFILE OF THE TRIBUNAL	Ensure communication pertaining to final decisions in mergers and prohibited practice cases are made public within adopted delivery timeframes.	Timely and compliant communication of adjudication outcomes.	% of press releases of final merger decisions communicated within 2 business days of order date.	75%	99.05%	100%	Target is exceeded for year to date. The target is set at less than 100% as it is possible that certain mergers are not of major interest that a press release will be issued. Press releases were issued for all final merger decisions and the target was therefore exceeded.
			% of press releases of final prohibited practice decisions communicated within 2 business days of order date.	100%	80%	60%	Target not met for year to date. 5 press releases for final prohibited practice cases were issued during the year and 2 were issued in excess of 2 business days due to housekeeping issues that have been rectified.

**3 met/exceeded  
1 partially achieved**

### STRATEGIC FOCUS AREA 3

STRATEGIC FOCUS AREA 3:		ACCOUNTABLE, TRANSPARENT AND SUSTAINABLE ENTITY				YEAR TO DATE	REASON FOR DEVIATIONS
		BUDGET				R9 335 486,10	
		ACTUAL EXPENDITURE				R7 878 485,38	Variance mainly related to vacant positions in the finance division still to be filled and underspending on training.
GOAL STATEMENT		TO ENSURE THE TRIBUNAL HAS EFFECTIVE STRATEGIC LEADERSHIP, ADMINISTRATION AND MANAGEMENT THROUGH ADHERENCE TO GOOD GOVERNANCE AND SOUND BUSINESS PRACTICE					
STRATEGIC OUTCOME							
STRATEGIC OBJECTIVE	STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS
						YEAR TO DATE	
GOOD GOVERNANCE	Increase the level of compliance with the prescripts of good governance	Accountable and transparent Public Entity	Achieve an unqualified audit outcome year on year	Unqualified audit – no issues of governance raised	Final management report for 2015/2016 - no issues of governance raised	Unqualified audit achieved for 2016/2017 - no issues of governance raised	Target exceeded for year to date as we received a clean unqualified audit report
EFFECTIVE OVERSIGHT STRUCTURES	Maintain effective oversight structures that promote solid business practice	Sound Business Practice	Achieve an unqualified audit outcome year on year	Unqualified audit – no issues of governance raised	Final management report for 2015/2016 - no issues of governance raised	Unqualified audit achieved for 2016/2017 - no issues of governance raised	Target exceeded for year to date as we received a clean unqualified audit report
EFFECTIVE MANAGEMENT OF THE BUDGET	Ensure financial management that promotes effective and efficient use of resources	Optimal financial resource allocation and utilisation	Achieve an unqualified audit outcome year on year	Unqualified audit-no findings of fruitless / wasteful expenditure	Fruitless and wasteful expenditure disclosed in final AFS for 2015/2016	Unqualified audit achieved for 2016/2017 - no findings of fruitless/wasteful expenditure	Target exceeded for year to date as we received a clean unqualified audit report

### STRATEGIC FOCUS AREA 3 (continued)

STRATEGIC FOCUS AREA 3:		ACCOUNTABLE, TRANSPARENT AND SUSTAINABLE ENTITY				YEAR TO DATE	REASON FOR DEVIATIONS
		BUDGET				R9 335 486,10	
		ACTUAL EXPENDITURE				R7 878 485,38	Variance mainly related to vacant positions in the finance division still to be filled and underspending on training.
GOAL STATEMENT		TO ENSURE THE TRIBUNAL HAS EFFECTIVE STRATEGIC LEADERSHIP, ADMINISTRATION AND MANAGEMENT THROUGH ADHERENCE TO GOOD GOVERNANCE AND SOUND BUSINESS PRACTICE					
STRATEGIC OUTCOME							
STRATEGIC OBJECTIVE	STRATEGIC OBJECTIVE STATEMENT	OUTCOME	PERFORMANCE INDICATORS	ANNUAL TARGET	PRIOR YEAR ANNUAL PERFORMANCE	ANNUAL PERFORMANCE	EXPLANATIONS FOR DEVIATIONS
						YEAR TO DATE	
FINANCIAL GOVERNANCE AND REPORTING	Ensure a sound control environment and monitor and maintain compliance and ensure that all reporting requirements are met	Compliance to requirements as an accountable, transparent institution.	No material misstatements for May submission	No material misstatement on May submission	Final management report for 2015/2016 - no material misstatements	No material misstatements in May submission	Target met for year to date.
			Submission against annual deadline	Annual reporting submission dates met May and July	May date met - July date met	Annual reporting submission dates for May and July met	Target met for year to date.
		Integrated risk management processes and combined assurance.	Achieve an unqualified audit outcome year on year	Unqualified audit – no issues of risk management raised	Final management report for 2015/2016 - no risk management issues raised	Unqualified audit achieved for 2016/2017 - no issues of risk management raised	Target exceeded for year to date as we received a clean unqualified audit report.
SUSTAINABLE CAPACITY	Ensure that the Tribunal effectively leverages employee skills by recruiting, retaining and developing high quality people	Strengthen the Tribunal's organisational capacity and performance to deliver on its legislative mandate	Implementation of case management graduate internships against plan	Graduate internship targets meet plan requirements.	Implemented and currently 2 LT interns employed	2 LT interns appointed for the period 1st January 2017 to 31st December 2017 4 vacation interns in July 2017.	Target met for year to date.

7 met/exceeded



## TRIBUNAL GENERAL INFORMATION

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