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Annual Report on Competition Policy Developments in South Africa

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This report is submitted by South Africa to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 10-12 June 2020.

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Table of Contents

1. Executive Summary 3

2. Changes to Competition Laws or Policy, Proposed or Adopted 4

2.1. Amendments to the Competition Act 4
2.2. Changes in abuse of dominance provisions 4
2.2.1. Price discrimination 4
2.2.2. Excessive pricing 4
2.2.3. Refusal to deal 4
2.2.4. Predatory pricing 4
2.3. Introducing flexibility in the granting of exemptions 5
2.4. Mergers and public interest 5
2.5. Strengthening Market Inquiries 5
2.6. Higher administrative penalties 6
2.7. The Commission publishes guidelines for determination of administrative penalties 6

3. Enforcement of Competition Laws and Policies 7

3.1. Actions against anti-competitive practices – Summary of CCSA activities 7
3.2. Mergers and Acquisitions – CCSA statistics 9
3.3. Summary of significant mergers and acquisitions 10
3.3.1. Sibanye/Lonmin merger approved with conditions 10
3.3.2. The Competition Commission recommend prohibition of BAT Holdings SA and Twisp (Pty) Ltd merger 13
3.3.3. Ostrich Skins (Pty) Ltd, Mosstrich (Pty) Ltd and Klein Karoo International (Pty) Ltd 14

4. Resources of Competition Authorities 15

Tables

Table 1. Enforcement cases received and finalised in 2018/19 7
Table 2. Cartel cases received and finalised in 2018/19 8
Table 3. Sectors with the most complaints: Enforcement and Exemptions 8
Table 4. Noteworthy investigations and Market Inquiries in priority sectors 8
Table 5. Mergers notified and reviewed over four years 10
Table 6. Average turn-around times in 2018/19 against service standards 10
Table 7. Annual budget 15

Figures

Figure 1. Number of CCSA employees 15

South Africa

1. Executive Summary

1. The 2018/19 financial year brought significant developments to South Africa's competition regime, some of which are detailed below.

2. In February 2019 President Cyril Ramaphosa signed the Competition Amendment Bill into law; this is after the Bill was approved by the National Assembly on 23 October 2018 and endorsed by the National Council of Provinces in December 2018. The amendments are a major boost for the pursuit of a growing and inclusive economy, particularly with regards to SMEs and economic inclusion and it opens the economy to fresh investment and innovation. The amendments provide greater clarity to firms and investors on prohibited practices and what constitutes abuse of dominance.

3. The Competition Commission considered a merger between Sibanye and Lonmin which presented the most complex public interest issues. The merger also attracted an immense third-party participation including the trade unions and community representatives. The Competition Tribunal upheld the Commission's recommendation to approve the merger subject to conditions that would minimise public interest issues.

4. The Competition Commission continued to build on its enforcement agenda with targeted abuse of dominance cases, as well as continued prioritisation of enforcement against cartels. Our key highlight in this regard is the school uniform case. The investigation into anti-competitive behaviour at schools was concluded early last year. The probe established that a number of schools still had exclusive contracts with one supplier. These contracts didn't go through a competitive and transparent bidding process. Despite finding the anti-competitive behaviour that was rampant, the Commission was reluctant to drag these schools through protracted litigation process and distract them from their main function – to educate. We engaged all stakeholders including private schools, suppliers, governing bodies, and the government. We agreed on the implementation of school uniform guidelines which would lead to competition in the supply of school uniform and lead to lower prices. This work will continue to be the focus of the Commission until there is full compliance.

5. South Africa, through the Competition Commission, also chairs the Africa Competition Forum (ACF). The 41-member forum continues to lobby for the effective (1) advocacy and awareness; (2) fundraising; (3) capacity building (4) resource mobilization and (5) creating awareness in Africa. would be utilised for the development of South African agricultural outputs for barley, hops and maize, as well as to promote entry and growth of emerging and black farmers in South Africa.

6. The Competition Commission continues to receive a large number of merger filing and complaints. The Competition Commission also continues with its cartels work in the construction sector, and has finalised various cases, some through settlement agreements.

2. Changes to Competition Laws or Policy, Proposed or Adopted

2.1. Amendments to the Competition Act

7. The Competition Act was amended to amongst other things introduce provisions that clarify and improve the determination of prohibited practices relating to restrictive horizontal and vertical practices, abuse of dominance and price discrimination and to strengthen the penalty regime; to introduce greater flexibility in the granting of exemptions which promote transformation and growth; to strengthen the role of market inquiries and merger processes in the promotion of competition and economic transformation through addressing the structures and de-concentration of markets; to protect and stimulate the growth of small and medium businesses and firms owned and controlled by historically disadvantaged persons while at the same time protecting and promoting employment, employment security.

2.2. Changes in abuse of dominance provisions

2.2.1. Price discrimination

8. The new provision in section 9(3) states: "When determining whether the dominant firm's action is prohibited price discrimination, the dominant firm must show that its action does not impede the ability of small and medium enterprises and firms controlled or owned by historically disadvantaged persons to participate effectively".

2.2.2. Excessive pricing

9. The new provision in section 8(1)(d)(vii) states: "It is prohibited for a dominant firm to engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency or other pro-competitive gains which outweigh the anti-competitive effect of requiring a supplier which is not a dominant firm, particularly a small and medium business or a firm controlled or owned by a historically disadvantaged person, to sell its product to the dominant firm at a price which impedes the ability of the supplier to participate effectively".

2.2.3. Refusal to deal

10. The amendment in section 8(1)(d)(ii) states: "It is prohibited for a dominant firm to engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency or other pro-competitive gains which outweigh the anti-competitive effect of refusing to supply scarce goods or services to a competitor or customer when supplying those goods or services is economically feasible".

2.2.4. Predatory pricing

11. The amendment in section 8(1)(d)(vi) states: "It is prohibited for a dominant firm to engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency or other procompetitive gains which outweigh the anti-competitive effect of selling goods or services at predatory prices.

12. predatory prices are prices for goods or services below the firm's average avoidable cost or average variable cost;

13. average avoidable cost means the sum of all costs, including variable costs and product-specific fixed costs, that could have been avoided if the firm had not produced an identified amount of additional output; and

14. average variable cost means the sum of all the costs that vary with an identified quantity of a particular product, divided by the total produced quantity of that product.

2.3. Introducing flexibility in the granting of exemptions

15. The amendment in section 10(3)(b)(ii) states: “The Competition Commission may grant an exemption only if the agreement or practice concerned, or category of agreements or practices concerned, contributes to the promotion of the effective entry into, participation in and expansion within a market by small and medium business, or firms controlled or owned by historically disadvantaged persons”.

16. The amendment in section 10(10) states: The Minister may, after consultation with the Commission, and in order to give effect to the purposes of this Act as set out in section 2, issue regulations in terms of section 78 exempting an agreement or practice or category of agreements or practices from the application of chapter 2 of the act.

2.4. Mergers and public interest

17. The amendments to section 12A(1) and 12A(1A) states: “When required to consider a merger, the Competition Commission or Competition Tribunal must initially determine whether or not the merger is likely to substantially prevent or lessen competition. Despite its determination, the Competition Commission or Competition Tribunal must also determine whether the merger can or cannot be justified on substantial public interest grounds”.

18. The amendment to section 12A(3) states: “When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in and expand within the market”.

19. The amendment to section 17(1)(c) states: “Within 20 business days after notice of a decision by the Competition Tribunal in terms of [a merger], an appeal from that decision may be made to the Competition Appeal Court, subject to its rules, by the Minister on matters raised in terms of [public interest], where the Minister participated in the Competition Commission’s or Tribunal’s proceedings in terms of section 18 or on application for leave to appeal to the Competition Appeal Court”.

2.5. Strengthening Market Inquiries

20. The amendments to 43A(3) read together with 43B(1), 43C(1) and (2) and with the powers in 43D(1) state that the Competition Commission, may conduct a market inquiry at any time, subject to [certain procedural rules], if it has reason to believe that any feature or combination of features of a market for any goods or services impedes, distorts or restricts competition within that market; or to achieve the purposes of this Act.

21. Any reference to a feature of a market for goods or services includes:

22. The structure of the market, including levels of concentration and barriers to entry in a market;

23. The outcomes observed in the market, such as ownership, prices, innovation, employment, and the ability of national industries to compete in international markets; and

24. The conduct in that or any related market.

25. In a market inquiry, the Competition Commission must decide whether any feature, including structure and levels of concentration, of each relevant market for any goods or services impedes, restricts or distorts competition within that market. In making its decision in terms of subsection (1)(a), the Competition Commission must have regard to the impact of the adverse effect on competition on small and medium businesses, or firms controlled or owned by historically disadvantaged persons.

26. Subject to the provisions of any law, the Competition Commission may, in relation to each adverse effect on competition, take action to remedy, mitigate or prevent the adverse effect on competition.

2.6. Higher administrative penalties

27. The amendment to section 59(1) states: The Competition Tribunal may impose an administrative penalty for a prohibited practice, [including all types of restricted horizontal practices, restricted vertical practices, abuse of dominance and price discrimination. The amendments to sections 59(2A), 59(3)(d) and 3A states:

28. An administrative penalty imposed in terms of subsection (1) may not exceed 25 per cent of the firm's annual turnover in the Republic and its exports from the Republic during the firm's preceding financial year if the conduct is substantially a repeat by the same firm of conduct previously found by the Competition Tribunal to be a prohibited practice.

29. When determining an appropriate penalty, the Competition Tribunal must consider the market circumstances in which the contravention took place, including whether, and to what extent, the contravention had an impact upon small and medium businesses and firms owned or controlled by historically disadvantaged persons. In determining the extent of the administrative penalty to be imposed, the Competition Tribunal may increase the administrative penalty to include the turnover of any firm or firms that control the respondent, where the controlling firm or firms knew or should reasonably have known that the respondent was engaging in the prohibited conduct.

2.7. The Commission publishes guidelines for determination of administrative penalties

30. The Competition Commission published its Guidelines for the determination of administrative penalties in cases of failure to notify and prior implementation of a merger. The Competition Commission is empowered in terms of section 79(1) of the Act, to prepare and publish Guidelines to indicate and clarify the Competition Commission's policy approach on any matter within its jurisdiction.

31. The Competition Commission has used a filing fee-based methodology in these guidelines which is different from the guidelines for determining administrative penalties for prohibited practices cases, which uses a turnover-based methodology. This is because the Competition Tribunal has advised, in its consideration of cases of failure to notify and

prior implementation, that a turnover-based methodology for calculating penalties in failure to notify and/or prior implementation mergers may be inappropriate.

32. These guidelines are aimed at conduct which amounts to run-of-the-mill contraventions of the provisions of Chapter 3 of the Act and will not apply to conduct which is wilful or deliberate. The Commission will seek the maximum allowable penalty as stipulated in section 59(2) of the Act as well as a divestiture, where appropriate.

33. These Guidelines are not binding on the Competition Commission, the Competition Tribunal or the Competition Appeal Court in the exercise of their respective powers in terms of the Act. In addition, the guidelines do not fetter the discretion of the competition authorities to consider administrative penalties on a case-by-case basis.

3. Enforcement of Competition Laws and Policies

3.1. Actions against anti-competitive practices – Summary of CCSA activities

34. The CCSA's investigations against anti-competitive practices are carried out by two divisions, namely, the Market Conduct Division ("MC") and the Cartel Division ("CD"). MC investigates restrictive vertical practices and abuse of dominance while the CD investigates restrictive horizontal practices. The tables and statistics below summarise the enforcement activities of these two divisions in the financial year.

Table 1. Enforcement cases received and finalised in 2018/19

Complaints received from the public	256
Complaints initiated by the CCSA	1
Complaints withdrawn	6
Complaints closed (non-referred) at screening stage	193
Complaints that became full investigations (excluding those referred to CD for full investigation)	10
Complaints closed (non-referred) after full investigation	14
Complaints referred to the CTSA for adjudication after full investigation	1

Table 2. Cartel cases received and finalised in 2018/19

Total cases handled in the year	142
Total investigations carried over from the previous year	91
Completed investigations	30
Referrals to the CTSA	18
Non-Referrals	12
New cases initiated by the CCSA	22
New cases received from third parties	13
Corporate leniency applications received	6
Corporate leniency applications received last year	7
Granted corporate leniency applications	1
Denied corporate leniency applications	0

Table 3. Sectors with the most complaints: Enforcement and Exemptions

Sector	Number of complaints
Human health and social work	31
Wholesale & retail	26
Information & communication technology	19
Manufacturing	19
Transportation & storage	18
Education	14
Financial & insurance	13
Construction	12
Real estate	09
Art & entertainment	07
Mining	06
Energy	05

Table 4. Noteworthy investigations and Market Inquiries in priority sectors

Priority sector	Case name and summary
Information and communication technology	Complaint by the Competition Commission against Vodacom Group Limited for exclusionary abuse of dominance through an exclusive transversal agreement to supply mobile communication products and services to certain organs of state.
	The Competition Commission is conducting a market inquiry in the data services market with the aim of understanding the factors or features of the market that may cause high prices for data services, and to make recommendations that would result in lower prices for data services.
Construction and infrastructure	The Commission concluded several settlement agreements for cartel conduct in the construction sector. Settlement agreements were concluded with amongst others, GD Irons Construction (Pty) Ltd, Group Five Construction Pty (Ltd) and Edilcon Construction (Pty) Ltd
Food and agro-processing	The Competition Commission has conducted a market inquiry in the Retail Grocery Market seeking to examine if there are any features or a combination of features in the sector that may prevent, distort or restrict competition in the grocery retail sector.

Transport	The Competition Commission is conducting a market inquiry in the Public Passenger Transport market with the aim of understanding price setting mechanisms and regulations, allocation routes, allocation of subsidies and transformation in the land based public passenger transport.
Healthcare	The Commission has conducted a market inquiry in the private healthcare sector. The inquiry revealed that the market is characterised by highly concentrated funders and facilities markets, disempowered and uninformed consumers, a general absence of value-based purchasing, practitioners who are subject to little regulation and failures of accountability at many levels.
	The Commission granted the National Hospital Network, a co-operative venture of medical enterprises, a new five-year exemption which covers collective bargaining, global fee negotiations and centralised procurement. The pro-competitive gains that are anticipated to arise from the exemption will enable NHN members to compete effectively in the healthcare market

3.2. Mergers and Acquisitions – CCSA statistics

35. The Mergers and Acquisitions (M&A) Division assesses mergers filed with the Competition Commission to determine whether the merger is likely to substantially prevent or lessen competition in a market, and whether the merger can or cannot be justified on public interest grounds. Not all mergers that have an effect within South Africa have to be notified to the Competition Commission, only those that meet the thresholds set out in the Act. Mergers are classified as either small, intermediate or large, depending on the turnover or asset values of the merging firms.

36. The Competition Commission receives a filing fee for every intermediate and large merger filed. According to the Act it is not compulsory for small mergers to be notified and no filing fee is prescribed. However, the Competition Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds. In terms of the guidelines on small merger notifications, the Competition Commission requires any party to a small merger to inform it of that merger if either party is under investigation by the Competition Commission for a contravention of the Act, or if there is an ongoing investigation in the relevant market.

37. For operational efficiency, the Competition Commission classifies notified mergers as either phase 1 (non-complex), phase 2 (complex) or phase 3 (very complex) mergers, depending on the complexity of the competition or public interest issues it raises. The Competition Commission has published service standards for merger investigations, particularly the time periods it takes to complete an investigation. These service standards are necessary as the Act has set out timeframes for merger investigations, regardless of their level of complexity. Therefore, the service standards assist in managing our internal deadlines and stakeholders' expectations when notifying mergers with varying levels of complexity. The tables below set out the Competition Commission statistics concerning merger regulation in the financial year.

Table 5. Mergers notified and reviewed over four years

	2017/18	2018/19
Notified	**377**	**348**
Large	119	104
Intermediate	249	235
Small	9	9
Finalised	**388**	**336**
Large	120	106
Intermediate	261	221
Small	7	9
Approved without conditions	**325**	**287**
Large	94	85
Intermediate	226	196
Small	5	6
Approved with conditions	**52**	**41**
Large	23	18
Intermediate	27	21
Small	2	2
Prohibited	**12**	**4**
Large	4	1
Intermediate	7	2
Small	1	1
Withdrawn / No jurisdiction	**9**	**2**
Large	4	1
Intermediate	5	1
Small	0	0

Table 6. Average turn-around times in 2018/19 against service standards

Phase	Service standard	Total number of transactions (excluding withdrawn and no jurisdiction cases)	Average turnaround time
Phase 1	20	151	17
Phase 2	45	133	41
Phase 3 (small and intermediate)	60	24	57
Phase 3 (large)	120	25	122

3.3. Summary of significant mergers and acquisitions

3.3.1. Sibanye/Lonmin merger approved with conditions

38. The Competition Commission recommended the approval, subject to conditions, of a merger whereby Sibanye Gold Limited t (Sibanye) intended to acquire sole control of Lonmin Plc (Lonmin). Upon implementation of the proposed transaction, the existing Lonmin shareholders would hold approximately 11.3% in the enlarged Sibanye Group, and

Sibanye's current shareholders will hold the remaining 88.7% of the total issued share capital in the enlarged Sibanye Group.

39. Sibanye is a public company listed on the Johannesburg Stock Exchange Limited (JSE) and is not controlled by any firm. Lonmin is also a public company listed on the London Stock Exchange and the JSE. Sibanye is a holder of mineral reserves and assets allowing it to produce gold and uranium, as well as small amounts of silver as a by-product from its gold production. Sibanye also holds reserves and assets allowing it to produce concentrate containing certain Platinum Group Metals (PGMs). Sibanye's main operative PGM mining operations comprise of the Kroondal Mine, the Rustenburg Mines, the Stillwater Mining located in the United States of America, and a 50% joint venture indirect interest in the Mimosa Mine located in Zimbabwe. Lonmin also owns various PGM mines/shafts and PGM reserves, various PGM exploration projects, tailings dams, concentrators, a smelting complex and PGM refining facilities, the majority of which are located in South Africa.

40. The proposed transaction presents both a horizontal (competitors) and vertical overlap. In relation to the horizontal overlap, both Sibanye and Lonmin mine and produce PGM concentrate, which is further refined at refineries by companies such as Anglo American, Implats and Lonmin. PGMs are ultimately sold in international markets.

41. The Competition Commission found that the merged entity was unlikely to give rise to any horizontal or vertical competition concerns. However, the Competition Commission found numerous public interest concerns arising from the proposed merger. Some of the public interest concerns were raised by other third parties such as the Association of Mineworkers and Construction Union (AMCU), Solidarity, United Association of South Africa (UASA), Mining Forum of South Africa (MFSA) and the Bapo ba Mogale Community, among others.

42. The concerns arising were varied and included concerns about the negative impact of the merger on employment, concerns relating to procurement from historically disadvantaged persons (HDPs), honouring existing arrangements with the Bapo ba Mogale Community and honouring of Social and Labour Plans (SLPs). These concerns are discussed in more detail below:

Impact of the merger on employment

43. Lonmin submitted to the Competition Commission that it has been operating under severe financial pressure for a number of years due to, inter alia, weak PGM prices and cost increases, and that it continued to be hamstrung by its capital structure and liquidity constraints. Despite some action taken by Lonmin to improve its precarious position, none of the measures it had implemented had yielded the desired outcome of ensuring the long-term sustainability of its business as a standalone entity.

44. As a result, in terms of Lonmin's 'standalone business plan', mining operations at Lonmin were marked to be significantly scaled back and a number of its depleting shafts would be placed on Care and Maintenance – resulting in the retrenchment of total of 13 344 employees (including contractors) from 2018 through to 2020.

45. The Competition Commission carried out its own investigation on the impact of the proposed merger on employment, and found that there are 10 156 retrenchments which were independently determined by Lonmin and which the Commission found to be unrelated to the proposed merger, and would likely have taken place whether the merger

had been proposed or not. These retrenchments were driven by operational requirements as alluded to above.

46. The Competition Commission's own assessment therefore found that 3 189 retrenchments of the proposed total of 13 344 retrenchments as submitted by Sibanye are influenced by the merger, and arise directly as a result of this merger. As such, the proposed merger results in a substantial negative impact on employment; given these significant retrenchments that are likely to take place post-merger.

47. In an endeavour to address the retrenchments identified by the Competition Commission to be related to the proposed merger, Sibanye has made commitments to implement some short-term projects (the K3, 4B and MK2 Rowland shafts) in order to save some jobs totalling 3 714 over the corresponding three year period spanning 2018 to 2020. Such job savings are anticipated to be brought about through a combination of avoiding or delaying the closure of shafts/mines Lonmin had earmarked for closure, and/or the development of new projects. A significant amount of these job savings are, however, subject to PGM prices increasing in future and reaching certain thresholds, as well costs of mining at the 4B and MK2 Rowland shafts being maintained at certain levels. In the event that PGM prices and mining costs for these 2 (two) projects do not reach the prescribed thresholds, the merged entity may not be in a position to save all the jobs contemplated to be saved by the year 2020.

48. In an effort to further mitigate the negative impact of potential retrenchments on employees, especially if PGM prices do not rise in future, Sibanye has undertaken to embark on an Agri-Industrial Community Development Programme in the Rustenburg area, in order to maintain and sustain the livelihoods of any retrenched employees and the communities in which they reside.

49. Sibanye was finalising a Memorandum of Understanding with a multi-stakeholder group, for an Agri-Industrial Community Development Programme in the West Rand area. The long term-objective of this programme is to build and support a portfolio of large, medium and small-scale, transformed and financially sustainable agricultural enterprises – capable of operating effectively across the entire agricultural value chain. This initiative is intended to develop alternative sources of economic activity in parallel with mining and mitigate prospects that mining communities may become distressed as mining activities inevitably wind down. Once the implementation schedule for the greater West Rand district is finalised, Sibanye is committing to investigating the opportunity to expand this initiative to the Rustenburg area.

50. This initiative involves a variety of stakeholders (e.g. banks, the Public Investment Corporation and relevant municipalities), each of which has a different role to play in respect of the initiative, and the decision on whether or not to proceed with the initiative does not lie with Sibanye alone. In the event that the feasibility study supports the extension and replication of such a programme in the greater Rustenburg area, Sibanye is undertaking to extend the West Rand project into the Rustenburg area.

51. The Competition Commission recommended that the proposed transaction be approved subject to the conditions relating to minimizing the public interest issues. The Tribunal conducted a hearing in November 2018 and approved the merger subject to conditions largely similar to those recommended by the Commission, except that there was an additional moratorium period of 6 months imposed on any retrenchments at Lonmin. AMCU appealed the decision of the Tribunal, citing positive changes to Lonmin's operational circumstances since the time the merger had been recommended for approval.

The Competition Appeal Court also approved the merger in May 2019, subject to the same conditions as those imposed by the Tribunal, subject to minor changes.

3.3.2. The Competition Commission recommend prohibition of BAT Holdings SA and Twisp (Pty) Ltd merger

52. On 25 July 2018, the Competition Commission (Commission) recommended a prohibition to the Competition Tribunal (Tribunal) of the proposed large merger in terms of which BAT Holdings SA intends to acquire Twisp. BAT Holdings SA is a leading cigarette manufacturer and supplier globally. It supplies over 200 cigarette brands worldwide. In addition to traditional cigarettes, BAT also produces and supplies other tobacco products including fine cut (a roll-your-own tobacco product), snus (snuff?) and cigars. Internationally, BAT is also a leading supplier of e-cigarettes, including in Europe and the United States.

53. Twisp is a South African-based supplier of bespoke vaping products (e-cigarettes). The company was established in 2008 and is known as the leading e-cigarette brand in South Africa. Twisp's products are distributed through its branded kiosks, retail outlets and online channels. Twisp's suite of vaping products comprises of various bespoke e-cigarette devices, flavours and accessories. The hardware for the devices is procured by Twisp from international manufacturers, who work with Twisp's design team to tailor the devices to Twisp's specifications. The flavours are created by Twisp's in-house flavour specialist and produced by a third party on behalf of Twisp.

54. The Commission found that there are separate markets for the supply of cigarettes and e-cigarettes. The Commission therefore assessed the effects of this transaction in the (i) national market for the supply of cigarettes and (ii) national market for the supply of e-cigarettes including devices, e-liquids and accessories. The Commission found that the proposed transaction results in the removal of a potential competitor. Given BAT's presence in the e-cigarette market internationally, the Commission found that BAT could have potentially entered the South African e-cigarette market absent this transaction, and it would have been in a position to compete effectively against Twisp, the largest and dominant e-cigarette supplier in the country. Therefore, the merger is likely to result in unilateral effects which may manifest in the form of an increase in prices of e-cigarettes in future (or a reduction in the rate of price reductions that could potentially occur with BAT's entry) and/or a reduction in the quality or rate of innovation of e-cigarette products offered post-merger.

55. The Commission also considered the extent to which the instant transaction is likely to lead to exclusionary portfolio effects post-merger. In particular, the Commission found concerns relating to exclusionary practices relating to shelf space by BATSA that may be perpetuated as a result of the proposed merger. The Commission received a number of concerns from third parties regarding the proposed transaction.

56. Following the investigation, the Commission found that the proposed merger results in a substantial prevention of competition. Further, the proposed merger raises significant public interest concerns. There were no efficiency justifications or remedies submitted that can alleviate the concerns arising. For this reason, the Competition Commission recommended that the proposed transaction be prohibited.

3.3.3. Ostrich Skins (Pty) Ltd, Mosstrich (Pty) Ltd and Klein Karoo International (Pty) Ltd

57. On 19 December 2018, the Commission prohibited the intermediate merger between Ostrich Skins (Pty) Ltd (Ostrich Skins), Mosstrich (Pty) Ltd (Mosstrich) and Klein Karoo International (Pty) Ltd (KKI).

58. KKI and Mosstrich are both active in the production of ostrich meat, leather and feathers. KKI and Mosstrich have two abattoirs each at which they slaughter ostriches and obtain ostrich meat, raw feathers and skin. Both merging parties have meat processing facilities and tanneries.

59. The Commission found that the production and supply of ostrich meat constitutes a separate market from other types of red meat such as beef and lamb. The Commission found that ostrich meat is considered to be a healthier alternative to red meat, as it is leaner compared to other types of red meat. Ostrich meat serves the needs of customers who are looking for a healthier alternative to other types of red meat such as beef and lamb. As such, the Commission found that ostrich meat is in a separate market. The Commission also found that there is a separate market for the production and supply of ostrich leather. With regards to ostrich feathers, the Commission identified an upstream market for the production and supply of unprocessed feathers, and a downstream market for the production and supply of processed feathers.

60. The Commission found that the merger is likely to result in unilateral effects in the market for the production and supply of ostrich meat. The Commission found that the merged entity will have market share in excess of 90%, post-merger. In effect, the proposed merger is a merger-to-monopoly in the ostrich meat market and the Commission found that the merged entity will likely have significant market power post-merger. The remaining players in this market are relatively small. The Commission found that prices for ostrich meat are likely to increase post-merger, as the merger will effectively eliminate competition from Mosstrich. Further, post-merger customers will have limited bargaining power due to the loss of competitive rivalry between the merging parties. In addition, the barriers to entry in this market are high. The Commission received a number of concerns from third parties in this market. All in all, the Commission found that the proposed merger is likely to result in a substantial lessening of competition in the ostrich meat market in South Africa.

61. Furthermore, the Commission found that for the market for the production and supply of ostrich leather, the merging parties are likely to have market power post-merger. However, as ostrich leather is mainly exported, it is unlikely that there will be significant competition harm to customers in South Africa.

62. With regards to ostrich feathers, the Commission found that the merging parties are likely to foreclose downstream processors of feathers, post-merger. There were several concerns received from third parties in this regard.

63. The Commission also found that the proposed transaction may lead to a softening of competition, through coordination in the markets for the production and supply of ostrich meat as well as ostrich feathers.

64. Following the investigation, the Commission found that the proposed merger results in a substantial lessening of competition. There were no efficiency justifications or remedies submitted that alleviate the concerns arising. For this reason, the Commission prohibited the proposed transaction.

4. Resources of Competition Authorities

Table 7. Annual budget

Item	2017/2018	2018/2019	Percentage (decrease) or increase
CCSA revenue	R345 million ($23 m)	R 360 million ($24 m)	(4%)
CCSA income from grant (government allocation and transfers)	R263 million ($17 m)	R 281 million ($19 m)	(7%)
CCSA income from filing fees	R75 million ($5 m)	R 75 million ($5 m)	0%

Figure 1. Number of CCSA employees