

# **COMPETITION ENFORCEMENT AGENCIES**

## HANDBOOK 2019

Published in association with:

Atsumi & Sakai

Bowmans

Cooley

ELIG Gürkaynak Attorneys-at-Law

Lapidot, Melchior, Abramovich & Co

Morrison & Foerster LLP

SRS Advogados

Van Bael & Bellis



# Competition Enforcement Agencies Handbook 2019

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A Global Competition Review Special Report

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*Global Competition Review's* 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

The information listed is correct as of April 2019.

### **Global Competition Review**

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## Questions and answers

### How long is the head of agency's term of office?

Five years. This term is renewable once.

### When is he or she due for reappointment?

The current chairperson was appointed in August 2009 and his term of office was renewed in August 2014. A new chairperson will be appointed in August 2019.

### Which posts within the organisation are political appointments?

There are no political appointments. All Tribunal members are appointed by the President of South Africa on recommendation from the Minister of Economic Development.

### What is the agency's annual budget?

Our budget for 2018/19 is 52 million rand.

### How many staff are employed by the agency?

As of 31 January 2016, there are 28 staff members, including five full-time Tribunal panel members. There are also six part-time Tribunal panel members.

### To whom does the head of the agency report?

The Tribunal is only subject to the law and the constitution with respect to its decision-making in competition cases. However, it is accountable to parliament via

the minister of economic development on its financial management and corporate governance. The Tribunal reports on its activities and expenditure on a quarterly basis to the minister. The minister of economic development tables the Tribunal's annual reports in parliament. The Tribunal presents its annual report to parliament when requested to do so.

### Do any industry-specific regulators have competition powers?

Yes. For example, in 2015–2016, the Competition Commission signed memoranda of understanding (MOUs) with the following regulators: the Ports Regulator of South Africa; the International Trade Administration Commission of South Africa; and the National Department of Agriculture Forestry and Fisheries.

### If so, how do these relate to your role?

The Competition Commission, which is the investigative arm of the competition authorities, is required to agree an MOU with industry-specific regulators. The MOU delineates the respective roles of the agencies in dealing with competition matters.



**Do politicians have any right to overrule or disregard the decisions of the authority?**

No. The Tribunal is only subject to the law and the constitution with respect to its decision-making in competition cases.

**Does the law allow non-competition aims to be considered when taking decisions?**

Yes, specified public interest issues are taken into account when deciding on mergers, limited to:

- the effect on a particular industrial sector or region;
- effect on employment;
- the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive; and
- the ability of national industries to compete in international markets.

**Which body hears appeals against the agency's decisions?**

The Competition Appeal Court (CAC) is a court comprised of High Court judges. A recent amendment to the constitution has meant that the CAC has final jurisdiction over the merits of competition cases. However, if a case raised jurisdictional or constitutional issues, the Constitutional Court would still have jurisdiction to decide such matters.

**Has the authority ever blocked a proposed merger?**

Yes. Examples include: the Imerys and Andalusite Resources merger in 2016; the proposed merger between Telkom Ltd and Business Connexion Group, which was prohibited by the Tribunal in June 2007; and the proposed merger between Pioneer Hi-Bred International Inc and Pannar Seed (Pty) Ltd, which the Tribunal prohibited in December 2011.

**Has the authority ever imposed conditions on a proposed merger?**

Yes, on a number of occasions the Tribunal has imposed conditions on mergers. The types of conditions have varied depending on the nature of the merger, but include behavioural conditions and orders of divestiture. We have also imposed conditions to deal with employment loss post merger where job losses are shown to be merger specific. Please refer to the Competition Tribunal's website [www.comptrib.co.za](http://www.comptrib.co.za) for all merger decisions.

**Has the authority conducted a Phase II investigation in any of its merger filings?**

The Competition Act does not distinguish between Phase I and II filings. Internally, the Competition Commission adopts a classification procedure that distinguishes complex and non-complex mergers.

**Has the authority ever pursued a company based outside your jurisdiction for a cartel offence?**

It is the Competition Commission's role to pursue cartels. The only case of this nature that has been before the Tribunal concerns American Natural Soda Ash Corp (Ansac), a US based Webb-Pomerene association of soda ash producers that markets the products of its members in a number of markets outside the US. After many years of litigation, Ansac entered into a consent agreement with the Competition Commission agreeing, inter alia, to pay a fine. Ansac members, however, operated in South Africa (that is, made sales of their products within South Africa).

**Do you operate a leniency programme? Whom should potential applicants contact?**

The Competition Commission operates a leniency programme. Please consult the Commission's response for relevant contacts.

**Is there a criminal enforcement track?**

Yes, as of 21 May 2016, section 13 of the Competition Amendment Act became operable, its effect to amend section 74 of the Competition Act. The Act now, in the case of a contravention of section 73(1) or 73A, allows for a fine not exceeding 500,000 rand, or imprisonment, not exceeding 10 years.

**Are there plans to reform the competition law?**

Yes, a number of amendments have been made to the Competition Act over the years.

**When did the last review of the law occur?**

The last amendment was in 2016. Please refer to the Tribunal's website [www.comptrib.co.za](http://www.comptrib.co.za) for the latest amendments to the Act.

**Do you have a separate economics team?**

The Competition Tribunal has one full-time economist and two part-time economists as Tribunal members. We have also have one full-time in-house economist in our case management division. The in-house economist assists Tribunal panels on case-specific economic issues.

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