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COMPETITION AND TARIFF COMMISSION

2009

This report covers the Commission's activities during the year ended 31 December 2009 as provided for in terms of Section 22(1) of the Competition Act [*Chapter 14:28*]

ANNUAL REPORT

21st September 2010

The Honourable Professor Welshman Ncube, M.P.,
Minister of Industry and Commerce
Mukwati Building
Fourth Street/ Livingstone Avenue
Harare

Honourable Minister

I have the honour, Honourable Minister, to submit to you in terms of section 22(1) of the Competition Act [*Chapter 14:28*] the Annual Report on the activities of the Competition and Tariff Commission during the reporting year ended 31st December 2009.

The Report incorporates the Commission's audited financial statements for the relevant year in accordance with the provisions of section 25(2) of the Act.

Yours sincerely

Dumisani Sibanda
Chairman

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I. CORPORATE GOVERNANCE

The Competition and Tariff Commission (CTC) is fully committed to the corporate governance principles of accountability, openness and integrity. The Commission also adheres to the principles of Results-Based Management (RBM) as advocated by the Government of Zimbabwe.

1.1 Commission's Mandate

The Commission derives its mandate from its enabling Act, the Competition Act [*Chapter 14:28*]. The Act in 2001 underwent major amendments through the Competition Amendment Act, 2001 (No.29 of 2001) that, *inter alia,* provided for the merger of the Industry and Trade Competition Commission (ITCC), which had been established under the Competition Act, 1996 (No.7 of 1996) and had commenced operations in 1998, and the Tariff Commission (TC), which had been established under the Tariff Commission Act [*Chapter 14:29*] and had also commenced operations in 1998.

The Competition Act [*Chapter 14:28*] aims at promoting and maintaining competition and competitiveness in the economy of Zimbabwe. The Commission's statutory functions in terms of section 5(1) of the Act are listed in Box 1.

Box 1: Commission's Statutory Functions

(a) to encourage and promote competition in all sectors of the economy; and
(b) to reduce barriers to entry into any sector of the economy or to any form of economic activity; and
(c) to investigate, discourage and prevent restrictive practices; and
(d) to study trends towards increased economic concentration, with a view to the investigation of monopoly situations and the prevention of such situations, where they are contrary to the public interest; and
(e) to advise the Minister (of Industry and International Trade) in regard to –
  (i) all aspects of economic competition, including entrepreneurial activities carried on by institutions directly or indirectly controlled by the State; and
  (ii) the formulation, co-ordination, implementation and administration of Government policy in regard to economic competition;

  and
(f) to provide information to interested persons on current policy with regard to restrictive practices, acquisitions and monopoly situations, to serve as guidelines for the benefit of those persons; and
(g) to undertake investigations and make reports to the Minister relating to tariff charges, unfair trade practices and the provision of assistance or protection to local industry; and
(h) to monitor prices, costs and profits in any industry or business that the Minister directs the Commission to monitor, and to report its findings to the Minister; and
(i) to perform any other functions that may be conferred or imposed on it by the Competition Act or any other enactment.

1.2 Vision and Mission Statement

The Commission's Vision and Mission Statement as pronounced in its Three-Year Strategic Plan: 2007-2009 are outlined in Box 2.

Box 2: Commission's Vision and Mission Statement

<table>
<tr><td>Vision

To be an internationally acclaimed fair trading regulatory authority and preferred advisory centre on competition and trade tariffs.</td><td rowspan="2">Mission Statement

• To promote fair trade, assist and protect local industry through the provision of quality advisory and regulatory services.

• To place top priority to meeting the needs and requirements of business, the consumer and Government in a sustainable way and within the scope of the Competition Act [Chapter 14:28] and other Acts as amended from time to time.

• To strive to continuously improve service through the attraction, retention and development of competent staff.</td></tr>
<tr><td>Values

• Confidentiality
• Transparency
• Fairness
• Professionalism
• Integrity
• Innovation
• Shun corruption</td></tr>
</table>

1.3 Commission Operating Arms

The Commission has two operating arms: (i) the Board of Commissioners, which is primarily responsible for its adjudicative functions; and (ii) the Directorate, which is basically responsible for its investigative functions.

1.3.1 The Board of Commissioners

Members of the Commission (the Commissioners) are appointed by the Minister of Industry and Commerce in terms of section 6 of the Competition Act "for their ability and experience in industry, commerce or administration, or their professional qualifications or their suitability otherwise". The appointments are for three-yearly terms of office. Since its coming into operations in 1998, the Commission has had four Boards of Commissioners, as follows:

- First Board : February 1998 to June 2001 (extended)
- Second Board : June 2001 to May 2005
- Third Board : June 2005 to March 2009 (extended)
- Fourth Board : July 2009 to date.

The Commission's operations during the year under review were therefore guided by two separate Boards of Commissioners, i.e., the Third and Fourth Boards, whose members are indicated in Tables 1 and 2, respectively.

Table 1: Members of the Third Board of Commissioners

Commissioner	Status	Profession/Qualifications
Mr Owen M Tshabangu	Chairman	Business Executive. Bachelor of.Arts Degree in Economics
Mrs Dinah Mandaza	Vice-Chairperson	Legal Practitioner. Bachelor of Laws (LLB) Honours and LLB (Post Graduate)
Mr Samson Dandira	Member	Business Consultant and Educationalist. Masters Degree in Business Administration
Mrs Judith Kateera	Member	Top Civil Servant. Bachelor of Science Honours Degree in Economics and Masters Degree in Development Economics
Dr John Saungweme	Member	Research Consultant. Doctorate in Economics
Mrs Constance Tsomondo-Shamu	Member	Businesswoman and commercial farmer. Public Accountant and Associate Member of the Institute of Chartered Secretaries and Administrators in Zimbabwe
Mrs Christine Tungamirai	Member	Commercial farmer. Diplomas in journalism and nursing
Mr Nhamo Ellliot Zengeni	Member	Civil Servant. Bachelor of Arts Honours Degree in Economics and Masters Degree in Public Administration

Table 2: Members of the Fourth Board of Commissioners

Commissioner	Status	Profession/Qualifications
Mr Dumisani Sibanda	Chairman	Businessman. Associate Member of Chartered Accountants (ACMA) and Associate Member of the Institute of Chartered Secretaries and Administrators (ACIS)
Mr Samson Dandira	Vice-Chairman	Business Consultant and Educationalist. Masters Degree in Business Administration, and Fellow Member of the Institute of Administration and Commerce (IAC) of South Africa.
Mr Peter Kadzere	Member	Business Executive. Bachelor of Science Economics (Hons) Degree, Masters Degree in Business Administration, Fellow Member of the Institute of Chartered Secretaries and Administrators (FCIS) and registered Public Accountant
Mrs Chrysostoma Kanjoma	Member	Tax Administrator and Auditor. Bachelor of Business Studies (Hons) Degree
Mr Antony Mutemi	Member	Business Executive. Bachelor of Science Engineering (Hons) Degree, Masters Degree in Business Administration, Fellow of the Zimbabwe Institute of Engineers (ZIE), and Member of the South African Institution of Mechanical Engineers (SAIMechE)
Mr Fambaoga Myambo	Member	Civil Servant. Masters Degree in International Business Administration
Mr Thulani Ndebele	Member	Commodity Broker and Consultant. Bachelor of Science Economics (Hons) Degree, and Masters

		Degree in Business Administration
Mrs Constance Tsomondo-Shamu	Member	Businesswoman and commercial farmer, Public Accountant and Associate Member of the Institute of Chartered Secretaries and Administrators in Zimbabwe
Mr Godfrey Sigobodhla	Member	Civil Servant. Bachelor of Administration Degree, and Master of Science Economics Degree
Mrs Varaidzo Zifudzi	Member	Legal Practitioner and Consultant. Bachelor of Laws (Hons) Degree, and Master of Laws Degree

Mr Dumisani Sibanda (Commission Chairman)

Mr Sibanda is an Associate Member of the Chartered Accountants (ACMA) and an Associate Member of the Chartered Secretaries and Administrators (ACIS). He has wide experience in financial accounting, which begun in 1987 to date. Currently he is the Managing Director of C. Gauche (Private) Limited.

Mr Samson Zukwa Dandira (Vice Chairman)

Mr Dandira is a holder of a Masters of Business Administration (MBA) qualification from the University of Zimbabwe. He became a Fellow Member of the Institute of Administration and Commerce (IAC) of South Africa after obtaining three diplomas of the Institute. He served as member of the previous Competition and Tariff Commission Board of Commissioners during the period 2005-2009. Currently he is a Management and Training Consultant of First Link Consultants (Private) Limited.

Mr Peter Kadzere

Mr Kadzere is a holder of a Bachelor of Science Economics (Hons) degree and a Masters of Business Administration (MBA) degree, both from the University of Zimbabwe. He is a Fellow Member of the Institute of Chartered Secretaries and Administrators (FCIS) and is a registered Public Accountant. He has 23 years of progressive experience in the insurance, pensions and financial services sectors. He is currently the Managing Director of Kingdom Asset Management, and sits on a number of boards.

Mrs Chrysostoma Kanjoma

Mrs Kanjoma holds a Bachelor of Business Studies (Hons) degree. She has 20 years experience in the administration of the tax and customs operations. She has extensive knowledge and expertise in auditing and training of a diverse group of entities, including large corporations. Currently Mrs Kanjoma is employed by the Zimbabwe Revenue Authority as Head of Audits for Region 2 (Bulawayo).

Mr Antony Mutemi

Mr Mutemi holds a Bachelor of Science Engineering (Hons) degree from the University of Zimbabwe, and a Masters of Business Administration (MBA) degree from the same university. He is a Fellow of the Zimbabwe Institute of Engineers (ZIE) and a Member of the South African Institution of Mechanical Engineers (SAIMechE). Currently he is the Group Managing Director of Steelnet (Zimbabwe) (Private) Limited. He has been with the Steelnet (Zimbabwe) Group, and its predecessor group, TH Zimbabwe, for 12 years.

Mr Fambaoga L Myambo

Mr Myambo holds a Masters degree in International Business Administration. He was the first Zimbabwe Counsellor Commercial to be posted to Nairobi, Kenya (1989-1998). Mr Myambo has development key competencies in market research, trade negotiations skills, spatial development and leadership development. Currently he is a Deputy Director in the Ministry of Industry and Commerce.

Mr Thulani Mluleki Ndebele

Mr Ndebele holds a Bachelor of Science (Hons) degree in Economics from the University of Zimbabwe, and an Masters of Business Administration (MBA) from the same university. He is an Economist by profession and a Banker by design, having worked for both the Standard Chartered Bank (Zimbabwe) Limited and the African Banking Corporation (Zimbabwe) Limited at senior managerial levels. Currently, he into commodity broking and consultancy.

Mrs Constance Tsomondo-Shamu

Mrs Tsomondo-Shamu is an Associate Member of the Institute of Chartered Secretaries and Administrators in Zimbabwe, and also a registered Public Accountant. She has a Master of Business Administration diploma with Natal University. She served as a member of the previous Board of Commissioners of the Competition and Tariff Commission from 2006 to 2009. Currently, Mrs Shamu is involved in business ventures that includes safari hunting, service stations, retail shops and farming.

Mr Godfrey H Sigobodhla

Mr Sigobodhla holds a Bachelor of Administration degree and a Master of Science Economics degree. He is a Public Administrator with over 20 years' experience in the Civil Service, and is specialised in economic development, human resources management, and change management. Currently he is Director in the Ministry of Youth Development, Indigenisation and Empowerment.

Mrs Varaidzo Zifudzi

Mrs Zifudzi holds a Bachelor of Laws (Hons) degree from the University of Zimbabwe, as well as a Master of Laws from the University of London (British Chevening Scholar). She has experience ranging from the corporate and public sector, financial services, as well as private practice. Mrs Zifudzi co-founded the setting up of Capital Edge (Private) Limited, an advisory services unit, in July 2008 and is currently the Managing Director.

1.3.2 Board Committees

The Board of Commissioners has established in terms of section 14 of the Competition Act four Standing Committees for the better exercise of its functions: (i) the Audit & Administration Committee; (ii) the Mergers & Restrictive Practices Committee; (iii) the Tariffs Committee; and (iv) the Legal & Enforcement Committee.

The Committees are comprised of members of the Commission (the Commissioners). Table 3 shows their composition during the year under review.

Table 3: Composition of Commission's Standing Committees in 2008

Committee	**Third Board Members** (Jan – Mar)	**Fourth Board Members** (Jul – Dec)
Audit & Administration Committee	C Tsomondo-Shamu (Chair) S Z Dandira J Kateera N E Zengeni	C Tsomondo-Shamu (Chair) P Kadzere C Kanjoma A Mutemi
Mergers & Restrictive Practices Committee	J Kateera (Chair) S Z Dandira D L Mandaza J M D Saungweme N E Zengeni	S Z Dandira (Chair) P Kadzere G Sigobodhla C Tsomondo-Shamu V Zifudzi
Tariffs Committee	J M D Saungweme (Chair) S Z Dandira J Kateera P C Tungamirai N E Zengeni	T M Ndebele (Chair) C Kanjoma F L Myambo V Zifudzi
Legal & Enforcement Committee	D L Mandaza (Chair) S Z Dandira P C Tungamirai N E Zengeni	V Zifudzi (Chair) S Z Dandira T M Ndebele C Tsomondo-Shamu

The Commission has also established a Board of Trustees that administers its Employee Pension Scheme with Old Mutual Pensions. The Board is comprised of two Commissioners, two members of the Commission's management, and a member of the Commission's Workers Committee. It is chaired by the Chairperson of the Commission's Audit & Administration Committee.

1.3.3 Commission Meetings

The Board of Commissioners is statutorily required in terms of section 13(1) of the Competition Act to hold at least six meetings per annum. Meetings of the Commission's Standing Committees may be convened at any time, but the practice is that the Committees should meet at least once a Quarter, i.e., four times a year. The Pensions Board of Trustees is required to meet at least twice a year.

Table 4 shows the number and duration of Commission meetings (i.e., those that are attended by members of the Board of Commissioners) that were held during the year under review.

Table 4: Number and Duration of Commission Meetings in 2009

Type of Meeting	No. of Meetings	Total Duration of Meetings	Ave. Duration Per Meeting
Ordinary Commission Meetings	4	12hrs.55min	3hrs.14min
Special Commission Meetings	2	3hrs.45min	2hrs.12min
Audit & Administration Committee	2	4hrs.10min	2hrs.05min
Mergers & Restrictive Practices Committee	3	4hrs.55min	1hr.52min
Tariffs Committee	2	3hrs.15min	1hr.57min
Stakeholder Hearings Meeting	1	4hrs.00min	4hrs.00min
Totals	**14**	**33hrs.00min**	**2hrs.36min**

The Commission's Legal & Enforcement Committee did not meet during the year, mainly because of lack of serious legal issues and absence of quorum. The Pensions Board of Trustees also did not meet during the year because of lack of real issues to consider and discuss.

The fact that the Commission during the year under review spent five months (from March to September 2009) without a Board generally adversely affected the holding of Commission meetings during the year.

The attendance by Commissioners at Commission meetings during the year under review for both the Third and Fourth Boards is shown in Table 5 and 6 respectively.

Table 5: Third Board Commissioners' Attendance at Commission Meetings in 2009

Member	Board (1 meeting)	A&A (0 meetings)	M&RPs (1 meeting)	Tariffs (0 meetings)	Hearings (0 meetings)	Total Meetings
O M Tshabangu	1	n/a	n/a	n/a	n/a	1
D L Mandaza	0	n/a	0	n/a	n/a	0
S Z Dandira	1	n/a	0	n/a	n/a	1
J Kateera	0	n/a	0	n/a	n/a	0
J M D Saungweme	1	n/a	1	n/a	n/a	2
C Tsomondo-Shamu	1	n/a	1	n/a	n/a	2
P C Tungamirai	0	n/a	n/a	n/a	n/a	0
N E Zengeni	1	n/a	1	n/a	n/a	2

Table 6: Fourth Board Commissioners' Attendance at Commission Meetings in 2009

Member	Board (5 meetings)	A&A (2 meetings)	M&RPs (2 meetings)	Tariffs (2 meetings)	Hearings (1 meeting)	Total Meetings
D Sibanda	5	n/a	n/a	n/a	1	6
S Z Dandira	5	n/a	2	n/a	1	8
P Kadzere	4	1	2	n/a	0	7
C Kanjoma	4	2	n/a	2	1	9
A Mutemi	4	2	n/a	n/a	1	7
F Myambo	3	n/a	n/a	1	1	5
T Ndebele	4	n/a	n/a	2	1	7
C Tsomondo-Shamu	3	2	2	n/a	1	8
G Sigobodhla	5	n/a	1	n/a	1	7
V Zifudzi	3	n/a	1	1	1	6

1.3.4 The Directorate

The Commission's Directorate is headed by the Director, and consists of full-time professional and administrative support staff. Members of the professional staff are recruited on the basis of their qualifications and experience in relevant fields, such as economics, law, accounting and administration. Members of the administrative support staff are recruited on the basis of their specialised skills and qualifications in the relevant operational areas.

The Director's statutory functions in terms of section 17 of the Competition Act are to administer the Commission's affairs, funds and property. The holder of that position is therefore the Commission's Accounting Officer. The Commission has also delegated to the Director its investigative functions on competition and trade tariffs matters. In the performance of his functions in the operational areas of competition and trade areas, the Director is by two Assistant Directors.

The Directorate has a Management Committee, which is chaired by the Director and which has the primary function of ensuring that the Commission is being managed and administered efficiently. The Committee also provides a forum for the exchange of views on the formulation of strategic planning policies. The Committee comprises all managerial staff of the Commission, inclusive of heads of Divisions and Departments. Members of the Management Committee during the 2009 year under review are shown in Table 7.

Table 7: Members of the Directorate's Management Committee in 2009

Committee Member	Position	Period of Membership
A J Kububa	Director	Whole Period
E Ruparanganda	Assistant Director (Tariffs)	Whole Period
B Chinhengo	Assistant Director (Competition)	Whole Period
P Hoko	Manager (Finance & Administration)	Whole Period
M Gurure	Commission Secretary	From March 2009

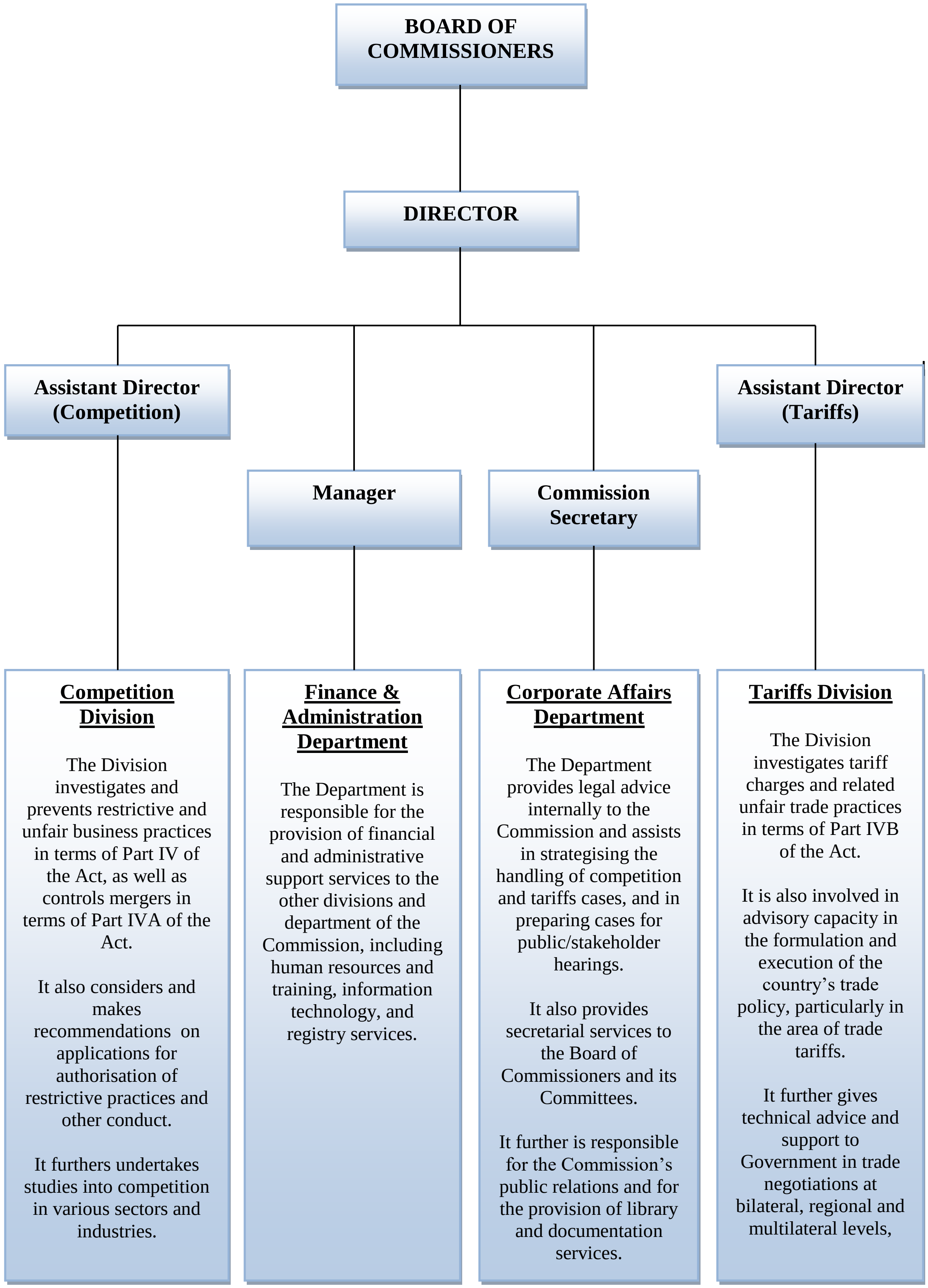
The Directorate also has an Operations Committee, which meets regularly to review outstanding competition and trade tariffs cases, including sectoral studies, and exchange views on other operational issues related to the Commission's implementation of competition policy and law and execution of trade policy. Members of the Committee, which is chaired by the Director, include heads of Divisions and Departments, and all professional staff in the Directorate's two operational Divisions of competition and tariffs.

1.4 Structure of the Commission

The Board of Commissioners is at the apex of the Commission's organisation structure with its policy direction and adjudicative functions. Organisationally, the Commission's Directorate has two operational Divisions, the Competition Division and the Tariffs Division, and two support Departments, the Finance & Administration Department and the Corporate Affairs Department.

The organisational structure of the Commission during the year under review was as shown in Figure 1.

Figure 1: Structure of the Commission in 2009



1.5 Domicilium Citandi et Executandi

The corporate address of the Commission is as follows:

Block One, 2nd Floor
No.1 Kwame Nkrumah Avenue
P Bag 7774 Causeway
Harare. Zimbabwe
Telephones 263-4-775040/5, 771126/9, 773563/4
Facsimile 263-4-770175
E-mail compcomm@mweb.co.zw

II. CHAIRMAN'S STATEMENT

Introduction

I am pleased to report that the Commission during the 2007 year under review met all its statutory mandates in the implementation of the country's competition policy and execution of trade tariffs policy in the furtherance of its Vision of being "an internationally acclaimed fair trading regulatory authority and preferred advisory centre on competition and trade tariffs", and its Mission Statement of "promoting fair trade, assisting and protecting local industry through the provision of quality advisory and regulatory services".

Commission Membership

The Commission's Board underwent major changes during the year with the expiration of the terms of office of its old members in March 2009, and the appointment of new replacement members in July 2009. The Commission therefore operated for a period of four months without a governing Board.

Two members of the old Board were retained in the new Board for continuity. Even though the new Board has the full statutory complement of 10 members, most of its members on appointment did not have experience in the implementation of competition policy. All the members however had some working knowledge and experience in the execution of the country's trade tariffs policy.

The Commission held a total of six meetings during the year, inclusive of ordinary and special/specific purpose meetings. In addition to that, its standing Committees held a total of seven meetings. The above was in accordance with the requirements of the Competition Act [*14:28*], which provides that the Commission should meet at least six times in a year. A total of 33 hours were spent in Commission meetings during the year. Attendance at Commission meetings by Commissioners was good. It ranged from 100% for the most attendee Commissioners to 60% for the least attendee.

As in previous years, the issue of Commissioners' remuneration and allowances remained unresolved throughout the year. In addition to low Board and Sitting fees, which were not commensurate with the specialised duties undertaken by the Commissioners and the times spent on the undertaking of the duties, Commissioners were not adequately compensated for the expenses they incurred in connection with the business of the Commission.

Discussions with the Minister on the resolution of the outstanding issue of Commissioners' remuneration and allowances were commenced.

Activities and Results

The Commission's operations during the year were rather subdued when compared with those of the recent past years, mainly because of severe financial constraints. In its competition operations, the Commission only concluded 12 competition cases. During the previous 2008 year, the Commission made determinations on a total of 32 competition cases. The highest number of competition determinations were in 2006, when a total of 49 cases were concluded. In its trade tariffs operations, the Commission also made recommendations on only 4 tariff relief requests.

Financial constraints, which had ripple effects on the Commission's human and capital resources, were the major cause of the severe restraints in operations. The fact that the Commission spent four months of the year without a Board was also a contributory factor.

The quality of the Commission's operations during the year was however high. Its determinations on competition cases were aimed at producing benefits to the country of a socio-economic nature. In encouraging and promoting competition in various sectors of the economy (the Commission intervened in not less than 18 different industries and sectors during the year), the determinations had the effect of increasing productive and allocative efficiencies in the sectors. The determinations also eliminated entry barriers, and encouraged new entrants, into some sectors. The outcome of all of the above was the production of wider choices of goods and services at lower prices. In particular, the Commission's intervention in the Government publications sector resulted in a substantial decrease in the costs of cash-starved Government departments and other Statutory Bodies who are statutorily required to publish their regulations and decisions in Statutory Instruments. Its intervention in the health delivery sector also had the effect of ensuring the fair provision of health services to the populace. The conditions it imposed on the approval of the *Schweppes Zimbabwe/ Delta Beverages merger* were aimed at not only ensuring the continued availability of the Schweppes beverages brands on the local market, but also guaranteeing the continued existence of the local Schweppes bottling plant under control of indigenous entrepreneurs.

The Commission during the year made a conscious decision to tackle public monopolies that are exploiting both the business community and the general public. Targeted monopolies are those in public utilities such as electricity and water. A preliminary investigation into ZESA Holdings' abuse of monopoly position in the electricity production and distribution sector was commenced during the year. The exploitative practices of local authorities in the area of rates will also be probed.

In the area of trade tariffs, the Commission did sterling work in the provision of technical advice and support to Government in regional and multilateral trade negotiations under the auspices of the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Economic Partnership Agreement (EPA) between the Eastern and Southern Africa (ESA) countries and the European Union (EU). Concentration was made on the conclusion of sensitive lists of products to be excluded from trade liberalisation under the negotiations. The exercise on the sensitive products lists was led by the Commission. The Commission also sharpened its expertise in the area of market access on agricultural and non-agricultural products (NAMA) in anticipation of the resumption of multilateral trade negotiations under the World Trade Organisation (WTO).

The formation of a Customs Union (CU) under COMESA and a Free Trade Area (FTA) under SADC has increased substantially competition from the region against local industry. That in turn intensified the undertaking of the Commission's tariff relief activities as local industry sought that relief to improve its competitiveness following years of economic downturn. In that regard, the Commission during the year considered a total of 7 requests and applications for various forms of tariff relief, such as import duty reductions on raw materials and other inputs, duty suspensions, tariff splits, and even tariff protection. The number of tariff relief requests and applications is expected to increase during the coming year in support of the country's economic recovery strategy.

An influx of foreign goods on the local market has been seen from the progress made in liberalising regional trade. While international trade has many economic benefits, its uncontrolled upsurge might harm local industry, which is re-emerging. The Commission has therefore geared itself to fully administer the two trade defence legislation under its mandate, that is, the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, and the Competition (Safeguards) (Investigation) Regulations, 2006, in line with its statutory functions of providing assistance or protection to local industry.

However, regardless of the progress made in trade liberalisation under regional and multilateral trade negotiations, the Commission is of the opinion that Zimbabwe's trade tariffs are still too high, and that they might therefore be a need for the undertaking of another General Tariff Review as a follow-up to the one undertaken by the Commission in 2000.

Challenges

The biggest challenge faced by the Commission during the year was insufficient funds for its operations. Being a non-commercial Statutory Body with basically regulatory and advisory functions, the Commission has to rely heavily on the Government for its funding. The Commission however only received about US$60 300 as its Government grant for the year, which was far too small for its operations. Its operations were therefore only sustained, at very low levels, from receipts from other sources, such as merger notification fees and the trade development surcharge levy, which were not reliable since they are dependent on economic activity.

Funds from the merger notification fees and the trade development surcharge levy, which constituted about 67% of the funds utilised in the year, are also for specific purposes. They therefore could not be used wholly to meet pressing needs like employee remuneration and procurement of capital goods. Resource constraints, in relation to human resources, and capital resources in the form of motor vehicles, computers and other office equipment, therefore besieged the Commission's operations during the year.

The establishment of sector regulators with some competition responsibilities is another challenge that the Commission has to face. For example, [ ]. Jurisdictional conflicts are bound to occur with the sector regulators when the Commission investigates competition cases involving undertakings operating in the regulated sectors. To prevent such conflicts, the Commission will engage the relevant sector regulators on the conclusion of cooperation agreements.

Acknowledgements

I acknowledge the support and assistance that the Commission got during the year from all the relevant Divisions of its parent Ministry of Industry and Commerce, and in particular from the Office of the Minister. The Ministry of Finance also greatly assisted the Commission during the year on its funding requirements.

I also acknowledge the cooperation that the Commission got from other Government Departments and public organisations, which contributed to the effective undertaking of the it's operations during the year. Such Government Departments and public organisations that come to mind include the Attorney General's Office, the Department of Anti-Monopolies and Anti-

Corruption, the Department of State Enterprises and Parastatals, and the Zimbabwe Revenue Authority. The cooperation of the Consumer Council of Zimbabwe in the handling of competition cases, and of Zimtrade in trade promotion activities, was also appreciated.

Of the public sector organisations that cooperated with the Commission during the year, special mention must be made of the Confederation of Zimbabwe Industries (CZI), who invited the Commission to attend and participate of its meetings. The Confederation also responded positively to consultations held during competition investigations and on trade negotiations issues.

Special commendation must be given to the United Nations Conference on Trade and Development (UNCTAD), particularly the Advisory Services and Capacity Building Section of its Competition Law and Consumer Policy Branch, for its unwavering support of the Commission's programmes. UNCTAD remains one of the few international organisations that are still prepared to involve the Commission in its programmes with other competition authorities worldwide. COMESA and SADC are the other regional organisations that actively involved the Commission in their programmes in the fields of trade and competition policies. In this regard, the COMESA Secretariat is particularly thanked for facilitating the financing of the Commission's participation at various trade negotiations meetings.

The positive responses from the World Bank and the African Capacity Building Foundation in supporting the activities of the Commission in enterprise development were also welcomed and encouraging developments.

The efforts made by my colleagues on the Board of Commissioners in guiding the policy direction of the Commission and adjudicating on important competition cases are greatly appreciated, more so since the efforts were made with financial sacrifices on the part of the Commissioners. The Director and his team are also commended for managing and administering the affairs of the Commission during the difficult year against great odds.

D Sibanda
Chairman

III. DIRECTOR'S REPORT ON OPERATIONS

3.1. General Fulfilment of Statutory Mandates

The Commission has the following statutory objectives to meet In the fulfilment of its twin mandates of implementation of Zimbabwe's competition policy and execution of the country's trade policy through the trade tariff regime:

- to encourage and promote competition in all sectors of the economy;
- to reduce barriers to entry, and facilitate new entrants, into economic activity;
- to investigate, discourage and prevent restrictive and unfair business practices;
- to investigate and make reports on tariff charges, unfair trade practices and provision of assistance or protection to local industry, including giving technical advice on regional and multilateral trade negotiations;
- to undertake studies into competition in various economic sectors, and into industries requiring tariff assistance or protection;
- to provide information to interested persons on current policy with regard to restrictive practices, acquisitions and monopoly situation, and to serve as guidelines for the benefit of those persons; and
- to advise the Minister of Industry and Commerce on various aspects of economic competition and competitiveness, and on the formulation, co-ordination, implementation and administration of the country's competition policy and trade tariffs policy.

To a very large extent, the Commission met all the above objectives during the year under review. The major achievements in that regard are briefly outlined in Table 8.

Table 8: Meeting of Commission Statutory Objectives in 2009

Objective	**Achievements**
To encourage and promote competition in all sectors of the economy	The Commission during the year under review intervened into not less than 20 different industries and sectors on various competition matters related to restrictive business practices and mergers and acquisitions. The 24 competition cases that it investigated or examined during the year directly affected more than 280 different undertakings. The ongoing competition study that was being undertaken throughout the year also touched a lot more companies and organisations. The resultant encouragement and promotion of competition in all the affected sectors of the economy was therefore immense. Also, the Commission's determinations and decisions on the 12 competition cases that it concluded during the year were all aimed at rectifying and remedying the identified competition concerns, and were therefore educational to both private and public organisations on the role and importance of competition policy and law. In two of such decisions, three large conglomerate companies were required to enter into competition compliance programmes and agreements with the Commission.

To reduce barriers to entry, and facilitate new entrants, into economic activity	A large number of restrictive business practices cases handled by the Commission during the year under review involved abuse of monopoly and dominant position. The abusive practices investigated included those of an exclusionary nature, in which the monopoly or dominant firms attempt to suppress competition. The Commission's remedies to such practices included the removal of entry barriers imposed by the firms to encourage new entrants into the relevant markets. An exclusive dealing case, in which allegations were made that competitors were being excluded from bidding for a contract, was also investigated in the insurance services sector. The conditions that were imposed by the Commission on the approval of some of the mergers and acquisitions that were examined during the year were also aimed at removing or reducing barriers to entry and facilitating new entrants into the affected industries and sectors. For example, the *Tradewinds/Pelhams merger* was approved on condition that the merged entity should not foreclose supplies of furniture to other furniture retailers, and the *Schweppes/Delta merger* was approved on condition that the local traditional suppliers of raw materials to the merging parties be maintained and developed.
To investigate, discourage and prevent restrictive and unfair business practices	During the year under review, the Commission investigated a total of 7 competition cases, of which 5 involved 'Rule of Reason' restrictive practices and 2 involved *per se* prohibited unfair business practices. Corrective action taken against the identified competition concerns included cease and desist orders.
To investigate and make reports on tariff charges, unfair trade practices and provision of assistance or protection to local industry, including giving technical advice on regional and multilateral trade negotiations.	The provision of assistance or protection to local industry was done through the investigations and recommendations made on tariff relief applications and requests received during the year. The applications and requests were mainly for import duty reduction and tariff protection. The giving of technical advice on trade negotiations constituted the bulk of the Commission's trade tariffs operations during the year. In that regard, six trade negotiations meetings were attended under the auspices of COMESA, SADC and ESA-EU/EPA at which the Commission gave valuable advice on specialised areas such as market access and sensitive product lists. Two analytical reports, on the introduction of an additional 5% tariff band to the COMESA CET and its implications to Zimbabwe, and on the comparison of the SADC-EPA-COMESA, were also prepared and submitted to the Government.
To undertake studies into competition in various economic sectors, and into industries requiring tariff assistance or protection	A study on competition cases closed for lack of serious competition concerns was in the process of being undertaken during the year. In the area of trade tariffs, two sectoral studies were also being undertaken in the food processing cluster and the fertilizer cluster.
To provide information to interested persons on current policy with regard to restrictive practices, acquisitions and monopoly situation, and	The Commission during the year under review gave various advisory opinions on the implementation of competition policy and law, and the interpretation and application of the provisions of the Competition Act to a number of law firms, including South African law firms. The regular 'Anti-Monopolies/Restrictive Business Practices' column in *The Herald* newspaper was also extensively used to inform the business community

to serve as guidelines for the benefit of those persons.	and general public of the Commission's implementation of the country's competition policy.
To advise the Minister of Industry and Commerce on various aspects of economic competition and competitiveness, and on the formulation, co-ordination, implementation and administration of the country's competition policy and trade tariffs policy.	The Minister was advised on various competition issues during the year under review, including on the socio-economic impact of recently concluded mergers and acquisitions, particularly the *Total Zimbabwe/ Mobil Oil merger* and the *Meikles/ Kingdom/ Tanganda/ Cotton Printers merger*.

3.2. Competition Operations

The Commission's competition operations at the investigative stage are handled by the Directorate's Competition Division. During the year under review, the Division was manned by the following officials with professional qualifications in Economics and Business Administration:

- Mr B Chinhengo (Assistant Director): in post throughout the year
- Mr A Mashumba (Senior Economist): resigned in February 2009
- Mr J C Chiwaza (Senior Economist): left the Commission in February 2009
- Ms C Dzenga (Economist): in post throughout the year
- Mr I Tausha (Economist): in post throughout the year
- Miss C Mashava (Economist): in post throughout the year
- Miss C Mack (Economist): resigned in September 2009
- Mr S Zhou (Economist): absconded from December 2009.

In its competition operations, the Commission is governed and guided by the relevant provisions of the Competition Act [*Chapter 14:28*], particularly those related to: (i) the prevention and control of restrictive practices and monopoly situations (Parts IV and V of the Act); (ii) the prohibition of unfair business practices (Part VII of the Act); and (iii) the regulation of mergers and acquisitions (Parts IV and IVA of the Act).

The major provisions of the Competition Act are relevant to the competition operations of the Commission are explained in brief in Box 3.

Box 3: Major Competition Provisions of the Competition Act

Restrictive Practices

The term 'restrictive practice' as defined in terms of section 2(1) of the Competition Act covers anti-competitive agreements (both horizontal and vertical agreements) and abuse of dominant position, or monopolisation. The Act provides for the use of the 'rule of reason' approach in the consideration of most restrictive practices. Thus, any efficiency or pro-competitive features of a restrictive practice are evaluated against its anti-competitive effects to decide whether or not the practice should be prohibited.

In terms of section 32(2) of the Act restrictive practices engaged in by persons with substantial market control over the commodity or service to which the practice relates are generally considered to be contrary to the public interest.

The *de minimus* rule in the Act effectively exempts from the application of the Act those practices that do not materially restrict competition. The application of the *de minimus* rule using the 'Rule of Reason' approach excludes many small and medium-sized enterprises from being investigated for restrictive practices.

Unfair Business Practices

Certain restrictive practices are termed 'unfair business practices' in terms of section 42(1) of the Act, and are criminal offences punishable by fines and/or imprisonment. These include: (i) misleading advertising; (ii) false bargains; (iii) distribution of commodities or services above advertised price; (iv) undue refusal to distribute commodities or services; (v) bid-rigging; (vi) collusive arrangements between competitors; (vii) predatory pricing; (viii) resale price maintenance; and (ix) exclusive dealing.

Unfair business practices are *per se* prohibited since they are considered not to have any redeeming pro-competitive features.

Mergers and Acquisitions

The term 'merger' as defined in terms of section 2(1) means "the direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person". While the term covers horizontal and vertical mergers, it excludes pure conglomerate mergers (unless such mergers have horizontal and or vertical elements).

The Act has pre-merger notification provisions on large combination transactions that exceed a prescribed threshold in terms of combined turnover or assets in Zimbabwe of the merging parties. Failure to give notice of a notifiable merger, or to proceed to implement the merger without the specific approval of the Commission, attracts a penalty of up to 10% of either or both of the merging parties' annual turnover in Zimbabwe.

Investigation of Anti-Competitive Practices

The Commission is empowered in terms of section 28 of the Act to investigate and prevent restrictive practices and anti-competitive mergers. Investigations undertaken by the Commission can either be preliminary investigations to establish *prima facie* cases on the existence or otherwise of restrictive business practices and/or full-scale investigations into serious competition concerns. The undertaking of full-scale investigations requires the publication of notices in the *Government Gazette* and national newspapers, and the holding of stakeholder/public hearings.

Competition Studies

The Commission has the function in terms of section 5 of the Act "to study trends towards increased economic concentration, with a view to the investigation of monopoly situations and the prevention of such situations, where they are contrary to the public interest". The Commission uses competition studies to identify anti-competitive practices in various sectors and industries for proactive investigation, and to advise the Minister of Industry and Commerce, as well as to inform other interested parties, on competition policy.

Remedial Action

The Commission has powers in terms of section 31 of the Act to issue orders against anti-competitive practices, mostly of a 'cease and desist' nature. For enforcement purposes, orders issued by the Commission may be lodged with the Registrar of the High Court to have the effect of a civil judgment of the High Court.

Even though the Commission during the year under review handled a total of 24 competition cases (15 restrictive and unfair business practices, and 9 mergers and acquisitions), it made determinations on only 12 of them (7 restrictive and unfair business practices, and 5 mergers and acquisitions). The number of competition cases determinations during the year was the lowest since the effective coming into operations of the Commission in 1999.

Table 9 comparatively shows the number of competition cases determined by the Commission during the 2009 under review *vis-a-vis* those determined over the years since the effective coming into operations of the Commission.

Table 9: Comparative Table of Competition Cases Determined Since 1999

Case Category	1999-2005	2006	2007	2008	2009	Total
Mergers and Acquisitions	134	25	24	16	5	**204**
Restrictive Practices	127	19	17	14	7	**184**
Competition Studies	19	5	4	2	0	**30**
Totals	**280**	**49**	**45**	**32**	**12**	**418**

A number of factors adversely affected the number of competition cases handled and determined by the Commission during the year. The major causal factor was human resource constraints at both the investigative and adjudicative levels of the Commission. The already understaffed Competition Division of the Directorate lost four officers during the year, two of them at senior Economist level. For the greater part of the year, the Division was manned by only five officers, who could not cope with the investigation of existing outstanding cases, let alone proactively identify new cases. The Commission's Board of Commissioners was also not in office for as long as five months, from March 2009 to July 2009, which held back the adjudication of cases. Other resource constraints, such as the shortage of motor vehicles, for outside investigations, and of computers, for research and report writing, also contributed to the decline in the number of cases handled during the year.

The decade-long economic downturn in Zimbabwe was arrested in February 2009 with the introduction of the multicurrency system in the economy. The positive results of the dollarization were however slow in being realised, and by the end of the year many enterprises were still operating at well below capacity, with some of them actually closing down. The sub-optimum economic activity in the country also had a negative bearing on the Commission's competition operations.

Despite resource constraints, the competition case turnaround period for mergers during the year under review was shortened when compared with that of the previous year. The turnaround period for restrictive and unfair business practices was however lengthened, and was the longest in five years. Table 10 shows the average case handling turnaround periods during the year, as compared with those in the previous four years.

Table 10: Competition Case Turnaround in 2009

Type of Competition Case	Average Case Turnaround (working days)				
	2005	***2006***	***2007***	***2008***	***2009***
Mergers and Acquisitions	44.0	57.8	69.3	105.8	68.4
Restrictive and Unfair Business Practices	126.5	122.2	163.8	144.7	183.7
Competition Studies	264.0	124.7	198.0	328.0	n/a

Even though the Competition Act does not specifically provide for competition case completion time limits, with the only provision being that cases should be looked into "as expeditiously as possible", the Commission has administratively given the Directorate's Competition Division up to 90 days to examine mergers and acquisitions, and up to 120 days to investigate restrictive and unfair business practices. The averaged 68.4 days for merger examination that was achieved during the year under review was therefore well within the stipulated time frame. The achievement was attributed to increased experience gained in examining such transactions, and to proper filling of the relevant merger notification forms by the merging parties.

The averaged 183.7 days for investigating restrictive and unfair business practices that was attained during the year was however outside the stipulated time frame of 120 days. The major causal factor for the lengthened investigation times was human resources constraints. The high staff turnover in the Competition Division resulted in some cases being handled by a number of different Case Officers. The cases therefore had to be re-started by new inexperienced officers. The increasing complexity of the cases was also a contributory factor. A number of the cases involved collusive and cartel-like behaviour, which is very difficult to investigate and prove.

Table 11 shows the times taken to examine or investigate each of the competition cases that were finalised during the year under review.

Table 11: Competition Case Examination/Investigation Times in 2009

Mergers and Acquisitions		Restrictive Practices	
Transaction	***Examination Time*** *(days)*	***Case***	***Investigation Time*** *(days)*
Acquisition of Schweppes Zimbabwe and Schweppes Export by Delta Beverages	76	Preliminary investigation into abuse of monopoly position by Printflow (Pvt) Limited (formerly Government Printers) in the Government publications sector	256
Acquisition of Delta Corporation's Shareholding in Ariston Holdings by Emvest Zimbabwe Holdiings	25	Preliminary investigation into allegations of restrictive practices in the ambulance services sector	128
Glaxosmithkline Export Limited/	45	Preliminary investigation into	122

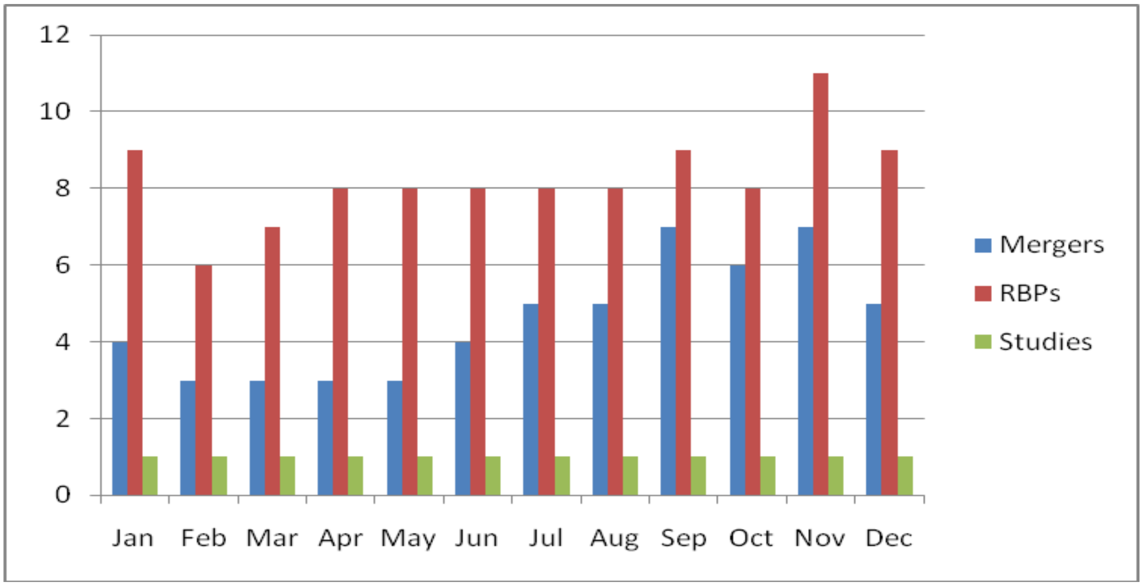
Aspen Pharmacare Holdings merger		allegations of restrictive and unfair business practices in the timber industry	
Acquisition of Tradewinds (Pvt) Limited by Pelhams Limited	138	Preliminary investigation into allegations of restrictive practices in the insurance services sector (involving Farmers Development Company and Jupiter Insurance Company)	62
Acquisition of Zellco (Pvt) Limited by Farpin Investments	58	Preliminary investigation into allegations of restrictive practices in the fast foods services sector	394
		Preliminary Investigation into allegations of unfair business practices in the vehicle registration regulatory services	199
		Preliminary investigation into allegations of unfair business practices in the mobile cellular telecommunications services sector	125
Total Time Taken	**342**	**Total Time Taken**	**1 286**
Average Time Taken Per Transaction	**68.4**	**Average Time Taken Per Case**	**183.7**

All of the mergers that were determined during the year, with the exception of the *Tradewinds/Pelhams merger*, were examined within the stipulated 90-day merger examination period. The *Tradewinds/Pelhams merger* took longer to examine mainly because of lack of cooperation from the merging parties in the provision of relevant details on the transaction.

With regards restrictive and unfair business practices, only the *Farmers Development Company case* was investigated within the 120-day investigation period. Three other cases (or 43% of the total cases completed) marginally exceeded the stipulated time frame. The investigation periods of two cases (29% of the total) were more than double the stipulated time frame. These were the *Government Printers case* and the *Fast Foods case.* In the case of the *Government Printers case*, a lot of time was spent in clarifying the applicability of the Competition Act on the respondents. Thereafter, the level of cooperation of the responsible Government Ministry in the investigation was very low. In the case of the *Fast Foods case*, the investigation covered food outlets situated in different parts of the country, and required the undertaking of extensive consumer surveys.

The intensity of the handling of competition cases over the twelve months of the year under review is shown in Graph 1. The second half of the year was the busier period for the Directorate's Competition Division, particularly with regards the investigation of restrictive business practices (RBPs). The examination of mergers and acquisitions was also intensified during the second half of the year. The undertaking of competition studies was subdued throughout the year, reflective of human resource constraints.

Graph 1: Competition Case Handling Intensity in 2009



The Commission in its competition operations during the year under review intervened into not less than 18 different sectors and industries, with the most interventions being in the telecommunications services sector. Table 12 shows the sectoral competition interventions during the year.

Table 12: Sectoral Competition Interventions in 2009

No.	Sector/Industry	Interventions		
		Mergers	***RBPs***	***Total***
1	Telecommunications Services Sector	1	2	3
2	Petroleum Industry	2	-	2
3	Printing and Publishing Industry	-	2	2
4	Motor Vehicle Services Sector	-	2	2
5	Road Transport Services Sector	1	1	2
6	Furniture Industry	1	-	1
7	Beverages Industry	1	-	1
8	Pharmaceuticals Industry	1	-	1
9	Agro-industrial Sector	1	-	1
10	Financial Services Sector	1	-	1
11	Fast Foods Services Sector	-	1	1
12	Music Industry	-	1	1
13	Health Care Services Sector	-	1	1
14	Insurance Services Sector	-	1	1
15	Electricity Services Sector	-	1	1
16	Water Utilities Services Sector	-	1	1
17	Tyre Industry	-	1	1
18	Timber Processing Industry	-	1	1
	Totals	**9**	**15**	**24**

3.2.1. Mergers and Acquisitions

In line with international best practices, the Commission uses the 'Rule of Reason' approach in the examination of mergers and acquisitions since it recognises that while some mergers seriously harm competition by increasing the probability of exercise of market power, others generate immense efficiency and socio-economic benefits arising from economies of scale. The Commission also views all types of mergers and acquisitions, whether of a horizontal nature or a vertical nature or a conglomerate nature, as requiring examination since all such transactions have both pro and anti-competitive elements, *albeit* in varying degrees.

The Commission is required in terms of section 32(4) of the Competition Act to regard a merger as contrary to the public interest if it is satisfied that the merger "has lessened substantially or is likely to lessen substantially the degree of competition in Zimbabwe or any substantial part of Zimbabwe" or "has resulted or is likely to result in a monopoly situation which is or will be contrary to the public interest". In determining whether or not a merger is likely to substantially prevent or lessen competition, the Commission considers the following factors:

- the actual and potential level of import competition in the market;
- the ease of entry into the market, including tariff and regulatory barriers;
- the level, trends of concentration and history of collusion in the market;
- the degree of countervailing power in the market;
- the likelihood that the acquisition would result in the merged parties having market power;
- the dynamic characteristics of the market including growth, innovation and product differentiation;
- the nature and extent of vertical integration in the market;
- whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and
- whether the merger will result in the removal of efficient competition.

The Commission can either approve a merger with or without conditions or prevent its consummation.

During the 2009 year under review, the Competition Division of the Commission's Directorate handled a total of 9 cases of mergers and acquisitions, of which the Board of Commissioners made determinations on 5, as shown in Figure 2.

Figure 2: Mergers and Acquisitions Examined in 2009

Cases Brought Forward from 2008	5
Cases Notified in 2009	4
Total Cases Handled in 2009	**9**

Cases Determined in 2009	5
Cases Carried Forward to 2010	4

The merger transactions that were determined by the Commission during the year are listed in Table 13. Two transactions were approved without any conditions since they were found not likely to substantially lessen or reduce competition, or to result in monopoly situation, in the relevant markets, while two others were approved with certain conditions aimed at eliminating or alleviating the identified competition concerns, or at enhancing their efficiency or pro-competitive features. One transaction was not challenged for lack of jurisdiction on the part of the Commission. No merger transaction was disallowed during the year. The outcome of the Commission's merger determinations are graphically shown on Graph 2.

Table 13: Mergers and Acquisitions Determined in 2009

Transaction	Type of Merger	Determination Month	Commission Determination
Acquisition of Tradewinds (Pvt) Limited by Pelhams Limited	Vertical	September 2009	The Commission approved the merger on condition that the merged entity does not renege on the target firm's current furniture supply contracts with other furniture retailers.
Acquisition of Zellco (Pvt) Limited by Farpin Investments	Conglomerate	September 2009	The Commission approved the merger since the transaction did not raise competition concerns.
Acquisition of Schweppes Zimbabwe and Schweppes Exports by Delta Beverages	Horizontal	October 2009	The Commission approved the merger on the following conditions: • that Delta Beverages guarantees the continuity of local *Schweppes* beverage brands; • that Schweppes Zimbabwe maintains existing raw material suppliers agreements; • that the Commission's conditions on the approval in 2001 of the *Coca-Cola/Cadbury-Schweppes merger*, on the maintenance of local brands and local suppliers, be retained; and • that the merging parties enter competition compliance agreements and programmes with the Commission.
Acquisition of Delta Corporation's Shareholding in Ariston Holdings by Emvest Zimbabwe Holdings Limited	Vertical	November 2009	Commission approved the merger without any conditions as it was found that the transaction was unlikely to substantially reduce competition in the relevant markets, and also that it had a number of efficiency and public interest benefits.
Merger of Glaxosmithkline Export Limited and Aspen Pharmacare Holdings Limited	Vertical	November 2009	Commission agreed not to challenge the merger on the grounds of lack of jurisdiction since both merging parties were foreign registered and resident companies.

Graph 2: Outcome of Merger Examination in 2009

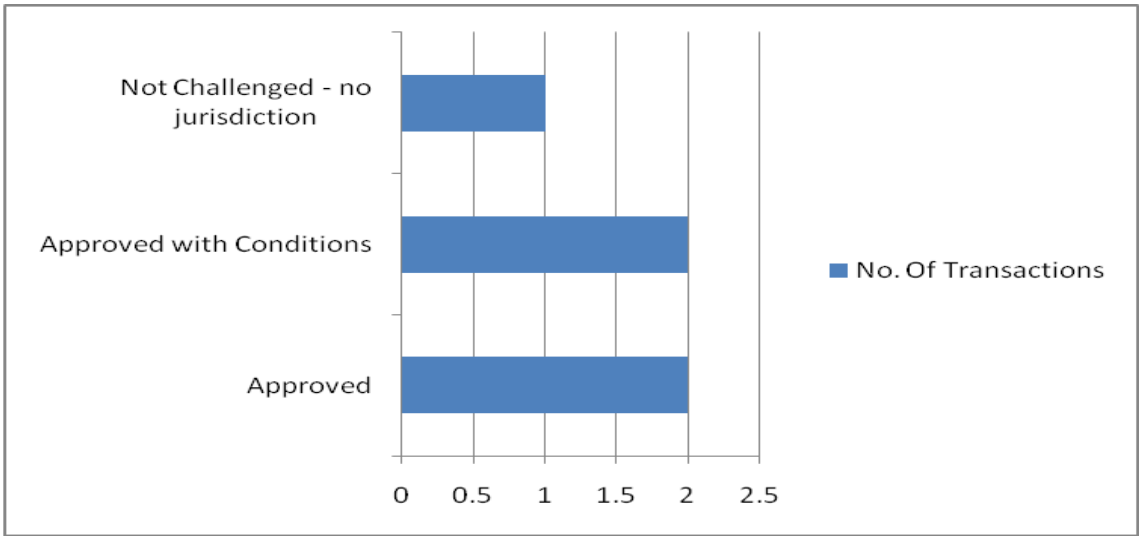
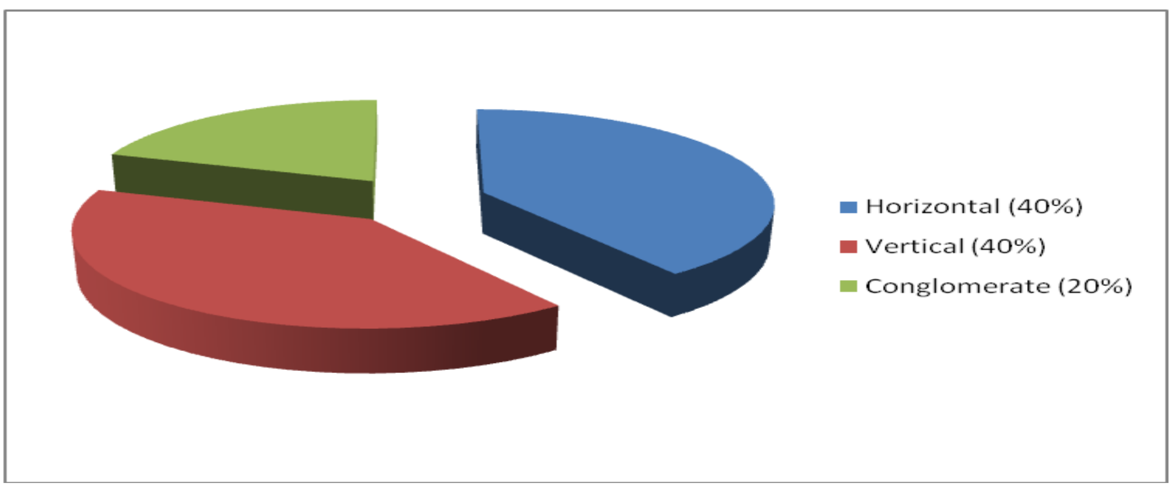


Table 13 also shows the types of mergers that were determined, which are graphically shown in Graph 3.

Graph 3: Types of Mergers Determined in 2009



3.2.2. Restrictive and Unfair Business Practices

The Competition Act provides for the prevention and control of restrictive practices and monopoly situations, as well as for the prohibition of unfair business practices. Under the Act, restrictive practices include anti-competitive agreements (both horizontal and vertical) and abuse of dominance, or monopolisation.

Most restrictive practices are considered using the 'Rule of Reason' approach, and are proscribed if they materially restrict competition. In the case of abuse of dominance, the Commission follows the generally accepted rule that dominance *per se* is not anti-competitive but its abuse through the engagement of exploitative and/or exclusionary practices.

Unfair business practices under the Competition Act are considered to be the more harmful forms of restrictive practices, and are *per se* prohibited. These include: (i) misleading advertising; (ii) false bargains; (iii) distribution of commodities or services above advertised price; (iv)undue refusal to distribute commodities or services; (v) bid-rigging; (vi) collusive arrangements between competitors; (vii) predatory pricing; (viii) resale price maintenance; and (ix) exclusive dealing.

During the 2009 year under review the Commission investigated a total of 15 cases involving restrictive and unfair business practices, and concluded 7 of the cases, as shown in Figure 3.

Figure 3: Restrictive and Unfair Business Practices Cases Investigated in 2009

Cases Brought Forward from 2008	7
New Cases Referred in 2009	8
Total Cases Investigated in 2009	**15**

Cases Concluded in 2009	7
Cases Carried Forward to 2010	8

The Commission's decisions on the cases that were concluded during the year under review are summarised in Table 14, which also shows the competition concerns investigated. 5 of the cases (or 71% of the total concluded) were closed for lack of serious competition concerns or evidence, 1 (14% of the total) was closed for lack of jurisdiction, and only 1 (14% of the total) was referred for full-scale investigation in terms of section 28 of the Competition Act [*Chapter 14:28*] on establishment of a *prima facie* case on the existence of the investigated alleged restrictive practices.

Table 14: Restrictive Business Practices Investigations Concluded in 2009

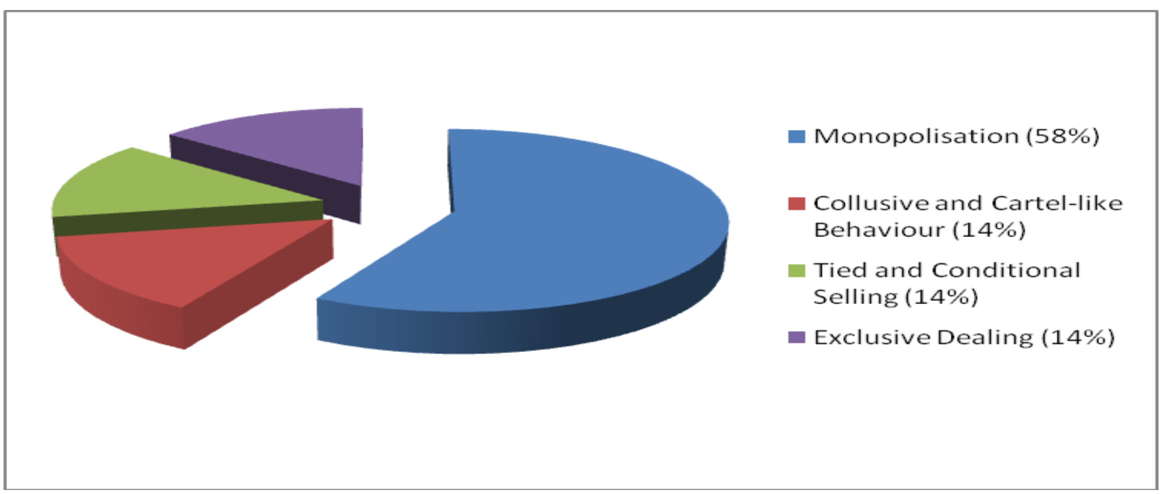
RBP Case	Competition Concerns	Concluded	Commission Decision
Alleged restrictive practices in the fast foods services sector	Tied and Conditional Selling	September 2009	Commission noted that even though the practice complained of, i.e., the conditional selling by the *Chicken Inn* fast foods outlets of chips and rice with fried chicken was proved, the practice did not materially restrict competition in the relevant market. It was therefore agreed to close the case for lack of serious competition concerns, but that the owners of the Chicken Inn outlets, Innscor Africa Limited, be engaged in negotiations with the Commission on the conclusion of a competition compliance programme and agreement.
Alleged restrictive	Abuse of	September	The Commission noted that the provisions of the

practices in the issuance of vehicle registration licences	Monopoly Position	2009	Competition Act [*Chapter 14:28*] do not apply to the regulatory activities of the Ministry of Transport, or the Municipality of Harare, in the issuance of vehicle registration licences. The complained of practice of the issuance of fewer quarterly licence discs than annual discs was also found to be justifiable. It was therefore agreed to close the case for lack of jurisdiction, as well as for lack of competition concerns.
Suspected unfair business practices in the mobile cellular telecommunications services sector	Collusive and Cartel-like Behaviour	September 2009	The Commission noted that even though all the cellular mobile network providers had more or less similar service charges and conditions, no evidence was found that they were sitting down and agreeing on the charges and conditions. What was found was a situation of price leadership in the market, in which the charges and conditions of the dominant player, Econet Wireless, were merely being followed by the other players. It was therefore agreed to close the case for lack of competition concerns. It was however also agreed that the Commission should engage the relevant sector regulator, the Posts and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) in the promotion of competition in that sector.
Alleged restrictive practices in the printing of government publications	Abuse of Monopoly Position	December 2009	The Commission noted that even though the practice of Printflow (Pvt) Limited (formerly Government Printers) of excessive pricing of the government publications that it had a monopoly to handle constituted an exploitative abuse of its monopoly position, it had efficiency justifications and had since been stopped. It was therefore agreed that the case be closed, but that the respondents, Printflow (Pvt) Limited sign an undertaking to the effect that they would not engage in future excessive pricing of their services on government publications. It was also agreed that the relevant sector regulator, the Ministry of Finance, be advised of the repercussions of Printflow's restrictive pricing system on the operations of other Government departments.
Alleged restrictive practices in the ambulance services sector	Abuse of Dominant Positions	December 2009	The Commission noted that the two dominant players in the medical aid services sector, Premier Services Medical Aid Society and Cimas Medical Aid Society, were refusing to honour claims submitted to them by Netstar ambulance services, which was a competitor to their own ambulance services. It was therefore agreed that since a *prima facie* case

			had been established on the existence of the alleged practices, a full-scale investigation in terms of section 28 of the Competition Act [*Chapter 14:28*] into the allegations.
Alleged restrictive practices in the timber industry	Abuse of Dominant Position	December 2009	Commission noted that the complainant had failed to produce evidence to support the alleged restrictive practices on the part of Allied Timbers (Pvt) Limited, that Allied Timbers was abusing its dominant position in the timber processing industry by engaging in both exploitative and exclusionary practices. It was therefore agreed that the case be closed for lack of evidence.
Alleged restrictive practices in the insurance services sector	Exclusive Dealing	December 2009	Commission noted that Jupiter Insurance Company had fairly won the tender flouted by Farmers Development Company on insurance cover over agricultural equipment supplied to farmers on hire-purchase terms. It was therefore agreed to close for lack of competition concerns.

The most prevalent competition concern investigated and remedied during the year was monopolisation (4 incidences), with other concerns being tied and conditional selling (1 incident), collusion and cartel-like behaviour (1 incident), and exclusive dealing (1 incident). Graph 4 graphically shows the different competition concerns investigated and remedied during the year.

Graph 4: Categories of Competition Concerns Investigated and Remedied in 2009



3.2.3. Competition Studies

Resource constraints, in terms of both human and capital resources, prevented the Directorate's Competition Division from completing the one 4-part competition study, on competition cases closed by the Board of Commissioners during the period 1999 – 2005, that was being undertaken during the year under review.

3.2.4. Other Competition Activities

(a) Competition Workshops and Seminars

The number of workshops and seminars on competition policy and law that the Commission attended and participated in during the year under review was significantly fewer than in previous years. That was mainly because of the political and economic isolation of Zimbabwe by most Western countries who sponsor the organisation of such events. The relatively few competition workshops and seminars that the Commission was invited to are shown in Table 15.

Table 15: Workshops and Seminars on Competition Policy and Law Attended in 2009

Period	Workshop/ Seminar	Participant(s)
3 - 4 April 2009	Southern and Eastern Africa Competition Forum (SEACF) Annual Conference: Pretoria, South Africa.	B Chinhengo
6 July 2009	UNCTAD Ad Hoc Expert Group on Competition: Geneva, Switzerland	A J Kububa
7 – 9 July 2009	United Nations Conference on Trade and Development (UNCTAD) Tenth Session of the Intergovernmental Group of Experts on Competition Law and Policy (IGE): Geneva, Switzerland	A J Kububa
18 August 2009	Southern African Development Community (SADC) Competition and Consumer Law and Policy Committee Meeting: Gaborone, Botswana	A J Kububa
19 – 21 August 2009	SADC Regional Training Workshop on Competition Policy and Law: Gaborone, Botswana	A J Kububa, B Chinhengo, M Gurure
3 – 4 September 2009	Third Annual Competition Conference and Ten-Year Celebration of the South African Competition Commission and Competition Tribunal: Pretoria, South Africa	A J Kububa
7 – 9 December 2009	Common Market for Eastern and Southern Africa (COMESA) Regional Competition Commission Meeting: Lusaka, Zambia	A J Kububa

(b) Competition Advocacy and Networking

The Commission's competition advocacy work during the year under review was largely aimed at streamlining the implementation of competition policy with the country's other economic policies, particularly the indigenisation and empowerment policy. The Commission also used its members of the Steering Committee of the National Economic Consultative Forum (NECF) to advocate for the recognition of competition principles in public policy making processes.

Contacts with the Department of Anti-Monopolies and Anti-Corruption in the Office of the President and Cabinet were maintained and strengthened through regular consultative meetings. The strong relationship established with that Department greatly facilitated the Commission's investigations into restrictive business practices. The Department and the Commission also co-published a regular newspaper column in *The Herald* on 'Anti-Monopolies and Restrictive Business Practices' that the business community found very informative. The Consumer Council of Zimbabwe (CCZ) was also consulted on almost every competition case handled during the year. Relations with the business community was also maintained through contacts with the Confederation of Zimbabwe Industries (CZI) and the Zimbabwe National Chamber of Commerce (ZNCC).

International networking on competition issues was maintained and nurtured throughout the year through relevant organisations such as the United Nations Conference for Trade and Development (UNCTAD), the Consumer Unity & Trust Society (CUTS), and the Southern and Eastern Africa Competition Forum (SEACF). The Commission's application to join the International Competition Network (ICN) and benefit from the network's extensive research work on competition policy and law however remained unanswered throughout the year.

The Commission fully supported and contributed towards regional initiatives on competition policy and law under the auspices of both the Common Market for Eastern and Southern Africa (COMESA) and the Southern Africa Development Community (SADC). Cooperation with other competition authorities in the region was mostly with the Zambia Competition Commission (ZCC), the Competition Commission of South Africa, and the Namibian Competition Commission (NaCC). The cooperation with the Namibian competition authority extended to the Commission providing NaCC with technical assistance in the handling of competition cases.

3.3. Tariffs Operations

The Commission's tariffs operations at Directorate level are handled by the Tariffs Division, which was manned during the year under review by the following officials:

- Ms E Ruparanganda (Assistant Director): in post throughout the year
- Mr C Chipanga (Chief Economist): in post throughout the year
- Mrs R Makono (Senior Economist): resigned in February 2009
- Miss C Chirimumimba (Economist): in post throughout the year
- Mr T Katsande (Economist): joined the Commission in March 2009
- Ms R Svondo (Economist): joined the Commission in March 2009 but resigned in July 2009
- Mr T Zengeni (Economist): joined the Commission in April 2009

In its tariffs operations, the Commission gives advisory services to Government and the private sector on matters related to tariff charges, unfair trade practices and trade negotiations, and provides assistance or protection to local industry, in accordance with the provisions of the Competition Act [*Chapter 14:28*]. The key focus of Zimbabwe's trade tariffs policy is to facilitate the development and growth of domestic industrial capacity with a view to be globally competitive.

The major trade tariffs provisions of the Competition Act are contained in Part IVB of the Act, and are outlined in Box 4.

Box 4: Major Tariffs Provisions of the Act

Tariff Charges

In terms of section 34B of the Act, the term 'tariff charge' is defined as to mean any duty, tax or charge levied by the State in connection with commodities or services imported into or exported from Zimbabwe.

Unfair Trade Practices

The term 'unfair trade practice' is defined in terms of section 34B of the Act as to mean the dumping of imported commodities and the granting of a bounty or subsidy with respect to imported commodities. It also means "any other practice in relation to the importation of commodities or services or the sale of imported commodities or the provision of an imported service where such practice is declared to be unfair" by the Minister of Industry and International Trade.

Assistance or Protection to Local Industry

Also in terms of section 34B of the Act, the term 'assistance or protection' in relation to local industry includes:

- the raising of tariff charges on imported commodities or services that compete with commodities or services provided by local industry;
- the lowering of tariff charges on imported commodities or services that are used by local industry;
- the implementation by the Government of legislative or administrative measures for the purpose of countering unfair trade practices;
- the conclusion of arrangements with any other country for the benefit of local industry; and
- the implementation by the Government of other legislative and administrative measures that may, directly of indirectly, assist any person to undertake any gainful activity for the benefit of local industry.

Investigation of Tariff Charges and Unfair Trade Practices

The Commission's powers of investigating tariff charges and unfair trade practices are given in terms of section 34C of the Act, which provides that the Commission may make such investigation as it considers necessary:

- into any tariff charge or any matter related thereto, which the Commission has reason to believe is causing or threatens to cause detriment to local industry;
- in order to ascertain whether any tariff charge needs to be revised and the extent of any such revision, for the purpose of providing assistance or protection to local industry and

additionally, or alternatively, redressing any imbalance in trade between Zimbabwe and any other country;

- into any application for assistance or protection to local industry;
- into any complaint that, as a result of the importation, actual or prospective, of any goods: (i) detriment has been, or will be, caused or threatened to an established local industry; (ii) the establishment or expansion of local industry has been, or will be, detrimentally affected, where the commodities concerned are or may be found to have been dumped, or are goods in respect of which a bounty or subsidy has been or will be granted;
- into any complaint or an unfair trade practice; and
- into any practice in connection with the importation of commodities or services or the sale of imported commodities or services for the purpose of determining whether it should be declared an unfair trade practice.

Upon completion of an investigation into tariff charges or unfair trade practices, the Commission makes a report of its findings and recommendations to the Minister of Industry and International Trade, who in turn may do any one of the following with regard the Commission's report:

- refer the matter to the Minister of Finance in terms of the Customs and Excise Act [*Chapter 23:02*];
- by notice in the *Gazette*, declare any practice in relation to the importation of commodities and services or the sale of imported commodities and services to be an unfair trade practice;
- recommend that the Minister of Finance impose, abolish or amend any tariff charge to the extent that he is empowered by law to do so; or
- take such other action in connection with the report as he thinks fit.

3.3.1. Tariff Relief Requests

In terms of section 34B of the Competition Act [*Chapter 14:28*], tariff relief 'assistance or protection' that the Commission can give local industry includes "the raising of tariff charges on imported commodities or services that compete with commodities or services provided by local industry" and "the lowering of tariff charges on imported commodities or services that are used by local industry". Other forms of tariff relief assistance that the Commission can give include duty exemptions and tariff splits.

During the year under review, the Commission's Tariffs Division considered a total of seven tariff relief applications or requests, and made recommendations on four of them, as shown in Figure 4.

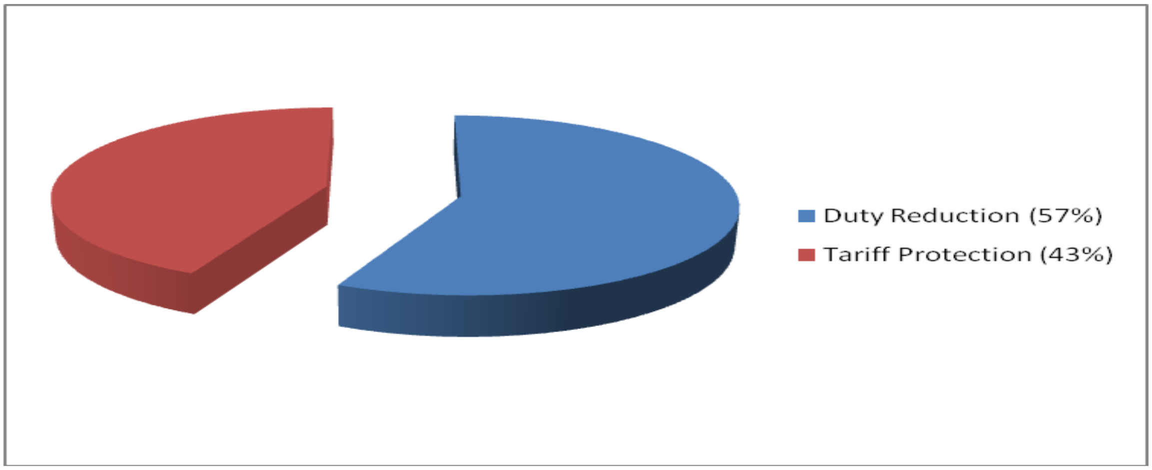
Figure 4: Tariff Relief Applications/Requests Considered in 2009

Cases Brought Forward from 2008	0
New Cases Submitted in 2009	7
Total Cases Considered in 2009	**7**

Cases Recommended on in 2009	4
Cases Carried Forward to 2010	3

The cases considered were mainly for duty reduction (4 applications or requests) and tariff protection (3 applications or requests), as graphically shown on Graph 5.

Graph 5: Forms of Tariff Relief Considered in 2009



The tariff relief requests that were considered and recommended on during the year are summarised in Table 16.

Table 16: Tariff Relief Requests Recommended on in 2009

Requesting Industry/Company	Request	Case Details and Recommendations
Plastics Industry	Duty reduction on imported raw materials	All raw materials used in the manufacture of plastics are imported as they are by-products of the crude oil refining process. The local plastics industry is currently operating under high input costs as it is dependent on imported raw materials from non-COMESA and non-SADC countries, which were attracting a 5% import duty. The industry's request for duty reduction to 0% was forwarded to the Ministry of Finance for consideration in the 2010 National Budget.
Metal Packaging Industry	Duty reduction on imported raw materials	While Zimbabwe is well endowed in iron ore and exports the product, the country does not have refining capacity to beneficiate the product. The local metal packaging industry therefore has to import its requirements of steel plates and sheets used in the manufacture of metal packaging. The high import costs were making the industry's products uncompetitive. The industry's request for duty reduction to 0% of its raw materials was also forwarded to the Ministry of Finance for consideration in the 2010 National Budget.
Olivine Industries	(i) Tariff protection	Olivine Industries imports crude palm oils from the Far

P/L	on locally produced palm fats; and (ii) Duty reduction on imported tallow	East which it processes to produce palm fats used by the local bakery and confectionery industry. It is fully meeting the local demand for palm fats, and thus its request for tariff protection on the locally produced product. For the manufacture of its soaps, the company relies on tallow from the local beef industry, which has however been on the decline over the years, and therefore has to import supplementary quantities of the raw material, and thus its request for duty reduction on the raw materials. The company's two requests were forwarded to the Ministry of Finance.

3.3.2. Unfair Trade Practices

No complaints of unfair trade practices in the form of dumped imported commodities, subsidised foreign goods, or import surges were received during the year under review even though Zimbabwe has in place two trade defence legislation, which are being administered by the Commission, the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002, that were *gazetted* as Statutory Instrument 266 of 2002, and the Competition (Safeguards) (Investigation) Regulations, 2006, that were *gazetted* as Statutory Instrument 217 of 2006.

The existence of the trade defence legislation was publicised to the business community through newspaper articles published in *The Herald*'s 'Anti-Monopolies/ Restrictive Business Practices' column.

3.3.3. Technical Work on Trade Policy Issues

The Commission during the year under review was called upon by the Government to undertake surveys and analyses on various trade policy issues. The most prominent work undertaken was on: (i) the introduction of an additional 5% tariff band to the COMESA Common External Tariff (CET) and its implications to Zimbabwe; and (ii) the comparison of the SADC, Economic Partnership Agreement (EPA) and COMESA sensitive products lists. The work undertaken is summarised in Table 17.

Table 17: Technical Advice Given to Government in 2009

Trade Policy Issue	Findings
Introduction of Additional 5% Tariff Band to COMESA CET	Survey undertaken established that there are 2 211 tariff lines, or 37% of the tariff lines, under this tariff band, and these covered raw materials, intermediate and capital goods. The survey concluded that the majority of industries consulted were eager to see the maintenance of their duties at 5%, or even a reduction of duties, on raw materials and capital goods from 5% to 0% as this would reduce their costs. Given efforts to resuscitate production, industry was uncomfortable with the hiking of duties from 5%

<table>
<tr><td></td><td>to 10% and 25% for intermediate and finished goods respectively as this would result in an increase in their costs.</td></tr>
<tr><td>Comparison of SADC-EPA-COMESA Sensitive Products Lists</td><td>Zimbabwe is currently involved in trade negotiations under the auspices of the COMESA, SADC and EPA. Under these negotiations, the country has had to submit a list of sensitive products under each configuration as part of its market access offer. In 2000, Zimbabwe submitted a sensitive products list (SPL) under the SADC tariff phase-down programme. In 2004 a sensitive products list was compiled in consultation with industry (the Kadoma SPL), and that was used as a basis for deriving the EPA SPL in 2007, and will again form the basis for the COMESA SPL.

Given the above multiplicity in sensitive products lists coming from one country, the Commission undertook an analysis of the three existing SPLs with a view to identify areas of similarities and differences. The findings of the analysis on a tariff line basis are summarised below:

<table>
<tr><th>Sensitive List</th><th>No. of Tariff Lines</th></tr>
<tr><td>COMESA</td><td>997</td></tr>
<tr><td>SADC</td><td>984</td></tr>
<tr><td>EPA</td><td>715</td></tr>
<tr><td></td><td></td></tr>
<tr><td>Common tariff lines among the three lists</td><td>152</td></tr>
<tr><td>Common tariff lines - Kadoma SPL/SADC</td><td>22</td></tr>
<tr><td>Common tariff lines - Kadoma SPL/EPA</td><td>668</td></tr>
<tr><td>Common tariff lines – SADC/EPA</td><td>153</td></tr>
<tr><td>Peculiar to Kadoma</td><td>46</td></tr>
<tr><td>Peculiar to SADC</td><td>801</td></tr>
<tr><td>Peculiar to EPA</td><td>4</td></tr>
<tr><td>Kadoma SPL not in EPA</td><td>98</td></tr>
</table></td></tr>
</table>

The Directorate's Tariffs Division also gave technical advice to Nestle Zimbabwe during its analysis of that company's application for tariff relief on the importation of roasted bulk ricoffy coffee. Nestle Zimbabwe imported the coffee in bulk and repacked it into 250-gram and 500-gram packs. The coffee was imported from South Africa, preferably because of its proximity to Zimbabwe. The only other plant in Africa that manufactures this special type of coffee is in Tanzania. The Commission recommended that the company utilises the SADC preferential rates of 15%, which was lower than the prevailing MFN rate of 40% that the company was paying, conditional upon the obtaining of the SADC certificate of origin.

3.3.4. Consultative Meetings

The Commission held consultative meetings with various companies and industries to ascertain their levels of capacity utilisation, appreciate their production processes, and identify areas where tariff relief could be provided as part of its mandate of assisting and protecting local industry. Table 18 lists the sectors and industries consulted and summarises the consultations held.

Table 18: Technical Consultations Held with the Business Community in 2009

<table>
<tr><th>Company/ Industry</th><th>Issues Discussed</th></tr>
<tr><td>Lafarge Cement</td><td>The company’s raw materials requirements, of which over 90% are sourced locally (gypsum, limestone, coal and black furnace slug), and exports of clinker to Malawi.

The company’s bleak future from external competition if it does not upgrade its outdated plant and machinery to current standards which are more cost and energy efficient.</td></tr>
<tr><td>Nestle Zimbabwe</td><td>The company’s state of the art equipment, which is comparable with any other regional/international player, and operational capacity (70%).

The company’s sources of raw materials locally, regionally and internationally, as tabulated below:

<table>
<tr><th>Raw Material</th><th>Source</th></tr>
<tr><td>Milk</td><td>Zimbabwe, South Africa, New Zealand</td></tr>
<tr><td>Minerals iron phosphates, vitamins</td><td>Holland, South Africa</td></tr>
<tr><td>Maize and wheat flour</td><td>Zimbabwe, South Africa</td></tr>
<tr><td>Banana paste, cornstarch</td><td>Zimbabwe</td></tr>
<tr><td>Coffee powder</td><td>Ivory Coast</td></tr>
<tr><td>Glucose</td><td>Zimbabwe</td></tr>
<tr><td>Vitamins</td><td>Holland</td></tr>
<tr><td>Iron phosphates, bulk ricoffy</td><td>South Africa</td></tr>
<tr><td>Flavours</td><td>Egypt</td></tr>
<tr><td>Oils (palm oil, Verma oil)</td><td>Malaysia</td></tr>
</table>

Major challenges faced by the company: (i) local availability of milk; (ii) exorbitant cost of local maize; (iii) unavailability of vegetable seeds; and (iv) exorbitant cost of working capital.</td></tr>
<tr><td>BAT Zimbabwe</td><td>The company’s major raw material requirements (Virginia and burley leaf tobacco, sugar, cocoa, and filter toll), which are sourced both locally (tobaccos) and imported (additives), and operational capacity (70% to 80%).

The company’s major challenge emanating from the increasing global trend by most countries in the ban of smoking tobacco in public places.</td></tr>
<tr><td>Colcom Foods</td><td>The company’s low capacity utilisation of about 40% due to a slow down in the pigs available for slaughter. Major raw material requirements of pigs, which are sourced locally, and additives, which are imported from Europe, South America and Europe.

The company has bright prospects conditional upon the sustainable revival of the agricultural sector.</td></tr>
<tr><td>Pharmaceutical Industry</td><td>The industry’s up-to-date infrastructure, which can compete regionally is adequately resourced, and exports of drugs to Mozambique, Angola, Namibia, Democratic Republic of Congo, and Zambia.</td></tr>
</table>

	The industry's working capital constraints, and proposals on the reduction of import duties on raw materials from 5% to 0% given that its products are merit goods which should be easily accessible to the general public.
Plastics Industry	The industry's high dependency on imported raw materials, and currently operating under high input costs as it imports from non-SADC and non-COMESA countries. The industry's request that import duties on its raw materials be reduced from 5% to 0%.
Metal Packaging Industry	The industry's bemoaning of the high import duties on steel plates and sheets that it uses in the manufacture of metal packaging, and request that they be reduced to 0%.
Olivine Industries	The company's raw material sources in the manufacture of cooking oil, margarine and soaps. The major source of its raw materials is cotton seed from seed cotton which is grown locally. The company now imports crude palm oils from Malaysia and other countries in the Far East which it processes into palm fats used by the local bakery and confectionery industry. It therefore requested import protection on the palm fats since it is now producing it in sufficient quantities to meet local demand. On its soap production, the company relied on tallow from the local beef industry, which has however been on the decline over the years. It therefore also requested that import duties on soap making raw materials be reviewed downwards to enhance the competitiveness of locally produced soaps.
Chamber of Mines	The potential impact on the mining industry's performance of the proposed introduction of an additional 5% tariff band. Most of Zimbabwe's mines were not operating due to the economic hardships that were being experienced in the country. The mining sector imports 60% of its inputs while 40% is locally available. The sector's output is exported in its raw form, thus there is no value addition being done on the minerals. The export destinations for the mining industry's products are countries such as South Africa, United States of America (USA), Japan and India. The industry mainly imports specialised equipment, plant and spares from countries outside COMESA like South Africa, Europe, USA and Canada. Therefore since the industry imports from non-COMESA member States, any increase in the MFN rates of duty would also increase its operating costs, thereby lessening its competitiveness on the international market. The mining industry would prefer a 0% rate of duty on its imported inputs.

3.3.5. Trade Negotiations

During the year under review, the Tariffs Division of the Commission's Directorate attended a total of six trade negotiations meetings under the auspices of COMESA and the Economic Partnership Agreement (EPA) between the Eastern and Southern Africa Group (ESA) and the European Union (EU). The outcomes of the meetings are summarised in Table 19.

Table 19: **Summary Deliberations of Trade Negotiations Meetings Attended in 2009**

Trade Negotiations Meeting	Summarised Deliberations
SADC Trade Negotiating Forum Meeting: April 2009: Gaborone, Botswana	The meeting was intended to update member States on the developments pertaining to trade in goods and the tripartite meetings. The major concern at the meeting was that member States had not implemented their 2009 Tariff Phase-Down programmes. The carrying out of an analysis of the impact on the different countries of reducing their tariff rates on sensitive products in relation to the global economic crisis was therefore called for.
COMESA Heads of State and Government Summit: June 2009: Victoria Falls, Zimbabwe	The major milestone of the Summit, whose chairmanship had been assumed by Zimbabwe from Kenya, was the launch of the COMESA Customs Union (CU).
ESA-EU/EPA Meeting: September 2009: Grand Baie, Mauritius	The interim Economic Partnership Agreement (EPA) was signed. Only four out of the six ESA countries that had initialled the interim EPA in 2007 signed the agreement. These were Madagascar, Mauritius, Seychelles and Zimbabwe. Comoros and Zambia did not sign as they needed to undertake further consultations within their least developed country constituency.
Committee on the COMESA Customs Union: September 2009: Victoria Falls, Zimbabwe	The objectives of the meeting was to inaugurate the Committee, adopt its rules of procedure, consider and adopt its work programme for the 3-year transition period for implementing the Customs Union (CU), and review progress towards the preparation of the sensitive products list and tariff alignment schedules.
COMESA Council of Ministers Meeting: September 2009: Lusaka, Zambia	The main objective of the meeting was to consider progress in the implementation of the COMESA economic integration agenda and provide decisions for achievements of the vision of the organisation. The agenda of the meeting also covered a wide spectrum of issues, including agriculture, infrastructure, simplified trade regime and trade and customs.
SADC Customs Union Technical Working Group on the Common External Tariff: December 2009: Johannesburg, South Africa	The objective of the meeting was to discuss the study prepared by a consultant on a common external tariff suitable for the regional trading bloc in preparation for the SADC Customs Union. The workshop noted the options as presented by the consultant and agreed that further work needed to be done before the Working Group could conclusively settle for any of the options.

3.3.6. Other Trade Tariffs Activities

(a) Workshops and Seminars Attended

The Directorate's Tariffs Division during the year under review attended and participated at a number of trade-related workshops and seminars, which are listed in Table 20.

Table 20: Trade-Related Workshops and Seminars Attended in 2009

Dates	Workshop/ Seminar	Participant(s)
11 -15 May	World Trade Organisation (WTO) Workshop on Trade Facilitation: Harare, Zimbabwe	T Zengeni
17 – 19 June	ESA-EU/EPA Regional Seminar: Harare, Zimbabwe	T Zengeni, R Svondo
9 – 10 July	Zimbabwe International Investment Conference: Harare, Zimbabwe	E Ruparanganda, B Chinhengo, P Mutowo
13 – 17 July	WTO Training Workshop on Electronic Negotiating Files: Geneva, Switzerland	E Ruparanganda
6 August	ZNCC Consultative Workshop on Business Legislation Programme: Harare, Zimbabwe	E Ruparanganda

(b) Proposed Tariff Adjustment Procedures

In accordance with the provisions of the Competition Act [*Chapter 14:28*] (section 34C(1) of the Act), the Commission undertakes investigations "into any tariff charge or any matter related thereto, which the Commission has reason to believe is causing or threatens to cause detriment to local industry" and "in order to ascertain whether any tariff charge needs to be revised and the extent of any such revision, for the purpose of providing assistance or protection to local industry ...".

Upon completion of investigations in the above connection, the Commission is required in terms of section 34C(3) of the Act to make a report of its findings and recommendations to the Minister of Industry and Commerce, who may refer the matter to the Minister of Finance for redress.

In practice, therefore, the Commission has been receiving applications from local industry for various forms of tariff relief, which it has investigated and made recommendations to the Ministry of Industry and Commerce. It has however not been receiving feedback from the Government on the outcome of its recommendations to enable it to inform the applicants accordingly. In some cases, the Ministry of Finance has been receiving requests for tariff adjustments direct from the business community, which it had processed without referring them to the Commission for investigation.

To address the above shortcomings in the processing of tariff relief applications and requests, the Commission submitted to the Government proposals aimed at clarifying the tariff adjustment procedures and regulating the time frames for the consideration of the applications and requests.

(c) Trade Tariffs Provisions of the Act

The Directorate's Tariffs Division during the year under review analysed the provisions of the repealed Tariff Commission Act [*Chapter 14:29*] and the current amended Competition Act

[*Chapter 14:28*]. It was noted that a number of pertinent trade tariffs provisions of the repealed Tariff Commission Act were not incorporated in the amended Competition Act, and proposed that these be so incorporated.

3.4 Administration and Finance

The Finance & Administration Department provides essential administrative and financial services to the Commission's core competition and tariffs operations. In particular, the Department has the crucial role of assisting the Director in the performance of his statutory functions in terms of section 17 of the Competition Act of "administering the Commission's affairs, funds and property". The many administrative support functions of the Department include human resources management, maintenance and effective allocation of physical assets, and control and efficient utilisation of financial resources.

The Department during the year under review was manned by the following officials:

- Mrs P Hoko (Manager): in post throughout the year
- Mr E Rindayi (Accountant): joined the Commission in May 2009
- Mr S Nyatsungo (Administration Officer): joined the Commission in March 2009
- Ms R Munyanyiwa (Human Resources Officer): in post throughout the year
- Mr D Mwatsveruka (Sub-Accountant): in post throughout the year
- Mr L Mutero (Sub-Accountant): joined the Commission in May 2009 but resigned in July 2009
- Mr L Chiwara (Sub-Accountant): joined the Commission in December 2009
- Miss P Simbi (Private Secretary): in post throughout the year
- Miss P Ruwo (Accounts Officer): resigned in October 2009
- Mr N Jaure (Accounts Officer): joined the Commission in December 2009
- Ms T Mabhureni (Registry Officer): joined the Commission in May 2009
- Mr T Chivinge (Office Orderly): in post throughout the year.

3.4.1. Funding

Government's fiscal and monetary statements at the beginning of 2009 year under review saw the introduction of the multicurrency system and the liberalisation of foreign currency usage with effect from February 2009. The fundamental change was the shelving of the Zimbabwe Dollar as the functional currency throughout the economy and its replacement by a basket of other more stable currencies, including the United States Dollar, the South African Rand and the Botswana Pula. The Commission United States Dollar was primarily adopted by the Commission for its transactions.

The Commission's major sources of funding for its operations during the year under review are shown in Table 21.

Table 21: Sources of Commission Funding in 2009

Source of Funds	Receipts (US$)	Contribution (%)
Government Grant	60 371	32.9
Merger Notification Fees	5 644	3.1
Trade Development Surcharge Levies	117 245	63.9
Other	200	0.1
Totals	**183 460**	**100**

The Commission's operations were generally weighed down by insufficient flow of liquidity as the economy was still experiencing cash shortages, especially in the financial services sector. While the Government should be the major source of funding for the Commission, being a non-commercial Statutory Body with predominantly regulatory and advisory functions, it only directly contributed 32.9% of the funding during the year under review.

3.4.2. Staff Establishment and Development

During the year under review, the Commission lost 8 employees from resignations and other separations, and gained 12 employees from recruitments, a net gain of 4 employees, as shown in Table 22.

Table 22: Staff Turnover Analysis: 2009

Employee Grade	Staff Losses	Staff Gains	Loss/Gain Variance
Grade E: Managerial Staff	0	1	1
Grade D: Professional Staff	6	6	0
Grade C: Skilled Staff	2	3	1
Grade B: Semi-Skilled Staff	0	2	2
Grade A: Unskilled Staff	0	0	0
Total	**8**	**12**	**4**

The highest staff turnover was at the professional grade level, which comprises officers that are directly involved in the Commission's core operations. The movement therefore had adverse effects on operations. Of the two operational Divisions, the Competition Division was more affected, with four separations but no recruitments.

All the resignations during the year were for 'greener pastures' as the Commission could not offer competitive conditions of service. The Commission's grocery assistance scheme, which is designed to augment the employees' meagre basic salaries, went a long way in staff retention.

The Commission's staff establishment as at the end of the year under review is shown in Table 23. The Table shows that the Commission was severely understaffed. Out of the establishment of 45 positions, only 25 were filled, and thus the Commission was operating with only about 55% of its staff establishment.

Table 23: Staff Establishment As At 31 December 2009

Position	Establishment	Posts Filled
Director	1	1
Assistant Directors	2	2
Manager	1	1
Commission Secretary	1	1
Accountant	1	1
Legal Counsel	1	0
Legal Officer	1	1
Internal Auditor	1	0
Chief Economists	2	1
Senior Economists	4	2
Law Officers	2	0
Economists	8	4
Investigators	4	0
Administration Officer	1	1
Human Resources Officer	1	1
Public Relations Officer	1	1
Private Secretaries	3	2
Sub-Accountants	2	2
Accounts Officers	2	1
Administrative Assistant	1	0
Registry Officer	1	1
Receptionist/Telephonist	1	1
Driver/Messengers	2	0
Office Orderly	1	1
Totals	**45**	**25**

Training in various managerial and administrative fields is crucial for the development of all employees of the Commission to better equip them in the performance of their duties and functions. No such training was however undertaken during the year under review because of financial constraints. The only forms of capacity building undertaken during the year was that sponsored by other organisations in the competition and trade tariffs fields.

3.4.3. Financial Performance

The Commission's financial performance during the year under review is as reflected in its audited financial statements as at 31 December 2009, which are attached as an integral part of this Report.

3.5. Corporate Affairs

The operational mandate of the Commission's Corporate Affairs Department cover areas such as: (i) legal advice; (ii) corporate governance; (iii) enforcement of Commission determinations on competition cases and other resolutions; (iv) Board secretarial services; (v) public relations; and (vi) library and documentation services. The Department's specific objectives are shown in Box 5.

Box 5: Specific Objectives of the Corporate Affairs Department

- To develop and provide clear legal strategies in relation to the business direction of the Commission in terms of the Competition Act [*Chapter 14:28*] and other relevant statutes.
- To ensure that all contracts and other business activities of the Commission are legally compliant in keeping with the best practice standards, and that the interests of the Commission and related national interests are adequately protected.
- To establish and implement legal and enterprise-wide risk management (ERM) monitoring and compliance frameworks.
- To ensure the enforcement of the Commission's statutory determinations, and to coordinate the implementation of all the other resolutions and decisions of the Commission.
- To provide the Board of Commissioners and Commission Committees with quality legal and secretarial services.
- To provide a central source of guidance and advice to the Board of Commissioners and management on matters of ethics and good corporate governance.
- To direct the Commission's public relations and other related corporate affairs functions and activities.
- To coordinate the accumulation, storage and dissemination of research and reference material to the Commission's other Divisions and Departments, including the provision of library and documentation services.

The Corporate Affairs Department was manned during the year under review by the following officials:

- Mrs M Gurure (Commission Secretary): joined the Commission in March 2009
- Mr T Madzingira (Legal Officer): joined the Commission in August 2009
- Ms F I Chikosi (Public Relations Officer): in post throughout the year
- Ms A Malunga (Receptionist): transferred from the Department on promotion in October 2009
- Ms P Hove (Receptionist): joined the Commission in December 2009.

Most of the Department's staff joined the Commission in 2009, with some of them during the second half of the year. That, coupled with the general thinness of the Department's staffing strength, subdued the Department's activities during the year under review, with concentration made mainly on the provision of legal services on the operations of the Commission, Board secretarial services, corporate governance, library and website development, and promotion and public relations.

3.5.1. Legal Services

(a) Legal Advice

The department provided legal advice to the Commission's operational divisions and support departments on the following:

- Interpretation of the provisions of the Competition Act [*Chapter 14:28*] and the Trade Development Surcharge Act [*Chapter 14:22*],

- The applicability of competition law to a complaint made by tenants at the Braeside Shopping Centre who were threatened with eviction.

- The composition of the Commission's Disciplinary Committee, and on the need to fully comply with the relevant provisions of the Commission's Employment Code of Conduct, on the case involving disciplinary proceedings against the Commission's Sub-Accountant.

- The suspected merger between Pioneer Transport and Unifreight Transport was considered, and the Competition Division was advised that there is need first to carry out clandestine investigations on the suspected merger and allegations of collusive dealings in the road transport services sectors before the Division can directly approach the transport companies.

- The feasibility of invoking the prohibition of certain acts pending investigation in line with the provisions of section 29 of the Competition Act [*Chapter 14:28*] on the allegations of restrictive practices in the fixed-line telecommunications services sector was considered. The relevant Division was advised that the Commission must first of all initiate investigations into the allegations against the telecommunications service providers and thereafter publish in the *Gazette* and national newspapers notices in terms of section 29 only after it is satisfied of the existence of good and compelling reasons for publishing such notices.

(b) Legal Drafting

The proposed amendments to the Competition Act [*Chapter 14:28*] were perused and critically analysed to ensure their effectiveness and that they comply with legal drafting principles. Comments on other necessary amendments to the Act were being worked on by the end of the year under review for consideration by the relevant Committees in the Commission.

The drafting of an Undertaking for negotiations with Allied Timbers on the discontinuation of that company's identified restrictive practices in the timber processing industry was finalised and eventually signed by the concerned parties. Follow-ups were made on the conclusion of an Undertaking with Zimplow Limited on the Commission's conditional approval of the *Zimplow/Tassburg merger*. The Undertaking was accepted and signed by the merging parties and the Commission.

A proposed Statutory Instrument on the imposition of time limits to be observed in considering tariff relief cases was drafted for the Tariffs Division for submission to the relevant Government authorities. Proposed amendments to the Competition Act [*Chapter 14:28*] from that Division that are targeted at ensuring the Division's relevance in view of trade liberalisation were considered and appropriate advice given on what should be addressed before a final draft is prepared.

The appropriate amendments to the Trade Development Surcharge Act [*Chapter 14:22*] and the relevant Statutory Instrument to reflect the Commission's proposal to extend the collection of the trade levy on goods directly imported into and exported from Zimbabwe through the country's Ports of entry outside the banking system were drafted and forwarded to the parent Ministry of Industry and Commerce. Under the proposed amendments, the Zimbabwe Revenue Authority (ZimRA) would be the levy collecting agent at the Ports of entry.

The Management Committee resolved that the appropriate amounts to be charged as advisory opinion fees should be in US Dollars, and not in Zimbabwe Dollars, and at a level of US$250 per opinion as charged by the South African competition authorities. The revised Statutory Instrument on Advisory Opinion Fees with the proposed figure was redrafted and forwarded to the parent Ministry of Industry and Commerce for approval and *gazetting.*

3.5.2. Corporate Governance

The Department carried out the following activities in ensuring the Commission's compliance with good corporate governance principles:

- Library and internet research was carried out on current corporate governance requirements and principles in order to ensure the Commission's compliance with the same.
- Risk management trends were also acquainted with in order to offer effective advice on risk management in the operations of the Commission.

Arrangements on the holding of a Strategic Planning Workshop to formulate the Commission's next Three-Year Strategic Plan were commenced during the month of August 2009. The arrangements had been finalised by the end of the year. The venue for the Workshop was identified as the Kadoma Hotel & Conference Centre, and the most suitable management consultants to facilitate the process were identified as Mitace Business Solutions. A total of 45 workshop participants were also identified, comprising members and staff of the Commission and other key stakeholders in both the public and private sectors of the economy.

3.5.3. Board Secretarial Services

The Department organised and provided the necessary secretarial services to the fourteen (14) Commission meetings, inclusive of Board and Committee meetings and Stakeholder Hearings, that were held during the year. The services included calling the meetings, distribution of discussion papers and writing of minutes.

The Department organised, in liaison with the Competition Division and the Finance & Administration Department, the holding of the Stakeholder Hearings into the proposed acquisition of Schweppes Zimbabwe and Schweppes Export by Delta Beverages. Appropriate legal advice was given to the Board of Commissioners during and after the Hearings. The Commission's order on the acquisition of Schweppes Zimbabwe Limited and Schweppes Exports Limited by Delta Beverages (Pvt) Limited and Whaterton Investments (Pvt) Limited was published in the *Government Gazette* and *The Herald* newspaper during the month of December 2009.

3.5.4. Promotion and Public Relations

(a) Public Relations and Visibility Plans

The draft public relations and visibility plans were reviewed to increase their effectiveness. The review exercise was at an advanced finalisation stage by the end of the year.

The draft project proposal on the establishment of the Commission's Newsletter was prepared for presentation to the Management Committee once the sample Newsletter is ready

(b) Trade Fairs and Exhibitions

The Department coordinated the Commission's participation at the 2009 Zimbabwe International Trade Fair (ZITF) that was held in Bulawayo during the month of April 2009. It also organised the Commission's participation at the COMESA Summit Exhibition that was held at Victoria Falls during the period 3 – 8 June 2009 to commemorate the launch of the COMESA Customs Union.

Preparations for the Commission's participation at the Harare Agricultural Show during the month of August 2009 were also made, but the participation was affected by financial constraints since the funds earmarked for the exhibition were diverted to the holding of Stakeholder Hearings into the proposed acquisition of Schweppes Zimbabwe and Schweppes Exports by Delta Beverages.

(c) Media Publicity

The Commission's Director appeared twice in national newspapers during the first quarter of the year. The first was in *The Sunday Mail* newspaper in which he commented extensively on the destructiveness of monopolies in trade liberalisation under regional and multilateral trade negotiations. The second was in *The Financial Gazette* in which he gave an interview on his appointment as a COMESA regional Competition Commissioner.

The Director was interviewed by the Zimbabwe Broadcasting Corporation (ZBC), at the launch in Victoria Falls in June 2009 of the COMESA Customs Union and the interview was flighted on both the television and radio. Even though the interview was basically on the Director's role as a member (Commissioner) of the Regional COMESA Competition Commission, it also gave publicity to the national competition authority. He was also interviewed on the ZTV towards the end of the month of August 2009 on the Commission's merger control activities, as well as on trade remedies. The television interview was repeated on the main radio news. He was further interviewed on the television on the *Schweppes/Delta Beverages/Wharton Investments merger*. The interview was not only screened on the Main News, but also on the This Morning programme and the radio.

The Assistant Director (Tariffs) and Assistant Director (Commission) were also interviewed by the ZTV's business reporter on their respective Divisions' operations and activities.

3.5.5. Library and Website Development

(a) Library Restocking

The Department visited the Legal Resources Foundation's Baron Library at the Eastgate in Harare to gain some insight on the running of libraries as a preliminary step to the preparation of the project proposal for the equipping and restocking of the Commission's Library and Documentation Centre.

(b) Website Development

Internet research was also undertaken on the development of websites, and a draft project proposal on the development of the Commission's website was prepared. The final draft was considered by the Management Committee during the month of July 2009 and referred to a Select

Group of professional staff for finalisation before submission to the relevant Committee of the Board of Commissioners.

3.5.6. Workshops and Seminars

The Commission Secretary was part of a Commission delegation that attended the Competition Law and Policy Training Seminar for SADC Member States held in Gaborone, Botswana, during the period 17 – 21 August 2009. The seminar addressed a number of critical areas, one of which was the interface between economics and competition law.

3.6. Operational Constraints and Future Outlook

All the Commission's Divisions and Departments operated under severe constraints during the year under review. The constraints are summarised in Table 24.

Table 24: Major Operational Constraints in 2009

Division/Department	Major Operational Constraints
Competition Division	The Division operated during the year under review with only one computer, no printer nor a vehicle. Absence of these resources negatively impacted on the Division's operations.
Tariffs Division	The year was characterised by financial constraints, which continued to hamper the operations of the Division. These challenges are enumerated below: • **Shortage of Computers:** The Division had two computers which were shared by four officers. That impacted negatively on their performance as cases took longer to complete. • **Internet:** The internet is an important tool for any research work. The Division only had one internet port which compromised the quality of its work. • **Transport:** The Division's work demands a lot of interaction with the private sector, and hence a lot of travelling. The Division has not been able to travel beyond Harare because of vehicle constraints. The ones in the pool are aged and unreliable to use outside Harare. • **Low Salaries:** The Division lost two members of its staff due to uncompetitive remuneration levels. There is need to continue offering attractive salaries if the Division is to attract and retain competent staff.
Corporate Affairs Department	Inadequate funding was the major constraint to the Department's operations during the year under review. Resource constraints directly linked to lack of funds were not only of a capital nature but also of a human resource nature. Resource constraints of a capital nature were in the form of depleted vehicle pool and outdated computer equipment, which had direct adverse effects on the Department's operations. The visibility of the

	Commission was also affected as the organisation was unable to fund its planned awareness programmes and advertise its operations and activities. The Corporate Affairs Department is very thinly staffed as it only has a staff complement of five officers, that is, the Commission Secretary, the Legal Officer, the Public Relations Officer, the Documentation Officer and the Receptionist. The lean staff complement for the Department is also affecting operations since the PRO's office has to be closed when she is off sick or out of the office on trade fairs and exhibitions or organising the logistics of the Commission's public and stakeholder hearings, workshops or other functions. There are also instances when the Legal Section of the Department is closed, for instance, when the Commission Secretary and the Legal Officer have to attend some meetings, hearings or workshops.
Finance & Administration Department	Financial constraints greatly hampered the Commission's operations to a level below normal capacity. That was due to low liquidity in the macro economy, contributed mainly by loss of investor confidence. Exploring additional sources of funding should therefore be the prime objective of the Commission during the coming 2010 financial year. In that regard, all possible sources of funds allowed in the Competition Act [*Chapter 14:28*] should be pursued.

Resource constraints were the major impediment to the Commission's operations during the year under review. The major constraint was lack of adequate funds to finance the Commission's operations. That not only frustrated its expansion programme, which is aimed at covering the whole country, but also prevented it from attracting and retaining suitably qualified personnel to undertake its specialised operations. The adverse effects of the financial constraints were greatest on personnel management as the resultant poor conditions of service caused an unprecedented high staff exodus to 'greener pastures'.

The financial constraints also forced the Commission to operate with inadequate infrastructure in the form of motor vehicles and equipment such as computers, document reproduction machines and telecommunication machines. The Commission was also holed up in unsuitable office premises that do not meet its staffing requirements and are not client-friendly.

Zimbabwe's political isolation by Western countries also constrained the Commission's operations, particularly its competition operations that are dependent on cooperation with other competition authorities worldwide. There has been a marked decline in the number of invitations extended to the Commission to attend many international competition events under the auspices of organisations such as the Organisation for Economic Co-operation and Development (OECD), the International Competition Network (ICN) and the European Commission (EC). The Commission's cooperation on a bilateral level with other more developed competition authorities, such as the Australian Competition and Consumer Commission (ACCC), the Office of Fair Trading of the United Kingdom, the Anti-trust Division of the U.S. Department of Justice and the Federal Trade Commission, which used to be vibrant, has also been adversely affected. The Competition Law and Consumer Policies Branch of the United Nations Conference on Trade and Development (UNCTAD) however remained steadfast in its support of the Commission throughout the year. The CUTS Centre for International Trade, Economics & Environment of India was also one of the few remaining international organisations that supported the Commission during the year by supplying it with publications on competition policy and law.

The evident thawing of Zimbabwe’s international relationships with the major donor communities is a welcomed development that will not only revive the national economy, and thus leading to increased Government funding of the Commission’s operations, but will also unlock the Commission’s access to international donor funding.

Alexander J Kububa
Director