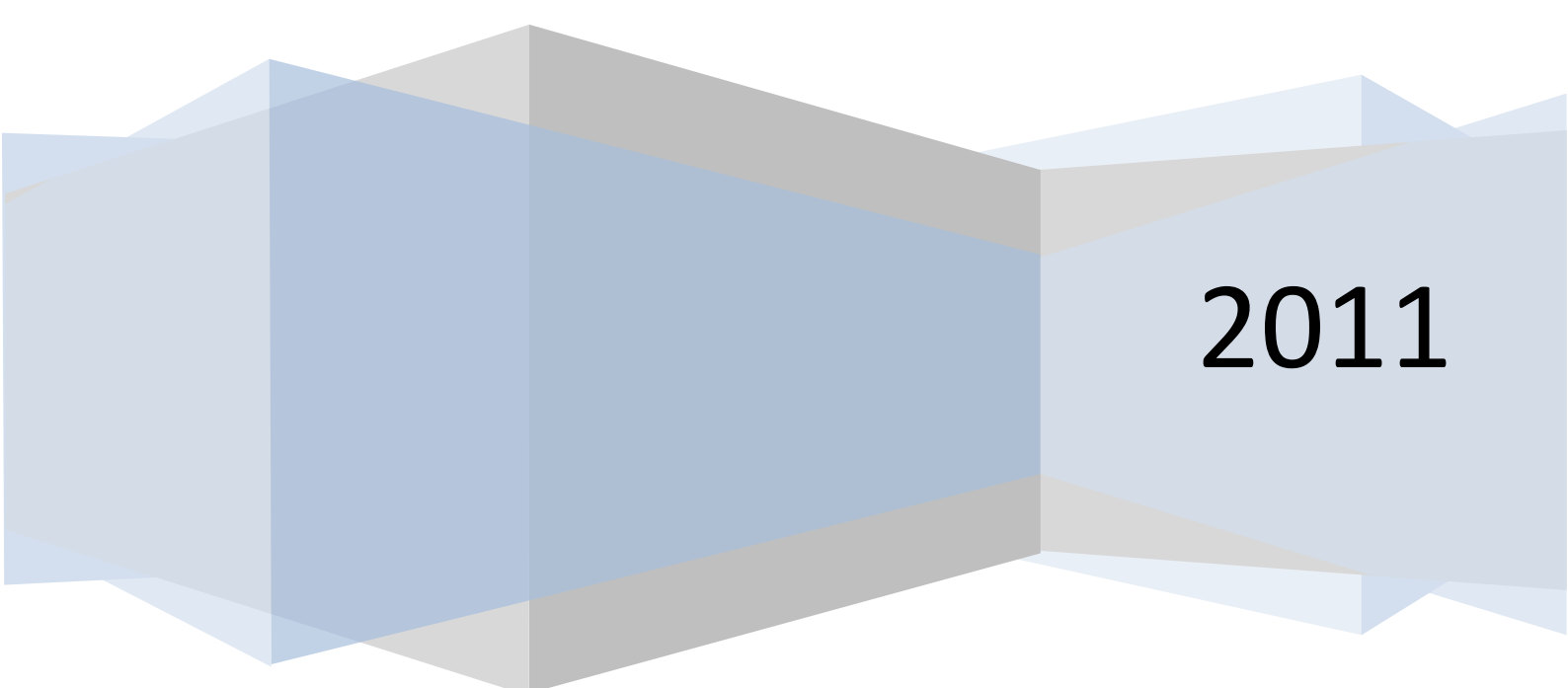


COMPETITION AND TARIFF COMMISSION

ANNUAL REPORT

Activity and Financial Statement Reports



2011

12 June 2012

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 2011.

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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PART I: GOVERNANCE

1.1 OBJECTIVES AND FUNCTIONS

The Competition and Tariff Commission (CTC) is an autonomous Statutory Body established under the Competition Act [*Chapter 14:28*] to implement and enforce Zimbabwe's competition policy and law, and to assist in the execution of the country's trade tariffs policy. The Commission is a product of the merger in 2001 of the former Industry and Trade Competition Commission (ITCC) and Tariff Commission (TC) under the Competition Amendment Act, 2001 (No.29 of 2001). Its primary objectives are to promote and maintain competition and competitiveness in the economy of Zimbabwe through the: (i) prevention and control of restrictive practices, including monopoly situations; (ii) prohibition of unfair business practices; (iii) regulation of mergers and acquisitions; (iv) correction of unfair trade practices; and (v) provision of protection and assistance to local industry.

The Commission's statutory functions in terms of section 5 of the Competition Act that are aimed at achieving and meeting the above objectives are listed in Box 1.

Box 1: Statutory Functions of the Commission

The Statutory functions of the Commission in terms of section 5 of the Competition Act [*Chapter 14:28*] are:

- (i) to encourage and promote competition in all sectors of the economy;
- (ii) to reduce barriers to entry into any sector of the economy or to any form of economic activity;
- (iii) to investigate, discourage and prevent restrictive practices;
- (iv) 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;
- (v) to advise the Minister of Industry and Commerce in regard to all aspects of economic competition, including entrepreneurial activities carried on by institutions directly or indirectly controlled by the State, and the formulation, co-ordination, implementation and administration of Government policy in regard to economic competition;
- (vi) 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;
- (vii) to undertake investigations and make reports to the Minister of Industry and Commerce relating to tariff charges, unfair trade practices and the provision of assistance or protection to local industry;
- (viii) to monitor prices, costs and profits in any industry or business that the Minister of Industry and Commerce directs the Commission to monitor, and to report its findings to the Minister; and
- (ix) to perform any other functions that may be conferred or imposed on the Commission by the Act or any other enactment.

1.2 VISION AND MISSION STATEMENT

The Commission's Vision, Mission Statement, and Values as pronounced in its Three-Year Strategic Plan: 2010-2012 are as shown in Box 2.

Box 2: Commission Vision, Mission Statement, and Values

Vision To be the leading advisory and regulatory authority on competition and trade tariffs nationally, regionally and internationally.
Mission Statement • We will promote competition and fair trade through the provision of quality advisory and regulatory services whilst attracting, developing and retaining competent staff. • We will be a responsible corporate citizen.
Values • Professionalism • Integrity • Fairness and transparency • Innovation • Timeliness • Teamwork

1.3 CORPORATE GOVERNANCE PRINCIPLES

Corporate governance has been defined as the system by which companies are directed and controlled. It involves regulatory and market mechanisms, and the roles and relationships between a company's management, its board, its shareholders and other stakeholders, and the goals for which the organisation is governed. The Principles of Corporate Governance of the Organisation for Economic Co-operation and Development (OECD) states that:

“Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”

The Commission subscribes, and adheres, to good corporate governance principles as enshrined in the *Corporate Governance Framework for State Enterprises and Parastatals* that was published in November 2012 by the Ministry of State Enterprises and Parastatals, the main principles of which are summarised in Table 1.

Table 1: Major Corporate Governance Players Under the Corporate Governance Framework for State Enterprises and Parastatals

Corporate Governance Player	Corporate Governance Principles
Shareholders	• The shareholders shall jointly and severally protect, preserve and actively protect the interest of the organisation. • The majority shareholders and members of the Board should appropriately respect the rights of the minority shareholders. The organisation's affairs may not be conducted in a manner which is unfairly prejudicial to the interest of minority shareholders and/or to the purpose of the organisation. • The legal and regulatory framework for State Enterprises and Parastatals (SEPs) should ensure a level playing field in competitive markets to avoid market distortions. There should be a clear separation of Government's ownership function and other Government functions such as the regulatory function.
	The Responsible Minister shall ensure that: • Only competent and reliable persons with appropriate knowledge, skills and experience are appointed to the Board; • The Board is refreshed on a regular basis bringing new and sound viewpoints into discussions and decision making; • The Board is held accountable and responsible for the efficient and effective governance of the organisation; • The organisation acts as a good corporate citizen; • The organisation complies with all applicable laws; and • The level of remuneration for members of the Board and top management is sufficient to attract and retain the quality and calibre of individuals needed to run the organisation successfully.
	The Responsible Minister shall: • Decide the term to be served by non-executive members of the Board in terms of the relevant Act of Parliament or Articles of Association, whichever is applicable. In cases where legislation does not specify, the term of office shall not exceed three years; • Foster constructive relationship with the Board to facilitate the success and sustainability of the organisation; • Change the chairperson and/or the composition of the Board that does not perform to expectation or in accordance with the mandate of the organisation; and • Respect the fiduciary duties of the members of the Board.
	The relationship between the shareholders and the Board shall be governed by a written agreement between the Responsible Minister and the Board. It is the responsibility of the Responsible Minister, after consultation with the Minister of State Enterprises and Parastatals, to ensure that the agreement is developed and signed by the Responsible Minister and the Board.
	The Minister of State Enterprises and Parastatals is responsible for: (a) the setting and monitoring of good corporate governance standards; and (b) informing and advising Cabinet on cross cutting policy matters relating to the administration and management of SEPs.
The Board of Directors and Senior Management	Boards constitute the fundamental base of corporate governance in the SEPs and have responsibility to ensure the success of the organisation. Each State Enterprise or Parastatal shall be headed and controlled by an effective and efficient Board,

	comprising of executive and non-executive directors or whom the majority shall be non-executive directors in order to ensure objectivity in decision making. • The performance of a SEP largely depends on the capabilities and performance of its Board. It is therefore imperative that when appointing directors, the shareholders shall ensure that the Board is constituted with the appropriate expertise and skills mix. In this regard, the Board shall, at all times, comprise of competent individuals with integrity, relevant complementary expertise and experience. • Board appointments shall take into account the need for gender balance. • Board appointments shall be in accordance with the provisions of the relevant legislation, that is, the enabling Acts of Parliament or Articles of Association of the Company. • At the expiry of the Board tenure, where possible and appropriate, at least a third of the Board shall be retained to ensure continuity and stability to its leadership and policies. No member shall serve for more than two successive terms on the same Board except in exceptional circumstances as determined by the Responsible Minister. • The individuals nominated for appointment to a Board of a State Enterprise or Parastatal should not be serving on Boards of more than one State Enterprise or Parastatal at a given time. • The timing of appointment of a new Board should allow for smooth hand-over/ take-over processes. • The Boards of SEPs have responsibility for the performance of the SEPs and are fully accountable to the shareholders for such performance and in all cases are guided by relevant legislation and/or the Memorandum of Association of the Company. • The Board's principal task are to: - establish a corporate strategy for the SEP; - ensure that the SEP has effective management teams; - ensure that the SEP's shareholders and other interested stakeholders are informed of the SEPs' progress and financial position; - in concurrence with the shareholders, appoints the Managing Director (MD)/ Chief Executive Officer (CEO)/ General Manager (GM)/ Director-General (DG) and other designated posts; - ensure that an effective succession plan for key executives is in place; - ensure effective risk management, internal control and internal audit processes are in place; - ensure that a Safety, Health and Environmental (SHE) policy is in place; - ensure that a Human Resources Management Policy is in place; and - ensure that a code of conduct for Directors is developed and complied with. • The Board shall ensure that the SEP is fully aware of and complies with applicable laws, regulations, government policies and codes of business practice. • The Board shall be cognisant of the overall macroeconomic and socio-political goals of Government and shall ensure that activities are consistent with those goals which include, but not limited to: - promotion of sustainable economic recovery and growth; - indigenous economic empowerment; - pro-poor development; - empowerment of women and youths; - promotion of community welfare; - promotion of investment; and
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	- promotion of environmental protection. • The Board shall ensure that there is minimal conflict of interest, among Board members and Management. The Board as a whole and each individual director shall not accept any unauthorised payment or commission, any form of bribery, gift or profit for her/ himself. • The Board shall adhere to and implement the principles of sound corporate governance policies, procedures and practices. • The Board shall ensure that the SEP has an effective management team. The Board shall monitor and evaluate the management team's performance on a regular basis. The Board shall appoint and dismiss, in consultation with the Responsible Minister and subject to terms and conditions set out in the enabling legislation, MD/CEO/GM/DG on such terms and conditions as it sees fit. The terms and conditions of such appointment shall be reduced to writing in the form of a Performance Based Contract. The Board shall regularly monitor and evaluate the SEP's operations against the agreed objectives and guidelines.
	• The Board shall evaluate itself against agreed performance indicators and targets on an annual basis in accordance with the guidelines developed by the Responsible Minister after consultation with the Minister of State Enterprises and Parastatals. • The Board shall sign a performance agreement with the Responsible Minister for the period of appointment. Using an agreed Performance Management System, the Responsible Minister shall appraise the performance of the Board on an annual or such more frequent basis as the Responsible Minister and the Board may agree.
	In view of the unitary structure of the Board, directors are jointly and severally responsible for all the decisions taken by the Board.
	The Chairman is the head of the Board and reports to the Responsible Minister on policy matters. The responsibilities of the Board Chairman shall include: • Ensuring that the business of the Board is well organised, conducted and that the Board discharges its duties smoothly and efficiently; • Ensuring that all the Board members are fully involved and informed of any business issues on which a decision has to be taken; • Ensuring that the executive directors play an effective management role and participate fully in the operations and governance of the SEP; • Ensuring that the non-executive directors monitor the business and contribute to the business decisions of the SEP; • Exercising independent judgement, acting objectively and ensuring that all relevant matters are placed on the agenda and prioritised properly; • Working closely with the Board Secretary in ensuring that at all times all the Board members fully understand the nature and extent of their responsibilities as directors in order to ensure the effective governance of the SEP; • Ensuring that the performance of the CEO/MD/GM/DG is appraised on an annual or other more frequent basis as the SEP's circumstances may demand, by a sub-committee appointed by the Board; • Being receptive to shareholders' views and communicating these views to members of the Board; • Ensuring that the Board receives information that is satisfactory to form sufficient basis for the Board's decision-making process; and • Ensuring that the Board regularly evaluates its work.
	As a general principle, the role of the Chairperson and that of the Chief Executive

	Officer should not be vested in the same person. This is necessary to eliminate role conflict.
	The Board shall establish standing committees as it deems necessary which committees shall include the ones responsible for: • Corporate Strategic Planning; • Audit and Internal Controls; • Human Resources and Remuneration; and • Finance and Risk Management.
	The MD/CEO/GM/DG should focus on the operations of the State Enterprises or Parastatal, ensuring that the organisation is running efficiently and effectively and in accordance with strategic decisions of the Board.
	• The Board shall appoint a Board Secretary whose role shall be to ensure that the Board functions effectively. This entails providing the Board and individual directors with detailed guidance as to the nature and extent of their duties and responsibilities and, more importantly, how such duties and responsibilities shall be properly discharged in the best interests of the State Enterprise or Parastatal and the shareholders. • The Board Secretary shall circulate to members materials such as financial reports, relevant committee minutes and other background materials fourteen days before scheduled meetings and during months when the Board is not scheduled to meet. • The Board Secretary co-ordinates the induction of new Directors, and together with the Chairperson of the Board, develops mechanisms for providing continuous education and training for Board members in order to improve and maintain the effectiveness of the Board. • The Board Secretary shall assist the Chairperson and the CEO in developing an Annual Board Plan and other strategic issues of an administrative nature that affect the Board. The Board Secretary shall provide guidance and advice to the Board and the Management Team on matters of ethics and good governance. • The Board Secretary shall keep a register of disclosures of interest with respect to each Director. Directors shall be required to give written notice of any changes with regards to disclosure particulars. • The Board Secretary shall report to the Chairman and is accountable to the Board as a whole.
	• Senior Management of the organisation shall constitute a Management Team (MT). • The Management Team, among other matters, shall be responsible for; leading the implementation of the strategic direction set by the Board and reporting on the implementation status; and • Generating information for quarterly reports to the Board and the Responsible Minister.
	A State Enterprise or Parastatal Director is bound to disclose in writing to the Board, the Responsible Minister and the Minister of State Enterprises and Parastatals information of material effect to the State Enterprise or Parastatal's operations, financial status or image which include, but not limited to the following issues: • Any connection with the State Enterprise or Parastatal (or any related company) shares, debentures, or any changes in respect of those particulars prescribed; • Disclosure of contracts in which he/she has direct or indirect personal interest which may give rise to conflict of interest such as contracts

	between the SEP and any other company in which a Director or his/her relative has an interest; and • Every such Director shall withdraw from the proceedings of the Board or Committee when a matter in which he/she has an interest is considered, unless the other members decide that the member's direct. or indirect interest in the matter is trivial or irrelevant
	Loans made either directly or indirectly to non-executive directors are prohibited unless the granting of loans is the core business of the entity and subject to the rules and procedures applicable to the granting of such loans.

1.3.1 Decision Making Structures

The Commission is a regulatory and advisory authority with wide investigative functions. In its competition operations, the Commission has final decision-making powers on restrictive and unfair business practices, as well as on anti-competitive mergers and acquisitions. It is also a quasi-judicial body with adjudicative functions of an inquisitorial nature. In its trade tariffs operations, the Commission has recommendatory powers. It investigates unfair trade practices, and requests for tariff relief, and makes appropriate recommendations to the Government. It also gives technical and analytical support to Government on trade negotiations.

The Commission has delegated most of its investigative functions to the Directorate headed by the Director, and has retained in the Board of Commissioners its adjudicative functions. The Board of Commissioners also gives the Commission policy guidance.

(a) Board of Commissioners

The Board of Commissioners is comprised of members appointed by the Minister of Industry and Commerce in terms of section 6 of the Competition Act [Chapter 14:28] "for their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment". All the Commissioners who guided the policy and direction of the Commission during the 2011 reporting year under review were appointed on part-time basis. The following were members of the Board of Commissioners throughout the year under review:

Mr. Dumisani Sibanda (Chairman)

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

Mr. Samson Z. Dandira (Vice Chairman)

Mr. Dandira is a holder of an 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 IAC. He served as Commissioner on the previous Competition and Tariff Commission Board during the period 2006-2009. Currently he is a Management and Training Consultant of First Link Consultants (Private) Limited.

**Mr. Peter Kadzere
(Member)**

Mr. Kadzere is a holder of a Bachelor of Science Economics (Hons) degree and an MBA 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 25 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
(Member)**

Mrs. Kanjoma holds a Bachelor of Business Studies (Hons) degree. She has over 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, she is employed by Zimbabwe Revenue Authority as Head of Audits for Region 2 (Bulawayo).

**Mr. Anthony Mutemi
(Member)**

Mr. Mutemi holds a BSc. Eng. (Hons) degree from the University of Zimbabwe and an MBA 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). He has been with Steelnet (Zim) Group and its predecessor Group, TH Zimbabwe for 14 years.

**Mr. Fambaoga L Myambo
(Member)**

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

**Mr. Thulani M Ndebele
(Member)**

Mr. Ndebele holds a BSc (Hons) in Economics from the University of Zimbabwe and an MBA from the same University. He is an Economist by profession and a Banker by design, having worked for both Standard Chartered Bank Zimbabwe Limited and African Banking Corporation Zimbabwe Limited at senior managerial levels. Currently, he is into Commodity Broking and Consultancy.

**Mrs. Constance Shamu
(Member)**

Mrs. 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 Commissioner on the previous Board from 2006 to March 2009. Currently She is involved in business ventures that include safari hunting, service stations, retail shops and farming.

**Mr. Godfrey H Sigobodhla
(Member)**

Mr. Sigobodhla holds a Bachelor of Administration degree and MSc Economics degree. He is a Public

**Mrs. Varaidzo Zifudzi
(Member)**

Mrs. Zifudzi holds a Bachelor of Laws (Hons) degree from the University of Zimbabwe as well as

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.

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. She co-founded the setting up of Capital Edge (Private) Limited, an advisory services unit in July 2008 and is currently the Managing Director.

For the better exercise of its functions, the Board of Commissioners has established in terms of section 14 of the Competition Act four Standing Committees: (i) the Audit & Administration Committee; (ii) the Mergers & Restrictive Practices Committee; (iii) the Tariffs Committee; and (iv) the Legal & Enforcement Committee. The broad functions of the Committees are summarised in Figure 1.

Figure 1: Broad Functions of the Commission's Standing Committees

Audit & Administration Committee Oversees the Commission's responsibilities related to internal controls, risk management, and financial and other resource management. The Committee is a requirement under the 'Corporate Governance Framework for State Enterprises and Parastatals'.	Mergers & Restrictive Practices Committee Considers the Directorate's reports on preliminary investigations into restrictive and unfair business practices, as well as reports on examinations of mergers and acquisitions.
Tariffs Committee Considers the Directorate's reports on requests for tariff relief, investigations into unfair trade practices, and other issues related to trade tariffs.	Legal & Enforcement Committee Oversees compliance with the Commission's remedial orders and other decisions, as well as with laws and regulations.

The membership of the Standing Committees throughout the 2010 year under review is as shown in Table 2:

Table 2: Standing Committee Membership in 2011

Audit & Administration Committee	Mergers & Restrictive Practices Committee	Tariffs Committee	Legal & Enforcement Committee
Mrs. C. Shamu (Chair) Mr. P. Kadzere Mrs. C. Kanjoma Mr. A. Mutemi	Mr. S. Z. Dandira (Chair) Mr. P. Kadzere Mr A. Mutemi Mr. G. Sigobodhla Mrs. C. Shamu Mrs. V. Zifudzi	Mr. T. M. Ndebele (Chair) Mrs. C. Kanjoma Mr. F. L. Myambo Mrs. V. Zifudzi	Mrs. V. Zifudzi (Chair) Mr. S. Z. Dandira Mr. T. M. Ndebele Mrs. C. Shamu

A Board of Trustees that administers the Commission's Employee Pension Scheme with Old Mutual Pensions has also been established. 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.

(b) Directorate

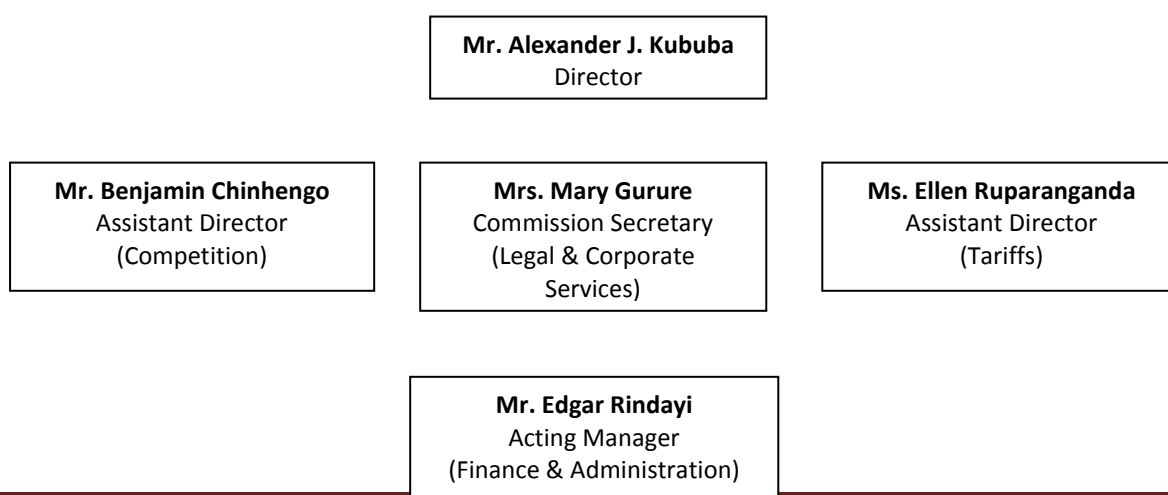
The Commission has a Directorate of full-time officials headed by the Director, who has the statutory responsibility for “administering the Commission’s affairs, funds and property and for performing any other functions that may be conferred or imposed upon him by (the Competition Act) or that the Commission may delegate or assign to him”. The Directorate has three operational Divisions (the Competition Division, the Tariffs Division, and the Legal & Corporate Services Division) and one support Department (the Finance & Administration Division) that have the responsibility of carrying out the Commission’s strategic plans and the day-to-day running of the organisation.

The broad functions of the Directorate’s Divisions and Department are summarised in Figure 2.

Figure 2. Broad Functions of Directorate’s Divisions and Department

Competition Division The Division investigates and prevents restrictive and unfair business practices in terms of Part IV of the Act, as well as controls mergers in terms of Part IVA of the Act. It also considers and makes recommendations on applications for authorisation of restrictive practices and other conduct. It further undertakes studies into competition in various sectors and industries.	Tariffs Division The Division investigates tariff charges and related unfair trade practices in terms of Part IVB of the Act. It is also involved in advisory capacity in the formulation and execution of the country’s trade policy, particularly in the area of trade tariffs. It further gives technical advice and support to Government in trade negotiations at bilateral, regional and multilateral levels,
Legal & Corporate Services Division The Division provides legal advice internally to the Commission and assists in strategising the handling of competition and tariffs cases, and in preparing cases for public/stakeholder hearings. It also provides secretarial services to the Board of Commissioners and its Committees, as well as ensures the enforcement of the Commission’s orders and decisions. It further is responsible for the Commission’s public relations and for the provision of library and documentation services.	Finance & Administration Department The Department is responsible for the provision of financial and administrative support services to the other divisions and department of the Commission, including human resources and training, information technology, and registry services.

A Management Committee assists the Director in the carrying out of his responsibilities. Members of the Management Committee include heads of the Directorate’s Divisions and Department. During the 2011 year under review, the Management Committee was comprised of the following:

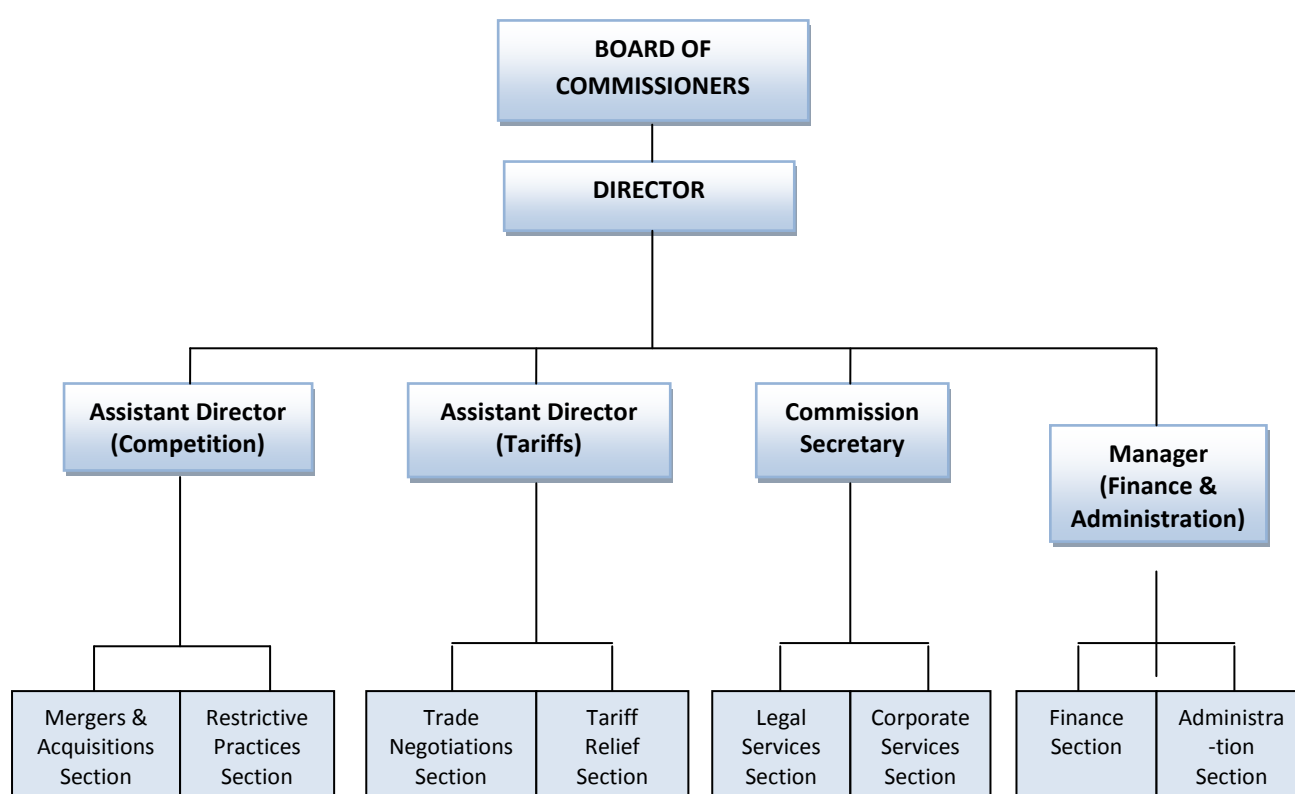


The Directorate also has the following two other specialist Committees, both of which are chaired by the Director, for the effective execution of its functions and carrying out of its duties: (i) the Finance Committee (which is an extension of the Management Committee and meets to consider purely financial resources issues); and (ii) the Operations Committee (which comprises heads of Divisions and Department and their relevant professional staff, and meets as and when necessary to basically discuss outstanding competition and tariffs cases and other operational issues).

(c) Organisational and Decision Making Structure

Figure 3 shows the organizational and decision-making structure of the Commission during the 2011 year under review.

Figure 3: Organisational Structure of the Commission in 2011



1.3.2 Board Statutory Requirements and Remuneration

The Commission's Board of Commissioners is statutorily required in terms of section 13(1) of the Competition Act [Chapter 14:28] to hold at least six meetings per annum. Meetings of the Board's Standing Committees are held as and when required, but the practice in the Commission 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. The Commission also holds Public/Stateholder Hearings as part of its full-scale investigations into competition and trade tariffs cases.

Table 3 shows the number and duration of Commission meetings that were attended by members of the Board of Commissioners during the year under review.

Table 3: Number and Duration of Commission Meetings in 2011

Type of Meeting	Abr.	No. of Meetings	Total Duration of Meetings	Ave. Duration Per Meeting
Ordinary Commission Meetings	OCM	5	18hrs.15mins.	3hrs.10mins.
Special Commission Meetings	SCM	3	6hrs.50mins.	2hrs.20mins.
Audit & Administration Committee	A&AC	4	5hrs.55mins.	1hr.48mins.
Mergers & Restrictive Practices Committee	M&RPC	5	5hrs.28mins.	1hr.06mins.
Tariffs Committee	TC	3	4hrs.10mins.	1hr.38mins.
Legal & Enforcement Committee	L&EC	2	2hrs.35mins.	1hr.29mins.
Public/Stakeholder Hearings Meetings	P/SHM	4	21hrs.00mins.	5hrs.25mins.
Totals		26	64hrs.13mins.	2hrs.46mins.

The Board of Commissioners met eight times during the year under year, five times in Ordinary Meetings and three times in Special Meetings. All the Board's Standing Committees held meetings during the year, with the Mergers & Restrictive Practices Committee being the busiest of the committees, with five meetings. In all, Commission meetings during the year consumed over 64 hours.

Table 4 shows the attendance by members of the Board of Commissioners of Commission meetings during the year under review.

Table 4: Commissioners Attendance at Commission Meetings in 2011

Member	OCM	SCM	A&AC	M&RPC	TC	L&EC	P/SHM*	Total
Total No. of Meetings	5	3	4	5	3	2	4	26
D. Sibanda	5	3	n/a	n/a	n/a	n/a	4	12
S.Z. Dandira	5	3	n/a	5	n/a	2	4	19
P. Kadzere	3	1	4	3	n/a	n/a	2	13
C. Kanjoma	3	1	1	n/a	1	n/a	3	9
A. Mutemi	4	3	4	1	n/a	n/a	4	16
F.L. Myambo	3	2	n/a	n/a	2	n/a	3	10
T. Ndebele	2	2	n/a	n/a	3	2	4	13
C. Tsomondo-Shamu	2	0	1	2	n/a	0	0	5
G. Sigobodhla	1	0	n/a	3	n/a	n/a	1	5
V. Zifudzi	5	2	n/a	3	2	2	3	17

* Includes stakeholder workshops

Section 15 of the Competition Act [Chapter 14:28] provides as follows with regards to remuneration of members of the Board of Commissioners:

“Every member of the Commission or of a committee shall be paid from moneys appropriated for the purpose by Act of Parliament –

- (a) such remuneration, if any, as the Minister, with the approval of the approval of the Minister responsible for finance, may fix for members of the Commission or of committees, as the case may be, generally; and*
- (b) such allowances as the Minister may fix to meet any reasonable expenses incurred by the member in connection with the business of the Commission or the committee, as the case may be.”*

The Commissioners' remuneration levels as fixed by the Minister of Industry and Commerce with effect from 1 December 2010, and as applicable during the year under review, were as shown in Table 5.

Table 5: Commissioners' Remuneration Levels in 2011

Member	Board Fees (US\$/month)	Board Sitting Fees (US\$/sitting)	Committee Sitting Fees (US\$/sitting)	Transport Allowance (US\$/month)	Airtime Allowance (US\$/month)
Chairman	100.00	50.00	40.00	100.00	75.00
Vice Chairman	90.00	40.00	30.00	50.00	70.00
Other Members	80.00	40.00	30.00	50.00	45.00

During the year, the Commissioners' remuneration totalled US\$32 990, as broken down in Table 6.

Table 6: Commissioners' Remuneration in 2011

Commissioner	Board Fees (US\$)	Sitting Fees (US\$)	Allowances (US\$)		Total Remuneration (US\$)
			Transport	Airtime	
D. Sibanda	1 500	1 200	1 200	900	4 800
S.Z. Dandira	1 200	1 710	600	840	4 350
P. Kadzere	960	1 040	600	540	3 140
C. Kanjoma	960	720	600	540	2 820
A. Mutemi	960	1 280	600	540	3 380
F.L. Myambo	960	800	600	540	2 900
T. Ndebele	960	1 040	600	540	3 140
C. Tsomondo-Shamu	960	400	600	540	2 500
G. Sigobodhla	960	400	600	540	2 500
V. Zifudzi	960	1 360	600	540	3 460
Totals	10 380	9 950	6 600	6 060	32 990

PART II: PRIORITISATION OF WORK

The Commission's Three-Year Strategic Plan: 2010-2012 recognised that having emerged from its formative stage, and overcame the organisational change effects of the merger of the ITCC and TC, the Commission's strategic priorities should now concentrate on the effective execution of its statutory mandates in the area of competition and trade tariffs. The identified strategic priorities include: (i) staff morale and motivation; (ii) alignment of structure and work processes to strategic priorities; (iii) centre of information, knowledge and expertise; (iv) approach and methodology to prioritisation; and (v) effective advocacy and communication.

Figure 3: Strategic Priorities for 2010-2012

Staff Morale & Motivation	• Motivation and turnover • Competitive salaries and remuneration • Recruitment, advancement and promotion • Performance management system • Training and development
Alignment of Structure & Work Processes to Strategic Priorities	• Clarification of roles and responsibilities, functional synergies, and resource requirements • Creation of interdivisional work teams, and management of the teams • Streamlining of decision-making structures • Expanding the organisation • Change management
Centre of Information, Knowledge & Expertise	• Commission is a knowledge-based and knowledge intensive organization • Management and sharing of information: (i) putting in place technology and infrastructure (case management system and share point server); (ii) training and capacity building to effectively use technology; (iii) development of culture of information sharing and knowledge management
Approach & Methodology to Prioritisation	• Need for coherent approach to deal with anti-competitive market structures and practices • Clarity of approach in factor determinants in dealing with tariff relief cases • Direct resources to high impact and strategic areas (develop framework for prioritising sectors and cases) • Transparency and consistency in decision-making
Effective Advocacy & Communication	• Improving dialogue with policy makers • Broadening participation by stakeholders • Effectively communicating the Commission's work

The specific strategic objectives of the Three-Year Strategic Plan: 2010-2012 per operational area are outlined in Table 7.

Table 7: Strategic Objectives for 2010-2012

Operational Area	Strategic Objectives		
	12 Months	24 Months	36 Months
Tariffs	To propose harmonisation of the Competition Act and the Finance Act in terms of trade tariffs determination		

	To provide assistance to local industry in accordance with set standards		
	To provide technical assistance to Government		
	To propose measures that tilt the balance of trade in favour of Zimbabwe		
	To undertake sectoral studies that inform trade policy formulation		
Competition	To regulate mergers and acquisitions		
	To encourage competition in all sectors of the economy		
	To investigate anti-competitive agreements and abuse of dominant positions		
Corporate Affairs	To improve the visibility of the Commission by 100%		
	To ensure up to date legal advice in accordance with set service level agreement standards		
	To provide timely and accurate secretarial services to the Board of Commissioners in accordance with set standards		
	To ensure that the Commission adheres to good corporate governance principles.		
Administration and Finance	To enhance financial resources to fund the 2010-2012 Strategy Plan		
	To attract, develop and retain competent staff		
	- To improve administrative service delivery		

The visibility of the Commission was seen as being of paramount importance, not only for increased operations but also for increased relevance to its stakeholders in both the private and private sectors of the economy, which determines the level of its funding. It was noted that while awareness programmes and campaigns would make the Commission more visible, the visibility would be limited if the organisation does not adequately execute its statutory mandates in the fields of competition and trade tariffs to the satisfaction of its stakeholders.

In the field of competition, it was agreed that while the Commission should build on the expertise it has amassed over the years in the area of merger control to improve the effectiveness of its examination of mergers and acquisitions, it should also develop and expand its operations in the area of restrictive business practices. It was agreed that the handling of competition cases involving restrictive and unfair business practices should be prioritised using clear criteria, such as: (i) impact on consumers, and on other socio-economic policies such as industrialisation, indigenisation, promotion of small and medium-sized enterprises; (ii) economic growth and development; and (iii) competition implementation experience. The following were the identified priority sectors, as justified in Table 8:

- agro-processing and food distribution;
- pharmaceuticals;
- infrastructure and construction;
- intermediate industrial products;

- financial services;
- telecommunications; and
- beverages.

Figure 4: Competition Priority Sectors In 2010-2012

Agro-processing and Food Distribution	• Involves the milling of grains (wheat, maize), baking of bread, canning of fruit and vegetables, etc. • Affects all consumers, particularly the poor and vulnerable. • High levels of concentration, thus potentially anti-competitive markets. • Prevalence of competition and consumer complaints.
Pharmaceuticals	• Affects all people of various statuses and backgrounds. • The manufacturing sector highly concentrated, and subjected to restrictive IPR laws and practices.
Infrastructure and Construction	• Inputs generally from highly concentrated industries (e.g., cement, bricks, timber). • Highly susceptible to collusive and cartel-like behaviour (price-fixing, market-sharing, bid-rigging).
Intermediate Industrial Products	• Includes basic chemicals and basic metal products which form key inputs to diversified manufactured products. • High concentration levels and/or dominant firms, resulting in ineffective or no competition. • Low production costs from economies of scale not passed on to more labour intensive downstream activities.
Financial Services	• Little evidence of rivalry amongst the sector players. • Public concern and complaints regarding levels of bank charges – with lending rates much higher than deposit rates. • Incidence of costs falling heavily on low income customers and small businesses.
Telecommunications	• Highly concentrated, and therefore potentially anti-competitive. • Has implications on productivity and competitiveness of various other industries and sectors. • High incidence of consumer complaints.
Beverages	• Highly concentrated markets, dominated by few companies. • High consumer interest. • Frequent product shortages, and product price increases. • Prevalence of competition complaints.

Abuse of dominance, or monopolisation, by public organisations was particularly targeted for competition investigation during the 2011 year under review.

In the field of trade tariffs, the Commission is primarily concerned with assisting and protecting local industry using the tariff regime. The focus of Zimbabwe's trade tariffs policy is to promote the development and growth of a competitive and export-oriented domestic industry. In that regard, the Commission assists local industry by making appropriate tariff relief recommendations to the relevant Government authorities, through the Ministry of Industry and Commerce, on import duty reductions and waivers, tariff splits, and even tariff protection. Tariff protection is however not given across-the-

board, but limited to needy industries, such as those that: (i) manufacture quality and cost-competitive products; (ii) are infant industries; (iii) are exporting firms, and those with export potential; (iv) have developmental projects and programmes with broad social impact; and (v) have exhibited a future potential for cost competitiveness.

The identification of tariff relief priority sectors was also recognised. In that regard, it was agreed that the identification should be based on clear criteria, such as: (i) economic impact (employment, export earnings, contribution to the fiscus, etc.); and (ii) regional and international competitiveness.

For the 2011 year under review, the Commission noted the need to gear itself for increased requests and applications for trade defences against imports of dumped and subsidised products that injure local industry.

PART III: CHAIRMAN'S STATEMENT

Introduction

Most, if not all, of the Commission's statutory mandates under the Competition Act [*Chapter 14:28*] were met during the 2011 year under review, so were most of the performance targets set in the Three-Year Strategic Plan: 2010-2012. That was in spite of the many operational constraints that faced the Commission during the year.

Board of Commissioners

The Commission's Board of Commission was unchanged and remained intact throughout the year at its full statutory complement of ten members. Members of the Board were kept extremely busy during the year, attending both ordinary and specialised meetings. A total of 26 Commission meetings were held, of which 8 were Ordinary and Special Meetings, 14 were Committee Meetings, and the rest were other special-purpose meetings. Over 65 hours were spent in the meetings.

The capacities of the members of the Commission, the Commissioners, were built and developed through attendance and participation at various workshops, both local and foreign, on corporate governance, competition policy and law, and trade tariffs policy.

The Commissioners were fairly remunerated during the year following the upward review of their fees by the Minister towards the end of 2010.

Activities

The operations of the Commission continued to grow and expand in response to the socio-economic challenges in its environment.

In its competition operations, the Commission's investigations into competition cases, including the examination of mergers and acquisitions, became more complex and involved as business undertakings devised innovative restrictive business practices, or entered into strategic alliances, to survive the harsh economic conditions. It was therefore not surprising that most restrictive business practices that were investigated involved abuse of dominance, or monopolisation, and collusive and cartel-like behaviour, and most of the mergers that were examined were of the potentially harmful horizontal nature. In all, the Commission intervened over 35 times in various sectors and industries on competition issues during the year. The most interventions were in the financial services sector, the food and beverages industry, and the public utilities sector.

There was also a marked increase in business challenges to the Commission's competition decisions, with some of the cases, particularly in the utilities sector, health services sector, and petroleum industry, before the courts as at the end of the year.

The Commission's involvement, and remedial action, in competition issues that directly affected the consumer increased its visibility and raised its profile in both the public and private sectors of the economy. In particular, the Commission's decisions on abuse of monopoly/dominant positions in the electricity services sector and the dialysis services sector received wide acclaim countrywide.

The Commission's efforts over the years to build a culture of competition in the country began to bear fruit during the year with the conclusion and signing of competition compliance programmes and agreements with two large companies in the beverages industry. Similar such programmes and

agreements with other large companies were being pursued by the end of the year. The conclusion of cooperation agreements with those sector regulators with some competition functions however suffered a setback with the reluctance of the regulators approached to enter into such agreements. Efforts in that regard will continue being made.

At a regional level, the Commission continued to play a leading role in the development of competition policy and law in both the Southern Africa Development Community (SADC) and Common Market for Eastern and Southern Africa (COMESA) regions. In that regard, it provided resource persons at the SADC regional training workshop on competition and consumer policy, and continued to assist the Namibian Competition Commission in the handling of competition cases. It was also represented on the Board of Commissioners of the new COMESA Competition Commission, and provided the chairmanship of that Commission.

In its trade tariffs operations, the Commission continued to give assistance and protection to local industry through the tariff regime in the form of duty reductions and tariff splits, particularly on raw materials and other production inputs. It also geared itself for increased trade defence applications against dumping and subsidisation, and upsurges in injurious imported finished products, following its education campaign in the national newspapers on the existence of national legislation against the unfair trade practices. In that regard, detailed application forms are now in place under the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002, and the Competition (Safeguards) (Investigation) Regulations, 2006.

The Commission consolidated its position as a leading technical advisor to Government on trade negotiations under the auspices of SADC, COMESA, Economic Partnership Agreement (EPA) with the European Union, and the World Trade Organisation (WTO). In that role, the Commission specialised on market access issues and sensitive lists of products.

The Commission is now also a regular and sought-after contributor to both the National Budget and Mid-Term Fiscal Review on trade tariffs issues. In that regard, the Commission's contributions were on various issues, such as: (i) the need for a general tariff review to address the anomalies in import duty rates between raw materials and finished goods; (ii) the reduction of import duties on industrial inputs; (iii) addressing the anomalies of bound tariffs under the WTO; (iv) most-favoured-nation (mfn) duties that exceed bound tariffs levels under the WTO; (v) levying of duties on imported motor vehicles over five years; (vi) enforcement of the legislated tariffs at border posts; (vii) the need to maintaining a cascading tariff structure consistent with value addition; (viii) the introduction of a tariff split to distinguish between GMO and non-GMO maize meal; (ix) duty reduction for raw materials in the battery, poultry and stockfeeds sectors; and (x) curbing of smuggling at border posts as that was affecting the viability of some industries, notably the blankets and poultry industries.

The Commission also held stakeholder workshops on public utilities in the country's two major cities of Harare and Bulawayo that impacted on its multi-dimensional operations. The workshops provided the much-needed platform for national debate on the sensitive issue of the pricing of public utilities, and were well received.

Challenges

The Commission's decision to have its implementation of competition policy and law peer reviewed under the auspices of the United Nations Conference on Trade and Development (UNCTAD) presented a major challenge to the organisation. The main objective of the Commission volunteering to the peer reviewed is to benefit from UNCTAD's capacity building and technical assistance programme, particularly in the training of staff and members of the Commission, and members of the Judiciary who hear appeals against the decisions of the Commission, on various aspects of competition policy and law, as well as in the amending of the Competition Act [*Chapter 14:28*].

The terms of reference (TORs) presented by UNCTAD Secretariat on the peer review assessment of competition law and policy in Zimbabwe were comprehensive and covered areas common to those covered by most other recent peer reviews considered by the Inter-Governmental Group of Experts on Competition Law and Policy (IGE). The Commission however suggested that the following specific issues in the implementation of competition policy and law in Zimbabwe should also be covered in the peer review assessments: (i) interface between competition and trade policies; (ii) merger control; (iii) institutional issues, such as the separation of investigative and adjudicative functions; (iv) role of the courts; (v) relations with sector regulators; and (vi) proposed amendments to the Competition Act.

The peer review exercise commenced in earnest in October 2011, with the fact-finding visit to Zimbabwe by the UNCTAD consultant. The challenge to the Commission is to ensure the successful completion of the peer review exercise, which will culminate at the Twelfth Session of the Inter-Governmental Group of Experts on Competition Law and Policy to be held in Geneva, Switzerland, in July 2012, and that the objectives of it volunteering to be peer review are met.

The Commission was also formally admitted to the membership of the International Competition Forum (ICN) during the year, after years of attempting to join the influential information exchange organisation. The challenge to the Commission is to justify its membership of the Forum by actively participating in the Forum's programmes through its various Working Groups.

Operationally, the challenges faced by the Commission were linked to financial constraints, which put the Commission at great risk. The constraints prevented the Commission from offering more competitive basic salaries to its employees for the purposes of retaining and attracting suitably qualified and experienced personnel. The Commission's attempt to improve its employees' conditions of service by giving them grocery assistance allowances to augment their meagre salaries was disallowed by its parent Ministry, and that soured labour relations in the organisation, which was still to be resolved by the end of the year. The constraints also prevented the Commission from procuring the necessary tools of trade, such as motor vehicles and computer equipment.

The above operational challenges are however expected to be resolved early during the coming 2012 year as resolved by the Board of Commissioners.

The challenges to some of the Commission's competition decisions, which were before the law courts by the end of the year, are formidable and have implications on the authority of the Commission in the business community. The challenges are however welcomed since they build the required jurisprudence in the implementation of competition policy and law in Zimbabwe.

Acknowledgements

The Commission acknowledges the support and assistance that it got during the year from its parent Ministry of Industry and Commerce, and other relevant Government Ministries and Departments, such as the Ministry of Finance, the Ministry of Economic Planning and Investment Promotion, the Ministry of State Enterprises and Parastatals, the Office of the Attorney General, the Zimbabwe Revenue Authority (ZimRA), and the Zimbabwe Investment Authority (ZIA). Various sector regulators also supported the Commission's operations and activities during the year.

The Commission also recognises with appreciation the cooperation that it got from business and consumer associations, such as the Confederation of Zimbabwe Industries (CZI), the Zimbabwe National Chamber of Commerce (ZNCC), the Chamber of Mines, and the Consumer Council of Zimbabwe (CCZ), and the Economic Consultative Forum (NECF).

Regional and international organisations to be acknowledged for their support to the Commission include UNCTAD, for continuing to facilitate the Commission's networking with other competition authorities, and both COMESA and SADC, for providing the Commission with financial and technical support in the fields of both competition and trade tariffs. The Competition Commission of

South Africa is particularly acknowledged for regularly providing the Commission with valuable information on its competition cases.

The dedication of members of the Commission, and of the Director and his staff, to the operations of the Commission during the year is also acknowledged with thanks.

Dumisani Sibanda
Chairman

PART IV: DIRECTOR'S REPORT ON OPERATIONS

4.1 OVERVIEW

The 2011 year under review saw an improvement in the Commission's handling of both competition and trade tariffs cases, which resulted in an increase and expansion in the organisation's multi-faceted operations.

During that year, the Commission's competition operations showed a marginal increase over those of the previous 2010 year in as far as competition cases handled was concerned. A total of 37 competition cases were handled during the year, as opposed to 33 cases handled in 2010, of which 21 involved restrictive and unfair business practices, and 16 were mergers and acquisitions. However, only 15 Commission determinations were made on the cases, 5 on restrictive business practices and 10 on mergers and acquisitions. A total of 22 cases were still outstanding as at the end of the year under review, of which 16 involved restrictive practices and 6 were mergers and acquisitions. The number of outstanding cases brought forward to the 2012 year is on the high side in relation to those that were closed during the 2011 year.

Major constraints that adversely affected the Commission's competition operations during the year were mainly of a resource nature, in the form of both financial/physical and human resources. Due to financial constraints, the Commission was forced to operate without adequate office equipment and motor vehicles, which are the necessary tools for the effective investigation and analysis of competition cases. The financial constraints also forced the Commission to operate with inadequate staff. The development of the available staff through exposure to international best practices was also adversely affected.

The time spent on individual competition cases, at both preliminary and full-scale investigation stages, was rather inhibiting, with too much time spent on a few cases. While that was mainly caused by lack of technical knowledge on some investigated industries and sectors, such as telecommunications and public utilities, time spent in addressing other public interest issues than purely competition concerns was also disproportionately long.

It is hoped that the Commission's access to donor capacity building and technical assistance to arise from the voluntary peer review of its implementation of competition policy and law under the auspices of the United Nations Conference on Trade and Development (UNCTAD) will go some way in resolving some of the constraints that besieged its operations in 2011.

A milestone was however reached in the effective implementation of competition policy and law in Zimbabwe with the conclusion of competition compliance programmes and agreements with Schweppes Zimbabwe Limited and Delta Corporation Limited. The programmes and agreements will go a long way in the creation of a culture of competition in the country. Another milestone was reached with the Commission's admission as a member of the International Competition Network (ICN) after a ten-year attempt. Membership of the ICN will greatly facilitate the Commission's re-joining the international competition family.

The Commission's trade tariffs operations in 2011 fared relatively better than its competition operations, despite being affected by the same financial constraints that besieged its other operations. That was mainly because members of staff of the Tariffs Division had over the years amassed considerable knowledge and expertise in the field of trade policy that enabled them to operate with minimum supervision in line with international best practice. Most commendable was the Division's contribution in the review of Zimbabwe's trade policy, and in international trade negotiations. The Division's contribution to the trade aspects of the National Budget and the Mid-Term Fiscal Review

was also highly appreciated by the Government, particularly the Ministry of Industry and Commerce, and the Ministry of Finance.

The major operational challenge that the Tariffs Division faced was to transform itself into an effective trade defense authority in the face of trade liberalization through the use of the national legislation on anti-dumping and Safeguards.

The upgrading during the year under review of the Commission's Corporate Affairs Department into a full operational Legal & Corporate Services Division was a positive development, which immediately produced the desired results. The upgrading was timely in that it came with the increasing complexity of competition cases being handled by the Commission, most of which require serious legal scrutiny and adjudication. It also greatly facilitated the undertaking of full-scale investigations into competition cases.

The Commission in 2011 faced its greatest operational challenges in the area of finance and administration. As already alluded to above, financial constraints impeded all the Commission's operations as the organization was forced to operate with inadequate physical resources in the form of computers, motor vehicles, etc. It also failed to adequately develop and train its personnel through exposure to international best practices. The situation was aggravated by the fact that the Commission's Finance & Administration Department operated without a substantive Manager throughout the year, and the Accountant had to assist in the running of the Department at a cost to his normal functions. Financial constraints also prevented the Commission from improving its employee conditions of service to attract suitably qualified and experienced staff.

The coming 2012 year however looks promising in as far as the Commission's operations are concerned. The Commission's financial position is much improved, and the 2012 year will commence with fewer operational problems associated with financial constraints. The Commission's staff engaged in competition operations has also gained considerable work experience in the enforcement of competition law, which augurs well for higher competition case turnover.

4.2 COMPETITION OPERATIONS

The Commission's competition operations are primarily handled by the Competition Division, whose manning during the 2011 year under review is shown in Table 8.

Table 8: Manning of the Competition Division in 2011

Name of Officer	Position	Qualification	Duration
Mr. Benjamin Chinhengo	Assistant Director	Business Administration	Throughout the Year
Miss Cicilia Mashava	Senior Economist	Economics	Throughout the Year
Ms. Calistar Dzenga	Economist	Economics	Throughout the Year
Mr. Isaac Tausha	Economist	Economics	Throughout the Year
Miss Loveness Jayaguru	Law Officer	Law	From May 2011
Mr Dennis Chinoda	Economist	Economics	From May 2011
Mr Earnest Manjengwa	Economist	Economics	From May 2011

The competition operations of the Commission are governed and guided by the relevant provisions of the Competition Act [Chapter 14:28], that provide for the prevention and control of restrictive practices and monopoly situations, the prohibition of unfair business practices and the regulation of mergers and acquisitions, particularly Part IV (investigation and prevention of restrictive practices, mergers and monopoly situations), Part IVA (notifiable mergers), Part V (authorisation of restrictive practices, mergers and other conduct), and First Schedule (unfair business practices).

The Competition Division investigates and makes recommendations to the Mergers & Restrictive Practices Committee of the Board of Commissioners on all competition cases. The Division's staff establishment and strength during most of the 2011 year review is shown in Table 9.

Table 9: Staff Establishment and Strength of the Competition Division During 2011

Position	Grade	No. of Posts On Establishment	No. of Posts Filled	Staff Strength
Assistant Director	E2	1	1	100%
Chief Economists	D3	2	0	0%
Senior Economists	D2	2	1	50%
Economists	D1	6	4	67%
Law Officers	D1	2	1	50%
Investigators	D1	5	0	0%
Totals		18	7	39%

The recruitment in May 2011 of three additional staff members, including a Law Officer, increased the Division's staff strength to 39%, from the 22% that prevailed during the previous 2010 year, which however still remained low in relation to the progressive expansion of the Division's operations. The Division was therefore forced to suspend undertaking competition studies to concentrate on investigating restrictive and unfair business practices, and examining mergers and acquisitions.

4.2.1 COMPETITION CASES

The Commission during the 2011 year under review handled a total of 37 competition cases, of which 21 involved restrictive and unfair business practices and 16 were mergers and acquisitions. Table 10 comparatively shows the number of competition cases handled by the Commission over the years since its effective coming into operations in 1999.

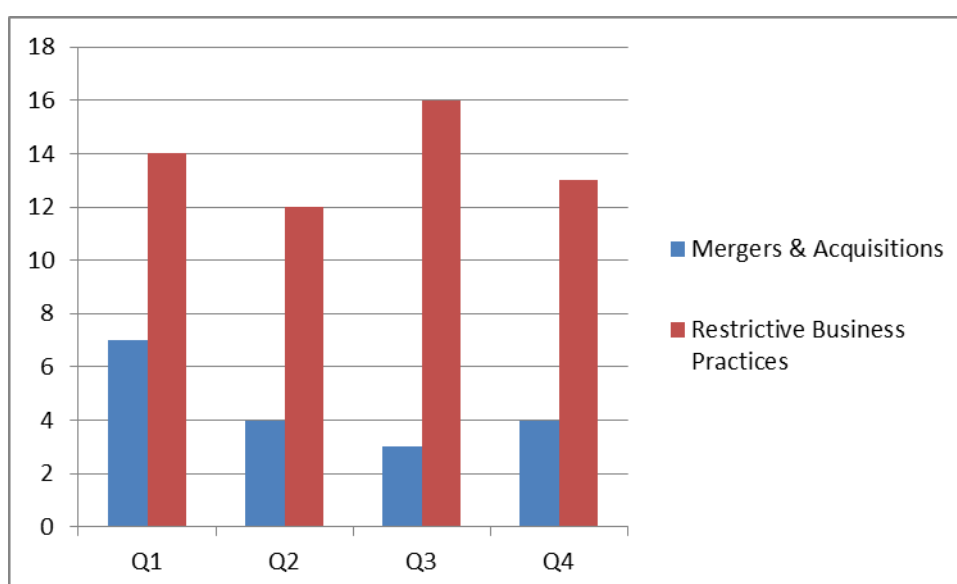
Table 10: Number of Competition Cases Handled Over the Years

Case Category	1999-2001	2002-2004	2005-2007	2008-2010	2011	Total
Restrictive Business Practices	58	61	54	47	21	241
Mergers and Acquisitions	24	78	81	29	16	228
Competition Studies	9	12	13	4	0	38
Totals	91	151	148	90	37	507

Table 10 shows that the Commission's handling of competition cases was severely curtailed during the period 2008-2010. That was because of both external and internal factors. Externally, adverse economic conditions in the country, which climaxed in 2008, had reduced economic activities and competition regulation. Internally, the Commission was rebuilding its depleted Competition Division with new and inexperienced personnel.

Graph 1 shows that while the intensity of merger examination was highest during the First Quarter of the year under review, it was lowest during the Third Quarter, the same period during which the intensity of investigations into restrictive and unfair business practices was the highest. Merger control activities however resurge somewhat during the Fourth Quarter of the year.

Graph 1: Competition Case Handling Intensity in 2011



The Commission's competition interventions during the year under review were not less than 36 times in various economic sectors and industries, as shown comparatively in Table 11, and graphically in Graph 2. The most interventions were in the financial and insurance services sector, and the food and beverages industries, followed by the public utilities sector. Other notable interventions were in the telecommunications services sector, the petroleum industry, and the fast moving consumer goods (FMCG) sector.

Table 11: Sectoral Competition Interventions in 2011

Sector	No. of Interventions		
	<i>Restrictive Practices</i>	<i>Mergers</i>	<i>Total</i>
Financial & Insurance Services	1	5	6
Food & Beverages	4	2	6
Utilities	4	0	4
Telecommunications Services	3	0	3
Petroleum Industry	0	3	3
Fast Moving Consumer Goods	0	3	3
Motor & Transport Services	2	1	3
Health Services	2	0	2
Manufacturing Industry	2	0	2
Mining Industry	0	1	1
Hospitality & Tourism	0	1	1
Printing & Publishing	1	0	1
Entertainment	1	0	1
Totals	20	16	36

Graph 2: Sectoral Distribution of Competition Interventions in 2011

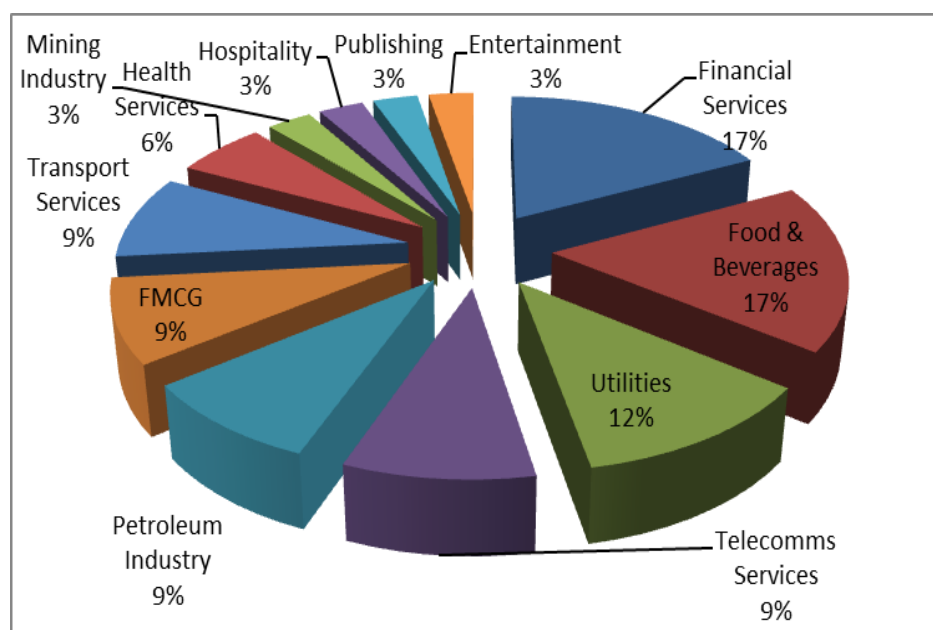


Table 12 shows the competition case handling turnaround during the year under review in comparison to the previous five years.

Table 12: Competition Case Turnaround in 2011

Type of Competition Case	Average Case Turnaround (working days)					
	2006	2007	2008	2009	2010	2011
Mergers and Acquisitions	57.8	69.3	105.8	68.4	60.6	38.8
Restrictive Business Practices	122.2	163.8	144.7	183.7	98.7	130.0

The case turnaround for mergers and acquisitions was reduced to an average of 38.8 working days during the year under review, from 60.6 working days during the previous years, which was the shortest since the effective commencement of the Commission's operations in 1999, and gave credence to the considerable experience and expertise that the Commission has amassed in merger control. The case turnaround for restrictive business practices at an average of 130 working days was however longer than the previous year's 98.7 working days, requiring further improvements in the investigation of restrictive and unfair business practices.

(a) Restrictive Business Practices

A total of 21 competition cases involving restrictive and unfair business practices were investigated by the Commission during the 2011 year under review. The term 'restrictive practice' is defined in terms of section 2(1) of the Competition Act [Chapter 14:28] as to have the meaning in Box 3.

Box 3: Definition of 'Restrictive Practice' In the Competition Act

"Restrictive practice" means -

- (a) any agreement, arrangement or understanding, whether enforceable or not, between two or more persons; or

- (b) any business practice or method of trading; or
 - (c) any deliberate act or omission on the part of any person, whether acting independently or in concert with any other person; or
 - (d) any situation arising out of the activities of any person or class of persons;
- which restricts competition directly or indirectly to a material degree, in that it has or is likely to have any one or more of the following effects –
- (i) restricting the production or distribution of any commodity or service;
 - (ii) limiting the facilities available for the production or distribution of any commodity or service;
 - (iii) enhancing or maintaining the price of any commodity or service;
 - (iv) preventing the production or distribution of any commodity or service by the most efficient or economical means;
 - (v) preventing or retarding the development or introduction of technical improvements in regard to any commodity or service;
 - (vi) preventing or restricting the entry into any market of persons producing or distributing any commodity or service;
 - (vii) preventing or retarding the expansion of the existing market for any commodity or service or the development of new markets therefor;
 - (viii) limiting the commodity or service available due to tied or conditional selling.

The term ‘restrictive practice’ in the Competition Act therefore covers both unilateral conduct of one firm (dominance and its abuse, or monopolisation) and coordinated conduct by two or more firms engaged in collusive and cartel-like behaviour (anti-competitive agreements of both horizontal and vertical nature). The *des minimus* rule also underlies the definition of the term ‘restrictive practice’ in the Act in that the practice must materially restrict competition to be prohibited. The rule also effectively excludes the uncoordinated business practices of small and medium-sized enterprises (SMEs) from being considered as being anti-competitive. In that regard, section 32(2) of the Act provides that “... the Commission shall regard a restrictive practice as contrary to the public interest if it is engaged in by a person with substantial market control over the commodity or service to which the practice relates ...”.

Most of the restrictive practices under the Act are considered using the ‘rule of reason’ approach, i.e., an attempt is made to evaluate any efficiency or pro-competitive features of the restrictive practice against its anti-competitive effects to decide whether or not the practice should be prohibited. Some restrictive practices are however *per se* prohibited in terms of section 42 of the Act since they are considered to have serious effects on consumer welfare with no redeeming economic benefits. These are termed ‘unfair business practices’ in the Act, and 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 arrangement between competitors; (vii) predatory pricing; (ix) resale price maintenance; and (x) exclusive dealing.

Sources of the Commission’s competition cases involving restrictive and unfair business practices included: (i) complaints from the business community and general public; (ii) referrals from government departments and sector regulators; and (iii) initiations by the Commission. The procedure followed by the Commission in handling such cases is that the Commission’s Directorate undertakes a preliminary investigation in terms of section 28 of the Competition Act to establish the existence or otherwise of a *prima facie* case on the alleged practices or conduct. If no competition concerns are found, or if they are not of a material nature in accordance with the *des minimus* rule, the case is closed. However, if serious competition concerns are found, the Commission may either enter into negotiations with the offending parties in terms of section 30 of the Act on the discontinuance of

the restrictive practices, resulting in the conclusion of undertakings or consent agreements, or undertake full-scale investigations in terms of section 28 of the Act into the matter.

The Commission during the 2011 year under review, investigated a total of 21 competition cases involving restrictive and unfair business practices, of which 10 were carried over from the previous year and 11 were new cases. Cases concluded during the year numbered 5, and 16 cases were carried forward to 2012. Figure 5 shows the cases that were handled by the Commission during the year under review.

Figure 5: Restrictive Practices Cases Handled in 2011

Cases Brought Forward from 2010	10
New Cases Referred in 2011	11
Total Cases Investigated in 2011	21
Cases Concluded in 2011	5
Cases Carried Forward to 2012	16

The 21 competition cases involving restrictive and unfair business practices that were investigated by the Commission during the year are listed in Table 13.

Table 13: Competition Cases Involving RBPs Investigated by the Commission in 2011

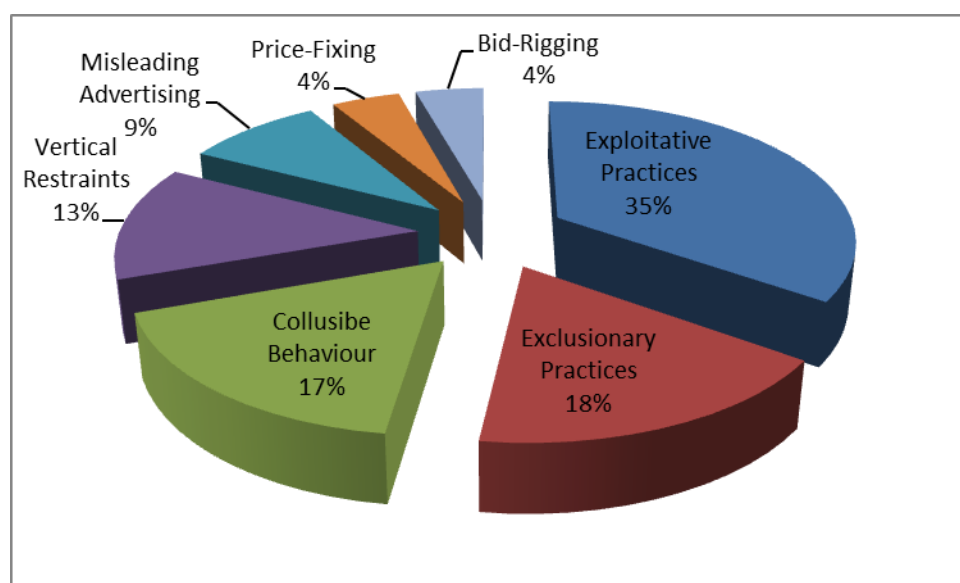
No.	RBP Competition Investigation	Competition Concerns
1	Full-scale investigation into allegations of restrictive and unfair business practices in the textbook distribution industry.	Abuse of Dominance and Anti-competitive Agreements
2	Full-scale investigation into allegations of restrictive practices in the music recording industry.	Abuse of Dominance and Anti-competitive Agreements
3	Full-scale investigation into allegations of unfair business practices in the ambulance services sector.	Abuse of Dominant Position
4	Finalisation of the full-scale investigation into allegations of restrictive practices in the electricity production and distribution services sector.	Abuse of Monopoly Position
5	Full-scale investigation into allegations of restrictive practices in the fixed telephone services sector.	Abuse of Monopoly Position
6	Finalisation of the full-scale investigation into allegations of restrictive practices in the health insurance (dialysis) services sector.	Abuse of Dominant Position
7	Preliminary investigation into allegations of restrictive and unfair business practices in the distribution of clear beer in the Chitungwiza geographic area.	Abuse of Dominant Position and Anti-competitive Agreements
8	Preliminary investigation into allegations of unfair business practices in the	Misleading Advertising

	grinding mill manufacturing and distribution industry.	
9	Preliminary investigation into allegations of restrictive and unfair business practices in the cotton industry.	Abuse of Dominance and Collusive and Cartel-like Behaviour
10	Preliminary investigation into allegations of restrictive practices in the provision of municipal services in the Harare geographic area.	Abuse of Monopoly Position
11	Preliminary investigation into allegations of restrictive practices in the provision of municipal services in the Bulawayo geographic area.	Abuse of Monopoly Position
12	Preliminary investigation into unfair business practices in the bread industry.	Collusive and Cartel-like Behaviour
13	Preliminary investigation into allegations of restrictive practices in the bakery industry.	Collusive and Cartel-like Behaviour
14	Preliminary investigation into allegations of restrictive practices in the motor vehicle spare parts distribution services sector (Transerv).	Abuse of Dominant Position
15	Full-scale investigation into allegations of unfair business practices in the bread industry.	Collusive and Cartel-like Behaviour
16	Preliminary investigation into allegations of unfair business practices in the awarding of tenders on fiscalised devices.	Bid Rigging
17	Preliminary investigation into allegations of restrictive practices in the supply of electricity to the cement industry.	Abuse of Monopoly Position
18	Full-scale investigation into allegations of restrictive and unfair business practices in the cotton industry.	Abuse of Dominance and Collusive and Cartel-like Behaviour
19	Preliminary investigation into allegations of restrictive practices in the mobile telephone services sector.	Abuse of Dominant Position
20	Preliminary investigation into allegation of unfair business practices in the motor vehicle spare parts distribution industry (GUD filters).	Misleading Advertising
21	Preliminary investigation into suspected restrictive practices in the telecommunications services sector.	Abuse of Dominant Position

Case involving abuse of dominance, or monopolisation, dominated the Commission's competition investigations during the year under review. The investigated instances of abusive practices numbered 12, of which 8 involved exploitative practices and 4 involved exclusionary practices. Three alleged vertical restraints were investigated, as well as two horizontal restraints of a cartel nature involving price-fixing and bid-rigging. Cases involving other collusive behaviour numbered 4. Two cases involving misleading advertising were also investigated.

Graph 3 shows the distribution of restrictive and unfair business practices that were investigated by the Commission during the 2011 year under review.

Graph 3: Distribution of RBPs Investigated By the Commission in 2011



Of the 5 restrictive and unfair business practices cases that were concluded during the year, 3 were closed for lack of competition concerns, or lack of serious competition concerns, 1 was closed for lack of jurisdiction, and 1 was resolved for full-scale investigation. The Commission's decisions on the cases are summarised in Table 14.

Table 14: Restrictive and Unfair Business Practices Cases Concluded in 2011

Competition Case	Competition Concerns	Commission Decision
1. Preliminary investigation into allegations of restrictive and unfair business practices in the distribution of clear beer in the Chitungwiza geographic area.	Abuse of Dominant Position and Restrictive Vertical Agreements	The Commission closed the case for lack of competition concerns. It had been alleged that beer wholesalers of Delta Beverages, the country's sole clear beer breweries, in the Chitungwiza area were selling beer to consumers at the same price they were selling to retailers, thereby driving the retailers out of business. It had also been alleged that Delta Beverages was preventing some aspiring beer wholesalers in the area from acquiring wholesale licences. The Directorate's preliminary investigation into the allegations had however found that the beer wholesalers were selling the product to retailers at discounted prices and not under-cutting them <i>vis-à-vis</i> direct sales to consumers, and that it was the retailers who were on-selling the beer to consumers at inflated prices. It was also found that Delta Beverages does not issue beer wholesale licenses, which authority lies with the Liquor Board, in terms of the Liquor Act [Chapter 14:12]. All what Delta Beverages does is to appoint wholesalers to be its beer distributors.

		The Commission resolved to close the case for lack of competition concerns.
2. Preliminary investigation into allegations of restrictive and unfair business practices in the cotton industry.	Abuse of Dominance and Collusive and Cartel-like Behaviour	The Commission agreed with the findings of the Directorate's preliminary investigation into allegations of restrictive and unfair business practices in the cotton industry that there was a <i>prima facie</i> case on the existence of the alleged practices, and resolved to undertake a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] into the allegations. The allegations were that cotton merchants, through the Cotton Ginners Association were collectively abusing their dominance of the cotton industry by engaging in exploitative practices against cotton farmers.
3. Preliminary investigation into allegations of restrictive practices in the motor vehicle spare parts distribution services sector (Transerv).	Abuse of Dominant Position	The Commission closed the case for lack of serious competition concerns. It has been alleged that Transerv, a large distributor of motor vehicle spare parts, was abusing its extensive distributorship position through predatory pricing of its products aimed at driving other distributors out of the market. The Directorate's preliminary investigation into the allegations had however found that Transerv was not a dominant player in the highly competitive market. In any case, it was also found that Transerv offered discounts to retailers ranging from 10% to 20%, which were reasonable and not predatory.
4. Preliminary investigation into allegations of unfair business practices in the awarding of tenders on fiscalised devices.	Bid Rigging	The Commission closed the case for lack of competition concerns. It has been alleged that only two companies were awarded the tender of supplying the whole country with fiscalised devices for value-added tax (VAT) purposes, thereby raising suspicions over the awarding of the tenders. The Directorate's preliminary investigations into the allegations had however revealed that the Ministry of Finance's tendering process was transparent and in accordance with statutory procedures. Of the companies that submitted bids on the tender, only two had met the tender requirements. (Following the intervention of the Commission, the relevant government authorities opened the tender to attract more suppliers of the fiscalised devices to increase competition in the supply of the devices).

5. Preliminary investigation into allegation of unfair business practices in the motor vehicle spare parts distribution industry (GUD filters).	Misleading Advertising	The Commission closed the case for lack of jurisdiction. It was found that even though the local respondent motor vehicle spare parts retailers were selling counterfeited <i>GUD</i> filters, thus technically constituting misleading advertising, the counterfeiters were foreign-based companies from the Far East. The Competition Act [<i>Chapter 14:28</i>] does not give the Commission extra-territorial jurisdiction over foreign-based companies that do not have physical presence in Zimbabwe.
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The legal and international best practices bases upon which the Commission investigated the restrictive and unfair business practices are explained in Box 4.

Box 4: RBP Investigatory Legal and International Best Practices Bases

Investigations Into Abuse of Dominance Abuse of dominance, or monopolization, constitutes a very harmful form of restrictive business practice by the mere fact that it involves abuses of an exclusionary nature (which operate against industry welfare) and/or of an exploitative nature (which operate against consumer welfare). It can actually be viewed as equally harmful to competition as collusive and cartel-like behaviour. Most abusive practices of dominant firms are analysed using the ‘rule of reason’ approach since while the practices are anti-competitive, they can also have pro-competitive and efficiency elements. Some vertical restraints, for instance, have strong efficiency and consumer welfare benefits. Certain abusive practices of dominant firms however are inherently harmful and are thus <i>per se</i> prohibited in some jurisdictions, particularly those in developing countries. For example in Zimbabwe, abusive practices such as resale price maintenance, predatory pricing, and exclusive dealing are <i>per se</i> prohibited in terms of section 42 of the Competition Act. The Commission is required in terms of section 32(2) of the Competition Act to generally regard a restrictive practice as contrary to the public interest if the practice is engaged in by a person with substantial market control over the commodity or service to which the practice relates, i.e., if is in a dominant position. In terms of section 2(2) of the Act, a person has substantial market control over a commodity or service if: “(a) being a producer or distributor of the commodity or service, he has the power, either by himself or in concert with other persons with whom he has a substantial economic connection, profitably to raise or maintain the price of the commodity or service above competitive levels for a substantial time within Zimbabwe or any substantial part of Zimbabwe; or (b) being a purchaser or user of the commodity or service, he has the power, either by himself or in concert with other persons with whom he has a substantial economic connection, profitably to lower or maintain the price of the commodity or service below competitive levels for a substantial time within Zimbabwe or any substantial part of Zimbabwe”. Abuse of dominance cases are complex, and require a combination of economics, legal and investigative skills, and even cost accounting skills in cases involving excessive pricing. Multi-skilled teams are therefore required in the investigation of abuse cases. Since abuse of dominance has to be assessed using the ‘rule of reason’ approach, there is also a requirement to weigh up anti-competitive effects against any efficiencies and pro-competitive elements that may arise from the unilateral conduct of dominant firms. All this makes such abuse cases longer to investigate than other restrictive business practices. The complexity of abuse of dominance cases thus places considerable strain on the Commission’s resources, in terms of both time and human resources.

The Commission's preliminary investigation during the year under review into allegations of restrictive and unfair business practices in the cotton industry amply illustrated its handling of dominance cases.

Investigations into Collusive and Cartel-like Behaviour

Collusive and cartel-like behaviour has been identified as the most harmful anti-competitive conduct with no redeeming economic benefits. Hard-core cartels (i.e., collusive behavior involving price-fixing, market-sharing or bid-rigging arrangements) are thus *per se* prohibited in most jurisdictions, and the mere existence of evidence of an agreement to cartelise is sufficient to establish a contravention of the law. Cartel agreements are in most cases punishable by fines and/or imprisonment.

Collusive arrangements between competitors are some of the unfair business practices that are *per se* prohibited in terms of section 42 of the Competition Act and constitutes a criminal offence. Such arrangements include the distribution of commodities or services at a particular price or within a particular range of prices (price-fixing arrangements), or the sharing of markets for commodities or services, whether the market shares are divided according to geographical area, class of consumer or otherwise (market-sharing arrangements), or the limitation by number or quantity the commodities or services produced or distributed (quantity limitation arrangements).

Paragraph 7 of the First Schedule to the Act however recognises that some agreements between competitors may not be anti-competitive, and therefore provides that the *per se* prohibition of such agreements may be lifted if "*bona fide* intended solely to improve standards of quality or service in regard to the production or distribution of the commodity or service concerned".

Bid-rigging is also one of the unfair business practices that are *per se* prohibited under the Act. The term 'bid-rigging' is described in the First Schedule to the Act as follows: "entering into or giving effect to an agreement, arrangement or understanding, whether enforceable or not, with another person whereby (a) any of the parties to the agreement, arrangement or understanding undertake not to submit a bid or tender in response to a call or request for bids or tenders, or (b) in response to a call or request for bids or tenders, some or all the parties to the agreement, arrangement or understanding submit bids or tenders that have been arrived at by agreement between themselves".

Cartels are difficult to unearth and investigate by the mere fact that they are illegal activities that are punishable by fines and/or imprisonment. Prosecution of cartels can only succeed if there is concrete proof of explicit agreement between or among cartel members to engage in the practices. The adoption by competition authorities of leniency programmes has thus become increasingly popular for the detection and prosecution of cartels. In this connection, the term 'leniency' means immunity from fines imposed on undertakings for participation in cartel activities. Leniency programmes set out processes through which self-confessing members of cartels, who first approach the competition authority and satisfies all conditions attached to leniency, can receive immunity from the competition authority for their participation in cartel activities.

Zimbabwe however has still not adopted a leniency programme in its fight against cartels, for two main reasons. Firstly, the statutory penalties for collusive and cartel-like behavior are not deterrent enough to make it worthwhile for cartel members to participate in a leniency program. Secondly, the Commission has still not demonstrated to the business community that it has the capacity to successfully investigate and prosecute a cartel case.

The Commission's preliminary investigation into allegations of restrictive and unfair business practices in the cotton industry illustrated not only it handled collusive and cartel-like behaviour, but also how it handled dominance cases.

Preliminary Investigation into Allegations of Restrictive and Unfair Business Practices in the Cotton Industry

The Commission received complaints from the Zimbabwe National Farmers Union (ZNFU) alleging unfair business

practices by the Cotton Ginners Association (CGA). The allegations were that cotton merchants and ginner, through the CGA, were engaging in collusive arrangements, resulting in them operating like a monopoly. It was alleged that due to the monopolisation of the market, the CGA were providing defective contracts to cotton farmers, offering inflated inputs prices, which were similar throughout the country regardless of the distance from the source of supply, as well as offering the farmers the same terms and conditions, leaving the farmers with no choice.

The ZNFU's allegations against the CGA were related to contracts, seed cotton buying, inputs supply, pricing policy, and cotton grading:

- **Contracts:** Every year the CGA provide inputs under growers' contracts to some farmers in form of seed, fertilizers, chemicals and packaging material, while the farmers provide the land, labour and the management for the production of the crop. It was alleged that the contracts were defective in that: (i) the value of the inputs advanced were not stated at the time of disbursement; (ii) the anticipated producer prices of seed cotton to be derived from the advanced inputs were not stated at the time of signing the contracts; (iii) the quantity of seed cotton expected to set off the value supplied inputs were not stated in the contract; and (iv) the farmers were not provided with copies of the signed contracts, which were deliberately made ambiguous and which the farmers were coerced to sign.
- **Seed Cotton Buying:** The farmers were only told of the prices of inputs advanced to them when the crop was ready for sale and during the purported negotiations with the CGA over the prices of the crop.
- **Inputs Supply:** All the companies that contracted farmers to grow cotton were members of the CGA, which consolidated inputs from the companies and issued them as one body at the same price. The prices of the inputs were manipulated upwards so as to maximise on seed cotton returns.
- **Pricing Policy:** The 2009/2010 season price for seed cotton was negotiated but no agreement was reached. The CGA presented an abbreviated budget which provided costs lines to their business on value addition processing, while the farmers presented a budget based on crop production using market related inputs costs and profit margins. The government had to intervene.
- **Cotton Grading:** When purchasing seed cotton, it is classified into four grades, A to D, with A grade being the top grade and attracting higher producer price, with D grade the lowest grade. An independent inspector is supposed to do the grading for transparency and fairness sake. However, that grading was being done arbitrarily by the buyers and contractors in the absence of farmers or their representatives.

The allegations raised against the CGA constituted restrictive practices under the Competition Act [Chapter 14:28]. In terms of section 2(1) of the Act, 'restrictive practice' means:

- “(a) any agreement, arrangement or understanding, whether enforceable or not, between two or more persons; or
 (b) any business practice or method of trading; or
 (c) any deliberate act or omission on the part of any person, whether acting independently or in concert with any other person; or
 (d) any situation arising out of the activities of any person or class of persons;

which restricts completion directly or indirectly to a material degree, in that it has or is likely to have any one or more of the following effects –

- (i) restricting the production or distribution of any commodity or service;
 (ii) limiting the facilities available for the production or distribution of any commodity or service;
 (iii) enhancing or maintaining the price of any commodity or service;
 (iv) preventing the production or distribution of any commodity or service by the most efficient or economical means;
 (v) preventing or retarding the development or introduction of technical improvements in regard to any commodity or service;
 (vi) preventing or restricting the entry into any market of persons producing or distributing any commodity or service;
 (vii) preventing or retarding the expansion of the existing market for any commodity or service or the development of new markets therefor;
 (viii) limiting the commodity or service available due to tied or conditional selling.”

The term 'monopoly situation' in the Act is defined as to mean “a situation in which a single person exercises, or two or more persons with a substantial economic connection exercise, substantial market control over any commodity or service”.

The relevant product market was identified as *the contracting (financing) and buying of cotton*, and the relevant

geographic market was identified as the whole of Zimbabwe. That market was monopolised by the CGA and its members.

Besides the complainants and the CGA, stakeholders consulted during the investigation included individual cotton merchants and ginnerers, the Zimbabwe Commercial Farmers Union, the Cotton Marketing Technical Committee (CMTC), and the Agricultural Marketing Authority (AMA), the relevant sector regulator.

The investigation and stakeholder consultations revealed suspicions that the cotton merchants and contractors, through the CGA, were engaging in monopolisation by offering low prices to cotton farmers, and in collusive arrangements on prices and price formulation. A *prima facie* case was therefore established for the Commission's undertaking of a full-scale investigation in terms of section 28 of the Competition Act [Chapter 14:28] into the matter.

Investigations into Misleading Advertising

Misleading advertising is one of the unfair business practices that are *per se* prohibited under the Competition Act with the objective of protecting consumers.

The term 'misleading advertising' is described in the First Schedule to the Act as follows: "for the purposes or in the course of any trade or business, publishing an advertisement: (a) containing a representation which the publisher knows or ought to know is false or misleading in a material respect; or (b) containing a statement, warranty or guarantee as to the performance, efficacy or length of life of any commodity, which statement, warranty or guarantee the publisher knows or ought to know is not based on an adequate or proper test thereof; or (c) containing a statement, warranty or guarantee that any service is or will be of a particular kind, standard, quality or quantity, or that it is supplied by any particular person or by a person of a particular trade, qualification or skill, which statement, warranty or guarantee the publisher knows or ought to know is untrue".

For the above purposes, "a representation, statement, warranty or guarantee expressed on or attached to an article offered or displayed for sale, or expressed on the wrapper or container of such an article, shall be deemed to have been made in an advertisement".

The Commission's preliminary investigation during the year under review into allegations of unfair business practices in the motor vehicle spare parts distribution industry, involving *GUD* filters, illustrated its handling of misleading advertising cases.

Preliminary Investigation into Allegations of Unfair Business Practices in the Motor Vehicle Spare Parts Distribution Industry (GUD Filters)

In March 2011, GUD Zimbabwe (Pvt) Limited complained to the Commission that there was an influx of counterfeit *GUD* filters into the country. GUD Zimbabwe, a manufacturer of motor vehicle filters, is the registered owner of the *GUD* trademark. The name *GUD* is synonymous with quality and reliability.

The complaint was that in recent years unscrupulous traders had taken advantage of the good name of *GUD* and were importing counterfeit *GUD* filters from Dubai and China. The counterfeit looked exactly the same as the original, which made differentiating the genuine from the counterfeit extremely difficult. From the box the counterfeit filter would be in, it was almost impossible to tell the difference. The actual filter was where one can find the major and mechanical differences. Use of the inferior counterfeit filters by unsuspecting customers could result in damaged car engines.

While counterfeits are not covered under the Competition Act [Chapter 14:28], the Act lists misleading advertising as one of the prohibited unfair business practices in terms of section 42. 'Misleading advertising' is described in paragraph 2 of the First Schedule to the Act as follows:

"(1) For the purposes or in the course of any trade or business, publishing an advertisement –

(a) containing a representation which the publisher knows or ought to know is false or misleading in a material respect; or

(b) containing a statement, warranty or guarantee as to the performance, efficacy or length of life of any

- commodity, which statement, warranty or guarantee the publisher knows or ought to know is not based on an adequate or proper test thereof; or*
- (c) *containing a statement, warranty or guarantee that any service is or will be of a particular kind, standard, quality or quantity, or that it is supplied by any particular person or by a person of a particular trade, qualifications or skill, which statement, warranty or guarantee the publisher knows or ought to know is untrue.*
- (2) *For the purposes of subparagraph (1), a representation, statement, warranty or guarantee expressed on or attached to an article offered or displayed for sale, or expressed on the wrapper or container of such an article, shall be deemed to have been made in an advertisement."*

It was found that offering for sale counterfeit GUD filters as genuine products constituted misleading advertising as defined in the Act. It was however noted that the publishers of the misleading advertising in the case under investigation were not the local traders but the foreign manufacturers of the counterfeit products, and that the Act does not have extra-territorial jurisdiction over foreign companies.

The Commission therefore closed the case for lack of jurisdiction, but advised the complainants to seek legal recourse using intellectual property rights legislation.

(b) Mergers and Acquisitions

The Commission examined a total of 16 mergers and acquisitions during the 2011 year under review, and made determinations on 10 of the transactions.

The term 'merger' is defined in terms of section 2(1) of the Competition Act [Chapter 14:28] as to have the meaning in Box 5.

Box 5: Definition of 'Merger' in the Competition Act [Chapter 14:28]

"Merger" 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 whether that controlling interest is achieved as a result of –

- (a) the purchase or lease of the shares or assets of a competitor, supplier, customer or other person;
- (b) the amalgamation or combination with a competitor, supplier, customer or other person; or
- (c) any means other than as specified in paragraph (a) or (b).

The term 'merger' as defined in the Act therefore not only refers to 'pure' mergers (i.e., those transactions that result in an amalgamation or joining of two or more firms into an existing firm or to form a new firm), but also to obtaining through acquisition of shares or shares of ownership and control by one firm, in whole or in part, of another firm or business entity, not necessarily entailing amalgamation or consolidation of the firms. It also covers both horizontal mergers (i.e., those that take place between two or more firms that are actual or potential competitors, that is, they sell the same products or close substitutes) and vertical mergers (i.e., those that take place between firms at different levels in the chain of production, that is, firms that have actual or potential buyer-seller relationships). 'Pure' conglomerate mergers (i.e., those between firms that neither produce competing products nor are in an actual or potential buyer-seller relationship) are however not covered unless they have horizontal and/or vertical elements.

The Commission during the 2011 year under review, examined a total of 16 mergers and acquisitions, of which 5 were brought forward from the previous year and 11 were new notifications. 10 transactions were concluded during the year either through Commission determinations or other terminations. 5 cases were carried forward to 2012. Figure 6 shows in tabular form the number of mergers and acquisitions that the Commission handled during the year.

Figure 6: Mergers and Acquisitions Examined in 2011

Cases Brought Forward from 2010	5
New Cases Notified in 2011	11
Total Cases Examined in 2011	16
Cases Determined/ Terminated in 2011	10
Cases Carried Forward to 2012	6

The 16 mergers and acquisitions transactions that the Commission examined during the year are listed in Table 15.

Table 15: Mergers and Acquisitions Considered by the Commission in 2011

No.	Merger Transaction Considered	Type of Merger
1	Finalisation of conditions on the approval of the <i>Schweppes Zimbabwe – Schweppes Exports/ Delta Beverages merger</i>	Horizontal
2	Investigation into Total Zimbabwe's compliance with Commission conditions on approval of the <i>Total Zimbabwe/ Mobil Oil merger</i>	Horizontal
3	Examination of the proposed acquisition of Ekodey Investments by Dawn Properties	Conglomerate, with Horizontal Elements
4	Examination of the proposed acquisition of CAG Mining Company by New Dawn Mining Company	Horizontal
5	Examination of the proposed acquisition of Allied Insurance Company by the Industrial Development Corporation	Conglomerate, with Vertical Elements
6	Examination of the proposed acquisition of Shell Petroleum Company and BP Zimbabwe by FMI Zimbabwe (Pvt) Limited	Conglomerate, with Vertical Elements
7	Examination of the proposed acquisition of Premier Finance Group Limited by Ecobank Transnational Incorporated	Conglomerate, with Horizontal Elements
8	Examination of the proposed acquisition of Makro Zimbabwe by OK Zimbabwe Limited	Horizontal
9	Examination of the proposed acquisition of Chevron Zimbabwe by Engen Holdings Limited	Horizontal
10	Examination of the proposed acquisition of Eagle Insurance Company by FBC Holdings Limited	Conglomerate, with Vertical Elements
11	Examination of the proposed acquisition of Unifreight by Pioneer Corporation Limited	Horizontal

12	Post-merger investigation into acquisition of National Foods Limited by Innscor Africa	Conglomerate, with Vertical Elements
13	Examination of proposed acquisition of Lynton-Edwards Stockbrokers by Rencap Zim Holdings	Horizontal
14	Examination of proposed acquisition of controlling interest in TM Supermarkets by Pick 'N Pay	Horizontal
15	Examination of proposed acquisition of Premier Milling Company by Croco Holdings	Conglomerate, with Vertical Elements
16	Examination of the proposed acquisition of Genesis Investment Bank by FMB	Conglomerate, with Horizontal Elements

Most of the mergers and acquisitions that were considered by the Commission during the year under review were of a horizontal nature, with a sizable number being of a conglomerate nature with both horizontal and vertical elements, as distributionally shown in Graph 4.

Graph 4: Distribution of Types of Mergers Considered in 2011

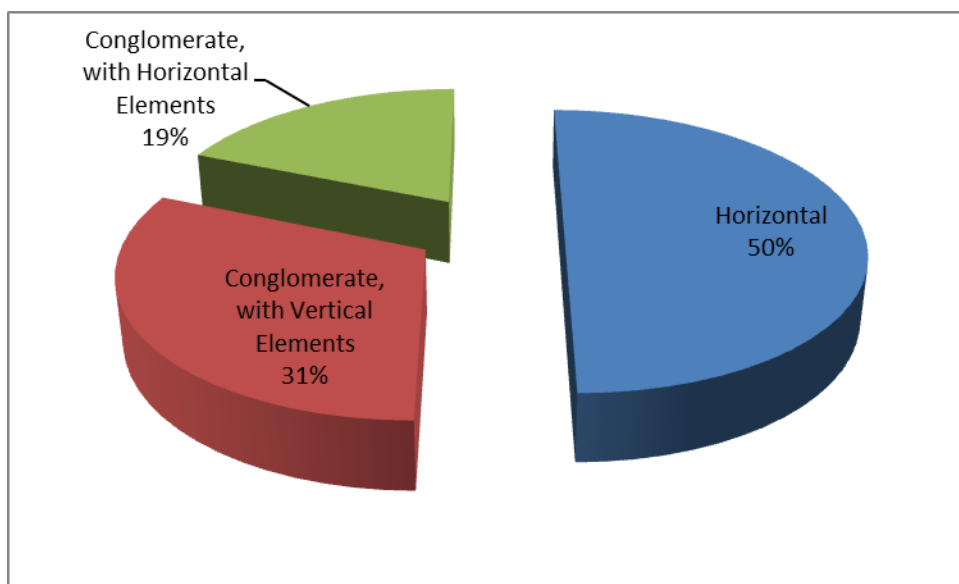


Table 16 summarises the Commission's decisions on those mergers and acquisitions that were determined or otherwise terminated during the year under review.

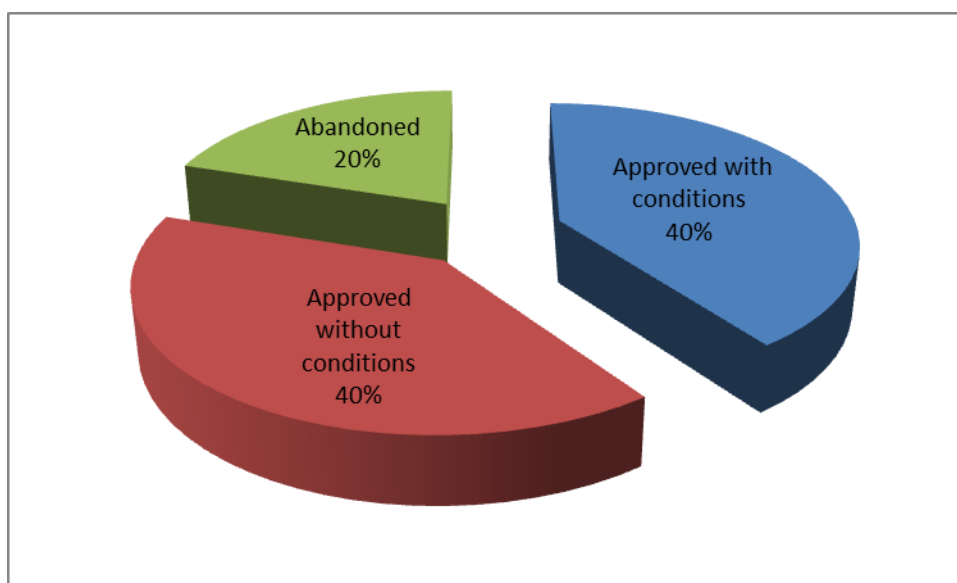
Table 16: Commission Decisions on Merger Transactions Determined/ Terminated in 2011

Merger Transaction	Type of Merger	Commission Decision
1. Conditions on approval <i>Schweppes Zimbabwe – Schweppes Exports/ Delta Beverages merger</i>	Horizontal	The Commission agreed, in support of the government's indigenisation and empowerment policy, to include as an approval condition of the merger the involvement of the management and employees of the target firms, Schweppes Zimbabwe and Schweppes Exports, in the transaction as acquirers.

2. Proposed acquisition of Makro Zimbabwe by OK Zimbabwe Limited	Horizontal	The Commission unconditionally approved the merger after noting that the transaction did not, or was not likely to, substantially lessen competition, or to result in a monopoly situation, in the relevant market.
3. Proposed acquisition of Eagle Insurance Company by FBC Holdings Limited	Conglomerate, with Vertical Elements	The Commission approved the merger without any conditions after noting that the transaction did not raise serious competition concerns in any of the relevant markets.
4. Proposed acquisition of Chevron Zimbabwe by Engen Holdings Limited	Horizontal	The Commission approved the merger after noting that the transaction did not, or was not likely to substantially lessen competition in the unconcentrated relevant market.
5. Proposed acquisition of Allied Insurance Company by the Industrial Development Corporation	Conglomerate, with Vertical Elements	The Commission approved the merger without any conditions since the transaction raised no serious competition concerns in the relevant markets (the merging parties however did not proceed with the transaction for other commercial reasons not related to competition).
6. Proposed acquisition of Shell Petroleum Company and BP Zimbabwe by FMI Zimbabwe (Pvt) Limited	Conglomerate	The Commission approved the merger on condition that the acquiring party give an undertaking that post-merger it would honour all existing arrangements and agreements with petroleum dealers using Shell and BP assets for their operations.
7. Proposed acquisition of Unifreight by Pioneer Corporation Limited	Horizontal	The Commission approved the merger on condition that the acquiring party take over all the employees of the target firm on their existing conditions and benefits.
8. Proposed acquisition of Lynton-Edwards Stockbrokers by Rencap Zim Holdings	Horizontal	The Commission agreed on the suspension of the examination of the merger following the abandonment of the transaction by the merging parties.
9. Proposed acquisition of controlling interest in TM Supermarkets by Pick 'n Pay	Horizontal	The Commission approved the merger on condition that the merged entity continue to source from local suppliers of merchandise.
10. Proposed acquisition of Genesis Investment Bank by FMB	Conglomerate, with Horizontal Elements	The Commission agreed on the suspension of the examination of the merger following the abandonment of the transaction by the merging parties.

Table 16 shows that of the 10 merger transactions that were determined or otherwise terminated during the year, 4 were approved without any conditions, 4 were conditionally approved, and 2 were abandoned, as graphically shown in Graph 5.

Graph 5: Merger Determinations and Terminations in 2011



The legal and international best practices bases upon which the Commission examined the mergers and acquisitions are explained in Box 6.

Box 6: M&As Examinatory Legal and International Best Practices Bases

The Competition Act [*Chapter 14:28*] provides for pre-merger notifications to the Commission. In terms of section 34A(1) of the Act, “a party to a notifiable merger shall notify the Commission in writing of the proposed merger within thirty days of: (a) the conclusion of the merger agreement between the parties; or (b) the acquisition by any one of the parties to that merger of a controlling interest in another”. In terms of section 28 of the Act, however, the Commission may a post-merger investigation.

The Commission is required in terms of section 32(4) of the Act to regard a merger as contrary to the public interest for the purposes of prohibiting it if 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”. The merger examination substantive test of ‘substantial lessening of competition’ is in line with international best practice.

In terms of section 32(1) of the Act, the Commission in determining whether or not any merger is or will be contrary to the public interest is required to “take into account everything it considers relevant in the circumstances, and shall have regard to the desirability of: (a) maintaining and promoting effective competition between persons producing or distributing commodities and services in Zimbabwe; and (b) promoting the interests of consumers, purchasers and other users of commodities and services in Zimbabwe, in regard to the prices, quality and variety of such commodities and services; and (c) promoting, through competition, the reduction of costs and the development of new techniques and new commodities, and of facilitating the entry of new competitors into existing markets”.

The concept of public interest in the Act is therefore used in its narrower sense to mean pro-market public interest (meaning pro-competition, including efficiency and innovation), in which competition therefore is a major interest.

The Commission has nevertheless used the concept of public interest in its wider sense in its examination of certain mergers to promote other socio-economic policies, such as those on protection of small and medium-sized enterprises, creation and safeguarding of employment, and localisation or indigenisation of economic activity.

The examination during the year under review of the *Makro Zimbabwe/ OK Zimbabwe merger* illustrated the handling of merger cases by the Commission.

Acquisition of Makro Zimbabwe by OK Zimbabwe Limited

The Commission received notification in terms of section 34A of the Competition Act [Chapter 14:28] of the proposed acquisition of Makro Zimbabwe (MakroZim) by OK Zimbabwe Limited (OK Zimbabwe). OK Zimbabwe was a retail organisation that provided comprehensive access to a broad range of retail products. MakroZim was a wholesaler that sold a diverse range of food, liquor, tobacco products and general merchandise. Both parties were involved in the distribution of fast moving consumer goods.

OK Zimbabwe is a public company quoted on the Zimbabwe Stock Exchange, whose largest single shareholder is Old Mutual. MakroZim (through H Robinson and Company (Private) Limited) was a wholly owned subsidiary of MASSTORES (Pty) Limited of South Africa.

OK Zimbabwe intended to acquire the business assets of H Robinson and Company (Private) Limited (t/a Makro Zimbabwe), free from any liabilities. The purchase consideration in exchange of the business assets would be settled by OK Zimbabwe through an equity and cash settlement. The transaction thus constituted a merger as defined in terms of section 2(1) of the Competition Act, as follows:

“ ‘merger’ 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 whether that controlling interest is achieved as a result of –

- (a) the purchase or lease of the shares or assets of a competitor, supplier, customer or other person;*
- (b) the amalgamation or combination with a competitor, supplier, customer or other person; or*
- (c) any means other than as specified in paragraph (a) or (b).”*

The relevant market was identified as *the distribution of fast moving consumer goods in Zimbabwe*. That market was found to be unconcentrated, both pre and post-merger, with HHIs of 886 (pre-merger) and 906 (post-merger), and a CR₄ of 51% in both pre and post-merger situations. OK Zimbabwe’s pre-merger market share of 10% would marginally increase to 11% post-merger. MakroZim had an insignificant market share of less than 1%.

Pre-Merger Market Shares and Concentration In the Fast Moving Consumer Goods Market

Company Name	No. of Branches	Market Shares	Concentration	
			HHI	CR ₄
Spar Supermarkets	80	17%	289	17
AfroFoods	56	12%	144	12
Jaggers Wholesalers	52	11%	121	11
TM Supermarkets	51	11%	121	11
OK Zimbabwe	49	10%	100	-
Redstar	42	9%	81	-
Others		30%	30	-
Total		100%	886	51

Makro has an insignificant market share and hence included in the ‘Others’ category.

The post-merger market shares and concentration in the fast moving consumer goods market are shown in Table 4 below.

Post-Merger Market Shares and Concentration In the Fast Moving Consumer Goods Market

Company Name	No. of Branches	Market Shares	Concentration	
			HHI	CR ₄
Spar Supermarkets	80	17%	289	17
AfroFoods	56	12%	144	12
Jaggers Wholesalers	52	11%	121	11

TM Supermarkets	51	11%	121	11
OK Zimbabwe	51	11%	121	-
Redstar	42	9%	81	-
Others		29%	29	-
Total		100	906	51

A total of six stakeholders were consulted during the course of the examination of the proposed merger, comprising the merging parties' competitors and customers. Of the stakeholders consulted, only one, Jagers Wholesalers, raised concerns over the transaction. The concerns raised were of a vertical restraint nature.

The transaction was examined as a horizontal merger. However, it was found that even though the merger is horizontal in nature, the size of the merging parties in the relevant market would not empower the acquiring party, OK Zimbabwe, to successfully engage in anti-competitive practices and earn super profits. The transaction entails an expansion of OK Zimbabwe operations through the addition of only two branches countrywide, and the impact of such is likely to be negligible. Unilateral effects are felt when a firm acquires market power which is unlikely for OK Zimbabwe. The reduction of the number of individual players will not make it easier or possible for the remaining countless players to coordinate their behaviour thereby jeopardizing competitive prices, quantity.

The analysis of other factors, such as concentration levels, acquisition of market power, removal of efficient competition, entry requirements, and degree of countervailing power, also showed that the transaction was not likely to raise serious competition concerns.

Public interest considerations examined included the continued employment of the present employers of the target firm, MakroZim, and the fate of the local suppliers of consumer goods to MakroZim. Indigenisation and empowerment issues by the empowerment groups were found to be outside the jurisdiction of the Commission.

The Commission agreed to approve the merger on the following conditions:

- (a) that OK Zimbabwe Limited give the Commission a firm undertaking in writing that it will honour the employment commitments that it made in its merger notification submissions, which include: (i) offering employment to Makro Zimbabwe's management and non-managerial employees; (ii) guaranteeing continued employment for Makro Zimbabwe employees who would have been laid-off upon shutdown of Makro Zimbabwe operations; and (iii) offering employment contracts to all Makro Zimbabwe employees; and
- (b) that OK Zimbabwe Limited also give the Commission an undertaking that it will honour all existing agreements and arrangements that Makro Zimbabwe had with local suppliers of goods and services.

4.2.2 OTHER COMPETITION ACTIVITIES

(a) Voluntary Peer Review

The Commission volunteered to have its implementation of Zimbabwe's competition policy and law peer reviewed under the auspices of the United Nations Conference for Trade and Development (UNCTAD). UNCTAD'S acceptance of Zimbabwe's peer review was confirmed at the Eleventh Session of the Inter-Governmental Group of Experts on Competition Law and Policy that was held in Geneva, Switzerland, during the period 19-21 July 2011.

UNCTAD Voluntary Peer Reviews on Competition Policy and Law

UNCTAD initiated the organisation of ad hoc voluntary peer reviews on competition law and policy with a view to ensure coherence between overall governmental approaches to privatisation and liberalisation of trade and investment regimes. Such reviews provide an ideal forum to appraise how economic reforms can promote development and ensure that markets work for the poor. The following countries have so far been peer reviewed under the auspices of UNCTAD: Jamaica and Kenya (2005), Tunisia (2006), Costa Rica (2008),

Indonesia (2009), Armenia (2010), and Serbia (2011). A voluntary peer review on the implementation of competition policy and law by the West African Economic and Monetary Union (WAEMU) and its eight member States was also undertaken. It was the first ever review of a regional grouping's competition policy, and it highlighted the challenges and opportunities which developing countries face in strengthening their regional cooperation and integration schemes.

The peer reviews have become an integral and appreciated part of UNCTAD work on technical assistance. They give rise to a range of recommendations on how the application of competition legislation might be made more effective at national and regional levels, and through UNCTAD to build capacity for the enforcement and advocacy of competition policy.

The main objective of the Commission volunteering to the peer reviewed was to benefit from UNCTAD's capacity building and technical assistance programme, particularly in the training of staff and members of the Commission, including judges of the Administrative Court and the High Court who hear appeals against the decisions of the Commission, on various aspects of competition policy and law, as well as in the amending of the Competition Act [Chapter 14:28].

The terms of reference (TORs) presented by UNCTAD Secretariat on the peer review assessment of competition law and policy in Zimbabwe were comprehensive and covered areas common to those covered by most other recent peer reviews considered by the Inter-Governmental Group of Experts on Competition Law and Policy (IGE). The Commission however suggested that the following specific issues in the implementation of competition policy and law in Zimbabwe should also be covered in the peer review assessments:

- *Interface between competition and trade policies*: critical evaluation of the Commission's implementation of the country's competition and trade tariffs policies under one roof;
- *Merger control*: the apparent inadequacy of the present definition of 'merger' in the Competition Act [Chapter 14:28] which seem to exclude certain combinations that are harmful to competition, such as conglomerate mergers and joint ventures;
- *Institutional issues*: the lack of clear separation of the Commission's investigative and adjudicative functions, which poses potentially natural justice, and due process, problems;
- *Role of the courts*: the dual roles of the High Court of Zimbabwe and the Administrative Court on the Commission's competition decisions;
- *Relations with sector regulators*: the jurisdictional conflicts between the Commission and sector regulators on promotion and enforcement of competition policy and law in regulated sectors; and
- *Proposed amendments to the Act*: the best way forward in effecting the necessary modifications of the country's competition law.

The scope of work on the voluntary peer review of Zimbabwe as agreed with UNCTAD Secretariat required the UNCTAD consultants to prepare an assessment Report on the work of the Competition and Tariff Commission. The Report was to include a review of the historical and political context of the Competition Act, 1996 as amended in 2001 to include tariff provisions; a review of the substantive content of the Act, including other laws that have a bearing on competition; as well as to put forward recommendations on areas requiring further attention and improvement. In setting out its recommendations on areas that might benefit from improvement, the Report should specify amendments to the Act (or other legislation) or institutional and regulatory arrangements for the enforcement of the Act, in any. In preparing the Report, the consultant should be guided by the United Nations Set of Principles on Competition, and the UNCTAD Model Law.

Besides the Commission, two other competition authorities in the region also volunteered to be peer reviewed. These were the Competition and Consumer Protection Commission of Zambia, and the Fair Competition Commission of Tanzania. UNCTAD therefore decided to have a tripartite peer review exercise involving the three countries, under which the countries would review each other. In

that regard, it was agreed that Zambia would review Tanzania, and Tanzania would review Zimbabwe, while Zimbabwe would review Zambia. Under the arrangement, national competition consultants from the three countries would research and draft the country reports, which would be consolidated by an international consultant.

The peer review exercise commenced in earnest in October 2011, with the fact-finding visit to Zimbabwe by the UNCTAD consultant, a senior official of the Fair Competition Commission of Tanzania.

The peer review report on the implementation of competition policy and law in Zimbabwe was being drafted by the UNCTAD consultant by the end of the year under review.

(b) Competition Advocacy and Networking

The Commission concluded and signed competition compliance programmes and agreements with two large companies during the year under review, i.e., with Schweppes Zimbabwe (Pvt) Limited in June 2011, and with Delta Corporation in August 2011. Discussions with Innscor Africa on the conclusion of a similar programme were underway by the end of the year under review.

A compliance programme provides a formal internal framework for ensuring that businesses comply with competition law. It may include such elements as training to raise awareness of the law, the use of checklists to ensure compliance by individual staff with company policies, recording systems to document any permitted contacts that staff have with competitors, and independent reviews of agreements, behaviour and staff to monitor ongoing compliance. A successful compliance programme should minimise the risk of a business from infringing the Competition Act. A compliance programme can also help a business identify any possible infringements early on, allowing it to take appropriate remedial action.

Even though the Competition Act [*Chapter 14:28*] does not specifically provide for the conclusion of concurrent jurisdiction agreements with sector regulators with competition functions, the Commission nevertheless aims at concluding such agreements to avoid jurisdictional conflicts. In that regard, consultations with the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) were ongoing by the end of the year under review on the conclusion of a Memorandum of Understanding (MoU) on concurrent jurisdiction in competition cases in the postal and telecommunications sector.

The Commission continued its efforts of ensuring coherence between the implementation of the country's competition policy and other socio-economic policies through consultative meetings with relevant economic Ministries in the undertaking of competition investigations and enforcement of remedial action. It also continued to advocate for competition in different fora such as the National Economic Consultative Forum (NECF). In that regard, the Director in April 2011 made a presentation on *Current Position Regarding Mergers and Cartels in the Economy* at a meeting of the NECF's Industrial Policy Task Force.. Furthermore, in recognition that the ultimate objective of the implementation of competition policy and law is consumer welfare, the Commission extensively consulted the Consumer Council of Zimbabwe (CCZ) in the investigation of all its competition cases.

International networking on competition matters was nurtured throughout the year under review through participation in work programmes of organizations such as the United Nations Conference on Trade and Development (UNCTAD), the Consumer Unity & Trust Society (CUTS), the Common Market for Eastern and Southern Africa (COMESA), and the Southern Africa Development Community (SADC). The Commission was also admitted as a member of the International Competition Network (ICN) in May 2011, largely through the support of Professor William Kovacic, then the Chairman of the Federal Trade Commission (FTC) of the United States, and Dr. Bruno Lasserre, President of l'Autorité de la Concurrence (the French competition authority).

The African Competition Forum (ACF) was formally launched in March 2011 as a network of competition authorities in African countries. The network is comprised of competition authorities of 41 countries, including the Commission, out of 54 African countries. It is tasked with enhancing the adoption of competition laws, building the capacity of new competition authorities, and assisting in advocating the implementation of competition law to the benefit of African economies.

(c) Cooperation with other Competition Authorities

The Commission throughout the year under review cooperated with a number of other competition authorities, particularly in exchange of information and investigation of competition cases. In some instances, the cooperation extended to giving technical support in the actual handling of competition cases. Competition authorities that were cooperated with included the Competition and Consumer Protection Commission of Zambia, the Namibia Competition Commission, the Fair Competition Commission of Tanzania, the Competition Commission South Africa, the Competition Commission of Mauritius, and the Competition Authority of Botswana.

Cooperation with other competition authorities on the African continent was done through the COMESA Competition Commission, in which the Commission is represented at Board level, and the SADC Competition and Consumer Policy and Law Committee, which organises annual training workshops on competition policy and law at which the Commission provides resource persons.

(d) Competition Workshops and Seminars

The Commission during the year under review attended and participated at not less than 10 international workshops and seminars on competition policy and law, as listed in Table 17.

Table 17: Competition Workshops and Seminars Attended in 2011

Period	Workshop/ Seminar	Participant(s)
4-7 April	PAI Training Workshop on "Competition Policy: How to Level the Playing Field": London, United Kingdom	D. Sibanda, V. Zifudzi, A.J. Kububa
2-3 March	First Conference of the African Competition Forum (ACF): Nairobi, Kenya	A.J. Kububa, B. Chinhengo
17-20 May	ICN Annual Conference: The Hague, The Netherlands	S.Z. Dandira, A.J. Kububa, B. Chinhengo
19-21 July	11 th Session of the Inter-Governmental Group of Experts on Competition Law and Policy (IGE): Geneva, Switzerland	A. Mutemi, A.J. Kububa, M. Gurure
27 June – 1 July	SADC Regional Training Workshop on Competition and Consumer Policy: Gaborone, Botswana	A.J. Kububa, C. Mashava, C. Dzenga, E. Manjongwa
10-11 October	COMESA Council of Ministers on the Swearing-In of Members of the COMESA Competition Commission, Lusaka, Zambia	A.J. Kububa
10-13 October	ICN Cartel Workshop: Bruges, Belgium	B. Chinhengo
27-28 October	SADC RoundTable on Regional Competition Policy: Gaborone, Botswana	A.J. Kububa, B. Chinhengo
1-2 December	SADC End of TradeCom Project Validation Workshop: Gaborone, Botswana	B. Chinhengo
12-13 December	COMESA Workshop on the Implementation of a Regional Competition Regulatory Framework in the Common Market for Eastern and Southern Africa: Lusaka, Zambia	A.J. Kububa, B. Chinhengo

4.3 TARIFFS OPERATIONS

The Commission's tariffs operations are handled by the Tariffs Division, whose manning throughout the 2011 year under review was stable, as shown in Table 18.

Table 18: Manning of the Tariffs Division in 2011

Name of Officer	Position	Qualification	Duration
Ms. Ellen Ruparanganda	Assistant Director	Economics, and Business Administration	Throughout the Year
Mr. Charles Chipanga	Chief Economist	Economics	Throughout the Year
Mrs. Chinyaradzo Phiri	Senior Economist	Economics	Throughout the Year
Mr. Tawanda Katsande	Economist	Economics	Throughout the Year
Mr. Tatenda Zengeni	Economist	Economics	Throughout the Year

The Commission's tariffs operations are governed and guided by the provisions of Part IVB of the Competition Act [Chapter 14:28] on '*investigation of tariff charges and related unfair trade practices*'. The term 'tariff charge' is defined in terms of section 34B of the Act to mean "any duty, tax or charge levied by the State in connection with commodities or services imported into or exported from Zimbabwe", while the term 'unfair trade practice' is defined to mean "the dumping of imported commodities", "the granting of a bounty or subsidy with respect to imported commodities" and "any other practice in relation to the importation of commodities or services of 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 Commerce)".

In its tariff operations, the Commission gives assistance or protection to local industry through, *inter alia*,: (i) the raising of tariff charges on imported commodities or services that compete with commodities or services provided by local industry; (ii) the lowering of tariff charges on imported commodities or services that are used by local industry; (iii) the implementation of legislative or administrative measures for the purpose of countering unfair trade practices; and (iv) the technical assistance to Government in the conclusion of arrangements with other countries for the benefit of local industry.

The Tariffs Division of the Commission investigates, analyses and makes recommendations to the Tariffs Committee of the Board of Commissioners on all trade tariffs cases and issues. The Commission's decisions on tariffs issues are submitted as recommendations to the relevant government authorities, through the Minister of Industry and Commerce. The Division's staff establishment and strength during most of the 2011 year review is shown in Table 19.

Table 19: Staff Establishment and Strength of the Tariffs Division in 2011

Position	Grade	No. of Posts On Establishment	No. of Posts Filled	Staff Strength
Assistant Director	E2	1	1	100%
Chief Economists	D3	2	1	50%
Senior Economists	D2	2	1	50%
Economists	D1	4	2	50%
Totals		9	5	55%

The Division's staffing level, at 55% staff strength, remained precarious throughout the year, relative to the work required, as the Commission was unable to recruit replacement and additional staff due to a Government freeze on recruitment in the public sector. One of the Division's Economists was

attached to the COMESA Secretariat in Lusaka, Zambia, during the whole of April 2011 to get practical experience in the implementation of trade policy at regional level.

4.3.1 TARIFFS CASES

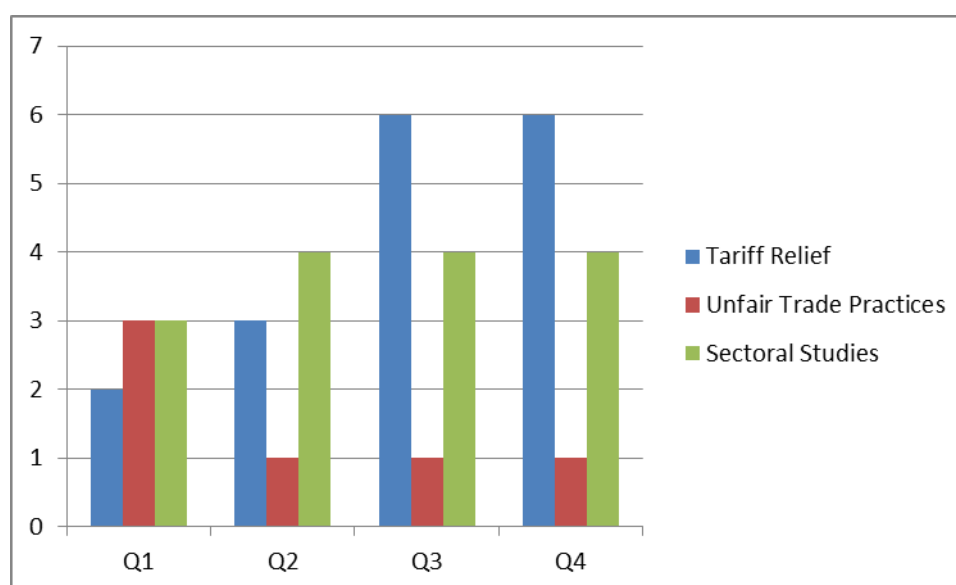
During the 2011 year under review, the Commission handled a total of 15 tariffs cases, of which 8 were tariff relief applications, 3 involved unfair trade practices, and 4 were sectoral studies. The number of tariffs cases handled over the years since the effective coming into operations of the Commission in 1999 is comparatively shown in Table 20.

Table 20: Number of Tariffs Cases Handled Over the Years

Case Category	1999-2001	2002-2004	2005-2007	2008-2010	2011	Total
Tariff Relief	37	44	12	17	8	118
Unfair Trade Practices	0	0	0	4	3	7
Sectoral Studies	6	8	0	9	4	27
Totals	43	52	12	30	15	152

Graph 6 shows the intensity of tariffs case handling throughout the year under review. The handling of tariff relief cases on tariff reductions and protection was predominant during the year, followed by sectoral studies. The handling of cases involving unfair trade practices (i.e., dumping and subsidisation) continued to be subdued, mainly because of lack of investigative skills on the part of the Commission and lack of knowledge of trade defence regulations on the part of the business community. Most activity on tariff cases was during the Third and Fourth Quarters of the year.

Graph 6: Tariffs Case Handling Intensity in 2011

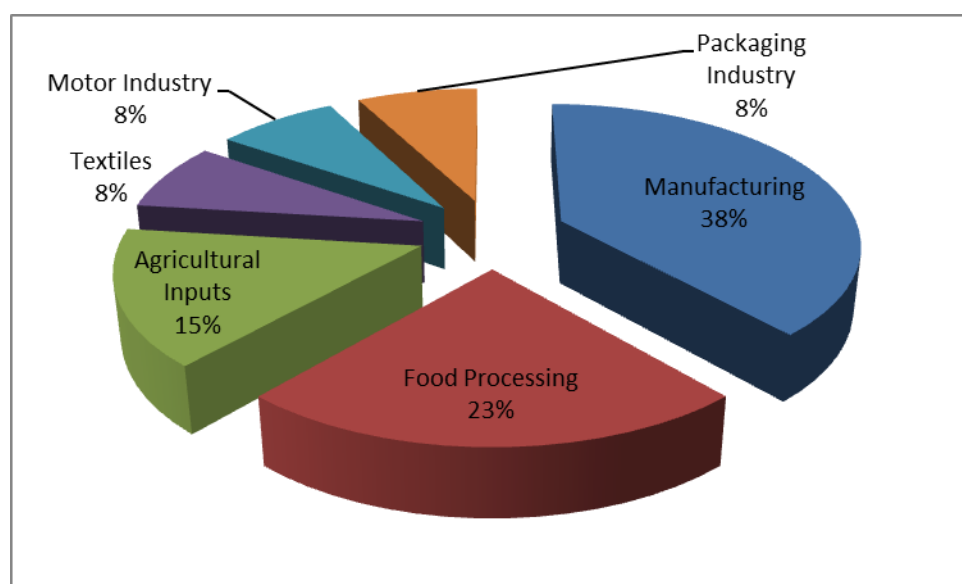


The Commission in its tariffs operations during the year under review engaged itself in not less than 13 times in various sectors and industries. The most engagements were in the manufacturing industry, followed by the food processing industry and the agricultural inputs industry. Other industries engaged were the textiles industry, the motor industry and the packaging industry. The engagements are shown in Table 21 and Graph 7, with Table 21 indicating the types of engagements.

Table 21: Sectoral Tariffs Engagements in 2011

Sector	No. of Engagements			
	<i>Tariff Relief</i>	<i>Unfair Trade Practices</i>	<i>Studies</i>	<i>Total</i>
Manufacturing Industry	3	2	0	5
Food Processing Industry	1	1	1	3
Textiles Industry	0	0	1	1
Motor Industry	0	0	1	1
Agricultural Inputs Industry	1	0	1	2
Packaging Industry	1	0	0	1
Totals	6	3	4	13

Graph 7: Sectoral Distribution of Tariffs Engagements in 2011



(a) Tariff Relief Applications

The Tariffs Division of the Commission investigated a total of 8 tariff relief cases during the 2011 year under review, and the Commission made recommendations to the relevant government authorities on 4 of the cases. Figure 7 breaks down the investigated cases, and the brief outlines of the cases on which the Commission made recommendations to the relevant government authorities, through the Minister of Industry and Commerce are given in Table 23.

Figure 7: Tariff Relief Cases Investigated in 2011

Cases Brought Forward from 2010	3
New Case Applications in 2011	5
Total Cases Investigated in 2011	8
Cases Made Recommended On in 2011	4
Cases Carried Forward to 2012	4

Table 22: Tariff Relief Recommendations in 2011

Requesting Company	Relief Sought	Case details and Recommendations
Duly Motors (Pvt) Limited	Import Duty Reduction	The Commission received an application from Duly Motors (Pvt) Limited requesting for tariff relief on <i>Ford Bantam</i> pick-up trucks, under tariff codes 8704.2130 and 8704.3130, for petrol and diesel engines respectively. The motor vehicles were being charged 40% duty on importation, and the company requested for a 20% downward duty review. The company was of the view that the <i>Ford Bantam</i> pick-up truck is a commercial vehicle hence must be treated the same as other commercial vehicles. Commercial vehicles (pick-ups) of a payload of more than 800kgs but not exceeding 1 400kgs attracted a 20% rate of duty under tariff codes 8704.2140 and 8704.3140 as amended in the Statutory Instrument 120 of 2009. The payload for the <i>Ford Bantam</i> is 650kgs. The Motor Industry Association did not have a clear position on Duly Motors' request as its members constitutes of both importers and assemblers of motor vehicles. The importers supported the request whereas the assemblers were against the reduction of duty on the motor vehicles, arguing that customers usually do not differentiate between vehicles basing on their uses but rather on prices. It was submitted that the proposed duty reduction on the motor vehicles would adversely affect local manufacturers since competing imports would be much cheaper. The Commission noted that the term 'local industry' in relation to tariff assistance or protection given under the Competition Act [Chapter 14:28] is defined in terms of section 34B of the Act as to mean "the persons who in Zimbabwe are engaged in the business of producing or providing, otherwise than by importation, commodities or services for consumption in or export from Zimbabwe, and includes any class of such persons". Therefore, since Duly Motors (Pvt) Limited was an importer of completely built vehicle, and not local industry as defined in the Act, the Commission recommended to the relevant government authorities that the requested tariff relief cannot be given.
Haggie Rand Zimbabwe (Pvt) Limited	Tariff Protection	The Commission received a request for tariff protection under the SADC Trade Protocol from Haggie Rand Zimbabwe (Pvt) Limited, a manufacturer of a wide range of wire products falling under tariff code 7217.1000 (wire), 7313.0000 (barbed wire) and 7314.4100 (fencing wire), against imports from South Africa, which were a major threat to its business. Wire products from South Africa attract 5% import duty if imported under the Zimbabwe-South Africa Trade Agreement, 0% under the SADC Trade Protocol, and 20% if imported from the rest of the world under MFN. Haggie Rand requested the imposition of a 15% duty on the products imported from South Africa under the SADC Trade Protocol. From its investigation and analysis, the Commission established the

		following: (i) the requested 15% duty would be ineffective as the landed price of imports would still be lower than the price of locally produced products; (ii) the applicant company's equipment was antiquated, costly to operate, inefficient and therefore adding on to the production costs - the company was therefore a high cost and inefficient producer, which was even failing to meet local market demand, and If protection was accorded, that would not only disadvantage consumers but the action would be inflationary; (iii) the company's production costs were higher than the selling price of imports, hence it could not compete, and concurrently, its mark-ups were too high when compared to imports; (iv) stakeholders opposed the protection as they feared that South Africa might retaliate, thus affecting their export business if the protection was given; and (v) the outlook was that New Zimbabwe Steel, a local steel company, was expected to produce steel in the near future, logistical challenges would be minimal, hence the situation would in turn favour local producers like Haggie Rand Zimbabwe. The Commission therefore recommended to the relevant government authorities the turning down of Haggie Rand Zimbabwe (Pvt) Limited's request for tariff protection.
National Foods (Pvt) Limited	Duty Reinstatement	The Commission received a request from National Foods (Pvt) Limited for reinstatement of import duty on maize-meal, and the introduction of duty on imported Genetically Modified Organism (GMO) maize-meal. Investigations into the request showed that although Zimbabwe had excess installed milling capacity, the sector had been unable to get sufficient maize requirements from the local market due to poor performance of the agricultural sector. Imports of maize, mainly from Zambia, South Africa and Malawi had been used to augment local supply. The cost of producing GMO maize is lower than that of GMO-free maize, thus making the landed cost of GMO maize per tonne was lower than the cost of locally produced GMO-free maize, adversely affecting the local industry's competitiveness. The Commission recommended the introduction of a tariff split to distinguish between GMO and non-GMO mealie-meal.
ProPlastics (Pvt) Limited	Tariff Protection	The Commission received a request from PropPlastics (Pvt) Limited for tariff protection on high density polyethylene (HDPE) and polyvinyl chloride (PVC) pipes against imports from South Africa. ProPlastics alleged that plastic pipes were being imported duty free from South Africa as the products were regarded as agricultural implements under the Government facility on duty free importation of such implements. The company claimed that it cannot compete with foreign companies boasting of the latest technology, with the ability to negotiate good material prices on the back of the volumes they push, culminating in imported products being cheaper than locally manufactured plastic goods. Investigations carried out revealed that ProPlastics is competitive as its prices are lower than its main competitor in South Africa where the competition stems from, and the company's export volumes had been increasing over the years reflecting its ability to compete in

		foreign markets. Granting protection to the company could therefore encourage inefficiencies leading to increases in prices, which in turn would affect the economy at large due to its strong forward linkages with sectors such as agriculture. It was also noted that although ProPlastics sourced its raw materials from South Africa zero rated, the company should be encouraged to source its raw material requirements from cheaper sources around the world by removing the MN duties on the raw materials. The removal of duty would be in line with the Mid-term Fiscal Policy Review thrust in which Government recommended the removal of duty on raw materials and capital goods. Therefore, while the Commission recommended to the relevant government authorities the turning down of PropPlastics (Pvt) Limited's request for tariff protection, it nevertheless also recommended the removal of all MFN duties on plastic pipe raw materials.
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As in previous years, the Commission's consideration of tariff relief applications during the year under review showed that requests for duty reduction on raw materials were more favourably considered than those for tariff protection. Tariff protection is generally found, except in exceptionally circumstances involving the viability, and imminent closure of the enterprise, to be inconsistent with the country's trade liberalisation obligations under regional trade agreements, such as under the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC).

The 4 outstanding tariff relief cases that were carried forward to 2012 are listed in Table 23.

Table 23: Outstanding Tariff Relief Cases Carried Forward to 2012

Requesting Company	Relief Sought	Request Submission
Universal Bags (Pvt) Limited	Duty Reduction on Raw Materials	May 2011
Zimplow (Pvt) Limited	Duty Reinstatement and Tariff Protection on Agricultural Equipment	May 2011
Crystal Candy (Pvt) Limited	Duty Reduction on Raw Materials	July 2011
Nestle Zimbabwe (Pvt) Limited	Waiver of Duty on Chicory	December 2011

(b) Unfair Trade Practices

The Tariffs Division during the year under review handled a total of 3 tariffs cases involving unfair trade practices for investigation under the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002 (Statutory Instrument 266 of 2002). The handled cases are broken down in Figure 8.

Figure 8: Unfair Trade Practices Cases Handled in 2011

Cases Brought Forward from 2010	3
New Cases Referred in 2011	0
Total Cases Handled in 2011	3

Cases Terminated in 2011	2
Cases Carried Forward to 2012	1

Of the three cases that were handled during the year, investigations on two of them were terminated for lack of evidence substantiating the alleged dumping and subsidisation practices. Brief details of the cases are given in Table 24.

Table 24: Terminated Investigations into Unfair Trade Practices in 2011

Complainant	Unfair Trade Practice	Case Outcome
National Foods (Pvt) Limited	Dumping	National Foods (Pvt) Limited complained that wheat flour originating from Mozambique was being dumped into the country, and that the unfair trade practice was negatively affecting one of the company's strategic business units. A preliminary analysis of the complaint however showed that the wheat was not being dumped into the country as the selling price was higher in Zimbabwe than in the source country, Mozambique, after factoring in all other costs, which is inconsistent with the fundamentals of dumping. National Foods did not refute the preliminary findings and accordingly withdrew its complaint.
Double-Edge Industries	Dumping	Double-Edge Industries complained that foreign steel fasteners were being dumped on the Zimbabwean market. The company however subsequently realised that imports of the fasteners did not fall under the strict definition of 'dumping', but that they were still injurious to its operations. It therefore decided to apply instead for tariff protection, or for relief under the Competition (Safeguards) (Investigation) Regulations, 2006 (Statutory Instrument 217 of 2006).

The one case that was carried forward to 2012 involved allegations by Dunlop Zimbabwe (Pvt) Limited that foreign motor vehicle tyres from the Far East were being dumped on the Zimbabwean market. The company was yet to fill and submit detailed anti-dumping application forms by the end of the year under review.

(c) Sectoral Studies

A total of 4 sectoral studies into trade tariffs issues were undertaken by the Tariffs Division during the year under review, and all of them were still ongoing by the end of the year, as shown in Figure 9.

Figure 9: Sectoral Studies Undertaken in 2011

Studies Brought Forward from 2009	2
New Studies Initiated in 2010	2
Total Studies Undertaken in 2010	4
Studies Concluded in 2010	0
Studies Carried Forward to 2011	4

The industrial sectors that were under study were: (i) the textiles industry (blankets); (ii) the agro-industrial sector (poultry); (iii) the chemicals industry (fertilizers); and (iv) the motor industry. The primary purpose of the studies was to assist the Commission in making more informed recommendations to the relevant government authorities on future tariffs changes.

4.3.2 TECHNICAL WORK ON TRADE POLICY ISSUES

The Commission's Tariffs Division undertook on behalf of the Ministry of Industry and Commerce, and the Ministry of Finance, technical work on various trade policy issues, as outlined in Table 25.

Table 25: Technical Work on Trade Policy Issues Undertaken on Behalf of the Government in 2011

Work Undertaken	Beneficiary Ministry
Preparation of draft Schedules under COMESA as follows: (i) Schedule i (tariffs that align to the COMESA CET); (ii) Schedule ii (tariffs to be aligned to the COMESA CET); and (iii) Schedule iii(a) and (b) (being the sensitive and excluded products lists).	Ministry of Industry and Commerce
Contribution to the 2012 National Budget. The Commission's recommendations covered: (i) the need for a general tariff review to address the anomalies in import duty rates between raw materials and finished goods; (ii) the reduction of import duties on industrial inputs; (iii) addressing the anomalies of bound tariffs under the World Trade Organisation (WTO); (iv) most-favoured-nation (mfn) duties that exceed bound tariffs levels under the WTO; (v) levying of duties on imported motor vehicles over five years; and (vi) enforcement of the legislated tariffs at border posts.	Ministry of Finance
Contribution to the Mid-Term Fiscal Policy Review. The highlights of the submission were as follows: (i) the need to maintaining a cascading tariff structure consistent with value addition; (ii) the introduction of a tariff split to distinguish between GMO and non-GMO maize meal; (iii) duty reduction for raw materials in the battery, poultry and stockfeeds sectors; and (iv) curbing of smuggling at border posts as that was affecting the viability of some industries, notably the blankets and poultry industries.	Ministry of Finance

4.3.3 TRADE NEGOTIATIONS WORK

The Commission's Tariffs Division attended and participated at 7 preparatory meetings on trade negotiations that were held at the Ministry of Industry and Commerce. Of those, 2 were on negotiations under the Southern Africa Development Community (SADC), 3 on negotiations under the Common Market for Eastern and Southern Africa (COMESA), and 2 on negotiations under the Economic Partnership Agreement (EPA) between East and Southern African countries (ESA) and the European Union (EU).

The Commission, represented by its Tariffs Division, attended and participated in 10 regional trade negotiations meetings during the year under review, as shown in Table 26.

Table 26: Trade Negotiations Meetings Attended in 2011

Regional Grouping	Meeting	Major Outcomes
Common Market for Eastern and Southern Africa (COMESA)	COMESA Policy Organs Meetings: 4-14 October 2011: Lilongwe, Malawi	The Policy Organs meetings incorporated the following:

		• Thirteenth Meeting of the Intergovernmental Committee, held during the period 6-8 October 2011; • Thirteenth Meeting of the Council of Ministers, held during the period 10-11 October 2011; • Meeting of the Economic Partnership Agreement Minister, held on 12 October 2011; and • Fifteenth Summit of the COMESA Authority of Heads of State and Government, held during the period 14-15 October 2011. The meetings received reports from various Committees within COMESA. The highlight was that COMESA did not have the critical mass in terms of numbers of member States required to establish a Customs Union by June 2012. The member States who also belong to the East African Community (EAC) were already in another Customs Union (CU), and therefore cannot join another CU. Four member States (Mauritius, Libya, Seychelles, and Egypt) were having problems in raising their already low tariffs to the Common External Tariff levels, and others, such as Eritrea and the Democratic Republic of the Congo, were still to join the COMESA Free Trade Area. The above delays would however provide Zimbabwe with ample time to recapitalise and re-equip in readiness for the Customs Union.
Southern Africa Development Community (SADC)	Meetings of the Committee of Ministers Responsible for Finance and Investment, Ministerial Task Force on Regional Economic Integration, and Committee of Ministers of Trade: 7-14 February 2011: Windhoek, Namibia.	The meetings approved the derogation for Zimbabwe from implementing tariff phase down for Category C products until 2012 when the annual reductions would resume and be finalised in 2014. The concurrently agreed to develop a criteria for derogations for future use by member States seeking to derogate from their SADC commitments made in the year 2000.
	Ministerial Task Force on Regional Economic Integration, and Committee of Trade: 20-26 November 2011: Luanda, Angola.	The highlights of the meeting were as follows: • The adoption of single or double transformation Rules of Origin (RoO) for the textile and clothing sector; • Draft criteria on application for derogation; • Preparations for SADC Symposium on Application of Trade Remedies; • Report back on implementation of Zimbabwe's Category 'A' and 'B' Tariff Phase Down.
East and Southern Africa/European	Joint Technical Working Group Meeting: 28 June-1 July 2011:	Trade negotiations on outstanding areas, namely trade in goods, and trade in services.

Union-Economic Partnership Agreement (ESA/EU-EPA)	Brussels, Belgium.	
	Joint Technical Working Group Meeting: 24 November-1 December 2011: Port Louis, Mauritius	Continuation of negotiations on outstanding areas.
COMESA/SADC/EAC Tripartite	Second Meeting of the Tripartite Ministerial Committee: 9-14 May 2011: Lusaka, Zambia.	The meeting was in preparation for the Tripartite Free Trade Area (TFTA) Negotiations. The Tripartite Task Force made proposals on the TFTA negotiating principles, processes and institutional framework, the roadmap establishing the TFTA, working texts for negotiating the Free Trade Area Agreement, a declaration for launching negotiations, and prepared the status of implementation of the decisions of the First Tripartite Summit.
	Second Summit Meeting of the COMESA-EAC-SADC Heads of State and Government: 10-12 June 2011: Pretoria, South Africa.	The Summit signed the Declaration launching the negotiations for the establishment of the Tripartite Free Trade Area, agreed on the roadmap for establishing the TFTA, and the principles, processes and institutional framework.
	First Meeting of the Tripartite Trade Negotiating Forum: 7-9 December 2011: Nairobi, Kenya.	The meeting formally constituted the tripartite negotiating forum, as well as the administrative arrangements to facilitate the conduct of negotiations of the TFTA.
World Trade Organisation (WTO)	Eighth WTO Ministerial Conference: 15-17 December 2011: Geneva, Switzerland.	The conference reviewed the entire breathe of the WTO work programme, and provided political guidance for the future work of the WTO, taking into account the impasse on the Doha Development Round of trade negotiations.
	Zimbabwe Trade Policy Review: 19-21 November 2011: Geneva, Switzerland.	Zimbabwe's second Trade Policy Review was successfully held under the auspices of the WTO, following the last review held 17 years ago. WTO Members lauded Zimbabwe's unilateral tariff liberalization, the upgrading of computerized customs clearance system, the improvements in the intellectual property regime, the adoption of the multi-currency regime in 2009, and the introduction of more discipline into the fiscal system. They highlighted key fundamental areas which still have to be addressed if the country is to spur trade growth. These include the indigenization policy, the tariff regime, developments in the mining sector, the land reform programme and the legal protection of investments in the light of Zimbabwe's land reform programme. They noted that these factors influence the pull factors for investment which Zimbabwe is currently starved off.

		Other areas identified included the need for structural reforms, simplification of the tariff regime, arbitrary quantitative restrictions and import bans, and outstanding notifications on SPS and TBT requirements for imports. The majority of Member States however highlighted that Zimbabwe was violating its tariff bindings at the WTO on possibly 64 non-<i>ad valorem</i> tariffs.
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The Commission however could not attend four key trade negotiating meetings because of financial constraints. The meetings were: (i) the Third Meeting of the Committee on the COMESA Customs Union, that was held in Lusaka, Zambia, during the period 3-5 August 2011; (ii) the Twenty-Seventh Meeting of the COMESA Trade and Customs Committee, that was held in Mbabane, Swaziland, during the period 15-18 August 2011; (iii) the SADC Trade Negotiating Forum, held in Gaborone, Botswana, during the period 27 July – 2 August 2011; and the SADC Summit Meetings, held in Luanda, Angola, in July 2011.

4.3.4 OTHER TARIFFS-RELATED ACTIVITIES

(a) Consultative Meetings

The Commission's Tariffs Division during the year under review held consultative meetings with companies in various industries and sectors to appreciate the companies' production processes, their requirements and sources of raw materials and other production inputs, and challenges they were facing, with the intention of assessing their overall competitiveness. Most of the meetings were held as part of factory visits to the companies, and were related to ongoing tariff relief and unfair trade practices investigations, and to the undertaking of sectoral studies. Table 27 shows some of the companies and industries visited and summarises the consultations held.

Table 27: Consultative Meetings Held with the Business Community in 2011

Company/ Industry	Issues Discussed
Willowvale Mazda Motor Industries (Pvt) Limited	A factory visit to Willowvale Mazda Motor Industries (Pvt) Limited in the Willowvale Industrial Area of Harare was carried out in February 2011 as part of the study in the motor industry. The visit was undertaken with a view to familiarise the Tariffs Division with the operations of the company, the problems being faced and identifying areas of possible intervention with the ultimate aim of coming up with an informed study on the motor assembly industry. Willowvale Mazda Motor Industries assembles commercial vehicles (Mazda BT 50 Range) and passenger vehicles (Mazda 3), and employs 203 workers. Production is for the local market only. The company was operating at 10% capacity utilization. Production levels were 578 vehicles in 2010 and the projection for 2011 was 1 300 vehicles. Its market share was 11% in 2010 and was expected to go up to 20% in 2011. The company's main input is the completely knocked down (CKD) kits imported from Japan, and constitutes 80% of the cost build-up of the vehicle. The main challenges faced by the company include: (i) perceived unfair competition from South Africa; (ii) lowering of duty on certain segments of vehicles; (iii) influx of second hand vehicles into the market, iv) low liquidity in the market; (v) costly

	utilities; (vi) local suppliers of parts; and (vii) antiquated machinery. In general, Willowvale Mazda Motor Industries felt that the industry outlook was bleak as there was no Government policy in place to guide the development of the industry. It recommended that a Motor Industry Development Policy be urgently put in place that would guide the development of the industry.
Zimbabwe Phosphate Industries	The Tariffs Division in February 2011 undertook a factory tour of Zimbabwe Phosphate industries (ZimPhos) in Harare. The objective of the tour was to enlighten the Division on the stages and processes of making phosphates used in fertilizer manufacturing, imported and locally available inputs, the use of these products in making phosphates and challenges faced by the company, as part of its study into the fertilizer industry. ZimPhos produces phosphates used in fertilizer manufacturing, but in the process as well as other by-products such as sulphuric acid, phosphoric acid, gypsum, aluminium sulphate and silicate solution. The inputs used for phosphate manufacturing are phosphate rock from Dorowa, and imported phosphoric acid and sulphuric. Sulphuric acid is imported from the Middle East and attracts a duty of 5% plus VAT. Other imported inputs are sulphur, amitraz and deltamethrin, which attract 5% duty. There was an anomaly whereby the inputs into fertiliser manufacturing are charged duty but the fertiliser is imported duty free. On the other hand, all other players in the fertiliser industry import their raw materials duty free and are exempted from paying VAT. The main challenge faced by ZimPhos was of VAT and duty on sulphuric acid which was impacting heavily on the company's liquidity. To assist ZimPhos, duty on the company's raw materials (i.e., sulphur, amitraz and deltamethrin) must be reduced to 0%.
National Foods Limited	The Tariffs Division in April 2011 conducted a factory tour at National Foods Limited's maize milling plant in the Aspidale Industrial Area of Zimbabwe as part of its investigations into the request for tariff protection on GMO maize meal products. National Foods is Zimbabwe's largest nationwide miller, oil processor and packaging company. The company was established before Independence, and the plant in Aspidale was officially commissioned in 1982. It has processing plants in Harare, Bulawayo, Mutare, Gweru and Masvingo. The company formulates processes and packages all types of consumer and stock feeds as well as a range of specialist stock feeds for livestock, including feeds for freshwater aquaculture. It employs a total of 800 workers, down from the 1 200 permanent workers and 800 contract workers that it used to employ. The company has three mills and two are currently operational with the other laying idle because the two can meet demand. <i>Roller Meal</i> and <i>Parlenta</i> mealie-meal are the two major brands produced by the company, and both are milled concurrently. The company's capacity is 60 000 tonnes per month, which is higher than the largest miller in South Africa with a capacity of 25 000 tonnes per month. The major challenge faced by the sector is the smuggling of mealie-meal into the country as the Ministry of Agriculture stopped issuing permits as of October 2010. The smuggled mealie-meal is bleached and contains low fibre content, thus making it not suitable for children below the ages of 12 years, and the elderly over 65 years. It also has a fibre content of 0.1%, which is below the 5% stipulated by Zimbabwean law. The total cost of production on mealie-meal varies according to source of the maize. The major challenges faced by the industry include: (i) imports of maize-meal which are inconsistent with bio-safety labelling standards which requires that GMO

	products should be clearly labelled; (ii) Zambia produces GMO-free maize and is currently subsidizing its millers buying maize at USD\$160 per tonne - given that the country has adequate maize for its consumption, its millers can easily export into Zimbabwe at US\$280 per tonne ex-factory; (iii) the cost of inputs such as seed and fertilizer are high in Zimbabwe, resulting in the cost base being higher than farmers in the region who are currently being subsidized by their Governments - for example, the cost of fertilizer in Zambia is USD\$15 per 50kg bag compared with \$USD27 for the same. The milling industry in Zimbabwe supports the Government stance on banning the growing of GMO maize. National Foods requested that the duty suspension be removed and tariffs should be re-introduced for GMO maize meal as it is cheaper by between 20-30% posing major competition for local industry.
Chloride Zimbabwe (Pvt) Limited	Chloride Zimbabwe (Pvt) Limited was visited in May 2011 at its factory in the Workington Industrial Area of Harare. The company manufactures the <i>Exide</i> wet cell automotive batteries under a franchise agreement, and is an affiliate member of the Battery Manufacturers Association. It was established in 1956 and employs 250 people directly in the manufacturing process. Its capacity utilization ranges between 45-50%. The company's production steadily increased since the beginning of the year from 9 000 units in February 2011 to 12 000 units in April 2011. It exports its batteries to Zambia, South Africa, Botswana and Namibia. It is however lagging behind in terms of technology due to limitations in long term capital. It imports most of its raw material requirements as these are not available locally. The challenges faced by the company are: (i) imports from South Africa with a rule of origin certificate are not paying the appropriate duty; (ii) aged equipment; (iii) a large number of scrap batteries being illegally smuggled out of Zimbabwe into Zambia, Botswana and South Africa has negatively affecting the ability of the company to recycle and thereby increasing the cost of production; (iv) the lack of working capital for the importation of raw materials and components including the actual production of components is impacting heavily on the ability of Chloride Zimbabwe to achieve the requisite volumes to satisfy the market and to increase capacity utilization; (v) high labour costs due to high expectations by workers; and (vi) high utility bills especially water and electricity which are higher than the regional averages. In general, it was found that the sector was lagging behind in terms of technology and was therefore incurring high maintenance costs. However, the Ministry of Finance in conjunction with the Zimbabwe Revenue Authority had been trying to address some of the challenges such as duty circumvention by importers and ensuring the correct duties are paid.
ProPlastics (Pvt) Limited	ProPlastics (Pvt) Limited is a division of Murray & Roberts (Zimbabwe) (Pvt) Limited, and is a specialist manufacturer and supplier of PVC, HDPE and LDPE pipes and related fittings for various applications in irrigation, water and sewer reticulation, mining, telecommunications, and building construction. Its products are certified by the Standards Association of Zimbabwe (SAZ) and the South African Bureau of Standards (SABS). A tour of ProPlastics' factory in the Ardbennie Industrial Area of Harare was undertaken in May 2011. The objective of the visit was to enlighten the Tariffs Division of the Commission on the state of the plastic pipe manufacturing company's challenges in response to its request for tariff protection. The company has a well-equipped factory with capacity to produce 12 000 tonnes of pipes per annum. It employs a total of 350 people, and its current capacity utilization is around 45%. Its

	major raw materials are, PVC resins, HDPE and stabilisers which are all imported duty free from South Africa using the SADC Free Trade Area agreement. Challenges faced by ProPlastics are: (i) stiff import competition from foreign suppliers such as DPI (South Africa) and Flotek (Botswana); (ii) duty free importation of pipes being imported as agricultural implements; and (iii) power outages which constrains production since the extruding equipment requires 8 hours heating prior to kick starting production.
Sable Chemicals (Pvt) Limited	A factory tour at Sables Chemicals (Pvt) Limited's plant in Kwekwe was undertaken in May 2011. The objective of the visit was to enlighten the Tariffs Division on the stages and processes of making ammonium nitrate used in the manufacturing of nitrogen, phosphates and potassium (NPK) compound fertilizer, and also used as straight fertiliser, as well as on the products imported by the company, the use of these products in making ammonium nitrate and the challenges being faced by the company. The Sables Chemicals factory was commissioned in 1969. The major inputs for ammonium nitrate (AN) manufacturing are air, water, electricity, ammonia, magnesium oxide, potassium hydroxide, sulphuric acid, water treatment chemicals and engineering spares. Most of these raw materials are sourced locally except for ammonia, potassium hydroxide and water treatment chemicals, which are all sourced from South Africa. The major imports of the company are spare parts for its antiquated machinery, with duties ranging from 5-25%. The company produces AN (agricultural grade and explosives), gaseous oxygen, liquid oxygen, demin water, anhydrous ammonia, nitric acid (57%), ammonium nitrate solution (83%) and ammonia solution (25%). It employs 550 people. Current capacity utilization is 45%. The main challenges faced by Sable Chemicals are: (i) the use of old technology on the water electrolysis plant for hydrogen production which consumes a tenth of the national electricity; (ii) high repair and maintenance of equipment resulting in many working hours lost; and (iii) lack of capital for brown and green field investments. The company is charged duty on spare parts importation and hence reduction of duties on the spare parts will positively contribute to the competitiveness of the company.
Dunlop Zimbabwe (Pvt) Limited	In September 2011, the Tariffs Division undertook a factory tour at Dunlop Zimbabwe (Pvt) Limited in Bulawayo. The factory tour was part of the Commission's investigation into Dunlop's allegations that foreign tyres were being dumped on the Zimbabwean market. The objective of the visit was therefore to enlighten the Division on the tyre making processes and stages, inputs into the process and challenges faced by the company. Dunlop Zimbabwe was established in 1950 and is wholly owned by Apollo Limited, an Indian company. The company employs 400 people, down from 1 200 people it used to employ in the 2000. It mainly produces radial tyres meant for use in rough/gravel roads, and imports cross-ply tyres from South Africa, suitable for smooth surfaces such as tarred roads, for distribution in the local market. The company's product range constitutes about 15% of the total market requirement. The company's imported raw materials in tyre manufacturing include natural and synthetic rubber, carbon black, wire, sulphur and zinc oxide. Natural rubber constitutes 70% of the tyre, carbon black is used as a filler and reinforcing agent whilst sulphur is used for hardening the rubber. The majority of these raw materials are imported duty free worldwide and some are accessed from the SADC region duty free using the SADC Rules of Origin certificate. The challenges faced by the company include: (i) high utility charges; (ii) import

	competition; (iii) lack of liquidity, long term and short term capital; (iv) logistics in transporting materials; and (v) use of antiquated equipment. The major challenge is lack of liquidity to recapitalize and import competition. It was therefore noted that there is need for massive capital injections particularly for the further upgrading of the plant and machinery and affordable working capital to maintain reasonable inputs stocks.
Scandia Wire (Pvt) Limited	Scandia Wire (Pvt) Limited in Bulawayo was visited in September 2011. The company manufactures hexagonal wire netting, diamond mesh, wire garment hangers, mild steel galvanised wire and allied wire products, and its products are ISO 9002 certified. The company sources its main raw material (steel) from South Africa duty free making use of the SADC Rules of Origin Certificate. Besides wire products, the company also produces plastic and fibre glass products like buckets, cooler boxes, toilet seats and water tanks. It employs 120 people and is currently operating at 50% capacity utilization. The challenges faced by the company include: (i) logistical problems; (ii) financial constraints; (iii) lack of long-term capital; (iv) high utility charges; and (v) import competition, mainly from South Africa. The resuscitation of New ZimSteel (formerly ZISCOSteel) was seen as a welcome development to the company and industry at large since it would be logistically easier to source inputs with the possibility of negotiating better credit terms.
Zimplow (Pvt) Limited	The Tariffs Division in September 2011 visited Zimplow (Pvt) Limited at its factory in Bulawayo. The visit was prompted by the Commission's investigations into the company's application for the reduction of duties on its raw materials in the light of the reinstatement of duties on some of its agricultural products. Zimplow was incorporated in 1939 as Rhodesia Plough and Machinery Company. After Independence, the company changed its name to Zimplow (Pvt) Limited and is listed on the Zimbabwe Stock Exchange. It has three divisions, namely Mealie Brand, CT Bolts, and Tassburg. The Mealie Brand Division is involved in the manufacture of animal drawn farm implements, hoes and associated spare parts. The company is actively involved in the export market in South Africa, Lesotho, Swaziland, Namibia, Zambia, Mozambique and East Africa. In terms of size and output, it is the largest such plant in Sub-Saharan Africa. Its major raw material is steel, comprising 80% of its production process. It sources its steel, in the form of bars, rods and sections, from South Africa due to the challenges faced by ZISCOSteel. Steel imports alone add up to 20% on the cost due to transportation. Steel from South Africa is imported duty free using the SADC Rules of Origin. The challenges faced by the company include: (i) high utility charges; (ii) import competition from India and China; (iii) lack of liquidity, unavailability of long term capital and high cost of capital; (iv) logistics challenges in transporting materials; (v) use of antiquated equipment; and (vi) counterfeits Mealie Brand products in export markets. It was noted that there is need for supporting Zimplow (Pvt) Limited as the company has the potential to supply the COMESA and SADC region.
Universal Bags (Pvt) Limited	The Tariffs Division in September 2011 toured Universal Bags (Pvt) Limited based in Bulawayo as part of the investigation into the company's request for tariff relief in the form of duty reduction on its imported raw materials from China.

	Universal Bags is a family business established in 1989 and is one of the largest luggage manufacturer in Zimbabwe. Other companies into luggage manufacturing are Monarch (Pvt) Limited in Bulawayo, and Shingi (Pvt) Limited, Ray Bags (Pvt) Limited and Commodity Textiles (Pvt) Limited, all of Harare. The company manufactures backpacks, portfolios, travel bags and suitcases. It imports most of its raw materials from China. The company currently employs 140 people and was operating at 50% capacity utilization. It has most of its raw materials charged MFN duties ranging between 10% to 25%. The main challenges faced by the company were: (i) lack of working capital; (ii) import competition (iii) high utility charges; and (iv) duty on raw materials. It proposed that a duty rebate on luggage imports be removed concurrently increasing duty on finished luggage imports. Overall, it was noted that assisting Universal Bags (Pvt) Limited would help the company to be competitive, a welcome development for the whole luggage bag manufacturing industry.
Crystal Candy (Pvt) Limited	The Tariffs Division undertook a factory visit to Crystal Candy (Pvt) Limited in Harare in September 2011 in response to the company's application for import tariff reduction on its raw materials. Crystal Candy manufactures sweets and chocolates. Other companies in the same business are M.E. Charhons (Pvt) Limited and Arenel (Pvt) Limited. The company was operating at 40% capacity utilisation, and the equipment used was old, having been installed over forty years ago. It employed 339 people, down from 423 people it used to employ in 2007. The company exports its sweets products utilising SADC Trade Protocol duty free to Botswana, Malawi, Mozambique, Tanzania, and Zambia. It was faced with the following challenges: (i) antiquated equipment; (ii) lack of cheap long-term finance; and (iii) high electricity charges.
National Fencing (Pvt) Limited	A factory visit at National Fencing (Pvt) Limited in Bulawayo was undertaken by the Tariffs Division in September 2011. National Fencing manufactures diamond wire mesh, barbed wire, brick force, and mild steel galvanised wire. Besides wire products, the company is also into welding, and thus makes gates and other welded items. It is also in the business of erecting wire fences. The main objectives of the visit were to enlighten the Division on the stages and processes of drawing wire and making of fencing wire, the raw materials and other inputs that the company imports, and the challenges being faced by the company. National Fencing sources its main raw material, steel, from South Africa duty free, making use of the SADC Rules of Origin Certificate. The company used to source its raw material requirements from Haggie Rand, a local company, a decade ago. It employed 180 people, and was operating at 50% capacity utilisation. The company was faced with the following challenges: (i) logistical problems; (ii) erratic power supplies, and high utility charges; (iii) financial constraints, and lack of long-term capital; (iv) import competition, mainly from South Africa. The resuscitation of New ZimSteel (formerly ZISCOSteel) would be a welcome development to National Fencing, and the steel-based industry at large, since it would be easier, and with less logistical problems, to source the steel raw materials with credit terms.

(b) Tariffs Mandate Issues

The Commission during the year under review continued to consider issues that affected and impacted on the effective execution of its trade tariffs mandate. In that regard, the Tariffs Division proposed modalities for raising resources for the undertaking of anti-dumping investigations in Zimbabwe. A detailed anti-dumping application form, under the Competition (Anti-dumping and Countervailing Duty) (Investigation) Regulations, 2002, was also drafted and adopted for use. Also drafted and adopted for use was a detailed application form for various other forms of tariff relief.

The Commission also educated and sensitised the business community on available trade defence mechanisms through the national media. Newspaper articles were written and published on topics related to dumping and subsidisation, and Safeguards.

The Commission's contributions to the National Budget and Mid-Term Fiscal Policy Review were also aimed at increasing the effectiveness of the execution of its trade tariffs mandate.

(c) Tariffs Advocacy and Networking

The Commission maintained and nurtured strong linkages and working relationships with those Government Ministries and Departments that deal with trade policy matters, notably the parent Ministry of Industry and Commerce, the Ministry of Finance, the Zimbabwe Revenue Authority (ZimRA), as well as the Central Statistical Office (CSO). As a result, the Commission's proposals and recommendations on trade tariffs issues were taken on board in relevant public policies, including the National Budget.

Relations were also developed with other relevant Government Ministries, such as the Ministry of Regional Integration and International Co-operation and the Ministry of Economic Planning and Investment Promotion for the purposes of effective implementation of the country's trade tariffs policy.

Close working relations with industry and commerce continued to be built through the Confederation of Zimbabwe Industries (CZI), the Zimbabwe National Chamber of Commerce (ZNCC) and the Chamber of Mines. In that regard, the Commission's Tariffs Division consolidated its membership of the relevant Sub-Committees of both the CZI and ZNCC, and actively participated in the committees' discussions on various issues pertaining to the challenges faced by the business community. Table 28 shows the frequency of the Commission's attendance and participation at meeting of the relevant Sub-Committees of the CZI and ZNCC during the year under review.

Table 28: Attendance at CZI and ZNCC Sub-Committee Meetings in 2011

Business Association	Sub-Committee	No. of Meetings Attended
Confederation of Zimbabwe Industries	Economics & Banking	10
	Trade Development & Investment Promotion	2
Zimbabwe National Chamber of Commerce	Trade & Advocacy	2

In addition to attending the regular meetings of the CZI's Sub-Committees, the Commission made a presentation to the Confederation on the state of trade negotiations under COMESA, SADC and EPAs. It also made by invitation a presentation on trade tariffs to the Tyre Dealers and Retailers Association.

The Tariffs Division also liaised closely with local research organizations that deal with trade policy issues, such as the Trades Centre and SEATINI. Relations with the World Trade Organisation (WTO) and the World Customs Organisation (WCO) continued to grow from strength to strength, with the Commission benefitting from the two international organisation's training programmes.

(d) Seminars and Workshops Attended

The Commission's Tariffs Division during the year under review attended and participated at a number of trade-related seminars and workshops, as shown in Table 29.

Table 29: Trade-Related Seminars and Workshops Attended in 2011

Dates	Event	Participant(s)	Highlights
10-11 March 2011	COMESA Workshop on Compilation of draft Schedules for Zimbabwe: Harare	C. Chipanga, T. Katsande, and T. Zengeni	The highlights of the workshop were as follows: • The sensitive products lists constituted 2 602 tariff lines, or 44% of the total tariff lines; • Excluded products lists constituted 63 lines, or 1.1%; • Schedule i (those that immediately complied with the COMESA CET) constituted 921 lines, or 15.6%; • Schedule ii constituted 2 334 lines, or 39.3%; • There was further need for national consultations with industry to come up with an informed list.
19 April 2011	SADC Workshop on RISP 2005-20 Questionnaire: Harare	T. Katsande, and T. Zengeni	SADC Member States Questionnaire for desk review of the RISDP 2005-20 completed the above questionnaire pertaining to the tariff phase down section as well as the inter-ministerial meeting held on the 27 th of April 2011 at Ministry of Foreign Affairs
28 June – 1 July 2011	ZNCC Annual Congress: Nyanga	E Ruparanganda	The theme of the Congress was "Economic Transformation, Challenges: Managing the Way Forward".
13-22 July 2011	ZIMRA Workshop on HS 2012 Tariff Book: Harare	C. Chipanga	The workshop was organized by the Zimbabwe Revenue Authority, and the other participants were from the Ministry of Finance and the Commission. The World Customs Organisation (WCO) revises the Harmonised System of Nomenclature (HS) after every five years to take into account changes in technology and patterns of international trade. These changes/amendments are then effected

			into Member States Tariff Handbooks. The workshop was therefore held to effect the new WCO amendments into the current HS 2007 Zimbabwe Tariff Handbook for implementation as from 1 January 2012. There were 220 WCO amendments to the Harmonised System Nomenclature. The intention was to manage the migration from the HS 2007 to the HS 2012. The draft thereof was submitted to the Ministry of Finance in August 2011 for further fine tuning before it is gazetted. The HS 2012 is expected to be operational and effective from 1 January 2012.
20 July 2011	Trades Centre Workshop on Towards a Tripartite COMESA-EAC-SADC Free Trade Area: Harare	E. Ruparanganda, C. Chipanga, C. Phiri, T. Katsande, and T. Zengeni	Towards a tripartite COMESA-EAC-SADC Free Trade Area- a panacea for deeper integration or a rhetoric African Grouping The half day workshop discussed the concept of the FTA, the implications of the FTA on the private sector and trade in general and the state of play with regards to the process. The presentation highlighted the deliberations at second Tripartite Summit held in June 2011. As a way forward, the workshop suggested that appropriate measures were needed to resuscitate the productive and trade capacity in Zimbabwe's key economic growth sectors and to ensure effective utilisation of market access opportunities in the FTA. This may encompass capacity building for stakeholders in market intelligence as well as the adoption of sector specific strategies based on value addition and value chain analysis.
27-29 July 2011	CZI Annual Congress: Victoria Falls	E. Ruparanganda	The theme of the Congress was "From Stabilisation to Growth: Imperatives for Zimbabwe".
30 September 2011	Ministry of Finance Stakeholders Workshop on the National Budget: Harare	E. Ruparanganda, C. Chipanga, C. Phiri, T. Katsande, and T. Zengeni	Stakeholders consultations on the 2012 National Budget.
26-27 September 2011	WCO Workshop on International Customs Instruments: Nairobi, Kenya	C. Chipanga	Tripartite workshop on adoption of WCO international customs instruments
1-4 November	WTO Workshop on market access: Cape Town, South	T. Zengeni	Market access issues discussed at length.

2011	Africa		
15 November 2011	Ministry of Finance Consultations on the National Budget: Harare	E. Ruparanganda, C. Chipanga, C. Phiri, T. Katsande, and T. Zengeni	Budget contributions for the year 2012 consultations
12-14 December 2011	EU Training Workshop on Tariff Analysis: Harare	T. Katsande, and T. Zengeni	The training workshop was not only on tariff analysis, but also covered trade remedies and notification of Zimbabwe's intellectual property rights.

4.4 LEGAL AND CORPORATE SERVICES

The Legal and Corporate Services Division provides internal legal services to the Board of Commissioners and the Directorate. It also assists in the handling of competition and tariffs cases at full-scale investigation stage, and in preparing cases for public/stakeholder hearings. In that regard, the Division plays the crucial role of linking the Directorate's investigative functions with the Board of Commissioners' adjudicative functions. Other areas that are covered by the Division's operational mandate include: (i) provision of Board secretarial services; (ii) enforcement of Commission's determinations on competition cases and other resolutions and decisions; (iii) public relations; and (iv) corporate governance.

The manning of the Department during the 2011 year under review is shown in Table 30.

Table 30: Manning of the Legal & Corporate Services Division in 2011

Name of Officer	Position	Qualification	Duration
Mrs. Mary Gurure	Commission Secretary, and Assistant Director	Law	Throughout the Year
Mrs. Rumbidzai Mutetwa	Legal Counsel	Law	From April 2011
Ms. Letiwe Maphosa	Legal Officer	Law	From May 2011
Ms. Fatima Chikosi	Public Relations Officer	Public Relations	Throughout the Year
Miss Priscilla Hove	Receptionist	Receptionist Certificate	Throughout the Year

The staff establishment and strength of the Corporate Affairs Department during most of the year under review was as shown in Table 31.

Table 31: Staff Establishment and Strength of the Legal & Corporate Services Division in 2011

Position	Grade	No. of Posts On Establishment	No. of Posts Filled	Staff Strength
Commission Secretary	E2	1	1	100%
Legal Counsel	D3	1	1	100%
Legal Officer	D2	1	1	100%
Public Relations Officer	D1	1	1	100%
Receptionist	C1	1	1	100%
Totals		5	5	100%

The 100% staff strength of the Legal and Corporate Services Division during most of the year under review belied the situation on the ground, which was characterized by a severe dearth of personnel to handle the Division's multiple functions following its upgrading from Department to Division level. All the Division's sections suffered severe personnel constraints during the year.

4.4.1 LEGAL SERVICES

During the 2011 year under review, the Legal & Corporate Services Division gave legal advice to the Commission's other Divisions and Department, as summarized in Table 32.

Table 32: Legal Advice Given to Other Divisions and Department in 2011

Division/ Department	Legal Advice Given
Director's Office	- The legal implications of continuing to extend an employee's acting period in terms of the Competition and Tariff Commission's Employee (Conditions of Service) Rules. - The interpretation of the provisions of the Competition and Tariff Commission's Employee (Conditions of Service) Rules relating to the calculation of acting allowances.
Competition Division	- Whether the increase in shareholding to a 49% stake in an entity constituted a controlling interest as defined in the Competition Act [<i>Chapter 14:28</i>]. - Interpretation of the term merger in relation to a foreign based supermarket that acquires a controlling stake in a local supermarket chain. - Recommendations to amend the current definition of the term merger in the Competition Act [<i>Chapter 14:28</i>] in line with the UNCTAD Model Law on Competition. - Whether the services provided by the City Councils are commercial or economic activities as envisaged by section 3 of the Competition Act [<i>Chapter 14:28</i>].
Tariffs Division	Eligibility of tariff relief assistance in terms of Part IVB of the Competition Act [<i>Chapter 14:28</i>] by a retailing entity that imports carbonated soft drinks and beers.
Finance & Administration Department	- Recommendations on the terms and conditions to be included in the office premises lease agreement between the Commission and its landlord. - Certain activities to be done by the Commission in compliance with the office premises lease agreement. - The need for the Commission to institute legal proceedings against Japan Auto-Trading for non performance of a contract to repair the Commission's Isuzu double cab truck.

The Division also engaged the legal practitioners of an entity that was refusing to pay the penalty imposed by the Commission for failing to notify a transaction in terms of section 34A of the

Competition Act [Chapter 14:28] on the basis that the transaction was not a notifiable merger at the time of consummation as the combined annual turnover of the merging parties was below the then prescribed merger notification threshold of five hundred million Zimbabwean dollars. The Division, on behalf of the Commission asserted that whilst the combined annual turnover of the merging parties at the relevant time was below the ZWD500 million threshold, their combined asset value was above this threshold as per the inflation adjusted figures of the 2002 accounts that the lawyers submitted.

(b) Legal Drafting

The Division spearheaded the drafting of amendments to the Competition Act [Chapter 14:28] based on international best practice. Initially the amendments were aimed at: (i) ensuring the effective separation of the Commission's adjudicative and investigative functions for natural justice purposes; (ii) providing for the handling of monopoly situations; and (iii) strengthening the Commission's merger control activities. A number of consequential amendments to various other provisions of the Act arose from these amendments, including the use of new terms which needed to be defined. Due to the extensive nature of the amendments the Commission noted that there was need for a review and revamp the whole Act and that such an exercise required external financial and technical assistance due to the Commission's limited financial and human resources.

The Commission thus, through its parent Ministry, officially requested to have the implementation of Zimbabwe's competition policy and law reviewed under the UNCTAD Voluntary Peer Review Programme. The offer was accepted and endorsed at UNCTAD's Eleventh Session of the Intergovernmental Group of Experts on Competition Law and Policy (IGE) that was held in Geneva, Switzerland, during the period 19 – 21 July 2011. The Division took part in the preparations for the voluntary peer review that commenced in September 2011, by putting together all the relevant competition law literature for consideration by the UNCTAD Consultants and also played a major role in considering the first draft Peer Review Report.

The Division drafted amendments to the relevant statutory instruments on merger notification fees and thresholds that is, the Competition (Notification of Mergers) Regulations, 2002, published in Statutory Instrument 270 of 2002 and the Competition (Notifiable Merger Thresholds) Regulations, 2002, published in Statutory Instrument 195 of 2002 to reflect maximum and minimum merger notification fees of US\$50 000.00 and US\$10 000.00 respectively and a threshold of US\$1 200 000.00 or its equivalent.

Other legal drafting services by the Division during the year under review were on various issues, such as drafting general notices for publication in the *Government Gazette* on full-scale investigations, remedial orders on non-compliance with merger conditions and merger examinations as shown in Table 33.

Table 33: Legal Drafting in 2011

Full-Scale Investigation	Remedial Orders	Merger Examinations
General notices announcing the commencement in terms of section 28 of the Competition Act [Chapter 14:28] of the following full-scale investigations: allegations of restrictive practices and collusive agreements in the cotton industry;	Remedial order in terms of section 31 of the Competition Act [Chapter 14:28] against Total Zimbabwe for failure to comply with the Commission's conditions on the approval of the Total Zimbabwe/Mobil Oil merger that were imposed on 26th January 2006.	Notices in terms of section 28 (2) of the Competition Act [Chapter 14:28] of the Commission's intention to investigate the following transactions: acquisition of a 92.59% Stake in Genesis Investment Bank by FMB

• allegations of restrictive practices in the ambulance services sector; and • allegations of collusive agreements in the bread industry		• Malawi and Partners; acquisition of a 49% Stake in National Foods by Innscor Africa Limited; • acquisition of the Operational Assets of Unifreight Limited by Pioneer Corporation Africa Limited; and • proposed increase of shareholding by Pick 'N Pay Limited in TM Supermarkets (Private) Limited.
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Since legislative drafting is not part of the curricula for the local law schools, the Division arranged for in house and international training for its legal personnel.

4.4.2 BOARD SECRETARIAL SERVICE

The Legal and Corporate Services Division organized and provided the necessary secretarial services to all the 22 Commission meetings that were held during the year under review (i.e., Ordinary and Special meetings of the Board of Commissioners, and meetings of the various Board Committees). It also organized one Stakeholder Hearings meeting for the Board of Commissioners on a competition case, as well as three workshops for the Commission, a Strategic Plan Review Workshop and two Stakeholders Workshops on Public Utilities.

4.4.3 CORPORATE GOVERNANCE

The Legal & Corporate Services Division, in liaison with the Director's Office and the Finance & Administration Department, organized and coordinated the holding of the workshop to review the Commission's 2010-2012 Strategic Plan that was held in Harare in February 2011. The workshop produced the 2011 Annual Plan, which guided the Commission's activities during the year under review.

Other corporate governance events in the form of workshops and seminars that were organized by the Division during the year are shown in Table 34.

Table 34: Corporate Government Workshops and Seminars in 2011

Dates	Workshop/ Seminar	Participant(s)
30 May-1 st April 2011	Professional Development Workshop for Corporate Secretaries.	M. Gurure
27-28 July 2011	Seminar on Corporate Governance Framework for Board Members and Management of SEPs	Commissioner D. Sibanda, Commissioner S.Z. Dandira M. Gurure, and E. Rindayi
30 September 2011	E- Government Workshop for SEPs	Commissioner D. Sibanda, Mr A.J. Kububa, M. Gurure, and E. Rindayi
29-30 November 2011	Conference on Corporate Governance Incorporating Strategic Planning in Zimbabwe	Commissioner P. Kadzere, M. Gurure, and R. Mutetwa

4.4.4 PROMOTION, PUBLIC RELATIONS AND VISIBILITY

During the year under review the Legal & Corporate Services Division continued with the re-formulation of the Commission's public relations plans to make the organization more visible to its stakeholders in both the private and public sectors of the economy. The work was continuing by the end of the year.

The Division was also actively involved in a number of promotion activities throughout the year. It organized and coordinated the Commission's active participation at the Zimbabwe International Trade Fair (ZITF), that was held in Bulawayo during the month of May 2011, and at the Harare Agricultural Show, that was held in August 2011. The Commission's stands at both events were very popular with both the business community and the general public.

The Division made the necessary arrangements for the holding of the Commission's Stakeholder Workshops in Harare and Bulawayo on the "*Socio-Economic Impact of Excessive Pricing of Public Utilities*". The Workshops were successfully held in Harare and Bulawayo in May and June 2011 respectively.

The operations and activities of the Commission were reported in not less than 25 newspaper articles throughout the year. The most reports were in the business section of *The Herald* daily newspaper, followed by the *NewsDay*, the *Financial Gazette* and the *Chronicle* in that order as shown in Table 35 and Graph 8.

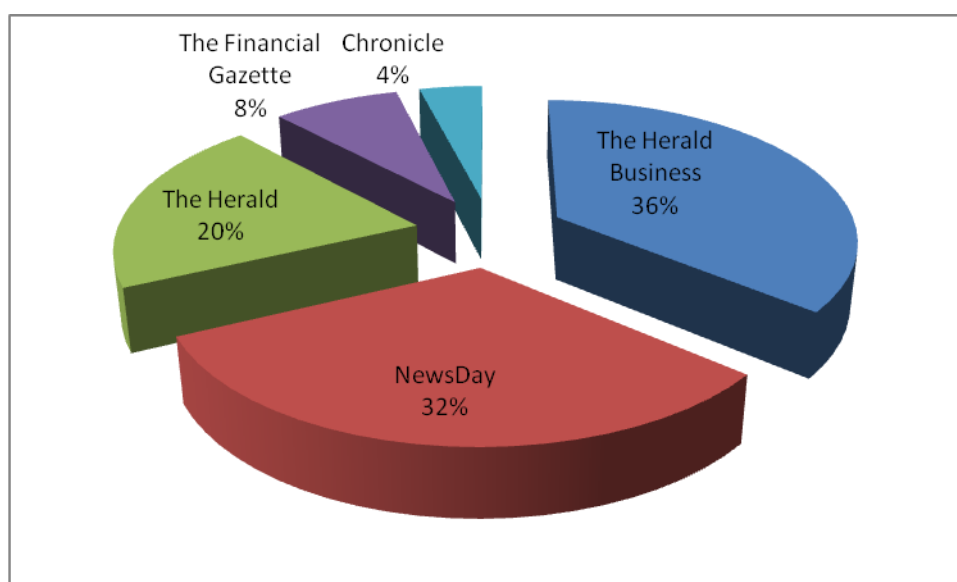
Table 35: Newspaper Coverage of Commission Operations and Activities in 2011

No.	Newspaper	Article
1	<i>NewsDay</i> daily newspaper of 7 January 2011	Article titled "OK-Makro Deal Under Threat", on the approaches made to the Commission by the Affirmative Action Group (AAG) not to approve the <i>OK Zimbabwe/ Makro Zimbabwe merger</i> .
2	<i>NewsDay</i> daily newspaper of 7 January 2011	Editorial comment titled "AAG Should Stop Fighting Big Business", on the AAG's attempts to lobby the Commission to disallow the <i>OK Zimbabwe/ Makro Zimbabwe merger</i> .
3	<i>The Herald Business</i> of 4 February 2011	Article titled "OK's Makro Takeover Approved", on the Commission's conditional approval of the <i>OK Zimbabwe/ Makro Zimbabwe merger</i> .
4	<i>The Herald Business</i> of 15 February 2011	Article titled "Meikles, Kingdom Demerger Approved", on the unbundling of the <i>Meikles Holdings/ Kingdom Financial Holdings/ Tanganda/ Cotton Printers merger</i> that was approved by the Commission in 2008.
5	<i>The Herald Business</i> of 16 February 2011	Article titled "Makro Managers Against Takeover", referring to managerial staff of Makro Zimbabwe challenging the <i>OK Zimbabwe/ Makro Zimbabwe merger</i> which was approved by the Commission.
6	<i>The Herald</i> daily newspaper of 24 February 2011	Article titled "ZESA Tariff Hike Shelved", which referred to the Commission's investigation into ZESA's abuse of monopoly position in the distribution of electricity.
7	<i>The Herald Business</i> of 28 February 2011	Article titled "CTC Approves BP, Shell Assets Takeover", on the Commission's approval of the <i>Shell-BP/ FMI Zimbabwe merger</i> .
8	<i>The Herald Business</i> of 10	Article titled "Schweppes signs accord with CTC", referring to the

	June 2011	Commission's signing of a competition compliance programme and agreement with Schweppes Zimbabwe.
9	<i>NewsDay</i> daily newspaper of 10 June 2011	Article on the signing of a competition compliance agreement with Schweppes Zimbabwe.
10	<i>The Financial Gazette</i> weekly newspaper of 16-22 June 2011	Article titled "Innskor Under Investigation", referring to the Commission's preliminary investigation into allegations of Innskor Africa's restrictive business practices in the food industry.
11	<i>The Herald</i> daily newspaper of 13 July 2011	Front page article titled "Write Off Old Debts, ZESA Told", on the registration with the High Court of Zimbabwe of the Commission's remedial order against abuse of monopoly position by ZESA Holdings (Private) Limited in the distribution of electricity.
12	<i>The Chronicle</i> daily newspaper of 13 July 2011	Article titled "ZESA Ordered to Reimburse Consumers", on the registration with the High Court of Zimbabwe of the Commission's remedial order against ZESA Holdings (Private) Limited.
14	<i>The Herald Business</i> of 30 August 2011	Article titled "Cimas, Premier Face Probe", on the Commission's planned Stakeholder Hearings into its investigation into allegations of restrictive practices in the ambulance services sector.
15	<i>The Herald Business</i> of 6 September 2011	Article titled "Delta Commits to Fair Business Practices", on the signing of a competition compliance programme and agreement between Delta Beverages and the Commission;
16	<i>The Herald Business</i> of 7 September 2011	Article titled "Cimas, PSMAS Probe Dropped", referring to the cancellation of the Commission's Stakeholder Hearings into its full-scale investigation into restrictive practices in the ambulance services sector following the withdrawal of the case by the complainant.
17	<i>NewsDay</i> daily newspaper of 14 September 2011	Article titled "Zesa Will Not Write Off Debts – Official", referring to the Commission's Order on ZESA Holdings.
18	<i>The Business Herald</i> of 25 October 2011	Article titled "Pioneer, Unifreight Swift Deal Almost Done", referring to the Commission's approval of the merger transaction.
19	<i>NewsDay</i> daily newspaper of 1 November 2011	Article titled "Pick 'n' Pay, TM Deal Awaits Approval", on the Commission's examination of the proposed acquisition of TM Supermarkets by Pick 'n' Pay of South Africa.
20	<i>NewsDay</i> daily newspaper of 9 November 2011	Article titled "ZESA Ordered to Write Off Pre-2009 Charges", on the Commission's order on ZESA to bill their clients on actual meter readings and justify some of their load-shedding programmes.
21	<i>NewsDay</i> daily newspaper of 14 November 2011	Article titled "Ginners Association Under Probe", on the Commission's embarkation on a full-scale investigation into restrictive practices of the Cotton Ginners Association.
22	<i>NewsDay</i> daily newspaper of 14 November 2011	Article titled "... As Mergers Come Under Scrutiny", on the Commission's examination of the proposed acquisition of a 75% stake in Lynton-Edwards by Rencap Zimbabwe MLE, and the proposed increase of Pick 'n' Pay's 25% stake in TM Supermarkets to 49%.

23	<i>The Herald Business</i> of 17 November 2011	Article titled “Engen, Chevron Deal Hangs in Balance”, on the need for Commission approval of mergers and acquisitions.
24	<i>The Financial Gazette</i> weekly newspaper of 17-22 November 2011	Article titled “Competition Commission Reacts to LES Takeover”, on the proposed acquisition of 75% stake in Lynton-Edwards Securities (LES) by Renaissance Zimbabwe Holdings MLE (Rencap).
25	<i>The Herald</i> daily newspaper of 18 November 2011	Article titled “ZESA Holdings Contests Decision to Write Off Bills”, on ZESA’s appeal against Commission’s order compelling the power utility to write off all pre-2009 bills.
26	<i>The Herald</i> daily newspaper of 2 December 2011	Article on the Commission’s conditional approval of the <i>TM Supermarkets/Pick ‘n’ Pay Merger</i> .

Graph 8: Newspaper Coverage in 2011



The Commission’s articles on various topics on trade tariffs policy and practices were also regularly published in the national newspapers for the information and education of the business community and the general public. Furthermore, the electronic media, both television and the radio, broadcasted a number of news items on the Commission’s operations and activities, particularly those related to merger control.

The increased visibility of the Commission was also evidenced by the fact that competition law was one of the subjects in the syllabus of the Institute of Chartered Secretaries and Administrators in Zimbabwe on *Corporate Law and Practice*. Areas covered in the subject are: (i) nature and definition of competition; (ii) legislative regulation of competition in Zimbabwe – provisions of the Competition Act; (iii) case studies of competition regulation in other countries; (iv) restrictive practices; (v) mergers; (vi) monopolies; and (vii) the Competition and Tariff Commission – role and implementation of the Competition Act. The Competition Act [Chapter 14:28] is one of the recommended readings.

4.4.5 CAPACITY BUILDING

The Legal & Corporate Services Division during the year under review built the capacity of its staff members by organising various training courses in the specialised areas that it operates in. Table 36 shows the relevant training courses that were attended by members of the Division, as well as members of other Units in the Commission.

Table 36: Legal and Corporate Services Training Course in 2011

Month of Training	Training Course	Staff Trained
March 2011	Strengthening Board Effectiveness	Commission Secretary
May 2011	Public Relations & Marketing Management	Public Relations Officer
July 2011	Legislative Drafting	Commission Secretary
September 2011	Pensions Board of Trustees	Board of Trustees Members
	Introducing Intellectual Property as Part of Modern Business Strategy	Legal Counsel, and Legal Officer

4.5 FINANCE AND ADMINISTRATION SERVICES

The Finance & Administration Department of the Commission provides essential financial and administrative services to the Commission's core competition and trade 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 [Chapter 14:28] 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 manning of the Finance & Administration Department throughout the year under review is shown in Table 37.

Table 37: Manning of the Finance & Administration Department in 2011

Name of Officer	Position	Qualification/Experience	Duration
Mr. Edgar Rindayi	Acting Manager	Accounts	Throughout the Year
Mr. Stephen Nyatsungu	Administration Officer	Psychology	Throughout the Year
Mrs. Rosemary Munyanyiwa	Human Resources Officer	Personnel Management	Throughout the Year
Mr. Daniel Mwatsveruka	Sub-Accountant	Accounts	Throughout the Year
Mr. Lazarus Chiwara	Sub-Accountant	Mathematics	Throughout the Year
Mrs. Prisca Chikotosa	Personal Assistant	Bookkeeper and Secretarial	Throughout the Year
Miss Angeline Malunga	Private Secretary	Secretarial	Throughout the Year
Mr. Ngonidzashe Jaure	Accounts Officer	Accounts	Throughout the Year
Mrs. Selina Mabhureni	Registry Officer	Records Management	Throughout the Year
Mr. Shame Murungweni	Driver/Messenger	Driver's Licence	Throughout the Year
Mr. Tinashe Chivinge	Office Orderly	'O' Levels	Throughout the Year

The staff establishment and strength of the Department during the year under review was as shown in Table 38.

Table 38: Staff Establishment and Strength of the Finance & Administration Department in 2011

Position	Grade	No. of Posts On Establishment	No. of Posts Filled	Staff Strength
Manager	E1	1	0	0%
Accountant	D3	1	1	100%
Administration Officer	D2	1	1	100%
Human Resources Officer	D1	1	1	100%
Sub-Accountants	C2	2	2	100%
Private Secretaries	C2	3	2	66%
Accounts Officers	C1	2	1	50%
Administrative Assistant	C1	1	0	0%
Registry Officer	C1	1	1	100%
Driver/Messengers	B1	2	1	50%
Office Orderly	A1	1	1	100%
Totals		16	11	68%

The Department was therefore one of the better staffed units in the Commission during the year under review, even though there were staffing gaps which compromised the provision of administrative services.

4.5.1 ADMINISTRATION

(a) Human Resources

Staff turnover in terms of separations in the Commission was nil during the year under review regardless of relatively low basic salaries. That was mainly because of the following reasons and factors:

- the provision of staff benefits of a non-monetary nature, such as educational assistance, grocery assistance, and subsidised meals;
- the depressed job market for professionals;
- job satisfaction arising from the challenges of the Commission's work; and
- career development and prospects from long work experience in the Commission's specialised fields.

Instead, the Commission attracted 6 professional staff during the year, as shown in Table 39.

Table 39: Professional Staff Recruited in 2011

Recruited Officer	Position	Division
Mrs. Rumbidzai Mutetwa	Legal Counsel	Legal & Corporate Services
Ms. Letiwe Maphosa	Legal Officer	Legal & Corporate Services
Mr. Whatmore D. Chinoda	Economist	Competition
Mr. Earnest Manjengwa	Economist	Competition
Miss Loveness Jayaguru	Law Officer	Competition

However, as in previous years, the Commission's staff establishment during the year under review was not as strong as it should have been for the effective undertaking of its multi-dimensional

operations. Table 40 shows the Commission's staff establishment by Divisions/Departments as at the end of the year.

Table 40: Staff Establishment By Divisions/Departments As At 31 December 2011

Division/ Department	Positions	No. of Posts On Establishment	No. of Posts Filled
Director's Office	Director, Internal Auditor	2	1
Tariffs Division	Assistant Director, Chief Economist, Senior Economists, Economists	9	5
Competition Division	Assistant Director, Chief Economist, Senior Economists, Economists, Law Officers, Investigators	18	7
Legal & Corporate Services Division	Commission Secretary, Legal Counsel, Legal Officers, Public Relations Officer, Receptionist	5	4
Finance & Administration Department	Manager, Accountant, Administration Officer, Human Resources Officer, Sub-Accountants, Private Secretaries, Accounts Officers, Administrative Assistant, Registry Officer, Driver/Messengers, Office Orderly	16	11
Totals		50	28

With 28 positions on its staff establishment of 50 filled, the Commission operated at 56% of the establishment during most of the year under review, a situation which over-strained the Commission's meagre human resources.

(b) Staff Development and Training

Staff development and training was given priority during the year under review to build the necessary skills to mitigate against staff shortage. On-the-job training was done by the supervisors, and supplemented through regular meetings of the Directorate's Operations Committee, which facilitated exchange of views and experiences on the handling of competition and tariffs cases. Formal training programmes were also embarked upon to expose staff members to new concepts, as well as to refresh their skills and knowledge.

Specialist training courses attended by professional staff have been reported on above under the respective operational Divisions. Table 41 shows those general courses that were aimed at skills development and enhancement that were attended during the year under review.

Table 41: General Training Courses Attended in 2011

Month of Training	Training Course	Staff Trained
March 2011	Records & Archives Management	Documentation Officer
	Strategic Financial & Fraud Management	Acting Manager (Finance & Administration), and Sub-Accountant
June 2011	Customer Care	Receptionist
	HIV and AIDS Awareness	All Staff
	Financial Modelling	Acting Manager (Finance & Administration), and Accounts

		Officer
October 2011	Research Methods	Competition Economists
November 2011	Front Desk Imaging	Receptionist
	International Financial Reporting Standards	Acting Manager (Finance & Administration)

The Commission also gave financial assistance to those of its staff members who wished to advance their academic qualifications that are necessary for the effective performance of their work. Table 42 shows the staff members that were so assisted during the year under review:

Table 42: Staff Members Given Education Financial Assistance in 2011

Staff Member	Position	Division/ Department	Programme
Miss C. Mashava	Senior Economist	Competition	Masters of Commerce in Strategic Management and Corporate Governance
Mr. I. Tausha	Economist	Competition	
Mrs. C Dzenga	Economist	Competition	Masters of Commerce in Strategic Management and Corporate Governance
Mr. S. Nyatsungu	Administration Officer	Finance & Administration	Master of Science in Strategic Management
Mr N Jaure	Accounts Officer	Finance & Administration	ACCA

4.5.2 FINANCE

The US Dollar continued to be functional currency for Zimbabwe in the 2011 year under review following the introduction in 2009 of the multicurrency system in the country. The Commission therefore also continued to use the US Dollar as its reporting currency for the year.

The Government's continued use of the multicurrency and cash budgeting policies helped to ensure a stable inflation environment during the year under review. Typical with Dollarised economies, inflation remained low and stable during the year at levels below 5%. Zimbabwe's annual headline inflation compared favourably with regional economies, and was aligned with the SADC macroeconomic convergence target of 5%. According to the Ministry of Finance, inflation for 2012 is projected to settle at 5% by end of 2011, and an average around 4.4% for the same year.

(a) Funding

The Commission's sources of funding during the 2011 year under review, as compared with those of the previous year, are shown in Table 43.

Table 43: Sources of Commission Funding

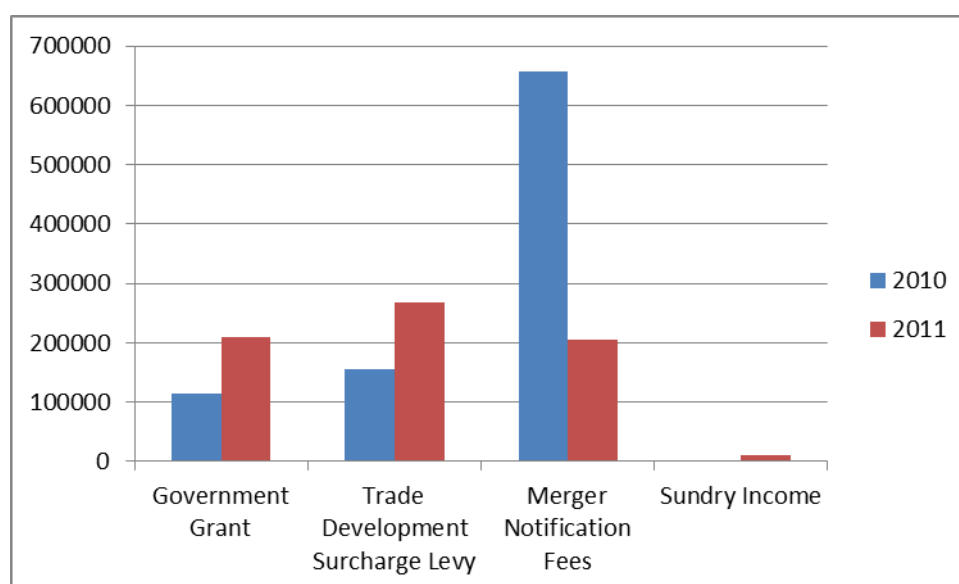
Source of Funds	2010 (US\$)	2011 (US\$)	Change (%)
Government Grant	114 154	210 405	+ 96 251
Trade Development Surcharge Levy	154 986	267 402	+ 112 416
Merger Notification Fees	657 620	205 986	- 461 634
Sundry Income	1 211	10 928	+ 9 717
Totals	927 971	694 721	- 233 250

Despite economic challenges that face the country, the Trade Development Surcharge Levy played a leading role in financing the Commission's operations during the year under review, specifically the Commission's trade development activities. Total revenue received during the year however declined by 25% from the previous year to US\$694 721, largely because of the 69% decline in merger notification fee receipts from US\$657 620 in 2010 to US\$205 986 during the year. The delay in the *gazetting* of the Competition (Notification of Mergers) (Amendment) Regulations, 2011 (No.5) (Statutory Instrument 109 of 2011), which set maximum and minimum merger notification fee levels of US\$50 000 and US\$10 000, respectively, and thus reduced the transaction costs of large mergers, contributed to the decline in merger notification fee receipts during the year. Statutory Instrument 109 of 2011 was only *gazetted* in September 2011, and that triggered the notification of merger transactions.

The Government Grant increased by 84% during the year, from US\$114 154 in 2010 to US\$210 405, while Sundry Income increased from US\$1 211 in 2010 to US\$9 717.

Graph 9 graphically shows the comparative funding sources of the Commission in 2010 and 2011.

Graph 9: Comparative Funding Sources in 2010 and 2011

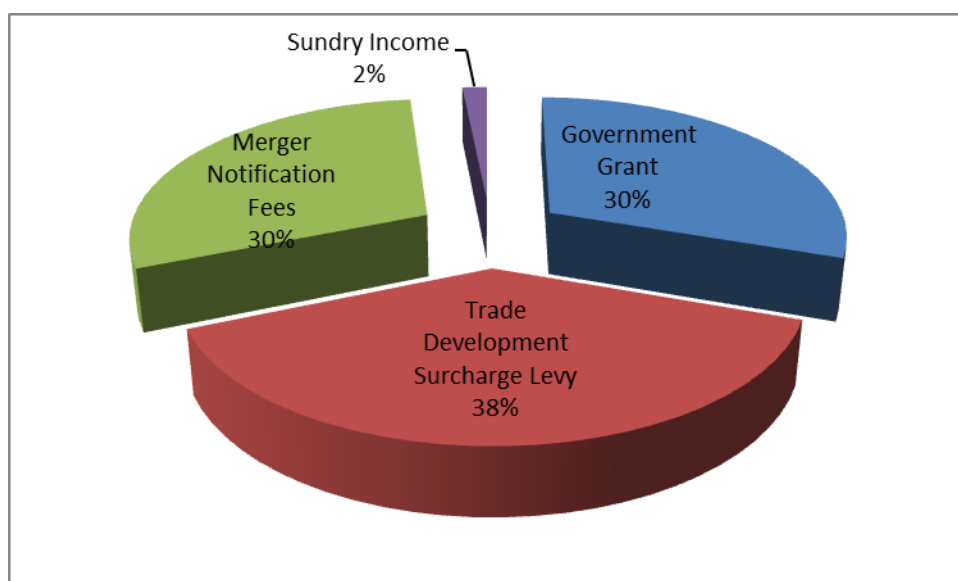


Government Grant as a source of funding of the Commission's operations continued to be eclipsed by the other funding sources, while that source of funding should be the main one for a non-commercial Statutory Body like the Commission with regulatory and advisory functions. Table 44 and Graph 10 show that the Government Grant contributed only 30% to the Commission's total financial receipts during the year under review.

Table 44: Comparative Income Contributors in 2011

Income Category	Receipts (US\$)	Contribution (%)
Government Grant	210 405	30.29
Trade Development Surcharge Levy	267 402	38.49
Merger Notification Fees	205 986	29.65
Sundry Income	10 928	1.57
Totals	694 721	100

Graph 10: Income Source Distribution in 2011



(b) Financial Performance

As already stated above, total revenue for the Commission during the year under review declined by 25% from the previous year to US\$694 721. Expenditure was 72% up from the previous year to US\$834 757. The deficit for the year rose to US\$95 269, which was 13% of income. The Accumulated Fund however amounted to US\$300 715, and cash resources stood at US\$306 285 as at the end of the year.

4.6 PERFORMANCE AGAINST TARGETS

The Commission's performance during the 2011 year under review against the objectives and set targets under its Three-Year Strategic Plan: 2010-2012 as revised is shown in Table 45.

Table 45: Strategic Plan Performance Results

Operational Area	Strategic Objectives	Performance Results
General Operations	To undertake research and other studies into competition and trade tariffs issues, <i>through the establishment of a Research Unit in the Director's Office.</i>	A project paper on the establishment of the Research Unit was drafted and approved by the Board of Commissioners. The approved proposals were that the main responsibilities of the Unit should be to: (i) undertake economic analysis on mergers and restrictive business practices; (ii) write briefing papers on key competition and trade tariffs issues; and (iii) undertake any other research into matters related to the operations of the Commission. Given the nature of the Unit's responsibilities, it

		was proposed and agreed that the Unit should be headed by a highly qualified and experienced research specialist who should be in the Commission's E (Managerial) Grade. The Commission at its Forty-Sixth Ordinary Meeting held on 6 October 2011 however noted that there was a Cabinet directive to freeze recruitments in Statutory Bodies until the end of 2011, and agreed to defer the recruitment of the Research Manager until the lifting of the Cabinet directive.
	To transform the Corporate Affairs Department into an effective operational unit in the Commission, <i>through the transformation of the Department into a specialised unit, and its transformation into an operational Division.</i>	The functions of the Corporate Affairs Department were critically assessed, and the following areas of specialisation were identified: (i) giving legal advice; (ii) providing secretarial services to the Board of Commissioners; (iii) undertaking public relations work; and (iv) manning the library and documentation centre. Proposals to transform the Department into an operational Division were considered and passed by the Commission's Audit & Administration Committee in September 2011, and approved by the Commission at its Forty-Sixth Ordinary Meeting held on 6 October 2011. The new Division was named the Legal & Corporate Services Division, to be headed by the Commission Secretary at the same grade as that of an Assistant Director.
	To enhance the capacities of members of the Commission (the Commissioners) on competition analysis and adjudication, as well as on trade tariffs, and corporate governance.	The attendance and participation of members of the Commission at various international events to enhance their capacities on competition and trade tariffs issues was facilitated. The events attended included: (i) a PIA Competition Policy Study Programme, held in London, the United Kingdom, in April 2011; (ii) the 10th Annual ICN Conference held in The Hague, the Netherlands, in May 2011; (iii) the 11th UNCTAD IGE meeting held in Geneva, Switzerland, in July 2011; and (iv) the UNECA Seminar on the COMESA/SADC/EAC Tripartite FTA held in Johannesburg, South Africa, in December 2011. A number of local corporate governance seminars were attended throughout the year by at least three Commissioners.
	To prepare for the Commission's voluntary peer review under the auspices of UNCTAD on its implementation of competition policy and law.	A Discussion Paper on the preparations for the peer review was prepared and considered by the Commission's Legal & Enforcement Committee. The paper covered issues such as: (i) background on UNCTAD peer reviews; (ii) terms of reference

		of the Zimbabwean peer review; (iii) peer review preparations suggestions and proposals (viz., internal housekeeping, major stakeholder consultations, and stakeholder consultations). Included under internal housekeeping was the compilation of the necessary documentation on the implementation of competition policy and law in Zimbabwe that would be required by the UNCTAD consultants. The proposals in the Discussion Paper were recommended by the Commission's Legal & Enforcement Committee, and approved by the Commission. All the necessary preparations for the peer review had been completed by the time of the fact-finding visit to Zimbabwe by the UNCTAD consultant during the month of November 2011.
	To review the Commission's staff grading system and organisational structure.	Lorimak Zimbabwe (Pvt) Limited were given the technical assignment of proposing an appropriate grading system and organisational structure for the Commission. The terms of reference included the following: (i) studying the current organisational structure; (ii) updating the current job descriptions of all positions in the Commission; (iii) job evaluation; and (iv) coming up with a remuneration policy for the Commission. Lorimak submitted its first report on the above assignment in October 2011, on which Management made a number of comments and identified areas that require further work. The final report was being awaited for by the end of the year.
	To put in place a system of job rotation between the Commission's operational Divisions, <i>to facilitate multi-skilling in the Commission.</i>	The drafting of an appropriate job rotation policy for the Commission faced a number of problems linked to the Commission's current staffing organisation, as follows: • the Commission's operational Divisions operate in highly specialised but dissimilar fields, that are not complementary; • the professional qualifications required in the operational Divisions are also not the same – for example, while the Competition Division requires a mixture of economists, lawyers, and accountants, the Tariffs Division only requires economists, and the Legal & Corporate Affairs Division basically requires lawyers; and • all the Commission's operational Divisions are severely understaffed, such that any job

		rotation among the Divisions could adversely affect their operations through loss of specialised skills and time spent on re-training. It was therefore agreed that the best system for the Commission in the circumstances was thus intra-Divisional job rotation, rather than inter-Divisional rotation.
	To enhance the Commission's financial resources to fund the 2010-2012 Strategic Plan, <i>through mobilisation of donor community funding of the Commission's activities.</i>	A number of international donor organisations were identified as suitable funders of the Commission's operations and activities. These included the World Bank (the Multi-Donor Trust Fund), the African Capacity Building Foundation (ACBF), the United Nations Development Programme (UNDP), the United States Agency for International Development (USAID), the German Technical Co-operation (GTZ), and the European Commission (EC). The World Bank positively responded to the Commission's request to co-fund the holding of a follow-up workshop to discuss recommendations made at the two stakeholders workshops on the socio-economic effects of excessive pricing of public utilities that had previously been held in Harare and Bulawayo.
Competition Operations	To promote and encourage competition in all sectors of the economy, through: - the development and implementation of competition advocacy programmes and plans; - the conclusion of competition compliance programmes and agreements with large conglomerate companies; - the conclusion of cooperation agreements with sector regulatory authorities with competition functions; and - the conduction of outreach programmes in the small and medium enterprise (SME) sector.	No competition advocacy and awareness programmes through the holding of stakeholder workshops were implemented during the year. Public awareness was however achieved through the holding of stakeholder/public hearings into high profile competition cases such as the ZESA case and the CIMAS-dialysis case. Preparations had also been made to make a presentation on competition issues at the ZNCC Annual Congress. Competition compliance programmes and agreements were negotiated and concluded with Schweppes Zimbabwe (Pvt) Limited and Delta Corporation, and similar negotiations with Innscor Africa (Pvt) Limited were initiated. Negotiations were commenced with the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) on the conclusion of a concurrent jurisdiction agreement on competition in the regulated sector. The former Zimbabwe Electricity Regulatory Commission (ZERC) had refused to enter into such negotiations. No outreach programmes in the SME sector were conducted, because of human and financial resources constraints.

		An exercise was commenced on the identification and grouping of barriers to entry detected from recent competition cases with a view to taking the necessary measures to eliminate or reduce them.
	To undertake research and other studies into competition issues.	No competition studies were undertaken during the year, mainly due to resource constraints in terms of human resources. The whole idea of competition research had to be shelved pending the establishment of a specialised Research Unit in the Commission.
	To investigate and control anti-competitive agreements and prevent abuse of dominant positions, through: - the identification and monitoring of sectors that are prone to anti-competitive practices; - the investigation of anti-competitive practices and execution of appropriate remedial action; - the identification of service quality standards for anti-competitive practices in line with regional and international trends and best practice; and - the conduction of service delivery audits.	Sectors that were identified as prone to anti-competitive practices were mainly those with active trade associations, such as the cotton industry and the bread industry. Investigations into anti-competitive practices were undertaken in various industries and sectors, such as: (i) abuse of dominance or monopoly in the electricity services sector and other utilities, telecommunications services sector, beverages industry, tyre manufacturing industry, the music recording industry, and health delivery services sector; (ii) collusive and cartel-like behaviour in the bakery industry, and the cotton ginning industry; and (iii) misleading advertising in the grinding mill manufacturing industry. Consultations were held with other competition authorities in the region and worldwide on best practices in quality standards for the investigation of restrictive business practices (RBPs). It was found that the investigation of RBPs by other competition authorities in the region take between 30 days and 12 months, while that by some authorities in the Far East take an average of 265 days.
	To regulate and control mergers and acquisitions, through; - the development of a market intelligence system on the identification of possible mergers and acquisitions; - the investigation and examination of proposed mergers and acquisitions; and - the definition of service quality standards in line with regional and international best practices.	A market intelligence system on the identification of possible mergers and acquisitions was put in place and was being executed through a 'Merger Watch' scheme on business combinations and consolidations reported in the media. The Zimbabwe Stock Exchange (ZSE) had also been enlisted in the identification of stock exchanges resulting in the acquisition of controlling interests. The cooperation of the Company Registrar and Deeds Office had also been obtained in the identification of company transfers that are related to mergers and acquisitions.

		Mergers and acquisitions that were investigated and finalised during the year occurred in various industries and sectors, such as: (i) the financial services sector (the <i>FBC Holdings/ Eagle Insurance merger</i>); (ii) the petroleum industry (the <i>Chevron Zimbabwe/ Engen Holdings merger</i> and the <i>BP and Shell/ FMI Zimbabwe merger</i>); (iii) the retailing services sector (the <i>Makro Zimbabwe/ OK Zimbabwe merger</i>); and (iv) the transport services sector (the <i>Unifreight Limited/ Pioneer Corporation merger</i>). Consultations were held with other competition authorities in the region, notably those of South Africa, Zambia, Namibia, and Kenya, and worldwide through the internet, on best practices in quality standards on the examination of mergers and acquisitions. It was found that the merger examination periods ranged from 30 days (Namibia), through 60 days for complex mergers (South Africa) and up to 90 days (Zambia and Singapore). It was therefore agreed that the Commission maintains the <i>status quo</i> of examining mergers within 60 days for simple mergers and 90 days for complex mergers.
	To investigate and control collusion tendering and bid-rigging in Government procurement, through: (i) familiarisation with Government tender procedures; and (ii) identification and elimination of unfair business practices in public tenders and contracts.	No specific plans and activities were undertaken to investigate and control collusion tendering and bid-rigging in Government procurement. The meagre human resources of the Commission's Competition Division were fully committed to dealing with outstanding competition cases.
	To assess monopoly situations in Zimbabwe and their competitive effects.	The assessment of monopoly situations in Zimbabwe and their competitive effects was not done, again due to human resources constraints.
Tariffs Operations	To provide assistance to local industry, through: • undertaking company visits to identify opportunities; • attending business association meetings/ workshops; • production of informative newspaper articles; • investigating tariff relief applications; • identifying institutions to collaborate with; • communicating with identified stakeholders on areas of cooperation; and	Not less than 12 companies were visited countrywide during the year for tariff assistance and protection, and their operational problems and constraints were noted for future policy formulation. Meetings of the CZI's Economics and Banking Committee and Trade and Development Committee were attended at which industry was informed of the Commission trade tariffs services, as well as meetings of the ZNCC's Trade and Advocacy Committee. The 2011 Annual Congresses of both the CZI and ZNCC were attended. Newspaper articles on trade tariffs issues were

	training in tariff analysis.	produced. The topics covered were on: (i) <i>Functions of the Tariffs Division</i>; (ii) <i>SADC Derogation: Implication for the Private Sector</i>; (iii) <i>Tariff Bindings and their Implications</i>; and (iv) <i>Why Firms Dump</i>. A total of 8 tariff relief applications were processed, with 4 of them completed, during the year. The average processing time was six months, as opposed to the targeted 90 days. The targeted processing times could not be met because of slow and poor response by stakeholders, and lack of cooperation from industry. The relief sought included reduction and/or suspension, tariff protection, and tariff splits.. The Tariffs Division collaborated on trade tariffs issues with relevant local organisations (the Trades Centre, ABUZ, Zimbabwe Statistics (ZimSTATS), Zimbabwe Revenue Authority (ZimRA), and Zimtrade) and international organisations (World Trade Organisation (WTO) and World Customs Organisation (WCO)). The collaboration with ZimSTATS was on trade data, with the WTO on training in trade remedies, and with the WCO on migration to HS2012 training. Two Economists in the Tariffs Division were trained in tariff analysis, and one in market access.
	To provide technical assistance to Government, through: - attending and participating in trade negotiating meetings; - undertaking research and analysis on market access; and - producing periodic status reports on market access issues.	The Tariffs Division attended and participated at a total of 10 trade negotiating preparatory meetings arranged by the Ministry of Industry and Commerce, and at some of the regional trade negotiating meetings. It however failed to attend at least 4 key trade negotiating meetings because of financial constraints. The Division produced 1 research paper on <i>Contribution to the Budget 2012</i>, and 3 other analytical papers. The analytical papers were on (i) recusal of Zimbabwe from joining the COMESA Customs Union; (ii) MFN tariff lines that exceed Zimbabwe's WTO binding commitments; and (iii) conversion on non-ad valorem to ad valorem equivalents for Zimbabwe's bound tariffs. 3 quarterly status reports on market assess issues were produced in March, July and December 2011.
	Attended and participated at a total of 10 trade negotiating preparatory meetings arranged by the Ministry of Industry and	No stakeholder workshops on unfair trade practices were held because of lack of trained personnel in the field. No unfair trade practices were investigated, also because of lack of trained

	Commerce, and some of the regional trade negotiating meetings. However, failed to attend 4 trade negotiating meetings because of financial constraints. Produced 1 research paper on <i>Contribution to the Budget 2012</i>, and 3 other analytical papers. The analytical papers were on (i) recusal of Zimbabwe from joining the COMESA Customs Union; (ii) MFN tariff lines that exceed Zimbabwe's WTO binding commitments; and (iii) conversion on non-ad valorem to ad valorem equivalents for Zimbabwe's bound tariffs. 3 quarterly status reports on market assess issues were produced in March, July and December 2011.	personnel and business awareness. The WTO was approached for training in unfair trade practices, and the training was promised in 2012. 4 newspaper articles on unfair trade practices were produced, and the topics covered were on: (i) unfair trade practices; (ii) dumping; (iii) safeguards; and (iv) subsidisation.
	To propose measures that tilt the balance of trade in favour of Zimbabwe, through researching on trade tariffs in the region.	Research was undertaken on a number of tariff handbooks in the region (on COMESA, SACU, and South Africa), which now constitute the Commission's database. However failed to secure the Zimbabwe tariff book from the Ministry of Finance. The Commission made recommendations on tariff reviews in the national budget and mid-term policy that were benchmarked with regional standards, especially those on South Africa.
	To propose harmonisation of the Competition Act and the Finance Act.	A paper on the proposed harmonisation of the Competition Act and the Finance Act was produced by the Tariffs Division and submitted to the Commission's Legal & Enforcement Committee.
	To undertake sectoral studies to inform policy formulation.	Four sectoral studies were undertaken during the year, on the motor vehicle, fertilizer, poultry, and blankets manufacturing industries. Training in research methodology techniques and analysis was arranged with the University of Zimbabwe for commencement in 2012.
	To acquire practical hands-on experience on the handling of WTO issues.	The secondment of Commission staff at the Zimbabwe Embassy in Geneva was suspended due to resource constraints.
	To synchronise the handling of	The deficiencies in the handling of trade policy

	Ministerial trade policy assignments with the Commission's internal approvals procedures.	assignments from the Ministry in sync with the Commission's internal approvals procedures were identified and rectified. It was agreed that the Tariffs Division's reports to the Ministry of Industry and Commerce on trade policy assignments should pass through the Commission's Tariffs Committee, or sent to members of the Commission on round robin basis before submission to the Ministry.
Legal and Corporate Services	To ensure up to date legal advice in accordance with set service level agreement standards	On-the-job training was carried out for legal personnel in the Legal & Corporate Services Division in the specialised areas of the Commission's operations, including involvement in the investigation and analysis of competition cases. A one-day training session on legislative drafting, conducted by the Attorney General's Office, was also held for the Commission's three new legal officers. A training seminar on legislative drafting organised by the International Law Institute, through the African Centre for Legal Excellence, and held in Kampala, Uganda, was also attended. In addition to providing legal advice and guidance during Commission meetings at both Directorate and Board levels, legal opinions were given on the following: (i) notifiability of a number of mergers and acquisitions; (ii) application of the Competition Act on acts and conduct of Statutory Bodies, and on eligible enterprises for tariff relief; and (iii) legal implications on continued acting positions, and calculation of acting allowances. Discussions were held with the Commission's external lawyers on the implications of section 33 of the Competition Act [<i>Chapter 14:28</i>] on the enforcement of the Commission's orders, and an appropriate <i>modus operandi</i> was agreed upon. Close liaison was also maintained with the external lawyers on all Commission cases before the courts. The provision of legislative drafting services included the drafting of general notices on at least five merger investigations for publication in the <i>Government Gazette</i> in terms of section 28(2) of the Competition Act [<i>Chapter 14:28</i>].
	To provide timely and efficient secretarial services to the Board of Commissioners in accordance with set standards.	Secretarial services were given to the Board of Commissioners on all the Commission meetings held during the year. The services included: (i) preparation of the notices and agendas of the meetings; (ii) collection, compilation, and distribution of the discussion papers; and (iii)

		recording and safe-keeping of the minutes of the meetings. Memoranda of Undertakings were drafted in respect of two conditionally approved mergers (the <i>BP and Shell Zimbabwe/ FMI Zimbabwe merger</i>, and the <i>Unifreight Holdings/ Pioneer Corporation merger</i>).
	To increase the visibility of the Commission to its stakeholders.	The formulation of the Commission's visibility and public relations policy and plan was done, and the policy and plan was being considered by the end of the year. The following activities that increased the Commission's visibility to its stakeholders were carried out: • the publication in the <i>Government Gazette</i> and national newspapers of the notice of the Commission's order on the compliance of conditions imposed on the approval of the <i>Total Zimbabwe/ Mobil Oil merger</i>; • arrangements for the Commission's participation at the Zimbabwe International Trade Fair in May 2011; • arrangements for the holding in Harare and Bulawayo of stakeholders workshops on the socio-economic impact of excessive pricing of public utilities. • Participation at the Harare Agricultural Show held in August 2011. The Commission's visibility to its stakeholders was largely done through the media, both the print and electronic media. During the year, the Commission's operations and activities were positively reported in at least 25 newspaper articles, an average of two articles per month.
	To ensure that the Commission adheres to good corporate governance principles.	The Commission at its Forty-Sixth Ordinary Meeting held on 6 October 2011 resolved to adopt the Corporate Governance Framework (CGF) for State Enterprises and Parastatals (SEPs) as its corporate governance manual, and to work on a Code of Ethics for its members and staff. The adoption of the CGF as the Commission's corporate governance manual followed the following activities: • attendance at the Professional Development Workshop for Corporate Secretaries that was organised by the Institute of Directors Zimbabwe (IoDZ) and held in May and April 2011;

		• attendance at a two-day seminar on the Corporate Governance Framework for Board Members and Managements of State Enterprises and Parastatals that was organised by the Ministry of State Enterprises and Parastatals, in conjunction with the IoDZ and PricewaterhouseCoopers (PwC) and held in July 2011; and • attendance at the E-Government Workshop for State Enterprises and Parastatals that was organised by the Office of the President and Cabinet and held in September 2011. The Commission also attended the Conference on Corporate Governance Incorporating Strategic Planning in Zimbabwe 2012 that was hosted by ASM Communications and Training Solutions of South Africa, and held at the Victoria Falls in November 2011.
Finance and Administration Services	To mobilise financial resources for the funding of the Commission's operations.	Representations were made to the Government on the inadequacy of the Commission's government grant, but with limited success. The Commission however financed most of its 2011 activities through the trade development surcharge levy (TDSL), and merger notification fees (MNFs). An audit trail on the TDSL collections through CBZ Bank was made to identify linkages in the collections. As a result, there was a significant improvement in the collections. The calculation of MNFs was also revised to introduce maximum and minimum fee caps. The revision resulted in a marked increase in merger notifications to the Commission. A number of relevant donor organisations have been identified to providing technical and financial assistance to the Commission. These include the World Bank, UNDP, USAID, GTZ, the African Capacity Building Capacity Foundation, and the EU.
	To retain, attract, and develop competent staff.	Proposals on the review of basic salaries and allowances in the Commission were made and considered by the Board of Commissioners. The proposals could however not be implemented without specific approval of the Government. Instead, the Government directed the Commission to discontinue the payment of grocery assistance allowances, which had supplemented the Commission's meagre basic salaries. Representations were being made to the Government, through the Ministry of Industry and Commerce, on the introduction of a special

		retention allowance for all employees of the Commission. Staff levels in the Commission were maintained throughout the year without any loss, and the Commission managed to attract five professional staff. An audit of staff training needs was conducted, and skills gap was identified. Staff training courses undertaken during the year were mainly for staff in the core operational Divisions of Competition and Tariffs. Other staff were also exposed to some training in the areas of corporate governance, risk management, labour relations, and management. The Commission's education assistance scheme, which is aimed at assisting members of staff in furthering their academic and professional qualifications was resuscitated and widely utilised during the year. The National Aids Council was engaged to sensitise the Commission's employees on the HIV/AIDS scourge, and to provide technical assistance in the development of an Aids policy.
	To provide administrative support services.	Service delivery to other Divisions of the Commission was greatly improved due to the acquisition of the necessary tools of trade, such as computers. The Commission is now fully computerised. However, the shortage of motor vehicles in the Commission still posed a great challenge to its operations. The Board approved acquisition of suitable vehicles was however frustrated by a new Government directive on the purchase of only certain types of locally assembled vehicles. Suitable training courses for staff of the Finance & Administration Department to equip them for effective provision of administrative supports services were identified, and some of the staff were trained accordingly.
	To develop information communication technology.	The Commission was fully computerised, with broadband internet connections and local area network (LAN) installed, together with e-mail facility. A Disaster Recovery policy on computerised information and data was drafted, and was under consideration by the end of the year.

4.7 CONSTRAINTS AND OUTLOOK

Resource constraints, in terms of both financial and human resources, besieged the operations of the Commission throughout the 2011 year under review. As a result, the Commission was unable to fully meet its statutory mandates and strategic objectives. Particularly affected were the Commission's operations in the area of competition, which suffered from lack of international exposure and best practices.

The Commission's poor and uncompetitive conditions of service contributed to the dearth of suitable human resources, with potential serious labour relations implications.

The outlook is however promising, with serious efforts already being made to address all the operational constraints facing the Commission. The Commission has also demonstrated to both the Government and the business community that it has a positive role to play in the country's economic recovery and development through its competition and trade tariffs operations, which augurs well for its acceptance and financial support.

The Commission has also geared itself to be a leading competition authority in the region, through its provision of technical assistance to new competition authorities and participation in regional competition events, as well as to fully benefit from the programmes of leading international competition organisations such as UNCTAD, ICN and OECD.

Alexander J. Kububa
Director